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## Country Profiles of Land Tenure: Africa, 1996

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Land Tenure Center

AN INSTITUTE  
FOR RESEARCH AND EDUCATION  
ON SOCIAL STRUCTURE,  
RURAL INSTITUTIONS,  
RESOURCE USE,  
AND DEVELOPMENT

# **COUNTRY PROFILES OF LAND TENURE: AFRICA, 1996**

coordinated by

**John W. Bruce**

All views, interpretations, recommendations, and conclusions expressed in this paper are those of the authors and not necessarily those of the supporting or cooperating institutions.

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## PREFACE

The Land Tenure Country Profiles presented here are a new edition of a continent-wide set of profiles prepared and published by the Land Tenure Center a decade ago, in 1986. The brevity of the profiles and their standardized organization across countries had made them a useful reference for a generation of development specialists. A few key references were noted at the conclusion of each profile.

The new profiles reflect a decade of intensive work on the continent by LTC, and a very considerable deepening of LTC's knowledge and understanding of land tenure issues in Africa. They take account of the events of the past ten years, which have been substantial in many of the countries covered. Land tenure continues to be a volatile policy domain. In addition, the standard topics treated have been revised to take into account new development concerns; those now covered, however briefly, are:

- National land policy and legal framework
- Replacement and adaptation of indigenous tenure systems
- Tenure constraints and opportunities
  - Economic growth and food security strategies
  - Agricultural development
  - Natural resource management and conservation
  - Democratization and governance
  - Gender dimensions
- Present policy position and reform debates
- Implications for policy reform and programming

The 1986 profiles appeared as a single volume, "African Land Tenure Country Profiles," in the LTC Papers series, with a single continent-wide synthesis of the state of land tenure. This was revealing in some ways, but obscured significant regional characteristics of policy debates and trends in law reform. This time, three regional syntheses have been prepared, for West Africa, the Greater Horn of Africa, and Southern Africa.

The profiles are a project of the Land Tenure Center's Access II Project with AID's Global Bureau and Africa Bureau, and the Center gratefully acknowledges both AID's support and the substantive contributions of Dr. Pamela Stanbury, Access II Project Manager.

Six LTC research assistants compiled most of the West Africa *tranche* of these profiles and contributed to the synthesis: Rebecca Furth, Mary Hobbs, Anna Knox, Stephen Leisz, Michael Williams, and Kevin Bohrer. Four LTC research assistants worked on the East African *tranche* and contributed to the synthesis: Jyoti Subramanian, Anna Knox, Stephen Leisz, and Kevin Bohrer. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) provided supplementary funding to allow drafts of these Horn of Africa profiles and the regional synthesis paper to be completed and circulated for comments at a Subregional Workshop on Land Tenure Issues in Natural Resource Management, Addis Ababa, 11–15 March 1996. The profiles benefited greatly from the suggestions of participants who commented on the drafts. Finally, five LTC research assistants compiled most of the Southern Africa *tranche* of these profiles and contributed to the synthesis: Eva Jensen, Scott Kloeck-Jenson, Anna Knox, Jyoti Subramanian, and Michael Williams.

The work of these LTC research assistants was performed under tight time constraints, their commitment and efficiency were exemplary, and their insights were valuable. In addition, thanks are due to Jane Dennis for her thorough work on preparation of the manuscripts.

**John W. Bruce**

**Profiles Coordinator**

## **SECTION 1**

# **LAND TENURE COUNTRY PROFILES, WEST AFRICA, 1996**

by

**Kent Elbow,**

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Anna Knox, Stephen Leisz, Michael Williams**



# **SYNTHESIS OF TRENDS AND ISSUES RAISED BY LAND TENURE COUNTRY PROFILES OF WEST AFRICAN COUNTRIES, 1996**

by

**Kent Elbow, Rebecca Furth, Anna Knox  
Kevin Bohrer, Mary Hobbs, Stephen Leisz, Michael Williams**

## **Executive summary**

The present report is a regional synthesis completed as a component of the Land Tenure Center's "Africa Land Tenure Profiles" project undertaken at the request of USAID. The tenure profiles project divides sub-Saharan Africa into three regions: the Greater Horn, Southern Africa, and West Africa. West Africa, as defined within the context of this project, includes a region bordered by the Sahelian states to the north, the West African coast (though Cape Verde, an island nation off the coast, is included), and the Central African states of Gabon, the Congo, Zaire, and the Central African Republic, stretching far to the south and east and occupying a space that is generally not considered to be a part of West Africa. This vast zone features dramatic and countless variations in climate, environment, ethnicity, cultural expressions, and social institutions. The region includes 22 countries, 15 of which are commonly classified as Francophone, 5 as Anglophone, and 2 as Lusophone. One might note as well that two tiny countries of West Africa—Equatorial Guinea and São Tomé and Príncipe—are not included among the countries profiled.

## **Policy and legal framework**

Contrary to what one might expect given a group of 22 countries of nearly unimaginable ethnic, linguistic, geographic, and climatic diversity, one can speak relatively easily of dominant policy trends across vast sections of this grouping and even, in general terms, of policy trends common throughout the greater region. This is mostly explained by the fact that all localities within the region have for over a century been subjected to nonlocal legal regimes that departed fundamentally from the still generally dominant customary systems of tenure and natural resource management. The legacy of dual tenure systems—statutory and customary—has continued into the era of independence and to the present day. Although there is a real distinction between the legal and administrative approach of the French, Belgian, and Portuguese colonizers as compared to the Anglo-Saxons, as well as a diversity of postindependent legal experimentation regarding land tenure and natural resource management policies, the fundamental duality that has long characterized tenure and resource management remains a defining characteristic of current regimes throughout the region.

**TABLE 1.1 Land and population**  
(millions of hectares and millions of persons)

COUNTRY	LAND AREA	ARABLE AND PERMANENT CULTIVATION		PERMANENT PASTURE		OTHER LAND		TOTAL POPULATION	AGRICULTURAL POPULATION	
Benin	11.	1.9	(17%)	.44	(4%)	5.3	(48%)	5.2	3.	(58%)
Burkina Faso	27.	3.6	(13%)	6.	(22%)	4.	(15%)	10.	8.4	(84%)
Cameroon	47.	7.	(15%)	2.	(4%)	1.7	(4%)	12.9	7.4	(57%)
Cape Verde	.4	.05	(13%)	.025	(6%)	.3	(75%)	.38	.15	(39%)
Central African Republic	62.	2.	(3%)	3.	(5%)	10.6	(17%)	3.2	1.9	(59%)
Chad	126.	3.3	(3%)	45.	(35%)	45.2	(35%)	6.1	4.4	(72%)
Congo	34.	.18	(.5%)	10.	(29%)	2.9	(9%)	2.5	1.5	(60%)
Gabon	27.	.5	(2%)	4.7	(17%)	.7	(3%)	1.	.86	(86%)
Gambia	1.1	.2	(18%)	.9	(8%)	.5	(.5%)	1.3	.82	(63%)
Ghana	23.9	4.3	(18%)	5.	(20%)	5.5	(4%)	16.9	8.	(47%)
Guinea	24.6	.7	(3%)	5.5	(22%)	3.9	(16%)	6.5	4.6	(70%)
Guinea Bissau	3.6	.34	(9%)	1.1	(31%)	.3	(8%)	1.1	.81	(74%)
Ivory Coast	32.	3.7	(12%)	13.	(41%)	8.	(25%)	13.8	7.1	(51%)
Liberia	9.8	.38	(4%)	5.8	(59%)	1.9	(19%)	2.9	2.	(70%)
Mali	124.	2.5	(2%)	30.	(24%)	82.6	(67%)	10.5	8.2	(78%)
Mauritania	103.	.21	(.2%)	39.2	(38%)	58.7	(57%)	2.2	1.4	(64%)
Niger	127.	3.6	(.3%)	8.9	(7%)	112.	(88%)	8.8	7.6	(86%)
Nigeria	91.	32.4	(36%)	40.	(44%)	7.4	(8%)	108.	68.7	(63%)
Senegal	19.	2.4	(13%)	3.1	(16%)	3.4	(18%)	8.1	6.3	(78%)
Sierra Leone	7.2	.54	(8%)	2.2	(31%)	2.4	(33%)	4.4	2.6	(59%)
Togo	5.4	2.4	(44%)	.2	(4%)	1.9	(35%)	4.	2.7	(68%)
Zaire	234.	7.9	(3%)	15.	(6%)	3.	(1%)	42.6	27.	(59%)

All statistics are based on FAO data from 1994.

The Portuguese (since 1856), the Belgians (since 1885/86), and the French (since the turn of the twentieth century) clearly articulated in legislation that “occupied lands” were to be governed according to local custom and all other lands were considered to be state property. A reading of the table profiles suggests, however, that during the colonial period, especially in Francophone West Africa, state property was widely considered by administrators to *include all untitled land* (as opposed to *excluding all occupied lands*), as land registration through long-term state leasehold and freehold titling systems gained a prominent place within legislated policy. Widespread practices of itinerant farming and transhumant or nomadic herding common throughout West Africa resulted in vulnerability of local populations to being confronted with state claims of ownership to lands exploited on a periodic basis. Economic development goals further increased vulnerability as continuous and monetarily profitable land and resource use was favored by colonial policies. An early legal development, for example, was codification by colonial administrations of the new principle of *mise en valeur* (land use and development) as a tool intending to achieve economic development goals. This principle required long-term leaseholders to satisfy specific resource investment and development conditions defined by the state prior to gaining eligibility for application for private title. Further evidence of the decisive role claimed by the colonial government in redirecting land tenure is early codification of the principle of *eminent domain*,<sup>1</sup> which was liberally exercised in some areas. Application of such principles as *mise en valeur* and eminent domain, often resulting in the establishment of state-supported and long-term land claims on the part of nonlocal individuals and the accompanying displacement of local populations, is especially striking in the resource-rich region today defined by the countries of Zaire, Congo, and Gabon.

One can generalize in the context of West African legislative policy with remarkable ease, especially across Francophone West Africa, which includes 15 of the 22 countries classified within the “West Africa Region” for purposes of these profiles.<sup>2</sup> In the Francophone zone, titling and registration systems were aimed at converting state land to private freehold, with the expectation that future private property would first complete a period as state leasehold. The leasehold period was to serve as a kind of land-steward apprenticeship during which the candidate for eventual land title fulfilled specified conditions regarding land exploitation, improvement, and development (as upheld by the legal principle of *mise en valeur*). Indigenous populations made extremely little use of legal provisions governing state leasehold or freehold land. Later attempts by French colonial administrators to make land registration more accessible to indigenous populations—such as the introduction of a less cumbersome method of land registration known as the *livret foncier* appearing in French West African legislation in 1925—did little to change the situation.

The British were less consistent than the French in their legal approach to land management during the colonial period. At the same time that the British colonial administration was attempting to consolidate state control over land management in northern Nigeria and northern Ghana through the establishment of protectorates, the policy elsewhere in British West Africa was to vest land ownership and authority in paramount chiefs considered to have derived their status from precolonial “customary” institutions. The distinction between the “protected” and “customary” (or “tribal”) regions, however, becomes less clear when one considers that in both settings actual land administration was accomplished “indirectly” through customary authorities.

A second ambiguity characteristic of the Anglophone zone emerges from the introduction of western-style freehold ownership of land in particular regions—especially coastal Liberia and Sierra Leone—adjacent to

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<sup>1</sup> The Black’s Law Dictionary begins a definition of the principle of *eminent domain* as follows: “The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character.” The principle is an important tenet in both Francophone and Anglophone legal traditions.

<sup>2</sup> One might note, however, that among the 15 countries here referred to as “Francophone,” a piece of Cameroon—at least in linguistic terms—is Anglophone, and Zaire was colonized by Belgium as opposed to France. The significance of the unique linguistic characteristics of Cameroon is here considered minimal since the dominant legal tradition of importance throughout the period since independence is decidedly French.

regions declared to be under the authority of indigenous chiefs. The juxtaposition of freehold principles and paramount chief administration of land has been a strong feature in most postindependence Anglophone West Africa countries; Nigeria, however, chose to revive the “protectorate” legacy in 1978 by proclaiming state ownership of the entire national territory.

As contrasted to a general emphasis on the privatization and economic development of *land* resources, colonial policies framed in the context of the broader category of *natural resource management* were decidedly state-centric and protectionist. Forest legislation enacted for French West and Equatorial Africa, for example, consisted primarily of lists of rules and restrictions to exploitation of trees and soils to be enforced by the quasi-military institution known as the government forest service. Ownership of trees and forests was, in legal terms, uniquely an attribute of the state. Nonetheless, commercially valuable trees, as was the case with land, could be made available for private exploitation through a state *concession*—an administrative act granting specific use rights to state-owned resources to particular individuals for specified periods. This centralized, enforcement-oriented approach to natural resource management remained intact—and in most cases was even reinforced—throughout the period since independence and has only relatively recently been seriously questioned and, in a few cases (see Senegal for an example), partially reformed.

The 2–3 decades following independence (around 1960 for the majority of the 22 countries discussed here) saw considerable experimentation in the realm of land policy on the part of a number of countries of the region. Such experimentation generally took the form of significant legislative reinforcement of state claims of direct management authority and ownership over land resources. Nationalization, partial nationalization, or some variation on this theme was attempted in a large number of countries, including Guinea, Zaire, Congo, Benin, Senegal, Ivory Coast, Burkina Faso, Nigeria, Ghana, Liberia, and Guinea Bissau. In some cases (Guinea, Benin) such policies have explicitly and officially been replaced by a push toward land privatization through registration of freehold rights that echoes the early colonial period. In others (Congo, Burkina Faso) recent reforms toward economic and political liberalization appear to signal coming legal reforms more supportive of private tenures—or at least to ignore current legislation running counter to individualized control over land. Finally, Niger has recently (1993) enacted innovative legislation providing for—and encouraging—conversion of customary land rights into legally recognized freehold.

The majority of the profiles treating West African countries note the increasing influence favoring individualized landholdings as economies based on the production of commodities become more developed, as populations and land pressures increase, and as international donors support widespread legal reform. Where private holdings are not legally allowed (Zaire, Guinea Bissau), the mechanism of state concessions provides for limited-term individual tenure security where profitable exploitation of natural resources is feasible, or where privileged individuals are allowed to engage in natural resource market speculation. Some countries, such as Cameroon, have put in place policies that appear to encourage land speculation through acquisition of private holdings—again apparently favoring privileged individuals with specialized access to knowledge, influence, or financial resources.

The unique example of Senegal draws special attention. Since 1964, legislation has existed that intends to replace customary systems of land administration in rural areas with locally elected councils (*Conseils ruraux*). Subsequent legislation in 1972 defined these councils and initiated the process of putting them into place throughout the zone designated as *terroir* (inhabited rural areas covering slightly more than half the national territory)—a process which took nearly two decades to complete.

The Senegalese initiative promoting decentralized and democratic control over land and resource tenure should still (in 1996) be regarded as experimental, since the tradition of centralized state control built up throughout the colonial period clearly remains strong in the attitudes and institutions of policy implementers. State claims of ultimate ownership of all land (with the exception of a small number of privately registered, mostly urban, plots executed prior to 1964), government definitions of *mise en valeur*, and requirements that government approval be obtained prior to execution of most of the important decisions of the local rural councils conspire to place limits to true decentralization in the area of land and natural resource management.

TABLE 1.2 National land tenure patterns

	1. PRIVATE OWNERSHIP (FREEHOLD)				2. STATE LEASEHOLD		3. COMMUNITY BASED TENURE		
COUNTRY	OFFICIAL TENURE OBJECTIVE	DE FACTO DOMINANT TENURE TYPE	Exists	Significant*	Exists	Significant*	Indigenous, legally recognized	Alternative, legally recognized	Extensive
Benin	individual land ownership	indigenous community-based	yes	no	yes	no	no	no	yes
Burkina Faso	individual and collective registration	community-based	no	no	yes	no	no	no	yes
Cameroon	individual land ownership	community-based	yes	yes	yes	yes	no	no	yes
Cape Verde	individual land ownership	individual land ownership	yes	no	yes	yes	no	no	no
Central African Republic	individual/private registration	indigenous community-based	yes	no	yes	no	yes	yes	yes
Chad	private titling registration	indigenous community-based	yes	no	yes	no	no	no	yes
Congo	state owned "individual" registration	indigenous community-based	no	no	yes	no/yes	no	yes	yes
Gabon	individual registration of land	indigenous community-based	yes	yes in urban areas	no	no	no	no	yes
Gambia	community based and title freehold in urban areas	indigenous community-based	yes	no	yes	no	yes	yes	yes
Ghana	individual registration under community based system	community-based	yes	no	yes	?	yes	yes	yes
Guinea	individual registration	community-based	yes	no	no	no	no	no	yes

	1. PRIVATE OWNERSHIP (FREEHOLD)				2. STATE LEASEHOLD		3. COMMUNITY BASED TENURE		
COUNTRY	OFFICIAL TENURE OBJECTIVE	DE FACTO DOMINANT TENURE TYPE	Exists	Significant*	Exists	Significant*	Indigenous, legally recognized	Alternative, legally recognized	Extensive
Guinea Bissau	individual registration	community- based	yes	?	no	no	yes	no	yes
Ivory Coast	private registration	indigenous community- based	yes	no	yes	no	no	yes	yes
Liberia	individual private ownership and registration	community- based and freehold	yes	yes	?	?	no	no	yes
Mali	private registration	indigenous community- based	yes	no	yes	no	yes	yes	yes
Mauritania	individual land ownership	community- based/Islamic	yes	yes	yes	yes	no	yes	yes
Niger	individual registration of land/titling	community- based	yes	no	yes	no	yes	yes	yes
Nigeria	individual registration through certificates	community- based	no	no	yes	yes(?)	no	no	yes
Senegal	individual "lease hold"	indigenous community- based	no	no	yes	no	no	yes	yes
Sierra Leone	individual registration	indigenous community- based	yes	yes/no	yes	no	yes	yes	yes/no
Togo	registered	community- based	yes	no	yes	no	yes	yes	yes
Zaire	state land/ individual leasehold	indigenous community- based	no	no	yes	no	no	no	yes

\* Significant does not refer to percentage of land area under private ownership or state leasehold but the impact those tenures have in national tenure policy and practice.

The commercial exploitation of natural resources such as trees and pasture resources is encouraged through a recent policy trend toward decentralized access to benefits—especially income—resulting from rational resource exploitation. The trend toward decentralization (at least of benefits) and the emphasis on increasing local tenure security is especially evident in the Sahelian countries organized into the Permanent Inter-state Committee for Drought Control in the Sahel (*Comité permanent inter-États de lutte contre la sécheresse dans le Sahel*, CILSS), which for nearly two decades has acted as a forum for policy debate on these topics. Guinea, Senegal, Niger, and other countries have enacted or will enact forest legislation granting increased rights to populations living in the vicinity of both classified and unclassified forests. In return for legal recognition of local capture of benefit streams, local communities are expected to adhere to a forest management plan formulated or approved by the state.

In summary, the overall trend (more pronounced in Francophone than in Anglophone countries, yet evident to varying degrees in both zones) toward official encouragement of land and natural resource markets is reminiscent of the turn-of-the-century colonial policies designed to replace customary tenures with state-administered land en route to registration as private property. Notable holdouts include Nigeria, Burkina Faso, Senegal, Ivory Coast, and Zaire, where policies currently stop short of targeting a final stage of legal conversion to freehold tenure as they concentrate on maintaining a strong—though perhaps decentralized—role for the state in land ownership and management. The lines between the two approaches are less distinct than might first be assumed, however, since policies aiming at conversion of customary tenures to private property, such as in Guinea and Niger, are quite explicit in maintaining a strong role for the state in land management even once the conversion is complete. For example, a notable tool to be used in maintaining a strong role for the state, somewhat redesigned since its introduction during the colonial period, is that of *mise en valeur*. The current concept of *mise en valeur* includes monitoring of land and resource exploitation, even on private holdings, by state agencies, or local councils that include participation of state agents, endowed with powers to enforce reigning governmental guidelines where they conflict with observed resource-use patterns and practices.

### **Replacement and adaptation of indigenous tenure systems**

In all West African countries, whether officially recognized or not, community-based tenure systems predominantly dictate who has access to land and natural resources. The only significant regions where this is not the case are in urban areas—where freehold tenure systems supported by land registration systems have been put into place—development zones such as irrigation schemes or plantations, and the east coasts of Liberia and Sierra Leone. The latter two areas were settled mainly by freed slaves. In both of these coastal strips, the colonizers put into place land registration systems based on freehold title which have replaced the community-based tenure systems that were previously present.

Literature on community land tenure systems in West Africa reflects the current understanding of how the land tenure systems employed by sedentary agriculturalists have evolved. The literature agrees that in most places the first person to arrive in an area, clear the terrain, or put the tract into production was considered to have primary use rights to that land. Today, in most cases that ancestor's descendants are considered the primary "owners" of the land and usually the eldest male has rights to allocate land or in other ways dictate who can use the land.

There are two major subdivisions. The first is lineage based. In these systems the members of the lineage descended from the ancestor are considered to be the "owners" of the land. Rights in these systems are passed either patrilineally or matrilineally. In patrilineal societies rights are passed either from father to eldest son or, more commonly, from eldest male in the lineage to the next eldest male (usually the brother of the eldest male). In matrilineal societies rights to land are passed on the mother's side. In these cases males get rights to land from their mother's brothers. Also in these cases one can find the eldest male in the lineage responsible for allocating land among the members of the lineage.

The second—and less frequently found among community-based land tenure systems—is where land allocation is carried out by the monarchy. In this case the king distributes rights to land to nobles who then distribute the rights to their lineage. These systems are also both patrilineally and matrilineally based. Two examples of this type are found with the Fon in Benin—a patrilineally based society—and the Agni and Baoule in Côte d'Ivoire, both of which have matrilineal social structures where land is allocated by the king to the various lineages.

In all of these community-based tenure systems, access to land is primarily through inheritance if one is a member of the lineage/group; borrowing, sharecropping, or renting if one is an outsider (stranger) to the group; or purchase if land is bought and sold in the area. All of these possibilities are primarily for men, though women can have access to land through borrowing. Otherwise, in most cases, women have access to land through the men in a lineage. This means either through their husband or through their father, brother, uncle, or another male relative. Exceptions to this are found among the Fulbe in Niger and in The Gambia, where women have been known to inherit land from their mothers.

Tree tenure is tied to land tenure in almost all community-based tenure systems. In most places only those who have primary access to land resources—for example, members of the lineage that controls the allocation of land in an area—have rights to plant trees. This is because tree planting, and the ownership of trees, usually indicates a strong right of access and control over the land on which the trees are planted. There are exceptions to this as shown by reports of community-based tenure systems in Sierra Leone, where stranger farmers can plant—and own—trees on land they are borrowing. In these cases the stranger farmers are compensated for the trees when they leave the land.

A second case is nomadic herders, on whom there have also been some studies carried out of land and natural resource tenure systems. Most of these systems revolve around access to water resources. Two examples of these systems are the Tuaregs and the Wodaabe in Niger. The Tuareg system consists of a regular transhumant circular movement that corresponds to the cyclical appearance of the rainy season. In the dry season the herd movement is organized around a number of wells that the group has dug. The Wodaabe, on the other hand, migrate along an east-west axis that corresponds to the rains. In many areas a complementary relationship has developed between transhumant herders and settled farmers, which has often expressed itself through manure “contracts” or established rights of entry to postharvest fields accorded to herders for grazing of crop residues. In some cases, however, the relationship has been one of conflict sparked by competition for access to natural resources. Such conflicts have been especially keen since the droughts of the 1970s and 1980s.

A third group of resource users who also have unique forms of community-based tenure systems are the “pygmies” of the central African forested areas. These people have traditionally made their living from hunting and gathering in the forested areas of central Africa (Zaire, Gabon, and Congo). While their traditional rights to land rest on a combination similar to the agricultural tenure systems—a combination of defined territories and group membership (descended from the first person to use the resource)—their corporate rights to land are not based on cultivation or clearing of land but, rather, to gathering, fishing, and hunting in the forested areas. Unfortunately, there have been few studies done on the pygmies’ natural resource tenure systems.

In many areas of West Africa Islamic law plays a large part in the community-based tenure systems. This is especially true in parts of Guinea, Chad, Niger, Mauritania, Gambia, and Nigeria, but is present in a number of other West African countries as well. Islamic law provides for both collective and individual ownership of land. It dictates that all land belongs to all Islamic people, but leaves an opening for state assertion of stewardship (basically amounting to legal ownership) of all land as is the case in Mauritania. However, an individual Muslim can have legal ownership to land. The basic criteria for establishing ownership are occupation and use. According to the Islamic principle of *Indirass*, private rights are established through ten years of continuous resource exploitation—such as for agricultural production—and are to be forfeited following ten years of disuse. In some cases Islamicization has resulted in the undermining of indigenous inheritance rules, such as where Islamic



formulas of land and wealth distributions among male and female offspring conflict with practices of matrilineal systems.

Water rights are also critical in Islamic law. The value of a parcel of land is determined by its proximity to water and, under Islamic law, all people have rights of access to water sources. Use rights, though, depend on the type of water source. Some are considered public water ways, open to all users including livestock; others are considered the property of the person or group that constructed them, such as wells.

In all the countries community-based tenure systems have evolved and adapted to historical pressures on them, and they are continuing to do so. Following are three notable ways in which some of the community-based tenure systems are evolving and adapting to specific influences in the different countries in West Africa.

In Togo, Ghana, Côte d'Ivoire, and The Congo (Brazzaville), land markets under community-based tenure systems are noted to be evolving. In Togo, the first private land markets were introduced by the settling of ex-slaves from Brazil. Today, this influence has spread to some of the community-based tenure systems in the area. In Ghana, land markets were noted as developing after the introduction of cocoa as a cash crop in the 1870s. In Côte d'Ivoire, immigrants to the forest area "bought" land from the local population. And in The Congo, since the 1970s, some nuclear families have been buying "personal" land. This land is then inherited father to son, instead of matrilineally. In all cases, land is being bought because a commercial potential for crops is seen.

Thus land markets, and therefore individualized tenure, have often appeared following introduction of cash crops. A further example is illustrated by the Senoufou and Minianka in Mali with the introduction of cotton as a cash crop. In some areas, such as in parts of Ghana, this individualization is putting pressure on traditional matrilineal societies to allow for transfer of land from father to son, so that improvements to the land can be passed on to sons rather than transferred to the eldest male in the lineage. In some cases fathers are giving land "gifts" to their sons before they die, so that when they die the land, with the improvements, will not be lost from the immediate family.

Another way that tenure systems are evolving is through the increased conflicts between herders and sedentary farmers which are seen in parts of Mali, Niger, Mauritania, and Burkina Faso. In these areas traditional systems that saw herders leaving their herds on agricultural land during the dry season and effectively exchanging manure for crop stubble, or in other cases herders allowing farmers to grow crops on pastureland during the rainy season, are breaking down. This is happening as some cultivators are expanding into herding activity and some herders are expanding into sedentary agriculture. In both cases, traditional tenure arrangements are breaking down and in some cases violence is reported as having broken out between the two competing groups. The overall tenure transition appears to be a movement from overlapping to exclusive rights.

Thus, while community-based tenure systems are still the most widely followed patterns of rules regulating land and natural resource use in West Africa, they are not static. And while there are general similarities amongst the systems, they are not all the same.

Finally, one should consider the treatment of community-based tenure systems in official policy. Is customary tenure recognized in national tenure legislation? The answer to this question could be expected to determine whether a particular policy orientation would be categorized as "replacement" or "adaptation" vis-à-vis community-based tenure systems. In fact, the answer is not always straightforward. In order to formulate a response to this question one must first consider what legal recognition of customary tenure might consist of. Such a task is attempted here through a brief examination of the country-by-country legislation.

A very loose and somewhat debatable classification system emerges from an examination of the profiles. One might suggest four categories regarding the treatment of community-based tenure systems at the hands of national legislation in West Africa: (1) nonrecognition or abolition; (2) neutral recognition; (3) recognition aimed at replacement; and (4) geographically-qualified ("zoning") recognition. Fully 50% (11 of 22) of the countries of West Africa appear to fit in the first category: "nonrecognition or abolition." According to the information

available, a slight majority of these countries features national policies that largely ignore the issue of community-based tenure; this includes Benin, Cape Verde, Gabon, Ivory Coast, Nigeria, and Zaire—the latter which declares its intention of affording some protection of customary rights, but has neglected to enact specific promised legislation to this effect. However, a number of the countries of this category, especially Burkina Faso, Cameroon, Congo, Mauritania, and Senegal, seem actively hostile to locally based customary systems and may even go so far as to legally abolish them.

The second category is composed of those countries with national policies that explicitly mention customary tenure systems without offering any substantial sanction or protection of them. This category includes the Central African Republic, Chad, and Mali.

The third category promotes customary recognition of rights as a basis for registration of private individual rights. One might argue that once such rights are registered on an individual basis, they are transformed (as an example, they generally become transferable at the initiative of the individual rights holder—contrary to the rules basic to most customary systems) and are therefore no longer community-based. Countries in this category include Niger, Togo, and Guinea.

Finally, the fourth category includes a group of countries whose policies have most often evolved from their former grounding in the British colonial legal system (the exception being Guinea Bissau). British colonial policies are generally considered to be more tolerant of customary systems of authority than those of the French—as long as the customary systems are geographically and definitionally circumscribed. The countries in this category vest land management authority and sometimes property rights in customary authorities within defined zones. A subtle tradition of standardizing definitions of “customary” systems and authorities accompanied implementation of British colonial policy and appears to have been upheld by most of Britain’s ex-colonies in West Africa. Other zones are designated state lands. Thus, something resembling the colonial legacy earlier designated as “tribal authority lands” continues to exist in Liberia, Sierra Leone, Gambia, Ghana, and Guinea Bissau. Such recognition of customary systems does not preclude the coexistence of strong replacement policies as evidenced, for example, by the rapid expansion of state grants of concessions in Guinea Bissau which threatens the integrity of customary systems and zones.

### **Tenure constraints and opportunities**

Agriculture is the primary source of livelihood for most countries in West Africa. Between 50% and 70% of West African populations reside in rural areas while up to 90% are engaged in agriculture either directly or indirectly. The majority of rural populations rely on subsistence agriculture. At the macroeconomic level, however, the countries are quite diverse in terms of their reliance on agriculture as a source of national income. Gabon, rich in petroleum and mineral resources, generates only 4% of its GDP from agriculture while agriculture accounts for 50% of GDP in resource-poor Guinea Bissau.

The overall performance of agricultural production in the West Africa region has been disappointing, particularly since it has been the object of substantial investment and policy directives for most countries since their independence. Much of the sluggish or negative growth in output can be attributed to several factors stemming from economic, land tenure, and agricultural policies handed down by governments and donors and the worsening drought situation in the Sahel. Other factors, including political instability and world price fluctuations, have affected agricultural production in the countries of the region.

Postindependence governments in West Africa sought development and growth through adopting economic systems which ranged from socialist to free market. Within the past decade or so, however, there has been a marked shift toward promoting market economies in the region. State farms and cooperatives, once the focus of agricultural investment in the CAR, Benin, Congo, and Guinea, are giving way to support for individualized farming. Internationally supported programs of structural adjustment have played a role in this process. The

process of market liberalization has fueled changing policies and incentives governing land use and agriculture, paving the way for increased export crop production.

The introduction of cash crops during colonialism has led to a concentration of different commodities corresponding to various climatic zones. Roughly, these zones correspond to cocoa and coffee production along the southern border, groundnuts in the far western region, and cotton production in the lower Sahel. Oil palm is produced in the more tropical southern and western locales. The trend toward agriculture commercialism has altered many of the rules and much of the administration of land tenure systems, both at the policy level and on the ground. Where economies have moved away from largely subsistence production to cash-crop production, the increased value attached to land as a result of its income-generating potential has led to greater individualization of tenure. For several countries situated along the coast, including the Ivory Coast, Ghana, Togo, Benin, and Nigeria, dual tenure patterns have evolved from the promotion and expansion of export crop production in their more humid southern regions. Here, community-based tenure systems tend to place greater emphasis on household ownership rights and are less reliant on traditional authorities for land administration than their northern counterparts, where subsistence agriculture predominates.

Export crop promotion has met with mixed results. In response to both policy and price incentives, farmers have undertaken higher levels of cash-crop production. However, policies in many cases have not supported smallholder production of these crops. In Liberia and Guinea Bissau, sharp inequities in land distribution and wealth have developed as a result of government policies favoring large-scale export crop production. In fact, large-scale agriculture, often assumed to be more efficient than smallholder production, has frequently been characterized by poor management, absentee landlordism, and inefficient land use. Another approach taken to boost agricultural production are resettlement schemes. In Togo and Burkina Faso, schemes sought to abolish customary tenure and impose strict regulations on land use and agricultural techniques. Because of their oppressive nature and inability to offer secure tenure, most floundered.

In addition, the emphasis on export crop production has left subsistence farmers vulnerable to food insecurity. Many countries which initially prospered from healthy price trends from cocoa, coffee, and groundnuts subsequently saw prices plunge during the late 1980s and 1990s, dragging their economies down as well. Heavy reliance on export crop earnings has had serious implications for the food security of both rural and urban populations. Policy and price incentives to produce export commodities have led to an overall decline in food crop production. As rural populations become more reliant on purchased foodstuffs, they become extremely vulnerable to price shocks which send producer prices for exports and consumer prices for staples reeling in opposite directions. In some cases, more recent policies, such as those in the Ivory Coast and Burkina Faso, have sought to revive food crop production to achieve higher levels of food self-sufficiency. In groundnut-producing regions, many farmers have in recent years reverted to staple food-crop production in response to low prices for groundnuts.

Furthermore, the profiles suggest that individualization through titling and registration has the potential to incite greater insecurity for the majority of rural populations by providing opportunities for those with greater wealth or status to acquire rights at the expense of the poor, whether it be wealthy government officials over smallholder farmers, landowners over land borrowers, or men over women. Where land speculation exists as a primary motive encouraging those registering rights to resources, as is illustrated in the case of Cameroon, agricultural production is most likely to suffer.

Finally, one cannot ignore the policy implications of structural changes occurring in the livestock production section. For many pastoralists, the waning availability of suitable pastureland and grazing routes has inclined them to adopt more sedentary lifestyles and engage in agropastoralism. This happens particularly during drought periods when higher herd mortality rates induce selling of herds and undertaking of cultivation to meet subsistence needs. Fulani and Tuareg have recurrently sold their herds to farmers, hiring themselves out as herders in order to generate an alternative source of income. Sedentarization of pastoralists is often perceived by governments to be a

beneficial process by removing constraints to agricultural expansion. Where it has not occurred naturally, governments with the aid of donors have frequently tried to encourage sedentarization through the establishment of reserves. However, sedentarization can have a devastating impact on the environment as a result of overgrazing and overstocking. Few, if any, efforts to settle pastoralists onto reserves have met with success. Today, it appears that only Niger is envisioning an alternative to what has been a series of failed attempts at sedentarization. Its Rural Code calls for the participatory redrawing of range and corridor boundaries. While the sluggish pace of policy application and recent political ruptures have curtailed implementation of this policy, it is a step apart from most government legislation in the region which has not addressed pastoralists' tenure rights at all.

Just as land tenure systems and national policy positions vary greatly across West Africa, so too do national legislation for the other components of the natural resource base. Water, pasture, forest, and animal resources may each be treated separately with their own codes, management, and enforcement services. Cutting across these sectors is a concern for environmental protection against threats of soil erosion, degradation, and deforestation.

Current natural resource management policies across West Africa are informed by the legacy of the French colonial administration. Contemporary Sahelian forest codes, for example, have roots in the 4 July 1935 decree which created forest services with the police powers deemed necessary to enforce the prohibitions established by the decree. The colonial government assumed responsibility for managing the resources of the forests for two reasons: (1) to conserve forest products (firewood, charcoal, lumber); and (2) to protect and restore ecologies of the regions being degraded. This policy thus protected resources through the enforced restriction of their use. The forest reserves created during this era are today divided into similar systems of classified forests, state reserves, forest domains, protected forests, community forests, and reforestation lands. While the Anglophone colonies did not inherit this tradition, they have since adopted comparable systems.

Although local communities' use rights are greatly restricted or suspended by the state forest preserves, exploitation of these resources continues. State enforcement of rules as an approach to natural resource management has not been successful in ensuring sustainable exploitation. When populations are denied management responsibilities over resources, they may perceive little interest in protecting them. Moreover, some populations have no choice but to continue exploiting these resources. In The Gambia, for example, deforestation and wildlife exploitation prompted the establishment of forest parks and reserves, to which villagers are now restricted access. These villagers, however, continue to rely upon forest products such as firewood and the pastureland found within the reserves, so they encroach upon the protected areas. Chad also enacted a new forestry code in 1989 that classified all forests as part of the public domain and abolished the local populations' access to these resources. Exploitation continues, however, because the government does not enforce the code. Furthermore, because these resources are now perceived as belonging to the state, incentives for local populations to restrain from overexploitation are likely reduced.

A common feature of natural resource policies throughout West Africa is the difference between legislation and the possibility of its enforcement. While many countries officially support strict forest-protection legislation, they do not have the staff or resources to enforce the regulations. When legislation is enforced, it often does not produce the desired effect. In 1989, for example, Senegal established forest protection committees (CPNs) to prevent the illicit use of forest resources. One of the effects of the CPNs' activities, however, has been an increase in the tensions between farmers and herders. While farmers once permitted herders access to the tree resources on their land, they are now restricting access to trees in order not to be blamed themselves for an tree damage or felling. Senegal's latest forest code (1993) seeks to increase local communities' control over their tree resources, but it is unclear whether or not the new law will be effective. Similarly, Mali's 1995 forest code allows both private and community registration of some forests in an effort to promote more forestry comanagement.

While forest resources are severely limited and fragile for many of the West African countries, abundant forests still exist in Gabon, Congo, and Zaire. In these countries, forest legislation is less developed and

overexploitation poses a significant threat. Zaire's 1973/80 General Property Law includes forests as a component of state property. The state grants 25-year logging concessions to vast tracts of forestland. This system encourages the destruction of Zaire's tropical forests by both lumber companies and local populations, who settle on the land once it has been cleared of trees. Logging in Gabon is similarly almost unrestricted as permits are required only for its coastal forests. A 1982 law broadly defines forest management, but specific legislation regulating logging is not yet complete.

Some recent innovative attempts at integrated natural resource management strategies include the adoption of a *terroir* approach to local-level management. A *terroir* is the area regularly used by a community for its subsistence. Neighboring *terroirs* often overlap and may include areas over which the community has weak or no tenure or management claims. The idea of a *terroir* integrates the physical and social environments and implies a sense of responsibility for the resources in those areas. Since 1986, Burkina Faso has promoted village management councils through its *programme national de gestion des terroirs*. These councils were intended to work with government administrators to curb environmental degradation, establish village boundaries, and settle conflicts between resource user groups. To date, relatively few councils have actually been established, and those that do exist represent the interests of the traditional power holders rather than the whole community. Both Guinea and Niger are now also considering a *terroir* approach to natural resources management. Niger has created *gestion du terroir* committees, but the government has not yet legally recognized them. The successful incorporation of a *terroir* approach requires that states recognize the authority of these local-level tenure authorities and their latitude to interpret national legislation in light of local circumstances. However, it should also be noted that the *terroir* approach has been criticized as biased toward settled, homogenous populations and, therefore, as disadvantageous for transhumant herders because of difficulties in including them in agriculturally based *terroirs*.

In recent regional discussions of natural resources management such as those held by CILSS, it is generally agreed that local—but not necessarily private or individual—control, over access to, and management of, natural resources must be increased. To achieve this end, it is advised that countries adopt an integrated management approach to natural resources rather than treat forests, water, and rangeland as resources separate from land, with different ministries, legislation, and enforcement strategies.

Democratization movements are common throughout West Africa, as they are across the continent. Such movements generally entail the legalization of multiparty politics via the passage of a new constitution followed by national presidential and legislative elections. An official declaration of a commitment to democratization, however, is not necessarily accompanied by the decentralization of authority. Tenure reform processes are not always envisioned within the framework of democratization efforts. Conversely, political democratization is not necessarily promoted by the individualization of tenure rights.

Yet one senses that the Jeffersonian ideal of widely distributed private property rights among a solid, roughly egalitarian class of small- to medium-landholders underlies some of the recent policy trend toward registration and titling of holdings in some countries. The theorized link between private property and democracy has been an important element of western political philosophy for centuries and is not without influence in policy debates and formulation in non-Western parts of the world. The logic is that individual or local ownership, or at least some element of local control or authority regarding land and natural resources, facilitates participation in the democratic processes by increasing one's stake in the process. Democracy, in turn, is thought to facilitate tenure security through the efforts of its practitioners: landholders. In some cases, where private property has been esteemed as inappropriate to a given situation and political climate, decentralized management authority regarding land and natural resources has been substituted for private property as a desirable complement to democratic—or at least, decentralized—institutions. The theorized link between private holdings or decentralized authority and democracy does not necessarily translate easily into workable institutions, as seems evident from the profiles.

The decentralization of authority and decision-making in relation to tenure issues may, therefore, be promoted through several different means. Senegal, for example, was an early leader in this respect when, in 1972, it initiated a system of decentralized rural councils for the local administration of national tenure legislation. More recently in Niger pilot networks of tenure commissions at the *arrondissement* level hold the potential for devolving the authority to evaluate *mise en valeur*, while they may also validate the conversion of state concessions into private property. Another potential model for the decentralization process is being pursued in Guinea, where the *communautés rurales de développement* (CRDs) are locally elected on the subprefectoral level. The responsibilities and powers of these CRDs, however, are not clear as they vie with the *sub-préfet* for control of regional duties. In these three cases, it has also been noted that the members of the local-level tenure councils are often the traditional power brokers in the community as well as the local-level representatives of the national government. Similarly in Burkina Faso, locally elected management councils tend to be founded on customary hierarchical power structures. Devolving tenure and resource management authorities to local-level institutions, whether “traditional” or newly created, does not ensure that such institutions will be democratic. A decentralized tenure administrative structure, therefore, may not generate democratic local-level institutions with equal representation of local interests.

Greater efforts are required to encourage national administrations to recognize existing customary tenure authority structures and to provide legal legitimization for new local-level user groups created within the scope of development, resettlement, and modernization projects. Existing structures, such as Senegal’s rural councils, could be used to promote democratization, but they must not represent exclusively only one aspect or faction of local interests or privileged user groups. Such councils must also be recognized by both national governments and local populations as a legitimate authority entity. Mali’s recent efforts to increase local decision-making authority in natural resources management, for example, may prove to be effective. In 1993, Mali passed administrative decentralization legislation that created rural and urban communes to be presided over by elected councils. These councils will oversee local environmental protection, tenure disputes, and questions of responsible land-use practices. The decentralization process in Mali, while encouraging greater local participation through the commissions, is still hampered by national legislation that disregards variations in local tenure realities. Thus, while decentralized tenure administration units can be democratically elected, national tenure regimes may not incorporate “democratic” (that is, participatory) principles in their underlying legislation and policy directives.

Often accompanying national democratization campaigns are privatization initiatives that promote the individualization of tenure. Individualization initiatives that encourage land registration and titling programs may not be democratic in the sense of allowing fair and equal access to the registration process. In Benin, for example, minority groups such as serfs and ex-slaves may lose tenure access rights as landowners solidify their control over the natural resource base. If democratization is a national priority, disadvantaged groups and social classes must not be excluded from or by individualization initiatives. The effects of individualization should also be monitored in urban and rural areas. The Cameroon experience shows that in urban areas, individualization weakens the powers of traditional leaders in the presence of mayors and other urban authorities, while in rural areas it strengthens the traditional leaders’ powers as they become the state-recognized arbitrators in tenure claim disputes.

As noted above, a common policy doctrine in West Africa aimed at improving agricultural production has attempted to replace or adapt community-based tenure systems in favor of more individualized forms of tenure, including registered leaseholds and, in some instances, freehold. It was also noted earlier that women most often gain access to productive land through male relatives. While much of the intent of the recent policies supporting land registration has been to strengthen tenure security and thereby enhance agricultural investment and production, the tenure security of borrowers, including most women, has been undermined. In the general case of borrowers, the fear of borrowers’ registering the land they occupy has prompted their eviction by the original landholders. Registration of land has particular implications for women, West Africa’s chief food producers. The

registration of land in the head of household's name by and large precludes women from obtaining rights and further entrenches male control over land.

Women's access to land for cultivation is becoming increasingly important in areas where the number of female-headed households is growing. This may be due either to male out-migration, death, or childbirth out of wedlock. Increasingly, many women are seeking access to land in their own right through borrowing arrangements or even purchase. Although most land legislation does officially allow women equal rights of landownership and registration, there is growing concern that local power structures may mitigate against women's registration rights apart from male family members. In areas where cash cropping and monetary land transactions are increasing land values, women risk being forced off lands they have acquired through husbands or other lenders on a temporary basis. Increasing land values will also make it difficult for women to purchase land independently.

The evolution of indigenous tenures, referred to above, does not necessarily affect different actors in similar ways. Some customary tenure regimes do allow women to inherit land from their birth family, though these situations are relatively rare. More often encountered are matrilineally based inheritance systems where land is passed down to male heirs through the mother; this tradition is fairly common among some groups in Côte d'Ivoire, for example.

Finally, in addition to uncertainties regarding women's access to land and natural resources is the uncertain control women exercise over their own labor. Judith Carney and Michael Watts (1991), Véronique de la Brosse (1989), and others have documented situations where project efforts aimed at increasing production relied heavily on the labor contribution of women. In cases where such additional labor was to be remunerated through increased commodity production or through enhanced land rights for women, this surplus has often been captured by male family members. Such examples highlight the constraints working against women entering into cash-crop production: inferior access to land and labor limit their ability to earn profitable livelihoods while their ability to increase personal labor is severely limited.

### **Future of land and resource tenure in West Africa**

The dual nature of West African tenure systems—represented by *national policy vis-à-vis community-based systems*—was suggested at the outset of this synthesis of 22 West African land-tenure profiles to be a defining characteristic of the region. This “duality” is no less pronounced today than it was during the colonial period when it was initially established. Nevertheless, from a historical perspective, the contemporary duality is unique, since the many interconnections and mutual influences between customary tenure systems and national policy tend to transform the expression and form of each over time. The profiles leave no doubt that the processes of policy change and customary system evolution are intimately interlinked.

Also as stated at the outset of this paper, the contrast between customary and statutory systems is perhaps the most generalizable significant feature of tenure and natural resource management across the region. The relevance of this fundamental observation is no less striking whether a country explicitly recognizes customary tenure in a legal sense, ignores it, or even tries to destroy it. Thus Cameroon and Mauritania (whose policies are hostile or at best neutral regarding customary tenure) experience the duality between customary and statutory systems to the same degree as Niger and Guinea (whose policies encourage registration of customary rights) or as Sierra Leone and Ghana (whose policies sanction a continuing role for customary systems—albeit one that is generally circumscribed by geographical boundaries as well as subordinate to role of the state).

This duality, though well-entrenched, is nonetheless dynamic. Indeed, the balance between the two components of the dual system appears to be shifting in tandem at disparate localities across the region in a characterizable manner. Yet the interplay between the poles of the dual system is subtle; changes in national policy affect community-based systems in unforeseen ways. It is clear that while customary systems of tenure and natural resource management nevertheless continue to function in rural areas as the true allocators of land and

other natural resources, the rules employed in allocation are increasingly modified by national policies and institutions as well as by changing economic conditions, encouraging development of a multiplicity of reference points where one or few existed previously.

The dynamic elements of the pole of the duality designated “community-based” are much more difficult to capture and to characterize than is the case with national policy, which in the majority of West African countries is moving toward official endorsement of private property rights to land and decentralized management and control of benefits resulting from the exploitation of nonland resources such as forests. The profiles suggest that national policy as a catalyst of rule modification at local levels has thus far been uneven and unpredictable. One conclusion is that where policy is not sufficiently informed by existing tenure and management systems at local levels, coexisting and competing sets of rules are introduced creating opportunities for increasing numbers of overlapping claims and social conflict. It is not yet clear where the dynamism thus introduced into customary systems will finally lead; in other words, one cannot yet confidently predict which of the (new or old) reference systems will eventually dominate, or whether existing systems have been permanently hybridized.

Nonetheless, available information allows one to elaborate somewhat. This second arena of transition, labeled “customary,” can be characterized as a partial shift from community-based systems operating on the basis of social identities (rights based on descent, sex, caste, class, or other historically based reference points) to less community-oriented systems that are also less consistent or coherent since they consist of competing elements. As noted above, rights claimants are newly able to select from diverse strategies in order to stake claims. Such strategies range from “traditional” reliance on social identity to exploitation of political connections to application of privileged access to economic resources or specialized information.

The profiles identify some of the external pressures to which customary systems are reacting and describe some of the observable reactions. Incentives to privatize land and other resources are certainly present in most of West Africa. Intensifying pressure on the natural resource base, exacerbated by growing populations and resource degradation, creates a built-in incentive for rights claimants to press their claims—whatever they might be based on. Many of the profiles speak of the “individualization” of property rights to land. Such individualization is taking place in contexts of overlapping and multiple rights to unique resources or sets of resources. Many claims continue to be bedded on community-based rules following well-established allocation patterns stemming from social identity. However, increasingly, challenges to claims based on the traditional social identity categories are issued by individuals attempting to make use of political connections, policy confusion, or privileged access to information or resources allowing them to capitalize on new policies such as those favoring private titling and registration of land. This facet of transformation of customary systems in West Africa—that is, toward a less exclusive reliance on social identity as a basis for staking and legitimizing claims to resource tenure—is common enough and general enough to qualify as an issue that is already crucial and will be of growing importance into the next century.

In summary, the current tenure transition in West Africa could be said in very broad terms to be taking place at each of the two levels designated by the labels of “customary” and “statutory”: (1) official policies (with some exceptions) are moving toward promotion of individual titling and registration, which is widely viewed as more compatible than community-based systems with achieving goals of economic development; and (2) a tendency is developing within customary systems to diversify strategies aimed at staking claims to land and natural resources or at having claims to land and resources recognized and legitimized. The underlying point gleaned from the profiles is that the two levels interact with each other in an unplanned and haphazard fashion, since institutionalized means of communication between them hardly exist. This not only threatens to exacerbate social inequalities and injustice, but also can result in market inefficiencies and social conflicts.

There is hope that the mutual incomprehension between national policy and community-based systems can be ameliorated. The CILSS-sponsored policy dialogue of the nine Sahelian states of West Africa is an example of regional integration and policy coordination in natural resource management issues that is unique in Africa—at



least in terms of the maturity of the initiative. The CILSS dialogue represents, among other things, an effort to inform policymakers of the needs and practices of rural populations, and rural populations of the contents and significance of policy. CILSS is attempting to create communications networks as mechanisms to promote the participation of all segments of civil populations as well as government authorities. The future of land and resource tenure in West Africa will to a significant degree be determined by the degree of success achieved by efforts such as those of CILSS to institutionalize multidirectional communications in order both to inform policy formulation and to promote local tenure security and stewardship of natural resources.

The CILSS policy dialogue and related research activities represent a new and promising element in the field of West African tenure and natural resource management. Many of the broad observations recorded in 1986, the last time LTC engaged in an exercise of producing tenure profiles for the countries of sub-Saharan Africa, remain valid today, albeit in some cases to a greater or lesser degree than was true ten years ago. Thus, for example, 1996 mirrors 1986 in the following fundamental characteristics: customary tenures continue as the dominant authority in the majority of land and resource allocation systems; existing tenure systems remain diverse, yet are evolving in sometimes predictable ways as they interact with modern forces; no single arrangement or model emerges as a global panacea to alleviate problems in agricultural production and environmental management (the general push toward private individualized and registered holdings has far to go before it can claim even a modicum of implementation success); a policy stance promoting individualization through registration and titling still raises questions (though an increasing number of countries has embraced such a policy stance); insufficient administrative capacity and financial means remain a decisive constraint in adopting land administration reforms; and where private property is promoted, governments retain a legal interest in privately held land (Niger, for example, retains some authority over use-right distribution to privately held land).

The essential elements that can be added to the synthesis list of West African tenure developments if one includes the decade leading up to 1996 include: an increasingly sophisticated understanding of contemporary indigenous systems and the evolution of those systems; an emphasis on regional integration of policy and dialogue; and a deepening commitment to democratization of tenure policy formulation and natural resource management. Furthermore, the willingness to strive for innovative policies, noted in the earlier profiles, is probably even stronger today. The West African region probably leads the continent in promoting a regional dialogue based on tenure and natural resource management issues, and it certainly has advanced considerably in this initiative compared to the situation in 1986.

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## **BENIN COUNTRY PROFILE**

**by Rebecca Furth**

### **Executive summary**

Despite government initiatives in the 1970s and 1980s to create agricultural cooperatives based on collective landholdings, and despite the more recent efforts of the newly elected democratic government to privatize landholdings and encourage the individualization of land, land tenure in Benin has continued to be dominated by traditional lineage-based systems. With increased cash cropping in the southern zone and government emphasis on individual private landholdings, greater individualization of land is on the rise. The increase in individualization of land is an important issue. Individualization will be felt differently depending on the customary tenure systems of various groups. The impacts of the 1990 reform on women will also vary depending on traditional land tenure practices and customs. In addition, land borrowers and descendants of ex-slaves may be disadvantaged by the reform.

### **National policy and legal framework**

Benin is a small country on the Gulf of Guinea wedged between Togo to the west and Nigeria to the east. It shares its northern border with Burkina Faso and Niger. The total land area is estimated at 112,620 square kilometers, of which 12% is arable, 4% is in permanent crops, 4% is pastureland, 35% is forest and woodland, and 45% is other. Over 60% of the total population of 5,522,677 million inhabitants is employed in the agricultural sector.

Benin is divided into two principal zones. The southern half of the country is a productive and densely populated tropical forest zone. The northern region, which lies in the transition zone bordering the Sahel, is generally less densely populated and less agriculturally productive.

The Government of Benin was set on rural cooperatives as a way of developing the country until the inception of the newly elected democratic government in 1990. The military government, which ousted the first independent government in 1963, espoused a strong Marxist-Leninist philosophy. Under this government, the state established obligatory cooperatives. Cooperative areas, usually for the production of oil palms, were chosen by the government. Farmers in the selected areas were then obliged to donate their land for a lease period of fifty years.

Land Law no. 61-27 of 1961 designated land for development. Such areas could be selected based on individual initiative or by the state. Land was broken up into "A" shares and "B" shares. "A" shares were contributions of landholdings of 1 hectare; "B" shares were contributions of labor. Often people with no or little land would give labor. There also existed "AB" shares, which consisted of landowners who contributed land and labor to the collectivity. The system was organized so that contributors of land would receive up to 3% of the interest earned by the cooperative but had no rights to govern cooperative activities in any way. Contributors of labor, "B" shares, would receive a percentage of cooperative profits after six growing seasons. All cooperative directors were appointed by the nation's Ministry of Agriculture. A person could resign from the cooperative; however, if he was a landholder, he could escape his obligation only by selling his land to a farmer who would be part of the cooperative. Once contributions of land were made to a cooperative, the commitment could not be annulled.

Land chosen for cooperatives had to be surveyed, consolidated, and titled under the 1961 law. In addition, a 1965 law declared that all land must be registered. There is no reference as to how the government titled

traditionally communal lands to individuals. Given that customary lineage-based land tenure systems have prevailed, it is possible that legal titling either was not extensive or was not viewed by the lineage as a contract for permanent ownership. An important point, which needs further investigation, is how such land titlings have influenced the individualization of land under both the current regime and indigenous land tenure systems.

In 1976, the military government increased cooperative production by establishing a law which divided the land into four categories: state land, cooperative land, individual land, and foreigners' land. All uncultivated land as well as forests, mining areas, water, and other natural resources were owned by the state. Cooperative land was selected by, and essentially leased to, the state; however, it was considered property of the cooperative. Individual farmers retained long-term rights to the land while leasing it to the cooperative for a fixed period. Individual land was land cultivated by and titled to a farmer. Finally, the government allowed foreigners to own and cultivate land as long as it was in the interest of the state. This suggests that though foreigners might have been vital producers, they had little land security.

The new democratic government of Benin, elected in 1990, has changed its emphasis from agricultural cooperatives to individual landownership. Farmers wishing to gain legal title to land must establish their claim to the land by either producing legal documentation if they have previously purchased the land or justifying their inheritance claims. They must then follow the appropriate registration measures. Unfortunately, specific information regarding formal land registration is absent from the current literature.

### **Replacement and adaptation of indigenous tenures**

In Benin at present there are four common methods of land transmission that correspond mainly to customary systems: inheritance, gift, customary attribution, and purchase. Inheritance appears to be entirely patrilineal and has become more common with the increasing tendency toward the individualization of land. In patrilineal lineage-based transmission, one lineage elder passes land on laterally to the next lineage elder. According to some authors, it is now not uncommon for land which is allocated by the lineage head to become the property of the receiver.

Gift giving is a way of manipulating customary transmission of land in favor of the children of a farmer. Under the customary system, as long as land is being cultivated by the farmer to whom it is allocated, it cannot revert to the lineage head. Because cash crops necessitate larger inputs than other crops, farmers seek to pass their land on to their sons in order to protect their investments, rather than have the land revert to the lineage after their death. Thus, many farmers will give their land to their sons before they, the fathers, die. Land therefore remains in the hands of an active farmer and cannot be reclaimed by the lineage.

Purchase of land is also occurring with increasing frequency. Sale of land in some areas is more common between indigenous landholders, and in other areas land is only exchanged between indigenous holders and strangers. In the latter case, lands closer to village areas continue to be passed through customary lineage transmission while lands farther from the village are sold to outsiders. In addition, it is possible for a village or an individual to hold land under several tenures simultaneously, depending on the land in question.

There are several different types of land borrowers and users. These include: traditional users, women, and strangers. People who are considered landowners, or who have established rights to land because of their affiliation with a lineage (in almost all cases men), have extensive use rights. Such users can plant trees and place permanent structures, such as houses, on the land. Other land users, who are not property owners or who do not have extensive use rights under the lineage system, are more restricted. Women, strangers, and other borrowers must continue to work the land in order to maintain their use rights. In addition, they are not permitted to plant trees on the land or to construct permanent structures.

The arid northern region of Benin has been largely ignored by the existing literature. Fulani herders in the north share fertile lands with farmers. Herds often find pasture on fallowed farmlands. Farmers exchange

agricultural goods with herders as payment for manure. Generally rights to land in the north are granted by the lineage chief, land priest, chief, or head of household. Gifts of land are not uncommon and much of the productive land in the north is farmed by “strangers.” Because population density remains relatively low, there have been few conflicts over land and borrowers rights remain relatively secure.

The peoples and tenure systems of southern Benin are better represented in the literature. These peoples of the south include the Fon, Yoruba, Aja-Ewe, and Idatcha. The Fon are characterized by a patrilineal lineage-based land tenure system. Unlike many lineage-based system, in which the first clearers of the land are considered the lineage head and have rights to allocate land, the Fon have a hierarchical system based on their monarchy. In the Fon system, the king allocates land to the nobles, who then have the right to divide the land among people of their lineages. Land ultimately reverts to the royal household.

Among the Yoruba and Aja-Ewe, land belongs to the first clearers. These groups practice patrilineal lineage-based transmission of land. The first clearers are considered to have established the lineages. Land is considered communal, though allocation of the land is generally managed by the lineage head. Land is passed laterally through the men of the family. In other words, instead of passing from father to son, land is transmitted from the oldest male in the lineage to the next oldest male. Land reverts to the lineage head for reallocation upon the death of the user. The lineage head then has the authority to allocate land to other members of the lineage.

The Fon, Yoruba, and Aja-Ewe, all separate men’s and women’s agricultural and financial activities. While there is little mention of the Idatcha customary transmission of land, it is mentioned that men and women among the Idatcha share farming and financial activities. This difference is important to consider as increasing cash cropping and individualization of land will affect these groups, and particularly the different genders, differently (see section 4.5 for more information).

Slavery and serfdom were common to all these groups. Slaves and serfs were responsible for cultivating their masters’ land as well as their own plots. They were prohibited from owning land under customary law; thus, all land ultimately belonged to nobles or masters. Despite the abolition of serfdom, social vestiges of this system remain to the present. Because these groups could not own land under customary land-tenure systems, they can gain title to land under current policies only through land purchase and registration. The access of ex-captives to land and the possibilities for land purchase for these groups relative to others need to be more thoroughly investigated and documented.

## **Tenure constraints and opportunities**

From independence, through the period of Marxist military government, and into the present democratic state, the Government of Benin has encouraged cash cropping. Many individuals engage in cash-crop production of oil ct Manager.

Six LTC research assistants compiled most of the West Africa tranche of these profiles and contributed to the synthesis: Rebecca Furth, Mary Hobbs, Anna Knox, Stephen Leisz, Michael Williams, and Kevin Bohrer. Four LTC rehin their nuclear families by transmitting the land they occupy to their sons and not allowing it to revert to the lineage head. Lands under cash-crop production are viewed more commonly as personal property and not as the property of the lineage.

There is no reference in the available information to government policy with regard to nomadic or sedentary herders. As was previously noted, herders in the north have an important relationship with farmers. Fulani herders are often hired to care for farmers’ livestock and fertilize farmlands with manure. Agricultural goods are often given in exchange for these services. In recent years, however, a decrease in grazing lands, due to population increases and perennial cash cropping, has created problems. Herds break into productive farmlands more frequently and destroy or damage crops inciting land disputes. Many Fulani herders have also started farming as well. Consequently, the traditional land tenure relations are not longer well delineated. The government needs to address these issues in its land tenure policies.

Land tenure is a crucial issue for natural resources management. In areas in Benin where land borrowing is more common and landownership less frequent, according to Heidhues and Neef (1994a), natural resources are more likely to be overexploited for several reasons. First, because land borrowers are prohibited from planting trees or any other perennial crop, or constructing permanent structures on the land, they are less likely to practice sustainable agriculture and more likely to reap as much from the land as possible within a given growing season. Second, because use rights can be maintained only if the land continues to be under production, land borrowers are not likely to put their land into fallow for fear of losing their use rights. Thus, in Benin land under production by borrowers is at risk of overexploitation and, therefore, decreased fertility and productivity.

There are laws addressing forest resources in Benin, though the specifications are not well defined in the literature. According to available information, state forestlands include all forests which are “vacant” and do not have a recognized proprietor. It is not at all clear what the government means by vacant or what constitutes a recognized proprietor. State lands also include classified forests, protected forest domains, and reforestation lands. Classified forests are forests which were formally classified under the French government and which have remained state-owned forestlands. Protected domains include all other forestlands that are not classified and do not have an owner. Reforestation lands are all state-owned lands in need of reforestation, particularly hill slopes and deforested zones. Yet all these categories are vague and are in need of further investigation.

It is clear that under the current regime, individualization of land is encouraged. Given that in order to title land one must establish legal purchase or inheritance, it is likely that laborers (including ex-slaves and serfs) will be formally excluded from landownership unless they are able to purchase land. More needs to be understood about the income and rights of these laborers in order to assess the impact of land individualization and government policies on the rights of laborers and borrowers. Successful democratization will necessitate government recognition of the various groups and social classes in Benin.

At present, Benin’s natural resources and availability of land are sufficiently abundant to sustain the population and permit further growth. However, the government must maintain a land tenure policy that takes into consideration indigenous land tenure systems and the rights of women, immigrants, and landless workers. Benin can avoid problems of land conflict and degradation now being faced by its neighbors, such as the Ivory Coast, if it establishes a clear and comprehensive land tenure policy which addresses all potential owners and users as well as traditional systems. Benin’s population growth rate is currently estimated at 3.33% per year, a figure which must also be considered when land tenure policies are constructed in order to assure continued productivity and maintenance of land resources under the pressures of a growing population.

There is no mention of matrilineal transmission of land in the literature on indigenous land tenure systems of Benin. All systems referred to are patrilineal. Nor is there any mention of government policy toward women and land tenure. According to the information available, women are generally land users and not land owners. Women do not have inheritance rights. However, they are able to obtain usufructuary rights from their husbands. Among the Ayizo and the Fon, women commonly maintain financial independence from their husbands and carry separate economic household responsibilities. They often borrow a parcel of land from their husbands in order to produce the goods which will contribute to their financial well-being as well as the family’s sustenance. Under customary law, it is obligatory for the husband to loan land to his wife unless he lacks sufficient land to do so. Women’s use rights are secure as long as they remain within the conjugal household of their husbands. However, with the increase in land sales and population, men’s landholdings may become more restricted and it could become increasingly difficult for women to gain access to land. Among other groups such as the Idatcha, women’s and men’s budgets and farming practices are mixed. It is imperative that gender dimensions of land use and tenure not be overgeneralized, because women of different ethnic groups will be affected differently depending on their customary practices.

## Present policy position and reforms discussed

Although the current government is making strides toward democratization through its encouragement of individual landownership, it must assure the rights of land users and borrowers if it is to maintain a truly democratic system. Location and use of lands must also be taken into consideration. Lands closer to urban areas have a higher percentage of land borrowers than lands in more rural areas. Increased individual ownership and cash-crop production may limit access and use rights to land for women, immigrants, and other borrowers. It may be necessary to develop a system of long-term leases to assure these producers equal rights and access to productive land. In addition, individualization of tenure will be a gradual process with much land remaining under indigenous land-tenure systems. Those systems, be they lineage or other, must be recognized and integrated into national policy and law.

## Implications for policy dialogue and programming

Benin's national land tenure policy is not adequately defined in the current land tenure literature. A much more comprehensive study of the current national land tenure policies is necessary for effective project planning and design. With regard to program design, it is important not to overgeneralize. It is clear from the literature that land tenure varies dramatically even on a village-by-village basis. Program planners must take into consideration traditional land tenure systems as well as current trends and modifications of traditional systems in the cash-cropping economy. Women and men, as well as other land users and owners, have different rights with regard to land. Long-term leases may be necessary to assure continued access to land for all land users. In addition, not all lands are considered equal, and in some cases lands are likely to remain under customary transmission while others are more likely to be sold. An in-depth understanding of these systems is necessary for the development of successful project plans and a just national land tenure policy.

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# BURKINA FASO COUNTRY PROFILE

by Rebecca Furth

## Executive summary

The Government of Burkina Faso has focused recent efforts on increasing agricultural production and assuring self-sufficiency. Although the government is encouraging intensive production and individualization of landholdings through the implementation of resettlement projects and tenure policies, customary land tenure and traditional extensive agricultural practices are still widely espoused. The drought plaguing the Sahel region since 1968 has influenced land tenure and agricultural policies by creating the need for the resettlement, development, and management of the river blindness-infested river basins. While the government has made tremendous efforts to overcome population and environmental constraints, its strategies have not recognized indigenous land tenure systems. Consequently, there is little tenure security, particularly in regions where the government has promoted resettlement or intensive agricultural production.

## National policy and legal framework

Landlocked in the center of West Africa, Burkina Faso is struggling for economic security in the drought-ridden Sahel. Bordered by Mali to the west and north, Niger to the east, and Benin, Togo, Ghana, and Ivory Coast to the south, Burkina Faso has a total land area of 274,200 square kilometers. Only 10% of this land is arable, 37% is meadows and pastures, 26% is forest and woodland, and 27% is classified as other. Burkina Faso has approximately 160 square kilometers of irrigated lands. Recent surveys estimate the total population at 10,422,800 with a growth rate of 2.79 annually. About 85% of the population is employed in the agricultural sector. Severe drought problems since 1968 and endemic onchocerciasis (river blindness) and bovine trypanosomiasis (sleeping sickness) have handicapped the country and inhibited agricultural production. Population pressures are intensifying and must be considered in government planning and land tenure policies.

Under the Sankara government (1983–1987) agricultural and economic self-sufficiency were principal objectives. The government nationalized all land, increased national spending on agriculture, and raised producer prices. Increased emphasis was placed on small-scale agricultural projects implemented by village cooperatives. For the most part, these policies have been maintained by the current government. However, recent shifts in political ideology from a Marxist-Leninist to a democratic philosophy may result in trends away from cooperatives.

In 1984, the government issued a decree addressing land tenure. This decree is evidence that though all land is property of the state, the government intends to create a system of land registration and titling which would secure individual as well as collective rights to certain lands. These laws include dictates for land occupation. Occupation rights outlined in the 1984 decree include a *permis d'occupation*. This permit allocates use rights to an individual wishing to engage in cash-crop farming or industry. An urban land occupation permit grants permanent land rights to a person wishing to build a house for himself or his family. Finally, the law outlines a regulation for a *permis d'exploitation* which grants permanent rights to rural lands used for cash cropping. Both the *permis d'occupation* and the *permis d'exploitation* can be acquired by collectives as well as individuals. The decree also prescribes the establishment of allocation committees to supervise the distribution and registration of lands. Although these laws are technically government policy, there is no indication that they have been implemented on a large scale. In addition, none of the titling provisions address farmers who do not engage in intensive cash-crop production. This excludes the majority of the rural population.

In 1991, the present government created a new land tenure law which further addresses issues of privatization. This new law permits the government to cede national domain lands to individuals for private land title. In addition to allowing for legal and inalienable title, the law recognizes various other forms of tenure such as use rights, long-term lease, and habitation rights, though it is not clear how the law assures these rights. Contrary to past laws, the 1991 law addresses production and land management as well as ownership; however, like the ownership laws, the specific conditions for “effective” land management are not clear. In order to administer its new management policies the state created four administrative bodies: *Schéma national d’aménagement du territoire* (SNAT), *Schémas régionaux d’aménagement du territoire* (SRAT), *Schémas provinciaux d’aménagement du territoire* (SPAT), and *Schémas directeurs d’aménagement* (SDA). Despite the creation of these offices, the ambiguous management law as well as the state’s neglect to address past land tenure make the new law difficult to implement. It appears as if previous laws remain largely intact.

Other national policies that include tenure issues have been crucial in Burkina Faso’s land management plan. Resettlement has been a key element in national land policy. One of the consequences of the prevalence of onchocerciasis was that some of the most fertile lands in the country became uninhabitable. Traditionally, peoples indigenous to the waterways would migrate between the fertile shores and more distant arid lands in response to the severity of the disease. This is an effective way of controlling the disease because when people leave the area with their domestic animals, the cycle of disease is broken and the area gradually becomes free of onchocerciasis and inhabitable once again. Although people may not have continually inhabited the fertile valley lands, those lands were never void of customary land rights. In an effort to control both disease and the vital natural resources along the waterways, the government took charge of all land in the valleys as well as all underpopulated territories.

The government-established resettlement projects, under the jurisdiction of the Volta Valley Authority (AVV), were designed to offset the rapid destruction of forests and random land settlement in the river basins as well as control onchocerciasis. The project eliminated traditional land tenure practices which it believed promoted “irrational” and unproductive extensive agricultural practices. A presidential edict declared all regions included in the river basins as property of the state. Zoning was applied to specific areas in order to protect forests and wildlife and to designate regions for cash cropping. The AVV also restricted the quantity of land that an individual household could clear and required settlers to adhere to intensive agricultural regulations.

One of the conditions of a farmer’s acceptance into the settlement areas was that he comply with the required agricultural techniques. These included monocropping and seasonal crop rotation, utilization of improved seed varieties, and, in many cases, mechanized or plow agriculture. According to most researchers, however, while settlers may have initially complied with government regulations and dictates on land tenure and agriculture, in the longer run these have largely been ignored. Although there has been a documented increase in the standard of living in some resettlement areas, project regions have also experienced many problems. Regarding land tenure, there is considerable confusion and conflict between indigenous and immigrant farmers in resettlement areas. As the population increases, and more farmers return from the Ivory Coast and Ghana, competition for land is growing. While the AVV projects may have shown some short-term successes regarding agricultural production, in the long run the problems seem to outweigh the benefits.

In 1989, the AVV was incorporated into the Ministry of Agriculture and no longer exercises extensive control in project areas. Because the AVV never established contracts for the land on which migrants were instructed to establish their concessions and farms, residents are now nervous about the security of their holdings within project areas.

The Front Populaire which took over the government in 1987 has shifted from a Marxist-Leninist ideology to one endorsing free trade and social democracy. While in the late 1980s the government had expressed



intentions to encourage agricultural cooperatives and land use, it is not clear how this new political philosophy will influence national land tenure policies.

### **Replacement and adaptation of indigenous tenures**

Burkina Faso is an ethnically diverse country. Traditional land tenure systems vary depending not only on ethnicity but also on demographic factors. Only a broad description of indigenous land tenure practices can be addressed in this document. However, it is important to note that for the development of successful project plans and policies, more specific research should be undertaken in order to determine the variations in the numerous traditional land tenure practices characteristic of different areas of the country affected by differing population and ecological constraints. Traditional tenure systems are also experiencing many changes and are going through internal modifications in order to adapt to current environmental, political, and economic constraints.

The Mossi are the dominant ethnic group in Burkina Faso. Not only do they have a greater population than the other ethnic groups, composing approximately 25% of the total population, but they have a political history of domination in the region dating back to the beginning of the Mossi empire in the eleventh century. Mossi land tenure systems are characterized by individual household rights to and control of land. In this system, the nuclear family is the major unit of production and land rights are held by the head of the family. However, the first clearer of the land established ownership rights for himself and his descendants within his lineage. The descendants of the first clearer of the land, not the lineage head, have ultimate use rights. Upon the death of a farmer, land passes to his sons and does not revert to the lineage. Although lineages did not have rights over the land of individuals, land title ultimately belonged to the clan of a given family. While individual household rights to land predominate in most Mossi areas, there are also communal lands which cannot be inherited and are governed by chiefs of clans or lineages who pass on their control of land through lateral transmission to junior brothers.

The Mossi also have a system of institutionalized borrowing of land in which loans of fields are very common. Farmers with more lands than their family unit can cultivate often lend land to other members of their extended families with limited access to land resources. Loans to unrelated farmers are also not unheard of and, in fact, in some areas the majority of land under cultivation is borrowed land. This suggests inequality in the distribution and ownership of land within the traditional Mossi land tenure system which is consistent with their strongly hierarchical political and judiciary systems.

The Bwa have a system of communal land tenure based on lineage affiliations. In this system, people of the same family work lands together. The lineage chief exercises control over land allocation and the distribution of agricultural yields from collective fields. Land cannot be sold or mortgaged but remains under the management of the lineage chief. The chief distributes land among the different kinship groups or sublineages and technically has the right to recall and redistribute lands, though such reclamations rarely occur. Access and use of land in this system tends to be more egalitarian, as opposed to the hierarchically based Mossi system.

A more common tenure pattern is one of mixed communal and individual land rights found in the southern and western regions of the country among the Gourounsi, Gouin, and Senoufo. Lineage chiefs in these systems also exercise powers of allocation over communal lands, which are usually those farther from the village and may often be cultivated only periodically. Land closer to the village is usually held by an individual family head and is under permanent cultivation by the nuclear family. Use rights to these lands can be both inherited and loaned for varying periods of time to individuals outside the family or lineage.

Lastly, in the northern part of the country, Fulbe pastoralists share lands with farmers. Fulbe often grant temporary use rights to dry-season pasturelands to local farmers in exchange for a percentage of their crop. The drought has resulted in mounting tensions between nomadic herders and sedentary farmers as available arable and pasturelands become more scarce.

With the dramatic out-migration of the 1970s and early 1980s, land lending and borrowing between occupants of fertile lands and immigrants became more common. Paradoxically, out-migration resulted in the freeing up of some fertile lands and an influx of immigrants from agriculturally poorer regions. Conditions for such loans dictate that no trees or permanent structures can be placed on the land by the borrower since these are signs of ownership. This, combined with the lack of land security for borrowers, has created greater problems of land resource depletion and erosion.

### **Tenure constraints and opportunities**

The production of cash crops, most notably cotton, has increased dramatically in recent years. Consequently, the production of many food crops has declined. No information is yet available on the effects of the augmentation of cash cropping on land tenure systems in Burkina Faso. Cash cropping in many other parts of Africa, and the world, often results in a greater individualization of land tenure. Project planners should investigate land tenure shifts and their repercussions in potential project areas. As population increases and cash cropping becomes more common, land available for loan may decrease. This could increase land inequality particularly in Mossi areas where households often loan out large portions of land but maintain ownership rights.

With increased population pressures, continued drought, and threatened water and forest resources, the Burkina Faso government must reevaluate its strategies for the management of agricultural resources. Sustainable agriculture cannot be promoted successfully without tenure security. A sense of tenure security is lacking in resettlement areas and in much of the rest of the country due to past government policies. In addition, the government's installation of irrigation systems covering approximately 10,000 hectares not only has affected agricultural production in irrigated areas but also has created questions regarding the rights of displaced people to their old and new lands.

Clashes and tensions between herders and farmers in the northern region of the country have escalated in recent years. While in the past, land was abundant enough to permit farmers and herders to live in the same region and share lands, the prevailing drought combined with mounting population pressures has created a shortage of arable and pasture lands. Recent projects which have encouraged northern farmers to raise animals have also thrown the traditional relationship between herders and farmers off balance. The government must work together with both the farmers and herders of this region to develop a defined land tenure policy which will enable them to continue to utilize the region's resources without major conflict.

In 1986, the Government of Burkina Faso instigated a natural resource management project which was based on the establishment of management councils. This program, called the *Programme national de gestion des terroirs*, proposed to assure natural resource management on a local level by creating management councils in each village that would work together with government administrators. The program was intended to curb environmental degradation as well as provide a body capable of establishing village boundaries and zoning land according to its use. The government also hoped to quell conflicts among different resources user groups and to instill the idea that natural resources are not inexhaustible.

The program necessitates widespread representation of the government administration in the form of Sous-préfets and lesser government officials. The role of these administrators is to supervise and collaborate with village councils. In addition, village management groups, *groupements villageois*, composed of a council of local leaders supported by the village, were to help communities define their needs and wants regarding natural resources and to work with government administrators to assure effective resource use and management.

One way the government encourages the creation of village councils is through the national agricultural credit reserve. Credit can be accessed by small farmers only through their village councils. Thus villages that do not have a village council affiliated with the "Gestion de Terroir" program cannot acquire credit.

There are several administrative problems with this program. First, because it necessitates government collaboration on the local level, it is difficult to support. The government simply does not have the manpower to maintain this program on a grand scale. Consequently, village councils have been set up in relatively few areas (perhaps as few as 100 villages). Second, the local councils are, for the most part, based on traditional political structures. The heads of the councils tend to be village chiefs or other customary leaders. These power structures are often hierarchical and not democratic. Community members are often reluctant to voice their concerns, feeling that it is not their place to do so. Minority or marginalized groups, such as immigrants and women, are sometimes excluded from these community organizations. Furthermore, decision-making is frequently based on the will and desires of the leaders and not the wants or needs of the community as a whole.

Moreover, the program is failing in its attempt to arbitrate disputes over resources and assure environmental protection. The councils, as previously stated, are not representative of the local populations. While there might be a representative from each user group on the council, these representatives tend to be members of the elite. The simple designation and representation of user groups is insufficient because the groups themselves are very diverse. For example, farmers might be chiefs or landless immigrants. In addition, the councils are more interested in tapping funding sources for the development of infrastructure than for the protection of the environment. Environmental protection is not valued in many areas over the construction of roads and schools.

While the program might have been a good idea, in practice, it has been largely unsuccessful. However, in areas where councils have been established resource users appear to be better informed about the condition of their local resources. Although little action has been taken, some small changes, mostly increased awareness, are occurring.

There are two main types of tenure which affect forest resources in Burkina Faso: commons, or community forests, and government forest reserves. While there is little information on land tenure in community forests, some documentation does address government policy in officially reserved forestlands. During the colonial era, the government designated certain forestlands as property of the state, expropriating them from traditional ownership. After independence, the populations inhabiting the designated forest reserves were able to acquire limited use rights to the forest which included collecting deadwood, medicinal plants, and sometimes, but rarely, parcels of land to cultivate. The lands originally reserved by the colonial government have technically remained state reserves. In practice, however, the combination of population pressures and environmental constraints combined with unenforced government policies has resulted in the occupation of these lands by farmers and occasionally whole villages. In some cases, the need for land is so great that the government has actually freed portions of previously reserved forestlands.

During the CNR (Conseil National de la Révolution) government, many of the forests were opened up to community use. This was part of the government's scheme to develop community forestry in order to promote the development of communities as well as forest management. All families who once had lands in the reserved forest regions still recognize the boundaries of those lands even if they are no longer actively used. Consequently, during the government's campaign for the creation of community forests, communities voiced their desire to reclaim their agricultural lands trapped within the boundaries of the reserved forests. While the government and FAO projects have not endorsed cultivation in forest reserves it appears as if enforcement has become lackadaisical in the past eight years. Under Sankara, the government had strict policies regarding bush-fire control, illegal wood cutting and uncontrolled grazing of livestock. However, since 1989, enforcement of these policies has been relaxed.

Water and forest resources are greatly threatened in Burkina Faso, largely as a result of the drought. The AVV was designed to gain control of the vital forest and water resources along the major waterways by resettling people along the river banks in a manner which would both protect valuable water and forest resources and promote agricultural production and economic development. While these programs have benefited the standard of

living of people in project areas, little has been mentioned of the overall effects of these government projects on the management of water and forest resources.

The *gestion des terroirs* approach to natural resource management instigated by the government in 1986 is constructed around the establishment of locally elected democratic management councils. These councils are intended to collaborate with government officials to create a democratic, decentralized political body in charge of natural resource management. With regard to democratization, this project has been largely unsuccessful. Local management councils tend to be founded on customary power structures which are generally hierarchical and undemocratic. Management problems seem to stem from a lack of understanding of local power structures and how they function. Future project design needs to undertake a thorough examination of these local political structures in order to devise effective ways of integrating democratic structures with traditional political systems.

The most recent government has taken some steps toward establishing itself as a democratic authority since the elections of 1991. However, the government has not yet come to terms with rights asserted under indigenous tenure systems, and this may undermine its mandate. In addition, the problem of land insecurity due to resettlement or the lack of appropriate guidelines for titling land must be addressed. Without such measures, land rights of the majority of the population cannot be guaranteed.

There are several obstacles inhibiting the economic development of Burkina Faso. These include the overpopulation of the plateau regions versus the virtually abandoned river basins. Severe problems of onchocerciasis, which escalated with the drought, have forced the population out of the fertile river basins to the overcrowded lands of the plateau regions. The plateau lands are not viable for the large-scale agricultural production that is necessary for the maintenance of the growing population and the growth of the national economy. The government attempted to overcome this problem through planned resettlement programs which would control disease and simultaneously promote intensive agriculture and protect water and forest resources along the rivers from overexploitation.

The Government of Burkina Faso has made agricultural production a priority in its strides to improving the national economy. This is evident in its irrigation and resettlement efforts. In addition, cash-cropping projects, particularly of cotton, have been encouraged. The government has taken these measures to assure adequate farming resources to sustain the population and to maintain the national economy. But because past approaches to land tenure in resettlement and irrigation project regions were not adequately comprehensive and did not incorporate indigenous land tenure systems, both indigenous and immigrant farmers have little land security. Without land security, the future stability of agricultural production and the national economy is tenuous.

There is little information in the available literature on women's rights within tenure systems. Among the Mossi and other peoples in Burkina Faso, it is common for women to cultivate at least one plot of land separate from their husband or family. The land a woman farms is borrowed from her husband; however, anything she earns from her field is her personal property. Income gained from women's market and farming activities is kept separately from men's. The government resettlement projects such as those promoted by the AVV ignored this aspect of the household economy and agricultural production and addressed only men. Unfortunately, there is no information indicating the effects of this oversight on the status of women or the household economy. Personal use of land, economic, and other household resources is not uncommon in West Africa, and this is no less true of Burkina Faso. Women's rights within indigenous tenure systems as well as their role in agricultural production and the household economy must not be overlooked in project planning or implementation.

### **Present policy position and reforms discussed**

The government's attempts at maintaining the country's self sufficiency through the resettlement of populations, the promotion of cash crops, the eradication of disease, and the provision of irrigation systems have been partially successful. According to recent statistics, the rate of production has remained above the rate of population growth

since the early 1980s. The production of cotton has also continued to be a prosperous enterprise. Despite these successes, the government faces several problems. Its failure to recognize indigenous land tenure systems and land rights and to incorporate these systems into a national policy has created a severe sense of insecurity among farmers. As a result, tensions are high between indigenous and immigrant populations. Without tenure security, it is unlikely that farmers will make the long-term investment necessary for sustainable agricultural systems.

The Government of Burkina Faso cannot expect to resolve its pressing environmental problems without addressing these land tenure issues. With the current environmental and population pressures, land has become more scarce. Land tenure policies of the Burkina Faso government need to find a balance in order to protect the rights and interests of both indigenous and immigrant farmer populations. With land security, both production and resource management will be more stable. In addition, administrative policies are necessary to assure the rights of pastoralists to grazing lands while simultaneously protecting farmers' land rights.

Through the decree established in 1984, the government intended to create a system of written permits and titles. The purpose of this would be to promote production on agricultural, pastoral, and urban lands. Such titling would also ensure a written record which would provide land security. While the government's policies were clearly stated in this decree, none of the current information indicates that this has actually come to pass. The 1991 law attempted to remedy the ineffectiveness of the 1984 law and provide for land privatization; however, the information available indicates that it is also largely inoperable. The creation and effective implementation of a clear and just land tenure policy which recognizes indigenous land tenure systems is necessary for sustainable production and economic stability in Burkina Faso. However, in order for such a system of titling to be effective, there must be a justifiable method for determining who has the right to gain title to land which would not usurp traditional land tenure rights.

### Implications for policy dialogue and programming

Project planners should be aware of the complex tenure issues existing in Burkina Faso between indigenous and immigrant farmers, farmers and pastoralists, and state and traditional policies. An effort to understand land tenure issues specific to project areas is necessary. The government's continued commitment to elevating agricultural production and its encouragement of the involvement of village cooperatives pose important land tenure questions that are necessary to consider in project design. In addition, the government's philosophical shift from a Marxist-Leninist ideology to a more democratic system must be considered. Future trends in the government's approach to development may involve new efforts and raise additional land tenure questions. In the absence of an adequately comprehensive national land tenure policy, strategies should be developed to assure successful integration of indigenous and state land tenure systems into project design.

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## CAMEROON COUNTRY PROFILE

by Mary Hobbs

### Executive summary

Cameroon has a complicated land tenure legacy as a result of colonial occupation by three different countries, each of which contributed distinct characteristics to future land legislation initiatives. Postindependence Cameroon has been under the formal tenure regime imposed by ordinances passed into law in 1974 and 1976. While the impact of this legislation has not resulted in widespread conversion of customary tenure rights to titled, private property, it has facilitated access to and titling of land for nonresidents such as entrepreneurs and bureaucrats. However, in spite of the 1974 Ordinance, customary definitions of land tenure rights continue to predominate at the village level. Economic and social changes have had a strong impact on the nature of land rights at the village level, particularly in areas where production of perennial cash crops such as coffee and cacao has led to greater individualization of landownership. Many regions of present-day Cameroon suffer from serious land competition, and twenty years of national land legislation seems to have contributed more to promoting the interests of absentee landowners than to decreasing competition by providing secure access for rural producers.

### National policy and legal framework

Cameroon is a triangle-shaped country possessing a small coastline on the Gulf of Guinea in the south, reaching up to Lake Chad in the north, and bordering Nigeria to the west and the Central African Republic to the east. Its population of 12,871,000 inhabits a landmass of some 46,540,000 hectares. A large portion of the landmass, approximately 75%, is forested, while only about 15% is under cultivation. Two distinct climatic zones can be found in Cameroon: the northern half of the country is primarily semi-arid tropics with a single rainy season (an exception to this climate is the plateau region of Adamaoua, which is more humid and cool due to its high altitude), and the southern part of the country is mostly humid tropics with bi-modal rainy seasons.

Current tenure legislation in Cameroon has been in effect since 1974, and there are presently no initiatives under way to revise these ordinances. One of the motivations behind the 1974 tenure reform was to reconcile differences between the British and French traditions of land law in order to solidify the unification of the country. In effect, what the 1974 Ordinances accomplished was to rescind legal recognition of customary and communal tenure rights, to impose land titling as the sole means of acquiring private ownership, and to empower the state as the guardian of all nonregistered lands, which were henceforth to be considered as national domain. These characteristics of the 1974 land laws actually had a great deal in common with French and German colonial traditions, and they signified a retrogressive approach to land policy by removing recognition of customary rights as embodied in previous legislation enacted in 1959.

It is necessary to review the history of colonial land laws in what has become modern-day Cameroon in order to understand the derivation of the 1974 and 1976 Ordinances. The first colonial legislation affecting land rights was established in Cameroon by the Germans in 1896. The 1896 Crown Lands Act established all lands *not* occupied by chiefs and their communities to be the property of the German Imperial Government. Private plantation agriculture was promoted and these properties were to be legitimized through procedures of registration and titling to be recorded in the official land registry (*Grundbuch*). Germany lost its holdings in Cameroon as a result of the signing of the Treaty of Versailles, which ended World War I in 1919. Portions of Cameroon were granted to both France and Britain, and each of these nations imposed its own distinctive traditions of colonial legislation on Cameroonian territory.

Under the British, all territory was declared “native land,” but with the important stipulation that these lands were under the control of the prime minister and that no titles of occupation could be granted without the prime minister’s approval. Additionally, according to official law, no indigenous Cameroonians were allowed to transfer or alienate land in any way without the prime minister’s consent.

French colonial land legislation closely resembled the German tradition. Under a 1921 law, all land not under occupation was simply declared the property of the French state. Later this legislation was refined and a system of registration was introduced which allowed for the recording of collective rights to land by corporate groups. Another important characteristic introduced under French law included the necessity of exploitation, or *mise en valeur*, as the primary means of establishing tenure rights.

As Cameroon prepared for independence, initiatives to reestablish the legitimacy of customary land rights were undertaken by the Territorial Assembly under Law 59-47 of 17 June 1959. This reversal was an effort to gain the support of traditional leaders and village residents, but it did not endure. Much of the recognition granted to customary tenure practices was rescinded by the postindependence government under Law 63-2 of January 1963. Not only did Law 63-2 remove the concept of customary land “ownership” in favor of “occupation,” but also it repealed the right to collective registration of customary land that was granted under the 1932 French legislation. The 1963 legislation further paved the way for the 1974 ordinances by reestablishing state ownership of “vacant” lands as a form of “national patrimony.”

The 1974 ordinances were ostensibly intended to empower the state as guardian of all land, thus ensuring rational use. Among other things, “rational use” during this period of drought, food shortages, and perceived environmental decline was defined in terms of maximizing productivity through the promotion of “modernized” private cooperatives and plantations, which could facilitate economic growth through increased exports. In support of these macroeconomic objectives, aspects of the new legislation granted rights of landownership through titling to village outsiders, in opposition to customary traditions, which tend to allocate land to members of the resident social group (Fisiy 1992, p. 103). This change has enabled land to be allocated through the marketplace, and the majority of persons who have taken advantage of the registration process are those in a position to purchase land, primarily government officials and private businessmen (Fisiy 1992, p. 116).

The 1974 land legislation comprises three separate ordinances: Ordinance 74-1 established rules governing land tenure; Ordinance 74-2 established rules governing state lands; and Ordinance 74-3 spelled out procedures for expropriation of land for public use. Three additional enabling texts followed in 1976 which specified procedures for registration and outlined conditions for managing state and national lands. The promotion of these land tenure revisions was made possible by the passage of a national Constitution through means of popular referendum in 1972. Under the new Constitution, the president was granted authority to revise Cameroonian land legislation, a power which was reconfirmed by Law 73-3 of July 1973, which specifically mandated the president to redraft existing tenure legislation.

In summary, since independence various Cameroonian governments have succeeded in resurrecting colonial traditions of state ownership of all nonregistered lands. The 1974 legislation officially recognizes private rights only to those lands which had been previously registered under any one of the previous governments (colonial or postindependence), thus leaving no opportunities for legally securing more recent ownership claims under customary practice.

## **Replacement and adaptation of indigenous tenures**

Indigenous tenure systems in Cameroon can be distinguished according to different production systems and historical and ethnic traditions. Clear distinctions usually exist between tenure rights for historically cultivating peoples versus rights for pastoral, transitory production systems. Because there are over 200 different ethnic groups in Cameroon, each possessing some distinctive characteristics in their tenure regimes, it would be

impossible to adequately address the variety of subtle distinctions. In general, however, one can note that control over land has traditionally been acquired by various groups through conquest, through first settlement and land clearing, or through land grants from established chieftaincies.

Among settled, cultivating groups land is usually entrusted to the village chief, who is often the direct descendant of the first settler. Historically, village chiefs grant use-rights to male heads of household, who then decide upon questions of land access for their extended families. Inheritance of land is typically divided among male heirs. While this pattern tends to be the norm, regional and ethnic distinctions certainly exist. Additionally it is important to note that tenure systems have evolved in response to changes in production strategies, particularly in those areas that have become dominated by coffee and cacao cultivation. In the areas where cash crops are a major component of agricultural production (particularly in the south and central regions and mountainous zones), land tenure is increasingly individualized and access to land is often determined by the market. Such is also the case in areas of high population density such as peri-urban areas surrounding Yaounde and Douala.

In less populated regions where subsistence production dominates, the customary land allocation role of village chiefs continues to be the major means of access. A rather extreme form of chieftaincy control exists among the Bamileke and Bamoun peoples of western Cameroon. Among these groups the village chiefs own all land, allocating temporary use rights to village members during the cropping season. This is sometimes problematic; temporary rights do not allow for the cultivation of perennial crops, and thus tree planting is not encouraged (Toney, Meke-Me-Ze, and Titi-Nwel 1993).

In most areas of northwest Cameroon, particularly in the Nso region, the village chief, or *Fon*, is the titular proprietor of village lands. But in actuality customary ownership rights belong to the person commonly recognized as having cultivated the area for an extended period of time. In these cases tree planting can in fact serve to solidify land rights.

Northern Cameroon is also inhabited by Fulani herders, who first moved to the area from Nigeria in the early part of the twentieth century. Historically the Fulani were granted access rights to pasture by local chiefs in exchange for tribute in the form of cows or money. However, shortly after their arrival and increasingly into the present day, competition for land has heightened among herders and local farmers. In particular, conflicts have occurred between herders and women, who frequently cultivate on the fringes of settlements in proximity to pasture areas.

In other areas of northern Cameroon, particularly in the Mandara mountain range, the Fulani acquired land through conquest, enslaving local populations who cultivated for them. Throughout the past century, however, many Fulani have settled into agricultural production, becoming the guardians of first claim to some village lands. Similarly, in the forest zone of southeastern Cameroon many groups acquired dominant land rights through conquest. This was the case among the Pygmies, who have also become increasingly sedentarised.

In the context of an expanding agricultural export economy, one could interpret the instigation behind the 1974 Land Ordinances as an effort to promote and secure the commercialization of land rights in order to expand the production of cash crops. For example, the stipulation allowing for alienation of land to nonvillage members often served to legitimize a process that was already under way. In other areas it facilitated processes of land acquisition and speculation among absentee owners.

Customary land rights, and particularly communal production systems, do continue to exist in many regions of Cameroon where land values and export crop production have not escalated. This is particularly the case in western Cameroon. In this region family-based production systems have been preserved, largely due to practices of primogeniture, which grant exclusive management rights over collective fields to the eldest son following the death of the father.



The last twenty years have been witness to increasing frustrations in those areas of Cameroon where community lands have been acquired by outsiders. In some areas this has led to situations where villagers work as day laborers on plantations which have been purchased and titled by outsiders, thus alienating local inhabitants from what is viewed under customary law as their birthright (Mbome, Ndong, and Poumie 1995). Pressures for reforming the 1974 ordinances in order to reestablish communal land rights have begun to enter the policy dialogue, but as yet no tangible revisions have been made.

### **Tenure constraints and opportunities**

In the Northwest Province of Cameroon interesting dynamics have been occurring during the last century which characterize the complexity involved in changing tenure rules and the shortcomings of current legislation in providing any means of reconciling conflicting rights of access. Increased competition over land between Fulani herders and women cultivators has led to conflicts which have not been adequately addressed through registration schemes promoted under the 1974 Land Ordinances.

When the Fulani herders first moved into the northwest region in the 1920s they were welcomed by both traditional leaders and colonial authorities because of the wealth they contributed in the form of fealty to local chiefs and cattle taxes to the colonial government. Problems began to develop in the 1930s due to the doubling of cattle numbers in the area and the simultaneous promotion of coffee cultivation. As male cultivators claimed much of the prime land close to village settlements for their coffee plantations, village women were forced to cultivate their food crops in closer proximity to what remained of the open range. The problem continued to exacerbate into the 1940s as cattle numbers exceeded projected carrying capacity levels leading to destruction of field crops and violent clashes between Fulani and women cultivators (Fisiy 1992, p. 69).

Decree 76-165 of 1976 attempted to resolve this problem by demarcating livestock boundaries and establishing arbitration councils for crop-damage disputes. However, the boundaries set by local authorities have not been respected, and promised provision of barbed wire has not been forthcoming. The situation is further complicated by the absence of any means to register collective property, such as rangeland, under the 1974 ordinances. In fact there is evidence to substantiate that some of the more prosperous Fulani are benefiting due to their ability to acquire private title to land, thus alienating many women from cultivable lands and changing rules of access for other herders (Fisiy 1992, p. 116). Many of the Fulani who have acquired private land through registration have moved into sedentary production in addition to investment in livestock. This trend appears to be leading to increased frustration among resident cultivators who perceive the continued alienation of their ancestral lands by "outsiders."

In the regions of large-scale cacao and coffee cultivation, such as Lékié, the transition from subsistence to market production has further weakened customary views of land as an inalienable right derived from the ancestors and to be passed on to future generations. Rather, land is increasingly seen as a commodity, and the high value to be obtained from cacao production has led to a situation of absentee ownership with local producers gaining access through rental.

In 1990 the ministries responsible for forest management in Cameroon were reorganized to form the Office National de Développement des Forêts (ONADEF). The purpose of this new organization is to promote the protection of forest resources and encourage reforestation initiatives with a view toward the economic gains to be made from responsible exploitation.

Similar to land legislation, forest policy in Cameroon is characterized by the notion of national domain. According to the Forest Code of 1981, forests in Cameroon are classified in one of three ways: (1) state forests, which include national parks and wildlife preserves; (2) collective or private forests, which are planted by individuals on land they have registered but which have some restrictions on use still applicable; and finally, the largest category, (3) national domain forests, which consist of all forested land not falling within the other two

categories. The state has attempted to enforce rules regulating access rights to these forests, including harvesting of products and timber by local communities. Cutting and hunting rights are allowed only through issuance of permits, though harvesting of deadwood and most tree products is allowed for local residents. Trees that are planted by individuals are considered private property as long as they are planted on that individual's registered landholding. All other trees are considered state property.

Customary laws differ significantly from national legislation. Under customary tenure rules trees are considered the property of the person with locally recognized, legitimate claims to the land. This holds true both for naturally propagated trees and for planted trees. Persons having only temporary use-rights to land under customary rules do not have ownership rights to trees and are discouraged from planting them on borrowed land. If trees are planted by a person with temporary rights, ownership of those trees belongs to the recognized landowner.

Wildlife species are similarly considered national domain, and they are protected through control over hunting permits. Additionally, a number of national parks exist, particularly in northern Cameroon, and hunting is strictly forbidden in these areas.

For nearly thirty years following independence, Cameroonian politics was dominated by a single governing party. This changed in December 1990 with the passage of Law 90-056, which legalized the creation of competing political parties and ushered in an era of multiparty democracy.

The single-party system in combination with the 1974 land legislation had different impacts in rural areas than it did in the urban zones. Control of urban areas by state-appointed mayors of the Unity Party meant that traditional leaders' powers were diminished and the nationalization and individualization of land rights as dictated by the 1974 Land Ordinances was realized. Conversely, in the rural areas the unitary political system had the effect of strengthening traditional leaders' control over land by naming village chiefs as the local party representatives. While the process of acquisition of village lands by outsiders did occur, at the same time the role of the village chiefs as ultimate arbiters in determining land rights was strengthened.

It is too early to determine if the transition to a multiparty political system will have a significant impact on tenure rights. However, it does seem certain that the control that appointed mayors have possessed over urban land decisions and village chiefs have possessed over rural land access will be subject to increased competition.

According to many customary traditions in Cameroon, women acquire access to land through their husbands. The 1974 Land Ordinances officially granted usufruct rights to widows upon the death of their husbands, but with the stipulation that ownership rights be acquired by sons (or in some cases daughters) once they reached the age of 21.

Additionally, many different ethnic groups consider the production of food crops and the provision of firewood to be the woman's responsibility. It is for this reason that few women have become involved in cash-crop production, particularly of tree crops such as coffee and cacao. As previously described, it has often been Cameroonian women who have come into conflict with herders as their fields are pushed farther to the margins to make way for men's coffee plantations.

Increasingly over the last few decades, more female-headed households are coming into existence in Cameroon as a result either of divorce, death, or abandonment on the part of husbands or of women raising families out of wedlock. Women are also increasingly involved in the market either as professionals and laborers or through the sale of their production. As a result, increasing numbers of women are independently acquiring or even registering land—a situation which was virtually unknown a generation ago.

However, while this development may be viewed as positive, a much more common incidence that has been occurring in recent years is that women who gain access to land through borrowing or other forms of temporary

usufruct are often forced off the land when the proprietor decides to sell the parcel or to increase his production. These occurrences are particularly common in peri-urban areas where land markets are prevalent.

### **Present policy position and reforms discussed**

Because over twenty years have elapsed since the passage of the 1974 Land Ordinances, a substantial amount of research has been conducted to allow for rudimentary conclusions of the impacts of this legislation. According to various authors (Mbome, Ndongo, and Poumie 1995; Fisiy 1992) some of the principal impacts of the land legislation have included: increased individualization of landownership; alienation of previously community-held lands by outsiders; increase in the number of cooperatively and privately owned commercial plantations; heightened land speculation in urban and peri-urban areas; greater proletarianization of rural residents who have lost access to land and now hire out their labor on coffee, cacao, or palm plantations; and increased state control over land access and use.

Remarkable distinctions have been noted between the impact of the legislative reform in urban versus in rural areas. The FAO study (Mbome, Ndongo, and Poumie 1995) in particular speaks of a dual land tenure system which presently exists: individual or state ownership and a thriving land market in coastal, central and southern Cameroon (particularly in urban areas); and continued predominance of customary rules of access in less inhabited, less commercially oriented rural areas. However, even in these rural zones it is argued that market forces are increasingly important, that outside investors now have access to landownership, and that the land allocation role of village chiefs has been strengthened in many areas (Mbome, Ndongo, and Poumie 1995, p. 64).

A growing consensus regarding the need to strengthen customary land laws and enhance tenure security for village residents appears to be emerging. The recent establishment of multiparty democracy may facilitate bringing these calls for reform into the policy dialogue; however, no substantive efforts to effect such changes have yet been implemented.

### **Implications for policy dialogue and programming**

To summarize, the result of the 1974 Land Ordinances appears to have been to create a dual structure in Cameroonian land tenure, with widespread registration and titling of landholdings and an active land market and land speculation in urban areas and some registration and titling of property with outsiders acquiring rights to community-held lands in rural areas. But the most part rural residents continue to abide by local custom in gaining access to and managing resources.

Given that the law has been accepted in a very uneven manner, many analysts have recommended revisions to the legislation that would effectively recognize the traditions which predominate in a given area, whether they be customary or modern rules. Among the tenure reform policies under discussion in Cameroon are the following:

- ◆ Decentralizing land tenure institutions so that land grants are allocated through local (village-level) decision-making rather than as concessions by national-level bureaucrats. Such a reform could continue the process of securing individual title in order to facilitate rational economic exploitation while at the same time returning control and recognition of customary land rights to the local community.
- ◆ Proclaimed state ownership over all nonregistered land and self-propagated trees should be discontinued, with rights to these resources reverting to local, customary definitions. Such definitions typically grant ownership rights to landowners over all trees located on their holdings. Additionally land rights are secured according to local definitions rather than through registration at the state-level. Unless individuals feel that they have a recognized claim to the resources they exploit, both land and trees, the likelihood that they will make investments in maintaining these resources is greatly reduced.

- ◆ Further deterioration of communal and family-based landholding could be alleviated by providing the legal means to register corporate land rights.

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# CAPE VERDE COUNTRY PROFILE

by Mike Williams

## Executive summary

When Cape Verde was discovered by the Portuguese in 1460, the islands were uninhabited. At first, they were used as a location to facilitate the slave trade and as a place where Portuguese ships could prepare for their journeys around the African continent. Most of the land in Cape Verde is not arable. In addition, the islands are subject to unpredictable and extraordinary droughts. Due to these circumstances, the Portuguese did not attempt to establish an infrastructure in the archipelago, and for most of its history, the Cape Verde was ruled by its landowners (*morgados*) rather than the Portuguese government. The *morgados* initiated sharecropping in the islands, and the remnants of this system still exist.th

## National policy and legal framework

The Republic of Cape Verde consists of ten islands 600 kilometers off the coast of Senegal. Nine of the ten islands are inhabited, and the total land area of the archipelago is 4,033 square kilometers. The islands are subject to long droughts and extreme shortages of water. Most of the islands are barren with only a few strips of arable land. Specifically, only 10–15% of the total area is suitable for farming, and the population density on agricultural land is approximately 400 individuals per square kilometer. The islands are volcanic in origin and represent the tip of a large undersea mountain range. Due to the dire ecological conditions, many Cape Verdeans have traditionally emigrated to seek employment. As a result, there are more Cape Verdeans abroad than in the archipelago.

Cape Verde experienced almost undiminished drought from 1968 to 1984. The total cultivable land area is 39,000 hectares, of which 34,000 hectares are actually utilized for agricultural production. The two staple agricultural products are maize and beans. During the years of drought (1968–1984), the harvest of maize and beans was nearly wiped out. While agricultural production has improved over the last fifteen years, Cape Verde is still forced to import most of its produce. Even though 90% of the population are engaged in the production of agriculture, food production makes up only 20% of the GDP.

The Portuguese founded Cape Verde in 1460, offering land titles to wealthy families as incentive to encourage settlement. In fact, the island of Santiago (the largest island) was divided between Diogo Gomes and Genoese Antonio da Nola—the two “discoverers” of the islands. These initial landowners wielded extreme power and retained title for almost 130 years. As settlers began to arrive, the Portuguese government continued to cede large portions of the islands to wealthy landowners. By the end of the sixteenth century, the land was divided among Portuguese families and the church under two similar land tenure arrangements: the *morgadio* (sharecropping) system, and the *arrendamento* (money-rent) system. These land tenure systems were utilized to establish large farms that produced sugarcane (an export crop) at the expense of food crops such as maize and beans. The overproduction of sugarcane under the *morgadio* system proved to be disastrous for Cape Verde’s economic and ecological system.

Under the *morgadio* system, individual families (*morgados*) were given the right to specific pieces of land in perpetuity through the male line. While the families had certain duties as landowners, for the most part they were able to extract what they wanted from the land without reimbursing those who happened to be living and working there. The sharecroppers were forced to renew their contracts every year, and thus they had no tenure security and no incentive to make improvements to the land. In addition, because the landowners were not allowed to sell the

land, when land became unproductive, many families simply abandoned their holdings. This type of land administration affected the peasants and slaves more than any other individuals. In addition, because land sales were prohibited and only the eldest son could inherit the land, many of the offspring were left without means of support except as tenant farmers. Due to the end of the slave trade in the mid-nineteenth century as well as the terrible drought in 1830, the *morgadio* land tenure system proved inefficient and was officially abolished by royal decree in 1864.

While the *morgadio* land tenure system was formally abolished in the late nineteenth century, it continued to be the de facto tenure arrangement until the 1930s. In 1865, the Banco Nacional Ultramarino (National Overseas Bank) was established in Cape Verde. This institution lent money to landowners and thus helped them retain their power. The financial crisis of 1929, however, damaged the landowners to such an extent that the *morgadio* system was finally destroyed.

The landowners who prospered under the *morgadio* land tenure system were replaced by a new middle class made up of Cape Verdean emigrants who had been working in the United States. For the most part, however, the land was controlled by a few wealthy landowners and it continued to be tilled by tenants or sharecroppers. Thus, while the old landowners were replaced by new middle class, the land tenure system (which consisted of tenant farming and sharecropping) was largely left intact.

In 1975, Cape Verde was granted independence from Portugal. Land tenure did not become an important political issue until the 1981 Agrarian Reform Act. This legislation was enacted to distribute landholdings of over 5 hectares that were not being farmed directly by the owners to their peasant cultivators. In another effort in the mid-1980s, the government sought to eliminate sharecropping and to limit tenant farming. Unfortunately, it did not pass any legislation to this effect. Under the current Movimento Popular Democrático (MPD) government land tenure reform is not a high priority issue, and it is unlikely to initiate any further land reform.

### **Replacement and adaptation of indigenous tenures**

As indicated above, most sources suggest that the archipelago was uninhabited when it was found by the Portuguese. Land was distributed to wealthy families under the *morgadio* land tenure system. This sharecropping system has continued, more or less, to the present day. While the government initiated some modest land tenure reform programs in the 1980s, most peasants do not own the land they till and continue to lease from large landowners.

### **Tenure constraints and opportunities**

Cape Verde suffered almost total drought from 1968 to 1984. It is unlikely that the islands will achieve food self-sufficiency in the foreseeable future. The success of agricultural development depends on whether the islands can tap the underground water resources. The complex volcanic geology of the archipelago, however, makes this endeavor difficult. Until more funds are devoted to the development of irrigation systems, it is unlikely that agricultural production will increase.

Over the last few years, the government has sought to increase the water resources through a reforestation program. This program sought to plant enough trees to supply fuel, retain rainwater, and reverse the effects of centuries of soil erosion. In 1990, the government instituted a program where they planned to plant 2 million trees. Unfortunately, there have been no studies to assess the success of this program.

Livestock plays an important role in the archipelago. Over the years, however, it has been difficult to sustain large numbers of livestock due to the droughts. For example, it is estimated that the total number of animals declined 37% during the 1970s. Even though there has been adequate rainfall over the last ten years, the total number of livestock is still below the historical average.

In terms of minerals, the islands possess virtually no natural resources except for pozzolana (a type of cement base) and orchil (a lichen that produces a specific red dye). There is no current information on specific natural resource management programs with respect to these minerals. As indicated above, however, the government has initiated afforestation programs.

In 1991, Cape Verde held its first multiparty legislative and presidential elections. This election resulted in the defeat of the Partido Africano da Independência de Cabo Verde (PAICV) and President Aristides Pereira. This ended the single-party rule that had existed since 1975. The PAICV was replaced by the opposition party, the MPD, and Carlos Veiga was elected president. Land reform was not an important issue in the elections, and it is doubtful that the MPD government will initiate land tenure reforms in the future.

Due to the severe droughts which have inflicted Cape Verde, the islands have been able to produce only 60% of their food needs. The main food crops are beans and maize. These crops are grown on terraced mountainsides by individual families. The land utilized for these crops, however, is minimal due to the intense cultivation of sugarcane. In the past, the landlords reserved most arable lands for the production of sugar cane. This product was either exported as refined sweetener or used as the base for the local liquor, known as *grogó*. The excessive cultivation of sugarcane was disastrous for both the economic situation of the Cape Verdeans and their health as well.

### **Present policy positions and reforms discussed**

There is no information available to indicate that the current government is considering land tenure reform.

### **Implications for policy dialogue and programming**

The amount of information that is available on Cape Verde is limited. There needs to be additional research completed.

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# CENTRAL AFRICAN REPUBLIC COUNTRY PROFILE

by Rebecca Furth

## Executive summary

The Government of the Central African Republic (CAR) has voiced its intention to encourage projects that are based on individual or small collective leadership groups. The idea is to promote the autonomy and encourage the motivation of user groups. Although the government created a system of land registration, it lacks the manpower to administer or promote such a system. While some skeletal land tenure policies may exist within national legislation, they are not heeded. Indigenous land tenure systems remain the foundation of CAR land tenure.

## National policy and legal framework

Central African Republic is a sparsely populated and geographically diverse country spanning the Sahelian and forest zones of central Africa. The country is bordered by Cameroon and Congo to the southwest, Zaire to the south, Chad to the north, and Sudan to the east. Landlocked in the heart of the continent, the Central African Republic has suffered from poor economic growth, political corruption, and drought. Its population is estimated at 3.3 million people with a 2.6% annual growth rate. The total land area of the Central African Republic equals 622,984 square kilometers (240,535 square miles). Only about 3% of the total land area is occupied with agricultural production, 5% by meadows and pastures, and 64% by forest and woodlands; 28% is employed for other uses.

In the 1970s and early 1980s, the government of CAR encouraged agricultural cooperatives based on a centralized decision-making body and obligatory participation. This approach met substantial resistance and was almost completely ineffective. More recently, the government has adopted an approach to agricultural development based on a “self-focused” development model. The government is interested in creating and implementing programs in a decentralized manner with local individuals or groups as the core of the decision-making body.

Although the government is voicing a liberal philosophy for production and development, its current doctrine is not reflected in its land tenure policies. The present land tenure policy of the Central African government is based on the archaic colonial land tenure policy. The government started a process of reconstructing a national land tenure policy in 1986; however, no new policies have been established to date.

The Central African government claims all “unused” or “unowned” lands (both rural and urban) as property of the state. Private ownership can be established and secured through the official entry of lands into the national land register. The regulations for registering land are detailed in Law No. 60/76 of 1976. According to this law, it is possible to obtain two different sorts of land permits: *habitation permits*, and official land title.

Certain lands are zoned for habitation only. The state remains the ultimate legal owner of these lands, but individuals can obtain permits to occupy and build nonpermanent structures on these properties. Huts or houses made of traditional organic materials are considered nonpermanent; cement or metal structures are not. In rural areas, *habitation permits* are easy to acquire and are usually free. In peri-urban areas, they are more difficult to acquire and usually necessitate substantial payment and the permission of several government officials. Permission to build permanent structures on land on which a person has a habitation permit can be obtained with the acquisition of a *construction permit*. Furthermore, if a resident can establish that he has put his “habitation” land into productive use according to the stipulations of *mise en valeur*, then he can apply for legal ownership of his residential lands. Such cases, however, are rare.



Legal registration of land for ownership title is possible in both urban and rural areas. In order to establish rights to land, an applicant must prove he has put land into viable *mise en valeur* (usually intensive or permanent agriculture) or erected a permanent structure on the land, which constitutes the land as legally occupied or in use. After viable use or occupation is verified, land can be officially registered and the application for legal title can be processed. It is possible for either an individual or a collective to obtain legal title to land in the Central African Republic. The procedure for land registration, however, is complicated, time consuming, and expensive. Consequently, few lands are legally titled.

In urban areas, vacant lands can be temporarily rented to people wishing to acquire use rights. Users can become owners of these lands by completing the aforementioned registration procedures. There is a zoning plan for each major town in the Central African Republic. These zones are hierarchically ordered and different tiers may have different building and use restrictions. These regulations manage the control and use of residential lands. However, the lack of facilities on urban sites and the inefficient collection of real-estate taxes result in the inability of the government to ensure the efficient operation of these services.

Despite its legal registration procedures, the state maintains legal right to expropriate lands for the public good (that is, the construction of roads). In addition, the state can also repossess lands which it feels are not being put to "proper use." Because proper use is only broadly defined, the state has a considerable amount of flexibility in declaring what it considers proper in any given situation. The unclear guidelines in this aspect of the law bring the issue of land security into question.

Just as the lack of manpower and finances inhibits the government from enforcing zoning and registration regulations in the urban centers, so there is no enforcement of government land-tenure policies in the rural sector. While the government recognizes the legitimacy of traditional land tenure systems, its policy does not incorporate these systems. Despite this neglect of traditional systems by the government, most lands continue to be allocated and controlled by community-based land tenure systems.

### **Replacement and adaptation of indigenous tenures**

While customary systems govern land tenure in rural areas, they have been affected by national policy as well as economic and environmental constraints. Whereas the lineage chiefs or clan elders once managed the land in most communities, chiefs (who are often government liaisons) are increasingly becoming intermediaries between the land seekers and users and the lineage or clan elders who are the traditional land managers. In addition to this administrative shift, traditional systems are being altered by the possibilities offered in the national policy, such as permanent individual ownership.

Traditional systems are constantly changing and adapting to differing political, economic, and environmental conditions. Individual communities may have highly divergent ways of adapting to similar situations. Although traditional systems are characterized in this paper, it is important that these general characterizations not be viewed as absolute or fixed.

Although an ethnically diverse country, the Banda and Baya groups compose the majority of the population. These groups typically practice extensive swidden agriculture. In this system, the first clearers of the land establish use rights. Rights to land are transmitted through patrilineal inheritance. While farmers have individual use rights to land, all land is collectively owned by the lineage. The lineage head has ultimate control over land distribution and allocation. Control over land passes laterally from the eldest male in the lineage to the next eldest. The lineage head also acts as arbitrator in land disputes.

A farmer can borrow land with the permission of the lineage head or an individual farmer. Borrowers can obtain only temporary use rights and not ownership rights to land. There is no indication of how many farmers are land borrowers versus land owners or perennial users. Development projects should attempt to gain an understanding of the relationship between owners, users, and borrowers in given project areas. It is also important

to examine the ways in which this relationship is changing under economic pressures such as the shift from food crops to cash crops in CAR. Because CAR is not encountering the same constraints of land shortages, even in the major cash cropping regions, it is likely that the change in relationships will not resemble that experienced by neighboring countries, such as Chad and Benin, which are facing major land shortages.

Fulani herders occupy the northwestern region of the country. There is little mention of their land tenure system, but it is noted that the herders and farmers of this region have a complementary relationship with farmers with regard to land use. Farmers will allow herders to occupy their fallowed and farmed lands. The herds sustain themselves on the fertile lands and simultaneously fertilize the fields. In addition, the herders and farmers exchange agricultural and animal products. This relationship between farmers and herders is common to many other countries of the region. In many areas this relationship is being thrown off balance by changing environmental and economic forces. This is an important subject in need of further investigation in the Central African Republic.

### **Tenure constraints and opportunities**

The Government of CAR has encouraged the intensification of agriculture in recent years. Permanent and intensive agriculture are two of the main conditions of *mise en valeur*. In the past, emphasis was placed on intensive cash cropping, particularly of cotton. Cotton plantations were mostly owned by French farmers and companies until the early 1980s, when they reverted to smallholder control. There is no information about the transformation of these large plantations into the hands of smallholders. Nor is there any indication of the rights these smallholders have to their lands. Recently the government has begun a campaign to encourage food-crop as well as cash-crop production in order to lower the national importation of foodstuffs.

Although the Central African Republic has undergone the same destructive drought as other countries in the region, its low population density and abundance of arable land have spared it from the land scarcity and conflict problems currently being experienced by its northern neighbors. The weak economy and poor prospects for exportation, due to the country's landlocked status and insufficient infrastructure, have resulted in a decrease in agricultural production. As a consequence, rural-to-urban out-migration is occurring at an alarming rate. Agriculture remains extensive and impermanent in most areas. Thus, the majority of lands do not meet the necessary conditions of *mise en valeur* and can be legally expropriated by the state. This circumstance results in little tenure security for the majority of the country's producers.

As noted earlier, the Fulani herders have traditionally shared lands in the northwestern region with sedentary farmers. There is not enough information available about the relationship of these two groups in the Central African Republic. It is noted, however, that because the Fulani are transhumant and migrate between grasslands and waterways, they rarely occupy a parcel long enough to establish a claim for legal title.

The government developed the National Livestock Project (l'Agence National pour le Développement de l'Élevage, ANDE) in 1986 to improve livestock production. This project was aimed at protecting pasturelands by establishing semi-sedentary "pastoral action zones." Each of these zones was planned to be administered by an association of herdsman. This project was to be based in the Ministry of Rural Development and the National Livestock Federation. Unfortunately there is no indication that it was ever implemented, nor any information about how it addressed land tenure issues, which were an integral part of the establishment of pastoral action zones.

The Central African Republic possesses one of the last truly extensive rainforests in Africa. The government has continually been developing new plans for the exploitation of the forest in order to better the national economy. The lack of sufficient infrastructure has proved to be an effective constraint to large-scale exploitation; however, deforestation is still occurring with increasing speed.

There are several pygmy groups and other peoples who inhabit these forest regions, not to mention the various groups who use forest resources. Tree tenure and land tenure are most often separate in customary tenure systems. In forest areas, caterpillar trees, mushroom trees, and certain fruit trees are open to exploitation by anyone. This is not the case with perennial tree crops, which are customarily accessible only by the tree owner. Owners of perennial tree crops have use rights to the land on which the trees are situated as long as the trees remain productive.

There are several classified forests that are considered property of the state. In 1990, Law No. 90.003 clearly delineates the various forest zones in the country, organizes the regulations for herding in classified forests, and defines regulations for controlled burning. It is important that project planners and the CAR government develop an understanding of the customary land and forest tenures and create programs sensitive to these peoples' rights and needs.

The Central African Republic has one of the last substantial wildlife populations in the world. Despite the government's creation of three national parks and eight game reserves, hunting and poaching have nearly decimated many of the animal populations. Most of these reserves were established in the sparsely populated regions of the country. There is no information regarding the rights of the peoples indigenous to these lands. This subject is in need of further research, particularly for project planners addressing issues surrounding game reserves.

Mining lands come under the national domain and are property of the state. However, Article 4 of Ordinance No. 83/024/1985 authorizes all persons of Central African nationality the right to small-scale exploitation of gold and diamond resources. Other mining resources are accessible only with permission of state authorities.

Since 1993, the Central African government has expressed its commitment to democracy. In addition, the government recently voiced its desire to promote village, group, and individual leadership in development programs. In order to remain consistent, the government must also develop a national land-tenure policy which will recognize the legitimacy of community-based land tenure systems. While it seems as if the government is philosophically dedicated to democracy, it must restructure its policy to reflect its doctrine in practical terms.

The principle of *mise en valeur* is designed to increase agricultural production in order to boost the national economy. This same principle is also the basis for legal landownership and rights to land. Despite the government's efforts to better the economy by controlling land tenure through *mise en valeur*, the Central African Republic has been struggling economically since the early 1970s. The lack of infrastructure, combined with the country's landlocked status, has inhibited exportation as well as production for domestic consumption. The CAR is a net food importer. In order to control this unfavorable situation, the government has promoted the production of food crops as well as cash crops in recent years. Pronounced rural-to-urban out-migration has resulted in the decrease of agricultural production despite the government's campaigns.

In most customary systems, women can acquire use rights to land only through their husbands or fathers. The national land-tenure policy makes it possible for women to own land independently since it does not discriminate on the basis of age or sex. Although women can legally own land, there is no indication that any have, as yet, registered land or gained legal title. The possibility for women to own land could potentially cause many shifts in community-based systems. Project designers should be sensitive to the relationship between men and women with the land and conscious of shifts in community-based systems if they are to construct effective development programs.

### **Present policy reforms discussed**

While it appears that the government has made important changes in its approach to agricultural production and development, the national land-tenure policies have remained unaltered. If the government is truly dedicated to

democracy and decentralization, it must adjust its land tenure policies to reflect its philosophy. There is little tenure security under current policies. New policies need to be developed to assure security for all users. Because of poor infrastructure and a weak economy, intensive (mechanized and plow) and permanent agriculture is not realistic. Therefore, the current stipulations for *mise en valeur* are not viable.

Furthermore, the Government of the CAR needs to formulate a new land tenure policy that recognizes traditional land-tenure systems and assures tenure security for lands governed under those systems. At the same time, an overarching national policy needs to be constructed to define national land-tenure policy in situations of land conflict, sale, rental, and loan as well the interaction between national and traditional systems. A policy of land registration and titling must be confined to the modest areas for which the government can provide the finances and staff necessary for effectively maintaining such a system.

### **Implications for policy dialogue and programming**

Far too little has been documented regarding land tenure in the Central African Republic. As a basis for successful project design and implementation, both state policy and traditional land-tenure systems must be investigated further. The Central African government needs to review its land tenure legislation in light of its current development philosophies. Projects should attempt to integrate state and customary land-tenure systems in order to empower local populations and ensure greater security of tenure.

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# CHAD COUNTRY PROFILE

by Rebecca Furth

## Executive summary

Unenforced national land-tenure policies in Chad have left intact the primacy of traditional land-tenure systems. The southern region, characterized by sedentary agriculture, has a hierarchical lineage-based land tenure system, while Islamic law governs land tenure in the northern pastoral region. Severe environmental constraints, due to the prolonged drought in the region and a weakened economy, have thrown the relationship between farmers and herders and various other users groups out of balance. Traditional land tenure systems are now challenged by changing environmental and social relationships. A clear and well-defined national land tenure policy, which recognizes the legitimacy of traditional tenure systems and yet provides clear and just land tenure laws, is necessary to ensure effective land tenure conflict resolution as well as continued production and economic stability.

## National policy and legal framework

Chad is a landlocked country spanning the Sahelian zone and the Sahara desert. The fourth largest country in sub-Saharan Africa, Chad covers an area of 1,284,000 square kilometers (495,800 square miles). Chad is bordered by Libya to the north, the Central African Republic to the south, Sudan to the east, and Niger and Cameroon to the west. Recent population censuses estimate the total population of the country at 6,288,000, with the majority of the inhabitants living in the southern third of the country.

Land tenure in Chad is characterized by the interaction of different tenure systems, many land uses, and various authorities governing the land. Different tenure systems include state policy, customary tenure, Islamic law, and the legacy of colonialism. Lands are used for agriculture, social and political activities, migrations of human and animal populations, and various systems of production. In addition to these myriad systems, there is an overlapping of state, traditional, and collective authorities.

Colonial land tenure policy claimed all “unowned” or “unused” land as property of the state and required the registration and titling of all lands. While the postindependence Chadian government did not directly adopt colonial policies, it did emulate them. According to available information, the most recent land tenure edicts were established in 1967.

In postindependence legislation, all land not under production and without a proprietor is considered property of the state. This includes all unregistered and communally owned lands. According to government policy, land under production which is governed by traditional land tenure systems is recognized as legitimate but can be expropriated by the state if left to fallow for three years or more. However, although the legislation claims to recognize indigenous land tenure systems, the policies usurp the power and rights of those same systems by requiring legal registration and titling and denying collective property rights.

Laws No. 23, 24, and 25 of 1967 define national land tenure policy. Landownership and usufruct rights, according to Law No. 24, necessitate legal registration and titling. Law No. 25 declares that the government has the right to expropriate any lands under customary ownership or use if those lands are necessary for public use. This suggests that there is little land security on lands governed by traditional tenure systems.

The Chadian state holds lands in both public and private domains. Public lands are nontransferable and are subdivided into natural and “artificial” domains. Natural public lands include rivers, lakes, mineral reserves, and

classified forests. Artificial public lands are composed of lands where infrastructure and public monuments are established. Private state lands can be sold, rented, or leased, though there are no guidelines for such transfers. Private lands encompass “other” lands which are owned and managed by the state. These include both urban and rural lands which are frequently used in development initiatives.

Despite the tenure laws of 1967, land tenure policies of the state are largely ignored. Neither private nor public state property has been developed to any notable extent. For the most part, customary land tenure practices prevail. Information from as recently as 1994 indicates that scarcely over 2,000 titles in all have been granted since 1967, and fewer than 15 of those titles were issued to rural land users. Furthermore, the laws do not address issues of conflict over natural resources, territorial boundaries, human and animal rights, competition between different user groups, or problems of cohabitation.

### **Replacement and adaptation of indigenous tenures**

Chad is divided into three main ecological zones which also largely delimit ethnic boundaries as well as land tenure systems. The southern third of the country has the highest rainfall and is most conducive to sedentary agriculture. This region of the country is mostly populated by animist farmers, most notably the Sara who compose 25% of the total population. These groups practice a patrilineal lineage-based land tenure system in which land is collectively owned. Land rights are established by the first clearer of the land and are transmitted laterally through the eldest male in the lineage (land chief). In other words, instead of passing from father to son, rights are passed from the oldest male in the lineage to the next oldest. The land chief has the right to distribute land and acts as arbitrator in land conflicts. Although land is collectively owned by the entire lineage, individuals have inalienable use rights. Only men in this system can inherit use rights. Women can gain access to land through their husbands, though such access is not guaranteed as it is with men.

“Stranger” farmers with no affiliation to the lineage system who, nonetheless, wish to obtain use rights to a parcel of land under this system can do so simply by getting the permission of the lineage chief. A primary condition for borrowed land is that the user cannot plant trees. Although strangers’ use rights can be inherited, a “stranger” will never acquire inalienable use rights or ownership. Some strangers have successfully obtained permission to plant perennial crops. These cases are rare and are usually granted only to a stranger who has already inhabited the area where he wishes to plant for several years. Strangers must keep land under production or it will be reclaimed by the lineage.

The customary system appears to be evolving. Traditionally, sale of land under the customary system is unknown. Land is viewed as common and not individual property. However, with the growing scarcity of viable farm and grazing lands, families are clinging more tightly to the lands on which they hold usufruct rights. Increasingly, families are wanting to assure that their land passes directly to their descendants and does not revert to the lineage head for redistribution. Consequently, land purchases, loans, and rentals are occurring with increasing frequency.

Islamic law governs land tenure in the northern and central regions of the country. Islamic law provides for both collective and individual ownership. It dictates that all land belongs to all Islamic peoples. However, an individual Muslim can acquire legal ownership to land. Within Islamic law there are privately owned lands and collective lands. Privately owned lands are under the governance of the owner, whereas collective lands are governed by the religious leader (imam) and are only managed by the land user. Collective lands are divided into three main categories: dead lands, live lands, and *terre de main morte*. Dead lands constitute collectively owned lands where each individual has private acquisition rights to a parcel of the collective land. Live lands are lands which belong to the Muslim community and are managed by the community leaders. Individuals can obtain usufruct rights to live lands by paying tribute to the leader of the Muslim community. Lastly, *terre de main morte* comprise lands owned by the Muslim community.

Water rights are critical in Muslim law. The value of a parcel of land is determined by its proximity to a water source. Under Muslim law, all people have rights of access to water sources. However, use rights vary depending on the type of water source. Lakes and rivers are considered public waterways and are open to all users including herders and their animals. Wells and other man-made water sources are the property of the person who constructed them. In general, Islamic law holds that all people have access rights to private water sources as well; however, they must offer payment or compensation to the owner of the water source (see section 4.2.1 for more information).

In general, there is nothing in either customary or Islamic land tenure systems which allows for equal access to and control of land. Both systems are fundamentally hierarchical. Descendants of chiefs or wealthy members of the community have access to more land and better quality lands and will rarely have difficulty acquiring land. Increasing scarcity of land and competition over land resources is liable to create even greater inequality.

### **Tenure constraints and opportunities**

Chad's history of political instability and civil conflict, combined with the prolonged drought and resulting environmental degradation, has jeopardized traditional tenure relations. Government policies are no longer sufficient to handle contemporary land tenure issues. New relationships are developing in agricultural and pastoral domains as well as in the realms of natural resources, economics, and social relations.

While communal land tenure systems were once quite stable, the decrease in the number and quality of fertile lands had destabilized traditional land tenure systems on agricultural lands. More and more, families are clinging tightly to their lands and assuring that they be transmitted within their nuclear families instead of reverting to the lineage. Sales, rentals, and loans of land are also occurring with increasing frequency. However, traditional communal systems are still paramount. Attention needs to be paid not necessarily to the increase of individually held lands but to the stabilization of land tenure systems, be they based on communal or private land tenure. According to Yonoudjoum and Abdelsalam (1994), nothing in Chad's experience indicates that the increased individualization of land has had noticeable benefits on agricultural production. However, the lack of land tenure stability has shown adverse effects on agricultural production and is therefore a crucial issue for the Chadian nation.

Livestock production plays an important role in the Chadian economy accounting for 13% of the GDP and engaging approximately 40% of the labor force. In 1988, the Chadian government created the Projet National d'Élevage (PNE). Although this project was established to improve the development of livestock production, its efforts are concentrated on veterinary developments. It does not address vital land tenure issues. The World Bank, in its pilot project Périmètres Pastoraux Pilots, has attempted to address the issue of resource distribution and use, particularly of water sources on pasturelands. It is not clear how the World Bank has approached land tenure issues or what the outcome of its efforts have been.

Herding tenure is traditionally based on the idea of inexhaustible land resources and the availability of a variety of pasturelands. The scarcity of pastureland which has resulted from the prolonged drought in Chad has had a significant impact on land rights of pastoralists. There are three different categories of pasturelands: rainy season pasturage, dry season pasturage, and trans-seasonal zones. Traditionally, there were clear arrangements between herders and sedentary farmers which delimited pasturelands and defined and permitted access to water sources. The war, drought, and environmental degradation since the late 1960s have thrown the relationship between farmers and herders drastically out of balance. Because of the limited availability of pasturelands, herders are continually trying to access new lands where they have no history of collaboration with the indigenous farming populations. There is no national code to assist contemporary negotiations; in fact, there is nothing in the national legislation that addresses these issues of land use between farmers and herders.

Herders frequent both public and private water sources. The tenure issues regarding these different sources have an important impact on water resource management and the surrounding lands. Public water sources are created by the state. Because of the lack of government restrictions or guidelines governing these water sources and the lands around them, the founts tend to be overused, dilapidated, and degraded. Private wells, on the other hand, are managed by the person or community who created them. Herders are prohibited from parking their animals at these sources for more than three days; thus these wells tend to be better maintained than public wells. As the government increases its efforts to develop water sources for pasture maintenance, it must address the issue of tenure and use rights in order to protect both the water sources and the surrounding lands.

Rights to water sources can be inherited but cannot be loaned, rented, or sold. In general, it is only the children of the first wife of a spring owner who can inherit ownership rights; children of other wives only inherit use rights.

The Government of Chad promulgated a new forest law in 1989. The information concerning this law is not explicit, but it does indicate that the law regulates the protection and exploitation of wild animals and otherwise reiterates the previous laws enacted in the 1960s. Laws No. 23, 24, and 25, established in 1967, address forest tenure. Classified forests are part of the public domain of the state. The population technically has no legal rights to these lands. However, the laws are not strongly enforced and exploitation of deadwood and other forest products is ignored by the state. More significantly in recent years, farmers and herders have begun to expand their activities into protected forest areas in an effort to find arable land.

Gum arabic is an important source of revenues for the Chadian herders and farmers. As pressure grows on increasingly scarce land resources, competition over rights to the exploitation of gum arabic is intensifying. Landowners often rent out the rights to exploit gum arabic from trees planted on their lands. Disputes have arisen over whether sedentary farmers with farming rights to lands or herders with grazing rights to the same lands have the right to harvest gum arabic. Tree tenure is an issue of increasing importance which should not be ignored in project design and implementation.

Oases are an important natural resource in the northern region of the country and generally come under Islamic law. The first clearer and manager of a water source in an oasis has rights to the water source and surrounding lands. Although gardeners may own rights to lands on which to garden, tree tenure may be completely separate. There is no specific government policy that defines land tenure in oases.

Substantial oil reserves were recently discovered in Chad. This finding has important implications for the national economy. According to Chadian law, the lands in which the oil is located are property of the state since they contribute to the public good. The government has not begun exploiting these resources. It is not clear whether the state will compensate the traditional landowners; however, nothing in the national land tenure policies, nor in political history, gives any reason to believe that they will.

Chad recently reclaimed the Azou strip, located in the far north of the country, from Libya. This region is said to have deposits of uranium and manganese. There is no information on government plans for this region. Nor is there information on the traditional landowners of this area.

The current Government of Chad has voiced its dedication to creating a democratic, multiparty system. The political turmoil, warring, and civil conflict of the past thirty years, combined with the prolonged drought, have wreaked havoc on farming and herding and destabilized the economy. A stable government and a new comprehensive land tenure policy are necessary for stable production. The newly democratic regime must understand the importance of land tenure issues and be dedicated to creating a clear and just policy which recognizes the rights of the many different user groups and the legitimacy of various land tenure systems.

The Government of Chad needs to address pressing land tenure issues if it is to assure economic growth and stability. Since 1991, the government has had difficulty balancing the country's fiscal situation. Civil conflict as



well as drought and other environmental constraints have disrupted the country's economy. Although the petroleum reserves discovered in 1993 may ameliorate the national economy, the agricultural and herding sectors will remain unstable without the resolution of land conflicts. New policies are necessary to assure land security and provide guidelines for arbitrating disputes. Without clarification of land tenure, agricultural production and herding will remain unstable and conflicts over land may increase dramatically.

here is little mention of women's land tenure rights in Chad. In the customary tenure system of the southern zone, married women can request a parcel of land from the land chief, though there is no guarantee that such a request will be granted. Young or unmarried women have little chance of obtaining a parcel of land.

### **Present policy and reforms discussed**

Chad is currently lacking a comprehensive land tenure policy capable of addressing its present land tenure problems. The old laws of 1967 are skeletal at best and do not address important issues of land tenure for herders, trees, oases and water sources. There is nothing in the present laws that provides a framework for arbitrating current disputes over land between herders and farmers and other user groups. Although the laws recognize traditional tenure systems, there is no clearly defined understanding of the relationship between rights of traditional systems versus rights of the state. In order to resolve the current tensions and disputes over land which have occurred as result of environmental degradation and political unrest, the government must create a new land tenure policy.

In the northern region of Chad, where land is suitable only for herding, private tenure has little to offer people who travel hundreds of miles each season in a continuing search for pasture. Moreover, the possibility of tenure claims on migratory routes (most likely in mid-Chad) could devastate the fragile balance maintained by herding populations with their environment. What may appear as vacant land may in reality be an integral part of a group's migratory pattern—even if it is used only in alternate years. Hence the failure of the 1967 laws to realistically account for pastoral patterns of land use becomes a critical tenure issue. If freehold tenure continues to be the national policy, planners must consider possibilities for integrating pastoral needs and practices into titling schemes, perhaps along the lines of group ranches. However, concomitant delimitations of herd size and range size necessary for such schemes make this an extremely difficult task.

For the more sedentary peoples in the south, a system of registration is unrealistic from the standpoint of both the administrative and the financial capacity of the government. This is manifested in the lack of survey personnel and the difficulty of demarcating the vast numbers of irregularly shaped farm plots. A system of land tenure that involves local input and relies on local administration could ease the requirements on national financial and human resources.

### **Implications for policy dialogue and programming**

Given the compound problem of civil conflict and drought, land tenure issues have been of secondary importance in past development strategies. However, with the new hopes of political stability, development projects must turn their focus to land tenure issues, which are fundamental in the relationship between different producers, and production as a whole. Solutions to environmental degradation created by drought cannot be developed without attention to land tenure issues. Project design must incorporate traditional land tenure systems in project areas in order to create effective and sustainable programs.

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## **CONGO COUNTRY PROFILE**

**by Kevin Bohrer**

### **Executive summary**

Congo is currently emerging from its long-standing anticolonial socialist ideology. The difficult transition to multiparty democracy has hampered the implementation of the 1992 Constitution. In 1988/89, the government began pushing free-market economic reforms, but these reforms have not yet been accompanied by more liberal tenure legislation. All land is owned by the state. Private landownership, even in urban areas, is not recognized. Instead, use and habitation rights may be registered to individuals and groups. An opportunity for creative tenure legislation exists in Congo in relation to the country's vast forest resources. Significant growth is possible in both the agricultural and the timber sectors, but further legislative reform is required to initiate and direct such expansion, particularly if private investment is to increase.

### **National policy dialogue and legal framework**

Congo covers a total of 342,000 square kilometers. The population of 2.5 million people (July 1995 estimate) is unevenly distributed throughout the country. Although the average population density is relatively low for Africa (7 people/square kilometer), some regions are highly urbanized. About 50% of the population lives in an urban or peri-urban environment; a full 82% lives in the southern corridor along the railroad between the capital Brazzaville and the port town of Pointe Noire. While such urban concentrations in the south generate problems of unemployment and competition for land, northern Congo is one of the most sparsely populated regions in all of Africa with a population density of only 1–3 persons per square kilometer.

The terrain varies from a coastal plain to a central plateau bounded by southern and northern basins. Constant high temperatures and humidity are typical throughout both the rainy and dry season. Less than 2% of the land is currently under cultivation and approximately 62% of the surface area remains wooded. Behind Zaire, Congo currently holds Africa's second most extensive forest reserves. While an estimated 75% of the labor force engages in agriculture, this figure is misleading because it includes urban workers who cultivate small supplementary gardens.

Congo has a heterogeneous ethnic composition. The numerically dominant Bakongo live in the Brazzaville area and account for 48% of the population. Other groups include the M'boshi and the Sanga, both in the north, and the Teke, in the central region. In all, people who speak Bantu languages constitute 97% of the population. The remaining 3% includes Aka and Bakola pygmies in the northern forests and Babango pygmies in the southern forests. The present-day close relationships with Angola and Gabon are supported by long-standing ethnic and cultural ties; however contemporary relations with nearby Zaire have been described as "fractious."

Despite the economic difficulties of the past decade, Congo maintains one of the highest per capita incomes in sub-Saharan Africa. In addition to timber, the country is well endowed with natural resources, including petroleum, potash, lead, zinc, uranium, copper, phosphates, and natural gas. Timber was the main source of foreign revenue until oil was discovered in the 1970s. Petroleum production has increased steadily, providing two-thirds of government receipts by the 1990s. As Congo has become sub-Saharan Africa's fourth largest oil producer, the future of the timber industry is uncertain. Due to local transportation costs, Congolese timber can no longer compete on the world market with timber from Southeast Asia.

When the price of petroleum declined on the world market in the 1980s, Congo tried to reinvigorate its economy by initiating a wave of free-market reforms. Since its independence from France in 1960, Congo had

been staunchly anticolonial and committed to a socialist path to development. The world petroleum crisis prompted nationwide reforms to reassure Congo's international donors and creditors. In 1991, opposition parties were legalized, and by 1992, a new multiparty constitution was adopted by a national referendum. A series of contested presidential elections followed in 1993, as did much civil unrest in the urban centers. In the wake of the recent political turmoil, the official status of Congo's tenure legislation is unclear.

During the colonial period, Brazzaville emerged as the administrative center of French Equatorial Africa, which included what is today Congo, Gabon, Cameroon, Chad, and the Central African Republic. In 1899, inspired by King Leopold of Belgium, France adopted a system of monopoly concessions in French Equatorial Africa similar to the system in the Belgian Congo. Seventy percent of the Congo was divided into areas that were leased to companies. Each company possessed a monopoly to exploit the products in its concession. When the concessions lapsed in 1930, they were not renewed. The companies instead were granted ownership of the large tracts of land.

French colonial land legislation exploited fully the notion that "vacant lands" reverted to state domain. All land not officially registered under the Torrens Act, or held in accordance with French civil code, was considered vacant. Local customary tenure was not recognized. The practice of collective land holding by communities and lineages, the role of land chiefs and elders, and the customary rights of individuals were ignored. In the 1930s, the colonial government initiated a program of village regroupings whereby many villagers lost access to their traditional lineage land. As a result of the reassembly program, an existing customary system of interlineage land borrowing was adapted to provide new arrivals with land access.

With the majority of rural land held by foreign concessions, only a few Africans in Congo were able to obtain land titles. In 1920, land titles were granted to Africans possessing urban land not held collectively. In 1955, title could be granted only with proof that permanent improvements (that is, buildings) had been erected on the land.

The 1969 Constitution represented a complete rupture from former French legislation. All land was declared to be the property of the Congolese people as presented by the state. A series of new constitutions followed in the 1970s and 1980s, but all held to the basic premise of state ownership of all land. The most recent land legislation available for review (1983) indicates that both land titles and customary tenure rules are invalid, but in reality the majority of rural land continues to be held and managed according to customary systems. Although the government once promoted the formation of state farms and government-directed producer cooperatives, the administration now favors the formation of small, voluntary marketing cooperatives based on existing village structures and customary land allocation practices.

## **Replacement and adaptation of indigenous tenures**

Recent news reports from Congo indicate that a new constitution was approved by referendum in March 1992. Neither the actual text nor the general policy direction of this document is available for review. The following discussion, therefore, does *not* take into account the 1992 Constitution. Whether or not this constitution permits private ownership of land or recognizes customary tenure is not known.

Since independence, land legislation has continued to dismiss the validity of customary land tenure. Following the 1969 Constitution, the 1973 Constitution stated even more clearly that all land titles and customary land rights were abolished (ARTICLE 31). In the 1979 Constitution, an added clause clarified that land cannot be held as private property. A specific 1983 Land Code (Law No. 52/83) solidifies even further the authority of the state over land. Whereas the 1979 Constitution (ART. 30) asserts that the state, in the name of the people, regulates the use of the means of production (including land), the 1983 law states that the land is the property of the people represented by the state (ART. 1).

According to the 1983 Land Code, land is broadly divided into two categories: state and popular domains. Regardless of legislative category, all land is the property of the state. State domain consists of state public and private domains. Public domain includes public works such as bridges and roads as well as minerals and water resources. Private domain is subdivided into state private domain and decentralized collectives. These categories include forest reserves and state-run farms.

Unique to the 1983 code is the creation of a new legal category of land, the popular domain. This designation represents a break from the French land law heritage. Included in the popular domain is all land that is effectively used by individuals and communities. The code, however, is not intended to formally recognize these rights but rather to provide a legal means for the state to regulate use patterns. The code was also designed to control the land speculation that was proliferating in the peri-urban areas, to discourage further increases in rents for the seasonal use of land, and to prevent the dispersion of fields that may impede growth in agricultural productivity.

Popular domain is subdivided into popular urban domain and popular rural domain. Popular urban domain includes a category for residential and commercial land, and a category for agricultural and industrial land. Individuals may obtain titles of occupation and use rights to popular urban domain, but not titles of ownership. Renewable residential titles are issued for periods of five years. Similar titles of use rights are also renewable but are initially issued for periods of twenty years. These titles cannot be sold or bequeathed. All titles must be registered in a national cadastre.

Two categories exist within the popular rural domain: collective land, and modernization land. Collective land includes residential, agricultural, pasture, and forest land. Each member of a village is entitled to secure use rights to a maximum of 30 hectares of collective land. Groups of village members may similarly secure use rights to a maximum of 100 hectares. Unlike collective land, modernization land is awarded not to individuals but to village groupings and agricultural cooperatives. Modernization land includes the majority of the land that during the colonial period was termed “vacante et sans maître.” The government expects this land to be used for staple crop production, agricultural cooperatives, livestock herding, tree plantations, forests, and mining activities. Included in the vast tracts of modernization land are the regions that will be crucial for Congo’s long-term food security.

Although according to the 1979 Constitution all customary tenure was “abolished,” the majority of Congo’s agricultural land, now under the category of popular rural domain, continues to be administered following customary tenure.

Among the Bakongo, land is held by the lineage that first cleared the land. Lineage land is managed by the lineage head who distributes access rights to the land. Land is inherited matrilineally; both men and women have access to lineage land through their maternal uncles. The control of marriage partners is traditionally an important means of maintaining or consolidating matrilineage property. Upon marriage, the nephew receives land use rights in his maternal uncle’s village. Women often lose access to their own lineage land when they move with their husbands, obligating them to either swap their use rights or rent land.

Much lineage land is today dispersed throughout a region, and even throughout the country, for several reasons. First, each lineage traditionally holds land in each of the different ecological zones. Most villages include several lineages whose holdings are scattered among each other. Second, over time, lineages segment to form new villages as populations grow. Because parcels of lineage land may be dispersed, the lineage chief may delegate his authority to a family member living nearby. Third, the forced village regroupings of the 1930s separated many lineages from their ancestral land. These rearrangements precipitated an early form of land sales in Congo.

Displaced lineages were accommodated by established villages through the evolution of a pre-existing form of land exchange. According to this system of land rotation (*kitemo*), a lineage head rents lineage land to members of other lineages who are unable to use their own lineage land due to the alternation of the cultivation-fallow

system or to constraints of the ecosystem such as water availability and soil fertility. In succeeding years, other lineages rotate offering their land for rent to neighboring lineages. Rents are determined by size, type, and potential productivity of the parcel.

Payments from these land rents are deposited in a collective lineage fund. According to the *kitemo* system, all lineages are ensured access to land, while at the same time they are able to protect their long fallow periods. When villages were forcibly regrouped in the 1930s, many lineage chiefs used lineage funds to buy land in new villages where host lineages offered for sale land in the *kitemo* rotation system. The land was then allocated according to customary rules and future access rights continue to follow matrilineal inheritance patterns.

Since the 1970s, individual heads of nuclear families have been using private funds to buy “personal” land. These land sales have begun to be the source of land disputes as matrilineages fear the loss of their traditional land. Many land buyers follow a father-to-son inheritance pattern rather than the customary uncle-to-nephew structure. This emergence of individualized tenure will continue to generate conflicts, particularly because the state does not recognize private property.

Although the 1979 Constitution does not recognize customary rights, the 1983 Land Code does leave open some opportunities for the strengthening of customary rights in the framework of the national legislation. By creating the categories of popular urban and rural domains, the state at least recognizes use rights as distinct from ownership rights. Furthermore, within the popular rural domains, groups as well as individuals are permitted to apply for use rights. The village groupings that may be awarded modernization lands could include lineages. Although this system forces lineages, at the risk of losing their use rights, to apply for their traditional land to be categorized as modernization land, once such a categorization has been made, the lineage is at liberty to continue distributing and managing this land according to its customary system.

### **Tenure constraints and opportunities**

Agricultural land in Congo is exploited in three categories. Traditional farming practices, which include the allocation and management of land according to customary systems, account for 70% of all land used for agriculture. The principal crops are manioc, banana, plantains, and maize. State-operated farms utilize 27% of the agricultural land and are oriented to large-scale palm oil and sugarcane production. The remaining 3% is devoted to private industrial farming. Livestock production is curtailed nationwide by a shortage of suitable pasture and the presence of the tsetse fly.

As of the late 1980s, the government, prompted by involvement from the United Nations, was developing small agricultural cooperatives. These cooperatives, which often targeted women, were intended to increase food production for local consumption rather than generate produce for the export market. The promotion of small-scale farming, and the concurrent scaling back of state-run farms, may signal a change in the government’s attitude toward the viability of private property in Congo.

There is evidence of the evolution of customary tenure systems as land pressure in the peri-urban areas raises the value of productive land. Some land has passed out of lineage control as private land sales proliferate. Inheritance patterns are also changing as men seek to bequeath their land rights directly to their sons. Conflicts involving land rights are likely to escalate, particularly since use rights titles cannot be inherited according to the 1983 Land Code.

The central natural resource management issue in Congo involves forests. Both the coastal swamp forests and the dry lowland forests are threatened by agriculture and timber exploitation. Deforestation is a concern, as is the impact of forest destruction upon the indigenous minority pygmy population. Yet Congo presents several possibilities for forest conservation. Since the 1970s, there has been an active program for establishing tree plantations. The country remains heavily forested with 65% of the territory still wooded.

According to a 1992 assessment of Congo's forest codes, all Congolese citizens are guaranteed the right to use forestland. The Forest Administration may not curtail these rights, even in areas managed by timber companies. Villagers are permitted to continue their practices of burning the forests to clear land for cultivation. Although the 1979 Constitution does not recognize customary ownership rights, use rights are protected. It is not clear how disputes between agriculturalists and timber companies are resolved.

To date, only one national park has been established in which no exploitation is permitted. Other tracts of forest have been designated as forest management units (Unités Forestières d'Aménagement, UFA). Each UFA is large enough to support a separate timber industry. The country may be roughly divided into two regions with regards to agriculture and the future of the timber industry. In the south, with higher population densities, the UFAs are often invaded by agriculturalists. Under such conditions, commercial logging cannot be sustained because neither the timber firms nor the local farmers have management responsibility or authority for the forests categorized as state private domain. One conservation organization suggests that if logging is to continue, a portion of the forest should be recategorized as popular rural domain which could be more intensely managed as a commercial plantation. Whether or not local farmers would then be denied access to the forest is unclear. In contrast, the forests in the north regenerate naturally after logging because they are relatively undisturbed by agriculturalists. In this situation, the forests can sustain a logging industry while still classified as state private domain.

The future of the Congolese timber industry is currently in question. Four of eight logging companies in the north have suspended activities since 1991. Disruption of transportation networks due to strikes, rail accidents, low river water levels, pressure from foreign environmentalist campaigns, and domestic political unrest have all made Congolese timber less competitive on the world market.

After decades of commitment to a socialist ideology, Congo is slowly making a transition to a more democratic state structure. Multiparty national elections were held in 1992 and 1993, but policy liberalization reforms have not yet permeated tenure legislation. The assignment of use rights to local communities in the 1983 Land Code opens the possibility for a more decentralized structure of natural resource management, but there is currently no recognition of local-level institutions.

Congo has considerable agricultural potential, but it relies heavily on imported food to feed the large urban population. In addition to the labor shift from rural to urban areas, agriculture also suffers from poor distribution and transport networks. Food production has fallen as total land cultivated has declined. Furthermore, the state farms that were established during the Marxist regime were often inefficient and depended on subsidies. The government has stated a desire to achieve food self-sufficiency by the year 2000, but there are no plans for achieving this goal. Unemployed city dwellers have been encouraged to take up farming, as is evident in the creation of the agricultural category of the popular urban domain, but overall the country imports over 90% of its food needs.

Although some project initiatives such as small producer farming cooperatives have been aimed specifically at women, there have been few legislative or policy efforts intended to secure women's tenure rights. Women often lose access to their lineage lands when they get married and move to a new village. The customary *kitemo* system of land rotations historically assured women of access to land, but as land passes into more exclusive family holdings, women may find it more difficult to borrow or swap land use rights. As land rents increase, women may be excluded from the productive land. Women's use rights are not specifically addressed in the 1983 Land Code.

### **Present policy position and reforms discussed**

In the 1970s, the Congolese government attempted to regroup farmers into producer co-ops administered by the government. Farmers, however, were noncooperative and the government now tries instead to incorporate

customary institutions in its cooperative program. In the 1980s, the rapid rise of world oil prices permitted Congo to launch many large-scale development projects which have since stalled. Government economic reform programs in 1990/91 also encountered problems when they coincided with the transition to a more democratic national political regime. Although the government no longer discourages smallholder farming on land distributed according to customary management practices, customary ownership is officially still abolished. Unless the 1992 Constitution states differently, there are no plans to revise tenure legislation or progress toward a more liberal stance regarding private property.

### **Implications for policy dialogue and programming**

Before any policy dialogue is initiated, the content of the 1992 Constitution must be understood as it relates to tenure, private property, and the recognition of customary rights. Clarification is also required regarding the national cadastre mentioned in the 1983 Land Code. How habitation and use rights are registered in this cadastre is not evident.

Of global interest, the fate of Congo's forests rests in the future collaboration between the government, villagers, and the forest industries. Use and management rights and responsibilities must be more clearly delineated to ensure a sustainable logging industry.

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## GABON COUNTRY PROFILE

by Kevin Bohrer

### Executive summary

Gabon's legal framework promotes the registry of individual private property to the exclusion of customary rights. The majority of land, however, continues to be held and managed through communally based tenure systems in the rural areas. Since Gabon is sparsely populated and heavily urbanized, land legislation has not been a national priority. Only in the urban areas have land disputes emerged, and even these disputes have not been severe. The most pressing tenure issue facing the country today is the ownership and management of Gabon's extensive rainforests. More explicit and detailed legislation is required to clarify the rights and responsibilities of individuals, groups, and the state before these forests are exploited or destroyed.

### National policy dialogue and legal framework

Gabon, covering a total of 267,670 square kilometers, is situated along the west coast of Africa. The tropical climate is hot and humid throughout the year. A hilly interior lies between a narrow coastal plain to the west and a savanna zone to the east and south. Gabon is endowed with valuable mineral resources, notably petroleum, manganese, uranium, gold, and iron ore, as well as extensive timber reserves. Approximately 78% of the country is still wooded, including dense tropical forests. Only about 1% of the land is currently arable, while 18% is suitable for grazing. A July 1995 estimate placed the population at 1,155,749 people. Most Gabonese people have Bantu origins, including the Fang in the north of the country who comprise 30–40% of the total population. Other local Bantu groups include the Eshira (25% of the population), the Bapounou, and the Bateke. A relatively large number of foreigners, about 100,000 people including Europeans and other Africans, reside in Gabon. The population is heavily urbanized with 46% of the total population living in one of Gabon's three major cities according to 1990 estimates. With the capital Libreville alone home to 352,000 people, population densities in the countryside are low.

Gabon has experienced a level of economic prosperity unusual in postcolonial Africa. Given its abundance of natural wealth and a manageable population growth rate of 1.46%, Gabon is not experiencing land shortages or even appreciable land pressure outside of the urban centers. Despite ongoing economic difficulties, Gabon has one of the highest per capita incomes in sub-Saharan Africa. The petroleum sector alone accounts for 50% of GDP, and Gabon is the third largest producer of petroleum in sub-Saharan Africa.

Iron and rubber were the main Gabonese exports when France divided the territory into massive 30-year concessions in 1898. The French settlers, and later companies, on these concessions were obligated to remit 15% of their profits to the colonial government. When the concessions lapsed in 1930, the companies were able to obtain freehold ownership by registering titles under the Torrens system. By that time, the territory of Gabon was already incorporated into French Equatorial Africa along with Congo, Chad, and the Central African Republic. In 1931, Gabon was divided into three zones of exploitation. Zones I and III were more easily accessed via the railroad system, and thus they were more exploited during the colonial phase.

When Gabon gained its independence on 17 August 1960, it modeled its legal system on French civil law. The most recent constitution was adopted on 14 March 1991. Little has changed in Gabonese politics during the past three decades as President Bongo has been successively elected in 1974, 1980, 1986, and 1993. According to the current legal framework, communally based tenure is rendered invalid. The national codes do not recognize village, lineage, clan, or tribal property claims. The procedures for land registration are prescribed in Land Law

15/63 of 8 May 1963, which was amended by Ordinance 50/70/PR/MFB/DE of 30 September 1970. Accordingly, local land commissions, courts, the Direction of Lands, the Council of Ministers, and the Chief of State may all become involved in the administration of land.

Officially, land commissions have been created in every administrative district. Anyone occupying land can initiate the registration process by contacting these commissions. Rural commissions may be composed of local administrators such as prefects, the head of the Office of the Cadastre, and the local land agent, among others. Despite this formal administrative structure for registering land, however, most rural land is not registered and remains under customary tenure, administered by local land chiefs, family heads, and other village notables. Although Gabon is heavily urbanized, an estimated 65% of the population is involved in agriculture to some degree.

### **Replacement and adaptation of indigenous tenures**

The Gabonese government has adopted a policy of encouraging individual private tenure, but only through a formal registry system. The Gabonese domainial code recognizes only state property and individual private property. Legally, customary tenure rights are not recognized, and there are no provisions for the evolution or accommodation of customary tenure. Occupants of state land can opt to register their customary land claims, but the registering entity must be an individual. Communal landownership is not permitted under the law.

State land consists of public and private domains. State public domain includes the nation's rivers and lakes, as well as roads, bridges, ports, and rail lines. State private domain includes all land without title that has not been registered as individual private property. This includes all land held under customary systems. Most rural land is officially state owned. Once definitive title is granted to an individual, however, the land is no longer state domain.

Private individual titles to state land are ceded by the state for a provisional period of two years in urban areas and five years in rural areas. Once the land has been shown to be developed and in productive use, a definitive title to land may be acquired. Persons who occupy land to which they have customary rights can secure a title only by going through the land registration process. The state can also agree to a long-term lease of land from the state private domain for a limit of fifty years. The lease may be renewed for a maximum of forty-nine years.

The promotion of individual tenure may be seen as a threat to local group landholding rights and social cohesion. Yet, since Gabon is relatively underpopulated and only a small fraction of the land is cultivated, the abundance of land may forestall severe land conflicts.

As of the 1970s, the government had an ongoing policy of regrouping and relocating villages to ease their access to services, agricultural extension works, and marketing of crops. State farms were formed with the expectation that they would serve as poles of rural development for the surrounding villages and region. The processes of resettlement may have generated conflicts between landholding groups, but little has been written about the consequences of the regrouping schemes or the success of the state farms.

Despite the state's policy of disregarding customary tenure, the majority of rural land continues to be held and managed under communally based systems. There is much variety in customary tenure systems among the over forty different ethnic groups, but documentation of such systems is limited mostly to the Fang and the Bateke people. In general, Gabonese villages are traditionally located in clearings in the equatorial forests, though as of the 1950s, some villages have been relocated so that all villages are now situated on either roads or navigable rivers. The major staple food crops are plantain and manioc. Lineage, clan, and village groups communally hold customary tenure rights. Individuals and families have rights to land contingent upon the broader lineage, clan, or village claims to natural resources.

In the north, the Fang are generally grouped together in larger villages and settled around cocoa and coffee plantations. Individual and family rights to land are relatively fixed. While male family members may have once contributed labor to family plantations, today each farmer is likely to develop his own plantation.

The literature is disappointingly sparse regarding the trade, rent, or sale of land. Similarly, land management practices are not detailed, especially the possibilities of returning to the same field after a fallow period or planting trees. The relations between customary tenure practices and relative land security are also not explored.

In the Libreville area, the land of the Mpongwe ethnic group has been completely subsumed by urbanization. The Mpongwe have claimed urban land through their customary rights, but these rights have been ignored by both the colonial and the postcolonial administrations. The case of the urban Mpongwe is the only documented example of friction between customary landholding groups and the legislative framework, but similar disputes are likely to exist elsewhere, particularly around the settlement villages.

### **Tenure constraints and opportunities**

Agriculture is one of the weakest sectors of the Gabonese economy. In 1991, agriculture contributed only 4% of GDP. The lack of an intense agricultural tradition in a mineral-rich country, coupled with the rural exodus of the recent decades, leaves Gabon heavily dependent on imported food. Meat is also imported since few of Gabon's ethnic groups have a pastoral tradition, and therefore they do not maintain animal herds. The national plan of 1976–1981 was the first national statement seriously to address agriculture, but with only 54% of population living in rural areas and revenues anticipated to continue from petroleum and timber, agriculture is still not a national priority. Fallow periods remain long, and soil fertility is not severely threatened.

The most pressing natural resource management issue in Gabon is deforestation. At the moment, however, the annual loss of tropical forest is low due to a limited infrastructure of roads and railways crossing the country's swamps and rivers. After Zaire, Gabon still possesses one of the largest remaining tropical forests in Africa, and, with such a relatively small population, Gabon has the highest figure of hectares of forest area per person in Africa. As of 1992, approximately 50 timber companies were practicing selective logging of *Okoumé* in Gabon's forests. While selective logging generally does not result in deforestation, many forests are now being relogged as timber companies target other tree species to diversify their exports. It is far from certain that the increased logging activities are sustainable. While reforestation projects have been started at six sites, the current annual reforestation rate is able to replace only the amount of timber selectively logged each day in Gabon. Selective logging is permitted even in Gabon's five protected areas.

The situation in Gabon presents a unique opportunity for innovative conservation and comanagement initiatives. Three divisions of the Ministry of Water and Forests are concerned with forest management, but exploitation licenses are required for only the coastal forests. All inland forests are open for unlicensed logging. Further legislation is needed to ensure that Gabon's forests will be protected and that their future exploitation will be rational and sustainable. According to the 1982 *Loi d'Orientation* (No. 1/82/PR), 40% of the national territory is classified as forests or animal reserves, but these are not protected areas. Reportedly, management rights for a portion of this land have been allotted to local families. Further research needs to clarify this division of forest management rights between individuals, logging companies, and the state, and to outline how these three entities interact. Despite the 1982 law, which broadly defines forest management practices, specific legislation relating to selective logging is not yet complete. Similarly, the mechanisms for dispute resolution must be detailed.

The country currently permits multiparty elections, but the Gabonese Democratic Party continues to dominate as it has since independence. The formation of "rural land commissions" intimates that a trend toward decentralized politics exists in Gabon. The actual workings of these commissions, however, is not described in the literature.

Heavily dependent on revenues from the petroleum and timber sectors, the state invests little money in agriculture. The few state-run plantations and large industrial farms for oil palms, sugar, rubber, and bananas have been able to meet domestic demand for these products, but staple foods still must be imported. Most state investment is directed toward the petroleum industry and the development of infrastructure such as roads and bridges. Food security has not been a priority of the Gabonese government, and though the country is potentially self-sufficient in terms of land and water resources, the population is presently ever-more oriented to urban rather than rural life.

The literature does not directly address gender issues in either customary or formal legal frameworks. National land registration laws do not specifically include or exclude women. Presumably, anyone occupying land can contact a land commission to initiate the registration process. It is not clear, however, if women are legally permitted to do so, and, if they are, if any women have actually registered land individually. The effects of formal land privatization upon women's customary rights cannot be estimated since such customary rights are not delineated.

### **Present policy position and reforms discussed**

The Gabonese government does not seem to have an agenda for reforms relating to tenure legislation or the agricultural sector generally. Some agricultural project proposals have been put forth to offset the nationwide economic losses from a floundering international petroleum industry, but with such little land pressure, there are few incentives to effect real policy change. The ongoing trend toward urbanization continues to focus attention away from rural land issues. As the urban areas expand, future conflicts may arise as individuals try to register land held communally under customary tenure systems. The mechanisms for such conflict resolution are not explicitly detailed, and further legislation in this domain may be appropriate. More detailed forest management legislation is anticipated, but no advancements toward such legislation are detected.

### **Implications for policy dialogue and programming**

Before specific policy recommendations can be made for Gabon, further research is required to clarify several issues. Questions include: Under the various customary tenure systems, what possibilities exist for land sales, rents, and trades? What level of tenure security do farmers hold under customary tenure? Are farmers assured of returning to the same fields after a fallow period? May farmers plant trees or make any other improvements on land that may be held through a communally based tenure system? What rights do women have under these customary systems? Are women's rights secure or insecure? How do women's rights under customary tenure compare to women's rights according to national tenure legislation? Are women permitted to register land as individuals? If legally they can, do they? In general, do the national land laws create greater security or insecurity compared to the customary systems, and are farmers more or less inclined to make improvements on the land?

Regarding the national agricultural policies directed at growth in the agricultural sector, clarification is needed regarding the village regroupings and state farms. Are such regroupings still initiated, and if so, what are the effects upon the existing surrounding villages? What are the tenure rights and responsibilities of the newly installed villages? Similarly, clarification is needed regarding the long-term lease of state private domain. Do individuals, collectives, or companies rent this land? Can the lease be sold or bequeathed?

Possible policy recommendations might include the development of more explicitly decentralized registration systems and conflict resolution mechanisms, especially in peri-urban areas. As urbanization trends continue in Gabon, land pressure is likely to surface in the neighboring rural areas. A more flexible registration system could be promoted to allow for the evolution of communally based customary systems into more individually held private property. Further forestry legislation is also needed to avoid large-scale devastation by private logging on state domain. Comanagement may be possible once the tenure of such areas is better defined.

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# GAMBIA COUNTRY PROFILE

by Anna Knox

## Executive summary

Unlike most other West African countries, land tenure policies in The Gambia have upheld customary mechanisms and institutions in the rural areas. Although quite diverse, these community-based systems have proved themselves highly flexible and responsive to local conditions. However, the State Lands Act 1990, while as yet applied only in urban Banjul and Kombo St. Mary, empowers the government to designate other areas to be covered by the law. This law would abolish customary tenure systems and replace them with long-term leases granted by the state, a change which would have serious socioeconomic implications for the country if implemented on a broad scale.

## National policy and legal framework

The Gambia's population is around 1,081,000, of which approximately 80% are engaged in agriculture (1994). Of its total land area, less than 20% is arable with an average of 0.22 hectare for each person engaged in agriculture. Land pressures are most serious in peri-urban and rural areas bordering Banjul, Serekunda, Farafenni, and other growing urban and semi-urban locales. Droughts and the declining groundnut industry have stimulated male out-migration from rural areas in search of wage employment in the cities or their environs.

While customary practices continue to dominate, efforts on the part of the Government of The Gambia (GOTG) to centralize control over land and natural resources threaten to overhaul community based land administration and management. In 1946, under British colonialism, the Land (Provinces) Act vested land in the *seyfos* (chiefs), also known as district authorities, who are ultimately responsible for land administration decisions such as establishment of villages in the district. They further preside over district tribunals, bodies of locally selected individuals, which are the initial layer of formal authority over land disputes. Within each village, the village leader known as the *alkalo* administers land and mediates land disputes at the local level. He is usually a descendant of the original village founders and, together with other founding families, holds the highest status and power in the village along with the greatest tenure security.

At the national level, the Ministry of Local Government and Lands is responsible for land administration. The ministry has the authority to expropriate any land it deems necessary for public use. Ecological preservation efforts as well as tourist industry promotion have prompted the government to establish numerous forest and wildlife parks, mainly in the western half of the country. There are tensions between villages near the reserves and officials over restrictions on use of reserves for such activities as gathering firewood, fishing, hunting, grazing, and controlling crop-destructive pests such as the bush pig.

The State Lands Act 1990 was made into law in April 1991. Its provisions hold that land in the urban Banjul and Kombo St. Mary areas is vested exclusively in the state with the exception of lands held under freehold. The Ministry of Local Government and Lands in turn grants 99-year leases to residents occupying land regardless of whether they are the original holder or acquired the land as a borrower. The act further empowers the government to designate other areas of the country to fall under the provisions of the law as it sees fit. The intention of the law is to provide greater and more equitable tenure security to landholders as well as opportunities for acquiring formal credit in order to stimulate investment in residential, commercial, and agricultural land. However, studies conducted in rural areas around Banjul conclude that application of the State Lands Act outside

of the urban realm could have several detrimental effects including exacerbating social inequities and destroying a highly flexible tenure system which effectively responds to local conditions (Freudenberger 1994).

### **Replacement and adaptation of indigenous tenure**

Community-based tenure systems in The Gambia are rooted in the original settlement patterns of villages. The initial founders of a village cleared the land, establishing public areas and residential compounds; small inner fields of vegetables, maize, potatoes, and early millet; larger outer family fields of sorghum, late millet, and groundnuts; and lowland swamp areas for rice cultivation. Extended families maintain exclusive rights over the compounds they occupy and the fields they cultivate, even when fallow. Families are generally governed by a male head of household and may house one or more brothers and their families within the same compound. The head of household is responsible for allocating land within his holdings to his family members as well as for the initial mediation of disputes. The majority of land disputes are resolved at the household level.

Women are the primary cultivators of vegetable gardens close to the compounds as well as rice plots. Traditionally they borrow the land they cultivate from their husband, husband's family, or other members of the village. On a more limited scale, women in some ethnic groups may also inherit land from their mothers, which may be passed on to their daughters. In this case, they are considered owners of such land rather than borrowers.

While the initial founding families are considered the "owners" of land in a village, they are not strictly so in the western definition, since in most cases custom and religion prohibit selling land. Land is rather vested in the community; the district *seyfo* acts as a trustee over it and guarantees the owners permanent rights to their land. The founding families have extensive usufruct rights over their landholdings and may transfer land via inheritance, gift, exchange, or loan.

Lending land is commonplace in rural Gambia. Founding families regularly were host to other ethnic groups who would settle in the village after its establishment. In some cases, *alkalolu* would grant them unused land for extensive periods, but more often they would borrow land from the founding families on a seasonal basis, though many families have borrowed land for decades. These provisions have traditionally not been accompanied by payment other than a possible tribute of kola nuts. More recently, in land scarce areas, "kola-money" has replaced the traditional symbolic gesture and a cash tribute is paid to the lender seasonally.

Yet another class of farmers exists though their numbers have waned considerably; these are immigrant or "stranger" farmers who migrate to Gambian villages on a seasonal basis, often from neighboring countries, typically to cultivate groundnuts. In exchange for being allotted land to grow crops as well as tools and inputs from the lender, the stranger farmer works for the owner a few days a week and pays him a share of the crop or income from its sale. The declining profitability of groundnut production as well as recent drought conditions have resulted in a shrinking number of immigrant farmers.

Women and land borrowers have less secure and equitable rights to land than male founding family members. Even though they may occupy a piece of land over a long period of time, it is on a perpetually temporary basis. Women and borrowers in many villages are prohibited from planting trees on the land they cultivate and, even when not forbidden, must receive approval from the landowner before doing so. This is because tree planting is typically associated with permanent rights to land since trees are regarded as the property of those who plant them. In areas suffering from increasing land shortages, such as urban and peri-urban locations, long-term borrowers are seeing some of their land being reclaimed to accommodate the inheritance rights of the children of founding families and other village newcomers. The less secure land rights of borrowers and the land-use limitations imposed on them have implications for the investments and improvements such farmers are willing to make in the land. Borrowed land is more likely to be subject to soil and water degradation and lack sustainable production technologies such as tree intercropping.

## Tenure constraints and opportunities

Growing competition for land, particularly in more populated regions and urban areas, has spawned the emergence of land markets. Cash is replacing kola nuts in securing land borrowing arrangements. In peri-urban villages, *alkalos* have taken part in selling land parcels to outsiders for personal gain. More often, individuals are selling land as a means to satisfy immediate cash needs. Buyers are typically affluent urbanites who seek land for speculation and/or residential purposes. Substantial growth of such a trend would inevitably exacerbate economic disparities among Gambians.

Natural resource preservation has been a growing concern. Open access regimes or weak common-property tenure regimes in areas surrounding villages have paved the way for environmental degradation. Heavy losses of dense forest areas and wildlife have prompted the establishment of forest parks and reserves often to the detriment of surrounding villages, whose members have restricted access to these areas. In the Kiang West District for example, the village of Dumbutu, flanked on three sides by forest parks, finds itself constrained for firewood collection, the sale of which is an important income source for women. Livestock owners find their animals are undernourished for lack of sufficient grazing areas. The village is further troubled by crop damage caused by the bush pig, whose numbers cannot be controlled since villagers may not hunt in the forest and are forbidden to set bush fires traditionally used for killing the pests. These problems and others such as restrictions on hunting and fishing in reserve areas plague villages in proximity to reserves and are an underlying source of tension. Many reserves promised surrounding villages employment opportunities, but these have turned out much more limited than anticipated and many villages feel they have suffered a net loss as a result of the reserves. In some cases, villager resentment has led to deliberate harm to the reserves such as setting fires and poaching.

Livestock raising is a major source of livelihood for many in The Gambia. While cattle owning is highly skewed, with around 20% of the cattle owners commanding 80% of the herds, women are also prominent livestock owners. Nearly half of Gambian women own cattle while the vast majority have small ruminants such as goats and sheep. Owned on a small scale, livestock are an asset and form of savings for families. Cattle are generally tethered during the cropping seasons to prevent damage to the fields. During the dry season, livestock feed in postharvest fields and are grazed in the common areas surrounding villages. Land shortages and degradation of the commons have led to a diminishing supply of fodder in many areas and thus forced herders to graze their animals at greater distances from their village. Although a commons may “belong” to a village, it is rare that outsiders are restricted from utilizing the resources of these areas. Tensions and disputes between livestock owners and farmers are commonly rooted in the crop damage done by cattle trampling through cultivated fields. Women cultivating lowland rice fields in the dry season may find their crops harmed by cattle herded to boreholes on the outskirts of the village.

Livestock owners are also increasingly facing a shortage of fodder and adequate grazing lands for their animals as drought, bush fires, and resource degradation take their toll on the commons. More and more livestock are undernourished and suffer high mortality rates.

In July 1994, military leader Lieutenant Yayeh Jammeh toppled the long-benign dictator-turned-democratic-president, Dawda Jawara, who had held office since The Gambia’s independence in 1965. The succession of military rule in The Gambia has been a step backward in its path toward democratization and potentially poses a threat to the decentralized administration of land tenure. The Jammeh government’s dissolution of parliament, suspension of the constitution, bans on political parties, and detention of former ministers and other government officials point to an intolerance for political pluralism and decentralized governance. However, land tenure issues do not appear to be a priority for Jammeh, so that the status quo may remain in effect until restoration of civilian rule, currently slated for July 1996.

As commodity prices for groundnuts fall, farmers are once again cultivating more subsistence crops. However, lack of opportunities to rise above a meager subsistence is driving more young males into the urban



areas and increasing the burden borne by women to manage farms and provide for the families. As agricultural production falls due to agricultural labor shortages, declining soil fertility, and drought conditions, The Gambia finds itself importing larger quantities of basic foodstuffs, such as rice, to meet its food security needs and facing a ballooning external debt. Whereas the agricultural sector accounted for 32% of GDP in 1982, it was only 23% in 1991. Within the past decade, the country has placed increasing emphasis on expanding its tourist trade and the service sector, which in 1990/91 was 63.2% of GDP. Urban and peri-urban agriculture is directed toward horticulture and vegetable growth, much of which goes to supply tourist hotels and restaurants. As migration from rural areas in search of limited wage-earning opportunities continues, leading to a shrinking of the domestic food supply, The Gambia will find itself increasingly pressed to meet its food security needs.

While women maintain unequal status as land borrowers under customary tenure regimes, their position would likely be weakened by implementation of the State Lands Act in the provinces, since this would confer greater rights on male registration holders. This may weaken men's obligation to allocate land to their wives as well as women's traditional control over crop production and the income earned from it. The envisaged use of leases to serve as mortgages for bank loans would in fact disadvantage women.

The well-known Jahaly-Pacharr irrigation project demonstrates how outside intervention with the intent to fortify women's position actually resulted in the erosion of their rights and loss of income. The project envisaged increasing the production of women's rice plots through provision of irrigation facilities. However, the use of upland fields rather than the lowland swamp areas where women traditionally cultivated rice overlapped with family lands controlled by the head of household and other men. While rice production grew and women found themselves needing to devote their time to cultivating the new fields, men's authority over the fields gave them control of the production and income produced from it. In some cases women demanded compensation for their time, but overall the project further marginalized and disempowered women.

### **Present policy position and reforms discussed**

The State Lands Act 1990 seeks to create more centralized authority over land tenure and impose more equitable and secure land tenure as a means to stimulate investment in land improvements, agricultural production, and conservation practices, particularly in areas characterized by severe land shortages and numerous disputes. While the act's application to the Banjul and Kombo St. Mary regions may be appropriate given the severe land scarcity problems and the emergence of land markets in the urban context, the rural areas might better be served by continued state recognition of customary systems and institutions which have proved themselves highly flexible and responsive to local realities. Indeed, a more decentralized structure may be appropriate for enhancing natural resource management and maintaining reserve lands. Some of the foreseen consequences of implementing the State Lands Act in rural areas include:

- ◆ Landowners may abruptly reclaim their lands prior to the implementation of the act in order to retain control over them, for the act grants 99-year leases to those occupying the land, whether owner or borrower. As a result many borrowers would be left with insufficient land to meet their subsistence needs or rendered landless.
- ◆ Registering leaseholders in the name of the household head would likely undermine women's status as landholders. Whereas customary tenure rules obligate men to provide land to their wives and recognize women's right to cultivate their own land, modern land law does not.
- ◆ The act's provision for the establishing of ministry-appointed land administration boards to replace district tribunals for hearing and making judgments on land disputes would gravely weaken the effectiveness of conflict resolution. Unlike the *seyfo* and members of the district tribunal, who originate from the district communities, the new decision-makers would not possess sufficient knowledge and experience with local circumstances nor would have engendered the confidence and trust of community members.

- ◆ Registration efforts undertaken in other African countries have proved enormously expensive and difficult to maintain. Even once lands are registered, title transfers are infrequently recorded and the system quickly deteriorates.

### **Implications for policy dialogue and programming**

While the issuing of long-term leases in urban areas may prove effective in reducing land speculation, replacing customary tenure with state control over land administration in the provinces is anticipated to be highly disruptive and ultimately much less effective than the status quo. The inequities present in community-based tenure as it stands might better be addressed through adaptation models specific to local circumstances and based on community decision-making. The insecure tenure situation of borrowers, for instance, might be improved by agreements for long-term (rather than seasonal) borrowing periods witnessed by the village chief. Such agreements could make provisions for the planting of trees such that the borrower would also plant and tend trees for the owner with all trees reverting to the owner at the end of the borrowing period. Agreements could further be formalized and made binding by the district *seyfo* to alleviate fears of land reclamation by the owners.

In cases where the State Lands Act has been applied, a land tax could be levied on landholdings exceeding an amount a family is capable of cultivating themselves. In this way, lending land to others may relieve one of such a tax burden.

With respect to preservation of natural resources, the current customary tenure structures and decentralized institutions provide an opportunity for comanagement of forest reserves and grazing commons by the state and the local communities, offering a more sustainable alternative to both government-controlled parks and open-access regions. Successful natural resource management would need to ensure that all community interest groups are represented, their needs acknowledged, and the rules for resource management as well as roles and responsibilities clearly spelled out. Preservation of forests and wildlife will depend on users' perceiving long-term benefits and continued access to the such resources.

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# GHANA COUNTRY PROFILE

by Anna Knox

## Executive summary

Although community-based systems remain the dominant form of land tenure in Ghana, the economic growth surge of the past decade has fueled the emergence of land markets and more privatized forms of landholdings. This is particularly evident in the southern cocoa-growing regions, characterized by agricultural commercialism and mounting pressures on land. While competition for land and the complexity of Ghana's various forms of customary tenure incite widespread land disputes and litigation, the government has attempted to tackle the problem by enacting legislation requiring all long-term claims to land to be formerly registered while continuing to extend legal recognition to local community-based tenure systems.

## National policy and legal framework

Ghana's population in 1989 was estimated at 14.5 million, 62% of whom live in rural areas and make their living from agriculture. The country's area spans 239,400 square kilometers. Despite an average population density of 60.5 per square kilometer (including urban areas), rural densities in the south measured as high as 200 persons per square kilometer in 1986. At that time, population growth was almost 3% per annum, indicating rural crowding has likely worsened considerably since the mid-1980s.

There are three main climatic zones: the coastal scrubland characterized by low rainfall and generally poor soils; the humid tropical rainforest of the southern interior zone where Ghana's primary export, cocoa, is grown; and the arid savannas of the north which stretch over half of the country.

Many of Ghana's development patterns and agricultural policies have both shaped and been affected by historic land legislation. Under British indirect rule, the colonial authorities delegated administrative power over land to paramount and divisional chiefs, thereby weakening the potency of the village chiefs and Tondanas over land allocation. This strategically minimized governing costs incurred by the Crown while bolstering the power of those authorities the British were allied with and could easily control. Northern Ghana was set up as a protectorate, with the prosperous cocoa trade in the south engendering the deliberate neglect of this region in order to foster a supply of cheap migrant labor to the south. This policy continued in the postindependence period. In 1927, the Land and Native Rights Ordinance declared all land in northern Ghana public lands, vested in the colonial governor for the benefit of natives, though chiefs were accorded substantial authority over land matters. By contrast, land in southern Ghana was vested in the stool. This differentiated status was carried through to Ghana's independence, after which the State Property and Contract Act of 1960 vested all land in northern Ghana in the president of the republic.

By 1951, power structures were again revised. Ghana was accorded self-governance under the leadership of Kwame Nkrumah. The country's first constitution was drafted, which provided for the establishment of local and district councils, comprised of elected officials. In accordance with Nkrumah's socialist doctrine of not allowing resources to be dominated by elite factions, this measure served to weaken the power of traditional authorities over stool lands. All transactions in stool land now required approval of local councils while revenue derived from such transactions had to be collected by the local councils and deposited into a collective fund.

When Kwame Nkrumah became the first president of the independent Republic of Ghana, he officially nationalized landownership under the Administration of Lands Act, 1962, and turned a blind eye to customary tenure systems. Not only were all stool lands subject to government acquisition without compensation, but all

revenues generated from stool lands were considered government property. By stripping chiefs of their authority over land and forcing them to depend on the government for their positions, Nkrumah blocked their exit from the political arena while he made opposition to his regime unattractive, particularly since one risked political detention and expulsion.

In the rural areas, government ownership of land essentially enabled Nkrumah's socialist government to appropriate land for the establishment of state-owned enterprise farms and sale to private commercial farming interests. Despite high hopes that large-scale, capital-intensive farming would serve as an engine for agricultural growth, particularly in the north, persistent faith in mechanization and economies of scale has resulted in widespread soil degradation, vast tracts of unproductive land, marginalization of smallholders, and, in some cases, violent outbreaks over access to land.

Today, a significant body of legislation exists concerning land tenure in Ghana, though much of it is quite ambiguous and contradicts what is taking place in practice. The revised 1979 Constitution revested land administration in local authorities, though much uncertainty has prevailed with regard to the government's policy on land and with whom authority over land administration rests.

The 1992 Constitution upholds the authority of chiefs and divides land into both public and customary tenures. Public land is vested in the president and is managed by a central lands commission under the provisions provided in the State Lands Act and the Administration of Lands Act of 1962. Customary land is divided into stool or skin lands and family lands. Most land in Ghana is administered under the former structure whereby lands are vested in customary "governments," termed "stools" in southern Ghana and "skins" in the north. Paramount chiefs and councils of elders hold the offices of the stool or skin and function as custodians over land in their respective jurisdictions. Essentially, communities own the land while the traditional authorities hold it in trust for their benefit via an allodial title. Family lands, common in certain regions of Ghana, are vested in landholding families and are administered by family heads and senior family members. The emergence of family lands is indicative of much of the individualization of tenure which has taken place in Ghana. In recent years, confusion has arisen over the rules governing the administration of family lands and whether it is subject to the same regulations as stool/skin land.

More recently, the central government has sought to check some of the powers of local chiefs through legislation. The PNDC Proclamation, 1982, stipulates all land transactions involving cash or in-kind transfers must be approved by the Lands Commission, which has the authority to regulate the size and duration of transfers as well as judge their fairness. This is a grossly unrealistic measure given the implicit transactions costs of seeking approval from a centralized institution and the fact that land markets are highly developed, particularly in southern Ghana where land purchases have taken place since the turn of the century. ARTICLE 267 of the 1992 Constitution further attempts to regulate land transactions to ensure their consistency with local development objectives by mandating the consent of regional land commissions. However, these bodies have yet to be installed. Another legislative restraint on the latitude of traditional authority is the Office of the Administrator of Stools Land Act, 1994, which requires paramount chiefs to establish stool land accounts for the deposit of all payments collected by the stool, including rents. It also fixes percentages for the allocation of such payments, with 55% being owed to the local district assemblies.

The Land Title Registration Law, 1986, was drafted in response to mounting litigation over entitlement to land, especially in the cash-crop regions. The law requires that all persons with claim to land must formerly register that land at local registry units in their state. Thus far, the measure has been applied only to the Greater Accra Region, while efforts to expand its coverage have not been forthcoming.

## Replacement and adaptation of indigenous tenure

Ghana has a tradition of community-based land tenure which is upheld to the present day. Nevertheless, this form of tenure has undergone significant changes in certain regions of Ghana corresponding to economic, political, and demographic conditions. Customary land tenure systems are based on land ascribed to a community of common lineage. Land belongs not only to the community but also to their ancestors, who are believed to exert power over the land and the welfare of the community. Land is held in trust by community leaders, who assume responsibilities for distributing unallocated land. Once community members are assigned land, they have a guaranteed right to it unless they permanently abandon the land. Eviction of community members from their land is virtually nonexistent.

Prior to colonialism, many villages, particularly in northern Ghana, had an “earth god,” known as Tendana, who administered land transactions and performed ceremonial land rights. Upon British indirect rule, the colonial powers designated area chiefs to administer land and awarded them title to it. This mandate manifested itself into a multitude of different hierarchical structures and decision-making levels involved in the administration of land. In some cases, such as the Ashanti in the south and the Dagomba and Gonja in the north, paramount chiefs have the final authority over who receives land, though decisions are made in consultation with local leaders. Other lineages recognize the head of the clan or extended family as the primary authority. Family land, in which land administration is controlled by the immediate extended family rather than the community, has assumed increasing prevalence in the more developed regions of Ghana, particularly among cocoa farmers. While past attempts were made to centralize land administration at the national level, today the government bows to local authority for most land transactions.

The introduction of cocoa to Ghana in 1879 invoked radical tenure changes as the profitability of the crop lured farmers to migrate to the Akyem Abuakwa region. Since their purpose in inhabiting the land was to earn profits rather than subsistence, the local leaders rationalized that the land ought to be sold to them rather than granted as had been the traditional means of allocating land to outsiders. Two main forms of tenure took root. In one, groups of unrelated individuals organized to purchase land and received parcel strips in accordance with their contribution to the purchase. These farmers largely originated from patrilineal groups, such as the Krobo. By contrast, the matrilineal Akan purchased land as individuals or, among extended families, often in tracts larger than what they were capable of cultivating themselves as land became looked upon as an investment.

The underdeveloped regions of the north have experienced different circumstances in the evolution of land tenure. Poor infrastructure combined with lack of public services and markets have stimulated high levels of migration to urban areas and the cocoa belt. Land thus remains relatively plentiful and more traditional community-based tenure systems continue to thrive. Among the Dagomba in the northern region, absolute title is vested in the paramount chief who acts as custodian over the land and exercises the final say over land allocations. Other northern lineages continue to recognize the Tendana or joint authority between the chief or subchiefs and the Tendana. Within the community, land is distributed to sons who do not obtain land through inheritance. Women are highly restricted from owning land; their rights being subjective to those of their husband. They are usually relegated their own plots on their husband’s land where they are chiefly responsible for growing food crops.

Once land is secured by an individual, the land remains in his family so long as they continue to cultivate it. Even when land is temporarily abandoned, the original possessor can still reclaim it. Tributes in the form of crop production are typically paid to the chief, but are considered a gesture of appreciation rather than rent. Usually they are quite small (for example, a basket of corn or millet) and not obligatory. Essentially, the farmer has full right to the returns of his own labor. In the case of allocations to outsiders who are not members of the community, land is usually made available to them provided they are judged by the community elders and chief to

be of good character. Regular tributes from them may be more obligatory and increasingly may involve some cash up-front, though not in the sense of a purchase. Practices are highly differentiated.

In the south, rising population pressures combined with agricultural commercialization have caused land to become a scarce resource. As a result, the role of local authorities in allocating lands has waned with the disappearance of unallocated land. Land is still transferred in large part through inheritance, though the incidence of sales, leasehold, sharecropping, gifts, and pledging are increasingly more common where land is scarce. With regard to inheritance, land held by patrilineal groups, who distribute land among all of the deceased's sons, has succumbed to increasing fragmentation to a size which is often too small to generate a reasonable return. The matrilineal Akan, who traditionally have passed land down to the eldest son of their sister, now prefer to bestow land as gifts to their own children before their death. This in effect protects the interests of their own children, since the community can no longer guarantee them land.

Land scarcity also precludes the migrant farmer from obtaining unallocated lands on which to farm. Instead, one witnesses the expansion of leasing and sharecropping arrangements plus the use of hired agricultural labor, often under exploitative and insecure terms. The incidence of landlessness is also on the rise in a country that once regarded land as a birthright of every citizen. As traditional values about the land are replaced by market values and commercial opportunism, the south has experienced two effects. One is the tendency for communities to protect their land and restrict it only to their own members. The other is increased commoditization of land under which land rights are no longer inalienable.

Land tenure patterns in the north, though relatively stable as compared with the south, have not been isolated from the drive toward economic modernization. In the 1960s, the entry of commercial rice farmers and modern technology kindled the development of dualistic land tenures. This was particularly felt in the Tono and Veia areas in the upper east region, where a large irrigation project was set up to raise the productivity of commercial rice farmers. In the process, neither local farmers nor chiefs were consulted about the project either before or during its implementation. Chiefs lost title to land and farmers were displaced, receiving delayed and inadequate compensation in return. As anger and resentment mounted, indigenous farmers took to burning commercial farmers' crops in protest.

### **Tenure constraints and opportunities**

Tenure security is commonly framed in terms of rights: the right to cultivate the land without imposition or disruption, the right to reap the benefits of one's labor and investment in the land, and the right to transfer one's claims to the land. Under customary tenure, the former two rights are largely uniform among different groups and resemble freehold ownership. Land is held on an individualized basis in which the farmer possesses the permanent right to the land and has ownership of its production and improvements he makes to the land. Transference rights, however, are more restrictive. Land under indigenous tenure has traditionally been acquired through inheritance, whereas males who were not entitled to inherit or there was not sufficient land to do so, received unallocated land bestowed by the local authority. Sale of land was not prohibited and could be regarded as an offense to one's ancestors. This is still by and large the practice in northern Ghana. As explained earlier, transference rights have been adopted significantly in the south to include land sales as well as the increased prevalence of bestowing land as gifts, leasing parcels, and pledging land as collateral.

The issue of tenure security under indigenous systems and its impact on investment has been a constant area of debate and misunderstanding among western development economists evaluating agricultural production in Africa. The term communal to describe community-based systems has often been mistaken for cooperative and assumed that individuals did not have rights and could be subject to removal from the land. Another mistake was the belief that community members were merely tenants or sharecroppers under the chief and did not have rights over their production or investment. Although these rights are better understood today, restrictions on transfer

rights are still argued to be a source of tenure insecurity. The claim is made that small-scale farmers are often precluded from access to formal credit since their inability to sell land restricts its use as collateral. However access to credit encompasses a much broader range of considerations. Small-scale farmers typically require loans which are too small for financial institutions to consider worthwhile. This in combination with their distance from urban areas where banks are located makes transactions costs too high for both the lender and the farmer. Agricultural credit is further viewed as very high risk with only a small part of a bank's portfolio being devoted to this sector. Thus, transfer rights play a relatively insignificant part in constraining farmers' access to formal credit.

Recent studies conducted in three separate regions of the south characterized by different tenure patterns suggested that no link could be made between the right of a farmer to dispose of his land freely and his level of investment and subsequent output yields (see Migot-Adholla et al.). In fact, tenure security may even be weakened when market economies induce societies to move away from community-based land tenure, which acts as a type of insurance to community members in times of economic uncertainty. When markets fail, guaranteed access to land and community support offer a means of subsistence and security. One might partly attribute the relative stability of indigenous land tenure systems in the economically disadvantaged north to this phenomenon.

The population pressures being experienced in Ghana combined with export orientation have given rise to land degradation and destruction of natural resources. Timber is a primary export of Ghana and is recklessly exploited. Despite government efforts to curtail the destruction, the capacity to enforce such laws has been limited. The widespread planting of the economic trees (cocoa trees in the south and shea and *dawadawa* trees in the north) has also replaced other tree growth, upsetting the ecosystem and creating shortages of fuelwood and fodder. Likewise, in the north, the expansion of commercial farming since the 1960s has led to widespread abuse of fragile soils in a drought-prone climate. With land being relatively cheap and easy to acquire, many commercial farmers have exploited land for a few years until its fertility is exhausted, after which they abandon their farms in search of new land.

The Ghanaian political system under the current president, Jerry Rawlings, has essentially evolved from benign dictatorship to a fairly open multiparty democracy. The first session of a multiparty parliament convened in 1993. Economic deregulation has accompanied political pluralism with major public enterprises undergoing privatization in the past few years. Debate over issues has not been constrained and land tenure is likely to be no exception. However, the many interests at stake will make it a very complex issue to grapple with. Chiefs and other local leaders will want to ensure their power and positions remain intact and advocate local autonomy. Likely, they will receive the support of many of their community members, who often identify more with local politics than national. Migrant sharecroppers, leaseholders, and the landless will favor reforms which give them access to their own land. Women may advocate for stricter reforms on inheritance rights than currently exist. Even if reforms are conducted democratically, however, their effectiveness will largely depend on the government's capacity to supply an infrastructure capable of supporting and enforcing the measures.

Ghana's widespread shift to export-oriented commercial agriculture, particularly in the south, has meant that food crops are grown to a much lesser extent and people rely increasingly on imported staples. The negative implications for food security are exacerbated by swelling urban populations as well as rural population pressures which necessitate increased intensification of agriculture with shorter or no fallow periods to rejuvenate the soil, resulting in lower yields. In the south, one finds cassava replacing yam as a staple food. Although it is less nutritious, cassava has a shorter growing period and requires less fertile soil than yam to grow.

Women have experienced a mixed fate in the face of evolving tenure systems. Traditionally, many ethnic groups awarded them no rights to land except under their families or husbands. This remains largely unchanged in the north. Once married, women are typically allocated plots by their husbands in which they grow vegetables and other food crops close to the home. They also perform duties such as weeding their husband's crops in

addition to firewood and water collection and other domestic duties. Among the Akan, women have gained access to land in their own right as a result of their fathers (and increasingly their mothers) bestowing land to them as gifts. Likewise, husbands in both matrilineal and patrilineal groups have a greater tendency to allocate land to their wives either before or after their death. National law now requires that a portion of property of persons dying intestate must be provided to their spouses. However, community traditions still continue to override this, leaving women without land. As lineage and extended family structures give way to smaller family units, as they have in the south, this may leave women particularly vulnerable since their security is no longer safeguarded by the community. Likewise, the expansion of agricultural commercialism has crowded out the food crops of women, forcing them into petty trade in order to provide for their families.

### **Implications for policy dialogue and programming**

In assessing strategies to improve tenure security and encourage sustainable, equitable development, one will want to explore the causes behind the limited implementation of a land title registry. Do the costs of building the infrastructure to maintain the system outweigh the potential savings from a reduction in land disputes? To what extent are there political pressures which do not favor implementation? Also, what are the costs and benefits to the individual of registering land? Are the benefits sufficient to ensure widespread participation? Finally, one will want to look at the impact of land registration on women and how such a measure may only further entrench male dominance over property rights if land is documented legally in the man's name.

Often, the principal argument behind private property rights and land registration is its use as collateral to obtain credit. However, for small-scale farmers, the link has been demonstrated to be quite weak as compared with other constraints they face. Rather than converting customary tenure systems, a more successful strategy may be reviewing the limitations and disincentives for financial institutions for lending to small-scale rural farmers. Rural credit schemes will not work until institutions can find ways to decentralize their structures to make rural lending more cost-effective; dealing with this bottleneck needs to be a first priority. In the end, changes made to financial systems may prove more effective in increasing agricultural productivity than changes to laws governing property rights.

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## GUINEA BISSAU COUNTRY PROFILE

by Mike Williams

### Executive summary

Land tenure is of central concern in Guinea Bissau. Over the last twenty years, there has been a steady increase in land tenure conflicts throughout the country. Government officials are faced with the dilemma of promoting agricultural production and land tenure security while also protecting the traditional land rights of the *tabanca* (village) farmers. The policy decisions made by government officials will undoubtedly affect all aspects of the Guinean way of life.

### National policy and legal framework

There are approximately 1.1 million people in Guinea Bissau with a population density of 26 persons per square kilometer. Guinea Bissau is recognized as one of the poorest countries in the world. The mining and manufacturing industries are underdeveloped and the only export crop that has provided income over the last decade has been cashew nuts. Agriculture is at the heart of the Guinean economy, and the current debates over land tenure reform directly affect the interests of most of the population.

The current land policy in Guinea Bissau can be traced back to the policies of the colonial government. The land laws set forth by the colonial government are characterized by a dualism between “governmental” land law (the law of concessions/long-term state leaseholds) and *tabanca* (village) farmers. Under Portuguese rule, the government allocated land to persons for a fee, but those persons who received such concessions did not receive full ownership of the land. Instead, the individuals were entitled to occupy and use the land for a designated period of time that was subject to renewal. Even though the colonial state desired to maintain control over the land (and thus production of agriculture for export), the reality of the situation was that *tabanca* farmers were important agricultural producers. Thus, as early as 1856, in order to protect the land used by small farmers, the Portuguese government established that land occupied by the natives would not be subject to concessions. In a 1919 law, it was established that concessions would be granted only after the local people agreed. The most important law concerning land tenure, however, was the 1961 Overseas Property Decree. This legislation was the most thorough land law in the history of Guinea Bissau, and it explicitly embodied this policy of a dual land tenure system. Under this law, the government ensured that the local communities had a right to land that was traditionally recognized as theirs. All “unoccupied” land, however, was subject to state regulations and concessions. While traditional rights to land were recognized, this did not grant the local communities rights of ownership. All land was still owned by the Portuguese state.

In 1974, when Guinea Bissau achieved independence from Portugal, the new government did not introduce a new conception of land policy. Instead, the government adopted the 1961 colonial legislation. In 1984, however, a new constitution was adopted that employed a socialist orientation of land policy. Under the constitution, all land was declared to be state owned. Currently, the 1984 Constitution is still in effect. As under the 1961 law, while *tabanca* farmers are in theory granted protection from their land being taken without notice or compensation, in reality, many investors and buyers are not receiving the necessary *tabanca* approval before purchasing land. Thus, while local communities have de facto rights to land use and occupancy, the law does not recognize rights of ownership.

Ever since Guinea Bissau gained independence, the government has stated that land policy is an important factor. In spite of such rhetoric, however, little has been done to address the serious issues that are becoming

increasingly conflictual. The Ministry of Rural Development and Agriculture is in charge of land tenure policies, but over the years, this ministry has not proved effective at initiating land tenure reform programs.

### **Replacement and adaptation of indigenous tenures**

Just as there is a dualism in the legal framework, there is a dualism in the agricultural structure as well. There are two distinct types of agricultural farms in Guinea Bissau: the *tabanca* and the *ponta*. *Tabancas* are village family farms, which account for a large portion of the national subsistence and export production and also provide employment for 85% of the population. In the past, many believed that *tabancas* were ill suited for commercial production and that their primary purpose was subsistence agriculture. Recent research, however, demonstrates that *tabancas* are more efficient than *ponta* farms. In addition, it has been shown that many community-based tenure systems embody the notions of “ownership,” even though they may not explicitly grant “private property” rights to individuals (Bruce and Tanner 1993). The capability of the customary law to be flexible and to evolve in response to changing internal and external circumstances makes it both an adaptable and efficient tenure arrangement.

It would be misleading to suggest that the customary laws of each *tabanca* are the same. Within the *tabanca* farms, there is much diversity with respect to the customary land laws that designate land grants, land sales, or land inheritance. The nature and specific rules of the customary law depend very much on ethnicity. Generally, however, land is regulated by village “chiefs” who have different roles depending on the ethnic group to which they belong. For example, the Fula *regalo* (tribal chief) closely controls land allocations, the Balanta *dunu di tchon* (founder of an area) monitors land transactions less stringently, and, finally, the Papel/Mancanha/Manjaco *regalo* regulates the land only in the area directly controlled by him. Despite such variety, research has indicated that the most common land disputes for all villages and all ethnic groups involve the rules regulating land grants, land loans, and land inheritance. Such disputes occur both between villages and between *tabancas* and *pontas*.

Contrary to *tabancas*, *pontas* are large-scale farms and plantations which are dedicated primarily to commercial use. These farms resulted from the concession policies of the colonial government and the postindependence government. The granting of concessions has often been a controversial matter due to the fact that in many circumstances the government will allocate land that is being used by *tabanca* farmers. This situation often causes conflicts between *tabanca* farmers and *ponta* farmers as they dispute the allocations. Since 1984, due in large part to the government’s liberalization policies, there has been a marked increase in land concessions. Even with a rise in concessions, however, it is estimated that only 3% of such land is being cultivated. Because concessions can be attained inexpensively, and because the land is not taxed, many individuals who acquire land concessions are more interested in speculation than food production.

The government has yet to implement a new land law, but it appears from recent policy statements that it would prefer to replace the *tabanca* community-based tenure system with a tenure structure based on private property principles. Many government officials believe that private property principles are not present in the *tabanca* land system. Recent research has shown, however, that the *tabancas* are a dynamic land tenure system that now encompasses a mixture of private property and community-based property tenets. It would be a mistake to assume that *tabanca* land tenure system is antithetical to notions of private property.

### **Tenure constraints and opportunities**

Agriculture represents the most important factor for future national development. It accounts for more than 50% of the GDP and approximately 90% of the employment. The principal food crops are rice, groundnuts, cereals, and root crops. The main export crop is cashew nuts. Since 1984, the Government of Guinea Bissau has been implementing liberal economic reforms. One of the major effects of these policies is that there has been a substantial increase in the number of *ponta* farms. While there has been an increase in agricultural output over the last decade, this success has come at the expense of *tabanca* farms. *Ponta* farmers are being granted concessions

to land that is occupied and used by tabanca farmers. The result is that there are numerous land disputes between the *ponteiros* and the *tabancas*. Despite the fact that there has been an increase in *ponta* farm production, *tabanca* farms still account for approximately 90% of the agricultural output. As *ponteiros* continue to gain access to *tabanca* land, it is possible that this production will decrease. Such a decrease would be devastating in terms of both domestic subsistence and export capabilities.

Most of the research in Guinea Bissau is focused on agricultural issues, and there has been little information gathered on common property issues. What is known, however, is that most of the forests, woodlands, and marshlands in Guinea Bissau which appear to be “unused,” idle, or uncultivated are in fact vital to local communities and farmers. In most instances, such areas are governed by customary common property regimes that are known to the local communities. Such rules have proved effective at utilizing and conserving valuable natural resources. As more land is granted through concessions, however, such customary rules are likely to be strained. Thus, it is imperative that the government recognize the existing, and potential, tenure conflicts that are linked to natural resources and attempt to mediate such disputes in a manner that is fair to both the *ponteiros* and the *tabancas*. Research has also indicated that in some cases there will be disputes between ethnic groups over which group has exclusive rights to common areas. There need to be more surveys compiled, however, before we can determine the extent and severity of such conflicts.

Since independence in 1974, the government has stated that land tenure policy is an important national issue. Even though land policy has been stressed, land law policy has not been fundamentally altered. In the late 1980s and early 1990s, the Government of Guinea Bissau began to liberalize both the economy and the political system. In 1991, the government legalized opposition parties and, in 1994, Guinea Bissau held its first democratic election. The election results, however, were contested on the speculation of widespread fraud. While land law reform was an important issue during the election, no candidate offered specific proposals and the newly elected government has not seriously addressed land reform.

As noted above, the past decade has seen an increase in *ponta* agricultural production even though *tabanca* farms still account for a majority of the food crops. The land pressure that *tabanca* farms are currently experiencing could have a dramatic effect on food security.

The research shows that women are responsible for much of the labor on *tabanca* farms. Thus, under the current community-based tenure system in the *tabancas*, women are entitled to use the land on the same basis as any other individual. In some cases, though women are allocated plots by their husbands, they have no claims of ownership over the land. Yet, despite the fact that the women do not “own” the plots, they are allowed to sell any surplus crops that are grown on the land. Thus, it appears that while women do not claim any ownership rights over land, they do maintain the right to treat surplus crops as their own. Finally, if land disputes concerning women occur, they are more likely to go to the family elder rather than the local authority for resolution.

### **Present policy positions and reforms discussed**

The Government of Guinea Bissau has yet to adopt any changes to the current land law as articulated in the 1984 Constitution. The dualist legal framework that has existed for over 100 years is proving to be ineffective at protecting the interests of the *ponteiros* and the *tabanca* farmers. While the government is naturally concerned with economic development and increased agricultural production, economic liberalization that harms *tabanca* farms—that are producing most of the agriculture—is self-defeating. The government’s attitude toward the *ponteiros* and *tabancas* is based on a misconception that *tabanca* farms are less productive than *pontas*, and that *tabanca* land law is devoid of any notion of private ownership. Research has shown that both of these assumptions is misplaced. Customary law is flexible and is able to adapt to changing circumstances. It would seem that the government has much more room to negotiate between the interests of the *ponteiros* and the *tabanca* farmers than it currently deems possible.

## Implications for policy dialogue and programming

As was noted above, the customary land laws are highly diverse and are not necessarily alien to private property concepts. Due to increased land pressure and an increasing land market, principles of private ownership have been evolving over time. The government should not attempt to replace the community-based tenure systems with a private property regime. Instead, the government should adopt a law that would recognize the customary definition of property rights, including agricultural land and common areas. In addition, it should set up a process whereby the tabancas could have their land boundaries demarcated and registered. Such a law would respect the community-based tenure system which has existed for hundreds of years and which has proved effective in promoting agricultural production, social cohesion, and conflict resolution. In addition, boundary demarcation may help forestall conflicts between villages and between tabancas and pontas. More importantly, such a legal framework would allow the tabancas to evolve into a private property regime if such a system proves to be beneficial to the individuals.

The government needs to adopt a national land law that establishes internally coherent and consistent legal rules while, at the same time, allowing for local variations among the villages. Because there is no one customary law “system,” any attempt to promulgate a national land law on this presumption will fail. Instead of one system existing, there are in fact many subsystems that operate at once. A national land law should try to adopt general principles that crosscut these subsystems. Most importantly, the government needs to demarcate and regulate village boundaries. A comprehensive framework that can establish general principles and respect the different customary land laws will allow the space needed for customary laws to adapt in the future.

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## IVORY COAST COUNTRY PROFILE

by Rebecca Furth

### Executive summary

The land tenure system of Ivory Coast is characterized by continuing reliance on traditional, predominantly lineage-based tenure practices, which have come under increasing stress with the influx of immigrant labor and intensive monetarization of land values. Although claiming ultimate ownership of land, the government has neglected to enforce its statutory tenure system in favor of an ad hoc consideration of problems and issues on a piecemeal basis. This policy worked surprisingly well up through much of the 1980s due to an economic prosperity which allowed the government to maintain acceptable producer prices and provide reasonably easy credit to farmers. However, the decline of the cocoa and coffee markets in the 1980s, the devaluation of the CFA, increasing resentment of immigrants, and recent shifts in political structures have resulted in recent years in considerable unrest, which is putting strain on the once stable system.

### National policy and legal framework:

Ivory Coast has a total land area of 124,503 square miles bordered on the north by Mali and Burkina Faso, the east by Ghana, the west by Liberia and Guinea, and the south by the Gulf of Guinea. The southern half of the country is a fertile forest region which is notable as a successful cash-crop production zone of coffee, cocoa, palm oil, and many other crops. The northern region, an arid Sahelian zone, poses more constraints to agriculture but is known for its considerable cotton production. Land use is divided as follows: 11.6% cropland, 40.9% permanent pasture, 23.2% forest and woodland, and 24.3% other. About 12% of the total land area can be classified as arable land. Recent population estimates from 1994 average 13,895,000 inhabitants and record an annual population growth rate of 3.7% per year. The estimated population density is 112 inhabitants per square mile with approximately 59.6% living in rural areas.

During the colonial period the French administration created many laws that were applicable to all its colonies. These laws included land tenure edicts. At the turn of the century, the French authorities claimed all "unused" (not under production at the time) land as property of the colonial state under the decree of 20 July 1900. This decree overruled all traditional ownership for lands not under cultivation at that time. Later acts imposed by the French colonial government defined a legal procedure for obtaining freehold title to land (25 July 1932 and 15 November 1935). Furthermore, the November 1935 degree declared the right of the colonial government to expropriate any lands in use under community-based land tenure systems if such an action was economically justified and necessary. A 1955 law renounced many of the previous policies by acknowledging community-based land tenure systems and revoking public claim to unoccupied land or land "not in use." This reversal of previously established policy was part of the overall trend of the colonial government toward liberalization in its last years of rule.

After independence the Ivorian government reestablished earlier colonial policies stating that all unoccupied land belonged to the state. A 1962 law vests all land in the state, which in turn has the right to grant concessions for varying lengths of time. A 1963 law, passed unanimously by the National Assembly but never promulgated, would have: (1) abrogated all customary rights in land; (2) given the government power to allocate vacant lands; and (3) made individual rights to land revocable and uninheritable until the land was registered for full ownership. However, fearing that ensuing resentments might retard economic development, not to mention potentially cause unrest, the president refused to promulgate the law (see Rassam 1990).

Subsequent land tenure legislation of 1964, 1971, and 1984 sought to clarify land tenure policy. The laws of April and October 1964 declared all private land sales as null and void and outlawed polygamy and all matrilineal succession of land. This latter law disregards all indigenous forms of inheritance with the exception of patrilineal (father-to-son) systems. The 1971 law reasserts the April 1964 law stating that private land sales are not legally recognized by the state. Lastly, a 1984 law established the government procedure for land grants and leases.

In order to legally register and gain title to land or leasehold of land in the Ivory Coast it is necessary to have a given parcel of land inscribed in the land register. In order to do so, an applicant must first put in a request to the *Sous-préfet*. The *Sous-préfet* must then consult the village council and, if the land is of 50 hectares or less, then has the right to grant a use permit. Any request for registration of land surpassing 50 hectares must be passed through the Ministry of Agriculture and Rural Development in Abidjan. After the land is registered and in use, the proprietor can begin the process of attaining actual ownership. This entails a formal survey which is used to create a *dossier technique*. If the request for ownership is granted, the government allows only 12 hectares to come under individual ownership. The remaining land can only be leased from the state. Leases are granted for twenty-five years with an option for renewal and can be sold, mortgaged, and inherited.

Needless to say, the process of registration for obtaining private property and lease titles is very lengthy and expensive. For this reason, few people bother to use the system. Consequently, most land remains in use through the community-based land tenure systems, where usufruct rights are granted by the lineage which is the guardian of the land. Whether legally titled or not, the government maintains control over the majority of cultivable land. If farmers do not title their lands, then the state is considered the legal holder. On the other hand, if farmers title their lands, the government reserves control over a major portion by permitting private ownership of only 12 hectares.

Although the 1962 law claims state ownership of all land, it nonetheless has allowed continued use of all lands put into production, even land that has not been legally registered or titled. Consequently, many farmers have tried to put more land into use to forestall government claims. In the process, there has been accelerated destruction of valuable resources including forests. In an attempt to curb expansion and assert state claims, the Ivorian government established laws in 1964, 1965, and 1974 which delineated potential mining, forest, and tourist lands. Despite this effort, however, it seems that these laws have been more or less impotent, for the indigenous population has refused to relinquish its claims to these lands.

The government's confusing and contradictory land tenure policies, and particularly its assertion of state ownership and simultaneous tolerance of community-based land tenure systems, have created a truly muddled ad hoc system. The creation of a better integrated and "rationalized" land tenure system is one of the greatest challenges facing the Ivorian government at present. In order to address this problem the government launched a pilot land tenure project in 1989 with the assistance of the World Bank and the French government. This project studied customary-based tenure practices with the aim of creating a unified system based on customary practices and government initiatives. Although a follow-up study was programmed to take place in 1993, no information is available regarding the results and implications of this project with regard to national policy.

### **Replacement and adaptation of indigenous tenures**

The Ivorian government, as was previously noted, does not recognize community-based tenure as legal. However, a lineage or village group can legally obtain land title by formally registering as a village cooperative or association. Such cases have arisen in the past. In confrontations over access to land the courts have upheld indigenous rights in circumstances where lands are legally registered.

The introduction of coffee and cocoa farming has also brought some degree of inequality of land distribution. Whereas in the past land was controlled by heads of lineages and divided among the group, the profits to be made from perennial tree crops have encouraged young men to clear forest areas on their own and have attracted investors (in addition to migrants) from outside the area. As yet, the inequalities in land distribution

are not severe, but there is an increasing tendency for large areas of land to be held by a small number of individuals.

The Ivory Coast is a culturally diverse country harboring over twenty different ethnic groups. Consequently, there are also a variety of community-based land tenure systems. When these myriad systems are outlined, however, it is important to keep in mind that traditional systems are undergoing modifications in response to changing national and local environmental, demographic, political, and economic conditions. Descriptions of these systems should not be considered as universal or static.

Although a comprehensive summary of each of these systems is not possible, several useful generalizations can be made. The Agni and Baoule ethnic groups predominate in the center and eastern portions of Ivory Coast. The tenure systems of both groups exhibit a hierarchical matrilineal social structure in which land is allocated by the king to the various lineages. However, the extended family remains the basic economic unit working the land and is not required to make payments in exchange for use rights. Whereas the Agni redistribute land annually, the Baoule tend to maintain the same parcels from year to year. "Slaves" existed within the Agni system, working not only their own plots but also those of "free" rural families. One finds a cluster of small ethnic groups, most of which also follow matrilineal descent, in the southeast corner of Ivory Coast. In contrast to the Agni to the north, these groups have few formal intervillage political structures. The chief of each lineage/village allocates the land. Age groups sometimes provide a communal agricultural labor pool.

The Senoufo, Lobi, and Koulango, in the north and northeast, are characterized by village-level hierarchical social structures. The oldest male in the lineage that first settled in the village allocates land to the extended family. These rights are partially matrilineally inherited. As with the peoples of the southeast, age groups provide communal farming labor.

Although the Krou and the Mande-tan speaking groups of the southwest are in different language classes, they are both patrilineal societies. Each lineage normally corresponds to a village. The lineage head allocates land to the extended family. Although slaves were utilized, their exact obligations and position are not clearly defined in the literature. Age-group labor is also common.

Finally, the Malinke and other Mande-tan speakers of the northwest have strongly hierarchical social structures based on patrilineal descent. Historically empire-builders, both groups had fairly rigid social castes and slaves. The oldest male in the longest-established lineages allocates land to the nuclear family.

The migrant/immigrant population, though not of a single ethnicity, makes up one of the more significant groups in the Ivory Coast. In the 1940s and 1950s, the French began importing laborers, mostly Baoule from central Ivory Coast, into the coffee- and cocoa-producing forest regions to work on the plantations. In the late 1950s, when the colonial land tenure policies were liberalized, many other Ivorian groups moved into the fertile forest area and began putting lands to use with the permission of the indigenous farmers. Finally, in the early 1960s, shortly after independence, the government encouraged people from Burkina Faso and Mali to move into the forest zone in order to fuel cash-crop production (and thus the national economy).

Technically, according to the government's decree that all land belongs to the person who puts it into use, many of these immigrants could stake claims to land. However, because the community-based land tenure systems prevailed, the majority of immigrants either purchased land directly from the indigenous proprietors or contracted out their labor for a number of years in exchange for a parcel of land upon completion of their service. Thus, the population of the productive forested zone today is composed largely of immigrants (who sometimes outnumber the indigenous peoples). A 1993 World Bank report found that in parts of the forested production zone, migrants accounted for over 70% of the total population. This is an astounding figure and one that must be considered when planning for the future of land tenure policies for Ivory Coast.

Creating a land tenure policy for the Ivory Coast will be a complicated endeavor. Not only does the government need to consider indigenous interests, it also must take into account the large population of immigrants who have been farming the land for over thirty years and are largely responsible for the success of the Ivorian economy. With a growing population, increasing land pressure, and the decline of opportunities in urban areas, it is likely that there will be increased tension over access to land between the indigenous and the immigrant populations.

### **Tenure constraints and opportunities**

The government's land tenure policies were specifically designed to encourage the production of cash crops. This emphasis has put significant strain on the production of food crops. Although largely successful in the cash-crop economy, Ivory Coast has become a net food importer. In recent years the government has made strides to rectify the low status of food crops by mounting campaigns to encourage more farmers to plant food over cash crops.

The nomadic Fulani herders of the northern Sahelian zones have begun to drift into the Ivory Coast in recent years. This is largely due to environmental and land constraints in the north, better pasture in the south, markets in the Ivory Coast, and veterinary care subsidies provided by the Ivorian government. The Fulani migration into the Ivory Coast has been the source of much conflict with Senoufou farmers, who are upset over the destruction of their crops by the wandering herds. In 1986, clashes over access to lands and crop destruction resulted in the murder of several Fulani herders at the hands of Senoufou farmers. The government is in the process of trying to quell the problems by encouraging collaboration between herders and farmers based on cropped lands and manured corrals. No mention has been made of the development of land tenure policies to address these issues.

The government's policy of land "belonging to the person who puts it into use" has resulted in the overexploitation of natural resources. Under state policy, the "use" law has no constraints, meaning that the user has equal access to all resources, including forest and land resources, on their parcels of land. However, a conflict has arisen with regard to community-based systems and cocoa and coffee crops. Although a farmer may lose use rights to land in the community-based system, any trees he has planted on that land technically belong to him. Because cocoa and coffee are tree crops, this issue has resulted in considerable confusion as indigenous farmers try to reclaim use rights from immigrants. In addition, because of the low population density, there was adequate access to land and little agricultural intensification in the past. With increasing population pressures in the forest zone, easy access to land and swidden agriculture have put stress on the resources of the forest area. Although conflict has been minimal so far, it is likely that tension will mount with increasing competition for land.

The Ivory Coast has recently undergone political transformation with a greater trend toward democratization. However, it is not clear how this may affect land tenure policies. In order to create a truly democratic system the government will have to give voice to the indigenous population and take community-based land tenure systems into consideration when designing national land tenure policies. However, the government also has a large immigrant population to consider as well. Creating a policy that acknowledges and protects the rights of both indigenous and immigrant farmers is one of the most difficult challenges facing the new Ivorian government.

The Ivory Coast has designed all its land tenure policies to encourage economic growth. The prevailing philosophies of the government under Houphouet-Boigny deemed traditional land tenure practices as obstacles to cash-crop production, judging that individualization of land was the only way to achieve the economic growth that would lead the country to prosperity. Given that the state has chosen not to enforce its land tenure policies and has allowed customary practices to prevail, it is clear that the economic prosperity of the country was, until recently, significant enough for the government to pay little regard to land tenure. With the failing coffee and cocoa markets in the 1980s and the increasing economic instability in Ivory Coast, the government needs to rethink its policies in order to assure a stable economy.



There is little information regarding women's roles in land tenure in the Ivory Coast. Women have use rights to land through their husbands, but it appears as if they have no ownership rights. Under customary matrilineal systems, land stayed in the woman's family and was inherited by her sons through her brother. However, the government's 1964 decree outlaws all land succession except patrilineal inheritance. There are two main implications of this policy. First, it eliminates matrilineal community-based land tenure systems. Second, it formally denies women the right to inherit or pass on land. Thus, the essential aim of the government's policies is to vest all land rights in men and their male offspring and prevent women from owning land.

### **Present policy position and reforms discussed**

Although the government has taken strides in recent years to redefine its land tenure policies, there is little indication as to where these efforts will actually lead. The government's land tenure pilot project is an important step toward recognizing the importance of community-based land tenure practices.

It is essential that the government also develop a system for assisting indigenous villagers and immigrant farmers to resolve land disputes. If steps are not made in this direction, considerable conflict could arise over rights to land and production. Particular attention must be paid to land succession and the relationship in this regard between immigrant and indigenous farmers. The majority of recent conflicts have been over inheritance rights between these two groups, with the indigenous farmers reclaiming land and denying inheritance to the sons of immigrants.

### **Implications for policy reform**

It is imperative that the Ivorian government develop a coherent land tenure policy in order to assure the continued growth and development of the country without conflict. Mounting population pressures and unstable markets have resulted in considerable competition over land resources. Traditional land tenure systems are continually changing and adapting and appear to be highly flexible. In-depth research of customary land tenure practices and local incorporation of national policy is important for successful development planning. Of particular concern is the relationship between immigrant and indigenous farmers. Project planners must consider these issues when designing development programs.

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# LIBERIA COUNTRY PROFILE

by Anna Knox

## Executive summary

Since December 1989, Liberia has been in the throes of civil conflict and virtual anarchy. Rural areas in particular have been besieged by brutal violence, causing over 700,000 refugees to flee the country and at least as many to take sanctuary in and around Monrovia. As a result of this mass exodus, communities and families have been broken apart. Little is known from the literature about what currently characterizes the land tenure situation in Liberia. It can only be surmised that much of the formal structure has crumbled in the face of fear, instability, and out-migration. Much of the description below of Liberia's land tenure reflects the situation prior to the war and may not be a valid portrayal of present conditions; one can only speculate on the impact the war has had on land rights. As Liberia stands poised on the brink of a tenuous peace, serious consideration needs to be given to the role of land tenure as part of an effort to rebuild the nation.

## National policy and legal framework

Arable land is scarce in Liberia. According to FAO estimates, only around 3.8% of its total land area is considered arable. Liberia's agricultural population densities are extremely high at 5.2 persons per arable hectare as of 1993. The severity of arable land shortages is underscored by inequitable land distribution whereby 75% of agricultural land is held by 7% of landholders.

Liberia was founded in 1822 by the American Colonization Society for the purposes of creating an African nation of repatriated black ex-slaves, mainly from the United States. These settlers, known as Americo-Liberians, initially occupied five counties along Liberia's Atlantic Coast, which were purchased by the society from the African chiefs presiding over that region. In turn, settlers could purchase plots of land from the society in the name of the male head of household, thus launching a freehold tenure system. What started out as a "philanthropic" effort soon emerged as Black Imperialism, as the Americo-Liberians sought to expand their land acquisitions along the coast and further into the hinterlands. Their objectives were to extract resources and expand trade as well as to "civilize" and "christianize" the indigenous population. By 1900, Americo-Liberians controlled 600 miles along Liberia's Atlantic Coast and between 150 and 250 miles inland.

Liberia's land tenure system continues to provide for freehold tenure, which is secured by title. All other land is vested in the government and is classified as tribal trust (reserves) and state land. The former principally accommodates the various customary land tenure systems practiced by the sixteen indigenous ethnic groups of Liberia, which constitute 93% of the population. Freehold tenure, on the other hand, has been dominated by the former black slave settlers (Americo-Liberians) who principally occupy the coastal plain region where the capital, Monrovia, is located as well as large farming estates along the main arteries cutting through the rural areas. According to the Liberian constitution, only blacks may be citizens of Liberia and only Liberians may own land. Land may, however, be leased on a long-term basis to foreign concessionaires, and indeed much of it is. Foreign-owned mining operations and rubber plantations dominated Liberia's export trade prior to the war's outbreak.

Liberian law recognizes both individual and community tenure and guarantees the right of all rural natives to occupy land. Communities have the first right of possession against all outsiders. Nevertheless, the declaration of land held under customary tenure as property of the state initially sparked violent rebellions among indigenous populations, who viewed this as an assault on the authority of local leaders over land matters. Tenure insecurity resulted from the risk of lands not under cultivation or protected by deeds being appropriated by the state.

The recent history of land legislation in the country appears sparse. In 1974, the government instituted the Registered Land Law in an effort to formalize the land registration system through requiring landholders to register parcels. It empowers the Ministry of Lands and Mines to designate particular areas for adjudication and registration of land. The law itself assigns positions, specifies their roles and responsibilities, and outlines procedures for adjudication and registration once notice has been given by the minister of a designated area. It is unclear from the literature whether this law was implemented and, if so, to what extent. Given that descriptions of land tenure in more recent literature fail to mention the law, one supposes its impact was minimal.

By law, all land sales must be sanctioned by the government. The process of obtaining approval involves lengthy bureaucratic procedures, culminating with the signature of the president himself. Initial sales are made by the state, which sells land at a fixed price. The purchaser may subsequently sell this land to another individual at market price.

### **Replacement and adaptation of indigenous tenure**

Under customary tenure in Liberia land is allocated to community members by chiefs or elders. Rights to the land constitute use rights rather than full ownership and are initially established through clearing the land. Among some groups, gifts of salt and tobacco are given to the chief in appreciation for the land bestowed and may be followed by a sample of the first year's crop. Gifts are not required, though not offering them could impose high social costs on the community member. Several communities regularly donate labor to the local chief's land and crops.

Inheritance practices in Liberia are overwhelmingly patrilineal. Among the Kpelle, Kru, Gio, and Mano, upon a man's death, his eldest brother take possession of the land. Other tribes, such as the Bassa and Loma, bequeath land to their oldest son. Women are not permitted to inherit their husband's property.

Persons from outside the lineage of a community are generally welcomed since higher populations lend villages political clout. However, their tenure rights remain secondary to lineage males. In order to obtain land, they must receive permission from a member of the community to clear a portion of their family land, usually for rice cultivation. After one year, the borrower will give his host a bag of rice as tribute. After the initial year, he is accepted into the family and is no longer obliged to pay tribute. However, he retains his status as a borrower and is not permitted to plant trees on the land. In densely populated areas, more temporary borrowing arrangements have unfolded.

The arrival of the Americo-Liberians proved highly disruptive to the traditional administrative mechanisms of the African populations, including land tenure systems. A series of expeditions took place in the late nineteenth century followed by a scramble to protect existing territory and acquire new land to prevent it from falling into the hands of British and French colonial forces. Settlements were established in the interior to accommodate new immigrants, and the government granted concessions to Americo-Liberians wishing to acquire land for farming. By 1904, the Americo-Liberians imposed a system of indirect rule over the interior, dividing it into four districts administered by Americo-Liberian district commissioners and establishing military garrisons to protect the ruling interests and later to enforce the collection of hut taxes. The system proved to be highly repressive and brutal toward the Africans, who were frequently subject to forced labor on Americo-Liberian farms and plantations. Although concession-granting and freehold tenure exercised by Americo-Liberians fueled resentment and tenure insecurity among native Liberians, their oppressors did not attempt to alter customary tenure systems directly and so the mechanics of the systems remained largely intact.

It was not until President William Tubman assumed office that some of the political, social, and economic barriers between Americo-Liberians and African Liberians were removed. The Unification Policy of 1945 extended citizenship status to Africans, who had previously been unable to vote or occupy office. November 1960 marked the end of indirect rule in the interior provinces and locally elected officials replaced government

appointees, though no attempt was made to establish a single nationwide land tenure system and customary tenure among indigenous populations continued. However, it was not until the election of Samuel Doe in the early 1980s that concession granting in the provinces was suspended in the interest of strengthening the tenure security of Liberia's native occupants.

Today, most communities continue to discourage land sales despite the fact that they are historically familiar transactions and the practice has taken place within customary tenure systems in Liberia for some time. Among the communities where land sales are permitted, the person wanting to buy land must receive permission from village elders, the quarter chief, and the community chief. He then must pay for a surveyor and have the land registered. Members of the community purchasing land must compensate the village with a goat or sheep. Outsiders usually have to pay money and/or liquor in addition to goat/sheep to tribal authorities, including the village, clan, and paramount chiefs, to facilitate the transaction. This is in addition to the price charged by the government for the land.

The creation of these land markets has had implications for fallowing land since land left inactive is more vulnerable to being sold. The risk of appropriation by the state if the land is not being cropped has provided incentive for the cultivation of tree crops, namely, coffee and cocoa, which are sold as cash crops. Thus the need to ensure intensive use of the land and the resulting expansion of cash cropping has invited greater individualization of land.

Despite an increase in land purchases in Liberia's interior, disruptions in customary tenure are more attributable to concessions to corporate interests, including state, foreign, and wealthy Liberians, than to privatized tenure. Rubber and timber operations run mainly by foreigners have undertaken vast acreages while large-scale Liberian-owned commercial farms produce rubber, livestock, coffee, cocoa, and oil palm. Absentee landlordism is common as is the practice of leaving significant areas of land idle. Wealthy Liberians, in particular, government officials, have frequently purchased land in rural areas for purely speculative purposes, hiring local residents to maintain it.

### **Tenure constraints and opportunities**

About 70% of Liberia's population live in rural areas. Among them, around 75% are engaged primarily in agriculture which accounts for over 30% of national GDP. Most farmers (95%) grow rice, the staple food of Liberians, which accounted for 92% of agriculture production in 1978. Both upland and swamp rice cultivation are practiced, though the former continues to dominate.

Cash crops, including coffee, cocoa, rubber, and oil palm, have taken on increased prominence in the past few decades with rubber, oil palm, and sugar produced chiefly by commercial plantations. While smallholders mainly cultivate rice and other food crops, increasingly they are supplementing subsistence production with monetary income from small cash-crop cultivation. Coffee and cocoa are preferred among smallholders, who are the principal producers of these crops. They are also compatible with subsistence production, and the trees are frequently intercropped with cassava. Also, labor requirements are not excessive, with coffee in particular demanding little labor. On the whole, tree crops have been coveted by men whereas rice and food crops remain women's responsibility.

In the past, community groups were formed to assist in rice cultivation on a rotation basis during peak periods. Known as Kuu, this system of cooperative farming was practiced by male and female groups who worked on the farms of each member. Males undertook brushing and burning activities while women performed planting, weeding and harvesting, thus enabling individuals to manage larger farms than they would be able to themselves. Gradually, individualization of tenure has rendered Kuu groups obsolete and replaced them with hired seasonal labor.

The interior of Liberia, especially the north, has undergone fundamental changes in peasant agriculture since the 1950s as a result of the widespread expansion of commercial agriculture, markets, and wage labor opportunities. The Firestone Rubber plantation in the north served as a major source of rural employment along with other agricultural plantations, providing financing for smallholder cash cropping. Men also brought back new plantings from migratory work for planting their own crops. The expansion of road and market facilities in the north funded by foreign corporate farms has further contributed to enhanced cash-crop production by the region. This contrasts with the relatively underdeveloped rural areas in the east, where coffee and cocoa are not cultivated by smallholders nearly to the extent of their northern counterparts.

Despite increases in cash cropping by smallholders, most continue to operate at the subsistence level. In response to poor production, declining yields, and low technology adoption by the sector, the government instituted a series of agriculture development plans in the 1970s, including the Four Year Development Plan, launched in 1976, which stressed diversification of agricultural production as well as improvement of agricultural marketing and rural infrastructure. Like many others of its kind, little was invested in the plan to meet its purposes.

In the interest of enhancing production, several donor schemes in Liberia have been aimed at shifting farmers from upland to swamp rice cultivation on the principle that swamp rice, unlike upland rice, allows for continuous cultivation and provides higher returns to labor in the long run. Most projects ran into resistance, though, due to the risk of adopting new cropping techniques, problems of access to swamp plots and water resources, and the initial heavy labor requirement before swamp crops are profitable. Also, many farmers do not like swamp farming and associate it with disease. It creates conflicting labor demands due to the necessary timing of inputs. Projects also failed to integrate communities into their design, a major component in their failure. Studies have shown that increased swamp rice cultivation is more likely to be accelerated by increased population pressures and land shortages.

There is limited livestock production in Liberia due to problems with disease. Although most households keep goat, pigs, and chickens in small numbers, cattle and sheep are far less common.

There appears to have been little study of natural resource management in Liberia. With timber as a primary export, significant deforestation has taken place. Beginning in 1971, the government has undertaken reforestation efforts and manages five major reforestation areas. However, forest depletion continues at alarming rates with timber exports serving as a major revenue source for the National Patriotic Front of Liberia (NPFL), the rebel forces led by Charles Taylor.

Under certain customary tenure systems, secret societies, centered around boys' and girls' bush schools, hold their activities in local forests, which they regard as sacred. Farming activities are strictly prohibited in or near these forests and the exploitation of resources from these forests is tightly managed by the community through an intricate set of rules and beliefs.

The Liberian war is not populist in nature, but is rather carried out by numerous enclaves of persons seeking power with no substantial agenda or constituency. As a war of personalities as opposed to ideologies, it is fueled more by a lust for power and the pursuit of vendettas than commitment to a cause. Given this scenario, the prospects for building a democratic government and political participation following the war seem particularly bleak. Repeatedly, cease-fires and disarmament attempts have failed, multifactioned transitional governments have been systematically rotated and torn down, and elections have been postponed. Given the intensity of the struggle to attain power, it is doubtful that most of the probable candidates would be interested in turning some of it over to local authorities, such as allocating authority over administration of land. Certainly land issues will need to come at the forefront of the political agenda once the conflict is put to rest in order to accommodate the influx of returning refugees and resettle the internally displaced. It remains to be seen what type of tenure system will be established and the degree of centralized control which will govern it.

During the late 1960s and early 1970s, much emphasis was laid on achieving food self-sufficiency in an effort to halt increasing dependency on imported rice. Policies aimed at export promotion and import substitution combined with increased spending on agricultural development and price subsidies for locally produced rice aimed at strengthening food security. Although these efforts produced few results, they did manage to lend increased recognition of the agricultural sector and its contribution to Liberia's economy and welfare.

Little mention is made in the literature of women's roles in land tenure and agriculture in Liberia other than to specify their major role in rice production and their limited rights to land except through their husbands.

### **Present policy position and reforms discussed**

In the current state of upheaval and violent power struggle it is unlikely that any significant policies have emerged on land tenure. However, it appears the country is reaching a stage where it is exhausted by war and at least a tenuous peace is possible. As a country in which three-quarters of the population rely mainly on agriculture and land for survival, rebuilding the country will demand an effective land tenure policy which provides a secure livelihood for farmers. While customary tenure systems may have once offered that security, their foundation, communities, have in many cases collapsed, sending forth a diaspora of refugees. The question remains as to how the displaced will be settled after the war. Is a return to community-based systems with land vested in the state appropriate, or even possible, if people have no longer been living among their lineage communities? Or is private tenure a more viable option? Finally, how can the Liberian public be engaged in policy dialogue and decision-making over land tenure to determine what makes sense on the ground?

### **Implications for policy dialogue and programming**

In order to better anticipate the postwar situation and assess popular sentiment, it may be worthwhile to engage in dialogue with the Liberian refugees to ascertain their intentions of returning after the war and, if so, what sort of land tenure systems they perceive to be most appropriate to their circumstances. One would also want to know their expectations of the new government on land policy issues and their ideas for rebuilding rural communities. Such an assessment could be carried out by local agencies, nongovernmental organizations (NGOs), and United Nations refugee committee (UNHCR) officials assisting the refugees. The results of the study could serve as a launching point for future formulation of land tenure policy.

A particularly challenging objective for Liberia will be to incorporate widespread political participation and democracy around land and other issues confronting the nation. In a postwar climate of fear and suspicion, however, more authoritarian structures are poised to emerge, breeding further political unrest. The Organization of African Unity (OAU) is perhaps in the best position to encourage democratization in Liberia given its capacity to provide peer nurturing rather than paternal prescriptions.

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## MALI COUNTRY PROFILE

by Mary Hobbs

### Executive summary

Mali has been undergoing reform processes in the areas of administrative decentralization; forest, water, and fishing legislation; and tenure and land rights since the overthrow of long-established dictator, Moussa Traoré, in March 1991. Indeed, revisions to the Forest Code had been set in motion prior to the 1991 coup. The overwhelming unpopularity of Mali's repressive tenure and resource management legislation ensured that efforts to increase local control were a high priority for the current democratically elected regime. A revised Forest Code and laws governing fisheries and wildlife protection were passed by the National Assembly in early 1995, but have been widely criticized for maintaining excessive control in the hands of state officials. This revised resource legislation did take into account the devolution of authority to more local administrative structures as described in the decentralization Code 93-8, which was passed in February 1993. However, critics have argued that it might have been more effective to tackle the statist-oriented tenure regime supported by the 1986 Code Domaniale et Foncier (CDF) prior to attempting other natural resource reform efforts (Barrière 1995). The 1986 Code is seen as a carry-over from colonial legacies of state control over land rights, and revisions to this text are considered a high priority.

### National policy and legal framework

Mali is a large, arid, landlocked country located in the heart of West Africa. Northern Mali is dominated by the Sahara Desert and borders Algeria and Mauritania. As one moves south the climate shifts to a wetter Sudano-Sahelian zone and becomes increasingly humid as one approaches the border with Côte d'Ivoire to the south. Mali's population of 10,462,000 is concentrated primarily in the southern third of the country. While Mali's landmass consists of approximately 1,220,019 square kilometers, only about 2% is considered arable, while an additional 25% is classified as permanent pasture and about 6% is forested.

New Malian land legislation as embodied in the Code Domaniale et Foncier was drafted in 1986. However, even up to the present date, tenure and resource legislation has maintained many fundamental characteristics inherited from French colonial law. Such characteristics include continued state ownership over all lands not registered as private property, the role of the central state as the sole legitimate authority governing natural resources, and the concept of exploitation (*mise en valeur*) as the principal means for establishing land rights. The concept of *mise en valeur* as well as the state's restrictive role in managing forests and other resources were first established during the French colonial government and have been preserved to a large degree in the 1986 Forestry Code. (Brinkerhoff and Gage 1993)

Efforts to foster European traditions of private property were first attempted in the colonial era and have been continued to the present day. However, despite the assumed evolution toward private, freehold property rights, methods for registering and titling land are complicated and expensive. Different administrative steps are required to register property rights under the 1986 law: land must be declared and registered as state property before being designated a "rural concession" or leasehold, and the land must first be granted a lease before being registered as freehold under the producer's name. Each of these steps requires considerable financial investment. The combination of high cost, complicated procedures, and an apparent lack of necessity for registration given local recognition of land rights may provide an explanation for the small number of officially registered fields found in Mali. It is estimated that only 2–3% of cultivated land is registered as either leasehold or freehold. In

other words, de facto land rights in Mali continue to rely on legitimacy as established through customary definitions at the village level.

Prior to the 1993 administrative decentralization legislation (Law 93-12), the 1986 CDF outlined official procedures for clearing and/or registering land as follows: requests were first submitted to the village chief, who then passed the request on to the arrondissement chief (an administrative authority) and other technical agents. After payment was made for securing these rights, clearing or preliminary registration could be undertaken. The 1993 decentralization law changed these procedures surprisingly little. The primary impact of this legislation was to create new administrative units, the rural and urban communes, which would be presided over by an elected council. The communes are to replace the arrondissement as the level of administration just beyond the village unit. Under the leadership of an elected mayor, the communal councils are to have responsibility for environmental protection, conciliating tenure disputes, and questions of responsible land use practices. Similar elected councils are to preside at the next highest levels: the *cercle*, and the region. These councils also possess de jure authority over land use, tenure rights, and environmental protection. At the village level, the decentralization legislation preserves the office of village chief, but chiefs are to be seen as state officials and must be approved by the administrative authority at the level of the *cercle*.

To summarize, the decentralization law of 29 January 1993 was primarily a redrawing of administrative lines with the presumption of greater local participation in resource and land management through the election of local councils. However, the decentralization of resource and land management as currently drafted is a top-down approach rather than a participatory initiative. Restrictive state regulations over forest use and tenure rights have not been drastically changed. It remains to be seen whether the proposed re-drafting of the 1986 Code Foncier et Foncier will give greater recognition to customary resource tenure rights.

### **Replacement and adaptation of indigenous tenures**

Indigenous tenure systems vary throughout Mali according to both ethnic traditions and land use practices. The variety of tenure practices can be categorized into three broad areas reflecting various production zones: the southern and central agricultural regions inhabited primarily by Bambara, Senoufou, and Sarakole peoples; the north-central floodplains of the Niger Delta where herding, farming, and fishing are practiced by Fulani and Bozo groups; and the northern desert and arid plains where Tuareg and some Fulani practice nomadic pastoralism.

South-central Mali is the main cultivation region where staple crops such as millet, maize and rice are grown in addition to cash crops like cotton and peanuts. The Bambara are the predominant ethnic group in this area. Tenure rights among the Bambara are granted by the village chief (*dugutigi*), who possesses rights of distribution as the titular head of the first family to settle the region. Land is historically granted to male heads of household who rely on family labor to cultivate common fields. Increasingly, young male members of families cultivate fields independently of their fathers, though they continue to contribute labor toward family production. Bambara women work in the fields of their husbands and fathers and will frequently cultivate garden plots or fields independently. While Bambara women rarely inherit fields, they do acquire independent fields through other means such as borrowing.

Among the Senoufou and Minianka of south-eastern Mali, the office of land chief retains a strong authority and quasi-religious role over cultivation and land rights. The land chief is seen as the spiritual liaison for the community, and his advice relating to land use and cultivation practices must be adhered to in order to avoid bringing misfortune to the village. The land chief possesses eminent rights over all lands within the village domain, but grants permanent and temporary use-rights to groups and individuals. Additional responsibilities held by Senoufou land chiefs include setting dates for harvesting and cultivation, determining location and selection of crops to be planted on collective fields, and scheduling the work days for collective fields (Sanogo, in Crowley 1991). Similar to Bambara communities, land tenure is becoming increasingly individualized among the



Senoufou and Minianka with the increase in production of cash crops (notably cotton). Competition for land access has also heightened in the face of declining availability and increased agro-pastoral production.

Among the Fulani herders of the Niger Delta in north-central Mali, tenure rights have evolved since the well-regulated pastoral code, or *dina*, established under the reign of Cheikou Ahmadou in the nineteenth century. Because of the ecology of the Niger Delta region and the seasonal nature of resource use, a variety of different groups—Fulani pastoralists, Bozo fisherpeople, and Bambara rice farmers—may compete for the same resources during different periods of the year. Similarly, the changing availability of forage grasses, water sources, and minerals for livestock necessitated the development of a system of rules for determining access to the same resources over time. The Dina Code as originally established by Cheikh Ahmadou during the last century was essentially a set of regulations aimed at controlling livestock movements, ensuring resource access to different users and extracting taxes on livestock. Under this system water and pasture rights were granted to heads of clans or transhumance groups. Access could be provided to outsiders in return for payment of a user's fee to the clan chief. Annual livestock movements were coordinated by an eighty-member council under the leadership of Cheikh Ahmadou.

While some aspects of the *Dina* Code remain, its effectiveness has declined significantly in recent years due to a variety of factors. Increased population growth and declining resource availability due to drought have heightened competition. Additionally, state policy reforms and development interventions have been disruptive to rule enforcement and tenure rights (Crowley 1991).

Among transhumant Fulani and Tuareg in northern Mali, tenure rights revolve around access to key resources such as water points, salt licks, and pastures. Priority use over such resources is acquired through either investments of labor or materials, first arrival, long-term residence, or donation from an outsider (as in the case of access rights to boreholes).

The 1986 revision of the Code Domanial et Foncier served to reinforce the state's legal ownership over all land not independently registered. For the first time this legislation did provide official recognition to customary tenure rights, but did not define them and gave them priority only in cases where the state did not exercise a need for these lands (ARTICLE 127). The state's priority right to land is evidenced by the precedence which administrative authorities' (arrondissement chiefs and *commandants de cercle*) decisions relating to dispute resolution or arrival of new settlers have over that of traditional leaders' decisions.

The rationale for retaining eminent state ownership of land and resources has been interpreted as a means of achieving two ends: (1) the legal basis for enforcement of restrictive environmental regulations and state expropriation of land without compensation; and (2) an effort to accelerate the process of privatizing land rights through registration (Barrière 1995).

Revisions to the 1986 CDF have been established as a high priority since the overthrow of Traoré in 1991 and the passage of the 1992 Constitution. Several initiatives taken since the political transition have provided some hope for those favoring greater local control over natural resources and increased participation in drafting legislation which would accommodate local realities. Most notably a series of public forums dealing with increasing local decision-making authority in natural resource use were held in 1991, including a number of public hearings which informed revisions to the bush fire code. Additionally, a national conference was held in 1993 to discuss means of accommodating local realities in future tenure legislation.

However, in spite of such optimistic signs, the revised Forest Code, which was passed in 1995, did not bode well for true reform. This legislation largely retained the power of decentralized administrative authorities to determine and enforce regulations controlling forest use.

## Tenure constraints and opportunities

Expansion of agricultural production in Mali has been dramatic over the last twenty years. For example, the fertile inland delta has experienced an increasing proportion of land (on the order of 51%) devoted to rice and cereal production (Barrière 1995, p. 37). The result of such expansion has been increased competition for land, decreasing fallowing periods, and the replacement of rangeland with cropland.

Livestock production strategies have also changed as a result of decreasing livestock numbers following the droughts of the mid-1970s and 1980s. Large numbers of livestock were sold by desperate Fulani and Tuareg herders; much of the cattle was purchased by absentee merchants or traditional cultivators. Thus increasingly pastoral herd owners have become herd guardians, often resulting in a decline in incentives for responsibly managing rangeland. Additionally the integration of livestock into farming systems for manuring and traction purposes has led to a greater concentration of livestock in proximity to fields, resulting in greater demands for rangeland near villages. Much has also been written about the transfer of nutrients from pastures to farmland as organic fertilizers are increasingly valued as a substitute for fallowing and expensive chemical inputs.

The 1986 Code Domanial et Foncier did not explicitly address the issue of rights to rangelands. However, given the prevailing centrist approach of this legislation, it is assumed that these resources fall into the category of “non-registered” land and are hence defined as state property.

Among sedentary agricultural populations in Mali there has been an increasing individualization of production strategies over the last few decades, which has led to greater fragmentation of family fields and increased competition for access to land. This trend is particularly noteworthy in those areas where cash crops are an important component of production, such as in the cotton and peanut zones of southeastern Mali. A countervailing force to this trend has been the difficulty of accessing sufficient labor resources to support individualized production. This is especially problematic given the prevalence of out-migration of young males in search of off-farm work opportunities, particularly during periods of crisis.

The Malian state has long had a protectionist strategy toward the use of natural resources, particularly trees. Since the 1935 Forest Code, the state has claimed ownership over all forest resources, including trees on individual fields. Complete or partial cutting of trees as well as harvesting of forest products have been strictly controlled. Significant yet limited reforms have taken place in the area of natural resource management since 1992. The former Service des Eaux et Forêts (Water and Forest Service) has been transformed to the Direction Nationale des Forêts, de la Chasse et de la Pêche, which oversees policies relating to forests, wildlife, and fisheries. The approach of this service as outlined in the 1995 legislation is to apply and enforce legislation relating to protected forests and reserves and to ensure responsible exploitation of natural resources (Barrière 1995, p. 169).

The 1995 Forest Code (Law 95-003) allows for private and community registration of some forests, thus increasing local control over the exploitation of these categories of resources. The legislation emphasizes the economic potential of forests and supports this through the organization of local wood-marketing cooperatives, which are granted annual harvest quotas and exclusive sale rights. The previous forest classification system is preserved under the new law, with restrictions varying depending upon the level of classification. The three different types of forest domains are: (1) classified forests; (2) protected forests; and (3) individual or community forests. Classified forests are subject to the strictest controls, but do allow for some exploitation according to the nature of the specific ordinance and through the issuance of a permit; community and individual forests are planted by local populations and registered in their names. These forests are subject to many of the same restrictions as those imposed on classified forests, but there is greater leniency with respect to harvesting products.

Revised wildlife management legislation was passed in March 1995 (Law 95-031) and spelled out restrictions governing the management of protected areas and the protection of wildlife resources. The various levels of protected zones were maintained as written in the 1986 Code Domanial et Foncier. Classified reserves include: international biospheres, integral natural reserves (where all types of exploitation are prohibited), national parks, sanctuaries, and wildlife reserves. Wildlife is considered a national resource, and permission to hunt on restricted areas is granted only through the issuance of a license. An underlying premise of the revised legislation is the protection of wildlife for tourist purposes.

Much of the instigation for current legislative reform in the areas of natural resources and administrative decentralization in Mali stems from the popular overthrow of twenty-eight years of dictatorial rule and the subsequent multiparty elections held in 1992. To date, the decentralization process has resulted in the creation of new administrative levels presided over by elected officials. In spite of this initiative, however, regulations relating to land and natural resources have not devolved significant authority to the village level, but rather have maintained state control through elected councils responsible for enforcing national legislation.

In rural areas the repressive nature of forest and other resource regulations were partially responsible for opposition to the previous regime. Popular pressure continues to play a role in influencing changes to forest and land tenure policies. These initiatives are also supported through the influence of external donor agencies, which have promoted greater local control and decision-making power over natural resources during the last decade.

National tenure legislation as embodied in the 1986 Code Domanial et Foncier granted broader tenure rights to women than is often the case under customary law. Women are allowed to register land independently under the 1986 law, but they are seldom granted exclusive land rights in the village context. Rather, temporary arrangements such as borrowing agreements are the primary means by which women gain access to land.

Distinctions do exist between various ethnic groups with respect to women's tenure rights. For example, among the Dogon and Rimaibe, women often farm small parcels independently of male relatives and are allowed exclusive rights to harvested products. These occurrences are much more rare among the Fulani, Bambara, and Malinke (McLain 1992).

Socioeconomic changes such as male labor migration are leading to increasing instances of woman farm managers. In spite of this reality, however, few women are granted local recognition as landowners independently of male relatives.

With respect to tree tenure, women often have the right to harvest wood and fruit from trees, particularly on family land. However, they are not granted ownership rights to trees independently of land, even in cases where they plant the trees themselves. While men are often able to acquire land rights through tree planting (*mise en valeur*), this is seldom the case for women.

### **Present policy position and reforms discussed**

While progress has been made in Malian natural resource legislative reform through the passage of a new Forest Code, wildlife and fisheries legislation, and an administrative decentralization code, fundamental issues relating to land tenure have yet to be addressed. This is particularly problematic given that the above-outlined legislation will be affected by any changes made to tenure regimes. As things currently stand, the 1986 Code Domanial et Foncier is still followed, despite the fact that it was officially abolished with the passage of the 1992 Constitution.

The redrafting of land tenure legislation is frequently cited as a high priority in Mali. Evidence of progress on this front includes the 1993 national convention on land tenure reform. Furthermore, the tenure reforms in neighboring countries such as Guinea and Niger as well as the international policy climate embodied in the 1994 Praia Conference on Decentralization of Natural Resource Management in the Sahel, and the activities supporting community-based natural resource management promoted by donors should have some influence on

the reform process. It remains to be seen whether future revisions will accommodate customary tenure practices and how issues of tenure security will be addressed. Among the issues that have not been confronted in previous policies are questions of pastoral tenure rights and women's access to and ownership of land.

### **Implications for policy dialogue and programming**

Current Malian land legislation does not provide the necessary juridical framework for guaranteeing security of tenure to many producers because: (a) it does not recognize *de facto* (that is, customary) land rights at the village level, and (b) it does not give local populations the degree of ownership over resources necessary to foster rational exploitation and conservation.

It has been recommended that a suitable interim method for providing the security necessary to facilitate land transactions and provide incentives for both short- and long-term investments would be the promotion of user contracts between owners and renters of land or between the state and a local collectivity. Such contracts could be tailored to the specific needs of the two parties, and conditions relating to longevity of use and permissible investments (such as tree planting, fencing, and land reclamation efforts) could be spelled out in terms suitable to both parties (Hesseling and Coulibaly 1991).

Since revisions to land legislation have not yet begun, it is recommended that popular participation play an integral role in deciding upon the nature of the revised law. Such a process was implemented in drafting revisions to the bush fire code in 1991. While the results of this process were positive, it did require considerable investments in time and money. A more streamlined approach could be followed in revising the *Code Foncier*. One method might consist of using a multidisciplinary survey team to determine public opinion, followed by conferences at the regional and national levels in order to allow for public dissent (McLain 1992).

Once draft legislation is written, an extensive public education process would need to be undertaken to ensure that Malians are aware of changes made to their rights and obligations in natural resource management.

While involving local populations in policy planning process, it will be necessary to guard against biases in favor of sedentarized groups. This is particularly crucial in regard to common property resources (pastures, forests, and water points) that are used by a variety of groups at different times of the year. Some means will need to be considered to allow for the participation of transient groups (such as pastoralists) in order to protect their security of access to these resources.

While the promotion of greater local responsibility and control over resource use is viewed as a positive initiative, a vital role for the state remains. In order to prevent the monopolization of prime resources by local elites, the state must have some means of ensuring equitable access. Additionally, the state has a role to play in cases of conflict over resource tenure, particularly when these conflicts involve different villages or ethnic groups. Finally, in addition to serving as an outside mediator and protector of marginalized groups, the state should act as a technical advisor in promoting sustainable production practices.

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## MAURITANIA COUNTRY PROFILE

by Kevin Bohrer

### Executive summary

Land tenure is an extremely sensitive issue in Mauritania. Although pastoralists' rights to natural resources once took precedence over those of cultivators in this country, the 1983/84 land tenure legislation reversed this situation by promoting agriculture and emphasizing the role of irrigation. Following a series of severe droughts, the value of irrigable land became the basis of ethnic conflicts that escalated to international proportions. The control of flood-recession land, the most reliable land asset in the Senegal River Basin, has long been a source of competition and tension within and across communities and ethnic groups in the region. Mauritania's adoption of a private-property framework for landownership proved to be an instance where tenure legislative reform was justified by the national government as part of their "Islamization" program, and welcomed by international donor organizations as a positive step toward individualization, but proved to be a vehicle for land grabbing by a dominant ethnic group.

### National policy dialogue and legal framework

With a land area of 1,030,700 square kilometers and only 2.3 million people (1994 estimate), Mauritania is sparsely populated. Yet since approximately 80% of the territory is desert, all but 20% of the population live in the southern third of the country in or near the Senegal River Valley. Most of the country is hot, dry, and dusty throughout the year. Only the narrow band of land along the river can regularly support agriculture. The country's primary natural resources are iron ore, gypsum, and the well-known fishing waters off Mauritania's coast. Although approximately 47% of the population is engaged in either agriculture, herding, or fishing, these sectors account for only 25% of the GDP. The rest of the people work in services, industry, commerce, and government. Despite the decline in the world price of iron ore, mining continues to be Mauritania's main source of revenue. The country was severely affected by the series of droughts (1967–1985) that plagued Sahelian West Africa. While an estimated 75% of the population were nomadic herders in 1965, this figure was reduced to 12% by 1988.

The ethnic groups of the Senegal River Basin have long interacted and even intermarried. All but the Bidan are dark-skinned. The Haratine are both culturally and linguistically aligned with the Hassaniya Arabic-speaking Bidan. Although "Haratine" is often glossed as "slave" in English, many of the Haratine were freed long before the official abolishment of slavery by the Mauritanian government in 1980. Nonetheless, many Haratine maintain a dependent relationship with Bidan families. Together the Bidan and Haratine, the white and black Maures, dominate the country numerically and politically, followed by the Halpulaar-en, the Soninke, and the Wolof. Before the droughts, pastoralism was the primary activity of the Bidan, the Haratine, and the Peul faction of the Halpulaar-en.

The local patterns of resource tenure had woven into them complex compromises among different user groups. Each of Mauritania's ethnic groups can make legitimate historical tenure claims to fertile flood-recession land in the Senegal River Valley. The Soninke cultivate land on both sides of the river in the eastern portion of the country, but at the time of independence the Halpulaar-en cultivated the great majority of the land throughout the middle river valley. Their dominant landholding position makes them an obstacle to the expansion of Bidan-sponsored development schemes in the region. By conquest, the Bidan claimed a portion of the right bank of the river, where they established emirates in the nineteenth century. Most of the Halpulaar-en initially fled from this region, but, encouraged by the French regime, many of the Halpulaar-en returned and arranged tenure rights

through marriage ties or the payment of tithes to the Bidan. The Bidan also put a portion of the river valley land under cultivation using Haratine labor, and since 1984 they have established large irrigation enterprise which similarly employ Haratine labor.

The effects of the 1983/84 tenure reforms, which were in part designed to address the rising values of river basin land as irrigation was promoted, were compounded by severe environmental changes. This combination of factors gravely upset the existing tenure compromises among the local communities and led to conflict of international proportions. What started as a border skirmish between Mauritanian herders and Senegalese farmers along the river escalated into ethnic riots in Nouakchott and Dakar. Tens of thousands of people were shuttled between the two capitals as black Africans were routed out of Mauritania and Maures were repatriated from Senegal. These events continue to shape issues of land tenure and use in Mauritania, for the dominant Bidan have seized the opportunity to expand their landholdings in the Senegal River Valley.

The Maure influence can be traced in the tenure legislation passed by the French colonial government that recognized the Islamic principal of *indirass*. The French began conquering the Senegal River Valley in 1858, and by 1900 they controlled the entire southern portion of the country. The 1905 *arrêté* established the right bank of the river as the boundary between the Mauritanian and Senegalese territories. It also established the right of farmers residing on either side of the river to cultivate land on the opposite side. While the *décret* of 1906 provided for the conversion of traditional tenure claims into private legal property through a registration process (*immatriculation*), later colonial legislation confirmed customary tenure practices that favored current over past Muslim communities or user groups. According to *indirass*, property rights must be continually exercised in order to be renewed. Assessment of "use" is usually based upon signs of occupancy or cultivation such as constructions or irrigation works. The time period after which rights lapse is usually deemed to be ten years, whether or not signs of use remain. In the harsh and often barren landscape of Mauritania, however, *indirass* can sometimes be applied within just two years since the signs of rain-fed agriculture may leave few traces. In general, the French colonial administration furthered the interests of elites in the area, complicated claims to land rights and relations between groups, and did little to advance the status of former slave groups.

Just before Mauritania gained its independence in 1960, the French passed Décret 60.139 of 1960 which both recognized traditional claims to land and nationalized all land not claimed or under recognized use. Reference was again made to *indirass* and a ten-year time limit for the demonstration of land use. The legislation also provided for the registration of land, but only urban plots were ever registered.

In 1983, Mauritania initiated its own tenure reform with Ordinance No. 83.127, followed by the Décret No. 84.009 of 19 January 1984. Broadly, the law states that all Mauritaniens have an equal right to be landowners. Individual private property, established through a registration procedure, is recognized as the standard form of landholding. Customary tenure systems in the flood-recession land of the river valley are abolished, but the pastoral collectives within Bidan customary tenure continue to be validated.

Although traditional tenure is officially abolished according to ARTICLE 3, individual registration does not replace the standard Islamic law (shari'ah) procedures that are declared valid when they do not conflict with the new law. All land that is not state domain, or is not registered as private property by an individual or legal cooperative, remains under the jurisdiction of the shari'ah. Traditional collective landholdings can be preserved in a community-based system only if the lineage or clan forms a legal cooperative that meets the criteria for cooperatives, including the equal rights and duties of all members which echoes the Bidan's pastoral tradition.

While promoting private property, the law is more bluntly intended to make clear the state's right to declare any land as state domain, leaving no recourse to traditional tenure claims. The state again bases this right on the Islamic principle of *indirass*, which asserts that land not used for ten years reverts from private ownership and becomes available to the Islamic community for private or public acquisition. The bulk of the ordinance and the

*décret* are devoted to establishing procedures for registering individual tenure, for acquiring domain land, and for making concessions to individuals from state domain.

A series of controversial ministerial directives followed the 1983/84 legislation. Essentially, these *circulaires* facilitated the granting of concessions without going through full legislative processes. This focus on large irrigated perimeters accorded with Mauritania's commitment to the *Organisation pour la mise en valeur du fleuve Sénégal* (OMVS), which Mauritania had formed with Senegal and Mali. The OMVS planned to provide the means for expanded irrigated agriculture throughout the Senegal River Basin. Droughts throughout the 1970s made the river valley one of the only viable investments in Mauritania. In the shadow of the OMVS, the 1983/84 legislation was designed to promote irrigated agriculture in the hands of Bidan entrepreneurs.

The initial international responses to Mauritania's new land law were optimistic. They were seen as positive steps by a national government to address agricultural productivity and growth through land tenure legislation. Observers also cautioned, however, that there was a great potential for the misuse of the law, especially the *indirass* stipulations. It was acknowledged that, due to changing ecological conditions, the residents of the northern two-thirds of the country would have an interest in securing access to some of the productive land in the southern one-third of the country, though there was no immediate evidence that the legislation was being used systematically to gain access to the productive river valley land. The actual drastic consequences of the law were not apparent until the border conflict with Senegal erupted in 1989.

### **Replacement and adaptation of indigenous tenures**

To understand the events of 1989 and their consequences, it is important to review the local tenure regimes that have been increasingly disrupted. In a country dominated by Maure pastoralists, before the droughts the most important traditional tenure rights were the rights to seasonal pasturage, the rights to tree crops such as dates, and the rights to water sources. The Maure's customary tenure regime, which advantages pastoralism over cultivation, dominated the northern two-thirds of the country. Most Maure agricultural endeavors were undertaken by Haratine families associated with Bidan landholders. Even if they were freed over a century ago, Haratine are usually considered to be cultivating Bidan land. Only in areas where the Haratine have themselves cleared forested land are they considered landowners according to standard Islamic practice.

Land tenure cultivation rights were much more explicit and varied, however, in the Senegal River Valley, which contains almost all of Mauritania's irrigable land. This southern region has been cultivated for many centuries, mostly by the Halpulaar-en and Soninke. Their customary tenure systems recognize superior and inferior claims to land that approximate ownership and occupancy rights. Most of the fertile river valley land is held in common property at levels ranging from the extended family to the lineage. Individual tenure of smallholdings would be generally impractical and inefficient in the flood-recession context.

The balance of primary and secondary use rights dictates who may cultivate a given piece of land depending upon the availability of arable land in relation to seasonal rainfall. Land that is inundated for more or less than optimal amounts of time becomes less productive. As a result, the local agricultural systems, which are complemented by fishing and pastoral activities, have incorporated risk management strategies such as common property (to increase the size of the portfolio of land accessible to each cultivator) and annual reallocation of land after the flood recedes (to ensure that individual cultivators each have access to a viable holding). Approximately 80% or more of the cultivators have adequate primary or secondary rights in years of good rainfall. The remainder of the population is obligated to negotiate access at disadvantageous terms, particularly in poor years. The payment of tithes secures tenure rights ranging from near freehold to temporary usufruct.

The traditional agricultural systems in this region utilize both flood-recession land (*waalo*) and rain-fed land (*jeeri*). *Jeeri* land is never flooded. Since it is more plentiful and requires more clearing and preparation before cultivation than *waalo* land, *jeeri* land is characterized by more flexible tenure claims. In many cases, farmers



without ownership claims can cultivate the land without paying anything to the nominal owners. The most desirable *jeeri* fields, however, tend to be grouped and located near settlements because there is a high risk of damage from cattle and birds when the fields are isolated. Such *jeeri* land can command a higher tithe, though some Islamic judges consider that of agricultural land, only *waalo*, not *jeeri*, qualifies as traditional private property.

*Waalo* land is the most valuable land asset and it is regularly in short supply. Flood recession is intrinsically unpredictable in terms of how much land is annually inundated and, equally important, which land is best suited to agriculture in a given year. Such unpredictability is a major concern in the arid Sahel. Even when inundated, the flood-recession land varies in quality. Within the *waalo*, cultivators recognize *fonde* and *halalde* soils according to their proximity to the water level and their clay content. *Fonde* soils are more elevated, less regularly inundated, receive fewer clay deposits, and therefore are lighter and have better drainage than *halalde* soils. Irrigation projects have rendered *fonde* land more valuable than before because, while this land has always been near the river and usually flooded in years of good rainfall, it now is ensured of water access every year.

Many of Mauritania's current tenure clashes especially the problems along the Senegal River, can be traced to a number of factors. First, the droughts accentuated land pressure demands in the river valley, which contains not only the most productive agricultural land but also the most dependable pasture resources. Second, irrigation development, especially that resulting from the OMVS, increased tensions in the river valley with the promise of investment opportunities in the new irrigated perimeters. Third, the 1983/84 tenure legislation favors state intervention in the river valley and promotes the arrival of new landholders. In 1989, these three factors reached a violent peak in the border dispute with Senegal. The resulting repatriation of Maures placed even further demands on the limited natural resources. The new arrivals wanted access to agricultural land at the same time that Mauritanian herders were increasingly pressuring the local pasture and water resources since their herds were barred from traversing the river into Senegal.

A background to all of these events is the delineation of an international boundary in a resource use zone that spans two countries. Halpulaar-en and Soninke customary land territories (*leydi*) may include land on both sides of the river. Thus under customary law, many villagers hold land use rights in both Mauritania and Senegal. While the Mauritanian government refers to the 1905 *décret*, which situates the division of the colonial Mauritanian and Senegalese territories in the middle of the river, the Senegalese government refers to a 1933 *décret*, which places the boundary at the right bank of the river—the Mauritanian side—indicating that the entire river belongs to Senegal. One land use study noted that 21% of the people who cultivate on the right (Mauritanian) side of the river actually reside in Senegal. While recently expelled Mauritaniens have noted: “Si nos terres sont en Mauritanie alors nous sommes Mauritaniens” (Leservoisier 1995, p. 357), tenure legislation does not respect the cross-border tenure legacies and linkages that continue to shape interaction in the region.

### **Tenure constraints and opportunities**

Mauritania presents a unique situation where the rights of herders once took precedence over the rights of cultivators, but where, due to a series of events precipitated by climatic change, agriculture is now promoted by the national government in the interests of the former herders. Herders and cultivators have always come into conflict with each other, but the promotion of irrigation especially has generated or escalated several types of conflict. In some instances, the state has distributed to new landholders irrigated land that is simultaneously claimed by others making reference to precolonial and colonial-era land concessions. The increased value of irrigated land has prompted some cultivators to organize their farming activities more individually, thereby undermining traditional community and lineage-based land-holding practices. Guaranteed water access through irrigation has drastically altered the value of some land along the river. As the value of the land increases, tenure practices that were once flexible now become more rigid as landholders solidify their claims over the land. Irrigated perimeters along the banks of the river severely limit pastoralists' access to the water. Herders are also

barred from allowing their animals to graze within the perimeter after a harvest for fear that the animals will damage the permanent infrastructure such as the canals, dams, and embankments.

These effects of the promotion of irrigation have been compounded by the application of the new tenure legislation. The *indirass* principle in particular presents a problem because villagers might not be able to use their land for over ten years due to unfavorable climatic conditions or labor constraints. The legislation also makes it easy for many irrigation administrators to abuse their power and privilege in distributing land, claiming a large portion of the land for themselves. The administration is mostly Maure, and distributions to new private landowners have favored Maures. The intentions behind the abolition of common property and the insistence that only privately registered land has real legal value have become evident now that the various *circulaires* provide an easy means for Bidan absentee landlords to develop land in the flood plain.

A concern for natural resource management was brought to the forefront by the droughts. Desertification in the fragile Sahelian zone, which was already aggravated by overgrazing and deforestation, was accelerated by the lack of rain. The state is currently focused on the promotion of expanded irrigated agriculture. Although Mauritania is a member of the Sahelian drought-control organization CILSS (*Comité permanent inter-états de lutte contre la sécheresse dans le Sahel*), anti-desertification measures have been limited. A 1987 Forest Code promotes reforestation programs, particularly dune stabilization, but more innovative forest and water protection measures have not yet been put forth.

Fishing rights are another of Mauritania's natural resources that could be more favorably legislated and administered in order to ensure sustainability. Mauritania's coastal waters are among the richest fishing areas in the world. With limited investment resources and infrastructure, most industrial fishing in Mauritania is conducted by foreign-owned and -operated vessels which include on-board processing facilities. The government instituted a broad fisheries policy in 1979 in order to control the rate of exploitation and to augment Mauritania's revenues through more careful stock management and rights allocations. To date, however, Mauritania cannot secure value-added revenues from the fishing industry because it lacks the appropriate processing and storage facilities. The future of the fishing industry, and the important proceeds it brings the country, is severely threatened by recent overexploitation by foreigners. Even with more rigid legislation, however, the government will not be able to manage more effectively the fishing industry unless it also obtains the means, such as a navy, of enforcing fishing regulations.

Mauritania's current leader, Colonel Maaouiya Ould Sid Ahmed Taya, came to power by military coup in 1984. With the adoption of the latest Constitution in 1991, however, the democratic process was opened since organized opposition parties were officially permitted. Colonel Taya was elected as the first president in 1992, and, though opposition parties are legal, membership in Mauritania's umbrella resistance organization (FLAM, *Forces de Libération Africaine de Mauritanie*) is still considered grounds for arrest.

The organization and division of domain land into concessions is not a process that incorporates local-level input. According to the 1984 *Décret*, regional land commissions are created to divide and distribute collectively held land among newly formed cooperative members. These land commissions are not directly responsive to the local community because they are presided over by the *préfet* and include a magistrate of the tribunal of the *département*, the commandant of the local militia, the head of the regional agricultural service, and a representative of the extension service.

In accordance with provisions in the 1983 Land Law and the 1992 Constitution, local land offices have also recently been opened in a few towns in the river valley. Unlike the land commissions associated with cooperatives, the local land offices inform the national cadastre and oversee the institution of individual private property rights. As of 1995, however, it was still unclear if these regional offices would be sufficiently empowered to settle land claim disputes, especially those generated by the arrival from Senegal of thousands of repatriated Mauritians, who have been granted land that was previously occupied.

The series of droughts which began in 1968/69 has been a principal impetus for change in Mauritanian land tenure legislation aimed at changing land use practices and promoting increased agricultural production through irrigation. In the Senegal River Basin, much of the agricultural development has been financed by upper-class, Bidan entrepreneurs, but the schemes are based on Haratine labor. Moreover, a significant part of the land granted by the state to Bidan is claimed by Halpulaar-en, who insist that their tenure claims over seemingly unused land continue despite their inability to cultivate in years of drought. The effects of the droughts have also attracted Bidan to agriculture since they have lost the majority of their livestock herds and can no longer practice transhumant pastoralism. Most recently, Bidan business losses in Senegal (and expulsion from that country) have made the irrigation schemes all the more appealing as investment targets. Donors' insistence on privatization of the schemes and on individualization of tenure have facilitated Bidan dominance and use of hired labor.

Expanded irrigation and increased rice cultivation along the Senegal River have resulted in a net loss in tenure rights for women. The productivity of the "small irrigated perimeters" depends in part upon women's labor contributions. Women, however, have resisted participating in some of the perimeters because, to devote time to the new perimeters, they must neglect their traditional upland rice and peanut fields as well as their dry-season gardening activities. Women also resist working in the perimeters because this irrigated land falls into the category of land controlled strictly by men, whereas the customary tenure regime applicable to their traditional fields was more flexible. In some cases, men have agreed to permit women to form their own cooperatives within the irrigated perimeters, and thus to exercise their own management rights over the parcels, but only in exchange for offering one-half of their harvests to the men's cooperative. The irrigated perimeters, therefore, both divert women's labor away from their traditional fields and limit the extent of their land tenure management rights.

### **Present policy position and reforms discussed**

The ecological unity of the Senegal River Valley requires that proposed solutions to the tenure, and associated ethnic, problems go beyond national considerations. The Senegal River Basin and its user populations span two countries, Mauritania and Senegal. Significant revisions in both development policy and land tenure legislation are necessary to begin to rectify some of the inequities and injustices of the recent years. The government needs to recognize the virtues (risk management) as well as the failings (inequality) of the customary tenure systems in the region. A more democratic administrative and development structure involving small-scale producers is needed to ensure that the groups dominating the national government do not displace local farmers in the river valley only to establish large-scale absentee-landlord agricultural projects.

### **Implications for policy dialogue and programming**

In light of the violent events of 1989 and the subsequent ongoing tensions involving land issues, the Mauritanian government may choose to reevaluate the tenure legislation changes it made in 1983/84. Specific considerations could include: revise *Ordinance* 81.234 and *Décret* 84.009 to recognize the local collective tenure systems, which incorporate risk management advantages in the fragile Sahelian environment; recognize the shari'ah principle of the legal validity and priority of oral testimony in the revised land tenure legislation in order to protect the customary tenure rights of populations living on or near land incorporated into the state domain; recognize the customary access and use rights of Senegalese citizens to land on the right bank of the Senegal River; decentralize the procedures of the 1983/84 legislation so that land allocation and dispute settlement decisions do not have to be approved at the ministerial level while leaving room for appeal to higher authority and scope for national policy implementation as well as for regional differences; restructure the membership of the regional land commissions so that they include local-level representation beyond state appointees; and establish the right of indigenous cultivators to have first choice for any newly irrigated land made available through state expropriation.

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## **NIGER COUNTRY PROFILE**

**by Mary Hobbs**

### **Executive summary**

Niger has been in the process of revising land tenure and natural resource legislation since 1986. This new legislation, identified collectively as the Rural Code, is motivated by the perceived need to rationalize resource tenure in the face of increased competition. A history of contradictory land policies, population growth, and environmental degradation has led to escalating tensions over resource access. Some of the more innovative underlying principles of the legislative reform process include: (1) recognition of customary definitions of tenure rights; (2) efforts to promote tenure security through registration and titling; (3) legal sanction of customary dispute-resolution mechanisms; and (4) establishment and legitimization of community-based resource management institutions. However, in light of political preoccupations accompanying the institution of Niger's first democratically-elected President in 1992 and his subsequent overthrow in early 1996, the Rural Code process has not been a central focus of the government in recent years. Considerable technical and financial assistance has been provided by various donors (including USAID), but with continued international support in jeopardy as a result of the military coup, the Nigerien Rural Code faces an uncertain future.

### **National policy and legal framework**

Niger is a land-locked country whose northern regions are encompassed by the Sahara Desert. The majority of its 8,846,000 inhabitants live in a narrow band of semifertile land located in the Sudano-Sahelian ecological zone along Niger's southern border with Nigeria, Benin, and Burkina Faso. The northern desert area is sparsely populated, primarily by nomadic and settled Tuareg and Fulani peoples. While the total landmass consists of 126,700,000 hectares, only about 3% is considered arable and an additional 7% is classified as viable rangeland.

Nigerien land tenure systems are best understood as amalgams of customary law and practices which have been influenced by colonial and postindependence legislative initiatives. Under the French occupation, three policies in particular have had ramifications on tenure rights to the present day: (1) the (theoretical) implementation of private freehold tenure validated by the system of registration spelled out in the decree of 26 July 1932; 2) the strengthening of village and canton chiefs' control over land allocation, particularly through the legal obligation of tithe payment (1953 decree); and (3) the state's right of eminent domain over all land not under private leasehold (Decree 2745 A.P. of 29 September 1928).

The first of these initiatives, registration of freehold tenure, has been largely nonexistent except in some urban and peri-urban areas. However, as a result of current efforts to improve rural tenure security, the institution of arrondissement-level tenure commissions responsible for surveying and titling rural land is being promoted, albeit on a voluntary basis. Initial legislation defining the role of the tenure commissions and delineating procedures for land registration was drafted in August 1995 but has not yet been approved. However, the financial and institutional feasibility of widespread land titling has been brought into question; it seems fairly certain that the Nigerien government does not have the resources to undertake this initiative independently. Additionally, the preponderance of contradictory land claims as well as overlapping resource use-rights ensures that many individual efforts to register claims will be disputed.

The second land policy legacy involves the evolutionary nature of chiefs' rights over land allocation. Under the French, the typically ceremonial role of traditional chiefs as land managers was reinterpreted as a near-feudal right to resources within their domains. In the case of canton chiefs, many such authorities were in fact

established by the French and given full allocative authority over land within their jurisdictions, including resources controlled by village chiefs.

Following independence, efforts were made to diminish the power of traditional authorities under both the Diori and Kountché presidential regimes. Law 60-29 of 25 May 1960 officially abolished the payment of rental tithe to chiefs, and Law 61-30 of 19 July 1961 recognized use-rights of 10-years' duration as full ownership rights. The Diori regime went even further in limiting the feudal power acquired by chiefs with the passage of Law 62-7 suppressing chiefs' allocative power over land. Such trends were further reinforced under the Kountché regime with the 18 December 1974 Presidential declaration of "land to the tiller".

While these legislative acts did have some influence on local land rights, it is important to note that such impacts were highly variable. Assertion of individual land rights depended on a number of factors including knowledge of legislation and a willingness or ability to defy local power structures. The strength of land-to-the-tiller claims was further hampered by the ambiguous authority of local chiefs to conciliate resource conflicts. Under President Kountché, village and canton chiefs were first granted dispute conciliation authority, then later removed from this role. However, despite such policy reversals, customary practices continued to recognize the chiefs' role in determining land rights, thus ensuring that many claims which opposed the chiefs' interests would not be decided to the plaintiffs' advantage.

The Rural Code does little to clarify the confusion over chiefs' land authority. The Principes d'Orientation du Code Rural of 1993 effectively repeals all previous contradictory legislation, including populist efforts such as the land-to-the-tiller decree. However, methods of determining property and use-rights under the Rural Code are quite vague. Such rights are to be determined through means of "collective memory" and occupation since "time immemorial". This failure of the Rural Code to clearly define the nature of legitimate property rights ensures that the legacy of confusion will continue.

With regard to decision-making over resource disputes, the 1993 legislation strengthens the role of traditional authorities by sanctioning their primary position in land dispute resolution. However, methods for appealing decisions beyond traditional authorities do remain under the Rural Code. The state's intervention can be sought through the regional-level Ministry of Justice; the arrondissement-level tenure commissions can also be called upon to arbitrate land disputes.

Finally, the nature of the state's authority over national resources and its ability to expropriate land for public use have undergone some degree of transformation under the Rural Code. The postindependence administrations continued the colonial legacy of state ownership over all "non-appropriated" land with the passage of Ordinance 76-35 of November 1976. Along with similar previous legislation, this ordinance allowed the state to expropriate land at will with no compensation and provided the means for enforcing severe restrictions and fines for "irresponsible" land uses. The Principes d'Orientation du Code Rural modifies this tradition through the subtle redefinition of Nigerien resources from "state-property" to a "national common property" (*patrimoine commune*). This redefinition is meant to strengthen individual and community property rights while maintaining an obligation of responsible use. Furthermore, the 1993 Rural Code requires just compensation for resources expropriated for public use.

Regarding the state's regulatory role over resource management, both the Principes d'Orientation and the 1994 draft text on "land use" (*mise en valeur*) give authority to arrondissement-level tenure commissions to temporarily remove land from owners in cases of irresponsible management, neglect, or abuse. Therefore the state's power to intervene in questions of land management is preserved.

## **Replacement and adaptation of indigenous tenure**

Indigenous tenure systems in Niger share the commonality of the influence of Islamic law (shari'ah); however, there remains a great deal of diversity between ethnic groups regarding such practices as inheritance, individual

versus family tenure, and women's rights of access and ownership. Furthermore significant differences exist between tenure practices of historically cultivating and pastoral peoples. Where resource uses overlap, as in access to common pool resources like pastures, forests and ponds, tenure rights are generally shared according to locally established, but continually evolving rules.

Among settled, cultivator communities in Niger, the right of first occupant is the principal means of legitimizing tenure rights. Thus if a settlement is established in a previously un-inhabited location, the chief of the village has the power to grant permission to newcomers to settle within the village territory. Among the agricultural Songhai and Zarma of the western Niger river basin, the allocative authority of chiefs over land within their jurisdiction remains strong. Theoretically village and canton chiefs can call back land for redistribution, but this is extremely rare. Additionally, few Zarma and Songhai women cultivate land independently of their family units, and women's inheritance of land is extremely rare despite its sanctioning under Islamic law.

Among the Hausa and settled Fulbe (Peul or Fulani) speakers of central and eastern Niger, land ultimately belongs to the community and is unalienable; acceptance into the community gives one use rights. While community acceptance and access to land are still granted by village, canton, or provincial chiefs, the concept of "chieftaincy lands" is not as proprietary as is practiced among the Zarma and Songhay. Women in Hausa society frequently cultivate individual fields, whether acquired as a gift from their husbands, through inheritance, or through purchase. Women's inheritance of land is fairly common among the Hausa.

A variety of land transactions and tenure arrangements exists and continues to evolve in Nigerien agricultural communities. Borrowing fields is a common means of access for both newcomers and junior family members; these loans are often compensated through annual rental payments or symbolic tithes of harvested produce. Another common form of customary transaction is pledging, whereby a monetary loan is given to a landowner in return for cultivation rights. Once the landowner repays the loan, he reclaims field ownership. More recently, and particularly in the relatively prosperous agricultural zone of south-central Niger, land sales are becoming quite common. All of these various forms of customary land transactions tend to be validated through the use of witnesses rather than written contracts or formal registration.

Land tenure arrangements among pastoralists can be divided into two major types. One type is found among the Tuareg (and other Tamacheck speakers), where there is a regular transhumant circular movement that corresponds to the cyclical appearance of the rainy season. In the dry season, herd movement is organized around a series of wells that have been put in by the group. The other land tenure/range management system is best represented by the Fulbe-speaking Wodaabe, nomadic cattle keepers who were able to move into areas under Tuareg control after the French established their rule. In general, they migrate along an east-west axis, thus crossing the traditional Tuareg routes. In both pastoral groups it is the control of water that gives control over land.

Increasingly the pastoralist/cultivator dichotomy is weakening in Niger as various ethnic groups are engaged in both cultivation and livestock production simultaneously (agro-pastoralism). This shift in production strategies has had significant impacts on the management of and access to both range and field resources.

The current legislative reform process is moving in the direction of recognizing customary tenure practices. However, the emphasis on individualizing and formalizing tenure rights through titling tends to undercut the strength of this recognition. The 1993 *Principes d'Orientation* did allow for group registration (including registration of range by pastoral groups) as well as registration of a variety of different levels of tenure rights. Yet, the proposed 1995 draft text on the role of the tenure commissions contradicts this original definition by not recognizing group registration.

The need to maintain flexibility in the recognition of tenure rights is an issue of central concern and ongoing debate in the Rural Code process. The 1993 *Principes d'Orientation* provided *de jure* recognition of community-

based tenure regimes; nonetheless, it remains to be seen if the future complementary texts will respect or contradict this initiative. The important issue of seasonal and overlapping tenure rights to common resources has been addressed to some degree by the draft legislative text on *terroirs d'attache* (pastoral lands); however, there continues to be a need for further clarification.

### **Tenure constraints and opportunities**

Population pressures have increased in the southern agricultural zone of Niger following devastating droughts in the mid-1970s and 1980s. As livestock herds were decimated or sold, marginalized Fulani and Tuareg pastoralists settled in the south where they have increasingly relied on agricultural production. These recent settlers often have very tenuous land rights.

Over the last few decades, Niger's traditionally dual agricultural economy of pastoralism and cultivation has gradually evolved into mixed agropastoral production systems. As cultivable land is coming under increasing population pressure, competition for organic fertilizers has intensified in an effort to maintain production levels in the absence of fallowing. Some negative consequences of this trend include the permanence of large numbers of livestock in proximity to agricultural settlements, leading to increased crop damage.

In an effort to defuse these increasing tensions, the Rural Code legislation calls for the participatory redrawing of range and livestock corridor boundaries. However, this undertaking has the potential of being highly contentious as increased cultivation within the boundaries of pastoral resources has led to wide divergences of opinion regarding legitimate land use claims. Ironically, in many cases it is the sedentarized herders who are cultivating in pastoral areas due to their limited means of acquiring access to cultivable land.

Manuring of fields has become a critical strategy in maintaining soil fertility in Niger. The temporary nature of this and similar short-term investments such as *zy-hole* digging (a method of planting crops in recessed, manmade holes where fertilizer and organic debris are concentrated) has led some critics to question the validity of arguments relating tenure security to enhanced resource management. Furthermore, while field manuring may be a beneficial innovation for crop productivity, it is resulting in the transfer of valuable nutrients from rangeland to cropland, resulting in serious degradation of many range resources.

Niger's natural resources have suffered from the devastating consequences of drought and population pressure over the last several years. The resulting environmental degradation has resulted in some rather innovative policy directives, particularly in the area of forest management.

Through the instigation and financial support of a variety of donor organizations, Niger began experimenting with community-based forest management strategies in the 1980s. The perceived success of some of these early initiatives has led to efforts to organize local wood cooperatives and *gestion du terroir* committees. *Gestion du terroir* is an approach which has been promoted in various Sahelian and West African countries over the last decade. Broadly stated, it consists of establishing locally appointed or elected councils charged with decision-making and enforcement of rules of access governing natural resources at the level of the community and its surrounding resource base (the *terroir*).

Both the Principes d'Orientation and the draft 1995 administrative decentralization legislation contain enabling laws for the establishment and recognition of local natural resource management structures. Many *gestion du terroir* committees have already been established within the context of development projects, but they await legal recognition in order to play a greater role in environmental management.

An element of the Rural Code will consist of new legislation to replace the outdated Forest Code; however, this text has yet to be drafted. The Principes d'Orientation does contain several articles which address the issue of use-rights in protected areas. Protected areas may be established either to reverse severe degradation or to preserve ecologically significant resources. Because of the difficulty in confiscating land in a situation of scarcity,



few protected areas exist in Niger and it seems unlikely that additional ones will be created in the near future. Some of the most noteworthy reserves include the Aïr/Ténéré Nature Reserve found in northern Niger and the National Park “W” located in southwestern Niger and bordering similar reserves in Benin and Burkina Faso. Park W was established under the colonial government and has provided an important habitat for endangered wildlife. However, illegal poaching and livestock grazing do occur as a result of enforcement problems.

In 1991, Niger held a national conference to draft a new constitution which legalized political parties, allowed for freedom of the press, and established a free and open presidential and congressional election process. The process of land tenure reform as embodied in the Rural Code has not been directly linked to the democratization process. In fact, the instigation for the Rural Code preceded the national conference by four years.

The first democratically elected Nigerien president, Mahamane Ousmane, came to power in 1992. Ousmane’s administration was hampered by divisive party politics and the control of congress by opposition parties. Since the national conference, nine major political parties and several minor ones have been established in Niger.

In January 1996, President Ousmane was removed from power through a military coup led by General Ibrahim Mainassara. The coup leaders’ stated rationale was to end the political deadlock which they felt threatened the country’s stability. The military leaders appointed a civilian prime minister within a month after the coup, began the process of drafting a new constitution, and set a timetable for the organization of national, regional, and local elections.

At the time of this writing, USAID and several other international donors have suspended aid to Niger as a result of the coup. Because the Rural Code legislation is heavily dependent on external financing, it is currently unclear whether the process will be continued should external donors cut off aid.

It is difficult to determine if land tenure reform will be a priority for the future regime. However, given the current preoccupation with rescheduling elections and drafting a constitution, it is doubtful that any further action will be taken on the Rural Code until at least 1997.

Underlying efforts to promote tenure security is the need to enhance productivity in the Nigerien agricultural sector. Even in good harvest years, Niger has not been able to satisfy the food needs of its population without significant imports and aid. This situation is further complicated by climatic variability which has caused both drought and excessive rainfall and can dramatically affect annual harvests.

Following the devastating drought of the mid-1970s, President Kountché made food security a major priority. He attempted to accomplish this by exhorting populations, rural and urban alike, to “return to the land” in an effort to enhance food production. This national campaign included the development of large-scale rice irrigation projects in some areas of southern Niger. Additionally, Kountché provided land grants to numerous bureaucrats, particularly in fertile areas south of the capital. These grants were allocated at the expense of previous land users, causing serious disgruntlement among expropriated populations.

Although difficult to substantiate, there are reported increases in land degradation on some of the absentee-owned fields in arrondissements such as Say. This degradation has been attributed to poor management and the inappropriate use of capital inputs such as machinery and fertilizers. The Rural Code does not seek to address problems of absentee ownership, perhaps due to the influential positions of many of these landowners within the government structures.

As previously discussed, women’s tenure rights differ among the various ethnic groups in Niger. Among the strongly Islamicized Hausa and Fulani speakers of southern Niger, women have historically been allowed to acquire land through inheritance; yet these occurrences were relatively rare due to the custom of females marrying outside the birth village. However, as increasing numbers of men migrate away from villages in search of work,

female acquisition of land through both inheritance and purchase appears to be on the rise, particularly among the Hausa of central Niger. Thus, the trend toward increasing numbers of female-headed households in the face of male out-migration makes the need to solidify women's tenure security of paramount importance.

In spite of these trends, the issue of women's tenure rights has not been specifically addressed by the Rural Code legislation to date. Serious concerns exist among women regarding their ability to register fields independently of husbands and other male family members. This is particularly true for land acquired through gift or inheritance within the family. Such land acquisition is seen as insecure in the event of divorce or death of the husband. While this insecurity exists even in the absence of registration, there is little within the current policy reform debate which promises to rectify the situation.

### **Present policy position and reforms discussed**

At the time of this draft, a national convention is under way in Niger to draft a new constitution and schedule future elections to replace the democratically elected government that was overthrown in a coup earlier this year. The priority given to these initiatives along with the uncertainty surrounding the future elected government have combined to place the Rural Code and other legislative activities on hold.

In 1993, the framework of the new land and resource legislation, the *Principes d'Orientation du Code Rural*, and an additional text on water resources were completed and approved by the National Assembly. Additionally, some of the accompanying legislative texts to the Rural Code have been drafted, including texts on "Mise en Valeur" (land use), "Terroirs d'Attache" (rangelands), and the "Role of the Land Commissions" (Commissions Foncières), in addition to a text on decentralization of administrative institutions. None of these texts has yet been approved by the National Assembly (now temporarily dissolved), nor have the texts been studied in depth in order to identify inconsistencies and impracticalities contained therein. Several additional texts addressing specific issues in resource management await drafting before the Rural Code is complete. Most notably these texts include the Forest Code and codes on wildlife, fisheries, and property rights.

Progress on the Rural Code legislation has been greatly facilitated over the last five years through the support of a number of international donor agencies and governments. Because of the current political situation in Niger, financial assistance from outside donors has been temporarily, and in some cases perhaps permanently, suspended. It is also unclear whether the Rural Code reform process will occupy a priority position in the policy objectives of the new government to be elected into office in late 1996.

### **Implications for policy dialogue and programming**

Should progress continue on the Rural Code, a number of issues remain which will need to be addressed if the Code is to become a viable tool for rationalizing land and resource tenure in Niger. These issues can be broadly classified under the following headings: feasibility, participation, and equity.

Many of the initiatives proposed in the *Principes d'Orientation du Code Rural* and other draft texts rely upon financial and institutional capabilities that do not currently exist in Niger. Most particularly this is the case with the proposed establishment of arrondissement-level land commissions and their role in registering land rights. No one has yet seriously addressed the financial and human resource capacity that will be needed if the proposed surveying, titling, and registration activities discussed in the Rural Code are to be implemented.

Other areas of difficulty are the determination of *mise en valeur* (defined in the draft text as responsible resource management) and the implementation of participatory land-use planning. Current arrondissement agents do not have the time or resources to adequately monitor resource management on all local properties as described by the draft text. The additional complication relating to the potential for abuse of this power has also not been addressed.

Finally, the human and capital resources needed to implement a truly participatory effort at land use planning do not currently exist at the arrondissement level. Training in participatory approaches and conflict resolution would be critical to the success of such an initiative. Furthermore, the transportation and financial resources needed to demarcate pastures and livestock corridors will be considerable.

Although a public information campaign has been undertaken to announce changes made under the new Rural Code, no widespread participation has been involved in drafting the *Principes d'Orientation* or the other legislative texts. Assuming that a goal of the process is to make national legislation more relevant to local conditions and to bridge the gap between customary and written law, it is argued that such goals would be more attainable through the involvement of customary authorities and rural Nigeriens, at least in a consultative capacity, in the legislative process.

Also, as previously alluded to, the implementation of a truly participatory land-use planning process will need to involve *all* users of a particular resource base, including pastoralists, women, and temporary or recent inhabitants. Facilitation of such a process would necessitate the involvement of persons skilled in participatory approaches and arbitration techniques.

In order to avoid the accumulation of land and resource rights by those in positions of economic, political, or social authority, efforts will need to be made to ensure that access is maintained for those with less secure rights. Examples of tenuous access include the use of rangelands by transhumant pastoralists and the use of farmland by recent settlers, women, and borrowers. Security of access or use rights might be accomplished through such means as promotion of user contracts between lenders and borrowers and registration of group rights to common property resources such as rangelands. The Rural Code legislation as currently drafted does not clearly address these issues, though some texts do allow for group registration.

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## **NIGERIA COUNTRY PROFILE**

**by Anna Knox**

### **Executive summary**

In 1978, the military government of Nigeria promulgated the Land Use Decree in an effort to impose a land tenure reform that would replace the authority of customary leaders over land tenure with state control and thereby impose a uniform, nationwide land tenure system. The legislation has been fraught with problems, not the least of which has been heightened tenure insecurity emanating from the government's liberal use of its compulsory acquisition right and general public confusion over the law's provisions. Nevertheless, the law's unique entrenchment into the country's constitution constrains its modification. Applicable to urban dwellers and rural farmers, the decree failed to address the significant population of Fulani pastoralists who reside in the northern region of Nigeria. Rather, targeted efforts have been made to settle the Fulani onto grazing reserves as a measure to assert greater economic and political control.

### **National policy and legal framework**

In 1900, northern Nigeria was established as a British colony while southern Nigeria remained a protectorate. Land was classified as either crown land in the colony or public land in the protectorate, the former held in trust by the colonial governor for the Queen of England, and the latter, for the Nigerian people. Separate land laws were applied to northern and southern Nigeria. The Native Land Acquisition Proclamation sought to ensure that land in southern Nigeria remained in the hands of Nigerians. It sanctioned customary tenure systems and forbade foreigners to acquire land in this region. By contrast, the Land and Native Rights Proclamation of 1908, applicable in northern Nigeria, vested ownership of land in the government. However, on public lands, there was little disturbance of indigenous land tenure practices. By 1916, the Land and Native Rights Ordinance imposed stricter government control over crown land such that certificates of land occupation required the consent of the relevant state governor. Outsiders, including southern Nigerians, were required to obtain certificates in order to reside in the north. All certificates were revocable at the will of the governor.

The foremost piece of land legislation following independence, the Land Use Decree of 1978 (LUD), was modeled in large part after the Land and Native Rights Ordinance. Established by the military government in power, the law, which is still in force today, guarantees all Nigerians the right to land. Land in each state, excluding federal land, is vested in the individual governors who are empowered to acquire land deemed to be in the overriding public interest. The governor, with the assistance of a land use and allocation committee, is also authorized to issue certificates of occupancy, which essentially are 99-year leases (except in Lagos State where terms may be shorter). Rent is fixed at the governor's discretion. Certificates apply to urban or rural land and must be approved by the governor. Customary certificates of occupancy are administered by local government councils and apply solely to rural land. Limits on land size are applied depending on use: 0.5 hectare for residential purposes, 500 hectares for agricultural purposes, and 5,000 hectares for grazing. Any certificate may be revoked by the governor under compulsory acquisition. By holding a certificate, one is entitled to compensation for existing improvements on the land acquired. The law stipulates that land sales, mortgages, and subleases can be transacted only with the approval of the governor.

The Land Use Decree has revealed several problems in its application. A leading cause of land disputes, some of which have been violent, arises from the law's lack of clarity as to whom land belongs in the case of landlord-tenant arrangements. As a result, many tenants have chosen to stop paying rent or tribute to landowners, arguing that the state now owns the land. Despite the fact that one of the reasons behind the creation of the LUD

was to promote egalitarian rights to land, most courts have ruled in favor of landlords, fining tenants and requiring them to make back payments, though tenant use rights have not been revoked. Other cases have been decided in favor of the tenant, revealing conflicting interpretations of the law.

Another contradiction arises from the law's approving customary inheritance practices while at the same time forbidding land fragmentation, which typically occurs when land is bequeathed to multiple sons. Promulgated in 1991, the NALDA Decree seeks to address land fragmentation through the development of 30,000–50,000 hectares in each state, which would be divided into 4-hectare contiguous farming lots on which to settle smallholders. The program also intends to provide the settlements with technical and marketing assistance as well as access to credit, inputs, and agroindustry outlets.

Rather than curtail land speculation, as was intended, the Land Use Decree opened the door for land to be acquired by government officials and used for political patronage. This is reinforced by the fact that members of the land use and allocation committee are appointed by the governor and the fact that the governor has discretion over rent charges. Indeed, the role of state governors as supreme authorities over land allocations has made it difficult for the federal government to acquire land from states, particularly when the offices are occupied by members of different parties, and political standoffs afford governors the opportunity to show their teeth.

The LUD has resulted in significant amounts of land being turned over to government and commercial interests at the expense of smallholder farmers and pastoralists who have been dispossessed of their land. Even though evicting landholders in favor of private commercial enterprises is not permitted, the law itself forbids the courts to judge matters pertaining to the state governors' or local governments' rights to grant certificates of occupancy as well as matters concerning compensation paid as a result of government acquisition. This immunity has permitted inadequate and untimely payment of compensation; it is often several years before displaced farmers are reimbursed.

Because certificates are issued in the name of the household head, women are effectively precluded from holding rights to land by virtue of the fact that men assume the role of head of household. In the event of dispossession, all compensation is made payable to the male head of household.

Despite all of the LUD's problems, steps taken by the military government before leaving power to integrate it into the constitution and even render its authority above that of other constitutional mandates makes its repeal or modification very difficult. In addition, the intent of the LUD to sever the authority of customary tenure institutions has not been realized. Rural communities continue to rely on community-based systems, and not the state system, to govern tenure practice. By alienating the support of traditional authorities through undercutting their power, the government simultaneously eliminated its most effective means of extending its rule to the grassroots.

### **Replacement and adaptation strategies**

A unique array of customary land tenure practices has evolved in Nigeria which to some extent can be defined according to region and historical influences. The experience of Nigerians living in the arid savannah terrain of the north contrasts sharply with their southern counterparts residing in a humid, subtropical climate. The spread of Islam in the Sahel reinforced individual land rights, altering more communal patterns of land tenure in the northern region. Colonialism's stronghold in the north and the evolution of the market economy further contributed to more individualized customary tenure regimes. Meanwhile, the presence of Fulani pastoralists has cultivated a system of overlapping rights between farmers and herders.

The south witnessed colonialism in a different light. Even though colonial authorities sought to protect native rights to land, land sales and leases to foreigners were widespread, creating a myriad of different tenure arrangements under the categories of freehold, leasehold, and customary tenure. The introduction of cocoa to the south spurred the development of land markets. Greater values attached to land as a result of cash-cropping

opportunities in addition to a more long-term interest in this perennial crop and the land led to increased individualization of tenure. This trend has continued to the present, strengthened by growing land scarcity arising from tremendous population growth and a decline in arable land. When the LUD was promulgated, its intent was to alter customary tenure practices in order to create a unified land tenure policy for the nation which would facilitate government acquisition of land for national development purposes. The emergence of rampant speculation and rising land prices had led to demands for regulation to establish more egalitarian land distribution and greater agricultural productivity. Finally, the Land Use Decree was seen to be the remedy to the perceived ills of customary tenure, which was blamed for fostering tenure insecurity, land fragmentation, constrained land markets and inequitable access to land, inefficiency and poor productivity of agriculture, as well as exploitative and unproductive tenancy arrangements. As discussed earlier, many of these objectives have not been realized.

Characterized by rich, fertile soils and a high population density, the south is home to the dominant tribes of the Yoruba to the west and the Ibo to the east. Customary land tenure among the Yoruba emphasizes household rights to land. Once land is allocated by the village leader to a member of the lineage, the land remains permanently within the family and is passed down to its heirs so long as it is not alienated. The Ibo observe more communal rights to land whereby cropland beyond the household compound is subject to periodic rotation among community members following fallow periods. Before 1978, communal land in the south was vested in the stool, an office presided over by the Oba or paramount chief. It appears that communal tenure is easing over on the continuum toward greater individualization as the rights of the community are increasingly giving way to those of the household. More often, one encounters a mixture of communal and individual tenure, depending on the different types of land and crops. Even in communal systems, lowland swamp regions suitable for rice cultivation are subject to individual tenure rules.

Tenant farming is widely practiced within customary tenure systems. This occurs when families seek to farm land in a community dominated by another lineage. In communal systems, arrangements are usually made with the village chief, who assigns the tenant land in exchange for periodic tribute. Where family land predominates, access to land is by arrangement with the household head whereby tribute is paid to him, usually on a yearly basis, in cash or in kind, the latter often being an agreed share of the tenant's harvest. The assertion of individual rights to land combined with the expansion of the market economy has meant the tenancies are assigned shorter terms, frequently on an annual renewable basis, and tributes more often take the form of cash. Overall, outsiders tend to have greater access to lands held under communal tenure than those dominated by household tenure.

Nearly all ethnic groups in Nigeria practice patrilineal inheritance. Upon a man's death, land may be divided among his male heirs or passed down solely to the eldest son, depending on community practice. If a man has multiple wives, his land is divided equally among the wives and passed down to their sons. While divided inheritance provides more security to family members, it has been cited as a leading cause of land fragmentation and declining productivity. Women rarely inherit land, usually doing so only if there are no male heirs. Inheritance is by far the most common mode of land acquisition among rural Nigerians, followed by leasing and pledging.

### **Tenure constraints and opportunities**

Community-based tenure regimes in Nigeria traditionally discouraged land alienation and land sales were not practiced. European colonialism, however, made land sales and leasehold more familiar transactions. Today, most communities permit land sales, but only if all principal members of the family agree to the sale. If not, the transaction can be rendered void.

The Land Use Decree has been ineffective in curtailing land alienation. Instead, increasing land values have given rise to revocation of tenancy agreements, heightened state acquisition of land, and land sales. Substantial speculation continues to occur and is particularly rife in the Middle Belt region, which is the target for future

agriculture expansion. In the majority of cases, those who purchase land from chiefs and obtain leaseholds from the government do not occupy the land and smallholders continue to farm the land under high levels of tenure insecurity arising from the threat of eviction. Studies in the Middle Belt region have showed these farmers practice less sustainable agricultural techniques, incur low levels of investment, and have poorer agriculture productivity than their counterparts living on community held land. (Ariyo and Ogbonna 1992). The situation is fueled by currency devaluation, smallholder fear of government acquisition without compensation, and traditional authorities who have established themselves as brokers for wealthy individuals and commercial interests seeking land. Once a sale is complete, the purchaser presents the receipt for endorsement by the local government chairman. Application to the state land allocation committee is then made. If approved, the state governor will issue the buyer a statutory certificate of occupancy, constituting a 99-year lease. It is uncertain whether prior approval for making the sale is typically obtained. Oddly, the LUD makes it illegal to sell land, but not to buy it.

The pastoral Fulani of the northern states comprise around 8% of Nigeria's total population and contribute to almost 5% of Nigeria's GDP through livestock production (data dated from 1981). Within the past few decades they have confronted immense challenges to their survival and the survival of their herds, including drought, land degradation, and increased competition for land stemming from agriculture. Once predominantly transhumant, the Fulani are becoming increasingly sedentarized. Government and donor agency emphasis on expanding agriculture in the north in conjunction with population pressures has meant that herders are confined to drier and more marginal lands which do not offer the necessary fodder to feed their herds. The practice among farmers of sharing overlapping rights to their fields with herders in search of crop residues is increasingly restricted and potentially a source of conflict as tenure individualization along with shorter fallow periods becomes more common. Drought has forced the Fulani to migrate further south where they face greater competition for land with farmers.

Loss of herds, the corresponding need to expand food cultivation, and growing demands for cash income arising from the market economy have acted together to induce the Fulani to adopt agropastoralism or hire themselves out as herders to more wealthy pastoralists or farmers who possess livestock. In other cases, destitute herders migrate to urban areas where they tend to be among the most impoverished.

Since the 1960s, the government in conjunction with agencies such as the World Bank, the Food and Agriculture Organization, and the U.S. Agency for International Development has attempted to settle the Fulani onto grazing reserves in order to guarantee a supply of meat and dairy products to urban centers and to establish firmer political control over them. Despite donor agency claims for being better able to provide inputs to pastoralists if they are settled, projects have floundered. The fact that Fulani recognize the importance of mobility in responding to opportunities and uncertainty and to maintaining their livelihood has prevented them from choosing to settle on the reserves. Most who have settled on the reserves have already adopted agropastoralism in the vicinity and move to the reserves to take advantage of the services. Due to high concentration levels on the reserves, overstocking and overgrazing are problematic, leading to erosion. Mechanized boreholes and other modern technologies on the reserves have broken down, and Fulani lack the spare parts and know-how to repair them. Of the 2.3 million hectares earmarked for development of grazing reserves, only 0.5 million hectares have actually been granted (dated reported 1991).

In the south, the threat of trypanosomiasis limits farmers to small ruminants such as goats and sheep. Most of these livestock are owned by women and remain confined year round.

Customary tenure regimes in Nigeria involve a complex set of rules surrounding natural resource management. Tree tenure is most favorable to male lineage members who are free to plant and harvest trees on their holdings. By being accorded a nonlandowning status, women and tenant farmers are typically restricted from planting trees, since doing so provides grounds for staking one's claim to land. In the case of tenants, tree rights like other resource rights will depend on the tenant's relationship with the landowner. They may be able to



negotiate with the farmer to plant trees so long as they agree not to challenge the owner's rights to the land; this may be reinforced by having the tenant pay additional tribute. Usually those trees will remain the property of the tenant, however, even after he vacates the land. While such rules certainly pertain to economic trees, it is not clear to what extent they apply to trees which do not produce a marketable commodity, such as alley trees whose prunings provide soil-enriching nutrients. Studies have been undertaken which focus on the role of tree and land tenure in adopting alley cropping technology (Lawry).

Nigeria has experienced severe forest depletion, particularly in the north where competition for scarce fuelwood is high. The establishment of forest reserves have offered little remedy to the problem. Traditional community forestry management practices, which divided forests into regulated zones such that the community held different rights to each, may offer some insight on developing effective forestry management practices.

The design and implementation of the Land Use Decree, 1978, reveals much about the approach taken by Nigeria's military government toward legal reform. Part of the intent of the legislation was to wrest control from local authorities and communities and enlarge the power of the government. The majority report of seven members of an eight-member Land Use Panel in 1977, established to provide recommendations on developing Nigeria's land tenure policy, favored increased privatization of tenure with minimal state intervention, but the government accepted the minority recommendations of one man favoring continued state ownership. Community leaders and farmers were left out of the debate over land tenure and formulation of the decree, instigating widespread resentment. Probably the most audacious moves made by the military government, however, were the legal immunity afforded the state in carrying out the law and the supreme legal status the government bestowed before handing over the reins to a civilian administration. Recent political history does not bode well for initiating participative policy reform dialogue over land tenure issues in Nigeria.

Ninety percent of Nigeria's agricultural output is produced by smallholders. However, factors such as fragile tenure security, low producer prices, and declining soil fertility threaten agricultural production. With agricultural policy focused on cash-crop production since independence, food-crop production has lagged far behind, often experiencing negative growth rates. Thus, Nigeria has had to import a growing share of its domestic food supply. As well, the expansion of the market economy into rural areas and cash rents for land have forced farmers to sell an increasing share of their crops to the market to meet cash demands. Having to contend with a decline in subsistence production, a growing number of cash demands, and inflation, farmers' food security is jeopardized.

Under customary tenure, women rarely inherit land and primarily obtain use rights to land through their husbands. In some cases, unmarried women are allocated land by their families which they subsequently keep upon marriage. Nevertheless, the tenure security of women is much weaker than that of men, particularly when a man has multiple wives who he may assign different fields each cropping season. Studies have revealed how this uncertainty impedes on women's willingness to invest in crop-improving technologies or plant tree crops (Lawry). Given that women uphold the dominant role in food production, this has implications for the nation's food security.

Rather than enhancing tenure security for women, the Land Use Decree has the potential to lead to further regression in their rights to land, requiring only the head of household to apply for registration. Lack of widespread compliance with the law in rural areas may in fact prove a blessing to women in view of the fact that customary tenure at least obligates men to allocate land to their wives. The decree also marginalizes women from obtaining land by linking land acquisition to financial capacity and bureaucratic familiarity.

### **Implications for policy dialogue and programming**

While it is uncertain how open the present Nigerian government will be to land tenure policy discussion, several issues are at hand to address.

Land speculation, corrupt compulsory acquisition practices, and the ambiguous nature of the Land Use Decree have contributed to weakening tenure security among farmers. Particularly vulnerable are tenants, women, and to a certain degree those living under communal tenure systems. Clear policy and legal precedent needs to be established on the issue of ground rents paid by tenants. This, in addition to more formal contracts spelling out their rights and obligations, may reduce the number and severity of the disputes which have arisen between landholders and tenants. In the case of women, certificates of occupancy could include women as joint leaseholders while land transfer approvals might require the wife's (or wives') consent. By enhancing the tenure security of tenants and women, greater strides could be made toward adopting more sustainable and productive agricultural techniques.

The high cost of registration and its bureaucratic complexity in addition to lack of information on the law preclude most rural residents from applying for certificates of occupancy. Local government councils in charge of providing customary rights of occupancy often were never established. Alternatively, the de facto role of chiefs in land administration could be capitalized on so as to involve them in issuing certificates. Not only could this prove an administratively simpler and more cost-effective solution, but also it would enhance the effectiveness of local authorities in reconciling land disputes. Regional supervisory bodies may need to be established to ensure that village leaders do not manipulate their power for personal gain.

In the same vein, the immunity afforded state governors under the Land Use Decree demands repeal; otherwise, gross abuses of power and political patronage will continue at the expense of the less enfranchised. Legal reform needs to be undertaken to reinstall the court's power to rule over claims concerning compensation and the issuance of certificates of occupancy.

After years of investing vast sums in unsuccessful attempts to settle pastoralists onto grazing reserves, it is time to reassess these methodologies and engage in a better understanding of the strategies and adaptation techniques of the pastoralists themselves. The fragile ecosystem of the northern region along with high levels of climatic variation and uncertainty necessitate mobility and opportunistic grazing. In order to protect pastoralist land rights and simultaneously preserve sustainable natural resource management, large land areas corresponding to regular grazing routes need to be allocated to them. This could be facilitated by the removal of inefficient large-scale agriculture and irrigation projects. Stationary services could be replaced with mobile units while durable manual technologies could substitute for mechanized versions.

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## SENEGAL COUNTRY PROFILE

by Rebecca Furth

### Executive summary

Land tenure in Senegal is managed under the National Domain Law of 1964 and the subsequent Rural Council Law of 1972. These laws define the national land tenure policy and establish a locally based administration to manage land tenure and enforce state policy on a local level. In this way, the government has attempted to create a policy that addresses national and community concerns. In addition, the state has tried to set up a democratic decentralized body to administer national and customary laws. However, despite the government's efforts to create a functioning administrative body through the *communautés rurales* (rural councils), problems persist. The rural councils function erratically and often act on the basis of nepotism or social status. Furthermore, as a result of gaps, conflicts, and contradictions between national and customary land tenure laws, land tenure legislation has neglected to address, or has confounded, tenure issues for women, herders, and poor and landless farmers.

### National policy and legal framework

Senegal is situated at the western-most point of continental Africa. It shares borders in the north with Mauritania, the south with Guinea Bissau and Guinea, the east with Mali, and the west with the Atlantic Ocean. The Gambia forms a 200-mile intrusion into the southern region of the country. Senegal hosts a variety of climatic and ecological zones. The northern region of the country is an arid Sahelian zone, while the Casamance region in the south is tropical. The central region of the country ranges from dryer to wetter savanna moving from north to south. Senegal's total land area is estimated at 75,955 square miles. Twelve percent of the land area is classified as cropland, 16% as permanent pasture, 55% as forests and woodlands, and 17% as other. Approximately 27% of the total land area is considered arable land.

Population estimates from 1995 assess the total number of inhabitants at approximately 8,165,000. Based on this figure, total population density is 108 persons per square mile. The population growth rate is estimated at 2.7% annually. Over 60% of the population is based in rural areas.

The current land tenure policy of the Senegalese government was enacted in 1964. This law, referred to as the National Domain Law, expropriated all previously unregistered lands, or lands not registered within a two-year grace period established by government, as property of the state. Hence, 97–98% of Senegalese land is incorporated into the national domain. There were several motivating factors behind this law. First, the government wanted to curb what it perceived as a mass accumulation of land by the rural elite and religious leaders and the resulting landlessness of the poorer population. Second, the government wanted to encourage production by establishing conditions for efficient land allocation and use while acknowledging the viability of customary tenure systems.

The 1964 law divides land into four categories: urban zones, classified zones, territory zones, and pioneer zones. Urban zones include all lands situated in urban centers or community settlements. Classified zones contain all government-classified forest areas and national parks. Territory zones are all lands which, at the time of the enactment of the law, were unregistered and exploited for agricultural purposes, pasture, or rural housing; these lands are under the direct control of the rural councils, though the decisions of the councils are subject to approval by local administrative officials. Lastly, pioneer zones encompass all other lands.

In 1972, the government enacted the Rural Council Law (Loi Relative aux Communautés Rurales) which provided for administrative councils in each community. The councils are composed of elected community

members who work under the supervision of the Sous-préfet and other government administrators. These councils are given the right under law to allocate land according to customary practice as long as the land is exploited in the “most productive” manner.

In 1976, Law No. 76-66 was enacted to define and secure land rights. The law established four new methods for securing rights to land: occupation authorization, ordinary lease, long-term lease, and land concession. Of these, only leases can be mortgaged.

In 1986, a new law and decree were debated by the government. This legislation proposed authorization for the sale of national domain lands zoned for housing in urban areas. The government’s philosophy behind the law was that people would want a piece of land which they could own and which their children could inherit. This acknowledges the government’s responsiveness to the population in urban areas. More importantly, however, the government is not willing to relinquish ownership of national domain lands in rural areas, because this might also entail the loss of supervisory control over agriculture, herding, and natural resource management.

### **Replacement and adaptation of indigenous tenures**

Like all countries in West Africa, Senegal is ethnically diverse. Incorporated within the many groups are myriad customary land tenure systems. These systems are not static. They are changing and adapting to current political, environmental, and economic conditions. Therefore, for project design, it is necessary that these systems be considered on a case-by-case basis, for there are many different ways of adapting to changing conditions.

While it is important not to overgeneralize, it is possible to highlight several predominant systems. Among the hierarchical societies in the arid zone north of The Gambia, access to resources is held and governed by certain social classes. The Wolof, Toucouleur, Soninke, and the Serer are among the most notable of these groups.

The Wolof, who are for the most part farmers, inhabit the northwestern region between St. Louis and Dakar. Among the Wolof, customary rights are vested in the descendants of the first clearer of the land, who generally claimed large expanses of land by burning. The right to allocate and govern land is held by the eldest male in the lineage. This right is passed laterally from the eldest male to the next eldest and not from father to son. It is important to stress that members of the lineage acquire use rights, not ownership rights, from the lineage head. Use rights of a given parcel of land are often inherited from father to son without the reclamation and redistribution by the lineage head. Families of the same lineage, who arrived after the first clearers, obtained use rights from the descendants of the original clearers and were not required to pay tribute. Strangers, or members unrelated to the original settlers, were required to pay tribute in exchange for use rights. Families who arrived after the fertile farming lands were allocated obtained farming rights to less productive lands but were denied many other rights. Members of the lineage can lend land but cannot alienate it permanently.

The Serer compose one of the few groups that have a tradition of both herding and agriculture. They occupy the region of the peanut belt between Dakar and The Gambia and have a customary land tenure system not unlike that of the Wolof. Allocation of land is governed by the lineage head. However, unlike the Wolof, the Serer inherit rights to land through their affiliation with their mother’s, not their father’s, lineage. Strangers can acquire use rights to land by paying tribute to the lineage head. Although strangers do not have inalienable use rights, as do members of the lineage of the first clearers, evictions are rare.

The Toucouleur, of the northern region along the Senegal River, also have a hierarchically structured society in which the nobles or religious leaders hold ultimate rights over land. Rights to land are transmitted through patrilineal inheritance. Loans, rentals, and leases of land are not uncommon. Land tenure among the Toucouleur is made complex by the nature of their environment. Along the river, fertile flood lands are scarce and are unequally distributed among households. The more abundant uplands, however, are less constrained and are thus more equally distributed.

Unlike their northern neighbors, the Dioula of the southern Casamance region do not have a hierarchically ordered social structure. Land is communally owned. Use rights to land are held by the lineage members who are the descendants of the first clearers. Within the household, land is inherited through patrilineal transmission. Farmers with insufficient holdings can expand their plots by borrowing land, usually from their mother's brother, or clearing new land. Borrowed land can be inherited and requires no tribute. Government policy is likely to carry little weight in the Casamance region, where the Mouvement des Forces Démocratiques de Casamance (MFDC) has been staging a fight for independence from the Senegalese government.

The issue of land tenure in the Casamance is complicated. In particular, the subject of indigenous rights to land and the establishment of rural councils in this region is in need of further investigation. It appears as if Wolof farmers have migrated from the peanut basin in the Kaolack region into the Casamance in search of more fertile lands. As a result of the Wolof's ethnic ties with many government administrators in the region, they have gained positions and influence on the local rural councils. Consequently, many Dioula have been denied control of or access to their traditional lands. If this is indeed the case, then there are serious issues regarding tenure security and land rights in the Casamance region which are being abused under the current national land tenure system.

Within all the customary systems, land loans, rentals, leases, and sharecropping are possible. However, rules vary according to the customary laws and, in many cases, the scarcity or abundance of resources.

### **Tenure constraints and opportunities**

Unfavorable environmental conditions coupled with population pressures have pushed agriculture onto new lands. As a result, many conflicts have arisen between farmers and other user groups (particularly herders). Agriculture has diversified in the past twenty years in response to environmental and economic constraints. Farmers are reducing their dependence on peanut crops by entering into the production of such produce as watermelon, pumpkin, hibiscus, and a variety of cereals. Agriculture is relatively secure under the national domain laws because it is considered viable use of land. Herding, on the other hand, is more problematic.

Almost every ethnic group in Senegal practices herding to some degree. Historically, the Peul (Fulani) were the most specialized herders and are still revered for their herding skills. As agriculture has become less stable in recent years, more farmers have tried to diversify their activities by increasing livestock production. Herding in Senegal ranges from large-scale migration to sedentary livestock raising. However, the increase of year-round cultivation and the expansion of farmlands in northeastern region of Senegal is reducing grazing lands. This is causing problems for all herders and is threatening livestock production in the entire country.

Under the National Domain Law, pastoralism is not considered viable use of land. Consequently, herders' rights to land are limited under the law and are considered profoundly inferior to farming rights. Nonetheless, in 1980, Decree 80-268 attempted to protect valuable pasturelands by prohibiting the clearing and cultivation of "natural pastures." The decree also called for the creation of pasture conservation committees in each district. There were two major problems with this decree. First, there was no clear definition of natural pasturelands. Second, the committees which were established to monitor pasture were made up largely of powerful members of the farming communities who often failed to represent herders' interests.

Conflict over land is a major issue among herders and other user groups. For the most part, disputes between herders and sedentary farmers are over access to resources. However, the expansion of urban settlements onto pastoral lands is also a source of tension. The construction of dams along the Senegal River at Manantali (Mali) and Diama (Senegal) has increased irrigated farming opportunities but has reduced access to pasturelands and water sources for herders. In the Ferlo region in Eastern Senegal, sedentary farmers who have moved in and settled around boreholes, dug by the French in the 1950s to cultivate peanuts and other crops, are competing for use rights to land with the herders. The expansion of cotton production in Eastern Senegal has further impinged upon grazing lands and caused tension between farmers and herders. Traditional migratory routes are being

reduced by encroaching farms. Access to water sources along the Gambia and Senegal rivers is reduced by farmers who fence off land along the waterways for gardening.

In addition to land disputes, conflicts have arisen over the right of herders to cut forage for their animals from protected tree species. Customary practice dictates that herders can exploit tree resources if they have permission from the owner of the land on which the trees are situated. The Forest Protection Code has confused this issue. In 1989, the Forest Service reestablished forest protection committees (CPNs) in some areas. The role of these committees is to prevent illicit use of forest resources and report offenders. In order to encourage the committees to act, the Forest Service gives the committee 10% of fines received. Recently several herders have found themselves subject to these fines. In many cases farmers do not object to herders exploiting tree resources on their property as long as they do not damage their crops. However, with the re-establishment of CPNs, farmers are increasingly rejecting herders' requests to access tree resources for fear that they themselves will be fined by the Forest Service for allowing the herders to cut their trees. The Forest Service's formal stance on the issue is that tree resources can be exploited as long as no branches are cut.

Unlike customary land tenure, traditional resource-use rules are not considered legitimate by Senegalese law. Exploitation of natural resources is subject to the government forest and water codes. In reality, the rules that predominate depend on whether the government chooses or is able to enforce its control. In most areas the government is still largely inactive and thus customary systems of resource use prevail.

Natural resources are under stress in some areas by population growth and liberated in others by out-migration. Thus not all regions have similar constraints on natural resources. The Senegal River area is one region where a combination of environmental constraints and population pressures has created land shortages. Drought has caused widespread desertification in the northern half of the country. In addition, soil degradation has caused not only the decline of agricultural yields but also the disappearance of valuable grasslands necessary for pasture. Although the country's latest Forest Code, enacted in February 1993, aims at empowering local communities to manage their forest and other natural resources, it is yet to be seen if this will be effective.

Senegal's current Forest Code is based on the French forest code established by the colonial government in 1935. The code affecting forest resources declared specified forest areas as property of the state and prohibited any exploitation of these forests without proper authorization. Subsequent codes declared all trees and forests as property of the state and mandated permits for commercial use. In addition, based on the 1935 code, the French administration clearly delineated the classified forest regions which, for the most part, remain classified under the present government.

After independence, this forest code was appropriated by the government with only minor alterations. Changes included an extension of the list of protected tree species and an elaboration of the regulations on charcoal production. In 1974, the law addressing the forest code was changed while the decree establishing the system for implementing the law remained in place. Under the new law, a permit is required for the commercial exploitation of national domain and forestlands. In addition, a second permit is necessary for the transportation and circulation of products extracted from these lands. If an individual wishes to exploit protected areas for building materials or firewood for personal use, s/he must obtain a permit to do so. No permit is necessary for individuals who want to exploit resins, deadwood, honey, medicines, or straw for personal use from protected forests. As previously stated, cutting branches for animal forage is not acceptable under any conditions. Farmers are permitted to clear lands if they have obtained legal use rights from the rural council. However, the Forest Code stipulates that a certain number of trees must be left standing (20 fully grown and established trees or 60 young trees per hectare). Many tree species are further protected by the Forest Code.

A new Forest Code was enacted in 1993. The new code is significant because it allows planted trees to be owned as private property (see Art. 9 and 88). Art. 78 of the law allows local collectives and communities the right to own planted or natural forests. Furthermore, Art. 81 allocates free use rights of trees and tree products to

communities and allows all revenues from the exploitation of forest products to go to the community, though a small amount (not specified) must be returned to the forest fund. Lastly, Art. 83 empowers local communities to manage the use, enrichment, and restoration of their forest resources. While the law seems to allow a great deal of liberty for individuals and collectives wishing to exploit forest resources, it also states in Art. 53 that an authorization permit must be obtained by any person wishing to exploit tree resources even on his own lands. Furthermore, although the law addresses ownership for planted trees, it does not address the question of ownership for naturally regenerating trees.

Irrigated lands have become an important issue with the recent construction of dams along the Senegal River. Villages wishing to set up an irrigation system either acquire collective rights to appropriate lands or pool their lands together into a collectivity. After the establishment of an irrigation system, the rural council is responsible for redistributing the land equitably among members of the collective. Because irrigation makes year-round cultivation possible, many conflicts have arisen between farmers and herders over irrigated lands. Herders are often denied access to lands and water sources on which they traditionally camped during the dry season. The government has yet to address this issue fully.

Senegal has one of the longest histories of stable government and democracy in Francophone West Africa. The national land tenure policy is evidence of the government's dedication to democracy. Through its policy, the Government of Senegal has attempted to create a just land tenure system which acknowledges customary rights under the umbrella of a unified government policy. The establishment of an administrative body capable of implementing both government and customary tenure is significant. However, the guidelines for the use of either method of approach are not clear and the rural councils' actions are, as yet, minimal. In addition, when administrative decisions are made by the rural council they frequently favor one or the other system for political reasons. Often wealthy farmers or those who are relatives of council members are favored over poor or unrelated farmers. National policy needs to address the needs of all user groups such as herders, the landless, or land-poor farmers who may be marginalized or openly discriminated against.

The Senegalese economy has been challenged in recent years by the devaluation of the CFA. Although agriculture, livestock, fishing, and forestry account for over one-fifth of GDP, production has not kept up with population growth. While agricultural production is expanding and diversifying, it is still restricted in the north by unfavorable rainfall and poor soils. The southern region of the country is highly productive; however, the ongoing political struggle in the Casamance threatens the dispersal of products from this region.

As noted above, the expansion of the agricultural sector has been the source of many land conflicts between various user groups. Although agricultural production does not appear to be restricted as a result of land tenure issues, livestock production is limited. Many herders have found it difficult to expand their enterprises as a result of restricted access to and use of land and degraded environmental conditions. Increased production of livestock cannot be assured until the government secures land tenure rights for herders and acknowledges pasturelands as productive.

Under the National Domain Law, women can acquire and own land. This runs contrary to many customary systems which allocate use rights to women only through their husbands. While women once gained access to parcels for an indefinite period of time, their access is often more restricted in recent years. This is largely a result of the National Domain Law, which states that land cultivated by the same user for three years or more can be claimed by that farmer. In order to assure that loaned lands do not transfer to women or other users, farmers now reclaim them before the three-year limit. Although women may receive another piece of land from their husbands, the lack of stability discourages investments in the resource and consequently may cause greater environmental degradation.

In customary practice, women make decisions as to what and how to plant on their own parcels, but their husbands maintain ultimate rights to the land. In addition, women play an important role in natural resource

management not only in the decisions they make on their own plots but also as controllers of manure. Women are the principal owners of small domesticated animals (though this is beginning to change) and thus make many important decisions regarding the use and distribution of manure.

Despite the fact that women can technically acquire inalienable rights to land through the National Domain Law, few have attempted to do so. There is little information regarding the implication of this policy for women's production and land security.

### **Present policy position and reforms discussed**

Although Senegal's National Domain Law and administrative structure, as represented by the rural councils, make an important step toward ensuring continued agricultural production and economic growth while respecting both customary land tenure practices and national policy, they still suffer from many problems. First, the rural councils are often ineffective. Many farmers prefer to handle their land disputes and transactions within the village and pay no attention to the council. Second, the law provides no guidelines for whether national policy or customary land tenure should be employed in specific instances. Consequently, councils often choose to use national policy in some cases and customary land tenure in others in order to benefit wealthy or well-connected members of the community over poorer or less-respected members. While the laws do provide a framework, they are easily manipulated and can be used for unjust purposes.

### **Implications for policy dialogue and programming**

Senegal has one of the most innovative and effective national land tenure policies in West Africa. However, its implementation is erratic and sometimes discriminatory. Policy programmers should consider the degree to which rural councils are active and effective in project areas. In addition, attention should be paid to the various user groups and their rights under both national and customary laws. Although the land tenure policy of Senegal is relatively comprehensive, it still has many inconsistencies. Consequently, various user groups' rights are unaccounted for or are not secure within the national policy. Consideration of these issues will greatly inform project planning and design.

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# SIERRA LEONE COUNTRY PROFILE

by Anna Knox

## Executive summary

Community-based tenure prevails in three of the four provinces of Sierra Leone and continues to be affirmed by laws established during the colonial period. In the western province, which includes the coastal regions and the capital, Freetown, these laws vested land in the state, which granted freehold titles to individuals. Today, this area remains largely private property holdings. While much debate arose during the 1970s on the implications of converting the entirety of the country to freehold, customary tenure regimes remain intact in the rural provinces. Within the past five years, Sierra Leone has been plagued by civil war and issues of land tenure have taken a back seat in the face of more immediate political concerns.

## National policy and legal framework

In the north, south, and eastern provinces of the country, land is primarily held by extended families. According to the Protectorate Ordinance of 1927 and the Tribal Authorities Ordinance of 1938, land is vested in the paramount chiefs who govern the villages within their particular chiefdom and act as custodians over the land. Nevertheless, land is actually considered to belong to the families of the original settlers or hosts of a village who enjoy the greatest degree of tenure security.

By contrast, in the western province comprising Sierra Leone's capital and coastline, the British coveted the lands and administered them as private property, a system which continues to the present. Land which is not held privately is owned by the state. The government also controls national forests and reserves. As a mining-based economy, it has frequently exercised its eminent domain privileges, negotiating compensation agreements with the relevant paramount chiefs.

On a national level, little has changed on the land tenure front since colonial rule. During the 1970s, debate sprung up around the impact of customary tenure on agricultural production and whether more individualized tenure might better serve the country's interests. Studies affirmed rural people's interest in maintaining community-based systems and attested to their flexibility in adapting to dynamic environments. Since then, limited study has been devoted to the issue of land tenure in Sierra Leone.

## Replacement and adaptation of indigenous tenure

Less than 10% of Sierra Leone's total area of 7,174,000 square hectares consists of arable land and permanent crops. Agricultural population per arable hectare was around 5.3 in 1993. Most of Sierra Leone is forested with the exception of the coastal and northeastern regions, the latter of which is savannah. Around 65% of its citizens are engaged in agriculture and cultivate food crops (principally rice, millet, cassava, and cocoyam) as well as commercial crops (cocoa, coffee, oil palm, and some groundnuts) for export, all of which contribute to about 45% of GDP. The dominant Mende and Temne ethnic groups occupy much of the land in the provinces while nonnative Creoles reside throughout the western area.

Descendants of the original settlers, credited for the establishment of a particular village, hold the most elevated tenure status. Chiefs, including village chiefs, section chiefs, and paramount chiefs, are usually prominent members of these founding families. Since their ancestors cultivated the village land, these lineages and their children are seen as having permanent and inalienable rights to it. Families from other lineages who arrive later must gain access to land via their hosts. In some cases, the chief may allocate them new land to cultivate.

More commonly, one of the founding families grants them a parcel of their own land in exchange for a tribute of goodwill, such as kola nuts. Gradually, if the new family establishes themselves on a permanent basis and develop a good standing in the community, their rights may evolve to a more permanent basis. Essentially, the longer one cultivates a piece of land, the greater one's use rights to it. A farmer may, for instance, gain permission from his patron to plant trees on the land, bury his dead there, or pass the land onto his children, all of which confer more profound rights to the land. Unlike members of founding families, however, if nonlineage families abandon the land, the rights to it revert to the host family. In the case of migrant farmers, land may be borrowed on a seasonal basis, resembling a sharecropping arrangement.

Tenure rights governing trees are separate but integrally linked to land tenure. The planting of "economic" trees often solidifies a farmer's right to a parcel while it connotes dedication to that land through investment. A farmer may award others certain use rights to his trees while a community may do the same for the forest resources it manages. For instance, a farmer may permit community members to tap his palm trees for palm wine or remove palm leaves for roof thatching, but forbid them to remove the fruit or kill the tree since the palm oil is highly valuable. Farmers may also pledge their trees in exchange for loans whereby their creditor is entitled to collect the tree product as interest payment. Among the Mende, if a borrower leaves his patron's land, he is usually entitled to compensation for any trees he has planted. Because of this separability of land and trees, such that the latter have become marketable commodities, borrowers are usually not prevented from planting trees on their patron's land, though they are generally not granted land specifically for tree crops. Trees of the community forests, especially those of religious sacred forests, are managed by the strict rules set forth by powerful village organizations, known as secret societies.

A family's land is administered by its head of household, who allocates it to other family members. When this person dies, the responsibility is typically passed to the eldest male, either brother or son of the deceased, who inherits the land and the position as head of household. Customary inheritance law as practiced in the rural provinces is determined largely according to ethnic origin; in the western area, inheritance practices conform to English law.

### **Tenure constraints and opportunities**

While land markets have been present in the commercially vibrant western province since the early 1900s, they are gradually emerging in other areas where populations have multiplied and competition for land has set in. The increased pressure on land has resulted in reduced fallow periods and some incidences of borrowers losing land to patron reclamation. For the most part, though, severe land shortages exist only in limited areas and, though commoditization of land is no longer an alien concept, customary values of universal access to land still prevail. Nevertheless, the commoditization of land is not an alien concept. In the eastern province, villages, realizing they could demand compensation for the destruction of sacred forests by mining companies, began to designate increasing amounts of land as sacred forest.

While most land is agriculturally based, animal husbandry is practiced by the Fulani people who settled in the northern savannah regions. Little information seems to be available concerning their land tenure practices specific to this area.

Among cultivators, natural resource management at the village level is largely the domain of powerful village-level organizations. Consisting of village elders and other respected individuals of the community, they protect the interests of the community through ensuring that the resources it depends on for survival are not exploited for personal gain. Through the use of an emblem symbolizing the society, they may mark trees to preclude picking fruit or cutting or they may mark a pond to prevent fishing and allow the stock to regenerate. During colonial times, these organizations were forces against timber depletion by the British since native workers refused to fell trees which were marked by the emblem of the secret societies for fear of spiritual

repercussions. Although their role is often not well understood, these traditional village organizations essentially define and administer the moral code to which a village adheres; they are in fact the backbone of rural society and oversee religious, educational, political, economic, and social spheres. Various organizations exist which govern different arenas of behavior, such as women's affairs, sexual conduct, or religious matters. Decisions made by the chief are usually sanctioned by relevant society members, and a chief often must be among the ranks of the men's Poro society. Breaches of rules set forth by the societies carry penalties ranging from fines to ousting from the community.

Many rural communities in Sierra Leone have "sacred forests" which serve both religious and practical purposes. Protected by the tenets established by traditional village organizations, these wooded reserves function as social gathering places where rituals are performed and village youth are educated. Their preservation is assured by a thorough set of common property rules, which include regulations governing the cutting of trees, removal of firewood, hunting of game, gathering of wild fruit or medicinal plants, and so on. In a country which has suffered from rampant deforestation for commercial purposes, means of supporting effective common property regimes, such as those which sustain sacred forest areas, should be explored.

Sierra Leone's political future remains highly uncertain at present. War broke out in 1991 with the mounting of attacks by the rebel group, Revolutionary United Front (RUF), led by Corporeal Foday Sankoh, who condemned the one-party state under President Momoh. The military soon after staged a coup toppling the civilian president and placing the country under the military rule of the National Provisional Ruling Council (NPRC) and Captain Valentine Strasser. Unappeased by the NPRC's promise to turn over power to democratic civilian rule, the RUF held their arms in what has unfolded into a five-year-long civil war. Multiparty elections are currently pegged for February 1996, though the RUF will not agree to a cease-fire or participate in the elections unless foreign troops from South Africa, Guinea, and Nigeria supporting the government are removed.

Although not directly stated in the literature, it appears that the new government has not sought to impose change on the existing land tenure systems. Rather, it would seem that other pressing concerns have permitted rural and tenure systems to remain essentially autonomous. However, once the war ends, land tenure will likely take a forward seat in the formulation of strategies to revitalize the economy. Participation in this dialogue and ultimately the distribution of power over land issues will depend to a great extent on the philosophies of those who succeed to power and the scope of outside intervention.

War has plunged Sierra Leone into economic disaster. The country is highly dependent on bauxite, rutile, and diamond mining to support the country's economy, and now such extractive activities have come to a grinding halt with mining companies abandoning their operations. Economic development projects have been frustrated, agricultural production hampered, and the tourist industry shut down. Crop burning and roadway obstruction by rebel factions and government troops not only undermine food security for urban populations as a result of infrastructure breakdown, but also threaten the subsistence agriculture of the besieged rural communities. On the one hand, one may anticipate that these occurrences might heighten community interdependence and foster greater communal rights. On the other hand, the impact of migration from war-affected areas may have resulted in communities' disbanding. There appear to be no studies revealing how tenure has adapted to the effects of the war.

Substitution of cash crops, namely, cocoa and coffee, in place of rice cultivation has also led to an increased reliance on rice imports to meet the country's food security needs. Fluctuating cocoa and coffee prices translate to unstable income flows and nutrition levels. Men's participation in rice cultivation for a given year is often linked to the profitability of cash crops versus rice production.

Under customary tenure practices, women typically gain access to land through their husbands, though in some cases they may inherit and own land independently. Often the first wife of a man is allotted a certain portion of land which she later doles out to subsequent wives at her discretion. Their position being subordinate to that of

men, women are generally excluded from decision-making roles and the most influential village organizations, relegated to those concerning purely women's affairs. Women mainly cultivate vegetable and root gardens close to the family compounds or as upland intercrops and plant rice in the lowland swamps or upland dry areas. Women have assumed the dominant role in rice planting and harvesting, once an activity shared by both men and women, leaving men obligated solely to the initial clearing of the bush. The shift from upland rice crops to swamp cultivation as well as the expansion of men's commercial tree crops in upland regions has contributed to a loss of women's rights to upland areas for intercropping vegetables and roots, the latter of which are an important source of nutrition during lean periods. Essentially, the decreased share of women's production in upland areas combined with the expansion of men's tree crops in these same areas has resulted in men's assuming greater rights to these fields.

### **Present policy position and reforms discussed**

Given the lack of attention to land tenure issues in Sierra Leone in the past decade coupled with the country's current state of political affairs, it is difficult to ascertain the policy position surrounding land tenure, if one exists. In the aftermath of war, tenure issues could well surface in the process of reclamation and rebuilding. In the meantime, it is doubtful that any coherent policies concerning land tenure will emerge; peace will have to be negotiated with the RUF before any headway on tenure issues is possible.

### **Implications for policy dialogue and programming**

Whereas it may appear administratively complicated to uphold two systems of land tenure in one country, one based on customary norms and the other on western freehold, it is important to appreciate the cultural division which separates the residents of the provinces and the natives to Sierra Leone versus the residents of the western area and their non-African origin. For the Mende, Temne, Sherbro, and other ethnic groups occupying the rural provinces, community-based tenure provides the individual with permanent social security as well as contributes to one's identity and role in society.

Appreciation for the value of this social safety net will be critical once the war has ended and the government sets out to rebuild the nation. An urgent need to revive the mining sector so as to jump-start the economy could result in substantial eviction from landholdings, the severity of the consequences underscored by a lack of resources to adequately compensate and relocate residents. Similarly, the remaining rainforest reserves may come under threat in the interest of securing foreign exchange from timber exports. Encouraging community forestry practices may be one alternative for averting further rainforest destruction. The government might consider exploring collaborative measures with village organizations and paramount chiefs to enhance their effectiveness, perhaps establishing comanagement arrangements for national forests with local groups including those representing women's interests.

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## TOGO COUNTRY PROFILE

by Rebecca Furth

### Executive summary

Land shortages resulting from population pressures in Togo have brought about many conflicts in recent years. The Togolese government has attempted to alleviate the problem of overpopulation through resettlement projects; however, these have been largely unsuccessful. There was an extensive land tenure policy enacted in 1974, but unfortunately, despite its policies, the government has neglected to implement this legislation. As a result, land tenure issues in Togo remain unresolved. Increasing population pressures combined with environmental degradation will continue to challenge traditional land tenure relationships and systems. The Togolese government needs to clarify and put into operation a state land tenure policy that is sensitive to indigenous systems but also addresses pressing national issues.

### National policy and legal framework

Togo is situated on the coast of the Gulf of Guinea. It is bordered to the east by Benin, to the west by Ghana, and to the north by Burkina Faso. Although a small country covering only 21,925 square miles, Togo spans several ecological zones from the tropical forest of the southern coastal region to the grasslands of the northern savanna. Over a quarter of the total land area (26.24%) is cropland, 3.68% permanent pasture, 28.50% forests and woodland, and 41.58% is classified as other. The population is estimated at 3,296,000 inhabitants with an annual growth rate of 3.06%. The population in Togo is unevenly distributed with the southern plateau region suffering from pronounced overpopulation and other scattered areas more moderately populated.

Togo was first a German colony which was ceded to the French in 1914. In 1906, the Germans decreed that all lands must be formally registered. This law was reestablished by the French in 1922 with the addition of the *Livre Foncier*. Despite these declarations, almost no rural lands were registered and only a few urban lands were legally inscribed. Freehold and modern leasehold (as opposed to sharecropping) have existed along the coastal region since early in the twentieth century. The Germans declared Togo a *Musterkolonie* (model colony), which was to provide a pattern for economic expansion elsewhere. Plantations were established throughout the southern portion of the country and were registered according to German legal practices (referred to in Togo as Romano-Germanic law). The northern populations resisted any incursion and very few colonial enterprises were established beyond 100 miles inland. By the time the French took over in 1914, there were 13,000 hectares of German-owned plantations and even larger areas of African-owned estates.

Another source of individual private tenure appeared in the latter part of the nineteenth century when commercial families, whose ancestors had been repatriated slaves (many from Brazil and hence the designation "Brazilians" in many Togo histories) settled on the coast, especially around the port at Aneho. They purchased and sold land along the coastal plain from the outset; they, rather than the Germans, are the originators of Togo's small land market.

The postindependence Togolese government campaigned to increase agricultural production. In 1967, the government delivered an ordinance which would have instituted agricultural cooperatives; however, the plan was too complicated and was, therefore, never enacted. Not until 1974 did the postindependence government successfully promulgate a national land tenure policy. This policy was developed to help improve agricultural production. Although the law is comprehensive, it has not been enforced. Consequently, land tenure issues continue to be confusing and contradictory.

The 1974 law divides land into three categories: lands privately held by individuals or collectives, public and private lands of the state domain, and national domain lands. Individuals and collectives are assured rights to land if they can establish ownership. Article 2 of this law states that owners are all persons or collectives holding legally registered land and an official land title. Indigenous persons or groups can be allocated legal ownership if they can prove their customary rights to the land. The article does not specify what is considered adequate proof of customary ownership.

State public lands fall into two categories, natural and artificial. Natural state lands include rivers and the land bordering the ocean up to 100 meters inland. Artificial public lands include national monuments, roads, and other man-made constructions. State private lands are lands on which the state reserves private ownership and access, such as reserves. Lastly, the Government of Togo has established a third, rather unique, category which it calls national lands. National lands are lands which are neither the property of the state nor owned by an individual or collective. While the state reserves the right to manage these lands, farmers can acquire access by obtaining permission from the state and adhering to state restrictions.

Ordinance No. 12 of the 1974 law declared all “unused” or “abandoned” land as property of the state. A 1976 law attempted to further clarify the government’s definitions of unused and productive lands. Unused land is defined as nonproductive land not situated adjacent to productive lands which were not under production for ten or more years prior to the creation of the law. Lands that lie adjacent to active farmlands are not subject to expropriation by the state. In order for a piece of land to be considered under production it must be actively employed for agricultural cultivation. Lands used for the collection of firewood and other products are not considered by the state as “in use.” Furthermore, lands left unproductive for more than five years (after 1974) can be expropriated by the state and transformed into national lands. This prohibits lands from being fallowed for more than five years, thus contributing to degradation of the soil.

In 1978, the state passed another ordinance which established production zones known as Zones d’Aménagement Agricole Planifié (or ZAAP). These zones included private and collective lands as well as national lands. An indemnity was provided to private and collective landholders whose lands fell within ZAAP boundaries. Cooperative exploitation was obligatory on ZAAP lands. According to the government, ZAAP lands were created to both increase and manage agricultural production in diverse areas for the improvement of the people and the economy. Construction of new land tenure systems was authorized in ZAAP areas, and ZAAP lands were subject to inventory and evaluation by the government.

In addition to the ZAAP land project, the government attempted to assuage the problem of overpopulation by creating a resettlement program. However, the populations indigenous to resettlement lands often resisted by either rejecting the resettled populations or denying the government access to lands. Although all the present laws indicate that the government is philosophically dedicated to playing an active role in the nation’s land tenure systems, its failure to implement its policies reveals that it lacks practical initiative or ability. It is necessary that the government develop a realistic and effective land tenure policy which it is capable of not only enacting but also implementing.

### **Replacement and adaptation of indigenous systems**

Togo, like most West African countries, is ethnically diverse; but there are a few dominant groups which have tenure systems indicative of most of the region. The Ewe predominate in the southern region of the country while the Paragourma, the Anufom, Peul, and many others inhabit the northern savanna zone. Generally, land is held by patrilineal descent groups which are hierarchically ordered. The largest group is the clan whose members are associated through a common ancestor or ancestors. Clans are broken down into lineages. Each lineage is divided into sublineages or lineage segments which most often make up residential quarters and are usually composed of a large household or several closely related households. Land in Togo is controlled through lineages. The head of

the lineage has ultimate control over the allocation of land and is responsible for the arbitration of conflicts and the management of other land issues. Household rights to land, acquired through lineage affiliation, are inherited through father-to-son transmission. Lineage control over land passes laterally from the eldest male in the lineage to the next eldest.

It is important to note that in these customary land tenure systems, people hold only use rights to land and not ownership rights. There are generally three categories of land in customary systems: lineage lands, individual household lands, and village lands. Lineage lands fall under the direct control of the lineage head. Household lands are also ultimately the property of the lineage, but once rights are granted to the household head from the lineage chief, the household head manages the use and production of the land. Village lands are lands that are held by neither the lineage nor the household; they are managed by the village head and other respected members of the community.

A farmer can obtain land through different means in the traditional lineage-based system, including: inheritance, gift, loan, rental, share tenancy, and purchase. The most lands are inherited or borrowed. Inheritance involves the transmission of use rights and not ownership rights. Sons are the preferred heirs over daughters or other relatives. Heirs cannot allocate or pledge land as security for a loan without permission from the lineage head.

A gift of land indicates an offer of more or less inalienable use rights to land. Land gifts account for up to 5% of the total land acquired in some areas. As previously stated, individuals are permitted to give land only with permission of the lineage chief. In the case of community lands, only the community leader has the right to give land; in order to do so he must obtain the accord of other community leaders. Gifts of land can be revoked only by the giver. A 1983 decision made by the Lomé Traditional Court of Appeals declared that a donor's heirs do not have the right to revoke a gift of land made by the donor himself. This raises the question of whether gifts become permanent after the death of a donor and suggests that gift transfers are relatively secure.

Renting land is widespread in Togo. Renting allocates inalienable use rights to land for a fixed period of time and is determined by the transfer of cash payments. Share tenancy is much like rental with the exception of the transactions of payment in kind instead of in cash.

Loans are commonly made to strangers who have no connection to the lineage or community of a given region. Rights to lands taken on loan can be inherited. However, because borrowed or loaned lands are some of the least secure, there are no guidelines protecting the rights of the borrower. Given the current population pressures, it is likely the relationship between land loaners and borrowers will become more tenuous in densely populated regions.

Lastly, though unknown in the traditional system, land sales and purchases have become more common. This is largely a result of the intensification of cash cropping (particularly of cotton, coffee, and cocoa). For the most part, sales are regulated by an oral contract. Formalities included in purchase and sale transactions necessitate the consent of the council of the family who owns the land. Without this consent, the transaction is null and void. A second requirement is that witnesses be present at the time of the transaction; however, should this requirement not be fulfilled, the transaction is still valid. Once land is formally purchased, it ceases to be regulated by customary law. Most sales transactions in Togo combine legal transfer through the government, which includes a signed written document and a land survey, and customary transfer practices. As is common in many other region of West Africa, cash cropping has resulted in the greater individualization of land and therefore the increase in individual sales and purchases.

Although useful, generalizing glosses over the tremendous variation that is found among the many ethnic groups in Togo. Many of the land transactions common among the Ewe and other groups in the south are also shared by people in the central and northern parts of the country. However, information addressing these groups

and land tenure is seriously lacking. Project planners should seek out more specific information about customary land tenure practices in project areas.

### **Tenure constraints and opportunities**

Severe overpopulation as well as government land tenure policies aimed at increasing production are posing serious threats to agricultural production. Lands are overexploited and soils are rapidly becoming nutrient-poor. The lack of tenure security may be decreasing the incentives for farmers to practice sustainable agriculture. The absence of rights for planting bushes and other perennial crops for green manure, as well as other sustainable agricultural practices on borrowed or rented lands, is destabilizing agricultural production. In order for land to continue to be fertile, it must lie fallow until it regenerates (certainly more than five years) or significant investments must be made. Current state land tenure policies and population pressures will not permit land to lie unused for such an extended period of time, and rural farmers do not have the resources to invest in organic or chemical fertilizers. At present, most lands are neither lying fallow nor being refertilized by organic or other means. The end result is that agricultural lands are quickly degenerating.

Land scarcity in the northern region of the country has resulted in recent conflicts between Peul (Fulani) herders and local farmers. Traditionally, Peul herders used farmers' fallowed lands for pasture. Farmers exchanged grains with herders whose animals fertilized their lands when grazing. Two problems have arisen in recent years which have thrown this relationship off balance. First, perennial cotton crops have reduced the number of fallow lands and therefore decreased the availability of pasturelands. Second, herders have started farming in order to supplement their income and now prefer to retain the animal manure for their own fields. With the exception of the increased involvement of herders in the agriculture sector, farming and herding are not integrated. Government land tenure laws do not address herding issues.

Natural resources, particularly agricultural, are seriously threatened in Togo due to overpopulation. In addition, a shortage of firewood in the northern savanna region of the country has reached serious proportions. As already noted, soil resources are threatened. There is nothing in the national tenure laws which addresses access to and use of natural resources (the available literature does not address the country's forest code). Because lands reserved for firewood or the collection of other forest products are not considered as "in use" according to government law, there is little incentive to protect forestlands. The extent to which forest and water resources are affected by customary and national policies is not adequately addressed in the literature.

Despite political shifts, the Togolese government's land tenure policies have not changed. The present regime has declared its dedication to establishing itself as a democratic government. If this is truly its aim, it must assure access to land and land security for all producers. This will entail formulating a new policy which integrates both indigenous and state tenure and addresses issues of women's, pastoralists', and other users' land tenure rights.

Like Ghana and other neighboring countries, Togo has shown little economic growth since the early 1970s. The land tenure policies enacted in the mid- and late-1970s were clearly efforts to rectify this problem. Despite these efforts, Togo has continued to struggle economically. Food security is largely dependent upon women's continued access to land. In many other regions of West Africa, the decrease in the availability of land has negatively affected women's access to land and land resources. Although the literature makes no mention of the effect of land scarcity on women's agricultural production in Togo, this is an important issue which should be investigated further. Land shortages and environmental degradation pose serious threats to the country's food security.

There is no reference to women's tenure rights in any of the government's land tenure laws or ordinances. In many of the traditional systems in Togo, women are given a plot of land when they marry. Women are often



required or encouraged to take on additional farming plots in order to produce more and contribute to household expenditures. If women need additional land, they must rent or borrow it from male members of the lineage.

Women's role in land rentals and loans must not be ignored. Government policies are in need of revision to address the issue of women's rights to land. Project planners should consider the important role that women play in production, land use, and tenure systems. Better information is needed to reflect women's role in land rentals and borrowed lands more accurately since it appears that they play a significant part.

### **Present policy and reforms discussed**

While the government's policy of 1974 attempts to address many of the land tenure issues crucial to the country's development, its failure to implement these policies has resulted in a muddled and ad hoc system. The 1974 policy acknowledges indigenous land rights but does not indicate how national policy and indigenous systems might be integrated. Furthermore, the national policy has had little impact due to the complications and costs of implementation. If the government is to assure land security, it must construct a comprehensive and feasible land tenure policy which integrates indigenous systems. The current national policy addresses only issues of agricultural production and does not provide guidelines for various land uses such as the collection of firewood and other forest products. Women's role in land tenure is also neglected in the national policy. In order for Togo to successfully resolve its problems of land scarcity, agricultural production, and environmental degradation, it must create and implement a more comprehensive land tenure policy.

### **Implications for policy dialogue and programming**

Issues of land insecurity are central to problems of development and must be taken into consideration by policy planners. Policymakers should keep in mind that land shortages, population pressures, and environmental constraints will have profound effects on tenure systems. It is important that programmers not overgeneralize. Areas suffering extreme land shortages in Togo have a higher rate of land rental and pledging and tend to represent a greater variety of land tenure systems. This may be one strategy used by local populations to redistribute land and cash resources. These intricacies should be carefully studied and closely noted so that policies and programs can be developed to respond to specific as well as general situations and needs.

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## ZAIRE COUNTRY PROFILE

by Steve Leisz

### Executive summary

Zaire's General Property Law, passed in 1973 and modified in 1980, declares that all land and natural resources belong to the state. Thereby, the state does not recognize any of the rules relating to access and control of land and natural resources that emanate from community-based land tenure systems. Yet, the literature suggests that access to nearly 97% of the land and natural resources is de facto through the community-based land tenure systems. This situation encourages land and natural resource tenure insecurity, and the literature suggests that in certain regions of the country land tenure insecurity is high. Further complicating this situation is the political situation in present-day Zaire. The impasse between President Mobutu and the parliament leaves little hope that current governmental paralysis will resolve itself anytime soon.

### National policy and legal framework

Zaire straddles the equator and is Africa's third largest country with an area of 2,344,000 square kilometers. It is blessed with a plethora of natural resources and relatively low overall population. According to a World Bank estimate, its mid-1991 population was 38.6 million and, while its population growth rate from 1980 to 1990 was estimated at 3.2%, its current population growth rate is estimated at 3.0%. There are over 200 different ethnic groups. Mirroring this ethnic diversity is the fact that while French is the official business language, there are four others—Lingala, Swahili, Kikongo, and Kiluba—that are generally recognized as "lingua francas" in the various regions of the country.

Since independence in 1960 urban populations have grown. At independence 26% of the population was estimated to live in the urban areas, while World Bank estimates in 1991 put the percentage at around 40%. Urban growth has resulted from decreasing returns from agriculture and some of it has been blamed on decreasing land tenure security in certain parts of the country. However, the urban growth does not mean that the urban manufacturing economy is booming. Rather, out of a total potential working population of 16 million, it is estimated that only 1.34 million are working, and it appears that the total number of those working in the formal sector of the economy has changed little since independence. Thus, most Zairians, in one way or another, still depend on subsistence agriculture.

While Zaire has enormous agricultural potential with soil and a climate that is suitable for growing a wide variety of crops, such as cotton, rubber, coffee, oil palm, sugar, and others, for export, and also a wide variety of food crops, agricultural production per person has actually decreased. Consequently, Zaire's export of agricultural products has decreased and it is no longer self-sufficient in food production.

With 1.78 million square kilometers of tropical forest area, Zaire contains 12.5 percent of the world's remaining tropical rainforest, less only than Brazil and Indonesia. While most of this area has not been exploited due to poor infrastructure, deforestation is on the rise. Between 1980 and 1985, the annual rate of deforestation was 3,700 square kilometers. Since then it is feared that deforestation may be rising as logging companies exhaust the easier-to-reach tropical forests of West Africa.

Since independence, Zaire's tenure systems have gone through a number of changes. Today, officially, all land belongs to the state, as noted in the 1973 Land Law, modified in 1980. However, the reality is that perhaps as much as 97% of land continues to be administered under community-based tenure systems. In this document the term *community-based tenure systems* is used to refer to systems where rules that gain their legitimacy from

community recognition are at the base of the land tenure system. In other publications these systems are often referred to as customary, traditional, or informal tenure systems.

During colonial times there was a dual system of land laws. Under the decree of 1 July 1885, ARTICLE 2, King Leopold of Belgium declared that in the Congo Free State “vacant lands must be considered as belonging to the state” and, in the decree of 17 September 1886, that “lands occupied by the native population, under the authority of their chiefs, shall continue to be governed by local customs and usages.” These two decrees established a system under law that sanctioned land rights under customary tenure systems, but also expropriated over 27,000,000 hectares from the original inhabitants of Zaire. This area became the base of the state’s domain, which could later be distributed as grants and concessions to Europeans. Also during this period a system of vacancy inquiry was instituted to determine whether land really was unused and unclaimed under customary law before it was declared state land. This inquiry provided some limited protection to customary rights.

During colonial times, the Belgians forcibly regrouped villages, local inhabitants were used as forced labor, and there was obligatory cultivation of food crops for cities and export crops. Because some of these practices had negative effects on the traditional farming systems and consequently negative effects on soil quality and crop production, the Belgians set up the *paysannat*<sup>3</sup> system as a way to ensure that fallow periods were respected, good crop rotations retained, agricultural production maintained and increased, and surpluses marketed. Some *paysannats* allocated individual plots to farmers, often on land to which they had no customary title, while others attempted to respect customary tenure and allowed land chiefs to distribute the land to group members.

Land that was distributed to Europeans was administered under written law. Land titles were registered under a Torrens registry system. Under the Torrens system land units had to be surveyed and then registered in a land book by a registrar of real property. All title transfers had to be recorded in the land book. Only Europeans could hold title to land. Urban land was also registered under the Torrens system. Consequently, Africans could not hold title to urban land; they were granted only a temporary right of occupation to restricted urban areas.

A number of changes took place in the official land tenure situation after independence in 1960. First, immediately following independence all restrictions on African ownership of land were removed and Africans could acquire land under the Torrens Act. In 1966, the government enacted the Bakajika law to force holders of colonial titles to renew registration and prove that the land was being put to good, and productive, use. If the latter conditions were not being met, the government could repossess the land. In 1971, the Constitution of Zaire was amended and a law passed stipulating that the Republic of Zaire retook the “full and free disposition of all the rights in the land, the subsoil, and natural resources granted or signed before January 1, 1972.” The effect of this amendment and law was to make all land and resources state property.

The General Property Law (*Loi portant régime général des biens, régime foncier et immobilier, et régime des sûretés*), which is the current law governing land, was passed in 1973 and amended in 1980. This law stipulates that all land and natural resources are the property of the state. Further, the category of “native” lands is abolished by the amendment and these laws, thus abrogating the dual system of land laws inherited from colonial times. Under the 1973/80 laws, individuals can obtain rights to land and natural resources through the granting of either “perpetual concession” or “ordinary concession.” Customary rights held by the indigenous population are transformed into “rights of use” that are to be regulated by an ordinance of the President of the Republic. To date, this ordinance has not been enacted.

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<sup>3</sup> *Paysannats* were located on land considered by the colonial government as “state” land. They were set up to provide agricultural produce for city areas and also to encourage what were considered “good” agricultural practices by the colonial administration. People who worked land under the *paysannat* system had to agree to farm the land in a certain manner, and utilize the extension services that were made available to them.

The 1973/80 laws also cover Zaire's forested lands. Thus, the tropical forests are considered state property and areas of forest are allocated as logging concessions on a 25-year lease basis. In theory this time period allows the logger to harvest the area once, replant, and return for a second harvest. In reality, as the area is opened up, immigrants often enter and clear land after the first cut; or the logging company's loggers clear the land for their own agricultural purposes after the first cut is taken.

According to ART. 182 of the 1980 Land Law, "Lands are managed either by the public administration, or by public organizations created for this purpose, or by mixed societies of real property development and promotion."

The Department of Land Affairs oversees state policy with respect to land and is under the direction of the Commissaire d'État. The *commissaire* appoints a *conservateur des titres*, or registrar of real property titles, for each land district, which corresponds to an administrative district. The Department of Land Affairs is divided into (1) a service of real property titles, which handles land registration; (2) a survey service; (3) a state lands service, which manages state lands and grants concessions; and (4) a land dispute service. Regional branches of these services are headed by the regional *conservateur* who reports to the *Conservateur en Chef* and the *Commissaire d'État*.

### **Replacement and adaptation of indigenous tenure systems**

Community-based tenure rules vary from one culture to another, being adapted to ecological, demographic, and socioeconomic variables. Throughout Zaire, individuals customarily gain access to land through membership in some local corporate group. The rights of the group to the land are inalienable, and individual members of groups also have inalienable rights of access to some land. The local landholding group may be matrilineal—such as the clans and families of the Kongo—or patrilineal—as with the Zande Vungara. The local corporate groups cannot sell land; yet parcels of land may be ceded at times to neighboring groups, and land may be rented to strangers.

Within the larger corporate group with collective title to the land there may exist smaller groups such as families with direct control over use and inheritance of family land. Within families individuals may have rights to specific plots of land under cultivation or in fallow after having been cleared. Individuals also often own trees of economic importance.

The customary right of individuals to their harvest is generally protected, though payments to chiefs of land may be required. Security of tenure over particular plots of land varies. Rights to fallow land reinforce security where such rights exist. Women are often considered to have access to land only through their relationship with a man—husband, father, brother, uncle, and the like—though women may own their harvest. Strangers who do not become members of the local landholding group generally have short-term, insecure use of land or may be denied access to land altogether. Religious ideology plays a role in maintaining preeminent rights to local corporate groups.

Various forms of shifting cultivation are common on lands held under customary, community-based tenure. Population density is low and tenure systems are flexible over most of Zaire. Where population density is greater or where for other reasons arable land is scarce, tenure rules and boundaries are stricter, and disputes, more likely. Scarce land near markets acquires commercial value, and forms of customary rent or one-time payment appear when landholders allow strangers to use scarce land. Land is particularly scarce in areas of Kivu and Bas-Zaire and in areas near urban markets. Where land is scarce and valuable, the landholding group with direct control over land tends to be small and tightly knit.

One exception to the above-noted generalities is the case of the land and natural resource tenure systems followed by the ethnicity often referred to as the "pygmies." These people have traditionally made their living from hunting and gathering in the forested areas of the Zaire basin and Gabon. While their traditional rights to land rest on a similar combination of defined territories and group membership, as do those of the neighboring,

farming-based ethnicities, their corporate rights to land are not related to cultivation but rather to gathering, fishing, and hunting in the forested areas. Another difference is that they see themselves as dependent on the goodwill of the forest rather than the goodwill of their ancestors.

As noted above, state laws since colonial times have contradicted or officially overturned the community-based tenure rules. Currently, community-based tenure systems are subverted by the General Property Law of 1973/80. The most enthusiastic enforcement of this principle was actually tried before the law was passed. In 1971, Mobutu denounced the customary tenure in the densely populated Kivu region as “feudal” and exploitative. Land reform was attempted which stripped local chiefs of their power to allocate land. Agreements between individuals under a form of freehold were substituted for customary tenure. This tenure reform was met with widespread resistance and increased general land insecurity. Consequently, the reforms were abandoned. Under the 1973/80 laws the president is supposed to issue an ordinance clarifying the role that community-based tenure systems are to play under the General Property Law. The ordinance has never been issued and many commentators suggest that it has not been (and most likely will not be) issued because of the sensitive nature of land reform, as witnessed by the Kivu experience.

More recently Salacuse (1985) has noted that in Bandundu a *programme fermier* has started which small farmers can apply to for a “concession.” In this program local authorities compel chiefs to turn over a few hectares to the administrators and/or the small farmers. These small farmers are issued “titles” and they then consider themselves *cessionnaires*. However, the titles are never registered, though the administrators insist that someday in the future they will be registered. This new program appears to be another example of the government’s clashing with the community-based tenure systems.

Since all land is officially owned by the state, there are no official land markets. Still, literature suggests that under some of the community-based tenure systems land is bought and sold. Also, under the state laws, the *cessionnaire* has rights to the improvements made upon the land and it appears that the rights to these improvements may be sold. In some cases in both rural and urban areas these transfers of rights may constitute a land market.

### **Tenure constraints and opportunities**

Agricultural production in Zaire is in crisis. Since independence both food and export crop production has fallen, and prices farmers are paid for their goods have also fallen. There are multiple reasons for this. One impetus is definitely tied to the land tenure insecurity that has resulted from government land policies. The land policies ignore customary rights to land, provide no role for the traditional land chiefs, and do not provide secure title to land in the place of customary rights. In the early 1990s, another element entered into the fray. The political upheaval engendered by President Mobutu’s conflict with the reform elements of the transitional parliament have guaranteed that no laws are passed that will put the country on a path to resolving its agricultural problems.

Huge increases in logging are currently planned according to the Tropical Forestry Action Plan for Zaire. As current laws are written, these increases will not occur in an environmentally sensitive way. Rather, 25-year concessions will be given to logging companies, which will then enter an area and take out an average of 8.7 cubic meters (less than one tree) per hectare. However, the removal of this wood is done in such a way to cause large amounts of destruction to the rest of the forest and also open the forest to people looking to expand agriculture into these areas. As with agriculture, there is no chance of reforming Zaire’s forest and natural resource management laws given the current standoff between President Mobutu and the parliament. Consequently, the current tenure situation encourages the destruction of Zaire’s tropical forests.

The General Property Law is a top-down edict from the government, effectively taking control of land decisions away from the local, traditional authorities. This limits the participation of the local population in decision-making and runs counter to the idea of democratization. In order to foster democratization in Zaire, the

government should look to the local institutions and the rules made under them to better understand how local participation in decision-making works in the countryside. One way of doing this would be to attempt to adapt these institutions and rules into the national land tenure system. By adapting community-based tenure systems into the larger system, local participation in decision-making would be encouraged and the process of democratization in the country could be fostered.

Food security has deteriorated in Zaire since independence. Not only has food crop production decreased, but rural diets are protein-deficient. There are food shortages, predictable by season in the rural areas, and malnutrition in both rural and urban settings. These problems are exacerbated by government policies, carried over from the colonial era, that demand obligatory cultivation of certain crops by the rural population. As urban food problems have mounted, there has been an emphasis on obligatory cultivation of food crops suited for the urban market. This mandatory policy has backfired in that the rural population often uses poor land for this cultivation, which leads to land degradation and, further, to poorer harvests. Other causes of food insecurity and decreasing prospects for economic growth are the deterioration of the road network, land tenure insecurity caused by the nationalization of land under the General Property Law (which has worked to discourage investments in the land by both small and large land holders), and the political instability caused by the standoff between President Mobutu and the parliament.

Generally, women are responsible for most of the work on food crops among most of the ethnicities in Zaire. However, though many of the ethnicities recognize matrilineal lines of inheritance, it is the men who control the land. Indeed, men inherit land from their mother's brothers and women gain access to land through men—either their husband, father, sons, or brothers. Under the customary tenure rules, women have little or no right to land as “owners.” It appears that this situation has remained, *de facto*, the case under the General Property Law. In general men have the right to make decisions regarding land use and access, and women must go along with these decisions if they wish to access land.

### **Present policy position and reforms**

The Government of Zaire's present policy is that all land belongs to the state. Land can be acquired as a concession, either for the short-to-medium term under an ordinary concession or for the long term under a perpetual concession. The current forestry and natural resource laws are such that they encourage the exploitation of the natural resource base in a manner that leads to the degradation of the resource over the long term. In both cases reforms are not on the horizon given the situation between President Mobutu and the national parliament.

### **Implications for policy dialogue and programming**

The major area where dialogue is needed is in the realm of the General Property Law. Given that there are levels of land tenure insecurity in many areas of Zaire, the law should be modified to recognize that community-based tenure systems still exist and influence how the major part of the land and resource base is accessed and used. Recognition of the validity of community-based tenure systems could also influence the rate at which deforestation is spreading in the country by decreasing the accessibility of logging companies to logging concessions.

However, before any policy dialogues can be opened, the current political instability in the country needs to be addressed. For this to happen the tense situation between President Mobutu and the parliament needs to be resolved. Unless this takes place all reform of the land tenure situation will have to wait.

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## **SECTION 2**

### **LAND TENURE COUNTRY PROFILES, GREATER HORN OF AFRICA, 1996**

by

**John W. Bruce,**

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## SYNTHESIS OF TRENDS AND ISSUES RAISED BY LAND TENURE COUNTRY PROFILES OF GREATER HORN OF AFRICA COUNTRIES, 1996

by

**John W. Bruce, Jyoti Subramanian, Anna Knox, Kevin Bohrer, and Stephen Leisz**

This paper attempts to identify important trends and issues of land and natural resource tenure confronting policymakers and analysts in East Africa. The diversity of the national experience is almost overwhelming. The challenge, and the primary enterprise of this paper, is to find commonalities in trends and issues upon which it is potentially productive to focus attention at the regional level.

### **State of land and natural resource tenure policy**

The countries in the region reflect very different land endowments relative to population, as indicated in table 2.1.

There are also vast differences in the landforms and ecologies of the countries within the region. The same is true of the tenure “topography” of the region: this is the part of Africa where in the years following independence countries adopted the most dramatic tenure reform strategies, strategies which differed dramatically from one nation to the next. What is remarkable is the extent to which tenure reform was undertaken by countries of all ideological stripes. However different the national scenarios for inducing greater productivity through tenure reform, a common thread runs through these efforts: the attempt by new national elites to wrest control of land from traditional elites and create a uniform national tenure system.

Only Kenya has aggressively pursued a policy of tenure individualization and privatization. Burundi, Rwanda, Comoros, Djibouti, and Sudan have conserved private ownership which existed at independence, but of these only Burundi and Comoros has show any interest in expanding land in private ownership by conversions of land in the indigenous tenure sector. Somalia abolished private ownership and was embarking on major conversions to leasehold from the state, but the current position in that country is unclear. Uganda, which once abolished private ownership and sought to replace both it and indigenous land tenure with leaseholds from the state, has in its 1995 Constitution restored recognition of private ownership and protection to the rights of those who hold land under indigenous tenure.

Most of the countries in the region have provided some legal recognition to indigenous, customary land tenure, but some, notably Tanzania, Ethiopia, and Eritrea, have abolished private ownership and sought to replace indigenous tenure systems with alternative, community-based tenure forms. Two of Africa’s most serious attempts at collectivist solutions took place in this region, in Tanzania and Ethiopia, the former in the context of programs of *ujamaa* and villagization, the latter as the follow-on to a huge land-to-the-tiller reform.

Today, the basic assumptions of governments remain remarkably similar to those of a decade ago despite major economic liberalization in other sectors of their economies. If many governments in the region have conserved limited amounts of privately owned land, they have been reluctant to expand it into areas currently governed by indigenous tenure systems. There is still a clear concern on the part of most governments about the development of large concentrations of land in private hands, and this has retarded the spread of private ownership and the development of land markets. In those countries which have continued to affirm state ownership of land and administrative allocation of the land resource, land administration bureaucracies have been reluctant to let go of the power and opportunities for corruption provided by administrative allocation of land. Tanzania and Ethiopia (and now Eritrea) remain committed to broad state ownership of land, and pursue non-market land policies. They have moved toward tenure policies which seek to support household farming through decentralization of land administration.

**TABLE 2.1**  
**Land and population**  
 (millions of hectares and millions of persons)

COUNTRY	LAND AREA	ARABLE AND PERMANENT CULTIVATION	PERMANENT PASTURE	FORESTS/ WOODLAND	OTHER LAND	TOTAL POPULATION	AGRICULTURAL POPULATION	AGRICULTURAL POPULATION/ ARABLE HA
Kenya	56.91	4.52	21.30	16.80	14.29	26.39	19.97	4.42
Burundi	2.55	1.36	0.90	0.09	0.21	6.03	5.47	4.02
Rwanda	2.47	1.17	0.45	0.55	0.30	7.55	6.85	5.85
Comoros	0.23	0.10	0.02	0.04	0.07	0.61	0.47	4.70
Sudan	237.60	12.98	110.00	44.24	70.38	26.60	15.09	1.16
Uganda	19.96	6.77	1.80	5.50	5.89	19.94	15.77	2.33
Djibouti	2.32	—	0.20	0.01	2.11	0.56	?	?
Eritrea	10.10	1.28	4.80	2.00	2.02	3.35	?	?
Ethiopia	100.00	12.65	40.00	25.00	22.35	51.86	39.37*	3.10
Tanzania	88.40	3.50	35.00	33.50	16.40	28.02	21.74	6.21
Somalia	62.73	1.02	43.00	16.00	2.71	8.95	6.17	6.05

Note: With the exception of Kenya, all breakdowns of land area area based on FAO estimate.

\* 1992 figure.

Only Uganda has undergone a major shift toward private ownership, and there the focus has been on the restoration of ownership in areas where it previously existed rather than contemplating any major expansion at the expense of customary tenure. Kenya remains firmly committed to gradual realization of the economic potential of its conversion to individual ownership, which is now largely complete, and Comoros is pursuing a similar direction, although much more gradually.

The present national policy situations are summarized in table 2.2.

Comparing the present with the situation thirty years ago, when most of these countries attained independence, what are the constants and what has changed?

- 1) Smallholder production continues to be the major form of production throughout the region. Tenure security for these cultivators remains a critical need throughout the region. With the exception of Kenya (and to a lesser extent Ethiopia and Tanzania), customary tenure systems still govern most smallholder land use. Policymakers across the region have abandoned attempts to move to other forms of agricultural production organization.
- 2) Many policymakers in the region express the same concern over potential impacts of liberalizing land markets as they did in the immediate post-independence period. There is still a fear of their potential for creating large private concentrations of land ownership. There is in fact little beyond anecdotal evidence to this effect, though this is the single most important objection to recognizing growing informal markets in land rights.
- 3) Debates in the region over tenure policy have remained heavily focused on agricultural land, perhaps because of the complexities of the situations created there by half-effective tenure reforms. Policy work has only begun to focus on the broader issues of tenure in natural resource management which have for the last decade preoccupied policymakers in West Africa.
- 4) There is a new appreciation by governments of the limits of the state's administrative capacity and their ability to rapidly replace customary land tenure systems with imported tenure forms. As a result, several countries have embarked on a re-examination of the potential of decentralization of land administration and adaptation of customary tenure systems.
- 5) While reforms of thirty years ago were enacted on a relatively clear stage, any new land policies must contend with considerable confusion of patterns of landholding by previous reforms. The failure to fully implement many of these reforms has created substantial normative confusion, as well as an increasingly cynical view of reforms on the part of the purported beneficiaries.

## **Tenure issues**

In all the countries in the region, the profiles suggest a close connection between tenure arrangements, food security, and agricultural development. The connections to food security are pronounced and exist on two fronts: 1) security of tenure is an important factor in allowing land to function as a social security mechanism, a safety net; and 2) security of tenure is necessary to provide the incentive necessary to invest in the holding and thereby increase agricultural productivity.

There seems to be broad acceptance across East Africa that agricultural producers throughout the region have need of greater security of tenure. Different countries in the region are, however, pursuing this objective in very different fashions. Uganda is restoring individual private property in land while Tanzania is tending toward greater reliance on community-based tenure systems. In the former case the marketability of land is seen as a critical element of security of tenure, while in the latter it is seen as a threat to security of tenure. The difference in approaches reflects different emphases in agricultural policy, with an emphasis on production for export in the first case and an emphasis on protection of subsistence opportunities in the other.

**TABLE 2.2**  
**National land tenure patterns**

COUNTRY	OFFICIAL TENURE OBJECTIVE	DE FACTO DOMINANT TENURE TYPE	1) PRIVATE OWNERSHIP (FREEHOLD)		2) STATE LEASEHOLD		3) COMMUNITY BASED		
			Exists	Significant	Exists	Significant	Indigenous, legally recognized	Alternative community based	Extensive
Kenya	private ownership	private ownership	yes	yes	yes	no	yes	yes	no
Burundi	private ownership	indigenous community based	yes	no	?	no	yes	no	yes
Rwanda	mixed 1/2/3	indigenous community based	yes	no	yes	yes	yes	no	yes
Comoros	mixed 1/3	indigenous community based	yes	yes	?	?	yes	no	yes
Sudan	mixed 1/2/3	?	yes	yes	yes	yes	?	no	yes
Uganda	mixed 1/2/3	indigenous community based	yes	yes	?	yes	yes	no	yes
Djibouti	?	?	yes	no	?	?	yes	no	yes
Eritrea	state leasehold	indigenous community based	no	no	yes	no	no	yes	yes
Ethiopia	state ownership 2/3	alternative community based	no	no	yes	yes	no	yes	yes
Tanzania	unclear	alternative community based	no	no	yes	yes	no	yes	yes
Somalia	?	?	no	no	yes	yes	no	no	yes

There has probably been more progress made in sorting through issues of security of tenure in the last two decades than on any other tenure issue. The area has been a major target of research funded by the World Bank and USAID. While both institutions remain committed to private land ownership of farmland in market economies, studies conducted in the region (Uganda, Somalia, Kenya, and Rwanda) have provided a better sense of priorities. It has become clear that compulsory and systematic tenure conversion to individual ownership offers little benefit in most rural smallholding situations, largely because the benefits anticipated involve interactions of land markets with other factor markets, and those other factor markets are not developed.

There is a growing understanding that tenure change is not a silver bullet, but must move along with other reforms in the rural economy. This has suggested greater emphasis on the incremental adaptation of customary tenure systems to meet new needs of farmers, and the need to provide a legal and institutional environment which is conducive to that process. A national land policy may pursue a tenure replacement strategy in one part of the country and an adaptation strategy in another, depending on the objectives of agricultural policy. Not all the lessons learned to date have been absorbed by policymakers, but there is increasing sophistication of analysis by national land tenure experts.

Policy discourse in the region is also changing with regard to tenure issues in natural resource management. The political turmoil in this region has been accompanied by loss of control of scarce natural resources. In Uganda, the war years saw dramatic deforestation, and the conflicts in Rwanda and in Burundi have threatened unique habitats and animal populations. Throughout the region, renewed attempts to protect natural resources are resulting in the barring of local communities from access to resources on which they had previously depended, and has given rise to a new land tenure literature on the “buffer zone” areas on the edge of parks and reserves, in which specialized tenure strategies may be adopted and in an attempt to decrease pressure on protected areas

After decades of thinking in terms of a “tragedy of the commons,” policymakers are beginning to absorb some of the lessons of the common property literature, which emphasizes that under certain circumstances local communities can manage natural resources sustainably. Resources such as water, fisheries, pastures, wetlands, and forests are at stake. There is, however, a lack of rigorous studies of these situations in the region, which may be necessary to convince policymakers of their viability. The legislative framework for management of non-farm natural resources is commonly a poorly thought-through jumble. In some countries in the region, notably Uganda, there has been considerable research in this area in recent years, and this will in the near future lead to a clearer enunciation of policies and an improved legal framework.

A pervasive theme in the profiles is growing conflict over land. This is not a new factor, but it seems clearly to be intensifying as population pressure on land increases. It is often most acute between expanding farmers and pastoralist populations, and agricultural intensification is making more difficult the maintenance of overlapping land uses which once co-existed comfortably in many areas. In some cases this conflict has grown through natural processes of expansion of farming, but in others it has been pushed by government policies pressing for (and often subsidizing) the growth of large-scale mechanized cereal production, as in Tanzania and Sudan.

While farmer/pastoralist conflicts have been a standard of African land tenure for decades, it is remarkable how little progress has been made in grappling with them. It seems clear from the profiles that this is due in part to the political weakness of pastoralists in most polities in the region. Somalia and Djibouti are exceptions, but in these countries one finds growing disputes between groups of sedentary and transhumant pastoralists. But disputes in this context also seem to be due to a failure to identify viable tenure systems for pastoralist land use. The failure of group ranching in Kenya and Tanzania has redirected attention back toward preservation of viable extensive land-use patterns for pastoralists, which brings them directly in conflict with farmers.

The profiles suggest a frequent connection between communal and ethnic conflict and competition over natural resources. In Rwanda and Burundi, with high population densities and acute competition for land, competition between groups for resources has fueled devastating conflict. In Somalia, one factor leading to the

collapse of national coherence was anger over unfairness in resource distribution, with pastoralists marginalized and the valuable urban and irrigated land moving into the hands of clans associated with the government. In Uganda, policy reform discussions have seen persistent questions of which ethnic groups are winners under different reform scenarios. In Tanzania and Sudan, expansion of mechanized cereal cultivation is undermining the viability of pastoralist peoples and has become an international human rights issue. In Kenya, there has been violence in rural areas against members of ethnic groups who have acquired land through the land market, the most active in Africa, raising important concerns about the ability of land markets to act as mechanisms for national integration. Ethiopia has decentralized tenure policy to ethnically based regions, raising fears of discrimination against those coming from other regions.

Given the alarming growth of ethnic conflict in the region, the links between competition for land and other natural resources seem to demand urgent attention by policymakers. Neglect of needs for security of tenure and equitable access to resources may lie at the heart of much of the conflict, and finding remedies for these problems may offer the best chance of arresting the alarming trends. It appears from the profiles that what is called for in some cases is not more rules, but finding more effective means of dispute resolution and conflict management. While formal, judicial approaches to dispute resolution remain critical, it appears there is a need to think through how these can best be supplemented and properly integrated with more informal approaches to the resolution of disputes, approaches with strong roots in African culture.

Gender issues in tenure rights stand out as among the most intractable faced in the region. However, they are also the least seriously appreciated by policymakers and perhaps the least adequately addressed by tenure analysts. Most women in the region have access to farmland only through their husbands or fathers. Any knotty policy problems have not been adequately considered, for example, the problems in tenure individualization through titling to men and the accompanying loss of customary rights of wives, on the one hand, versus making it possible for women to get land in their own right through inheritance and the land market, on the other.

Discourse on these issues in the region is well behind southern Africa and, for the most part, has yet to move beyond demands for legal reforms to thinking through effective strategies to realize change. There is ample evidence that traditional values toward women's access to land persist in national government, as when customary limits of women's rights to land are reproduced in non-traditional contexts such as settlement schemes.

There are, however, interesting experiments in the region which deserve to be examined more closely. Legal reforms in Burundi appear to be facilitating inheritance of land by women, and recent anecdotal evidence suggests that Ethiopia and Eritrea are allocating separate parcels to husbands and wives to create household holdings.

Democratization and associated initiatives seem to interact in important ways with tenure policies. Secure tenure rights facilitate effective participation in political processes, and conditional tenure can create vulnerability which discourages free expression of political preferences. Where land access is threatened, more democratic structures may provide greater opportunities to press the case for equitable treatment, though this is no guarantee of success, at least in the case of minorities. Decentralization of decisions about land policy and land administration can empower and give vitality to levels of local government which have previously seemed largely irrelevant to local people. Similarly, the conferring control of land and other resources on local communities can stimulate popular participation and create new commitment to democratic processes.

### **Policy reform context**

The various countries in the region are at very different points in thinking about tenure reform. Some remain inflexibly committed to insufficient or faulty policies which have been in place for thirty years. In other cases the first tentative steps are being taken to move away from failed policies. The abandonment of old tenure policies often presents delicate political problems and can threaten powerful vested interests.

Uganda and Tanzania have perhaps been through the most extensive processes of research and consultations to redefine land policy. In Uganda, the broad framework of reform has already been enacted in the constitution. The work of the Presidential Commission on Land Matters in Tanzania stands out as a well-conceived process of policy development, but Tanzania appears to be having more difficulty coming to grips with policy choices. Eritrea has recently enacted a new land law, after a process involving some local consultation. Ethiopia has reaffirmed state ownership of all land, but has shifted the responsibility for development of new tenure arrangements to the governments of the new ethnically defined regions.

In Kenya, Djibouti, and Comoros, no major tenure reforms seem to be contemplated. There is a clear need for attention to land policy in the strife-torn countries of Rwanda, Burundi, Somalia, and Sudan, where competition for land and other natural resources may lie at the root of these civil conflicts. It is not yet clear, however, whether these volatile situations now present serious opportunities for thoughtful consideration of tenure options.

There are some commonalities across the regions in terms of the context for reform of land tenure policy:

- 1) The last two decades have not been good years for tenure research in the region, especially investigation by national researchers. Governments with strong commitments to particular reform paths have not promoted critical thinking about policy options or empirical research into the consequences of their policies.
- 2) Nonetheless, a thin but significant cadre of national land tenure experts has developed in the region over the last two decades. The extent and quality of this cadre varies considerably from one country to another, but overall it compares well with other African regions; in some countries, considerable competence was built up, then dissipated.
- 3) In spite of the high levels of tenure reform activity within the region, there has been a notable lack of interaction on these issues at the regional level. Tenure policy debates remain highly compartmentalized nationally, and, beyond the very broadest generalization, national debates tend to be ill-informed about the relevant experiences of other countries within the region.

### **Lessons from larger African experience**

To think about the future of land policy on the Horn of Africa, it is necessary to have reference to the larger experience of the continent. In the post-independence decades, the vast majority of African countries attempted to reform the indigenous land tenure systems.

The new elites who came to power at independence believed that these tenure systems were outmoded and had to be replaced. The reform enterprise has not fared well. In 1960, over 90% of Africa's land was held under indigenous land tenure systems, and the figure is certainly not lower than 80% today. Attempts to reform those systems altered and influenced them, often in ways unanticipated by the reformers, but the systems retained their customary nature and roots in local society.

The reform models adopted varied according to the ideological predilections of the new governments. But in spite of this diversity, these reforms had some common fundamental assumptions: indigenous systems of tenure needed to be replaced; the nation-state had to replace the local community as the guarantor of access to land and security of tenure; and a uniform national system of tenure should replace the diversity of indigenous systems.

The collectivizing reforms are gone, with most of the countries concerned having shifted to some form of state leasehold or a more decentralized approach to management of state land. Those countries which initially opted for state leasehold in many cases continue on that track, but this tenure has in most cases been implemented only on a very limited scale; the governments concerned lacked the personnel and other resources to take over the vast work of land administration from traditional authorities. Leaseholds were used in development projects and reform sectors, but generally could not be extended to smallholders in the traditional tenure sector. The experience

with leasehold tenure had been marred by its association with “free land” policies, such as the “land without value” concept in Zambia, and the corruption of the allocation process engendered by those policies. A system in which a scarce and valuable good is administratively allocated virtually free provides great opportunities for corruption. Development conditions, which had been one of the justifications for use of leasehold rather than full ownership, were often badly conceived and rigid, and in any case they were rarely effectively monitored. They were sometimes utilized as a pretense for government to take land to punish political dissidents, or simply to take valuable land for officials and their associates.

The individual ownership reform model has been judged largely by the Kenyan reform, which was remarkable for its scope, converting the tenure of virtually all agricultural land to private, individual ownership. The conversion was accomplished through a project of compulsory and systematic demarcation and survey of holdings, adjudication of rights, and registration of titles. Begun in the late colonial period, it was carried forward by the government of independent Kenya. In the years after the reform began, Kenyan smallholder agriculture showed great vitality, but it has been difficult to establish what role the tenure reform had in the rapid commercialization of smallholder production because several other important changes took place at the time, such as removal of restrictions upon black farmers’ growing coffee. Where the phenomena that are thought to link tenure change to investment and productivity (such as credit access) have been examined, linkages have been difficult to establish.

Side effects of the Kenyan reform have been widely criticized. Individualization had been conceived as an extinction of community controls over land, but by concentrating all rights in a single proprietor, it also cut off the customary rights and protections of family members and others. While there is no evidence that sales have resulted in significant concentration of land ownership, they have played a role in the growing landlessness and increased urban migration, and left many families without a safety net. While disputes over land declined in the period immediately after the reform, after a decade the number of disputes mushroomed as members of families which had not fully accepted the individualist ethos quarreled with the registered owners. The system relies upon participants to register successions and transactions, but they have very often not done so, undermining a system established at great cost.

The disappointing results of these reforms were becoming clear by the mid-1980s, and research has tried to understand better why they failed. In evaluating the reform experiences, it is often difficult to discriminate between flawed conceptualization and poor implementation as the root of failure, but consistent failure in many places over time tends to point toward poor conceptualization as the problem. The experience with collectivization models in Africa was consistent with poor performance under those models around the world, and they have disappeared from reform agenda. In the case of the individualization reforms, both those which offer full ownership and those which offered only a leasehold from the state, it seems that tenure had been miscast as the bottleneck, with tenure reform as the “silver bullet.” Tenure reform proved ineffective when rushed ahead of the development of access to commodity markets and to formal credit, and it is clear that future programs must treat tenure reform as an integrated part of rural development.

While the state may need to offer individual titles (private ownership or state leasehold) for urban and peri-urban situations, or in other circumstances where land is valuable and subject to intense competition, there is a need for a supplementary set of land tenure policies for most of rural Africa. In contrast to replacement strategies, there have been attempts to research and think through a set of “adaptation” strategies.

“Adaptation” reform models, while not idealizing indigenous tenure systems, attempt to build upon them. They recognize the considerable capacity of those systems to evolve to meet new social and economic challenges, and seek to create a supportive legal and institutional environment for that evolution. That environment is generally thought to include explicit recognition of the applicability of indigenous tenure rules, strengthening of local institutions to administer those rules, and provision of appropriate means of dispute settlement. Adaptation



anticipates the need to reform specific elements in those systems, both particular rules and institutional arrangements, but emphasizes the need to create democratic processes within local communities to facilitate self-reform rather than imposition of reforms through national law.

This emphasis on adaptation has directed attention to two early tenure reforms in Africa, those of Senegal and Botswana. While less well known than the reforms in Kenya and Tanzania, for instance, they offer valuable experience to those designing adaptation reform strategies.

At Senegal's independence in 1960, most rural land was owned by the state. It had been de facto administered by traditional authorities, but the colonial state had withheld recognition from customary tenure systems and had taken land at will for projects. That intrusiveness created considerable tenure insecurity and undermined indigenous tenure systems. There were only very small amounts of privately owned land, heavily concentrated in a few major urban areas. After independence, the government affirmed state ownership of land in 1964, and suspended creation of new private ownership, citing growing land concentration. It legislated for a new institution to administer rural land, the *communauté rurale*. This new institution was created under regulations promulgated in 1971 and implemented on a region-by-region basis over a period of fifteen years. *Communauté rurales* were created at a level encompassing several local communities and often different ethnic groups. They were managed by popularly elected executive committees. Traditional village leaders were sometimes elected, but other members came from a variety of walks of life. The law affirmed existing rights under custom, but set out some basic principles to guide committee members in future allocation decisions, including the principle that the actual tiller of land should have priority over those with historic land claims.

The government may initially have intended the executive committees to take over land administration directly, but in practice, the *communauté rurale* has usually acted as a direct allocator of land only in areas newly opened for farming or new irrigation schemes. It has functioned primarily as an appellate institution, hearing complaints from those who contend that traditional authorities and other local authorities have violated the principles set out in the 1964 law. It has also helped manage competition for resources and cooperation between communities, and served as a forum for interaction with government on proposals for land development. For day-to-day land administration, the executive committees still rely heavily on traditional and other local leaders, making the system relatively economical.

The land tenure position in Botswana at independence bore some resemblance to Senegal: there were only very limited amounts of privately owned land, a little in the capital, Gaborone, and some blocks of rural farmland. Most rural and town land was technically owned by the state, but, in contrast to the position in Senegal, the colonial state had long recognized its administration by customary authorities under indigenous law. The independence government in 1968 enacted the Tribal Land Act, which created a system of district land boards, each district being based on one of the major Tswana sub-tribes. These took over from the chiefs the role of trustee to tribal lands, but were also charged with executing the orders of the Ministry of Local Government and Lands. There is an obvious tension between these two roles, and it has been felt in the implementation of government's much-criticized Tribal Grazing Land Policy (TGLP), which required the land boards to participate in an exercise which pulled large amounts of land in western Botswana out of communal grazing and placed them under long-term leases for commercial ranching purposes.

Each board was provided with a vehicle, office facilities, and an executive secretary who is a ministry employee, and members were provided with training. They were usually located in the district capital, and sub-district land boards were later created in other towns in the district. Election to the boards was originally indirect, through the district council, and there were many ex-officio members, including chiefs and district officials. Reforms have recently provided for direct election of members from sub-areas within the districts, reducing the dominance of the boards by the middle class in the towns. While senior chiefs were initially ex-officio members of

the boards, their inability to control events proved awkward for them, and they have for the most part ceased to serve on them. The government has provided them with more satisfactory judicial roles.

The boards manage land directly in the towns, including the planning of town expansion and plotting of land for that purpose. While most of this land remains administered under the rules of customary land tenure, a board can on application confer long-term leaseholds which are acceptable to banks as loan security. These are available for industrial, commercial, and even residential purposes, in the case of an expensive residence. The boards also directly administer the TGLP leases. They do not, however, play so direct a role with respect to communal grazing land or farmland; in this case, day-to-day land administration remains in the hands of the lowest level of the traditional hierarchy, the ward heads.

The Senegalese and Botswana systems have common elements. Both have approached tenure reform through the creation of new public institutions which have introduced democratic processes into local land administration. Both have not sought any general replacement of customary law, but have sought to change customary rules in specific priority areas. Both have retained—to a greater extent than originally anticipated—a role for traditional authorities in day-to-day land administration, and they have as a result not incurred the cost of a large land administration bureaucracy. The Botswana program has been better financed than that of Senegal, as might be expected given the relative resources of the two countries. But both countries have treated land tenure reform as national priority and committed major national (non-donor) funding to the reforms.

These two instances represent one category of adaptation reform, those which seek to create new public institutions. There is a second category: adaptation of customary tenure through new private law institutions. One example is provided by the group ranches created in Kenya and Tanzania in the late 1960s and 1970s. These attempted to break up pastoralist territories into smaller units, each vested exclusively in a collective management which was to pursue investment and intensification of production. They have tended to break up more recently, the land being subdivided into individual holdings, as a result of market pressures for land from without and diverging interests from within their membership. It is possible that the major value of the group ranches to the pastoralists was transitional, as a way of allowing them to obtain titles to their land and thus limit incursions by neighboring sedentary farming peoples. These needs may have provided a stronger motivation for the pastoralists to work with the group ranch model than any desire to realize the rotational grazing scenarios designed by development planners.

Another variety of reform seeks to formalize extended family ownership of land through introduction of the Western institution of trusteeship. An example is the “family land” concept developed by the common law courts in Anglophone Africa, and recognized as a registrable interest in Nigeria and Malawi, among others. The trustees are often wealthier and better educated members of the family. One of the key motivations for such reform has been to facilitate the entry of customary tenure land into the land and credit markets, and so the trustees have the power to mortgage and sell the land. That power has often been abused. Transfers have commonly been made without consultation with and contrary to the interests of the family, and trustees have diverted the benefits from transactions to themselves.

The models involving private institutions have not been as well researched as the Botswana and Senegalese reforms, and represent a pressing need for further research.

### **Future of land tenure on horn of Africa**

What are the implications of this experience for land policy in the countries of the Horn of Africa? Probably no lesson is more central—from experience within the region and from that of Africa as a whole—than that governments cannot realistically expect to suddenly change their tenure systems, replacing them with another model. Indigenous land tenure remains extensive in most countries in the region, often the dominant tenure system. Where it has been largely replaced, as in Kenya, traditional values continue to inform how rural people

behave toward land. Where indigenous tenure has been to some extent replaced by alternative community-based systems, as in Tanzania and Ethiopia, it is often unclear in particular communities how “alternative” and how “indigenous” the tenure arrangements are.

It seems clear that the future shape of land policy in the region must seek more modest objectives. It may be feasible and necessary to replace existing tenure in urban and peri-urban areas, or other areas where competition for land is intense and indigenous land administration is not evolving fast enough to meet the new needs. It is more questionable whether this is needed in most rural areas, at least whether there is any prospect that the benefits will be commensurate with the costs. As a result, most countries in the region are likely to find themselves pursuing a two-track tenure policy in coming years, one track emphasizing the need to formalize tenure arrangements for high-value land, the other seeking to facilitate a more evolutionary path of tenure change. The latter path will need to find some way to accommodate innovating individuals whose needs for tenure are different than those of most smallholders in those communities.

In those same areas where change in agricultural land tenure is likely to be gradual, there is land whose value is as common-pool resources or for preservation. In those areas, there will be a need for more effective integration of land tenure policy for agricultural land and tenure policy for common property management or preservation of natural resources. In addition to tenure policy, there is a need for a new focus on dispute resolution in these areas, which tend to be the locus for conflicting claims to land for different uses.

This is not, it is emphasized, to suggest that a uniform national tenure system is not a reasonable long-term objective. It may or may not be, depending upon the diversity of land use systems and other factors of diversity in the country. What is essential is that there be a unified and coherent land tenure policy, which rationalizes different tenure forms in the national tenure system in a fashion that effectively mobilizes the potential of the land resource to meet public purposes.

## BURUNDI COUNTRY PROFILE

by Stephen Leisz

### Executive summary

Scarcity of land is the most pressing issue with regard to agriculture and development in Burundi. Under community-based land tenure systems land is held by individual heads of households and passed, for the most part, from father to son. Also, current agricultural practices and housing patterns follow a dispersed settlement pattern. These systems appear to provide reasonable security of tenure to existing holders. Over the past few years there are indications that inheritance patterns could change to allow women to inherit some land, in certain situations. The most recent land and forest codes indicate that the government is attempting to address land and forest problems through the replacement of community-based systems rather than by adapting the systems into a national system. But as in Rwanda, competition for resources is an important stimulant to the communal strife which is undermining any rational policy reform process.

### National policy and legal framework

Burundi, a landlocked country in Central Africa with an area of 27,834 square kilometers, has one of the highest population densities in Africa (208 inhabitants per square kilometer). Its population was estimated at 5.78 million by the United Nations in 1992, and its demographic growth rate was 2.9% between 1980 and 1991. During this same period its urban population increased by 5.7% annually, but today only 6% of the population is found in the urban area. The three main population groups in the country are the Hutu, 83% of the population, the Tutsi, 17% of the population, and the Twa, who account for less than 1% of the population.

With 94% of the population rural based and living in dispersed family units on their holdings, there are few villages or towns outside of the main cities. Most people rely on agriculture for their survival and, consequently, most of the country's surface area is used for some form of agriculture. Land use is estimated as follows: 25% of the countryside is used for cultivated crops, of which 90% is devoted to subsistence agriculture and 10% is devoted to export crops; 60% is devoted to pasture area, this includes areas of fallow land; and less than 2% of the land is forest or woodland. The annual deforestation rate is 2.7%. Over 80% of farm families have less than 1.5 hectares of land, and, as of 1982, the average field size was .39 hectares, although indications are that in recent years field sizes have decreased.

Since independence, changes in Burundi's land tenure patterns have come about more from demographic pressures than from government or market forces. Today the tenure systems present in the country are a mixture of state laws and community-based rules. Officially, all land that is not occupied belongs to the state, and all land that is occupied should be registered under the terms of the 1986 Land Tenure Code. However, the reality is that the 1986 land law is not understood by all of the population and as a result community-based tenure systems<sup>4</sup> that locally regulate access to and use of land and the natural resource base are still being followed.

A 1961 land law stated that land held under customary tenure is part of the state's domain, with the state exercising rights of reversion if the land should fall unoccupied or otherwise be abandoned. Individual farmers

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<sup>4</sup> Note that in this document community-based tenure systems are systems where rules that gain their legitimacy from community recognition are at the base of the land tenure system. In other places these systems are referred to as customary, traditional, or informal tenure systems.

only possess rights to occupy and use the land. Land that was registered and held by European companies and church missions under the colonial system were not similarly encumbered, but, rather, were held as freehold.

Laws passed in 1976 and 1977 furthered state control of land. The 1976 law returned to the state all land that had been illegally distributed by the local administrative personnel (the *bourgmestres*) since independence. The 1977 law officially ended the institution of *ubugererwa*. This was a system whereby access to land could be gained via a form of renting. In order to gain access to the land, the potential renter would approach a person who controlled large areas of land. Traditionally, the potential renter would solicit access to the land with a gift of beer, and then negotiate the conditions for use of the land. The use rights were often insecure. The 1977 law also officially supported the idea of villagization, moving families from living in their fields to villages.

The Land Tenure Code of 1986 was the first law, since independence, totally devoted to land tenure reform. The goal of the code is to encourage the development of the country and increase agricultural production. The law recognizes all previous granted titles and registration of land as being evidence that the land is appropriated. It also recognizes customary rights to land, (rights granted under community based tenure systems), in that land claimed under customary tenure systems is recognized as being “owned,” and specifically protects rights to land that is currently in fallow. However, the law specifies that land customarily claimed is now supposed to be registered, and, as the law is very complex, it has not been widely followed. Thus, in reality, after the adoption of the 1986 law, community-based tenure systems are no longer valid. All land that is appropriated under the various community-based systems in the country should now be registered and all future transfers of land and/or acquisitions of land should follow the procedures outlined in the 1986 text.

Urban areas are also covered under the 1986 law. During colonial times, Africans were only allowed usufructuary rights to urban lands. With independence Africans were able to acquire permanent title to plots of land in urban areas. The 1986 law further enforces this, noting that urban land needs to be registered and the registration must be passed on when it is sold, inherited, or in some other way passes from one owner to another.

Current policy discourse tends to focus on what are perceived as the two main problems of agricultural land fragmentation and increasing degradation of the natural resource base. Indications from the literature are that these two areas, and how state land and forestry codes affect them, are of the most concern to the Government of Burundi. From the 1985 Forestry Code and the 1986 Land Code it appears that these two areas are being dealt with via policies that reflect a national replacement strategy rather than adapting local rules and rule-making processes into the national structure.

## **Replacement and adaptation of indigenous tenure systems**

The myth that most Westerners hold of Burundi (as of neighboring Rwanda) is of a country whose populations consist of cattle-owning Tutsi, who control the country and live off their herds, and agricultural Hutus, the dominated group who are forced to yield up tribute and produce to their Tutsi overlords. The reality is, and has always been, more complex, and the point that needs to be stressed is that there is no dividing line, neither ethnic, economic, nor social, between pastoralists and agriculturists. Most individuals, whether Hutu or Tutsi, farm, and the better-off among them also own a few head of cattle. There is no neat division of land and land use between ethnic groups or castes or between geographical areas.

Land in Burundi is held by an individual rather than a lineage. A man acquires rights to land through clearing, planting, and continuing to work the land, or via inheritance or purchasing of land. In the past, by clearing and settling on land, the individual put himself under the authority of the chief in whose district the land was located. In exchange for the chief's patronage and protection, and as an acknowledgment of the chief's authority, the man would be obligated to supply some of his produce and labor to the chief. Thus, the chief gave out unallocated land to individuals who needed land.

Land is inherited patrilineally, passed from father to sons, either at the time the sons marry or when the father dies. Women do not inherit land, but rather have use rights to land through their husband, father, or another male relative. It is the nuclear, rather than the extended family, that is at the center of land holding and inheritance rules, just as it is the nuclear family that constitutes the unit of production.

In addition to fields, a wealthy individual may hold rights to pasture and forest land, land which is not under intensive cultivation. Although individually held, access to such land is generally shared with neighbors and relatives. Neighbors' cows may be allowed to graze on pasture (or fallow) land, and neighbors may also be permitted to go into wooded areas to collect dead wood for firewood (although such permission does not include collecting fruit from or cutting live trees). Not all individuals hold forest and pasture land, and allowing others rights to one's land is both a means of alleviating the unequal distribution of land and an expression of the unequal wealth (and status) in the countryside.

Community-based tenure, when described from the perspective of the farmer, appears to operate (and to have operated) relatively simply in Burundi. However, various factors have complicated the system, as well as our understanding of it. Pre-colonial Burundi was an hierarchical society, and its government a monarchy. Twentieth-century descriptions of the traditional system of government and land tenure have introduced anachronisms which have now become enshrined as reality. It has been widely written that under the customary land tenure system all land was considered to belong to the *mwami*, king, of Burundi. The *mwami* was not the all-powerful ruler the Germans and Belgians believed. Certain lands, those belonging to him personally, were at the *mwami*'s disposal, to assign or lend as he wished, but neither in actuality nor in theory did he or his delegates exercise broad allocation authority over his subjects or their land. Nevertheless, there is widespread acceptance of this idea today, and however false, its general currency has important implications for both the Republic of Burundi and the peasantry.

In the colonial era Burundi remained a country of smallholder agricultural producers, and almost no land was appropriated for European agriculture or industry. Apart from those changes introduced into the theoretical base of the land tenure system (as described above), there were few alterations in land tenure practices. With rare exceptions (such as urban areas, church mission lands, and minor agricultural and mining concessions), land holdings remained unregistered and continued to be held under the same tenure as in the past.

Community-based tenure systems also had rules that regulated access to trees and tree products. These rules differentiated between the person who had control and access rights to land and the same types of rights to the trees on the land. In the past, the person who planted the tree kept primary rights, controlling who could harvest fruit from the tree and cut the tree, even if he no longer had rights to the land on which the tree was planted. With the change in the land tenure codes in the recent past, there is debate as to whether the differentiation between rights to trees and land still holds.

The resolution of land tenure conflicts under the community-based systems also takes place. Conflicts are first taken to a local council of sages for resolution. If they are not resolved at this level, they are taken to an official, administrative level and/or the courts, and a resolution is handed down.

State laws recognize rights claimed under community-based tenure systems as a legitimate basis for registering land. However, with the passage of the 1986 land code, all land, even that claimed under community-based systems, should be registered with the state. To this extent, the state is currently attempting to replace all community-based tenure systems with a central, national, tenure system as outlined in the 1986 law. However, the state does not have the resources to carry this out, and education of the population, and even of the government functionaries, regarding official, national, land tenure laws has not taken place. In many places, administrators at the commune level look to community-based rules when regulating land tenure disputes rather than to the national law, and few in the rural population have registered their land with government officials.

There is evidence that land is bought and sold in Burundi, not only in titled areas but in areas under indigenous tenure systems. In some places of high population density, buying land is one of the few mechanisms by which a new farmer can gain access to enough land to support himself and his family. However, overall, indications are that less than 7% of rural farm land is accessed by buying it<sup>5</sup>. There does not seem to be any difference as to whether the seller has registered the land or has control of it under community-based land tenure rules.

## **Tenure constraints and opportunities**

Through the 1980s Burundi was one of the few countries in Sub-Saharan Africa that produced enough food to feed its population. It achieved this success by clearing new land for new fields, introducing new farming techniques (such as intercropping, relay cropping, and double cropping), and changing the crops grown in its fields as its population increased<sup>6</sup>. As the possibility of clearing new land for agricultural production decreases, it is questionable whether the practice of shifting from cereal and legume crops to tubers will be enough to keep up with the pace of population growth. If not, the food security of Burundi will suffer.

Land tenure security does not appear to have been a limiting factor when it comes to increasing agricultural returns. The literature indicates that Burundi have high levels of land tenure security. However, investments are limited because there is little access to credit throughout the country, and even if credit was available, indications are that most Burundi “own” too little land for bankers to consider it adequate security against loans.

Access to land markets also does not appear to be a constraint on agriculture. There are land markets working in Burundi. The limitation is that resources for buying land are limited and not many enter into the market, because of the primarily subsistence nature of agriculture in the country.

The main limiting factor on agricultural production is the high amount of land fragmentation in the countryside. This fragmentation is a byproduct of high population growth rates, and an inheritance system that encourages the splitting up of agricultural land among all the male offspring of a land owner.

There is only a very limited literature on land tenure and natural resource management in Burundi. Still, it is possible to say that in spite of the security conferred by the existing land tenure systems and laws encourage the fallowing of agricultural land in order to recover its fertility, there are still natural resource management and conservation problems in Burundi. These problems are tied to the limited surface area of the country, the high deforestation rates, and the growing population. All of these together have put undue pressure on the land and force farmers to limit fallow periods, or altogether do away with them, in order to produce adequate food for their families. These same pressures are noted as the cause for a high deforestation, increasing land degradation, and destruction of rare flora and fauna found within the country.

Until the 1985 Forest Code, there were no laws strictly devoted to forestry issues. Instead, different laws covered different aspects of forestry (such as interdictions to woodcutting, specific rules regarding burning, and the like). One of the notable aspects of the 1985 code is that for the first time the national government explicitly looks to protect the remaining primary forests of the country and also encourages a scheme for the exploitation of the tree plantations planted in Burundi since colonial times. Finally, while the code does distinguish between state forests, forests controlled by the “communes” and public forests, it is not clear, from the sources available, how

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<sup>5</sup> More land may be bought in urban areas. Land is also accessed by renting and the same study showed that about 1/5 of households surveyed have access to some of their fields by renting them.

<sup>6</sup>As population increases, grains and legumes are replaced with tuber crops. This is done as tubers can feed more people from the same field area. However, as grains and legumes are replaced with tubers, the nutritional value of the harvest is decreased.

the forestry code interacts with community-based rules relating to the control of and access to forests and trees, nor how the forestry code corresponds to the land tenure code.

At the national level, the Ministry of Land Development, Tourism, and Environment, created in 1988, is in charge of overseeing and enforcing both the appropriate land codes and forestry codes. Its mandate is to administer programs relating to rural works, water and forestry, land tenure, and rural cadastre throughout the country. At the local level the commune administrator<sup>7</sup> enforces the land codes and forestry codes, and acts as judge when conflicts relating to land and forest issues are brought to his level.

Both Land Tenure Reform and Forestry Codes have taken the form of top-down edicts in Burundi. This limits the participation of the local population in decision making and runs counter to the idea of democratization. In order to foster democratization in Burundi, the government should look to the local institutions and the rules made under these to better understand how local participation in decision making works in the countryside. One way of doing this would be to attempt to adapt these institutions and rules into the national land tenure system. By adapting community-based tenure systems into the larger national system, local participation in decision making would be encouraged, and the process of democratization in the country could be fostered.

As already discussed, under community-based systems women have little direct access to land, and the inheritance structure is such that only male children inherit land. In 1980 the Family Code gave women the right to process legal documents, own property (including land), practice a profession, engage in industrial undertaking and gain access to credit. There are also indications that this change in legal status is slowly affecting women's access to land, as at least one study indicates that some women may be inheriting land from their father where no male heir is present.

### **Present policy position and reform directions**

Burundi's present policy is one of recognizing that community-based tenure systems confer rights to land, but officially encouraging all to register their land. Theoretically, this will result in the total replacement of the community-based tenure systems. Another aspect of this is that the creation of villages is being encouraged (to decrease the instances of farmers living in their fields). However, few resources have been devoted to the land registration campaign and little education of the population (and government officials) regarding the land tenure code has been carried out.

With regard to the noted problem of land fragmentation, little has been done to attempt to address the population growth rate of the country.

### **Implications for policy dialogue and programming**

There are two areas where policy dialogue is needed. The first is over the government's insistence of implementing a replacement strategy towards land tenure reform. Given that land tenure security is not a problem in rural Burundi it is debatable whether the aggressive implementation of the 1986 land tenure code will have any effect other than to decrease land tenure security. Given that few people understand the law and it is difficult to register land given the laws complexities, there is the potential for people who currently believe their rights to land are secure under community-based tenure systems, to start to question that security if an aggressive campaign to implement the 1986 code is undertaken.

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<sup>7</sup> Burundi is divided into 15 provinces, each of which is divided into communes (114 in all). Communes are further divided into a total of 2,464 collines, which are the smallest administrative unit. Communes and collines both fall under the jurisdiction of the Ministry of the Interior.



The second area where a policy dialogue may be needed is in the area of land fragmentation. This dialogue would have to revolve around the dual areas of population growth and reform of the inheritance structure. The population dialogue should center on verification through research of the economic consequences of fragmentation, and the development of strategies for bringing population growth rates under control. There is a need to review inheritance law to ascertain whether there are ways to minimize fragmentation of land at inheritance. There are different mechanisms that could be introduced into the community-based tenure systems that could help alleviate this problem; one possible approach would be rotational use of inherited land by the inheritors<sup>8</sup>. Progress in these areas must, however, await the alleviation of the conflict within the country.

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<sup>8</sup> This type of strategy is used in Sri Lanka and parts of Madagascar to avoid the fragmentation of agricultural land.

## COMOROS COUNTRY PROFILE

by Kevin Bohrer

### Executive summary

Agricultural production in the Comoros has been stagnant due to a political situation which alternates between peace and extreme violence. A small number of landowners have title to the most productive land which they use for export crops. The majority of the peasant farmers hold very small untitled and unregistered parcels. The government seeks to achieve food security by diversifying the export crops, but self-sufficiency is unrealistic since arable land is limited and the islands have one of the highest population densities in the world. No tenure reform policy is currently being discussed.

### National land policy and legal framework

Three islands, Grande Comore (Mjazidja), Mohéli (Mwali), and Anjouan (Nzwani), constitute the Federal Islamic Republic of the Comoros. The republic also claims the French-administered island Mayotte (Maori), but this island is not included in the nation's 2,170 square km of land surface. One third of the land is arable, while an additional 7% is meadow or pasture, and 16% is forest or woodland. Approximately 80% of the 549,338 people live in rural areas, while an additional 100,000 Comorians live abroad.

The Comoros Islands have played an historic role in the region due to their strategic geographic location in the Mozambique Channel between Madagascar and mainland Africa. Today, although agriculture employs 80% of the work force, Comorians are able to produce only about 10% of their staple rice needs, and overall local agricultural production does not provide half of local subsistence. The economy is dominated by export crops. The Comoros lead the world in the production of ylang-ylang (a flower used in perfume) and are the second-largest producers of vanilla. The present tenure situation in the Comoros islands is the result of hundreds of years of foreign influences. The islands were populated through waves of immigration from East Africa, with the addition of Muslim Arabs in the twelfth-to-fifteen centuries. The Muslims created sultanates and established themselves as the local elites. Each island, however, has a unique settlement history, with Anjouan being the most dominated by the land-holding Muslims, and Mohéli being the most affected by French colonial planters.

In the nineteenth century, France assumed control first over Mayotte Island, and then extended protectorate status to the other three islands by 1886. In 1912, France declared the Comoros a colony and established four categories of land: 1) company concessions, which were the consolidated land holdings purchased from the local French planter class and which accounted for approximately 35% of the archipelago's total land surface; 2) state land, which included most of the forests and mountainous areas; 3) the private estates of the Comorian aristocracy, who were the descendants of the previous sultanate rulers; and 4) collectively held village reserves. There were no provisions for peasant small land holdings.

With the majority of the arable lands controlled by the colonial companies and the Comorian aristocracy, the Comorian peasants began demanding land from the colonial government as early as 1927. To maintain peace, France forced Bambao, the largest land company, to surrender some land claims to Comorian peasants occupying company-held land.

The French promoted a series of land reforms in the 1950s and 1960s. Villages were awarded legal ownership to the land they occupied, and more company land was transferred to peasants. The best arable land, however, was retained by Bambao. Although some additional land was made available to villages on a collective basis, villages were not assured of long-term access. Tenure security was weak as policy changes shifted land from the control of one village to another.

In 1975, the Comoros declared unilateral independence from France, though Mayotte refused to secede and today remains under French domain. Bambao at that time sold the majority of its company land to private foreign and local elite landowners. A series of coups d'état in the 1970s, 1980s, and 1990s have stalled the agrarian reforms that were to accompany the establishment of the new nation. The 1975 five-year plan, for example, was not published until February 1978. The scope of this plan included land reform and food self-sufficiency, but the only enacted policy was the distribution of some small plots of idle company land to landless peasants. The new regime that assumed power later in 1978 wrote a new constitution which included the right to, and protection of, private property. The vestiges of the French colonial law continue to provide the texts for land ownership and registry.

Today there are four basic categories of land in the Comoros: untitled land; titled land; State Domain; and village reserves. Approximately 80% of the population holds small parcels (.8–1.5 hectares) without title. Most of these parcels are held and managed through one of the island's customary tenure systems, although the local qadi (Muslim judge) may grant a "deed" to the land. Such deeds, which have been issued for about one quarter of these small parcels, codify inheritance rights, but they do not secure individual ownership in the eyes of the state.

Large landholdings (635–5,000 hectares) constitute the second land category. These parcels are held by either former French colonists (on Mohéli) or Comorian elites (on Anjouan). Large landholders possess land titles from the colonial period that are respected by the present government.

Most non-arable land, forests, and some of the land from the colonial companies are held as State Domain. The state claims control over this land through rights that were outlined by the colonial legal system. For the non-arable land, the population respects the State's exclusive management and use rights, but peasant farmer invasions are common in the forests. Regarding the former colonial company land, the status of the State Domain is also in question because the majority of these State-held parcels are occupied by squatter peasant farmers.

Village reserves constitute the fourth land category. The status of these reserves is varied and uncertain. In older villages, particularly on Grande Comore, this land is held collectively by the village and cultivated by extended families for only short-cycle crops. Such village reserves are held under customary law without a title. For villages lacking traditional reserves, like most villages on Anjouan, the State has purchased land—often the former colonial company land—and placed it at the villages' disposal. How these newly created village reserves are managed is unclear.

The government's current policy direction regarding land is based upon the 1983-84 Economic and Social Development Plan. This document held that progress in agricultural and the modernization of traditional cultivation techniques could not be achieved until land users had more secure tenure rights. Although the Comoros could be more agriculturally productive, the land could not be used optimally until more of the small landholders are assured of their future use rights. Aside from promoting crop diversification, however, the Comoros has not advanced this policy with supporting legislation. In the 1980s and 1990s, agricultural reform frequently has been stalled by coups and changing governments.

### **Replacement and adaptation of indigenous tenure**

Local tenure regimes in the Comoros vary by island as each island has a unique settlement and colonization history. Nonetheless, customary land-holding and inheritance structures on each of the islands are loosely based on Islamic law, overlaid on an island-specific system.

Grande Comore has been the least effected by Arab and colonial policies and land acquisitions. On this island, for example, some land (*manyahuli*) is still inherited through one's mother. Women decide which parcels to bequeath to their daughters and sisters, as well as the size of each parcel. Women may not, however, sell this land without the permission of her family, and then only if money is needed for a family cause (for example, funeral or marriage). In practice, men manage *manyahuli* land because, according to the local interpretation of

Islamic law, husbands own their wives and therefore their wives' land. The land called *manyahuli* also exists on Mohéli, but here it is "indivisible land", owned jointly by the extended family.

On Anjouan, land is inherited through one's father. The local tenure system on Anjouan has been characterized as "feudal" because a few noble families of Arab descent historically controlled both the land and the labor force. Brought from East Africa, agricultural laborers were established in hamlets surrounding the nobles' villages. Neither the present-day vestiges of these hamlets, nor the villages created by the colonial companies, have village territories delimited by natural boundaries. The lack of such boundaries has proved problematic as conflicts over land escalate with increasing population pressure. With about twenty families owning 40 % of the arable land, social and economic inequality is more pronounced on Anjouan than on the other islands.

The State formally recognizes only the land titles granted by the French to the colonial companies, and the titles acquired by the few large Comorian landowners. The State seems willing to recognize the customary system of community-based landholding in the village reserves, but no mechanism has been established to assign this land permanently to particular villages. Local qadis claim the authority to grant land "deeds", but the State does not yet recognize these deeds as legally binding. Although the State maintains a policy of promoting the development of private property, such deeds do not secure land holding to this extent. The status of women's inheritance rights, especially those that are unique to *manyahuli* land, is not currently a matter of national debate.

### **Tenure constraints and opportunities**

With a high population growth rate and little local industry, the national economy is heavily dependent on agriculture, particularly export crops. As almost all arable land is already in use, and as population pressures mount, land fragmentation is increasingly a problem. Land holders have parcels either too small to be productive, or too far apart to be worked effectively. Cultivators face greater competition for land to be used for both export and staple crops. To address these problems, the government has proposed two solutions: 1) a vast birth control program; and 2) more rational and intensive natural resource exploitation. The second initiative is directed at land use and management, but it suggests no changes to land holding practices or legislation.

Food self-sufficiency has been a goal of almost every regime since independence. With the introduction of commercial crops during the colonial era, many rice fields disappeared, especially on Mohéli. In 1988, recognizing that with such a high population growth rate this goal was unrealistic, the government instead announced a policy of food security. Food security means diversifying export products to insure the revenues necessary to import food. Ideally, both staple and export crops will be more intensely cultivated, each on the land most suited for that crop. Future food security initiatives ideally would promote both sustainable intensified cultivation, which requires increased tenure security, and the coordination of small farmers whose individual holdings are too small to make export crops profitable. Proposed food security measures do not seek to redistribute the property of the few large land holders, nor do they promise to solidify the rights of the small land holders.

Environmental problems common to all of the islands are not being addressed, largely because farmers use rights are not secure. Comorian soils are mostly laterite, lack humus, and require careful attention if they are to remain fertile. Grande Comore in particular has very little topsoil. Severe soil degradation and erosion results from crop cultivation on slopes without adequate terracing, yet land users are unwilling to improve the land without the guarantee that they will be able to return to the land in future years. With increasing population pressure, land fragmentation is also a problem. Due to recent immigration from the other overpopulated islands, especially Anjouan, land squatters are a recent phenomenon on Mohéli. This immigration, however, has also spawned the development of land markets on Mohéli as some land owners have sold their parcels to recent

arrivals. On Grande Comore, peasant farmers have begun cultivating more intensively land in the village reserves, but without tenure security, they tend to do so without adequate soil-protection measures.

With very limited pasture on the islands, herding is insignificant. Most animals are for use in ceremonies only, while the majority of the meat consumed on the islands is imported. Those few goats and cattle that are reared on the island are corralled or staked.

Although the islands were once covered by primary evergreen rain forests, today little of these forests survives. On Anjouan, the only extensive forest is on the slopes of Mount N'Tingui, which is too steep for cultivation. Some forest still remains on Grande Comore on the slopes of Karthala volcano. This forest, however, is being cut for timber, and since the underlying soil is fragile, the forest does not regrow. Mohéli, with the lowest population density, is the most heavily wooded. Farmers there often strip the forest undergrowth to plant bananas, leaving the canopy intact. While the State owns almost all forests, it recognizes villagers' use rights to the forests. These use rights are not clearly defined, however, and encroachment into the forests is a serious problem. On Anjouan, the forest of Moya is nearly 100% occupied and broken up into parcels. On Grande Comore, the forest of Grille is 95% occupied. Both reforestation and anti-erosion measures are being considered by the government, but no specific actions have been proposed. There is no mention of possible forest co-management policies that might include a peasant-State dialogue.

The Comoros' role in the regional fishing industry has diminished over the past century, and today the islands are a net importer of fish. The pollution of coastal waters threatens the few remaining fishermen.

Two possible avenues for increasing villager participation in tenure policy and natural resources management have been identified in the literature. Both suggest adapting an existing village structure to promote a more participatory and decentralized national tenure policy. The village reserves, for example, are local-level land management units that could be incorporated into a national system, and could be invested with state-sanctioned authority to distribute the land under their domain. Throughout the islands, and on Grande Comore especially, there is also a system of social categories (*hirimu*) based upon whether or not one has sponsored or participated in "the grand wedding." This complex of marriage ceremonies and obligations confirms one's local economic, political, religious, and social status. As an existing village structure that can influence the inheritance of *manyahuli* land, the *hirimu* could be the basis for a village land management "community." No policy developments, however, seem to be directed toward incorporating either the village reserves or the *hirimu* social groupings into decentralization programs.

The *manyahuli* land presents an unique situation with regards to women's tenure security. Presently, up to one-quarter of all peasant-cultivated land is *manyahuli* land. While only about 20% of this land is registered, women are reasonably certain of their future access to it. Yet while women have usufruct rights to *manyahuli* land, men hold the management rights, deciding which crops to plant where and what portions of the land will be available to the women. In particular, men maintain the right to manage and harvest cash crops from this land, while women are left to plant staple crops. In areas where *manyahuli* land is scarce, such as on Anjouan, women's guaranteed access to land is very limited. Women's tenure security is also threatened by high divorce and abandonment rate in the Comoros. Although a woman who remarries retains her *manyahuli* land and, therefore, her access rights, the management rights to this land pass to her second husband. Such a change often brings disastrous results for soil sustainability because crop rotations, fertilization regimes, and anti-erosion practices are altered without regard to sustainability.

### **Present policy position and reform directions**

The State currently recognizes that tenure reform is needed and that any such reform must accommodate the tenure realities peculiar to each island. Different soil and water conditions, different customary tenure systems, and different population pressures render each island unique. Beyond this recognition, however, little actual

policy debate has been initiated. Although tenure conflicts have become more frequent and acute since independence, the government has seen this as a largely demographic problem to be solved by limiting the population growth and increasing agricultural productivity through improved farming techniques. Reforms addressing land access, distribution, registration, or long-term management rights are not being discussed, perhaps due to the frequent political instability.

### **Implications for policy dialogue and programming**

There are several opportunities for tenure reform initiatives in the Comoros. Any initiative should begin with a nationwide study of the tenure systems currently operating on the different islands. Several issues must be clarified before new policies can be proposed: 1) How have the colonial mechanisms for registering land been incorporated into Comorian national legislation?; 2) What is the status of the deeds granted by local qadis? How much tenure security do the people holding these deeds have? Can women acquire these deeds? Are the deeds an avenue for establishing a nation-wide system of land registration with a decentralized arbitration structure?; 3) How do the different customary systems interact with the national law? Can any aspects of these systems be formally recognized under the present legislation?; 4) What is the legal status of the village reserves? Can the villagers be assured of long-term access to this land? How does the village actually manage this land, and how secure are individual farmers' tenure security?; 5) How are people migrating within the archipelago acquiring access to land, and how secure are their holdings?; 6) Outline clearly the rights of small landholders who are squatting on the former colonial company land that is currently claimed as State Domain.

As a related programming initiative, the government may consider promoting the development of forestry co-management since farmers already occupy most State forestland.

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## DJIBOUTI COUNTRY PROFILE

by Kevin Bohrer

### Executive summary

With little arable land and almost no agricultural tradition, Djibouti has not extensively developed national legislation regarding land tenure or natural resource management. Traditional tenure systems presently regulate the distribution and use of grazing land throughout the countryside, while land titles are honored in Djibouti city. The need for a codified system may escalate as pastoral nomads settle permanently in peri-urban areas, placing greater strains upon the pastures and water sources. At present, however, no tenure reform is under consideration.

### National land policy and legal framework

Most of Djibouti's 421,320 people live in Djibouti city and other coastal towns. Approximately 9% of the 22,000 square kilometers are meadows and pastures, while the majority of the country is unable to support even sparse vegetation. None of the dry desert territory is naturally arable land, although a few small gardens are today irrigated.

Situated on the Horn of Africa where the Gulf of Aden meets the Red Sea, Djibouti is strategically located for both commercial and military reasons. Accordingly, the Djibouti economy is based upon service activities associated with the port at Djibouti city. Easily accessible to the world's busiest shipping lanes and to the Arabian oil fields, this port serves as the sea terminus for the Ethiopian railroad to Addis Ababa, as well as an international transshipment and refueling center. Local industry is limited to dairy production and mineral-water bottling, and with an unemployment rate of approximately 30%, the country is heavily dependent upon foreign assistance. Having virtually no arable land, hot and arid Djibouti must import the majority of its food. Djibouti's main exports are live cattle, sheep, and goats, as well as tanned hides. Many pastoralists have lost their herds, however, as Djibouti was severely affected by the droughts of 1983/84 and 1987/88. Salt, in almost inexhaustible supply, is Djibouti's only other exploitable resource.

Three-quarters of the population live in Djibouti city and the few other urban and peri-urban areas. The remaining quarter of the population continues to pursue the traditional transhumant pastoralist lifestyle that predominated in pre-colonial Djibouti. Both the Afar and Issa people are herders of camels, goats, and sheep. The Afar, in the northern region of the country, are part of a larger Afar group located mostly in Ethiopia, while the Issa, who live mostly in the south, are related to the Somalis of neighboring Somalia. In addition, approximately 25,000 Somali refugees currently reside in Djibouti. Many of these people have been in Djibouti since British Somaliland merged with the Republic of Somalia in 1960.

The former French Territory of the Afars and Issas became a French colony in 1896, but France at first devoted little attention to developing a system of local administration. In 1924–1925, the French passed two land laws dividing the colony into public and private domains. Public land was defined as “vacant and ownerless.” Private land fell into the categories of greater and less than 5,000 square meters. The larger parcels were sold at public auctions and titles were obtained. The smaller parcels, however, were assigned to landholders through temporary grants from the governor. These grants could be transformed into permanent titles if the holder met the requirements as outlined in the *cahiers de charges*. For small urban plots, for example, the landholder had to erect a building within 2–3 years, while land destined for cultivation had to be planted within 5–6 years.

According to the 1956 Loi-cadre, the Territory of Afars and Issas replaced France as the holder of the public domain, and a territorial assembly replaced the governor as the grantor of permanent titles. Neither the policies of 1924–1925, nor the law of 1956, however, were ever seriously applied because they both conflicted

with the realities of a nomadic lifestyle. A formal land tenure system was only ever established in Djibouti city and Ambouli. The majority of the Djibouti interior remained untitled.

When Djibouti gained its independence on 27 June 1977, it retained the basis of the French civil law system. Since approximately 94% of the population is Muslim, local legal practices also incorporate Islamic law. Although a multiparty constitution was approved on 4 September 1992, the country continues to be ruled by the People's Progress Assembly (RPP) which holds all 65 seats in the national legislature. President Hassan Gouled Aptidon, who has been in power since independence, was last reelected on 7 May 1993. With 75% of the population living in urban areas, rural tenure issues are not at the forefront of the political agenda. Improving agricultural output is a concern of the government, but realistically they do not expect ever to be self-sufficient.

The literature does not discuss current land tenure policies. Plots in Djibouti city seem to be titled, as are the irrigated garden plots used for vegetable production in the smaller urban areas in the coastal plain nearby. The rest of the country is probably unsurveyed and untitled. Land is held, used, and managed by extended family units within a structure of Afar and Issa sultanates whereby customary rules govern access to pasture land and water points. There is no mention that the Somali refugees contribute to land or resource-based tensions, perhaps because these refugees are mostly in Djibouti city.

### **Replacement and adaptation of indigenous tenures**

Indigenous tenure systems in Djibouti involve the rights to pasture land and water points. The Afar and the Issa maintain similar customary tenure practices, both investing regional tenure control in tribal groups. Local tribal units are subdivisions of the sultanates that have historically spanned Djibouti's borders with Ethiopia and Somalia. A portion of the land traditionally used for transhumant herding is assigned to each family within a tribe. This land remains within a family, and the use rights are inherited by sons of successive generations. If a family has no male heir, the tribal chief may choose to reallocate the land to other families.

Among the Afar, tribes are divided into noble and vassal groups. Noble tribes will cede to related vassal tribes the use rights of pasture and water points in exchange for their support and services in the event of warfare. Unrelated vassal tribes must borrow pasture land in exchange for a tribute payment.

The tribes of the Issa are less hierarchical than the Afar, and a larger portion of traditional Issa territory lies outside of Djibouti's contemporary borders. The head of an Issa family unit will decide when and where next to move the herds, taking into account the current state of familial and/or friendly relations with other Issa families whose lands he might traverse.

Since the Djibouti government consists of both Afar and Issa people, and since there are few crops to be threatened by the pastoralists' herds, there is no national tenure legislation that favors agriculturalists' rights over pastoralists' rights. Unlike most African countries where pastoralists are disadvantaged by tenure codes that do not recognize grazing as a productive use of the land, Djibouti upholds (or, with an absence of other legislation, it at least does not contradict) the traditional tenure rights and management practices of pastoralists.

There is little pressure or concern to codify pastoralist grazing rights, or to title their tribal and family-based landholdings, because the customary mechanisms of conflict resolution regarding pasture lands and water points continue to function. Furthermore, due to the droughts of the 1980s and the draw of urban-based amenities and services, there is an increasing trend towards sedentarization.

### **Tenure constraints and opportunities**

At the time of independence in 1977, increasing the country's agricultural capacity was a central concern of the new government. The Ministry of Agriculture operates experimental irrigated perimeters with two objectives: 1) to introduce agriculture to those pastoralists who lost their herds during the droughts; and 2) to provide extension



training to those vegetable farmers already engaged in agriculture. The Ministry also experiments with new crop species such as Jojoba (*Simmondsia Chinensis*) which may be suitable to Djibouti's arid climate. There is no specific accompanying legislation to encourage growth in the agricultural sector.

Djibouti's agricultural potential is severely limited due to several factors. Insufficient and erratic rainfall restricts food production to fruit and vegetable cultivation in irrigated plots and around wells. There are no permanent surface watercourses in the country, and only a few lakes. These lakes, like much of the underground water, have high mineral content, and much of the geo-thermic subsurface water is unsuitable for agriculture. Occasional excessive rainfall causes flooding in low-lying areas and along the coast, but attempts to create reservoirs using water-retaining dams have failed. Furthermore, since soil salinization is a problem, any irrigation efforts must be monitored for sustainability.

Traditional agriculture consists of date plantations and small vegetable garden plots around springs and wells. The majority of present-day cultivation occurs in the peri-urban centers along the coastal plain near Djibouti city. Producing vegetables for sale in the city, private gardens are irrigated from drilled wells. These gardens are run either by citizens of Djibouti city as a secondary activity, or by settled pastoralists who work the gardens while other segments of their extended families tend herds of goats and sheep in the pasture land nearby.

Agricultural productivity is so radically constrained by the country's physical circumstances that security of tenure as a constraint to investment has received little attention.

Independent families, in accordance with tribal authorities and traditions, continue to manage the majority of the grazing lands. Where water resources are scarce, regulation by intertribal agreements define customary rights. Outside of these traditional management practices, however, sedentary herders now also independently manage portions of grazing lands adjacent to urban areas, especially Djibouti city. Conflicts are emerging between the transhumant and sedentary herders over some of the peri-urban pastures because the transhumant herders generally migrate to this coastal plains region near Djibouti city during the dry season. From the transhumant herders' perspective, the sedentary herders are limiting their access to water sources and are overgrazing these pastures, causing irreversible degradation as the desertification process is accelerated without even the sparsest ground cover. Such conflicts are currently infrequent, but this situation could intensify as more herders establish permanent residences near the city.

With very little vegetation and even fewer trees, Djibouti has no national forestry service. The only extensive masses of vegetation exist on the steep slopes Mt. Mabila and Mt. Gouda, the two main peaks in the country. The forest of Day on Mt. Gouda, in which grow dew-fed juniper, ficus, and jujube trees, is managed by the commandant of Tadjoura cercle.

Fishing rights along Djibouti's coast are currently unregulated since fishing is not a traditional activity for either the Afars or the Issas. While a more extensive fishing sector could be developed, the limited fishing practices already exceed local demand, and the waters are not productive enough to develop a commercial industry.

The literature points to no striking connection between democratization, decentralization and land policy. Political participation in the 1993 presidential elections was limited almost exclusively to Djibouti city, decentralization seems far off. Despite the 1992 ruling to re-instate a multi-party system, at present the People's Progress Assembly (RPP) holds all 65 seats in the national legislature.

Gender issues are acute even by regional standards. The country's clerics follow a local interpretation of Islamic tradition that differs from Islamic inheritance practices elsewhere in the Muslim world, women do not inherit land or land access. Men own the animal herds as well as the land. Women may possess a only few animals from her dowry.

### **Present policy position and reforms discussed**

In the available literature, there is no discussion of tenure legislation debates or reforms in Djibouti. Likewise, there are no pending changes in national natural resource management policies. The government is more focused on possible agricultural projects which may attract foreign investment. The limited references do not speak of how future projects would distribute newly productive land, perhaps because such land would encompass small garden plots only. Large-scale agriculture is not foreseen. Legislation detailing more explicit conflict resolution mechanisms would be appropriate as the number of sedentarized herders increases, but such legislation is not being discussed.

### **Implications for policy dialogue and programming**

With little potential for growth in the agricultural sector, policy dialogue is limited. Nonetheless, a future initiative could target peri-urban areas to be titled: 1) to prevent land disputes for non-migratory pasture and water rights; and 2) to decelerate land degradation, due to over grazing, by establishing rotational grazing grounds.

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## ERITREA COUNTRY PROFILE

by Jyoti Subramanian

### Executive summary

The biggest challenge currently facing the Government of Eritrea is the enormous task of reconstruction and development of the war-torn and drought-ravaged economy. In an effort to create a uniform system of land tenure throughout the country, a Land Proclamation was enacted in 1994, which declared all land to be the property of the Eritrean Government. This decree abolished customary land tenure and substituted a state-designed system of community-based tenure. The system is egalitarian and radically improves the terms of access to land by a number of previously disadvantaged groups, especially women and pastoralist populations in the lowlands. It aims to decrease the acute competition and conflict over land, and to preserve the local participation in land management which existed under custom. It provides individuals with lifetime rights of use, but it also places more discretion over land in the hands of government land administrators than is warranted, given the experiences of other countries. It remains to be seen whether the new system will provide landholders with adequate security of tenure.

### National policy and legal framework

Eritrea consists of a triangle of 420,000 square kilometers of land bound by Ethiopia on the south, by Sudan on the west and the north, and on the east by the Red Sea. As of 1993 the population was estimated at 3,782,543. The economy of Eritrea is based on subsistence agriculture, with more than 80% of the population engaged in crop farming and animal production, although only 3% of the land is arable. Eritrea lies in the Sahelian rainfall zone of Africa; consequently, agriculture is and has been vulnerable to frequent years of drought, especially in the last twenty or so years.

With the colonization of Eritrea by Italy in 1890, the first laws regarding land tenure were put into place. Land was expropriated by the colonial administration, and, despite strong opposition from Eritreans, land expropriation continued under the British Administration after World War II. In the Eritrean lowlands, the colonial government legislated in 1909 that the low-lying plains--land located below 800 meters altitude (over 50% of the country) were declared as state lands. This applied to some other parts of the country as well, including land along river courses and other fertile areas. The state-owned lands remained as such throughout the Italian, British and Ethiopian.

In 1994, the year after Eritrean independence, the Eritrean Land Proclamation (*Gazette of Eritrean Laws*, Vol.4, No.6) declared all land to be the property of the Eritrean Government. [At this writing, no official English translation exists, and here reliance is placed on less unofficial renderings of its import.] Any claim to land, therefore, now has to be legally ascertained with permission of the government, which reserves the right to determine the proper usage and management of the land. Every Eritrean citizen is entitled to land usufruct with regard to agricultural and/or residential land, and people can not maintain a usufruct right to land in more than one area. This right is equally applicable to anyone regardless of gender, belief and/or ethnicity. To obtain land for residential and/or agricultural use, an Eritrean citizen must apply to the regional office of the Land Administrative Body. A plot of land distributed by usufruct right can not be sold or given as a gift to others, but can be leased to another resident with the approval of the local Land Administrative Body. The village now has no collective claim to its former farming area, though it still controls its own grazing areas, woodlands, and water rights, subject to government review or intervention if the need arises.

Excess land is the government's property. There is to be a standard measurement for equal land distribution for agricultural use depending on the particularity of the region. Distributed land is to be registered in the user's name, and the user has the right to use the land as long as s/he lives. Land is not inherited, nor may it be sold. On the death of a holder, his heirs have priority for the parcel and may apply to the community to receive it. Once awarded to them, it is for them to work out how they will divide it among themselves.

If the user does not use agricultural land within two years of distribution, however, it will be expropriated by the government. Similarly, if a villager moves, the land allocated to him/her will be given back to the government. These laws do not apply to those who have been authorized and licensed by the government to use land for modern agriculture, industry, tourism or other forms of capital investment.

The Land Proclamation declares all the rules and systems of land tenure given by colonizers and/or liberation movements—as well as existing village boundaries—to be null and void. In regions where the proclamation is not yet implemented, the existing civil law and traditional tenure system will continue to function as a transitional system.

The problem of land and the lack of uniformity in the tenure system has been identified by the government of Eritrea as one of the main problems facing it. In particular, the existence of community-based tenure systems in the highlands and government ownership in the lowlands present difficulties for creation of a uniform system of landownership throughout the country and, consequently, in effecting developmental policies. The Government has stopped the allocation of land for commercial farming in pastoralist areas. Some pastoralist groups have asked for and received areas of land for commercial farming.

There is also the problem of urban development. The towns and cities of Eritrea are facing an acute housing shortage as a result of refugees returning home after the war, areas being designated for government offices, industrial and services development, and so forth. Thus, the demand for large amounts of urban land has been very high. To meet this demand, land is being taken from outlying villagers, which are urgently trying to protect their identity as original land owners.

The process of developing an effective, efficient, and inexpensive method of registering both rural and urban land is also a major problem. There are no proper systems of measurement and registration, either of deeds or titles of lands. No land records exist apart from the tax registers, which contain no reliable detail on land with regard to location, and are generally fragmented, incomplete and inconsistent. The position and boundaries of any particular parcel of village land can be located only after an inquiry has been made to determine what land is under individual title and what falls under the ownership of the whole village. Procedures for dealing with land issues are cumbersome; disputes have historically been numerous and lengthy, and the cost in terms of time and money is considerable.

Security of tenure is in principle protected under the new laws. Government is committed to the provision of non-monetary compensation where land is taken, for instance through provision of alternative land or shares of ownership in the enterprise for which it is taken. Such compensation can be inadequate in a peasant society, and only time will tell whether local communities will accept the fairness of this approach.

### **Replacement and adaptation of indigenous tenures**

Four systems of tenure have dominated Eritrean society. Community-based or village ownership—*diessa*—is the most prevalent system of land tenure in the highlands. Under *diessa*, every member of the village community has the same usufruct rights to the land. To ensure a degree of fairness, *diessa* land is divided into different categories according to its fertility and, in theory, land of each quality is distributed among village members periodically (generally every five to eight years). Redistributions have been infrequent in recent decades, in part due to the war. Pastureland is left open for use by the community. *Diessa* land is never sold or inherited.

Under family ownership—*risti*—only the members of the extended family have usufruct rights to the land. Individual members are given land which their offspring have the right to inherit. This system falls short of private ownership because the right to dispose of *risti* land is the prerogative of the family unit and not of the individual user. Although women as well as men can inherit *risti* land, in practice only men are involved with decision-making procedures. For example, *risti* land could not be sold without the consent of all the male members of the family.

Italian colonial land policy favored *diessa*, replacing *risti* with it in the provinces of Akelle-Guzai and Hamassien. The Derg's land reforms abolished *risti* in the one province in which it still predominated, Seraye. The Eritrean government is thus implementing its reforms on a fairly uniform *diessa* base.

The third type of tenure—"domeniale" (that appropriated by the Italian Administration between 1890 and 1941 and retained as state land by subsequent governments)—refers to the large tracts of fertile land that were confiscated from the Eritrean people by colonial regimes. These lands are not subject to sale, and are leased mainly to agricultural capitalists and rich farmers. Finally, tribal ownership was prevalent in the lowland areas where nomadism prevails; here, too, one historically found more pronounced feudal relationships. Although the land was theoretically owned by the entire tribe, an aristocratic class of dominant families imposed heavy dues on some pastoral peoples.

### **Tenure constraints and opportunities**

Eritrean agriculture has traditionally been characterized by very low productivity, at only a subsistence level. With the onslaught of war and drought, the agricultural sector's established mechanisms of production and distribution in addition to almost all of the country's infrastructure have been destroyed. The chronic problems of poverty, hunger and unemployment among the rural population, however, will need to be addressed to ensure access to land for those who do not have capital with which to invest beyond a level of subsistence food production. The recent tenure reform reflects government's desire to give priority to the achievement and maintenance of an adequate and reliable agricultural food supply for local consumption.

It is less clear whether the new tenure system will provide the security of tenure necessary for investment in agriculture. This will depend to a large extent on how land administration officials exercise their considerable authority under the law. In the short run, the zeal which informed the struggle for independence will probably avoid possible abuses, but as that zeal wanes, as it must over time, more rigorous protection for property rights may be needed. In addition, it is not clear whether the tenure system will provide adequate scope for more efficient farmers to get access to a larger share of land, which is important if productivity is to be increased.

There has been a long history of extensive deforestation in the highlands, and trees are widely recognized as a scarce and valuable resource. Although members are allowed to cut trees for their own construction needs, they are prohibited from cutting trees for the purposes of selling wood and charcoal in urban areas, and are expected to use only dry wood for their fuel needs. Many villages, particularly those in high density areas, attempt to reduce overgrazing by preventing cattle—with the exception of milk-cows and plow-oxen—from grazing in village lands during certain months of the year. In addition, villagers fallow some land in order to restore its vegetation and fertility. Terracing and grass stripping along parcel boundaries are also practiced—especially in the highlands—to prevent soil erosion. Enforcement of these traditional conservation measures varies, but in most cases it has been loosely organized and patrolled. All members are responsible for stopping violators if they happen to see them.

The worsening economic hardships in the countryside as a result of the war, however, as well as the growing demand for charcoal and wood in urban areas as a result of population growth, have led many people to cut trees without planting replacements and/or paying compensation to the village. Along with the new system of tenure set forth in the Land Proclamation, therefore, the government needs to put forth a plan to manage natural resources,

especially since rainfall is so irregular and scarce, erosion is prevalent and much of the land's vegetative cover has been destroyed.

In peasant-dominated economies, successful and sustained development is not likely to occur without the transformation of the subsistence sector. Moreover, a genuine democratization of the country requires that the peasantry's not only have access to resources, but also the power to influence management. The fact that the country's Land Proclamation declares the government the ultimate authority in all land issues seems to undermine this very notion.

The need for democracy with regard to resource control is a pressing issue in Eritrea at the present time. The hardships the country has faced during colonialism and Ethiopian oppression have served to fuel land disputes, a problem under the customary tenure systems. It will be necessary to overcome not only traditional social and economic structures that are exploitative and negligent of the peasantry, but a traditional bureaucratic paternalism which may be given new life by a "vanguard" mentality.

Women were not well treated under the various forms of traditional land tenure. In the *diessa* tenure system, land was owned only by men; women had access to land ownership only insofar as they are wives. They had no right to participate in the redistribution of *diessa* land. Women were in theory entitled to equal shares on *risti* land, and women did in fact own *risti*, though a minority of women and in small amounts. Women have been able to receive an equal share of land under the land reforms carried out by the Eritrean People's Liberation Front, and the Land Proclamation explicitly states that every Eritrean citizen is entitled to land usufruct with regard to agricultural and/or residential land, regardless of gender. Each household thus receives at least two pieces of farmland, one for the husband and one for the wife. In case of the dissolution of the marriage, each takes their land with them out of the marriage.

This is the single most impressive reform of land tenure for gender equality in Africa in our time. The reform was at the insistence of the EPLF. A third of combatants in the liberation army had been women, and the party considered the issue of gender equality non-negotiable in its discussion of tenure policy with local communities, where there was substantial opposition to the change. The great popular confidence in the TPLF in the wake of achievement of independence made it possible for this reform to go forward.

### **Present policy position and reform directions**

It is easy to understand the Eritrean government's concern to unify existing systems of land tenure, due to the chaos during the past 30 years or more. But it appears to have achieved that uniformity by increasing state controls over land and lessening the strong traditional community rights in the highlands. Even within the highlands, the new land laws affect *risti* and *diessa* land holders differently. The law has important levelling implications in *risti* areas. Large *risti* owners face a loss of land because *risti* rights to land in different areas simultaneously will no longer be recognized. They will now be allocated land in only a single community, and the possibility of expanding land access by descent claims elsewhere will be foreclosed.

Interregional disparities due to different land resource endowments will continue to pose a challenge. These problems are probably better addressed by focusing non-agricultural development in areas disadvantaged in terms of land resources, rather than attempting to redistribute the land resource. In the short term, policy makers need to find more effective approaches to manage conflicts between agriculturalists and pastoralists stemming from the encroachment of crop production into traditional grazing.

In spite of all its positive features, there is a concern that the reform places too much confidence in the integrity of land administrators, and too little emphasis on strong, defensible property rights for producers. The reform is so recent that it seems likely that the next several years will see no major changes, but rather an accumulation of experience under the new system and fine tuning of its provisions. There will be time to judge whether the concerns expressed here are justified.

## Implications for policy dialogue and programming

Government has embarked upon an ambitious project for construction of a uniform tenure system for the entire country. The system is still developing, and it may prove capable of producing tenure security necessary to small and medium-scale commercial farming. Perhaps the most important needs are to ensure adequate monitoring of implementation of the system and its impacts, and rigorous investigation of any reported abuses. There is a need to ensure that productivity concerns receive a priority comparable with that given to equity concerns. It is important that broad access to land be preserved, but it is equally important that more efficient producers be able to expand their holdings.

The new land law grants government discretion in managing land which possesses the potential for serious abuses. That potential is fortunately not likely to be realized in the near future because government's cadres are drawn largely from the disciplined and idealistic participants in the struggle for independence, but it bears watching in the future.

Given the intense pressure on land in Eritrea's highlands, it is important to stress that the problem of the shortage of arable land cannot be solved by tenure change. Only the development of land productivity through extension and investment, plus the gradual outflow of labor into alternative employment, can overcome the problem of shortage of arable land.

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## ETHIOPIA COUNTRY PROFILE

by Jyoti Subramanian

### Executive summary

The Derg after the 1974 Revolution achieved genuine land reform by replacing extensive landlord holdings and share tenancy in southern Ethiopia with a pattern of smallholder agriculture in which land access was managed by local peasant associations. Soon, however, the government undermined autonomous peasant association control of land, and since the fall of the Derg, many conflicting land claims are surfacing. The Transitional Government of Ethiopia (TGE) was faced with creating a system of tenure that meets diverse demands of displaced and forcibly resettled populations and rural people tired of land redistributions. The 1995 Constitution of the Federal Democratic Republic declares all land state owned, and government statements envisage a system of leaseholds from the ethnically based state governments. It seems likely that the different states will develop coherent land policies at very different rates, and that there is a potential for constructive experimentation with tenure options in the different states. There is, however, also an unfortunate potential for patterns similar to those under the Derg to emerge, in which de facto one-party governments at state level come to control the peasant associations and use control over access to land to enforce political conformity.

### National policy and legal framework

Ethiopia is one of the largest countries in the horn of Africa, constituting 1.2 million square kilometers. As of 1984, the human population was estimated at 42.2 million. A population projection based on the 1984 census showed a population of 59.9 by 1995 with an annual growth rate of 3%. The lowlands, which cover some 61% of the national land area, are home to only 12% of the human population who are largely engaged in extensive livestock herding and opportunistic cultivation. Most of Ethiopia's inhabitants are cultivators living on the high, broken, central plateau that rises between 6,000–15,000 feet above sea level.

The smallholder agricultural sector comprises 90% of the population and occupy about 95% of the available arable and pasture land. Far from being homogeneous, Ethiopians exhibit great diversity of language, ethnicity, mode of livelihood, social organization and religion; these differences are greatly reflected in land tenure, especially between the peoples of the north and the south.

The land tenure system in southern Ethiopia before the 1974 Revolution was perhaps the most intricate and hierarchical of any country in Africa, being the product of the interaction of local tenure arrangements with both the central imperial regime. Much of the land was held in large estates by members of the nobility, and farmed by tenants who were often the original inhabitants of the area. There were also concerns about community-based tenure systems in northern Ethiopia and the tax-farming tenures which existed on top of them. By the 1960s it had become clear that the existing land tenure systems were the single greatest obstacle to agricultural development.

The new military government (the Derg) which seized power in 1974, gave priority to the need for land reform. On 5 March 1975, all rural lands were nationalized, placed under state ownership and referred to as the collective property of the Ethiopian people. The land reform aimed to free the masses of the rural population from oppression and exploitation by the landed classes and to promote economic development. Social justice, equality and development were to be attained through the "public ownership" of land.

The reform was sought to bring about equity in holding size among rural farmers. Implementation of the land reform began with the formation of Peasant Associations (PAs). Land distribution committees in every PA allocated land to each household on the basis of criteria agreed upon by the community. In most PAs, land redistribution was based on family size and availability of land. The reform provided usufructuary rights to rural



land to all farmers/willing persons, with a maximum of 10 hectares per household, though usually much less than 10 hectares was received. Groups previously discriminated against in land areas, such as Muslims in the highlands, received access to land. Households were eligible to get land in their residential areas only. When the association's pool of unallocated land was exhausted, new claimants were assigned land alienated from peasants considered to have more than their fair share, or from grazing or marginal land. The sale, lease, transfer, exchange and inheritance of land to other persons was prohibited. In addition, the use of hired labor was prohibited, except by widowed, old or sick persons, or dependent children.

Although the Derg initially implemented a land-to-the-tiller reform, it moved on to promote collectivization, villagization, forced resettlement, compulsory grain procurement, and control of grain marketing and pricing. Producer cooperatives (PCs) were created in some areas, primarily in southern Ethiopia, and were seen by government as models for eventual generalization. They were expected to become the chief source of food grain by the mid-1990s. Membership was voluntary, but the best land in each community as well as valuable natural resources were reserved for PCs, and those who did not join could be relocated to marginal land. As a result, PCs were extremely unpopular among the surrounding peasantry.

State farms were also created. Often these were on existing state land, but local communities often had historic claims to this land. State-managed land was in four sub-sectors: State Farms; State Coffee and Tea Farms; Wildlife Conservation Areas and State Forest Conservation Areas. Some displacement did take place; one estimate is that 90,683 local farmers covering a total area of about 176,708 hectares were displaced. Since the new government came to power, many of the dislocated farmers have been returning to their original land, claiming their original holdings on the state farms. There are reports of extensive encroachment by local farmers of state-owned land throughout the country.

The reform accomplished laudable equity objectives, and in the peasant associations provided the country for the first time with a nationally uniform system of local government. Collectivization and state farm production, while quite limited in scope (less than 10% of farmland), were costly and inefficient. The beneficiaries of the reform did not receive secure titles, but were subjected to repeated redistribution of land to accommodate new claimants, which had the net effect of diminishing individual possessions. Repeated redistribution also gave reduced tenure security. The extractive programs of the Derg, including compulsory acquisition of quotas of their production at below-market prices, impoverished peasant households and extended and deepened rural poverty. Furthermore, the implementation of most rural reform programs was highly authoritarian and top-down, with very little room for local participation or feedback. This top-down approach along with the coercion and control of the rural population/production eventually undermined the government's agrarian programs.

From the outset, the Transitional Government of Ethiopia leaned toward state ownership of land involving rights of usufruct for households, arguing that land is "collective property" and should remain under state control. The international community has urged private ownership of land and a freer land market. The Ministry of Agriculture's 1992 paper on agricultural policy proposed that land remain owned by the government, subject to the following admonitions: (1) in the smallholder sector, redistributions should be suspended, holdings inherited or leased, hired labor can be used, and farmers are to have full freedom of disposition of their production; (2) future resettlement is to be halted, given the ethnic tensions created by earlier forced resettlement; and (3) commercial farms are to be established by private individuals and companies, with the land provided by government on concession in such a way as not to affect the land rights of local people. The 1995 Constitution in Article 40 protects rights of private property and allows it taking by the state only with compensation, but while such property includes buildings and other improvements to land, it does not include land itself. All urban and rural land and all other natural resources are declared to be owned only by the state. Farmers and pastoralists are declared to have a right to free use of land, Land may not be sold or otherwise transferred, though houses and other improvements may be sold. Government may lease land to private investors, without prejudice to the

people's rights to land. The Constitution makes the federal ethnically-based regions responsible for the administration of land, and revenue legislation makes the regional governments the beneficiaries of the land tax.

### **Replacement and adaptation of indigenous tenure systems**

Prior to the 1974 Revolution and subsequent land reform, community-based systems of tenure referred to as *rist*, were widespread in northern Ethiopia. The most common system, the *rist* system, conferred rights according to inheritance from "first settlers." *Rist* land could not be sold or mortgaged but could be leased and inherited by children. Descent from these ancestors could be traced in both the male and female lines (ambilineal descent), giving men and women extensive potential *rist* claims, only a small portion of which could usually be realized. Powerful and influential individuals could significantly expand their landholdings by successful assertion of claims and litigation to realize previously dormant claims to land.

The size of most holdings ranged from a fraction of a hectare to 4 or 5 hectares and could include parcels in more than one community. It has been argued that security in access to land was guaranteed in *rist* systems of tenure, although land fragmentation and diminution of holding sizes were prevalent features of the system. Fragmentation of holdings exists when a household has several different parcels of land in scattered throughout a region. This was often the case under *rist* tenure systems, because households realized several land claims at once—each of which was based on a different line of descent in the ambilineal descent system.

Some researchers have suggested that reformers may have placed too much emphasis on the claim that land fragmentation under the *rist* system resulted in inefficient land-use. Such claims are founded on the belief that small and odd shaped parcels make plowing difficult, time spent traveling between plots is wasted, and that scattered plots prevents the introduction of technology. Purposeful or planned fragmentation, however, is an adaptive measure which provides protection against risk, uncertainty, and poverty. Ethiopian peasants prefer having dispersed plots because they are able to exploit different micro-ecologies, grow a wider variety of crops, and reduce the risk of complete crop failure.

In the southern core areas, by contrast, a majority of farming households worked as sharecropping tenants of a landlord class of northern elites. Access to the use of land owned by landlords was secured as long as the tenant agreed to pay the required rent and other services as required by the landlord. However, tenure insecurity was high and eviction easy, since most lease agreements were verbal and the landlord had the right to terminate the lease at any time. Evictions became common in the last decades of the imperial regime, when mechanization of farming on the large holdings increased. Overall, this area was characterized by a very unequal distribution of land and great inequalities of status and security. The need for reform of these tenure arrangements became a major force behind the 1974 Revolution.

In the more peripheral areas of the empire, tribal groups and pastoralists continued to use land and pasture under more or less indigenous arrangements except where disturbed by government or private development initiatives.

As the new state government establish the rudiments of land administration, it appears that the system of peasant associations may prevail and provide an element of continuity between the old and new systems. There are few indications of any inclination to return to customary tenure forms in the areas affected by the land reform, and it can be said that indigenous tenure systems have been largely replaced by new community-based tenure systems. Those community-based tenure systems, to the extent that they are relatively informal and the community is in effective control, may in a relatively short time be internalized in a fashion normally associated with customary tenure systems.

## Tenure constraints and opportunities

Smallholder agriculture is of overwhelming significance for the food security and welfare of Ethiopia's people, the growth of its economy and the quality of its environment. About 80% of the nation's households depend entirely or primarily on peasant agriculture or pastoral activities for their livelihood. These households occupy about 95% of the available pasture and arable land. Agriculture accounts for about 45% of the GDP and 85% of foreign exchange earnings. Because of poor transportation, a lack of economic diversification, and the scarcity of off-farm employment, access to arable land and/or pasture remains a primary determinant of income and food security for a majority of Ethiopia's rural households.

There is an ongoing debate over whether in the post-Dergue era smallholders have adequate security of land tenure. The Transitional Government initially suspended land redistributions by the PAs, and farmers have enjoyed a "honeymoon" during which price controls have been removed and government has more or less pursued a hands-off policy with regard to land. But there are indications, including clear statements by some regional governments such as that of Oromia, that land redistributions will be reinstituted in the near future, at least in some areas, to deal with growing numbers of young and landless households and to remedy injustices under the previous government.

If Ethiopian farmers come to believe that their access to particular parcels of land is insecure, this will discourage investments in multi-year soil improvement and conservation measures. In addition to tenure insecurity, low and unreliable farm-gate prices, the high cost of inputs, and risk of crop failure preclude investment as well. There is evidence of increasing sharecropping, cash rental contracts, illegal sale and other arrangements to secure land—practices which seek to adjust landholdings to household labor and capital endowments. Several of the regions are beginning to experiment with concessions of extensive areas of former state farm land to commercial producers. There is still a tendency in government to associate higher productivity with "modern", large-scale agriculture, and to ignore the potential in smallholder agriculture for more efficient and profitable farming.

The 1975 reform often left rules concerning grazing land untouched. In some communities there is common pasture from which nonmembers are excluded. Such land is usually managed as a commons, and use of the resource is regulated by members of the community. In some communities, restrictions are put on the number of livestock that one can send in, but in others there are no such limits, and as a result, overgrazing is the norm in such areas. Grazing lands have also been reduced in the last decade due to the need for additional farmland. Such resources are always under pressure from neighboring farmers who try to push the boundaries of their fields into the pasture. In the 1980s, community forestry and hill closures for reforestation also reduced pastureland.

In the forest sector, the Derg nationalized all indigenous forests. Policy strongly favored state and collective forestry and discouraged individual tree planting on household land. State forestry included all large-scale plantations over 80 hectares which were off-limits to all peasants. Community forestry on the other hand referred to all trees planted on common land and was aimed at meeting the needs of the communities. In theory, community forests belonged to the communities on whose land the trees were grown and the peasants were entitled to harvest the plantations for their use. In practice, however, the tenure issue was never satisfactorily resolved, and peasants were not confident that the trees on their community lands belonged to them. In addition, community forests were often reclassified as belonging to the state or handed over to cooperatives. Due to state policy and tenure insecurity, peasants were often unwilling to plant trees on their household farm plots. Today, however, with suspension of the redistributions, individual tree planting has become very popular in many parts of the country. Trees are planted as fencing or windbreaks, in between plots, or on land around the house which is not used for crops or vegetables.

The 1975 land reform was administered at the grassroots level by the PAs, which were chiefly responsible for land distribution. The PAs at the outset were fairly democratic in nature; each had an executive committee

elected by the adult members of the general assembly. Besides the creation of PAs, reform legislation empowered peasants to create their own judicial tribunals and militia organizations. These institutions were to be used as channels of participation and communication between the state and the rural population. But the PA officials gradually became resented implementers of central government's extractive policies, including military conscription. The principle of local governance still remains strong in many of these communities, with the PAs being reorganized after the fall of the Derg. These represent an important potential for grassroots democracy.

The 1974 land reform left issues of women's tenure in land largely unresolved. Single women with households (widows and divorcees) were usually given land as PA members. Households received land according to formulas that counted household members, including wives, but for practical purposes vested the land in the male head of household. Some reports indicate that in case of divorce women could claim a share of their husband's land, proportional to the number of children who stayed with them. Conflicts arose in Muslim regions when husbands tried to claim land by registering each of their wives as members in PAs.

The reform worsened women's rights in some ways. Women who had controlled land as *rist*, freehold, or through other prerevolutionary tenures, lost it. Those who did not own any land before the revolution benefited only as members of households. Although it has been widely accepted that Ethiopian women are an important force in agriculture and the rural economy, very little attention has been paid to the issue of women's rights of access to resources. Female-headed households are the most disadvantaged group in the rural areas, and there are large numbers of such households due to the war. Today, female membership in PAs may be as high as 20–25%.

In the most recent land distribution in Tigray and some areas in Wello and Amhara, wives were allocated their own holdings alongside those of their husbands, but it is not clear whether this trend will become more generalized in the future.

### **Present policy position and reforms directions**

Ethiopia is currently wrestling with a complex set of issues growing out of one of the world's most successful (in distributional terms) land reforms. The new government has shown a reluctance to abandon the 20 year-old policy that nationalized the rural lands previously held by smallholders, commercial farmers and feudal landlords. Pending establishment of effective state land administrations, landholders are experiencing a freedom from official interference in the short term, but long-term uncertainty as to the status of their rights to land. Because of the divergent interests in each community, the issue of future land redistribution will be a difficult one for the state governments. There are many competing claimants: previous occupants who lost land during the redistributions of the Derg period, those who benefited from land reform (former tenants, poor peasants, and the landless), those who were displaced by the war, and the burgeoning younger generation.

The Oromia State Government has stated that it is considering a major, if selective, reallocation of land in the region. This may be expected in other regions, as they seek to deal with new households and past injustices. There is in fact considerable dissatisfaction in many communities with the current pattern of distribution of land, because of political inequities under the previous regime and because a new generation of the holders' children (defined as "landless" in Ethiopia) are seeking allocations independent of their parents, whose land they are currently farming. A reallocation would challenge Oromia officials with applying the constitutional guarantee of equal right for women, but it is not yet clear whether they would consider separate allocations to husbands and wives as in the land redistributions in Tigray after the Derg was driven out. Reallocation may provide new state governments with an opportunity to build new political constituencies, but they will find that land reallocation can easily breed dissatisfaction, not gratitude. Depending on how such reallocations are handled, the negative impact of such reallocations on security of tenure may be long-lasting.

Since Ethiopia is embarking on the road toward a market economy, there is some feeling among the country's professional and technical experts in favor of private ownership, and external experts have recommend

this, especially given the prevalence of ownership in much of the country prior to the 1974 revolution. In view of the peasantry's experience under the Derg, any form of tenure that allows the state to retain a measure of power over peasant sources of livelihood will be resented. State ownership of land creates temptations, as a system of administrative allocation of the valuable land resource provides fertile ground for corruption of the land administrators. Experience in other countries in Africa and elsewhere has indicated that state ownership of land can result in dispossession of peasants in favor of political and urban elites, or simply in favor of other peasants who support the government of the day. This is a real danger given the de facto one-party government in most of the regional governments.

But many in the present government argue that a land market under freehold tenure would concentrate rural land the hands of a few, and could possibly create political tension in areas of different ethnic groups. They believe that tenure security can be guaranteed through long-term leasehold agreements. That freehold is associated with land concentration is unsurprising given the extensive land concentration in southern Ethiopia prior to the 1974 Revolution, though that concentration was in fact created through state grants of conquered territory rather than market forces.

### **Implications for policy dialogue and programming**

The distribution of land established in the land reforms since 1974 has great potential for agricultural growth if the governments build upon it effectively. An adequate appreciation of the potential of smallholder agriculture must be promoted, especially since it will be at least another generation before any significant part of the rural population can be absorbed by the industrial and commercial agricultural sectors. Rural land is the only subsistence asset for the farming population, and landholders need enhanced security of tenure.

While it is clear that the initiative in land tenure policy has shifted from the central to the state governments, there is a need to have an institution at national level which is responsible for tracking developments in this critical area. Central government, as guarantor of constitutional rights, still has clear responsibilities in this arena. There is also an urgent need for training in land administration at both national and regional levels.

The immediate future of land tenure in Ethiopia promises to be varied and confusing. It seems unlikely that there will be major adjustments at national level, and over the next few years the new state governments will find their feet in land administration and make their first forays into planning and land reallocation. It is particularly important that these processes be monitored and understood, and the learning shared among the regions. Presently, there is a lack of information from the field, and it is important that studies be undertaken to ascertain:

- (1) Are there any evolving market or other redistributive mechanisms acceptable to governments which can reduce insecurity of tenure by avoiding periodic reallocation of land?
- (2) How is the transition affecting women's access to land in different regions?
- (3) Where, how, and to what extent are ethnicity and/or religious factors affecting access to land and security of tenure in this new period of ethnically-based regions?
- (4) What exactly is the present role of the peasant association (PA) in regulating access to land, water, pasture and trees?

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## KENYA COUNTRY PROFILE

by Anna Knox

### Executive summary

As one of the first countries in Africa to undergo a comprehensive land tenure reform, Kenya is the best studied example of a large-scale planned conversion from indigenous land tenure to private ownership on the western model. The lessons learned have raised questions about several assumptions broadly held about tenure and development, such as whether privatization necessarily leads to better access to credit or enhances tenure security, particularly for women. Most recently, violent ethnic conflict rooted in acquisitions of land through the land market which have enhanced land access by some ethnic groups as the expense of others. Unable to turn back the clock, what remains to be seen is whether Kenya can develop more imaginative tenure strategies for the arid regions to which registration has not yet been extended, and policies which will moderate unanticipated results of the tenure conversions in the rainfed farming areas of Kenya.

### National policy and legal framework

The 580,367 square kilometers of Kenya accommodate a population of 27,343,000 (1994), which is subject to one of the highest growth rates in the world, estimated between 3.9 and 4.1%. While the vast majority of its citizens are farmers, only about 20% of its land is suitable for cultivation. Kenya thus has an extremely dense agricultural population of 4.5 per arable hectare.

Kenya's rural population is a mixture of farmers, agropastoralists, and pastoralists. Farmers are concentrated in the fertile Rift Valley, Central Province areas, and coastal plains of Kenya, and include the Kikuyu, Luo, and Luhya tribes among others. Agropastoralists, who raise livestock in combination with cultivating crops, occupy more marginal areas while nomadic pastoralists populate the arid and semi-arid regions of the north and northwest as well as parts of the lower Rift Valley and Central Province.

Prior to and during much of the colonial period, land tenure in Kenya was governed at the community level. Most of Kenya's ethnic groups have patrilineal systems with land passed down from males to their sons. In more land abundant days, land was passed from the father to his youngest son while older sons acquired unoccupied lands. Land allocation decisions were the domain of clan or lineage elders. Once land was conferred on an individual, it became inheritable and remained within his family indefinitely. Land sales were not sanctioned as land was identified with the community and equated with one's subsistence and the social security of one's children.

White settlers, who arrived during the early part of the century, were provided with large tracts of Kenya's best lands under Crown grants, in freehold. Meanwhile, indigenous populations were moved onto reserves of poorer lands to be operated under customary tenure and were subject to several statutory restrictions, including prohibition from cultivating cash crops. The poor economic conditions of the crowded reserves coupled with the stripping of their land and political rights were key catalysts of the Mau Mau rebellion of 1953. In response to the crisis, the British devised a plan to remove the former restrictions on African farmers and launch a campaign to register their land under individual titles. This strategy of creating politically stable "yeoman farmers" was outlined in the Swynnerton Plan of 1954 and was subsequently incorporated into law. Initially opposed by African nationalists, they embraced the program after independence. It continues to be the cornerstone of Kenya land policy today, making Kenya unique in the scope of its conversion to freehold.

## Replacement and adaptation of indigenous tenure

The land tenure reform was initiated with several objectives and expected benefits. The overriding interests at conception were increasing Kenya's agriculture production while securing colonial political interests through the creation of an elite class of African farmer whose interests would uphold privatization and market economies. It was purported that the conversion to individualized property would foster the emergence of land markets whereby more efficient farmers would accumulate large tracts of land from less efficient farmers and cultivate the land more productively. Those made landless would serve as a labor supply, both in the rural and urban sectors. Several other arguments for stimulating agricultural performance were put forth and included:

- ◆ replacing customary systems and individualizing land would offer increased tenure security to farmers by removing communities' stake in land;
- ◆ provision of titles would allow farmers to utilize them as security for agricultural loans thereby fostering investment in improvements, such as fertilizer and mechanized inputs;
- ◆ reducing land fragmentation and subdivision through land consolidation at the time of titling and establishing local land control boards to monitor land transfers so as to prevent these practices. The rationale was to ensure that parcels remained an economically viable size and farmers did not incur efficiency costs associated with allocating farm labor and capital to fragmented plots;
- ◆ mitigating the incidence of land disputes over boundaries through adjudication and documentation of legal holdings; and
- ◆ inducing investment in export crops, such as coffee and tea. and progress toward a more market oriented economy.

However, these objectives met with limited success and in many cases, severe repercussions ensued from the implementation of the registration process, which involved adjudication by committees of elders, demarcation of boundaries and title registration. The downside effects of the reform were not realized in isolation, however, but were also caused by high population pressures, growing land scarcity, and expanding commercialization of agriculture.

With respect to the tenure security objective, colonists misinterpreted customary systems and did not appreciate their individualized nature. Rather, they mistakenly assumed that title possession would allow farmers to have greater confidence in their land holdings. The risk control function of community tenure systems was also overlooked whereby members can make more economic use of the community's land, knowing others are available to help them meet their needs in case of shortfall.

Access to credit, marketed as a primary benefit of the reform, was largely unrealized by smallholders due to both supply and demand constraints. Many farmers feared using their titles to obtain credit would result in losing their land if they found themselves unable to repay. Smallholders' limited access to markets also lessens their demand for credit. Government programs subsidizing inputs and capital target large farms which are also more likely to be focal points for infrastructure improvements, giving them better access to markets. On the lender side, the smaller loans needed by poor farmers are not attractive to banks given their high transaction costs and perceived higher risk. Financial institutions have further experienced difficulty in foreclosing on unpaid loans, overwhelmed by community pressure to protect the holdings of its members.

Fragmentation and subdivision of parcels persisted. This was largely due to the tightly held values instilled by customary tenure systems and in spite of the role of land control boards, which evolved into a rubber stamp for most land transactions. Under increasing land scarcity, families are compelled to distribute land equally among their sons, knowing other rural income earning opportunities are virtually non-existent. Although widely believed by government policymakers to involve high efficiency costs, the traditional process of cultivating

scattered parcels of land is often rooted in the economic rationality of minimizing the spread of crop diseases while taking advantage of various soil types and microclimates suited to different crops.

For some, the fear of not getting permission to transfer title on subdivided or fragmented lands has led to noncompliance with the registry requirement. However, the cost of registering one's land is by far the overriding factor behind the breakdown of the registry system which now stands grossly out of date for many areas. For the smallholder, the expense of registration fees, bribes and travel to the district capital is prohibitive (estimated to match the cost of several weeks wages for an agricultural laborer) and particularly not justified when weighed against the limited benefits of title possession for the smallholder.

Small farmers subject to land disputes frequently suffer land losses either because they cannot afford litigation or they must sell other land to finance litigation. During the adjudication process, small farmers frequently lost out to wealthier individuals since they did not have the financial means to lobby for their interests. Ethnic group preference also played into this equation. As a result, land rights held under customary tenure were altered with registration. The incidence of disputes decreased immediately following the reform, but soon rose to exceed pre-reform level and now includes disputes over ownership in addition to boundaries.

As land scarcity grew and land took on value as a commodity, many with the means to do so began accumulating land. Land buying companies formed, selling parcels of land to members. Many individuals invested for speculative purposes with no intention of farming their purchase. Unlike for smallholders, titles procure greater access to credit for the more financially secure.

### **Tenure constraints and opportunities**

The emergence of land markets as a result of registration has been less than anticipated. Among many ethnic groups, such as the Luo living in the Lake Victoria Basin, customary rules continue to govern much of the way land is administered and land sales are discouraged or restricted. Where populations are particularly dense, the small size of landholdings discourage many farmers from relinquishing their means of subsistence in the face of limited income alternatives. To the extent that they do occur, landlessness tends to be the result. In less dense areas, land sales have shifted land between ethnic groups and aroused resentment toward tribes able to benefit from the market, namely the Kikuyu. The incidence of landlessness continues to rise as small farmers are compelled by their poverty to sell land to meet immediate cash needs, resorting to either agricultural labor or urban migration to earn an income.

Pastoralists engaged in livestock rearing occupy much of the 80% of Kenya's remaining land, which is arid and semi-arid and largely unsuitable for cultivation. Populations are sparse in the north and northwest regions of Kenya although the drylands east and south of Nairobi, home to the nomadic Masai, are subject to growing population pressures from farmers moving into the region. Many have obtained land through membership in "land companies," joining together to purchase land, then subdividing it. In the drier regions, herders tend to be nomadic while semi-arid regions make it agropastoralist practices possible. Despite their migratory patterns, pastoral kinship groups tend to establish community rights over particular grazing lands as commons and resources such as water. Although members may not hold exclusionary rights, the common interests of the group motivate resource conservation.

The wave of land tenure reform in Kenya included pastoralists, it having been argued that the grazing activities of pastoralists contributed to land degradation and desertification of the drylands. Failure to understand the true nature of community rights over land, and mistaking them for open access, led to "tragedy of the commons" notions that rampant exploitation of land would take place in lieu of private interests in its sustainability. Thus measures were undertaken to assign pastoralists to group lands and award them group titles with the belief that they would be used as collateral to obtain loans. By restricting their movement, it was argued that more intensive and ecologically sound pasture management practices could be imparted to the pastoralists.



Contrary to their stated intentions, group ranches intensified land degradation and crippled productivity through undermining the very nature of pastoralism. No longer able to rotate their herds seasonally to more accommodating land, overgrazing worsened and subsequent droughts caused massive herd losses.

Among the Masai, who occupy territory in the Central Province, many lost land as settlement schemes were corrupted by government officials registering dedicated lands in their own names as well as their families and friends. This enabled them to use the titles to obtain loans they had no intention of repaying. Numerous disputes in the Masai community over land assignments and outsider appropriations have led to hostilities within the community and resentment toward the government.

Perhaps the most acute tenure problem currently faced by the Kenyan government concerns the conflicts which have emerged between the Masai in the lower Rift Valley and their Kikuyu neighbors. The post independence departure of white settlers gave rise to resettlement schemes in some of Kenya's most fertile agricultural land, in particular the Rift Valley area west of Nairobi. Much of this land was allotted to and purchased by the more affluent Kikuyu as large cooperative and commercial farms. Mounting land pressures, however, prompted many Kikuyu to seek land in neighboring regions, including those occupied by the agropastoral Kalenjin to the north and nomadic Masai to the south. In the case of the latter, Kikuyu entered into agreements with the Masai to purchase or rent their land. Initially, relative land availability in the area allowed Masai to move their livestock to the arid areas during the rainy season while moving their herds to graze on Kikuyu post harvest cropland in the dry season. With growing competition for land resources, however, Kikuyu have attempted to restrict Masai access to their land. In turn, Masai accuse Kikuyu of tricking them into accepting unfavorable terms in exchange for their land. The result has been sporadic, yet escalating violence aimed at driving out the Kikuyu. Government has been reluctant to interfere for fear of alienating key officials of Masai origin and intensifying the conflict.

The government's role in Kenya's recent history of ethnic conflict raise serious questions concerning the country's level of political freedom. The Kenya African National Unity (KANU) party led by President Daniel arap Moi came under stern international criticism for its manipulative tactics designed to undermine multiparty elections in December 1992.

The clashes which took place between the Kalenjin and the Kikuyu tribes occupying the lower Rift Valley are widely believed to have been instigated by the Kalenjin dominated government. Historically, tensions have brewed between the two groups stemming from the acquisition of Kalenjin land by the wealthier Kikuyu. Nevertheless, relations between the Kikuyu and Kalenjin remained stable. With the introduction of multiparty politics in 1991 and the division of parties along tribal lines, opportunity opened up for the ruling party of President Moi to secure its power through aggravating the tensions to the level tribal war. Part of the objective was to weaken the opposition party voter base in his home province in preparation for the December 1992 election. This is widely believed to have been achieved by government recruitment of individuals to pose as Kalenjin and raid Kikuyu land, driving them out of the Valley. The guise thus stimulated real ethnic conflict as estimates of 2,500 were killed while upwards of 200,000, mainly Kikuyu, were displaced from their homes. Moi used the episode to blame the emergence of the multiparty system for the conflict and managed to win the December 1992 elections by a narrow margin. Realization of the actual cause of the conflict has calmed tensions and allowed Kikuyus to return to their land although resentment continues to fester and the future of their relations is uncertain.

Land issues are undoubtedly a sensitive topic, given their roots in political corruption and tribal favoritism. Policy debate on land tenure will likely be highly constrained, especially when one considers the numerous officials who have benefited from national government authority over land administration.

The impact of tenure reform on women in Kenya cannot be overstated. While certainly not equitably treated under customary tenure systems, women could be assured of use rights to land through their husbands or

mothers-in-law upon marriage. Women's interests and contributions to the community were factored into its tenure rules and land allocation decisions. The process of land registration, however, effectively eclipsed the recognition of women's rights to land by excluding them from the adjudication process and conferring title to the male head of household.

The result has been substantially weaker tenure security for women. Many cases have documented the incidence of men selling or mortgaging land against their wives' wishes, often without even consulting them. Land use decisions are also governed by men to the extent that women's food crops are marginalized and forced to be cultivated more intensively on poor soils. Women's lack of tenure security furthermore embodies serious implications for Kenya's agriculture production and economic development objectives as the continued urban migration of males leaves women to manage farms over which they have no rights.

Food security is integrally linked to women's tenure security, and these have waned considerably under privatization. Women's agricultural labor is the primary contributor to meeting family subsistence needs. The trend toward cash crop production and the demand for women's labor has compromised the time she may devote to tending food crops. With less land available, women are forced to employ more intense and ecologically unsound cultivation. They must also resort to the market to supplement their subsistence needs where women's lack of income and fluctuating cereal prices constrain their capacity to sufficiently provide for family nutrition needs. Among the female labor dominated coffee societies of the Murang District, women protested their lack of control over their earnings by withdrawing their labor and crippling production. In response, the coffee societies encouraged the opening of joint husband and wife checking accounts. Given women's dominant role in agricultural production, Kenya's economic future and food security depends on recognizing women's contributions and providing them opportunities to enhance their roles.

The incidence of drought and continued ethnic clashes pose repeated threats to food security as well. During the 1992 crisis, the expulsion of Kikuyu from their lands caused both food and commercial agriculture production to drop significantly, resulting in shortages.

### **Present policy position and reforms**

The success or failure of Kenya's land tenure reform is hotly contested, though most studies tend to conclude it has failed to meet expectations. The current situation is characterized by inaccurate land registries, widening land distribution gaps, gender discrimination, shrinking food production, landlessness accompanied by swelling urban populations, and threats to pastoral communities. In the case of the Masai and Kikuyu, land competition has escalated to violent proportions. While it is unlikely that the reform can bear full responsibility for these problems in the face of increasing population and cash crop production trends, the policy may have exacerbated by disrupting systems which had provided important safety nets. While the clock cannot be turned back, a reevaluation of the strategies is critical to avert further economic disparity and social unrest among Kenyans and to avoid an uncritical transfer of the Kenyan reform model to other countries in Africa.

### **Implications for policy dialogue and programming**

At the risk of further bloodshed and displacement, it is imperative to focus attention the growing ethnic conflicts over land. In the case of the Masai and Kikuyu, face to face negotiation need to take place among their respective leaders. Innovative dispute settlement approaches need to be brought into play. Reciprocal agreements could possibly be worked out to once again permit Masai seasonal access to croplands for grazing their livestock.

The role of women as key agents of economic development at the micro level implies a need to enhance their control over the resources they manage and have an interest in, land and income from agriculture production. Requiring that land be titled jointly in both the husband's and wife's may be one way to encourage this evolution. Land sale and mortgages should also require both spouses' in person consent and signature.

Greater registration compliance could be achieved by making it more affordable through the establishment of more decentralized registration facilities governed by local authorities and fee structures based on the amount of land being registered.

Risk constitutes an underlying reason for much of the lack of small farm productivity. The reliance on agriculture to meet their survival needs requires them to sacrifice high production strategies in order to curtail risk of crop loss. A better appreciation of the rationale behind such practices is essential to designing effective means to increase production without simultaneously undermining social security.

The creation of low-cost village credit schemes may offer an alternative to classic mortgage secured lending which have failed to reach rural smallholders. These need not be sponsored by the government. Where communities are cohesive, such schemes can be organized at that level supported by member savings. It is possible to design separate schemes for women to ensure their credit priorities are addressed.

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# **RWANDA COUNTRY PROFILE**

**by Stephen Leisz**

## **Executive summary**

There are short-term and long-term critical issues relating to land tenure in Rwanda. The short-term critical issue concerns the resettlement of refugees from two different periods. The Government of Rwanda needs to determine which group of refugees will be provided with control of disputed land, those who reclaim land after up to 35 years in exile, or those who were displaced from land during the recent fighting and change of government.

Long-term critical issues relate to land fragmentation and the conservation of the country's natural resource base. Both of these issues are the product of a high population growth rate, high population density, and an inheritance system that divides a man's fields amongst his sons. There are few alternatives to agriculture as a livelihood in Rwanda, and, over the years, the country's governments have been committed to a policy of equitable access to land for agricultural purposes. This policy was given legal standing in 1976, and recent proposed agricultural reforms still support this position. However, this policy may also be contributing to increasing land fragmentation and increasing degradation of the country's natural resource base.

## **National policy and legal framework**

Rwanda is a country of approximately 26,338 square kilometers. It is one of the most densely populated countries in the world, with an estimated 300 people per square kilometer in 1994. In 1934, the first year that a census was reported, there were 1,595,000 people in the country. This grew to a reported 7.16 million in the last official census in 1991. The annual population increase, based on calculations from 1980 to 1991, is 3%. If the population continues to increase at the present rate, it is estimated that there will be nearly 30 million people in the country by 2050.

Ninety-five percent of the population lives in the rural areas of the country and earns its living from farming. Given that virtually all arable land is already under cultivation, it is forecast that there will be increasing problems with land availability in the future, increasing pressure to clear remaining forests for agricultural use, and increasing problems of land degradation. In 1991 the average farm size, nationally, was 1.2 hectares. However, in some regions the average size was less than 0.6 hectare, and as farming practices encourage one farmer to simultaneously use fields in different areas of a community's territory, field sizes are often 0.15 hectare.

There are three basic types of land tenure in Rwanda:

- (1) community-based tenure systems, which recognize peoples' rights to land according to land tenure systems that are enforced by local communities;
- (2) rights to land that are supported through written law and are dependent upon the registration of the land with the state; and
- (3) State lands.

This collection of interlinking tenure systems comes out of a history of land tenure reforms dating back to colonial times. After independence the Rwandan Constitution of 1962 recognized these tenure reforms as binding. The constitution underlined the belief that (1) lands occupied by original inhabitants, that is, as recognized by a community-based tenure system, were to remain in that person's possession; (2) all unoccupied lands belonged to the state; (3) all sales or gifts of land had to be approved by the Territorial Governor; and (4) land belonging to persons, or institutions such as churches, who were not original inhabitants had to be registered with the state. These were the guiding principles of the state's tenure laws until 1976.

In 1976 the only post-independence legislation concerning land tenure was passed. This legislation had the following four main provisions:

- (1) all lands not appropriated according to written law belong to the State;
- (2) lands subject to community-based laws (also referred to as customary law), or rights of occupation granted legally, cannot be sold without the prior permission of the Minister for Agriculture, Herding, and Forests, and after the Communal Council has given an opinion on the transaction;
- (3) the Minister can only grant such permission if (a) the seller has at least 2 hectares of land remaining, and (b) the buyer does not possess more than 2 hectares of land; and
- (4) contraventions of the previous provisions are punishable by a fine of 500 to 2000 francs and the loss of customary rights or rights of occupation of the land.

The 1976 law further solidified the government's position that the state legally protects possession of land claimed through community-based tenure rules. Thus, the types of land "ownership" officially recognized are: (1) lands claimed under community-based tenure systems (approximately 90% of the land in the country); (2) lands claimed through registration with the state (mostly land found in urban areas, and land granted to churches, missions, and some NGOs); (3) State land such as national parks, roadways, and riverways; and (4) *paysannats*.

*Paysannats* are areas of land that were settled according to a colonial and, later, independent government plan. Originally *paysannats* were located in uninhabited or sparsely inhabited areas and were set up to provide land to farmers who, because of traditional patron-client situations, or other circumstances, did not have adequate land for farming.<sup>9</sup> People who gained land under the *paysannat* system had to agree to farm the land in a certain manner, and utilize the extension services that are made available to them. The *paysannat* system guarantees men and women equal access to land. Women heads of household who have land under the *paysannats* make up the majority of women who "own" land in the country. There are also *paysannat*-like areas of recently drained swamps (*marais*), formerly used as pasture but now under cultivation for potatoes, in which local officials allocate land to users, usually local residents.

Under both the Constitution of 1962 and the Land Law of 1976, all sales or gifts of land must be approved by the Minister of Agriculture, Herding, and Forests, who is also responsible for land. *Paysannat* settlement is administered by the same ministry. The Registrar of Land Titles is responsible for the registration of land titles in urban and rural areas.

Land markets, both those encouraged by state laws and those present under the different community-based tenure systems, are officially regulated by the state. According to these laws sellers of land must have more than 2 hectares of land at their disposal, and buyers must possess less than 2 hectares. However, there are many young farmers who only have access to a minimal amount of land through the traditional methods of inheritance or land gifts, and there are few landholders who possess more than 2 hectares of land. This situation lends itself to strategies for getting around the state's laws regulating land sales. Ways that these laws are avoided include, gaining the tacit understanding of the local communal council that a sale by an owner of less than 2 hectares is acceptable, not reporting sales or gifts, and informal renting of fields. With the use of these strategies land markets are very active in much of Rwanda.

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<sup>9</sup> Adequate land for farming was determined as being between 1.5–2.0 hectares. For the *paysannat* schemes plots were divided so that each farmer had 2.0 hectares at his or her disposal for agricultural purposes. This determination also influences the government's policies on land sales noted in the 1976 law. It should be noted that *marais* areas (drained swamps formerly used for pasture) have also been settled for farming purposes under the *paysannat* program.

Land that is not occupied or currently claimed is under the jurisdiction of the state. In cases where this land is forested, management falls to the Ministry of Agriculture, Herding and Forests. National Parkland is under the ORTPN (Organisation de Récréation, Tourisme, et Parc Nationale). In these areas there are limits as to the cutting of trees and harvesting of forest goods. Given the population pressures and the lack of arable land within the country it is difficult for government officials to adequately protect forested areas, and it is becoming increasingly difficult to adequately protect the national parks.

### **Replacement and adaptation of indigenous tenures**

A great deal has been written on the division of Rwandan society between Tutsi and Hutu and on the cleavage and consequences of this division. To simplify the problem for the purpose of this brief survey, let it merely be pointed out that in the pre-colonial period the Hutu-Tutsi cleavage was not absolute nor as central in the society as it became in the colonial period. Chiefs were more likely, but not necessarily, to be Tutsi than Hutu, and clients and subjects were more often Hutu than Tutsi. Although pastoralists were usually Tutsi and agriculturalists Hutu, the categories were not exclusive and it was possible for a person to “move” between being a Tutsi or Hutu depending upon the community where he lived. Furthermore, it appears that the terms Hutu and Tutsi were not widely used to define individuals’ status and memberships during the pre-colonial period as they were later to become.

The settlement pattern in Rwanda, as in neighboring Burundi, is one of dispersed households rather than small villages. These households are scattered on the hills, with the fields belonging to each household (*ruغو*) normally found on the same hill. Although the household is generally comprised of a nuclear family and the farming unit is this small family group, the land itself is considered belonging to the lineage, descendants of the man who first claimed and cleared it.

Under the traditional system of land tenure, both for Tutsi and Hutu, land was (and is) inheritable, passed from father to sons. Only when a man died without male heirs would the land revert to the wider lineage, and the chief of the lineage, usually the eldest male, would then reallocate the fields and other lands within the lineage. As long as land was plentiful the system of land tenure and inheritance posed few problems. Indeed, outsiders might be absorbed into the lineage with grants of land or taken on as clients. On most hills the settlement pattern was mixed, with agriculturalists and pastoralists coexisting and exchanging products. Land was not set aside for exclusive use as crop land or pasture. A section of pasture might be lent out for cultivation or fallow land given over for grazing for a period of time.

A second pattern of land tenure and relations was superimposed on this one as the central Rwandan kingdom expanded in the nineteenth century. Whereas in earlier years there were a number of chiefdoms and small kingdoms that from time to time came under the control of the central Rwandan kingdom, at this time the *mwami* (king) sought to establish a more permanent authority over these areas through the appointment of his own men as chiefs.

Under the colonial rule of first the Germans (1897–1916) and then the Belgians, the process of centralization was consolidated and extended. Governing under a colonial system of indirect rule, the administrative chiefs became the agents of the colonial regime, and their powers to allocate land and muster corvée labor (forced labor for the government) were even greater than before. Whereas earlier the limits to their powers were the amount of force they could employ and the need for at least a modicum of local acquiescence, now it was the central, European authorities that sanctioned their rule. Furthermore, the new chiefs were established in the northern areas of the country where centralized rule had not been imposed. The effect was to further diminish the authority of the lineage chiefs and to give greater impetus to the establishment of hierarchical ties between patron and client: a powerful and influential patron might intercede on his client’s behalf and perhaps

act to temper the authority of the chief. Land tenure, as other economic and social relations, became increasingly individualized, and the collectivity of the lineage exercised less and less authority.

The colonial system, with its reliance on the authority of chiefs and its perception that Tutsis were the appropriate group to exercise power set in place a system that opposed Hutus and Tutsi. The result by the end of the 1950s was a society polarized between ruler and ruled. The result of this was the revolution of 1959, in which the Tutsi chiefs were overthrown, and the subsequent events that led to the massacre of many Tutsi and to the exodus of thousands who survived.

Besides being recognized by state law, little change has taken place within the different community-based tenure systems found in Rwanda's country side. Over 90% of the land is still under these systems and they are similar to the general historical case outlined above. Rights to land are recognized as being obtained by either clearing, inheriting or buying the land. Little clearing of land goes on today, though there are a few areas where immigration is taking place and people are claiming rights to land through clearing. Inheritance of rights is more common and is still from father to sons. All sons are given equal shares of the fields, thus leading to fragmentation of fields. Land is bought as outlined in the previous section on land markets.

Access to land through renting does take place under the community-based tenure systems, though it is rare. Some sources suggest that in recent years renting is becoming a more common phenomenon as sons who have inherited little land attempt to rent land in order to increase their access to agricultural fields.

In general the community-based land tenure systems and the state land tenure system are compatible. State law recognizes the legitimacy of land rights under community-based systems. Even under the draft agricultural reform laws proposed in 1991 (and as far as can be determined, not acted on) there is no call for the replacement of community-based tenure systems. It appears that the spirit of the states laws recognizing and enforcing land rights granted under community-based systems will be carried into the future.

### **Tenure constraints and opportunities**

In general it should be noted that the largest constraint on development in Rwanda is the uncertain tenure situation of people displaced due to the war and the recent change in government. While the preceding sections outline the general land tenure situation in Rwanda up to the events of 1994, it is not clear how the situation has changed since then.

The current land tenure systems tacitly encourage land fragmentation. Even though the state laws officially encourage holdings of no less than 2 hectares, the reality is that, through the inheritance laws and customs, land is fragmented as it is divided among sons, and even field sizes have become increasingly small as individual fields are divided between inheritors. Land tenure security does not appear to be a problem for most Rwandan farmers as the different systems guaranteeing rights and access to land are accepted and enforced, but fragmentation acts as a check on the adoption of agricultural innovations and investment. Innovation is limited because farmers do not have excess land on which to try, for them, unproved methods. Monetary investment is limited as farmers' land holdings are too small for banks to accept them as collateral for loans and lend to farmers.

In general the security conferred by existing land tenure systems is not a factor in the conservation of the natural resource base. Rather, (1) the need to use fields year in and year out, (2) the pressure for increased access to new land sources and other pressures engendered from a population that is growing beyond the natural resource base's carrying capacity, and (3) the recent renewal of civil war and the subsequent change in government seem to be the biggest constraints on the sustainable management of the natural resource base. The civil war has its base in the competition for resources and undermines the tenure system.

Of the above-noted constraints, the civil war that has ravaged Rwanda since independence is the gravest problem. In the past, the search for enemy soldiers, and the desire to limit cover, has resulted in the destruction of

whole forest areas. Also, land mines, and other booby-traps, left behind by soldiers from both sides present a danger to animals and people in and around Rwanda's national parks.

The fact that the state land tenure laws recognize the legitimacy of community-based land tenure systems already encourages a certain level of local participation in the resolution of land tenure issues. This is the case because it is much easier for local people to participate in local decision-making processes than it is for them to influence edicts from a centralized government. As with all cases of democratization, though, there is a need for checks and balances so that local tenure issues that impact on national concerns can be resolved at the proper level of government.

While land tenure systems encourage a certain level of tenure security, the war has undermined legality and threatens to create tenure security problems in Rwanda. This and other issues related to the land limit both economic growth and food security. The most pressing of these other issues is the displacement of almost 2 million people since the war began.

Other long-term problems influencing both economic growth and food security are the twin issues of land fragmentation and overpopulation. In recent years only one prefecture of the country has achieved food security, and this prefecture did this by providing a higher than average hectareage per farm ratio than the remainder of the country through the destruction of its forests. As there is now little land left to clear for agricultural purposes, the food security situation will only get worse.

The Rwandan Constitution of 1978 guarantees equality under law to both sexes. However, under customary law women have no right to inherit land or land rights from either her father or her husband. If her husband dies and she has children, the woman has land rights through her children. If she has no children, she must return to her father's household in order to have access to the land. Under customary law, women do not have the right to buy land.

The only access that women, in general, and female heads of households, in specific, have to land is through settlement on government-sponsored paysannats. These schemes offer women the same rights to men regarding access to and use of land.

### **Present policy position and reforms**

The government of Rwanda has a clear policy to encourage the equitable distribution of land to its citizens for agricultural purposes. At the same time, through regulating land markets, it is attempting to combat land fragmentation of its arable land. With regard to conservation, the government is attempting to conserve what remaining forest lands are left and also encourage reforestation in order to fight land degradation.

At this point the government has not clarified its policy towards the most pressing, short-term, tenure issue it faces, the resettlement of the different waves of refugees, from 1960 to the present, who are currently making their way back into the country, or who shortly will be.

### **Implications for policy dialogue and programming**

There is a need to support policies that decrease rates of land fragmentation in the country, that lead to land tenure security, and that can decrease potential conflicts between the returning refugees. Given Rwanda's limited resource base and conflictual relationships between some of the Hutu and Tutsi, the best policy positions may not be immediately evident.

Regarding land tenure security, the best policy is to continue to support government positions that lend themselves to the conciliatory relationship between state land tenure laws and community-based tenure systems' rules.



In the case of land fragmentation, there is the need to support government efforts to control population growth and decrease the fragmentational effect of inheritance traditions. Policy decisions may have to be made as to which is more desirable, equitable access and control of agricultural land, or the ability of individuals to accumulate adequate amounts of land so that they can produce large enough harvests to guarantee food security.

On the question of the resettlement of two different groups of refugees, from two different time periods, government policies must urgently clarify who will be resettled, if compensation will be paid to those who lose land, and, if so, who will be compensated. It will be a delicate matter whether the newly disposed should be compensated in favor of those who lost land decades ago, or whether those who lost land decades ago should be compensated in favor of those who recently lost land. With this issue there are other factors that may play into the equation, such as the questions of war crimes and whether or not the recently displaced will return.

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# **SOMALIA COUNTRY PROFILE**

**by Jyoti Subramanian**

## **Executive summary**

The conflict over access to productive resources in Somalia is rooted in the historical process of land occupation and expropriation by the Somali state and its governing elites, as well as in large-scale demographic shifts, such as resettlement of refugees from the northwest in 1974, and changing market conditions. It can also be traced to the power relations in Somali society (typically expressed in terms of balances of power among clans), which have had and continue to have the ability to acquire and allocate the means of subsistence. The struggle for land was intensified with the passage of the Agricultural Land Law of 1975, which transferred control over all Somali land to the state. Despite the laws, community-based tenure systems continue to regulate access to land in all parts of the country. With the collapse of the Somali state, there appears to be a broad reversion to customary practices for allocation and control of land, but little reliable information is available. Any future reconstruction of national land policy will need to build upon customary, community-based tenure to a far greater extent than in the past.

## **National policy and legal framework**

Somalia occupies a land area of 637,540 square kilometers and as of 1993, has a population of roughly 8,050,000. (There are widely divergent recent population estimates, including estimates as low as 5.4 million as of 1995; the basis for these estimates is not clear, and the pre-collapse figures will be used here.) It is largely hot and dry throughout the year, with sparse rainfall except at higher elevations. Only 13% of Somalia's land is arable, of which only 8% has been cultivated. Livestock production is the primary economic activity in the country, comprising approximately 50% of the gross domestic products and more than 80% of the export revenue. About 55% of the national population participates in nomadic pastoralism and 80% is engaged in livestock raising of some kind.

The first efforts to regulate tenure were made by Italian colonizers at the turn of the century, but the impact of those laws was largely limited to the taking of land for urban development and for white settlement in the river valleys. The Agricultural Land Law of 1975 was the first land tenure legislation after independence. The law officially transferred control of all Somali land from traditional authorities to the Government of Somalia Democratic Republic (GSDR). Individuals desiring access to land were forced to register their holdings within 6 months of the passage of the law. According to the law, landholders are permitted to register limited amounts of land as state leaseholds or concessions, with usufructuary rights for up to fifty years, with the possibility of renewal. One concession can be obtained per individual/family, for up to 30 hectares of irrigated land, 60 hectares of rain-fed land and 100 hectares of banana plantations. The government can revoke a concession that exceeds size restrictions, is used for non-agricultural purposes, is not used productively, is unnecessarily fragmented, is transferred, or is not farmed for two successive years. There are no transactions allowed under statutory law. Cooperatives and state farms received preferential access to land in the registration process, particularly in terms of leasehold size, number, and duration of lease. Registration was most active in the Shabelle and Jubba river valleys, where irrigation is possible.

The land law does not recognize the customary rules and procedures of the indigenous institutions that still govern access to land, and weak legal enforcement resulted in disparities between statutory tenure and actual land use and allocation. Many farmers bought, sold and rented land, and ownership above allowed ceilings was common, as were multiple parcel holdings. Individuals circumvented restrictions against multiple parcel holdings by registering leases in the name of sons, daughters, and wives.

The conflict between statutory and community-based tenure intensified the struggle for resources in Somalia. These struggles are grounded in multiple contexts; the main areas of contestation are local (community membership), regional (rural-urban linkages and pastoral-agricultural interactions), and state or national (government policy, legal and administrative structures). Intersecting all three arenas are the politics of ethnicity and class.

Competition over productive resources occurred on many fronts in Somalia's recent history, but it was unquestionably in the settled farming districts of the south that the struggle was most intense and most disruptive to ordinary life. Where land becomes scarce, communities seek to exclude outsider land claims. But now there was strong government interest in local resources that previously had been relatively unimportant to them. The privileged access of those at the center of power to the institutional mechanisms through which land could be registered gave them a tremendous advantage in laying claim to valuable resources.

### **Replacement and adaptation of indigenous tenures**

Within community-based tenure systems, access to, rights to, and/or control over land is most often dependent upon one's social identity. Land can be acquired by individual clearing, inheritance, request from the village council, by purchase or by gift. Transactions are not entirely matters between the parties, and may require approval by community elders, especially if the transferee is an outsider. Landholdings have many of the characteristics of private property, and as a result, tenure security—provided by communal recognition of land ownership—has been high.

Systems of community-based tenure in Somalia have been created in response to an unpredictable environment. Nomadic pastoralism is one such example, where survival is increased by subsisting on more than one type of land under different climatic conditions. Community-based tenure varies with land quality; oftentimes land suitable only for grazing is overseen by the clan as a whole, while land which produces regularly is controlled by individuals to whom use-rights have been allocated. Land left in bush (uncultivated) by a farmer cannot be claimed by anyone else unless it is clear that the farmer intends to abandon the parcel. The right to bush land is a critical aspect of community-based land tenure, because such land is crucial in terms of population growth, inheritance, and the need to offset potential soil fertility losses on cultivated land.

The land law sought to transform these complex systems of land tenure and use rights that had been worked out over many generations. As a result, there were many adverse consequences for both nomadic pastoralists and farmers. The cost in money and time of registration and the lack of familiarity with government bureaucracy served as major barriers. Titles were unproportionately issued to outsiders/town-dwellers, while state and cooperative farms resulted in the displacement of small farmers as well as pastoralists. Community elders never accepted the statutory system of land allocation and there was often active opposition to anyone with a documentary title. Since uncultivated land risked appropriation by the government as well as outsiders, unregistered farmers were forced to clear their bush land although they might not actually have plans for cultivating it. As a result, deforestation became widespread.

### **Tenure constraints and opportunities**

Formal title is assumed to provide farmers with tenure security, thereby encouraging the transfer of land into the hands of the most efficient farmers and increasing agricultural investment. In actuality, however, a sense of tenure security was prevalent only among wealthier individuals owning superior parcels of land—a very small percentage of the total population in Somalia—and it appears as though the amount of agricultural investment in land by smallholders under the formal titling system was low. The smallholders who felt that title improved their sense of security were primarily farmers in irrigated areas, and it was against incursions by government and its nominees that they sought security. The granting of titles to outsiders undermined security of tenure of most of the smallholders in the irrigated schemes.

Whatever the original intentions of the Land Law of 1975, the insecurity that resulted from its implementation poses perhaps the greatest challenge yet to the future of smallholder agriculture in Somalia. By eradicating the legitimacy of customary land tenure and making state leasehold title the only legal means of claiming land rights, the law tipped the balance of tenure claims in favor of those with privileged access to the mechanisms of registration.

Studies indicate that the farmers with the least secure landholdings tended to be located in areas with access to water and large potential production response to irrigation. Despite the appearance of high tenure insecurity, few independent farmers registered their land due to a lack of financial resources and bureaucratic know-how. As a result, their land was vulnerable to land grabbing by outsiders and local elites because of its higher value and insecure status. It has been suggested that this land grabbing has come to a halt with the collapse of political authority.

Research in the lower Jubba Valley in the 1980s showed that many Somali farmers were eager to engage in market transactions. There was a market orientation among Gedo smallholders anxious to adopt irrigation technology for onion production in the valley, among pastoralists of the Afmadow region, and on the part of Somali women attempting to recover from drought and guerrilla warfare in northern Kenya. Somali farmers and herders have not only been interested in, and dependent upon, occasional production for the market but have frequently struggled against state policies to maintain access to profitable outlets for their production.

The use of land for grazing plays a crucial role in the lives of people and the economy in Somalia, since roughly 55% of the Somali population is pastoralist. The key land policy issue for Somalia's future development is how to manage that pastureland.

Another issue which deserves attention is the serious rate of deforestation over extensive areas due to a heavy demand for fuelwood and charcoal, grazing requirements for livestock, and land requirements for settlements and agriculture. Due to the lack of policies regarding afforestation and/or forest conservation, there has been significant erosion of the overall forestry resource base in Somalia.

Under the statutory tenure system the rights of individual farmers and pastoralists were diminished. By appropriating all land to the state, the GSDR managed to consolidate governmental power over individual interests. Settlements and cooperatives were established and were able to acquire large areas of prime land at the expense of individual users. Pastoralism was discouraged in the process, since dry season grazing was utilized for irrigated agriculture. Somali farmers and pastoralists in some areas also lost control over their land to the government-created village council, which replaced the community leaders once responsible for presiding over village affairs, but has now vanished. Clan conflicts over natural resources are the single most serious obstacle to democratization and establishment of stable governance.

Although women are not prohibited from inheriting, purchasing and otherwise acquiring land independent of their husbands under the community-based tenure system, most women (97.2% in the Bay Region of Southern Somalia) do not hold title to their own land since they are guaranteed access rights to the land of their husbands or brothers. This is an important aspect of community-based tenure, as it provides women who would not otherwise have access to land with a means to support themselves. The legal system of tenure jeopardized the rights of women by allowing only one concession holder per household, since titles were almost always issued in the husband's name.

Studies done in the Lower Shebelle also show that although women comprise about 20% of household heads, they were the least likely group to register their lands due to cultural factors that restrict their involvement in government programs. The tendency was for women to register their parcels in the names of brothers or sons.

## **Present policy position and reforms discussed**

The state leasehold system undermined the tenure security previously provided by the community-based tenure system, and failed to provide an appropriate alternative to that customary system. Long-standing community-based systems of land ownership and the indigenous institutions that still govern access to land and pasture were officially completely ignored, as were the practices and needs of pastoralists.

Titling is assumed to improve access to credit and agricultural investment, but credit access is more often a function of farm size than of registration status. Consequently, there was a significant neglect of smallholders, since cooperatives, state farms, parastatals and corporate agricultural enterprises were favored over private individual farmers in terms of holding size. As a result, formal tenure as implemented in Somalia displaced small farmers and pastoralists and reduced the possibility of sustainable economic growth in the region.

## **Implications for policy dialogue and programming**

While land tenure policy cannot be addressed until there is effective government in Somalia, it is possible to imagine certain possible policy directions. At the moment, we are seeing the de facto restoration of “traditional” resource management systems, where long-time residents automatically have the ultimate say in how land is allocated. Policymakers over the last decade were firmly committed to the notion that the resources of the riverine and interriver regions are part of the national patrimony, and there is little question that these agricultural and pastoral districts will be critical for feeding the nation in the future. At the same time, there is a desperate need for rural farmers and herders to feel secure in their possession of land and their access to resources. The neglect of important rural interests and poor management of the scarce agricultural land were among the key factors leading to the collapse of national government. It is important that planners tap the knowledge and expertise of rural people in developing new strategies.

Under community-based tenure systems, land use determines land tenure, and more effort should be concentrated on understanding indigenous ways of dealing with changes in land use and the traditional social institutions which continue to dictate access to natural resources. Accordingly, policies which take environmental, social and cultural conditions into account should be formulated. Such policies should be flexible enough to reflect changing conditions the same way community-based tenure systems do. In addition, the roles that clans traditionally played in land management need to be taken into account, in light of their importance and reemergence.

Alternatives to individualized titling should also be explored, such as registering land at the village level and allowing community-based tenure systems to continue to govern resource access and control. Under such a system, multiple parcel holdings and land sales could be allowed, some parcels of land could be retained in bush (uncultivated), women could retain access rights to land and equity could be maintained. Such a method of registration would also reduce costs, as village lands are already clearly demarcated in some areas. The fact that many people in irrigated areas want titles to their land, however, will need to be addressed as well.

If the formal registration system is to be resurrected, some important revisions will need to be made. It's purpose should be to confirm traditional right-holders in their control of the land. The registration process should be more efficient, less expensive and decentralized so that smallholders are able to partake of it; the district level is the most appropriate in which to conduct registration procedures. In addition, smallholders should be granted exclusive rights of occupancy for an unlimited term, and restrictions on the number of parcels held should be reduced. There will need to be consideration of whether leasehold tenure should be used for land formally titled, or whether full private ownership or other options should be considered.

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# **SUDAN COUNTRY PROFILE**

**by John W. Bruce**

## **Executive summary**

Patterns of land law and administration under the Islamic regime do not appear, in practice, to differ significantly from those of earlier regimes. While private ownership is well established in the riparian Northern Sudan, in the rest of the country existing policy and law use government ownership of land to provide access to resources to Northern elites on conditions which are highly profitable but not environmentally sustainable. There is every reason for concern over the long-term ecological impact of developing patterns of land use, as well as the immediate destruction of indigenous land tenure systems and the marginalization of traditional populations of farmers and pastoralists. Conflict over land has become endemic, and while some measures appear to have been taken for dealing with these problems, the information necessary to evaluate them is not available. The most extreme case of conflict presented by the civil war in the Southern Sudan, in reaction to attempts to impose Islamic law.

## **National policy and legal framework**

The Sudan is the largest country in Africa, with a land area of 237.1 million hectares, of which only 1.3 million are arable, and a population of 27.4 million. Large areas of the country are arid, used primarily by pastoralists. Much of the country's commercial agricultural production is concentrated in irrigated schemes and mechanized rain-fed farming schemes.

Legislation in 1970 limited private ownership to limited area, mostly along the northern Nile, where ownership had earlier been registered. All other land is state owned. In project areas both in irrigated and rainfed mechanized farming, government has utilized a leasehold system. Outside project areas, rights continue to be governed by customary rules. The basic patterns were set during the colonial period.

The Anglo-Egyptian administration enacted a Land Settlement Ordinance in 1905, with a stipulation that "waste, forest, and unoccupied land shall be deemed to be the property of the government until the contrary is proved." This was superseded by the 1925 Land Settlement and Registration Ordinance, which provided to the same effect. Land in most major urban areas in Sudan was registered in freehold, the result of sales of public land to private buyers as the cities have expanded. In limited irrigated areas land was systematically surveyed and registered in private ownership to traditional holders by the government. In these areas there is an active land market. But in most of the country, there was no systematic effort to identify which lands belonged to government. In practice, the state usually refrained from interference with rights of occupiers, whether group or individual, in unregistered land, managing the country indirectly through traditional Native Authorities.

In 1970, the Nimeiry regime enacted the Unregistered Land Act, which declared that all unregistered land of any kind whatsoever, occupied or unoccupied, belonged to the State and was deemed to be registered in the name of the State. Ownership could no longer be acquired by long use. The original intention appears to have been to establish direct state administration of all unregistered land. In 1971 the Local Government Act abolished the Native Authorities, traditional rulers through whom the colonial regime had ruled the country. The local government institutions intended to replace them were however never effective, and land outside major development projects has continued to be administered by traditional authorities. Land rights have been considered use rights, with disputes over such use rights being decided in customary or Islamic law courts in the various parts of the country. The primary importance of the 1970 legislation was to provide a clearer legal basis for use of leaseholds from the state as the tenure for farmers in development projects, and to facilitate acquisition of land for such projects.

A 1984 Civil Transactions Act, enacted by the new Islamic regime, repealed the Unregistered Land Act, while reaffirming government ownership of all land not previously registered as privately owned. The 1984 Act did not alter the status of urban or irrigated freeholds, but repealed a scheme of urban rent restriction dating back to the 1950s. That scheme was of limited effectiveness, but with its repeal landlords introduced major rent increases, especially for poor and lower-middle-class housing. The Act also introduced a variety of Islamic law concepts, including the fundamental notion that the act of clearing and cultivation of previously unused or abandoned land confers rights of usufruct. It is not clear that this has very much altered the situation on the ground. Perhaps more important is a 1988 Act which restored the role of the Native Authorities, but information on their operations is scanty.

### **Replacement and adaptation of indigenous tenures**

Customary tenure controls access to most agricultural land in the country. In the areas of western and eastern Sudan where shifting cultivation predominates, the village is the typical landholding community. Within the boundaries of village lands, each member of the village acquires tenure rights for the duration of cultivation by clearing land that is unoccupied. In areas where there is stability of cultivation, landholdings may be inherited according to Islamic law or customary law, depending upon the depth of penetration of Islamic legal values. If a villager leaves the village, the land he occupies is allotted to someone else. In parts of sparsely populated Kordofan and Darfur regions, land in excess of the village needs may be allotted by the sheikh (chief) to strangers. Because land is relatively abundant, the size of each plot is a function of *kifayat yet* (that is, not more than your hand can work).

The whole of the Southern Region is composed of land under customary tenure, as are the large areas occupied by nomadic and semi-nomadic peoples in the Eastern, Darfur, Kordofan, and Central Regions. The Nilotic peoples of the Southern Region, the Beja in the Red Sea Hills, the Kababish of Kordofan, and the Baggara of Southern Darfur have almost unrestricted enjoyment of a large territory known in Arabic as *dar*. For nomadic and other pastoralist groups, pasture is managed as commons, with recognized boundaries not only between tribes, but also between sections and subsections. Recent commentators note the continuing resilience of customary tenure systems, even as they are placed under growing pressure by expansion of the state leasehold system for mechanized farming.

Customary tenure has however been gradually but steadily replaced by tenure rights derived from national law. Private individual ownership of land (*melk*) is a fundamental concept of Islamic law, and has long been practiced in urban areas and other more thoroughly Islamicized areas of northern and central Sudan. In earlier centuries, sultanates granted land by written charter, and irrigated land along the Nile was governed by Islamic law. After the suppression of the Mahdist rebellion at the turn of the century, the British began to register both urban and agricultural land along the Nile in an operation which provided the prototype for land registration efforts in British colonies elsewhere in Africa. Registration was systematic, with a field operation to adjudicate the title to each piece of land in a "settlement" area (referring to settling of titles). The agricultural land registered was a minuscule part of Sudan's land area, but agriculturally extremely important: the irrigated land along the Nile between old Halfa and Kosti, and some rain-fed agricultural areas in the Gezira and in the Nuba Hills. The total area is about 6 million feddans (1 feddan is equal to 1.038 acres) out of a total of a little less than 40 million feddans judged suitable for cultivation.

This registered land was excluded from the Unregistered Land Act, 1970, which made the State the registered owner of all unregistered land. The Civil Transactions Act of 1984 established that the basic property regime for this land is Islamic law, which had previously affected only inheritance of this land. The system has been plagued, as in many other African countries, by failures to register transfers and inheritances.

Leasehold is the tenure on which government makes available land in development projects. This is the case both in the irrigated schemes and in the mechanized farming schemes in rain-fed agricultural areas. Rents are



nominal, and the most important function of the lease is to set out the complex relationship between the farmer and the scheme. The period of leaseholds ranges from one year under Gezira Scheme tenancies (though they are almost invariably renewed) to 25 to 40 years in rain-fed mechanized farming schemes such as those around Gedaref and Habila. This last sector is clearly the most important tenure sector in terms of commercial production.

The Minister of Agriculture, Food, and Natural Resources has overall authority over the system of state agricultural land leaseholds. The system is administered by the public agricultural boards or corporations. For instance, the Mechanized Agriculture Public Corporation administers and allocates leases and subleases and also approves dealings with leaseholds of lands under mechanized agriculture. The same is true of the Gezira Scheme where the Gezira Board not only allocates leases but also determines what is to be produced, and how to produce and market it. As for privately owned land, whether rural or urban, the keeping of records of titles and registration of transactions is the responsibility of the Registrar of Lands. The Office of the Registrar is part of the Judiciary, and there are local Land Registries in riparian provinces and towns with significant registered land. The Minister of Construction and Public Works has overall authority over urban land, town planning and zoning. The municipalities allocate urban lands and collect rates, levies, and registration fees on behalf of the Ministry.

### **Tenure constraints and opportunities**

There is only very fragmentary information available on these issues in the Sudan since the Islamic government assumed power. In some areas, for instance, the relationship between customary tenure and agricultural production, the information had always been very scanty.

In the agricultural sector, there appears to have been a progressive worsening of problems identified as serious even in the 1970s. In the privately-owned, registered land areas, progressive subdivision of holdings under Islamic rules of inheritance is widely assumed to have a negative impact on production, though there are no studies to document this. Following major floods in 1985, regional land committees and sub-committees down to local level were convened to consider these issues. They recommended that no parcel smaller than .42 ha be registered. Islamic and statutory rules give pre-emptive rights to relatives and neighbors in case of sales, and the scheme of transfer charges has been reworked so that transfers to strangers are taxed at a higher rate than those to relatives and neighbors. There is no indication that problems of unregistered transactions have been resolved, and indeed attempts to control transactions, even in a good cause, tend to result in these being made "off the register." There are expressions of concern over the poor training of registry staff and disorganization in the registry system.

On the recent irrigated schemes, leasehold tenure prevails. Conditionalities in leases extend a long history of over-control of farmer production decisions by scheme management. These controls appear to be at least partly responsible for declining yields of cotton, the export crop whose foreign exchange earnings provided the justification for the major irrigated schemes. Farmers' ability to expand into more profitable crops has been constrained by threat of loss of their holdings.

But the most serious problems seem to be arising from the rapid expansion of both irrigated agriculture and mechanized dryland farming of cereals. The expansion of irrigated agriculture has been critical for many rural populations because it has interfered with their patterns of water use. The expansion of mechanized cereal farming by urban financial interests has affected larger areas, expanding rapidly into the Central and Western Sudan from its initial areas in the East, and placing increasing pressure on traditional land users, both farmers and pastoralists. The last fifteen years have seen prolonged drought in Sudan, and this has exacerbated the conflicts emerging from these expulsions of traditional users, rendering their marginalization more severe.

Severe environmental problems have arisen from this pressure. Serious land degradation under mechanized cereal farming in eastern Sudan was noted fifteen years ago, but government has continued to expand the system,

which is highly profitable for urban investors if they are not required to make the investments in the land which would be required to make the system sustainable. While leases from government include conditions about sustainable use, government controls are minimal. Mechanized cultivators often expand cultivation beyond their leases and just move on to other land when the land on their lease is exhausted after a half dozen years. The result is a situation which has been characterized as “shifting mechanized cultivation.” This pattern was established under the Nimeiry regime, but has been expanding steadily under the present Islamic government.

In conditions of drought and increasing pressure on land by the expansion of commercial agriculture under the government’s leasehold system, the situation of pastoralists has become critical. Commentators suggest that the point may have been reached where pastoralist systems of land use may not be sustainable. Historically, tribal territories (*dars*) of pastoralists in the western Sudan have been adjusted to take account of changing rainfall. The annual conferences of tribal authorities in western Sudan held by the colonial officials to negotiate land uses for that year are a model for land management in these arid areas. Tribal territories or *dars* are well understood, but so is the principle that flexibility is required to accommodate great variances in rainfall from year to year. Principles of comity apply: the group asked to cede access to a part of its territory and water resources in one year will need to ask the same from another group in a later year. New pressures on land have made land conflict endemic, and these conferences have recently been revitalized (perhaps in connection with the re-establishment of the Native Administrations), but there is little information available on the process of re-establishment or its consequences.

Forestry efforts in the southern Sudan, the locus of Sudan’s only tropical forests, have been profoundly disrupted by the Civil War. In the north, gum arabic gardens play a key role in local economies. There is an elaborate customary law with regard to gum arabic-producing acacia trees, but this differs from one ethnic group to another. As pressure on resources increase, competition for these trees is intensifying. Gum arabic prices are high, and proposals for greater government regulation of this resource may presage its appropriation by urban-based elites.

The situation regarding basic human rights in the Sudan is so serious, both as a result of national policies and the war in the South, that it is perhaps futile to speculate on the more subtle linkages between property rights and democracy in the country. What is clear is that if the conflict in the South is ever resolved, it will leave behind it an appalling confusion of land rights similar to those being confronted today in Mozambique and Rwanda.

Gender impacts of tenure arrangements have received relatively little attention in Sudan in recent years. While Islamic law recognizes daughters as heirs, albeit to smaller shares than male heirs, in practice, women rarely inherit land, and tend to be allocated personal property, leaving land for their male siblings. This reconciles Islamic law with customary matrilineal inheritance patterns of most Sudanese peoples. Some observers have however noted the growing role of women in agricultural production, and have expressed concern that their lack of land rights undermines their incentives to invest their labor in agricultural production.

### **Present policies and reform directions**

Despite the centrality of the concept of private ownership to Islamic thought on land rights, it is now clear that the government intends to retain ownership of land in its own hands. Northern elites continue to support private ownership in the irrigated land in the north, but have used claims to government ownership to land outside the Nile Valley to legitimize vast land-grabs from rural people by urban elites. The value placed by Islam on the bringing of land into cultivation as a basis for land right has provided an underpinning for the extensive appropriations of land for mechanized farming by urban elites. Making land available for little or no price has encouraged an expansion of cultivation beyond what is ecologically sound. In the Southern Sudan the current rebellion is a reaction to attempts to impose Islamic law, and there the battle between Islamic and customary values is at its starkest.

## Implications for policy dialogue and programming

It is increasingly apparent that land tenure policies pursued since the early 1970s have produced unsatisfactory results. It is less clear that the needed reformulation of land tenure policy will be forthcoming. In these circumstances project planners will need to give particular attention to tenure issues. This will be especially true where major private investments in land are expected, and where significant increases in the value of land are anticipated as a result of project activities. The first requires secure tenure, while the second raises dangers of beneficiary displacement by more powerful interests if intended beneficiaries do not have secure tenure. Tenure arrangements for project participants should to the extent possible be explicitly prescribed in project agreements with government, pending establishment of a more stable land policy and land law environment for project activities.

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# UGANDA COUNTRY PROFILE

by John W. Bruce and Mark Marquardt

## Executive summary

Uganda has emerged from a period of considerable confusion in land policy. Uganda at independence had relatively extensive areas of land under registered freehold and *mailo* (a local variant of freehold), but these were nationalized and converted to long-term conditional leases by the 1975 Land Reform Decree enacted under Idi Amin. The same legislation weakened the position of customary landholders. In fact, the Decree was never seriously implemented and this left land tenure in Uganda in a state of considerable confusion for twenty years. In 1995 a Constituent Assembly produced a new Constitution which reestablished private property in land, and mandates replacement of the 1975 law with a new land law within two years.

## National land policy and legal framework

Uganda enjoys an excellent land resource base by Africa standards, and while there are areas of intense population pressure on land (the densities the extreme southwest of the country are comparable with those in Rwanda, just across the border), the country has 20 million hectares of land, of which 6.77 million are arable, and a population of 20.6 million of which 16.2 million depend directly on agriculture.

The 1900 Buganda Agreement between the British and the Buganda Kingdom has profoundly influenced the development of tenure patterns. An area of 1,000 square miles was divided into mile-square blocks (*mailo*) and allocated to the king and nobles in support of their offices (official *mailo*), and 8,000 square miles allocated to chiefs and other notables (personal *mailo*). An area of 9,000 square miles became Crown Land, under the administration of the British Crown. Similar patterns were followed in some other kingdoms, such as Toro, in which 255 square miles were titled as freehold and 122 square miles as official estates, and Ankole, where 50 square miles were titled as freehold. In succeeding years, many of these large holdings were broken up or substantially reduced in size by sales.

Many smallholders became de facto tenants on these large allocations, and tensions grew between them and their new landlords. By 1928 the colonial authorities enacted the *busulu* and *envujo* laws which provided these tenants with broad security of tenure and fixed rents which inflation rendered increasingly nominal. Critiques of the system suggested that this regulation locked in place two parties (landlord and tenant) who both lacked adequate incentives to invest in agricultural development, but in fact the area became Uganda's premier coffee-producing region.

Small amounts of freehold land were created by pilot projects in Uganda in the 1960s, in the wake of the freehold recommendations of the 1953 East Africa Royal Commission on Land Tenure. But the pilots met substantial public opposition, and the program never took off as it did in Kenya, where the civil war footing exempted the colonial government from politics as normal. These pilots were very different from the earlier tenure conversions, and involved systematic, compulsory registration by smallholders of their customary holdings, with 6,400 plots involved in the Kigezi pilot (now Rukungiri), 1,560 in the Ankole pilot (now Mbarara), and 120 plots in Bugisu (now Kibale).

In 1975 Idi Amin's Land Reform Decree nationalized all freehold and *mailo* and converted them to 99-year leases from the state, conditional on development. There had for many years been calls by socialist elements for Uganda to move away from the path toward freehold, and the change may have been inspired in part by the 1974 land nationalization in Ethiopia. But it was also motivated by a desire of the Amin government to use development conditions to take land and reallocate it, potentially to army officers and members of the ethnic groups which formed Amin's power base. The Decree also allowed the relative easy eviction of tenants. In practice, existing titles and forms remained as they had been on the records, though new allocations of land were

given as leases. Some tenants were evicted, but the requirement of the law that they receive compensation for permanent improvements such as their coffee plantations limited this.

By 1987, shortly after the present government assumed power, a land use task force urged review of the 1975 decree as a policy priority. Studies carried out in between 1987 and 1989 found that in at least one of the smallholder freehold pilots, there had been only very modest improvements attributable to titling. Perhaps more important, the studies found an informal land market almost as active in customary tenure areas of central Uganda as in the registered lands. Events were outpacing legal reform. The Agricultural Policy Committee (APC), an interministerial forum, created a Technical Committee on Land Reform to explore policy options. The technical committee conducted a series of public consultations on tenure reform throughout the country, and in the end recommended the repeal of the 1975 decree, restoration of rights of private property in land, and enhanced protection for the rights of customary holders.

The committee drafted a new land law, but this process was overtaken by the Constituent Assembly, while elevated the re-establishment of private property to a constitutional concern. The new constitution provides that land belongs to the people of Uganda, who hold it under freehold, *mailo*, leasehold and customary tenures. The constitution mandates new legislation to resolve the relationship between the owner and occupier of the land (that is, the *mailo* owners/tenant relationship), and this seems likely to be accomplished in the context of a new general law on land.

This drafting process is now in the hands of the Ministry of Housing and Lands, which presumably will begin with the draft law prepared by the technical committee of the APC in 1993. The Ministry is in this connection seeking donor funding for rehabilitation of the existing land registry system, which has fallen into serious disrepair.

In a parallel development, the official *mailo* and official estate of freehold are being restored by government to traditional authorities from which they were appropriated by the Amin government. In the case of the former Buganda kingdom, the restoration of official *mailo* to the Kabaka (king) involves the transfer of thousands of hectares of high-value land in Kampala.

### **Adaptation and replacement of customary land tenure**

Like most other African countries, Uganda exhibits a very considerable range of customary tenure systems. These range from the strongly individualistic tenure pattern in baKiga area of southwestern Uganda, to the notably hierarchical systems of the central Ugandan kingdoms to the highly communal systems of the north. There exist on land which is Public Land, but were historically recognized by the state, and this recognition and protection have been restored under the 1995 Constitution.

The pilot land registration schemes from the 1960s provide an example of replacement in the smallholder sector, but it is difficult to argue from them that freehold title and its registration will dramatically improve the situation of smallholders. Studies have suggested that tenure individualization and registration in advance of the development of other markets and infrastructure is unlikely to have much impact. Indeed, no one in Uganda today seems to be thinking in terms of the systematic, compulsory tenure replacement involved in those pilots. Rehabilitation of land registries in areas where registration already existed is likely to take a decade or more, and it seems that formal tenure will be available to customary holders in other areas only on a demand-driven basis, in response to applications from smallholders and on at least partial payment by them of the costs of survey and other field activities required to register the land.

This is the basis upon which leasehold titles are now available, and the experience with that process is informative. Registry offices are ill-equipped, and almost all measures must go to Kampala or Entebbe for approval. Few staff perform the duties associated with their office without some additional reimbursement from the applicant. Files tend to stop in mid-process unless facilitated or followed up rigorously. Costs of registration

are in fact substantial, geometrically more than the very modest fees officially chargeable. At present, most applications for registration reflect an intention to move the land out of agriculture by the building of a house or business.

In fact, the process involves two steps, the first of which reflects the adaptation of customary systems in the face of new opportunities. Long exposed to sales of freehold and *mailo* lands, sales have grown more and more common in the customary tenure systems. An investor planning to build on land under customary tenure in a peri-urban area, for instance, will first break it out of the customary system by a purchase from the customary holder, on terms recognized by the traditional authorities, then will apply for registration of his new right.

To make formal titles more available to smallholders, the registry system would need to be radically decentralized, which would require considerable investments in the local registry offices and their staffs. These registry office are considered the financial responsibility of district government, not the national Ministry, and it is not clear whether these investments will receive priority in the district competition for funds. Development of NGO-led community requests for titling could also significantly reduce costs.

### **Tenure constraints and opportunities**

The new Constitution provides a very promising framework for creating a new atmosphere of tenure security, but this will depend to a large extent on the terms of the new land law and the quality of implementation. There is a danger, for instance, that protections for tenants will not be promptly reinstalled when ownership is restored, inviting broad tenant evictions. There have been proposals that tenants receive freeholds for their holdings when the Government reprivatizes the land, but there appears to be considerable opposition to this among property owners in former Buganda.

Outside the agricultural sector, in natural resources management, property rights have not received the same level of attention. National parks and forest reserves suffered decades of encroachment and poaching during the civil wars. Efforts to reestablish controls have tended to be draconian, emphasizing the expulsion by force of squatters, even in cases where government had previously build schools and clinics for them in the areas of new settlement. Such expulsions have taken place from the game corridor between Kibale National Forest and Queen Elizabeth National Park. A more sophisticated approaches might have allowed for a continued but carefully controlled presence by farmers, but this was rejected by government. Similarly, while there is discussion of buffer zone strategies along the verges of parks and reserves, little implementation has so far occurred. Common property management of natural resources is not well-understood, and largely confused with loose management of natural resources under customary tenure.

The new Constitution includes a major decentralization of public land administration, placing all untitled land in the hands of district governments. This will include large areas of unreserved but valuable natural resources, such as ungazetted forests and wetlands. Legislation will be needed to elaborate a system of district land administration, and the staff and other capabilities at district level must be upgraded substantially to meet this challenge. Little thought has been given to these arrangements, and the decentralization could pose serious temptations for district officials if a legal regime is not in place to provide direction and criteria.

Gender dimensions of tenure have received considerable attention in studies in recent years. The patterns of inheritance which tend to exclude women from direct control of land in the customary tenure sector are also operating with regard to freehold, *mailo*, and leasehold land, and so far there is little sign of their having had an impact on the perceptions of policymakers. At precisely the moment at which these issues can be addressed because of the flux in land policy and law, they tend to be seen as tangential to the “big” policy decisions such a forms of property.

The non-party democracy under the present government seems to have provided an atmosphere conducive to tackling tough questions of land policy. Perhaps the most worrying trend at the moment is the reassertion of

ethnic interests in land, initially though struggles for restoration of properties of traditional authorities deprived of them by previous governments. This trend could potentially interfere with the development of nationally integrative forces such as land markets, as groups with better land endowments seek to reserve them for their own members.

The Constitution is only the beginning of necessary legislative reform, and priority projects are a new land law, a new law to govern the land registry system, a new law on district ownership and management of natural resources on public lands, and legal frameworks for buffer zone and common property natural resource management. Much will depend on how the government agencies concerned rise to the occasion. To date, government appears to be acting expeditiously. In September 1996, following a workshop on the implications of the new constitutional provisions on land at Makerere Institute for Social Research, a drafting committee convened in intensive sessions which produced a draft land law and forwarded it to the Ministry of Lands and Housing.

### **Implications for policy dialogue and programming**

The present policy position is clearly promising, but could fall dramatically short of its potential if government is unable to move forward to enact the necessary laws and establish the necessary implementation machinery. There is a danger that donors, because the Ugandan government has largely embarked on these policy reforms on its own initiative, will not appreciate the need to support these important transitions. Privatization of land tenure and the creation of land markets might be thought merely to require a withdrawal of government interference, but in fact requires the creation and support of those public institutions such as land registries which provide the infrastructure for markets. Similarly, there is a need to provide a more adequate legal framework for management of natural resources, then move forward to develop locally appropriate models for implementation of these measures. There is an urgent need to rebuild the capabilities of the Ministry of Lands, Housing and Physical Planning, and integrity in land administration in a ministry with a reputation for corrupt practices.

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## **SECTION 3**

### **LAND TENURE COUNTRY PROFILES, SOUTHERN AFRICA, 1996**

by

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# SYNTHESIS OF TRENDS AND ISSUES RAISED BY LAND TENURE COUNTRY PROFILES OF SOUTHERN AFRICAN COUNTRIES, 1996

by

**John W. Bruce, Eva Jensen, Scott Kloeck-Jenson,  
Anna Knox, Jyoti Subramanian, and Michael Williams**

## **Executive summary**

Southern Africa was a region of extensive white settlement. Some countries are just now embarking on the reform process, while others are well into the implementation of reforms or seeking to restabilize their rural economies after reforms. In some post-reform situations, the collapse of the ideology which spurred the reforms has led to normative confusion and massive land-grabbing. The region exhibits a broad range of land/population ratios, and this makes it difficult to generalize about tenure needs. But there is no region in Africa that has seen more creative thinking about tenure. To the extent that adequate progress has not been made, it is not so much because promising models are not available, but because of elites pursuing self-interest.

## **Policy and legal framework**

Southern Africa was the last part of Africa to come to independence, and the region in which white settlement was most extensive. Redistributive land reform came hard on the heels of independence. In Tanzania, Mozambique, and Angola, where most land had been in the name of the state under the colonial concession regime, the new governments retained state ownership and opted for socialist reform models, seeking to replace household farming with village collectives or state farms. Tanzania undertook a massive program of resettlement and experimented with communal production in its villages. The state farm experience in Mozambique is the most extensive in Africa. In Zimbabwe, Zambia, and Namibia, land reform has meant the subdivision and reassignment of what were either freehold or long-term leasehold white farms into smaller holdings for resettlement by Africans, usually retained in state ownership and allocated to the new holders on permits or leaseholds. In Malawi land reform was postponed under Banda and has only recently come onto the national agenda.

All these countries have had a strongly dualistic tenure structure, with cash crop production in the colonial period dominated by settler agriculture. The indigenous or “communal” tenure sector was for the most part ignored, or treated as a land reserve from which land was carved for white settlers as needed. It is striking that in these countries this pattern has not changed significantly since independence. In Zimbabwe the displacement of communal area holders has stopped, but in Tanzania, Mozambique, Angola, Zambia, Namibia, and Malawi it has continued. Even in those states once most committed to a radical egalitarianism, Mozambique and Angola, the governments are now presiding over massive land-grabs from rural people as elites move to take advantage of normative confusion created by the abandonment of socialist policies.

There have been a number of attempts to “modernize” indigenous tenure. That implemented in Botswana beginning in 1968 deserves serious attention, as do the 1992 proposals in Tanzania and the subsequent debate.

Egalitarian redistributive land reform will continue to be an important theme in the region for some decades, with a reform still under way in Zimbabwe, and reforms starting in South Africa and Malawi. Beliefs in the superior productivity of large-scale operations is crumbling under new evidence that it was due largely to colonial subsidies to scale and impositions of disabilities upon African smallholders. But there has been a major shift away from socialist tenure formulae for reform beneficiaries. South Africa, while allowing community options on tenure, seems to have opted for freehold ownership nested within a market economy, and this is what is being

promoted by government for reform beneficiaries, whether as individuals or private landholding groups. Malawi seems likely to move in the same direction.

The very different land resource endowments of the countries in the region suggest that there may be a continuing diversity in land policies. The basic land/population data for the countries of the region are set out in table 3.1. The fundamental tenure policies of the countries are arrayed in table 3.2.

### **Replacement and adaptation of indigenous tenure**

This region presents some of the more thoroughly disrupted indigenous tenure systems in Africa. Swaziland presents a traditional hierarchy firmly in control of national politics, relegating formal government structures to a secondary role and preserving perhaps the most indigenous land tenure system in Africa. But it is an exception. Indigenous tenure systems in South Africa have been badly mauled by a century of intervention with both rules and institutions, to the extent that many observers question whether they can be resuscitated. The ANC came to power declared for the abolition of traditional authorities and decidedly negative concerning “customary” tenure systems, which had been part of the Nationalist Party’s fiction of the homelands’ cultural and political autonomy. It is increasingly seems, however, that government will not move too forcefully to remove these structures where they have a genuinely popular base. Even among party cadres, blacks are increasingly voicing a hesitation to eliminate a key element in black culture, however distorted by the colonial policies.

This change reflects similar trends in Zimbabwe and Zambia, where governments which at independence rejected traditional authorities as having been co-opted by the colonial system are now seeking to define fuller roles for them, with a land tenure commission in Zimbabwe actually recommending the return of local land administration in the communal areas to traditional authorities. At the moment, there is a fascinating debate over the authenticity of customary tenure in Southern Africa. It is argued that its content was dramatically distorted by colonial policies and courts, emphasizing its “communal” elements and overstating the powers to traditional authorities. This left African farmers vulnerable to the taking of their family lands by the colonial state, which paid some token to the chiefly “owner”. This can serve as a base for an argument for restoration of traditional communitarian values on a more democratic basis. Or it can be argued that the downplaying of the existence of inheritable lineage tenure rights in the colonial period must now be redressed through allowing the development of individual tenure.

This discourse over the “real” content of tradition is mobilized in current political debates over the future. In light of the evidence from other parts of Africa about the constant evolution of indigenous tenure systems in changing circumstances, there is an appreciation that it is futile to look for the “original” form of traditional land tenure. But at the same time there is a temptation among some elements to see popular attachment to tradition as the product of a “false consciousness” and not entitled to the same respect in a democratic system as other genuinely held popular sentiments. In fact the interest in traditional authorities in this region may involve less a persistence of traditional values than a growing disillusionment by rural people with centralized government in the post-independence period, and an attempt to find in traditional authorities a counterbalance for the political dominance of urban-based national elites and their ideologies.

There is considerable interest in this region in new institutional structures for community-based tenure systems. The Land Board system in Botswana is perhaps the most successful attempt by the state to recognize the decentralized authority of tribal communities over land, and to a significant extent customary tenure rules, while at the same time easing traditional land administration authorities out of control. In South Africa, the Communal Land Tenure Associations Act of 1995 develops an alternative to tradition based on the community land trust model, initially for land reform beneficiaries but in the hope that it may serve as a new legal template for communal lands communities as well. The model seeks to address the gender inequities of many indigenous tenure systems. Tanzania appears to be moving toward a new land law which would empower local communities in land management, reducing the role of the state.

**TABLE 3.1 Land and population, 1993**  
(millions of hectares and millions of persons)

COUNTRY	LAND AREA	ARABLE AND PERMANENT CULTIVATION	PERMANENT PASTURE	FORESTS/ WOODLAND	OTHER LAND	TOTAL POPULATION	AGRICULTURAL POPULATION	AGRICULTURAL POPULATION/ ARABLE HA
Angola	124.7	3.5	29.0	51.9	40.3	10.3	7.0	2.0
Botswana	56.7	0.4	25.6	26.5	3.4	1.4	0.9	2.0
Lesotho	3.0	0.3	2.0	0.0	0.7	1.9	1.5	4.7
Malawi	9.4	1.7	1.8	3.7	2.2	10.5	7.6	4.5
Mozambique	78.4	3.2	44.0	14.0	17.2	15.1	12.2	3.8
Namibia	82.3	0.7	38.0	18.0	25.7	1.5	0.5	0.7
Swaziland	1.7	0.2	1.1	0.1	0.3	0.8	0.5	2.7
South Africa	122.1	13.2	81.4	8.2	19.3	39.7	5.7	0.4
Tanzania	88.4	3.5	35.0	33.5	16.4	28.0	21.7	6.2
Zambia	74.3	5.3	30.0	28.7	10.4	8.9	6.0	1.1
Zimbabwe	38.7	2.9	4.9	8.8	22.2	10.7	7.2	2.5

Note: All breakdowns of land area are based on FAO estimates.

**TABLE 3.2 National land tenure patterns**

COUNTRY	OFFICIAL TENURE OBJECTIVE	DE FACTO DOMINANT TENURE TYPE	1) PRIVATE OWNERSHIP (FREEHOLD)		2) STATE LEASEHOLD		3) COMMUNITY BASED		
			Exists	Significant	Exists	Significant	Indigenous, legally recognized	Alternative community based	Extensive
Botswana	customary tenure/ state leasehold	customary tenure	yes	no	yes	yes	yes	no	yes
Lesotho	customary tenure/ state leasehold	customary tenure	no	no	yes	yes	yes	no	yes
Malawi	private ownership, state leasehold	customary tenure	yes	yes	yes	yes	yes	no	yes
Angola	private ownership/ state leasehold	customary tenure	no	no	yes	yes	no	no	yes
Mozambique	state leasehold	customary tenure	no	no	yes	yes	no	no	yes
South Africa	private ownership	private ownership	yes	yes	yes	no	yes	yes	no
Namibia	private ownership/ state leasehold	private ownership	yes	yes	yes	no	yes	no	no
Zambia	state leasehold	customary tenure	no	no	yes	yes	yes	no	yes
Zimbabwe	state leasehold/ customary tenure	customary tenure	yes	yes	yes	no	yes	no	yes
Swaziland	customary tenure/private ownership	customary tenure	yes	yes	yes	no	yes	no	yes
Tanzania	unclear but state ownership	alternative community based	no	no	yes	yes	no	no	yes

## Tenure constraints and opportunities

The prospect of regionalization of economic forces in this region following the independence of South Africa throws two facts into sharp relief. First, the vagaries of colonial history have resulted in dramatically different land availability in the different countries of the region. A few countries, Mozambique, Angola, and Zambia in particular, enjoy very ample land/population ratios. They desperately need investment. On the other hand, in countries such as South Africa, Zimbabwe, and Malawi, competition for land is fierce. Second, agrarian structures in all these countries have been formed largely by non-market forces: land-grabbing on a racial basis and egalitarian land reforms. The relative efficiency of different holding sizes is largely untested by exposure to a land market in a free market economy, and this is as true of South Africa as of Mozambique.

There are already signs that the national compartments and regional imbalances created in the colonial period are feeling the pressure of a new economic environment, and this extends to land. South African capital and commercial farmers are reaching out for agricultural opportunities on cheaper land in the countries to the north, especially in Angola and Mozambique. And as subsidies to scale are removed gradually throughout the region, the experience of countries such as Zimbabwe suggest that at, least for some basic food crops smallholders will display an efficiency which will force large commercial operations in the direction of export crops for which they have a comparative advantages in market access.

Within national economies, the growing economic liberalization is producing more active land markets, legal and illegal. In Mozambique, a return toward political stability has stimulated land values. In Zambia, where there is a relative plenty of arable land, some holders of long-term leases from the government are partitioning the land and selling it to others. In Malawi and Zimbabwe, land markets are growing even where state land ownership or specific restrictions on sales make them illegal. For better or for worse, almost everyone (including officials) is acting as if he believes that, whatever land's current legal status, its market value will be increasingly recognized by law, as private ownership or in some other fashion. Because of the presence of freehold tenure in several countries in the region, Southern Africa seems likely to be the first region in Africa to see the emergence of a regional land market. Needless to say, this is a prospect viewed with optimism by some commentators, who see its potential for investment, and with fear by others, who are alarmed at the thought of foreign land ownership in their countries, with its echoes of the colonial experience.

In the national polities of the region, there is a clear understanding that current tenure arrangements, both those generated by land reforms and those indigenous, leave a good deal to be desired in terms of providing incentives for investment. There seems a reasonable prospect of confronting this need in the "reformed tenure" sector, but there is still a fascination with large-scale commercial farming in spite of the successes of small-farmers once the playing field is leveled, as in Zimbabwe. This may delay the putting in place of adequate tenure arrangements for small farmers in the "communal" sectors. This is in spite of interesting models for reform having been piloted for twenty years in Botswana, and important institutional approaches to communal tenure currently being generated in South Africa. The lack of action in this area may have less to do with inadequate understanding of needs by policy-makers than it does with the self-interest of government and commercial elites in cheap land acquisition as land is shifted from communal to statutory land tenure.

Land for pasture is a major issue in a number of countries in the region. In Tanzania, large-scale mechanized cereal production and expansion of the farm frontier generally have placed pastoralist land use in some areas of the country under intense pressure. Both Botswana and Namibia, the countries which have the largest cattle herds in the region, have opted for large ranches under long-term private tenure, though not necessarily ownership. Botswana's 99-year leases of huge ranches to large stockholders have provided a controversial model for range privatization. In Namibia, where white-held ranches have been in freehold, a "ranch reform" process will scale down and redistribute some of those units in coming years, and there are concerns about the appropriate scale for such operations on Namibia's rather poor land resource base. These two countries

have been much less successful in developing land tenure and management systems for their communal grazing areas. Indeed, none of the countries in the region has adequately addressed the issue of communal grazing, which even in Botswana and Namibia is still significant. Pastoralists in these areas are under much the same pressures as elsewhere in Africa, with the viability of traditional patterns of land use endangered by the shifting of land and key point resources into private hands. The situation of pastoralists in the region has worsened since independence.

The region also has some of the most important wildlife resources in Africa, and in this area it has been in the forefront in creative planning in the past decades. In Zambia, Malawi, Namibia, Tanzania, South Africa, and Zimbabwe, the state traditionally took a commanding role in the protection of these resources. Led by Zimbabwe with its CAMPFIRE program, however, the states in the region are increasingly examining options for community-based wildlife management, involving the flow of revenues from big game hunting to local communities. Zimbabwe remains the test case for such policies, and while there have been some difficulties in ensuring that benefits accrue to local communities rather than local government, those promoting the program have been persistently reforming the model and it is increasingly clear that it does have promise. The model has benefited from, and has been controversial because it has been piloted in situations where big game hunting generated very substantial revenues, but it is increasingly being experimented with in other sectors such as community forestry and should not be evaluated exclusively in terms of wildlife. While prospects for wildlife conservation are quite positive in the region as a whole, with Botswana and Kenya actively developing programs similar to CAMPFIRE, in Mozambique and Angola the civil wars have done what appears to be vast damage to wildlife resources, the extent of which has yet to be adequately assessed.

The other tenure-related environmental issue bedeviling the countries in the region is the question of relationship between communal tenure on one hand and on the other, erosion and other forms of land degradation. Lesotho and Swaziland, both countries where customary land tenure practices are still strong, are experiencing extensive erosion and this is attributed by some commentators to inadequacies in tenure provided to households there. The land degradation in the communal areas of Zimbabwe and South Africa are also sometimes cited in this connection. There is however no empirical basis for these assertions, and it is likely that the problem has more to do with the poor and/or mountainous nature of the natural resources rather than the tenure arrangements.

Tenure issues have had important connections to the democratization process in the region. In South Africa, Namibia, Zimbabwe and Malawi, fundamental political transitions in the recent past to majority rule have been driven to a significant extent by resentments over land concentration. Their politics will for many years be in part a politics of land. In the countries of the region generally, minority groups have found it difficult to obtain recognition of their land rights by central governments. This is true of the San in Botswana and Namibia, and fundamental human rights issues are involved. Overall, the region can be said to bifurcated into countries like South Africa, Namibia, Tanzania and Zimbabwe where land tenure is debated as an important political issue, with government engaging the problem successfully or unsuccessfully, and countries such as Mozambique, Lesotho and Swaziland, where governments seek to avoid the issue.

Women in Southern Africa deal with a broad range of tenure systems, though they are not well treated under any of them. Namibia and South Africa appear to be the only countries in the region where the government is actively promoting gender equity with regard to land ownership. A common trend exists in Zimbabwe, Lesotho, and Botswana, where women's rights to land have been neglected and in some cases worsened since independence. There has been an absence of government policy in Angola, Mozambique, Zambia, Swaziland and Malawi with regard to women's land rights. Despite customary and statutory restrictions, women in Lesotho and Swaziland are gaining access to land through informal markets and inter-family arrangements other than inheritance. In general, women in the region have been subjected to major disabilities in land ownership both at customary and statutory law, including permanent minority status under some statutory systems. Tanzania stands

out for its political commitment on this issue. It has enacted important legislation reforming customary rules of inheritance to include women as heirs, though the new rules appear to have had little impact in rural areas.

South Africa will be the bellwether on this issue. Its new constitution in Section 8(2) of the Bill for Rights provides that “no person shall be unfairly discriminated against, directly or indirectly” on the ground of gender or sex. This opens the possibility of women gaining independent access to land, unmediated by their relationships to male kin, and creates an interesting tension with recognition in the same constitution of customary law as a legitimate component of the South African legal order. Women are networked (largely through the Women and Law in Southern Africa Research Trust, based in Harare) far better in this region than in others in Africa, and the South African experience as it seeks to balance the two constitutional provisions will be shared widely and quickly. It is clear from the experience of other African countries which enacted fundamental legal reforms decades ago, such as Tanzania, that legal reform will be only a first, necessary step in the process of improving access and security of tenure in land for the region’s women.

### **Future of land and resource tenure in Southern Africa**

The region is rich in terms of experience with both land policies and their implementation. The most sophisticated discourse over land tenure futures in Africa has in recent years taken place within this part of Africa.

A great deal will hinge upon the role which South Africa comes to play in the region. It is potentially a major force for the development of market-friendly law and institutions in the neighboring countries. Southern Africa has seen important innovation in tenure for reform beneficiaries, and for traditional or quasi-traditional communities. The same is true of tenure arrangements for wildlife and other wildlife conservation strategies.

Also of particular importance are the debates over a new land law for Tanzania. The 1992 report of the Presidential Commission on Land Matters in Tanzania describes an unusually well-conceived and well-executed process of studies and public consultation in development of policy proposals. It is exceptional in its frankness. While a draft of a new land law exists, and it would represent an improvement on the current legal regime for land, it would be premature to assume that it will be enacted in its current form. But the 1992 report is a very thoughtful examination of how a community-based tenure system might be implemented.

Finally, Botswana’s Tribal Land Boards are a remarkably successful experience with decentralization of land administration and democratization of the process at the local level.

This does not mean that those innovations are receiving the necessary attention in other countries of the region. Mozambique and Angola are pursuing land tenure policies which encourage massive land grabbing, and this will almost certainly provoke a reaction against liberalization. The most problematic land policy domain remains the future of the “communal” tenure areas, which benefit from institutional and tenure reforms, which can make smallholders productive; be treated as a “social security reserve,” a safety net isolated from market forces; or be gradually diminished as urban and other politically dominant elites acquire them, placing customary systems under growing pressure and endangering their viability. Regional workshops and conferences on land tenure policy can serve a useful function in the spread of important ideas about tenure reform through the region.

## ANGOLA COUNTRY PROFILE

by Michael Williams

### Executive summary

Angola has experienced a variety of different land tenure systems. The community-based systems of the nineteenth century were abruptly uprooted with the influx of European settlers. Small-scale farming gave way to large plantations which were operated by the settlers. In 1975, the land was nationalized, and the plantations were transformed into state-run collective farms. Finally, the 1980s and 1990s witnessed sporadic attempts at dismantling the state farms and returning the land to individual farmers. Such policies, however, lacked adequate government support as the civil war continued. Presently, Angola is again at an important crossroads where land tenure policies could become important public issues. Despite such possibilities, it is doubtful whether Angola will be able to address the numerous land tenure issues due to a lack of political stability, and perhaps more importantly, a lack of information on existing land tenure systems and their salience in the countryside.

### National policy and legal framework

Although population estimates are difficult to gather due to the on-going civil war in Angola, it is estimated that there are presently 10.9 million people living in Angola. Sixty percent of the people live in rural sites while the remainder live in urban areas. Even though 75% of the population depend on the land for commercial or subsistence use, and that there is an estimated 5 million to 8 million hectares of arable land, only 3% of this land is currently being cultivated. In addition, there are approximately 800,000 residents who have been displaced because of the civil war. This combination of land pressure caused by the lack of quality land, and the return of many displaced people to their original parcels of land, makes the issue of land highly volatile in Angola.

During the colonial period, the Portuguese government encouraged the settlement of Europeans in Angola. Numerous land programs had the effect of displacing and “resettling” many Africans from the more productive land to smaller and less arable parcels of land. Specifically, in 1961, the Portuguese government passed the Overseas Property Decree, which in theory protected the land rights of both the settlers and the indigenous people. Under this law, it was established that the Europeans would be given title to such land if the property were developed for twenty years. Although formal registration requirements were set forth, there is little evidence that many Europeans were granted legal freehold interests due to the inefficient government bureaucracy. Thus, most Europeans held their large plantations as *de facto* freehold, rather than as *de jure* freehold. Such resettlement programs, especially those in the Central Highlands area, caused the disruption of the community-based land systems, and the colonial government did little to help the Africans resolve the numerous issues of cultivation rights that immediately emerged. The law did not recognize the community-based tenure systems, nor did it grant the indigenous people ownership rights in the land they were occupying.

The tracts of land that were given to the Europeans served as large plantations. Even though the Europeans were given the best land to cultivate, the land was underutilized, and the exports that the colonial government hoped to witness never materialized to the extent that the government had promised. At independence in 1975, the new government of Angola abolished private property and established state farms and agricultural cooperatives on the land that was abandoned by the Europeans.

These newly created state enterprises were called *agrupamentos de unidades de produção* (AUPs). In addition, the new government replaced the “bush traders” with its own rural shops. These shops were supposed to provide rural peasants with consumer goods and agricultural inputs, but because of a lack of efficient managers



and technicians, this bureaucratic apparatus failed, and precipitated the dramatic decline in peasant-produced crops. The AUPs proved to be a complete failure, and Angola quickly lost its status as a net exporter of agricultural products.

In 1985, the MPLA government began to dismantle the state farms and to establish an agricultural strategy that supported peasant producers. In particular, the government established *estacios de desenvolvimento agricola* (EDAs) to service small farmers. The EDAs are supposed to serve three distinct functions: 1) to provide technical assistance to small farmers; 2) to distribute inputs and other goods in rural areas where private wholesale and retail networks are inefficient; 3) to guarantee rural credit.

Before the resumption of the war in October 1992, there were signs that the government planned to establish private land ownership. In a project that was supported financially by Spain in 1991, the Ministry of Agriculture allotted ten agricultural plots to 24 war refugee families originally from the Huambo and Bie provinces. Even though the farmers of this land were prohibited from selling or leasing this land, the government claimed that its long-term goal was to grant the farmers freehold interests. This project was suspended in 1992 due to the resumption of the war. Also, in 1991, the government established a specialized agricultural bank entitled Caixa Agro-Pecuaria e Pescas.

The Ministry of Agriculture is in charge of land tenure policies. While the government has made sporadic attempts at changing the state farm system, any policies that sought to formally privatize the land have been suspended. In addition, the government has not stated what the legal status of community-based tenure systems will be.

### **Replacement and adaptation of indigenous tenures**

The colonial government, as well as the government after independence, paid little attention to African systems of land tenure. Thus, we know very little about such land tenure systems. Although our information is limited, there is evidence that at least two broad types of land tenure systems exist in Angola: the tenure systems in the Central Highlands, and the tenure systems of the agropastoralists in southern Angola.

The Central Highlands are mostly occupied by the Ovimbundu people. Landholding in this area of the country was originally community-based. The land was held by the village chief who allocated parcels to clan leaders. The clan leaders would then distribute the land to individual family members of the clan. Family members would occupy the land as long as it was productive—generally about six years. When the land became less productive, it would be returned to fallow, and the clan leader would allocate a different parcel to the family. Because the land formally belonged to the tribe (and symbolically belonging to the chief), it could not be sold or inherited by the family occupying it.

During the nineteenth century, this land tenure system began to change as the Ovimbundu experienced new land pressures. As clan leaders began to move, the power of the village chief declined. Over time, land use became more permanent, and in many cases, land became heritable following the principles of matrilineal succession. In addition, family members began to sell and lease land. Thus, in the Central Highlands, there is evidence that the community-based land tenure systems have gradually adapted to a system of strong individual interests in the land. As noted above, however, there is a lack of information from the Portuguese colonial government, or the independence government on these issues. More research must be done in order to determine whether the trend toward private ownership that existed in the nineteenth century continued over the years.

Unlike the peoples of the Central Highlands, the Dimba and Khumbi of the south are both agriculturalists and pastoralists. While they are principally animal herders, there is evidence that they have relatively permanent settlement sites—which many families occupy up to fifty years. The men are responsible for herding the animals while the women and children are responsible for tilling the land. This original tenure system has been affected by two recent events. First, much of the land that was used for herding was allocated to Portuguese settlers in the

1950s and 1960s. And second, this part of the country has been inflicted by fighting over the last 25 years. Again, while there is information concerning original tenure systems, there needs to be more research done in order to document any changes that have taken place over the last three decades.

The government has been silent as to its policy concerning community-based tenure systems. In 1975, all land was nationalized, and community-based interests were not formally recognized. Over the last decade, the government sought to return parcels of land from the state to the families, but there is no indication that the government considers issues of community-based tenure to warrant policy pronouncements.

### **Tenure constraints and opportunities**

Due to the war, and the 1989/90 drought, food production continues to decline. Prior to 1975, Angola was a net exporter of food products, specifically with respect to coffee. Presently, Angola is a net importer of food stuffs, and has been the recipient of over 92,000 tons of food aid since 1988. In addition, the prospects for an increase in food production are not only linked to the ending of the civil war. Dispersed throughout Angola, there are approximately 10 million land mines of which there are maps for only 2 million. Most of these mines were buried on footpaths leading to rivers where women and children sought to obtain water for their small agricultural plots. In order to increase food security, and its export capacity, the government must make a concerted effort to locate and dismantle these mines. This situation has put a strain on tenure security. The ultimate location and destruction of these mines will cause much damage to the land. Such a possibility has undoubtedly affected how individuals make tenure and agricultural decisions.

The five principal grain crops in Angola are maize, sorghum, millet, rice and wheat. In 1990, the total production of these crops fell to 246,000 tons, less than a quarter of the output in 1973. There is evidence that the crop production in 1991, the year of the Bicesse peace accords, began to improve. With the resumption of the civil war in 1992, however, the food production again began to decline. The war has also had the affect of making security of tenure highly suspect. Individuals are unable to adequately plan for the future because they do not know how the civil war will end and what policies will be implemented.

Over the last five years, there have been sporadic attempts at establishing rural agricultural services and investment incentives for farmers. These efforts, however, have been suspended due to the continuation of the war. Due to the lack of research in Angola, there is a substantial lack of information concerning both formal and informal land markets that currently exist.

There is no current information regarding parks, reserves, commons areas, or community forestry programs. There is every reason to believe their management is in great disarray as a result of the war.

The democratization process in Angola has at times showed signs of promise, but has ultimately only ended in failure. Unfortunately, because of the ephemeral reality of peace in Angola, the atmosphere is not particularly positive for land tenure reform issues. While there is no doubt that Angola's economy is based on its ability to produce enough agricultural to feed her residents and to export, it is difficult for the government to implement long-term policies due to the ephemeral reality of peace. As noted above, after the signing of the 1991 Bicesse Peace Accords, the government did address land tenure issues, but all such policies were suspended once the fighting resumed in 1992. As recently as December 1995, the MPLA government and UNITA have been negotiating in order to fully implement the principles of the Lusaka Protocol.

There is a lack of research in Angola concerning gender issues. While women do perform much of the agricultural labor, their tenure rights are not known. In addition, even though there are two mass organizations [Organization of Angola Women (OMA) and Popular Movement for the Liberation of Angola-Youth Movement (JMPLA)] of which an estimated 1.3 million women are members, there is no evidence that the government is pursuing any specific policies concerning gender issues.

### **Present policy positions and reforms discussed**

The Angolan government has not been able to implement long-term land tenure policies due to the civil war. There are signs, however, that it is committed to a land tenure system that is based more on private ownership, and less on state ownership. The dismantling of the AUPs in the 1980s, and the establishment of the EDAs show that the government is aware that the state farm system is inefficient and unproductive.

Unfortunately, however, the government has done little with respect to recognizing or dealing with the issue of community-based land tenure systems. Examples from other African countries show that a desire to replace one tenure system with another requires not only the existence of efficient bureaucratic institutions, but also a long-term policy that acknowledges the cultural aspect of change. Until the government addresses the issue of community-based tenure systems, it is unlikely that the EDAs, the agricultural bank, investments from foreign donors, or the creation of rural credit markets will be sufficient to adequately solve all the tenure issues.

### **Implications for policy dialogue and programming**

The difficulty of discussing land tenure issues in Angola is that we know very little about the actual land tenure systems on the ground or the impact that the government's policy change in the 1980s had on small farmers. Both because of the lack of interest the colonial government had in community-based land tenure systems, and the ongoing civil war, there is much we do not know about Angola's land tenure system. There is an urgent need to gather more information relating to the existing tenure systems. Until such research is completed, it is difficult to make specific policy recommendations that are based on fact rather than mere speculation.

## **BOTSWANA COUNTRY PROFILE**

**by Anna Knox**

### **Executive summary**

Botswana distinguishes itself from other African countries in its open recognition of customary tenure and provision of a legal basis for it. The Tribal Land Act, enacted following independence, and its subsequent amendments have nevertheless altered the framework, and perhaps much of the philosophy, underlying Botswana's customary tenure system. The role of chiefs in making land allocation decisions has been phased out and replaced with a decentralized system of Tribal Land Boards, which are linked to the national Ministry of Local Government, Land and Housing. Still, much of the security and easy access principles embodied in customary tenure systems has been preserved. By employing an adaptation rather than replacement strategy, the government has been more attentive to the evolving needs of its citizens and has avoided large-scale normative confusion which often accompanies radical conversions of land tenure systems. At the same time, it has eliminated distinctions between citizens from different tribes and subtribes and provided all Botswana citizens a right to land where they live.

### **National policy and legal framework**

Less than 1% of Botswana's land is classified as arable; about 45% is permanent pasture. Agricultural population per hectare of arable land is 2.03; 75% of Botswana's population resides in rural areas where livestock is the primary source of subsistence and income. The majority of livestock raised is cattle, which endure Botswana's drought conditions better than crops, partly because they are a mobile asset.

Land in Botswana is divided into three categories: tribal (71%), state (23%), and freehold (6%). With the exception of reserve areas and some commercial holdings classified as state land or freehold, land in the rural areas is designated as tribal land. The law permits two types of land tenure on tribal land, customary and leasehold. Until recently, one could also legally acquire freehold with the consent of the Minister of Local Government, Land and Housing, but this proviso has not been utilized to any extent since independence and was recently repealed.

Enacted in 1968 and implemented in 1970, the Tribal Land Act and its amendments pertain to the land tenure systems in the tribal lands which are recognized under Botswana law. The main body of the legislation provides for the creation of local land boards to administer land allocations in the tribal land areas, the rules underlying its administration, and the rights held by various groups of landholders. Land became vested in the boards, which were given the power to make customary grants and common law leases to tribesmen within their jurisdiction. Prior to the law, tribal chiefs were responsible for making customary land allocations to their members and thus the law made a sharp departure from tradition.

Land boards are divided into both main and subordinate categories, with the former residing in the district capital and the latter in more remote areas. Boards are overseen by the Ministry of Local Government, Land and Housing, which appoints several ex-officio members to each land board. When the law was originally implemented, it named the local chief as an ex-officio member of the board. The chief further appointed a full member to the board. Two District Council members were elected to the board and the minister appointed the remainder. Later, communities could elect land board members and chiefs and their appointees and District Council members were removed from land boards all together, such that today boards are made up of only

elected officials and ministerial appointees. Main land boards have 12 members while subordinate boards have 10.

Customary grants allocate land for residential, cultivation, and livestock grazing purposes. In the case of grazing, communal rights are granted to groups of community members rather than individual rights to individuals. Originally, such grants were restricted to members of the subtribe of the district given that almost all the districts correspond to the traditional territories of the Tswana subtribes, typically referred to as “tribes” in Botswana. This restriction to “tribesmen” was amended in 1993 so that any Botswana citizen could have equal access to any tribal land. Common law leases are provided for commercial, industrial, commercial livestock production, or commercial agricultural purposes. In 1985, in response to recommendations in a government White Paper, this was expanded to include residential leases which persons had the option to obtain in lieu of customary grants. The objective of this measure was to facilitate access to formal credit through enabling individuals to mortgage such property. Residential leases involve a one-time, small rental charge (P30.00) to ensure their accessibility to low-income citizens.

In the case of common law leases, the law allows land acquisition by noncitizens, but favors Botswana. This is reflected in requirements for ministerial approval for noncitizens to acquire land, plus higher rental charges and shorter duration on lease agreements. In the case of residential leases, for instance, citizens are awarded 99-year leases while noncitizens receive 50-year leases. All other leases uphold 50-year terms which are renewable for an additional 50 years for both citizens and noncitizens, with the exception of commercial agriculture, which carries a 15-year, renewable term.

The rights provided by customary grants closely resemble those of the customary tenure system. The allocations are made by the land boards free of charge and accompanied by a Certificate of Customary Land Grant, which, unlike leaseholds, does not have to be registered. Rights held by the recipient are permanent (the land never reverts to the state), exclusionary, and inheritable, provided that the grant is not revoked. The conditions under which a customary grant may be canceled include: failure to utilize the land on the terms specified by the land board, failure to develop the land according to the specified purposes within five years, guarantees to insure equitable land distribution by the land board, and compulsory acquisition by the government for public purposes.

Although the latter two provisions have potential for abuse, their use is in fact rare, perhaps because the compensation requirement discourages it. If the state acquires land from holders, it is obligated by law to compensate them for improvements made, crops planted, resettlement cost, and the subjective value of the rights lost to the land.

Land transfers made on tribal land require land board approval, regardless of whether the land is held under customary grant or common law lease, unless the transaction is exempted from such consent. Exemptions include inheritances, mortgages made by a citizen or sales made in execution to a citizen, and transfers of land which has been developed according to the terms specified in the grant or lease. However, one is still required to inform the land board of a transfer for record-keeping purposes. Prior to 1993, all transactions required board and/or ministerial approval, except for inheritances or mortgages of common law leases.

Land disputes are often brought to land boards. The fact that they have undertaken a judicial role has prompted debate over whether this administrative body should carry out such functions or whether district tribunals should be created for these purposes. All decisions made by subordinate land boards may be appealed to main land boards after which appeals are made to the Minister. The final authority rests with a court of law.

A small, but significant, portion of land remains under freehold tenure. Most of these holdings are estate farms carried over from the colonial period and are owned by families of European descent. The greatest concentration of these farms is in the highly fertile Ghanzi region and Tati Concessions. Prior to the repeal of the

acquisition of freehold tenure, freehold allocations were strictly frowned upon and post-independence freehold purchases were made solely by the state.

The Tribal Grazing Land Policy (TGLP) of 1975 emerged as a result of livestock populations having risen dramatically during the early 1970s, heightening competition for resources in communal grazing areas and resulting in overstocking and rangeland degradation. The TGLP sought to address these problems and bolster livestock production through providing more exclusive rights to large cattle owners while protecting the communal interests of small-scale herders. Commercial regions were zoned where these large-scale individual cattle owners and syndicates could obtain 50-year renewable leases on rangelands averaging 6,400 acres in area. It was believed that the ability to mortgage such leases, unlike customary grants for grazing, would improve cattle owners' access to formal financing. Implementation of the TGLP proved to be problematic, however. Several of the areas zoned for commercial ranching proved to be occupied by hunter-gatherer populations as well as other borehole owners, so that allocations in these areas had to be scrapped. Many TGLP leaseholders continued to herd their animals in communal grazing areas, keeping their ranches as reserves. Thus, the expected benefits to communal grazers of removing commercial ranchers from the open range did not materialize. In the end, the TGLP was implemented in only six districts, and by 1991, 300 commercial ranching leases had been granted, most of them to already established borehole owners. Despite government anticipation of the TGLP leading to increased investments, demand for large-scale credit, enhanced livestock production, and adoption of rangeland preservation techniques, significant improvements have not been forthcoming.

Allocations of state land are governed under the State Lands Act and apply principally to urban areas and some commercial farms. Leases are issued by the Department of Surveys and Land and require ministerial approval. Unlike leases obtained on tribal lands, those issued on state land do not require permission for transfer.

### **Replacement and adaptation of indigenous tenure**

Prior to the introduction of the Tribal Land Act, land allocations were made by chiefs to ward (extended family) headmen, who in turn divided land among their members. Rights were held on an individual basis for residential and agricultural land while communal rights were maintained over grazing lands. Rights were inherited patrilineally for the most part and provided the holder with permanent, undisturbed occupation of the land. The aim of the TLA was to uphold these principles while reassigning the administrative body over land rights so as to streamline procedures and provide greater efficiency and equitable distribution. Although amendments to the law have removed the chiefs from the picture, the land boards have continued to rely heavily on ward headmen for information and assistance in implementation.

### **Tenure constraints and opportunities**

Gaborone has undergone rapid expansion since independence, resulting in mounting land values. The pressure on urban areas and the severe shortages of housing there have sky-rocketed land values and prices, causing residents to seek land in peri-urban areas where free allocations of customary grants keep land values low. In several of these areas, rampant land sales have taken place, most without land boards' approval. There is evidence of corruption and influence peddling in peri-urban land allocation.

The government has endeavored to adapt the land legislation to suit changing needs and circumstances of rural populations while ensuring that land is accessible to all Batswana. In doing so, it has had to make tradeoffs in the pursuit of its dual objectives of equity and food security versus growth. Against the recommendations of some earlier land tenure commissions to replace the TLA with freehold tenure, government policy has upheld customary tenure systems which it believes offer greater access and security for the majority of its citizens. Meanwhile, its introduction of common law leases, expansion of mortgaging rights, and extension of exclusive rights to cattle owners under the TGLP are indicative of its growth objectives. Conflicts between these goals emerge when the provision of exclusive rights to commercial ranchers reduces small-scale herders' access to

grazing land and dispossesses hunter-gatherers, threatening their food security. Likewise, free allocations of customary grants keep land values low so that it is difficult to use land as collateral even when one has the right to do so. It may be that the recognition and acceptance of these conflicts have allowed Botswana to remain committed to a balanced development strategy.

Cattle-raising is the dominant activity of rural populations while beef is a primary export commodity and foreign exchange earner. Thus, the impact of land policy on grazing rights and livestock production bears importance to all in Botswana.

Prior to the TGLP, the growing intensification of competition for borehole access transformed the roles of syndicates, elite groups of cattle owners born out of high-ranking members of tribal lineages. Traditionally charged with the role of managing access to communal grazing resources, these bodies gradually adopted more rigid criteria such that only syndicate members and their immediate families were granted access to boreholes and the surrounding grazing areas. Nonmembers, typically poorer small-scale herders, could have access only as hirers, who paid fees for watering and grazing their livestock. The expansion of residential and cultivation areas further diminished available grazing land such that competition increased and smaller herders became relegated to more marginal lands. Although the intent of the TGLP was to relieve much of this pressure by assigning syndicates land in commercial grazing zones, the lack of unoccupied land resulted in granting exclusive rights (leases) to syndicates on existing land, where they were encouraged to fence the perimeter of their property to prevent others' cattle from intruding. The policy further stated that hirers would be given rights to the boreholes and lands they used. The threat of nonmembers acquiring rights prompted syndicates to exclude hirers from their land. Thus efforts to ensure greater equity took an about face.

Water is a source of widespread dispute among livestock owners. As livestock populations increase, so does competition for access to boreholes, particularly since in most cases they must be placed at a 5-mile distance from one another to work effectively. Whereas land is fairly abundant in Botswana, much land cannot accommodate boreholes since the groundwater supply is negligible, difficult to access, or salty. As land and borehole rights become increasingly privatized, smaller herders and hunter-gatherer groups have less access to resources from the land, including natural sources of water that border these properties. Fencing has also inhibited the mobility of wildlife and their access to resources, threatening animals' survival.

### **Present policy position and reforms**

Probably more than any country in Africa, Botswana has in place a functional, well-thought-through system of land administration. It has invested heavily in creating a serious land administration capability. We may expect to see fine tuning, but no major policy reversals.

Botswana has successfully upheld a decentralized system of land tenure administration; it has imposed a significant degree of state control over these matters. This is demonstrated by the number of decisions requiring ministerial approval, particularly concerning land transfers. Although many of these restrictions have been removed, the state has also replaced the representation of chiefs and other local community leaders on land boards with appointees of the minister. It is unclear whether such changes in board membership coincide with the opinions of rural populations being affected by them. Replacing some of the ex-officio members with elected members would better ensure local representation, and this issue of representation on the land boards continues to be discussed within and outside the Ministry of Local Government, Land and Housing.

Although the Tribal Land Act does not bar women from obtaining land, other legislation effectively precludes them from doing so. Namely the Marriage Act, the Married Persons Act, and the Deeds Registry Act do not permit women to register land in their own names if they are married. In doing so, they are denied access to credit from formal sources which require registered documents as collateral. Without the means to develop the land and comply with the five-year development requirement, women face the risk of losing their land. Women

also encounter discrimination by land boards. If married, they are sometimes questioned as to whether they recognize the man as the head of household, and if so, why they should then have land in their names. Similarly, if a woman is unmarried and the board feels she is eligible for marriage, she may be denied land on the grounds that she will have access to her husband's land once married.

### **Implications for policy dialogue and programming**

The decentralized structure of Botswana's land tenure system and the responsive nature of the government in addressing evolving tenure needs make Botswana among the more successful examples of how to structure land tenure policies which are compatible with development objectives. Although the dual objectives of equity and growth frequently compete so that no policy may address either completely, there is room for further adaptation to remove additional constraints.

Climatic uncertainty and risk of drought make flexibility, mobility, and community interdependence key factors in the survival and productivity of livestock. It may be prudent for land boards to negotiate and make customary grants which embody overlapping rights to land and water resources. Caution should be undertaken in granting exclusive rights to individuals on land used by other groups to avoid marginalizing such populations and exacerbating income inequalities.

The rights of hunter-gatherer populations like the Basarwa and the San have never been defined within Botswana's land tenure policy. For this reason, they are often not recognized as having rights to land, leaving them vulnerable to dispossession. Long the victims of policies which favor Botswana's pastoral tribes, hunter-gatherer groups are gradually gaining momentum and making themselves heard in the policy arena.

The lack of improvements undertaken on commercial ranches allocated under the TGLP may in fact stem from nontenurial constraints. Insufficient access to improved technology and extension may be key contributors to their lackluster performance. If mechanized technology is introduced, spare parts may be difficult or impossible to obtain, resulting in failure to adopt such improvements. Likewise, the problem of insufficient marketability of rural land and continued lack of formal finance available to rural populations may be more effectively addressed by nontenurial strategies which seek to revise banking norms.

For all their merit, Botswana's equity objectives have more aptly aspired to equity among males. Women's tenure rights need to be addressed in land legislation if they are to gain recognition. Gender discrimination by land boards should be made illegal. Efforts to include at least one female representative on land boards might aid in enforcing the measure and promote better treatment of female applicants. Training for land boards could also be instrumental in promoting gender equity.

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# LESOTHO COUNTRY PROFILE

by Jyoti Subramanian

## Executive summary

With the passage of the 1979 Land Act, the Government of Lesotho attempted to enhance security of tenure of landholders, with the ultimate aim of increasing agricultural production. Under this act, the customary system of tenure is modified, though the integrity of the system is protected by the government. Whereas in the past, chiefs had the power to reallocate land upon the death of a holder or to accommodate new households, now reallocation is to be done only in cases of abuse or nonuse of land. Implementation of the act has not been widespread, however, due to lack of effective communication on behalf of the government regarding advantages of the act. There is also a lack of incentive on behalf of farmers to comply with the law due to difficulties in securing good land for leasing.

## National policy and legal framework

About two-thirds of Lesotho is mountainous and only 13% of its area is arable. As of 1991, the country's population was estimated to be 1.9 million and growing at an annual rate of 2.6%. About 85% of this population is rural and resides mostly in the "lowlands," a narrow crescent of land lying along the western perimeter of the country. The Basotho peoples are traditionally agro-pastoralists. Under the impact of a rapidly growing population, overgrazing, severe soil erosion, and expanding residential areas, the quantity of arable land has been steadily decreasing. By the 1970s, population pressure on land had become very intense, and the average holding size per household was estimated at 1.4 hectares with an estimated 20% (approximately 70,000) of rural households being landless.

The relatively uniform customary tenure system which permeated the nation was criticized for two primary reasons. First, farmers' uncertainty about their long-term tenure rights discouraged investment in land. Second, progressive farmers willing and able to employ land and other factors at higher levels of productivity than subsistence were unable to do so because of the general prohibition against sales. The government's response was the Land Act of 1979. This piece of legislation accounted for some of the more obvious criticisms of the customary system while preserving its basic tenets, particularly the right of all Basotho to free allocations of agricultural land in their village of residence. The main provisions of the Land Act are as follows:

- 1) Land remains the property of the nation and is held in trust by the king.
- 2) The entitlement of all adult married males to a "customary" allocation of land for residential and agricultural purposes.
- 3) The recognition of inheritance rights and the establishment of procedures for them. (Inheritance has become a key mechanism for passing land from one generation to the next; surviving widows and then the oldest adult son inherit.)
- 4) The strengthening of individual rights against chiefs, who are prohibited from revoking or subdividing land for reallocation.
- 5) The creation of a new agricultural leasehold tenure. (The law gives customary holders the option of converting their allocations to a lease-right, which they can mortgage and even sell, subject to approval by the Ministry of Interior.)
- 6) The creation of land committees empowered to allocate land and chaired by chiefs.

The Land Act provides for the selective introduction of the agricultural lease which was felt to meet the needs of farmers seeking to invest substantially in their holdings. The lease allows the holder exclusive use of a specified piece of land for a period of not less than 10 years. The lease may be sublet, made the subject of a will, and can be used as collateral for a bank loan. The knowledge that the lease cannot be appropriated by any authority until the specified period has expired—provided the conditions are adhered to—is assumed to allow the leaseholder to make property investment plans which would ultimately lead to increased productivity. There was no general or automatic conversion of tenure to lease. Instead, it was left to holders of allocations with a felt need for the new tenure to apply for the conversion of their allocations to leases. An important exception to this was the provision in the Land Act for the general conversion to lease tenure in Selected Agricultural Areas (SAAs)—areas where government has decided it is necessary to pursue intensively the introduction of modern farming techniques. Because a lease is transferable under the Act, the possibility is also created for the beginnings of a market in agricultural land.

### **Replacement and adaptation of indigenous tenures**

Moshoehsoe, the founder of the Basotho nation and its first paramount chief, formalized Lesotho's customary tenure system. He established the principle that all land belonged to the nation, to be held in trust by the chief (today the king). He delegated land allocation rights to a hierarchy of area and village chiefs. Accordingly, a household head was entitled to allocation of three "lands," for maize, sorghum, and wheat, respectively.

Land was not inheritable, but reverted to the chief for reallocation on the death of the allottee. In fact, land was often passed to a son or sons of the allottee while the allottee still lived, with the chief's consent. Most land remained, therefore, in the family via a male lineage. A widow was entitled to retain two of her husband's lands until her own death.

Occasionally, land was reallocated between families. As a family diminished in size, due to either deaths or sons' moving away, the number of parcels to which a man had rights would be reduced, and these fields would be reallocated to a family that was growing in size. In theory, subsistence needs determined the amount of land to which a man had access. Sales of land were unknown, but there were gifts and occasional loans of land.

The Land Act modifies these terms of allocation by no longer allowing chiefs to reallocate land from existing holdings to the creation of new holdings. Regulations have been established which allow the Land Committee to revoke an allocation for abuse of the holding, overgrazing, refusal or inability to fight soil erosion, and lack of cultivation of arable land for over three years.

There are three distinguishing features of the Land Act as it applies to agricultural land. First, it encodes in law features of customary practice that authorities had not always applied consistently. Second, it creates a new tenure in the form of agricultural leases. This provision appears to meet demands for a more negotiable land title, but in reality has not been that effective since conversion to a lease requires the initiative of the landholder, and entrepreneurial farmers have had trouble in securing good land. In addition, the transfer process is enveloped in multilayered administration, and as a result, the Land Act has done very little to increase the marketability of land. Finally, the Land Act dilutes the allocation rights of village chiefs. However, since it has not pressed the adoption of the Land Committee model in rural areas and has not been clear in defining the real nature of the relationship between it and the chiefs, implementation of the Act has not been widespread. In fact, the impact of the Act in rural areas is almost negligible (only 3 leaseholds had been created by 1988), and customary tenure arrangements still govern most of the rural areas in the country. There is more of a tendency for the Land Act to be implemented in urban areas.

Either the government has not been effective in communicating the advantages of the law or rural farmers have not perceived that any advantages would be forthcoming if they complied with the law. A 1984 Land Act

Policy Seminar resulted in the drafting of a set of regulations for implementation of the Act in rural areas which are currently under discussion.

### **Tenure constraints and opportunities**

For most landed households, the principal source of income consists of remittances from men working in the South African mines. Long-term opportunities in South Africa and other urban centers in Lesotho, however, are sufficiently insecure and serve as disincentives for rural Basotho to cut their ties to the land. Although agriculture as a source of income has declined in importance where the head or other adult household members are working off-farm and sending home remittances, land continues to have value as a form of capital that can be used to produce a modest crop. Moreover, people retain customary interests in land, expecting that it will provide an important source of income in an uncertain future. Under these circumstances, agricultural land is both underutilized and in short supply in relation to demand.

The economic system within which most Basotho operate does not provide long-term assurance of access to nonfarm employment, of pensions on retirement, or of other forms of economic security that might incline holders to surrender their land to others who would be able to farm it more productively. Lacking other farming assets such as implements, labor, and cash, they will often use land as their contribution to sharecropping arrangements. In broad economic terms, land in Lesotho is seen less as a source of primary subsistence than as a source of supplementary income for households that cannot secure more conventional types of income outside of agriculture.

Many studies argue that land held under customary tenure is insecure because rights are not individualized, and because control over land is largely in the hands of the chief and the community. In addition, although the customary tenure system provides ready access to security in subsistence opportunities, it does so at the expense of tenure security in a specific piece of land. In particular, the possibility of land reallocation from existing holdings for new families reduced security of tenure. Given the debate on land shortages, fragmentation, security and declining production under the customary system of tenure, the government of Lesotho passed the Land Act of 1979 as a means of increasing investment on existing holdings, changing land allocation procedures, and increasing security.

The Land Act has not produced the production impacts intended, however, because other production constraints faced by farmers simply outweigh security issues. Farmers are not as likely to adopt resource management practices, for example, if costs outweigh perceived advantages, no matter how secure a holding appears. In response to such constraints, including shortages of land and farming assets such as draft power, labor, and cash, sharecropping has become a commonplace farming strategy in Lesotho. Sharecropping arrangements have been a common feature of agriculture in Lesotho for many decades. Terms consist of the landholding party contributing land, and the party sharing-in contributing other necessary assets such as draft power and cash. Some of the reasons given by chiefs for the increase in sharecropping include less land for allocation to newly established households, more widows and female-headed households with too little cash to farm on their own, declining livestock ownership and fewer available oxen for plowing, increasing farming costs, and population growth.

Although most commercial farmers recognize the social security role of the customary tenure system and tend not to perceive customary allocations as inadequate or as disincentives to investment, some are dissatisfied with sharecropping procedures since they are annual commitments generally associated with subsistence field crops. These farmers are looking for greater control over operations and profits than offered by this model. Some of them have tried to follow the procedure for transfer of lease rights as set out in the Land Act of 1979, but without much success. Prospective sellers are intimidated by the procedure for converting their customary right to

a leasehold, while prospective buyers have found the process expensive and time consuming. Consequently, the commercial farming sector in Lesotho is still relatively small.

The Land Act is focused upon arable land and does not deal with grazing and range management, because grazing rights are communal and are not allocated to individuals. Mountain pastures fall outside the jurisdiction of any Land Committee, being utilized by herders from many communities. The principal chief for the area concerned has control over the mountain pastures under the Grazing Regulations of 1980, and issues grazing permits for these areas. Emphasis has been placed on the development of grazing associations to achieve many of the economies possible under large-scale holdings. Two functions the associations can perform are: (1) providing a framework for assigning grazing rights to specific areas based on membership in the association, and (2) providing an institutional forum for agreeing upon local range regulations and controls.

Soil erosion has been documented as a problem on land governed by community-based systems of tenure. Since farmers do not have formal title under this system, it is assumed that more secure tenure would promote better soil conservation as well as the adoption of resource management practices.

The king and chieftainship of Lesotho never supported the Land Act, principally because of its provisions that committees allocate land. The new process of allocation under the Act, however, appears democratic in nature, since chiefs chair the land allocation committees, and all adult married males are still entitled to a “customary” allocation of land for residential and agricultural purposes as they are under the customary system of tenure. The fact that women can gain access to land only through their husbands, however, needs to be addressed in a critique of the Land Act.

Under customary tenure systems, women acquire land rights indirectly through their husbands. In the event of divorce or separation, a woman loses her rights to her husband’s fields and is expected to reincorporate herself into her parents’ production unit. Sometimes unmarried, divorced, or separated women are loaned pieces of land for food production by their brothers or fathers. These arrangements are intended only as temporary measures, usually until the woman gets married or remarried. An elderly, unmarried woman may be granted a small field in her own right at the discretion of a chief or village headman to enable her to produce her own food. A widow retains lifetime rights to her deceased husband’s fields, provided she continues to reside in his village and does not remarry. Thus, the male heir has to share the land with the widow as long as she lives. Ultimately, women’s access to arable land remains through the male as husband, father, or brother. The Land Act enforces provisions similar to the customary tenure system, in the sense that it allows women to gain access to land only through their husbands. The Act still protects a widow’s lifetime rights to her husband’s fields as well.

Some women without their own arable land have been able to gain access to other people’s land indirectly through sharecropping. The fact that one is able to provide one or more factors of production in sharecropping allows women, regardless of marital status, to gain indirect access to arable land and its products. In addition, informal land markets have allowed some women with cash and other resources to gain access to arable land independent of men.

### **Present policy position and reforms**

Despite high levels of landlessness and pressures for reform from donor agencies and commercial farmers, the Government of Lesotho has protected the integrity of the customary land tenure system. This is largely due to continuing support at both the elite and the popular level. The reason the customary system is so valued is because it is sufficiently responsive to current needs, as demonstrated by the spontaneous emergence of renting and leasing land. In addition, the system has the right to free land as one of its central components. The fact that land is in increasingly short supply serves only to galvanize support for the basic tenets of the system. Some critics believe, however, that the customary system allows tenure security to prevail with unrestrained reallocations of land by chiefs.

Some of the main criticisms of the Land Act are: (1) it does not attempt to deal with the issue of control/access/use of communal pastures; (2) the extensive powers given to the government in the SAA context have potential for land-grabbing by elites; and (3) by enveloping the leasing process in multilayered administration, the law contributes very little to the increased marketability of land.

### **Implications for policy dialogue and programming**

The government has not been effective in communicating the new law to rural residents since it provides so many benefits. By increasing tenure security, allowing for inheritance, encouraging investment and the possibility of a land market (especially for commercial farmers), forbidding reallocation of land, and striving to reduce landlessness, the Land Act has the potential to make a significant impact on the lives of the Basotho people. To facilitate implementation procedures, the excessively demanding survey standards and multilayered administration of the Act need to be revised. If, upon widespread implementation, the Act does not appear to be improving the tenure security of rural people, the system of sharecropping that is predominant in most parts of the country should be evaluated in terms of its effectiveness in making use of available land and other resources. This is especially important in light of the fact that women are able to gain access to arable land under the system.

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# MADAGASCAR COUNTRY PROFILE

by Stephen Leisz

## Executive summary

Madagascar has gone through a number of land and natural resource tenure reforms, yet, in much of the country, its community-based tenure systems are still strong. In general, land and natural resource tenure security is high. However, it is low where people do not understand the state laws and have lost confidence in the community-based systems, or where the community-based systems and state laws overlap and people variously respect one of the other sets of rules. Where tenure security is high there is an opportunity to encourage agricultural innovations and investment, and the conservation of the natural resource base. At the same time, there are other forces, including lack of access to capital for investment, poor agricultural extension services, and high population growth rates, which work against these opportunities. These should be addressed so that Madagascar can take advantage of the relatively high levels of tenure security found in its rural countryside.

## National policy and legal framework

Madagascar is the fourth largest island in the world and has an area of 587,000 square kilometers. Population has grown from an estimated 3.5 million people in 1900 to 6.7 million in 1970, 8.7 million in 1980, and around 13 million today. In 1992, the average annual population growth rate was 2.8%, one of the highest in the world. The population is unevenly distributed throughout the island, with 75% living in rural areas. The central highlands is the most densely populated area; the eastern rainforest area is also noted as having high population density; and the western, drier, part of the country has the lowest population densities. Approximately 46% of the population is under 15 years of age. Out of the total labor force, 80% are engaged in predominantly small-scale agricultural production.

Land is valued in Madagascar for more than agricultural purposes. Families and communities have strong ties to their land due to certain beliefs relating to the place of ancestors in the society. Different practices among the ethnic groups of the island manifest this belief. In some cases, the umbilical cord of a baby born away from the family's traditional geographic area must be carried back to the ancestral land and buried, and in other areas a person must be buried in an ancestral grave in order to be truly at rest. These strong connections to the land are reflected in the customs, rules, and laws that relate to land in Madagascar.

Madagascar also has a complex mixture of a state-sanctioned freehold tenure system and community-based tenure systems. There are both national laws and community-based rules that regulate the access and use rights that people have to land, trees/forests, and water.

Individual ownership of land under the law precedes the colonial era in Madagascar. In 1881, the Merina royal council set forth the idea in a Code of 305 Articles. The Code also established the concept that all land comes from the state. The Code was considered law for those areas of the island under Merina hegemony. Areas where this was not the case included the far northern part of the island, where the Antakarana were predominant and the southwestern part of the island, where Merina rule was not firmly established.

In 1896, the French colonial regime introduced the notion of land alienation and privatization with the goal of encouraging European settlement. In 1897, the Torrens system of land registration was adopted and it was required that all land sales be registered in order to be legal. Settler freehold was most common along the eastern coastal region, where large plantations were established. The 1896 law also stated that individual claims to land

could be based on “traditional” claims to land and that these claims could be used as evidence to establish individual ownership and receive land titles.

A 1911 decree abrogated the use of traditional criteria for claiming land in areas where slash-and-burn agriculture predominated. This decree followed in the tradition of the 1881 Merina Code and enlarged the powers of the state over land. The decree of 1926 further enlarged the state’s claim to land and stated that (1) traditional testimonies could no longer be used as proof of rights to ancestral land, and (2) in the future all land would be recognized as state land, except for titled land. The decree of 1956 reversed the decree of 1926 and reestablished the right of using traditional testimony as proof of “ownership” of ancestral lands.

Under state land laws, women and men are recognized as having equal rights to land and natural resources. However, in practice when land is titled, it is titled under the name of the male head of household.

As with land, the Merina kingdom had laws that regulated tree and forest use. These laws were promulgated in response to the perceived threat of deforestation and placed limits on the cutting of trees and clearing of areas for slash-and-burn agriculture. As with the land laws, these laws were mainly enforced in the central highland area of the island.

In 1913, the French passed the first colonial forestry codes. These codes were based on the French National Forest law of 1854. It held that all forests belonged to the state and that all trees were state property. These laws outlawed the practice of slash-and-burn agriculture. In 1927, the first laws creating protected areas<sup>10</sup> were passed. This law was passed at the behest of French botanists who noted the uniqueness of Madagascar’s environment. These laws were added to and changed slightly over the years up to independence. Under the colonial system the Department of Water and Forests (Département des Eaux et Forêts, or DEF) was responsible for both enforcing the forestry code and regulating access to the protected areas on the island.

After independence, the DEF continued in this capacity. The forestry codes were changed to accommodate new political realities. Rules regarding slash-and-burn agriculture were either changed or not enforced as stringently and the enforcement of laws relating to cutting trees was relaxed. Forestry laws and the enforcement of these laws have changed with different political regimes that have emerged in Madagascar, but today, the forestry code still states that all forests, except those on titled land, are state property, and most trees are also considered property of the state.

Protected area legislation has also changed over time. Currently there are 37 protected areas in Madagascar. Of these, only classified forests and hunting reserves are controlled by DEF; the rest are under the authority of the Association Nationale pour la Gestion des Aires Protégées (ANGAP), which was created in 1989 as part of the implementation of the Environmental Action Plan. ANGAP is authorized with patrolling and running the national parks, strict nature reserves and special reserves. The Ministry of the Environment was recently created and given the power of overseeing all environmental laws and Madagascar’s protected areas.

Water plays a large role in the agricultural systems of Madagascar. National water laws are administered by DEF. These laws state that all water sources and water courses belong to the state. Consequently, when there are disputes over access to water, the local Water and Forests agent has the primary responsibility for resolving the conflict.

Land markets are officially encouraged through the state laws that regulate land titling. In cases where state land laws are vigorously enforced, land markets are also present. However, even in these cases, traditional views of land influence arrangements between buyers and sellers (see below).

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<sup>10</sup> Protected areas include national parks, strict nature reserves, special reserves, classified forests, reforestation zones, and hunting reserves.

## Replacement and adaptation of indigenous tenure

Madagascar's community-based tenure systems recognize that different people have different rights to land and natural resources. Consequently, academics and others have used the categories of primary, secondary, and tertiary holders of rights to land to describe these differences. Primary holders are those individuals who have cleared, inherited, or bought rights to land or natural resources. They have rights to designate how the land will be managed, to sell the land or resource, and to say who can use or who will inherit the land. Secondary holders, who are usually sons of primary holders, but can also be daughters and wives in some situations, are in line to become the primary holder of the land or resource. They have certain rights to the land, such as deciding what can be planted on the land, and they often have a say as to whether the land or resource will be used during the coming season or whether it will be rented or loaned. They do not have the right to designate definitively who will have future use rights to the land and they can not sell the land. Tertiary holders have few long-term rights to the land. They either rent, sharecrop, or borrow the land, or the use/access rights to the resource, for a limited period of time. They can determine what will be planted on the land for the duration of that period, but have no long-term decision-making rights to the land. The same three designations differentiate holders of rights to water resources and trees under the community-based tenure systems.

In most situations women are secondary holders or tertiary holders of rights to land. Women hold these secondary rights because in most cases they have access to land through a male relative, such as a husband, father, or brother. This is the case since they usually leave their community to live on their husband's land or in their husband's household. This is the case even in community-based tenure systems where women inherit land from either their mother or their father. In these cases, when they leave the community at marriage, the tenure system dictates that they entrust the land to one of their brothers or to another male relative. In these cases, if a woman divorces, is widowed, or for some other reason returns to the community, she can reclaim the land that she entrusted to her male relative. In cases such as these, she could be considered a primary holder.

Community-based tenure systems regulate forests as community goods. The communities have rules and regulations that limit access to the forest and limit use rights to the forest goods. Communities recognize the value of their forests, and if a forest resource is becoming scarce, they place a variety of boycotts on the collection of the resource. Communities also designate seasons during which different forest resources can be collected. In most places the use of forests as common pastureland is also recognized.

Madagascar's community-based tenure systems include informal land markets. Each community has a complex set of rules that dictate who can sell land, who can buy land, and under what conditions land can be sold. In most cases people are unwilling to sell land unless they are in very dire need of money for food or to pay the costs of a funeral. When this is the case, most community rules orient the seller so that land stays within the community. The seller first tries to sell land to an immediate family member; if this is not possible, an attempt is made to find an extended family member who can buy the land. If this is not possible, someone else in the community is sought who can buy the land. Finally, if there is no one from within the community who can buy the land, an outside buyer is solicited. When an outside buyer buys land, it is usually under the minimal condition that he (or she in certain cases) agrees to recognize community rules. In more extreme cases the outside buyer needs to become "blood brothers" with a person or family in the community, or in some other way a recognized member of the community.

Land markets within community-based tenure systems are usually strongest and most developed in areas where there are already land shortages.

Community-based tenure systems are located within clearly defined geographical areas; accordingly, the communities know where their rules are in force. These boundaries generally were defined sometime in the past. As communities expand and come up against each other, the boundaries are refined and become more definitive. The same can be said about the rules of access under the systems. In general, when an area is first settled, most of



the land is loosely claimed or considered a common good. As populations grow, or people settle definitively in an area, boundaries between areas for pasture and agriculture are defined, and boundaries between peoples' fields are defined. As the population grows, these boundaries become fixed and better defined. Also, rules regarding who has access to and who can use the land and resources become more precisely defined. Specific examples of how these have changed follow in the next sections.

Irrigated farming systems rely on both land and water resources and are found through much of Madagascar. For the most part community-based tenure systems associated with these farming systems follow the generalized outline above. However, there are regional and ethnic differences. Some of the regional differences have to do with the population growth patterns and rates in the area. If there is scarcity of arable land, primary holders are less likely to loan out land, though renting and sharecropping may still be found. Secondary holders may also have less security regarding their future ascendancy to land. In some places, inheritance may take on a rotational form, where each secondary holder inherits the right to use land only on a rotational basis.<sup>11</sup> Another variation is that women may have fewer rights to land as arable land availability decreases. In some ethnic groups this has resulted in women's not having inheritance rights to land or losing access to inherited land if they leave the community to reside with their husband. Another aspect of population pressure on land tenure systems associated with irrigated farming systems is the process of land fragmentation. As population increases, landholdings become smaller and fragmented. This situation is prevalent in parts of the highlands.

Water resources are also regulated depending upon the irrigation situation. In some communities, as population pressure increases, access to water sources takes on an increasingly private tone, with each individual having a canal from the water source to their field. This can result in two, three, or more canals running side by side to adjacent fields. In other communities canals are communal, access is regulated by the community, and there are rules as to their creation, upkeep, and use.

Trees in these systems are recognized as being controlled by the individual who planted them. They are also used to mark boundaries between irrigated fields.

In areas where the farming system is dominated by slash-and-burn agriculture (*tavy*) the community-based tenure systems follow the general outline with minor variations. In these areas primary holders are those who have cleared or inherited land (women are included in this and are able to both clear and inherit land), secondary holders are usually sons and daughters of the primary holders and expect to inherit land, and tertiary holders are usually those who have access to land through land loans. In these areas, there is little or no sharecropping and little or no selling of agricultural land. There is, however, selling of bottomland, where irrigated rice is grown, and of areas where tree crops (such as tea and coffee) are grown.

In these areas most forests are considered community goods. However, in some areas, when land is cleared, the part of the forest that touches the farmer's field is considered private forest and the farmer has control over its use. This private forest acts as a firebreak between adjoining fields so that a fire started in one field for the purpose of clearing the land does not spread into other fields.

In these systems, primary holders of trees are those who plant and tend the trees. These holders are the only people who can cut down the tree. Secondary holders are family members and they can pick fruit from the trees.

Water is considered a community good in most slash-and-burn agricultural areas. There is little or no infrastructure for irrigation purposes. There are also few rules attached to water access in these areas.

The western part of Madagascar is predominantly dry savanna and its agricultural systems are structured around extensive cattle raising. In these areas the community-based tenure systems recognize pastureland as a

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<sup>11</sup> One year the inheritor has the right to use the land, the next year his brother, the year after that his other brother, and so on, until his turn comes up again.

community good. There are few rules that regulate its use. Some researchers suggest that the main ethnic group, the Savaka, who mainly raise cattle, will abandon an area rather than enforce their primary tenure rights when immigrants arrive. In these areas, one of the previously explained community-based tenure systems is found when there is land used for sedentary farming.

### **Tenure constraints and opportunities**

Throughout Madagascar three different types of land and natural resource tenure situations are found. These situations reflect the power of state law and community-based rules regarding land and other natural resources in the different parts of the country. The three situations are: (1) areas where the state land and natural resource tenure laws are in force and respected by inhabitants of an area; (2) areas where community-based tenure systems' rules regarding land and natural resources are in force and respected by the inhabitants; and (3) areas where the different laws and rules overlap, and where some inhabitants look to the state's laws regarding land and natural resources to guide how they have access and others look to community-based rules to regulate how they have access to the land and natural resources of the same area.

Given the three different situations, there are also different levels of land and natural resource tenure security experienced by people throughout the country. Tenure security is highest where people understand and respect the tenure system in place. For areas where the state tenure system is enforced, this means that people understand what the laws are and believe that the laws are well and fairly enforced. For areas where the community-based tenure systems are enforced, this means that people understand how the system works and believe that the system protects their rights to land and the natural resources. Conversely, tenure security is lowest where people do not have confidence in the land and natural resource tenure system(s), do not understand them, or are not sure which tenure system they should follow.

In Madagascar, the third situation results in low tenure security. In areas where this happens, state laws contradict community-based rules and regulations. Other instances that lead to tenure insecurity are situations where state laws are enforced to the benefit of outside immigrants or loggers and communities where people no longer have confidence in the community-based systems. All three of these result in people's believing that their rights of access to and control of their land and natural resource base may be in danger.

Madagascar's land and natural resource tenure situation has an effect on its capacity for economic growth and food security. Madagascar is an agriculturally based society and as such security of tenure influences both the crops that are grown and the number of fields planted. In most of Madagascar tenure security is high and other factors, such as access to agricultural extension and capital, are the biggest constraints on increased food production and increased economic growth fueled by export crops. In those areas where there is tenure insecurity, there are fields that are contested and crops that are not grown. Also, in areas where the tenure system encourages field fragmentation, such as in the Central Highlands, fewer crops are grown. All of these factors have contributed to lower security in Madagascar. Over the last 20 years Madagascar has gone from being a rice-exporting country to a rice-importing country.

In most parts of the country the biggest constraint on agricultural innovation is the lack of resources available to the farmer and the lack of adequate agricultural extension services. In most of the country, better extension services and increasing farmer access to resources would increase the acceptance of agricultural innovations. Only in those areas where tenure insecurity is a noted problem does land tenure enter into the equation of farmer acceptance of agricultural innovations.

Where tenure security is high certain types of investments take place. These investments are in the form of time, such as the community's policing its community goods and farmers' repairing irrigation infrastructure, the creation of new infrastructure in the fields, and the planting of perennial crops. Direct investment in the form of money, for buying new agricultural equipment, fertilizer, and pesticides, takes place, but in limited instances. As

in the case of innovation, tenure security is not seen to be the limiting factor. Rather, there are few banks which will loan money to small farmers, and few banks located in rural areas of Madagascar.

Informal land markets are present in Madagascar. These markets take the form outlined in the previous sections. Formal markets are found in urban areas and rural areas, but are highly influenced by cultural aspects of Malagasy society that dictate who will sell land to whom. In general, land is such a valued commodity, for cultural reasons, that individuals will not freely sell land, no matter the parcel or field size.

The general theory linking land and natural resource tenure security to conservation objectives is that if people feel secure in their rights of access to and control of land and natural resources they have traditionally used, they will use these resources in a wise manner, with a long-term perspective. In Madagascar there is evidence that this is the case. In places where land and natural resource tenure security is high, there is anecdotal evidence that community forests are conserved and that communities undertake some conservation practices. Where tenure security is low (especially in areas where there is confusion between state and community-based tenure systems) there are reports of poor natural resource management practices. Finally, it should be noted that other factors than tenure security influence conservation practices. Even when land and natural resource tenure security is high, if there is high population growth or if there is market-driven demand for the expansion of export crops, an expansion that forces the cultivation of food crops from prime to marginal agricultural areas or creates demand for the expansion of agricultural fields in general, then conservation may lose out to these other demands.

In the past tenure reform has taken the form of top-down edicts from colonial or central governments with little local-level, democratic participation. As Madagascar moves toward a more decentralized system of government and also moves to recognize the legitimacy of community-based tenure systems (see below), there is a real possibility that democratic participation in governmental processes will be encouraged. Community-based tenure systems tend to reply to local pressures and local needs. Thus, they can be viewed as encouraging local participation and certain forms of democratic decision-making. However, as with most democratic institutions, a set of checks and balances should be in place. Therefore, it is necessary that as the legitimacy of community-based tenure systems is recognized, there should also be certain checks on rules that may have an impact on areas of national concern. These areas need to be decided upon by the people of Madagascar in order for true democracy to take root.

Women's access to land is highly influenced by the land and natural resource tenure system that operates where they live. Of the community-based systems found throughout the island, some, such as those found in certain slash-and-burn agricultural areas, promote and protect women's rights to land and natural resources, while others, such as those found in some areas where irrigated agriculture is practiced, limit women's rights to control these resources (see discussion above). The state laws that regulate control of and access to land and natural resources officially protect women's rights. However, research has shown that the implementation of these laws often favors men's access and actually acts to limit women's. In areas where land titling has recently taken place, only the male head of household's name was listed on the title, and women's names were not recorded, even in cases where the woman had inherited the land.

### **Present policy position and reforms**

Land and natural resource tenure reform has had a long history in Madagascar, and the state has attempted to use reform to influence Malagasy agricultural practices, forest use practices, and most recently conservation practices. The latest instance of tenure reform was mandated in the Environmental Action Plan (EAP) written in 1989. The EAP mandated that land titling would be carried out throughout Madagascar and that community-based tenure systems would be replaced in a systematic manner, starting in areas closest to national parks and special reserves. This mandate was based on the premise that land tenure insecurity was one of the major causes of encroachment on Madagascar's protected areas. In September 1994, at a Land and Natural Resource Tenure

and Governance workshop, the Government of Madagascar accepted the recommendations from a number of sources that the land titling program should be put on hold and other ways of guaranteeing land and natural resource tenure security should be investigated. The major recommendation that came out of the workshop was that differences between the state land and natural resource tenure laws and community-based tenure systems should be reconciled, so that when the two systems overlap they do not contradict each other and, in the process, create situations of tenure insecurity. This recommendation seeks to bring the community-based tenure systems and state's laws and regulations into closer harmony and encourage long-term tenure security in the rural areas of Madagascar.

### **Implications for policy dialogue and programming**

The major need is for government and the donor community to recognize the resilience of community-based tenure systems in Madagascar and the necessity of harmonizing the state laws with these tenure systems. Replacement strategies have been tried in Madagascar since before colonial times, yet evidence suggests that in most rural areas community-based land and natural resource tenure systems are still looked to as the major provider of tenure security. Thus, the donor community should support the government's new initiative to revise state laws so that they support aspects of community-based tenure systems that are desirable, such as conservation mechanisms and women's rights to land.

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## **MALAWI COUNTRY PROFILE**

**by Anna Knox**

### **Executive summary**

The most striking characteristic of Malawi's land tenure system is its dualism. Large estates, hundreds and thousands of hectares in area, are held under either freehold or leasehold. Between 1970 and 1990, estate holdings grew more than tenfold from approximately 79,000 hectares to 843,000 hectares. By 1994, around 30,000 estates occupied over 1 million hectares. Historically, the sector has contrasted sharply with the smallholder sector which operates primarily under customary tenure rules. Here, the average farm size is around 1.1 hectares per household, with over one-third cultivating below the .7 hectare estimated area necessary to meet household subsistence requirements. Despite the government's purported commitment to improving the welfare of the smallholder, Malawi land policy has effectively precluded development of smallholder agriculture through measures which favor the estate sector while subjecting poorer farmers to increasing uncertainty and insecurity. It is only recently that meaningful changes in land policy have taken place which target smallholder interests.

### **National policy and legal framework**

Land pressures vary significantly. In 1993, the agricultural population per arable hectare measured 4.5, the most dense region being the South where fertile lands attracted many European settlers prior to and during British colonialism. By contrast, the North, characterized by poor soils, hilly terrain and low rainfall, still has a comparatively abundant supply of land. The Central region has been host to the greatest expansion of the estate sector in more recent decades, attracting labor from the barren areas of the North and the labor-saturated South. Agriculture overshadows all other sectors in Malawi. It engages around 72% of the labor force and accounts for about 35% of GDP. Its two largest cities, Blantyre and Lilongwe, have not yet experienced the severe mounting population pressure typical of many other African cities, in spite of overcrowding in rural areas. However, the growing number of landless poor is gradually turning this around. Overall, settlement patterns and land availability have proved key determinants of land tenure systems and population concentrations in Malawi's Northern, Central and Southern regions.

A brief sketch of Malawi's colonial background and land legislation history is useful in gaining a richer perspective of the complexities involved.

European settlers began to arrive in Malawi in substantial numbers around the early 1800s. These entrepreneurial farmers routinely took over large tracts of land, known as estates, which often overlapped with villages and indigenous land holdings. Such estates were regarded as freehold property of the settler. In the South, where this practice was most prevalent, the native farmers were commandeered as laborers as the price for their continued occupation of the land under a system known as "thangata." When the British colonial administration assumed control of Malawi in 1891, it officially discouraged this practice and eventually outlawed it in 1928, requiring estate holders to charge monetary rent to the occupiers rather than forced labor. Nevertheless, the lack of enforcement permitted the practice to continue for several years. The Central region estates employed mainly migrant labor (who farmed their own customary holdings elsewhere) in exchange for small wages, a factor which began to lure indigenous workers from the South into the Central region.

By 1904, allocation of estates in the Crownland (the South) was changed from freehold to leasehold, and land which was not held in freehold became vested in the government. In addition, the prospective lessee was obliged to obtain the signature of the relevant chief in order to have his lease approved. This measure provoked

disputes as headmen undertook transactions which were not in the interest of the community members, running counter to the belief that the land belonged to the community. This practice continues to be the norm for obtaining leaseholds today.

The colonial period was replete with competing views concerning the promotion of EuroPean estate holder interests versus protecting those of African farmers. Common themes included accusations that customary farming and land tenure practices were inefficient, unproductive, and contributed to land and soil degradation. Such beliefs were carried through independence and shared by Malawi's president, H. Kamuzu Banda, who proclaimed customary tenure systems were a hindrance to the country's economic growth. Nevertheless, the Trust Land Order, which first broke out the country's land tenure forms into Crown (public) land, Reserved land (mainly estates), and Native Trust, protected customary lands from alienation. In 1948, the government undertook to purchase and reallocate idle estate lands to African farmers in recognition of widening economic disparities.

However, resettlement schemes, both before and after independence, were largely failures. Allocations of consolidated plots prevented farmers from dividing their crops among different microclimates and employing risk-adverse strategies while imposed project rules limiting fallow periods hurt agricultural production and incomes. Other problems included lack of project staff, extension and farmer involvement in the planning stages.

With independence in 1965, several new laws were enacted which exemplified the new government's sentiment that the key to agriculture development lay in private forms of tenure. Under the Land Act of 1965, all Public land and Customary land (formerly Trust land) became vested in the Head of State and could be allotted to estates via leasehold. Outdated (1902) English land law was applied to private property tenure. Four other laws followed, including the Registered Land Act, the Wills and Inheritance Act, the Customary Land (Development) Act, and the Local Land Boards Act. The first of these, decreed in 1965, provided for the registration of customary land under private title in designated areas. The measure was only implemented in the Lilongwe area under the Lilongwe Land Development Program (LLDP) and subsequently floundered. In conjunction with this, the Local Land Boards Act provided for the establishment of administrative bodies in each district to oversee customary land transactions, with all land sales subject to their approval. The Wills and Inheritance Act Permitted an individual to bequeath long-term investments made on customary land. The Customary Lands (Development) Act of 1967 gave the government the right to acquire customary land for conversion from public land or leasehold estate without obligation to consult traditional authorities, although this remained the practice.

The Special Crops Act stipulated that only estate farmers, who acquire the relevant quota licenses, are entitled to grow certain primary export crops, such as burley and flue-cured tobacco, tea and sugar. Within the past few years, though, government schemes have been initiated to permit limited growth of burley tobacco by smallholders. In one case, a project designed to permanently settle smallholder families on land designated for burley tobacco cultivation has deteriorated as a result of many participants abandoning their new allocations. Even though the project produced 50% higher output per hectare than estate farms and generated larger gross revenues per hectare, the farmers themselves earned much lower incomes than their estate counterparts since they had to sell their produce through the Agriculture Development and Marketing Corporation (ADMARC) rather than via private auction where prices were up to six times higher. More recently, the government has liberalized burley tobacco cultivation and marketing, extending it to those farming under customary systems. Plans are to eventually eliminate all restrictions.

Another burley tobacco growing scheme was launched as a five year pilot project involving individual male farmers. Labelled the Malawi Young Pioneers, it was later coopted as a political organization by Banda's ruling party. It sprang up as an offshoot of the Master Farmers Program, which was initiated to mold a class of entrepreneurial "yeoman" farmers to lead the country's agricultural revolution. Based on a similar rationale as the Swynnerton Plan, the program has instead been blamed for forging class division among Malawians.

By contrast, the Smallholder Tea Authority (STA) scheme has been relatively successful as a result of a considerable level of credit, marketing and technical support. STA farmers receive attractive prices for their tea, notably higher than the lesser quality estate grown tea. The program has attained nearly full self-sufficiency, excluding staff salaries.

The most recent legislation has been the Control of Land (Agricultural Leases) Order (1990), which responded to the land shortage crisis faced by smallholders by terminating issuance of estate leases, except to those persons who have previously held land under customary tenure.

### **Replacement and adaptation of indigenous tenure**

The majority of Malawi's ethnic groups have matrilineal and uxori-local origins. Under matrilineal inheritance, land is inherited by males from their mother's brother. Uxorilocal applies to post-marital residence, such that the male goes to live in his new wife's village and is allocated land use rights to fields belonging to her family. In the case of polygamous societies, the husband must cultivate and tend fields on the matrilineage land of each of his wives. Men generally acquire their own land only through inheritance. Women, although they exercise little authority over land allocation, have more secure rights than under patrilineal and virilocal systems; in the event of divorce, they do not run the risk of losing their land. Matrilineal and uxori-local residence are practiced by Malawi's dominant ethnic group, the Chewa of the Central region as well as the Yao and Man'anja of south central Malawi.

Patrilineal societies reside chiefly in the North, perhaps the most prominent being the Ngoni. As mobile warriors originating from Swaziland, they succeeded in conquering several tribes, some of whom they engaged as serfs, including the Abafo and the Tumbuka. Over time, many of Malawi's ethnic groups have modified inheritance and residence patterns to reflect changing circumstances. Some of the Tumbuka adopted the patrilineal inheritance practices of the Ngoni while the Sena of the Lower Shire Valley have merged both matrilineal and patrilineal customs. Expanding land pressure has induced men to pass land on to their sons in the interest of safeguarding their children's future. Furthermore, European values and rules governing private tenure have influenced customary practices causing matrilineal systems to take on more patrilineal attributes.

Malawi is riddled with attempts at replacing indigenous tenure. Although it still accounts for around 70% of total land area, customary lands are increasingly encroached upon by the estate sector, leaving smallholders to cultivate smaller and more marginal lands. During colonialism, indigenous land tenure and agricultural practices were often described as ecologically ruinous and contributing to loss of soil fertility and erosion. Under the guise of conservation efforts, native farmers were induced to change from mound to row agriculture and decrease or eliminate fallow periods, plus they were prohibited from practicing slash and burn techniques. Claims of native land degradation were greatly exaggerated. Rather, techniques employed by European farmers, such as intensive cultivation, deep plowing and hillside cropping were far more harmful to the environment than customary practices. Indeed, estate farmers conducted slash and burn methods much more rigorously than smallholders, yet did not suffer reprisals.

### **Tenure constraints and opportunities**

Malawi stands as one of the poorest countries in Africa, with an average per capita income of \$176 per annum. When one considers the wide gap in income distribution wrought by its dualistic class structure, the depth of poverty and malnourishment are severe. The shrinking and marginalization of lands held under community-based tenure has direct implications for households' ability to meet their food security needs. Since independence, Malawi has set a goal of food self-sufficiency and has indeed made impressive strides in reaching that goal. However, access to food has always remained highly skewed. During the 1980s period of economic decline, Malawi, faced with dwindling export prices and rising import prices, was no longer able to meet its food

requirements. In a study conducted in the Kasungu and Ngabu districts in 1990, 85% of the smallholder farmers surveyed had depleted their food reserves by the pre-harvest month of February.

The demand for agricultural wage labor, in the form of tenancy and migrant labor, has grown as farmers find themselves unable to provide for their subsistence needs. Already meager wages have thus been driven further downward, exacerbating income disparities. The effect has been degenerative for seasonal workers who then have to plant their crops later in the season, undermining their productivity.

Most households own livestock in Malawi though not on a large scale. Livestock are raised for domestic consumption only. Women primarily hold small ruminants whereas men own larger livestock, mainly cattle. Under customary tenure systems, livestock graze during the off-season on commons and post-harvest crop areas.

In general, smallholders tend to cultivate food crops and a limited number of export crops, including maize, rice, beans, cassava, potatoes, groundnuts, sorghum, fire-cured tobacco and cotton. Maize, which occupies 73% of total crop area, is considered the primary staple. Tobacco is Malawi's largest estate-grown crop. The vast majority of burley and flue-cured tobacco are produced by estates along with other export crops like sugar, tea, coffee, and macadamia nuts. Although most of these precluded the participation of smallholders under the provisions of the Special Crops Act, since 1990, a limited number of districts have been allowed to deregulate smallholder production and marketing of burley tobacco. Full liberalization is envisaged during the coming years.

As demonstrated by several of the smallholder schemes described above, however, estates have proven overall to be less efficient producers of export crops than their small scale counterparts. Estates, rather, are characterized by a high incidence of absentee landownership, poor management and tenant farming. Quality of production is generally poor, in particular because tenant, compensated poorly and at the landholder's whim, have little or no incentive to improve output. 1990 estimates revealed that less than 28% of estate lands were utilized. Although lands held under customary tenure have been shown to be lagging in productivity behind the estate sector, several contributing factors are apparent, including regulations mandating smallholders to sell to ADMARC at depressed producer prices, special restrictions on customary land use, insufficient crop area to meet subsistence needs forcing smallholders to undertake agricultural wage labor, and lack of access to credit, markets and other inputs.

Land markets have arisen in Malawi primarily as a result of European settlement patterns and the perpetuation of estate farms for commercial agriculture. The restriction of lucrative export crops to estate operations has made it attractive for those with the means to do so to apply for estate leaseholds. Conversion to leasehold has another impetus, which stems from the uncertainty created by the numerous and ambiguous laws governing land policy. As estate sector expansion and mounting population pressures contribute to escalating land shortages, tenure security weakens. Under such a scenario, it would be unlikely to observe an increase in farmer investment or agricultural production among those operating under threatened community-based tenure systems.

Recognition of these widening disparities has recently come about, giving rise to the Control of Lands (Agricultural Leases) Order (1990), which has halted further conversion of customary lands to estate leaseholds, with the exception of individuals who previously engaged in customary tenure. The proviso has ostensibly served as a loophole, such that applications received since the law was put into effect have well exceeded previous levels. Nevertheless, the average area of estates has substantially decreased over the years from a mean of 250 hectares in 1979 to an average of 14 hectares between 1989 and 1994. The evidence points to the overwhelming number of smallholders transforming their customary parcels to estate leaseholds.

The tenure security of women is particularly fragile. As more customary lands are converted to estates directed toward commercial crop production, women's role as food producers is marginalized. Leaseholds are furthermore registered in the man's name such that women have no claim to the land nor its production, leaving her social security vested largely in her husband. If she descends from a patrilineal community, she has lost her



use rights. If her origins are matrilineal, she loses not only use rights but also the strong claims she held to land in her own community.

Since the 1920s, when conservation flourished as an issue and indigenous tenure systems were blamed for provoking environmental hazards, natural resource management has been a matter of concern among policymakers. Although the conservation debate may have used a moral imperative to disguise a less noble intent, natural resource degradation has become a serious concern in more recent years.

Deforestation is undertaken in grave proportions. About 75% of the total fuelwood consumed every year is by estate farms which is mainly used in the production of flue-cured tobacco. The bulk of what is consumed comes chiefly from indigenous and community forests rather than the estates themselves. Once the local supply is depleted, the estateholders purchase the wood from commercial cutters who also extract their supply from customary lands. In 1983, it was estimated that one-fourth of available fuelwood had been cut. The government has responded with measures which include creating national forest reserves, imposing leasehold covenants which stipulate the lessee devote 10% of his land to woodlot, and requiring commercial cutters to obtain permits. Although significant strides have been made toward afforestation, having 21% of Malawi's total land area under reserve conflicts with customary tenure values, as can be seen by the high incidence of villager encroachment. Moreover, lack of clarity concerning authority roles between the Forestry Department and other government departments invites opportunities for controversy. As for the woodlot requirement for estates and the permit requirement for woodcutters, they are rarely enforced.

Community forestry initiatives may offer some solution to continued depletion of forested areas. By vesting rights to forested areas in communities, their incentives are geared toward the forests' regeneration. As it stands, state control of forest reserves is inadequate at best. Villagers in need of fuelwood illegally remove it from the reserves while unpermitted commercial cutters wreak extensive destruction. Localized control should provide significantly more potent enforcement of cutting regulations than the Forestry Department which lacks the resources and staffing to effectively protect the reserves.

Following a referendum in 1993 instituting multi-party democracy, presidential elections were held in Malawi in May 1994. The result was the transfer from a thirty-year one-party state to a new constitution supported by a multi-party parliament. The new administration is led by former opposition leader Bakili Muluzi who vows a commitment to a more participative government, human rights and free primary education. The political environment has undergone a substantial transformation, which includes a highly vocal press, adamant against any resurgence of the political corruption and intimidation which had been so deeply rooted in Banda's regime.

Democratization is taking place for the first time in Malawi. In this climate, of political overhaul, it would seem to be a particularly opportune time to initiate land policy dialogue. As historical pioneers garnered by heavy international support, the new administrator's leaders are likely to be quite open to policy reforms which will inspire the favor of their constituencies.

Women in Malawi are the prime cultivators of food crops while men devote most of their time to export crops. When one considers that maize is the primary smallholder crop cultivated and that three quarters of the total cropland is maize, it is clear that women undertake most of the agricultural work. Men are involved chiefly in the clearing of the land and soil preparation whereas women do the bulk of planting, weeding, and harvesting.

At 28%, Malawi has one of the highest female headed household to total household ratios in Africa, consisting of unmarried, separated, divorced and widowed women. To the extent that food security issues affect all small scale producers, they are particularly critical for women. Whereas estimates are that in a typical household, Malawian women work one half to seven hours longer than their male counterparts, they undertake an enormous burden when left to shoulder it alone. In general, female headed households lie at the bottom of the poverty scale, cultivate the smallest plots (as small as .2 hectare), and face the greatest constraints in accessing

credit and markets. Government loan schemes have demonstrated little success in reaching women since beneficiaries must belong to community farmer clubs which tend to exclude women based on their meager assets and perceived high risk for credit. Women who seek seasonal wage labor to cover their subsistence requirements are typically assigned to low skill tasks as the bottom of the pay scale.

The combination of export-led development strategies along with the expansion of individualized tenure and estate agriculture have instilled a system of greater paternal values. Land shortages have undermined uxori-local practices while it has induced a preference for patrilineal practices of bequeathing land to one's own son rather than one's nephew. These factors have succeeded in partially supplanting matrilineal and uxori-local practices with implications for women's tenure security and social position.

### **Present policy position and reforms**

The impact of the 1965 and 1967 land laws has been largely negative for the smallholder operating under customary tenure systems. While the Registered Land Act was only applied in the Lilongwe area and failed to take root, the prevailing customary tenure system's social security function is being eroded. Whereas tenure insecurity had been a rarity among customary landholders before, it is fast becoming a credible threat with the encroachment of the estate sector fueled by an enabling government. The average size of customary holdings was 1.1 hectares in 1987 while many have less the .7 hectare to cultivate. Applications for leaseholds rose sharply starting in the late 1980s, in part as a measure to protect one's land. Another impetus for acquiring leaseholds has been the restrictions imposed by the Special Crops Act such that smallholders under customary tenure were virtually barred from cultivating certain lucrative export crops, such as tea and burley tobacco, even though special schemes have demonstrated small scale farms to be at least as productive as estate operations. Even crops which smallholders were permitted to market had to be sold to ADMARC, often at prices well below the exchange value obtained by estate farmers. With new legislation gradually allowing smallholders full rights to cultivate and market burley tobacco, one would expect a rise in productivity among those farming under customary tenure and an extension of the measure to all crops.

Small-scale farmers who cannot afford to apply for leaseholds (due to requisite fees and the investment criteria) and whose landholdings are insufficient to meet subsistence needs often find themselves having to work as tenants or migrant laborers on estate farms. The poor quality and mediocre production levels of estate tobacco farms attest to the lack of economic incentives present in tenant-landowner systems to foster agricultural investment and improved yields. Also apparent in this trend are the implications for worsening economic polarity.

More recently, government policy has placed greater emphasis on the promotion of smallholder agriculture. In addition to export crop liberalization, several schemes directed at small scale farmers have been initiated, some relatively successful while others are virtual failures. Key factors of success appear to be the provision of ample and appropriate inputs and extension, payment of competitive prices for agricultural produce, and integration of participatory decision-making and project maintenance. The Rural Development projects set aside for smallholder burley tobacco farming hold promise that production and marketing of the crop will soon be permitted to all smallholders.

Failure to place a limit on the hectarage of estates has enabled the establishment of large estates, some occupying over 1000 hectares. Most farmers do not ever approach full utilization of their lands, leaving the majority idle. It is little wonder that smallholders, when given access to the needed inputs, have proven more efficient producers of commercial crops than estates. Economies of scale in this context appear to be mythical. Implementation of the Control of Land (Agricultural Leases) Order (1990), banning the acquisition of leaseholds in all but certain areas, has been ineffective in controlling the number of leases granted due to an exemption applying to farmers under customary tenure. The measure is frequently exploited as a loophole. Nonetheless, the mean size of holdings being leased has decreased considerably, averaging only 14 hectares in recent years.

Lack of enforcement of lease covenants merely fuels the inefficiencies and inequities. Groundrents are set uniformly at rates far below market value. In most cases, however, they are not even paid since the authorities do not follow up on arrears cases.

The fact that land is vested in the State, which has the authority to appropriate it at will without the approval of traditional authorities, places customary land holders in a precarious position. Although the state has not been known to appropriate occupied customary lands, land converted to public and estate land translates to less commons land and land to accommodate future generations. The allocation of increasingly smaller and marginal customary holdings has implications for smallholder agricultural productivity and food security. The natural tendency of the government may be to lay blame on the structure of customary tenure itself whereas it might be better attributed to the emergence and promotion of the estate sector and the consequent creation of land shortages, both of which are reinforced by dualistic land policy and legislation.

### **Implications for policy dialogue and programming**

Many of the problem afflicting the implementation of sustainable development strategies in Malawi are rooted in the inequitable land policy and preferential treatment afforded the estate sector. The key to equitable growth, therefore, lies partly in the reversal of such policies. The government has taken important first steps toward this objective through relaxation of the long held restrictions on burley tobacco cultivation and sales.

All restrictions on crop production under the Special Crops Act need to be eliminated if smallholders farming under customary tenure systems are to be given an opportunity to make rational choices about which crops to cultivate. Their modest holdings often are not sufficient to meet their food security needs. If prices of export crops are high, it will generate additional cash to better meet food security needs and reduce the need for agricultural wage income.

The administration of uniform pricing policies for all agricultural commodities would also serve this end. Whereas originally ADMARC invested much of the proceeds from smallholder produce spreads in the estate sector, in recent years this has been eliminated and they are offering prices more in parity with sale prices. The sector still remains in need of further liberalization, though, which would bolster producer's income and production incentives.

Even with the opportunity to grow more profitable crops, the smallholder sector will not flourish if it continually must endure shrinking land holdings. It makes little sense that small farmers must continuously cultivate minute plots in order to eke out a meager subsistence while vast tracts of estate prime estate land remain idle. Instead, when the initial 29-year leaseholds come up for renewal, the government might opt not to renew unused lands and instead convert them to customary lands. Furthermore, estate lands which have already been returned to the government might be transferred from public lands to customary holdings. Other measures to discourage consolidation and unproductive practices may be to increase rental rates for holdings in excess of a certain moderate hectareage for leaseholds and apply a similar tax structure for estates held in freehold. This of course would necessitate vast improvement in the enforcement of ground rent collection, which is abysmal at present.

If factors contributing to tenure security are removed, such as estate sector encroachment and restrictions on land use, measures such as the Control of Lands Order may not be necessary. The law's principal effect has been to provoke panic and perceptions of land scarcity.

Inducing improved agricultural investment and productivity among farmers of customary lands will require the rebuilding of tenure security. The newly democratic government might take the opportunity to entrust the land once again to local communities and re-vest the land in customary authorities. Such a move should likely be decided in consultation with local communities since in some cases community relationships with village headmen

and paramount chiefs have been ruptured. In any case, decentralization, whether to traditional headmen or locally selected authorities, holds greater promise for more equitable and efficient land allocation.

Addressing women's needs entails devising means of linking them with improved access to credit and extension. Training for government extension and credit agents should stress the importance of reaching women and sensitize them on women's different needs and how to include women where it may be politically difficult. Programs may want to set goals for incorporating women as well as integrate more female field staff. Extension services also may need to gain a better appreciation of women's roles in order to offer them more agriculture extension, including that for cash-crop cultivation.

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## MOZAMBIQUE COUNTRY PROFILE

by Scott Kloeck-Jenson

### Executive summary

In 1995, the Government of Mozambique began to seriously address needed changes in national land policy, gradually moving toward a position which appears to recognize the need for encouraging land markets, decentralizing authority within state institutions, and integrating customary institutions and practices into the statutory land regime. The government has expressed its intention to construct a new land policy which improves tenure security, reinforces the move towards market-based policies, and is commensurate with extant state capacity and de facto practices concerning land in rural areas. Such revisions will be critical for a country attempting to rebuild state institutions, refurbish the new democratic regime's political legitimacy, and reconstruct a shattered economy following nearly two decades of devastating conflict and failed socialist policies. The specific policy reforms which would advance these broader objectives, however, remain unspecified. Indeed, the precise parameters of a revised national land policy continue to be debated nationally. Some within the government continue to resist privatization of land rights. In addition, the government continues to debate the extent to which administrative and taxing authority should be devolved to district officials as well as the number and identity of districts which would enjoy such authority.

### National policy and legal framework

Although no reliable census has been conducted in Mozambique since 1980, the government estimates the country's population to be approximately 16.5 million and that it is growing at a rate of 2.6%. According to World Bank estimates calculated in 1992, 70% of Mozambique's population resided in rural areas. Due to the return of many refugees and displaced peoples to their areas of origin following the October 1992 cease-fire, the percentage of rural dwellers has likely increased.

Mozambique, constituting approximately 80 million hectares of land, is often perceived to enjoy relatively low population densities which would presumably diminish competition over land. In reality, however, the Ministry of Agriculture estimates that only 18 million hectares of land are suitable for agricultural production. In addition, while there are indeed relative land surpluses in many parts of the country, fierce competition exists over land which is especially fertile and/or located near transport infrastructure, market channels, agricultural extension facilities, or where agricultural infrastructure such as irrigation equipment is situated. These areas include land along the Beira Corridor, in the Limpopo and Zambezi river valleys, agricultural land in Maputo province, land near or around the former state farms, and agricultural lands near urban areas. Land near the borders with Zimbabwe, Malawi, South Africa, and Swaziland are also in high demand. In addition, coastal areas and land within or near former game reserves are subject to growing competition as Mozambican and foreign capital begin to establish tourist complexes as political stability returns to these regions.

A critical problem in the climate of growing competition over land is that Mozambican land laws and policies remain incommensurate with existing state capacities and incompatible with the government's stated goal of establishing an economic environment grounded in liberal economic principles. Upon independence from Portuguese colonial rule in 1975, the government of Samora Machel promulgated policies premised on a rigid form of socialism that viewed free markets, international capital, and decentralized control over political and economic resources as incompatible with the ruling Frelimo party's broader project of constructing an economically advanced and nationally integrated society devoid of social or class-based inequities. In the

agricultural sector, these aims were to be achieved through a trio of programs—large smallholder cooperatives, villagization schemes, and in particular, the establishment of a large state farm sector.

In terms of land policy, the fundamental principles and regulatory norms governing rights in land are enunciated in three legislative instruments—the Constitution, the 1979 Land Law, and the 1987 Land Law Regulations. According to these instruments, ownership of land vests in the state while the state also controls all aspects of land use and enjoyment. The state exercises primary dominant rights while its citizens or other groups can only obtain limited, secondary use and occupancy rights (*direito de uso e aproveitamento*). The state exercises paramount rights over land and retains authority to revoke individual use rights as well as grant land use rights to development projects or selected Mozambican and expatriate enterprises. While individuals can transact improvements on their land, land and rights in land cannot be sold, encumbered, mortgaged, or in any way alienated. Formal land markets are therefore not permitted within this structure.

Statutory land administration in Mozambique remains highly centralized and ambiguous regarding customary rights and land claims. In practice, larger farmers exploit the formal legal system, while smallholders rely on customary systems of land tenure. In an important modification of the 1976 Constitution, a 1990 constitutional provision concerning ownership and control of land presumably supports customary rights and claims by specifying that the state would recognize rights acquired through occupancy. In practice, however, the provision provides little protection for the majority of rural dwellers who rotate their crops. For example, by leaving some of their land fallow, they are not formally “occupying” it; the land is therefore “available” for other parties to occupy. In addition, the provision does not establish any legal mechanisms for resolving land disputes involving conflicts between customary and statutory jurisdictions. As a result, because the property is not usually registered, smallholders lose out when disputes arise with state or larger commercial enterprises. Smallholder claims, rooted in customary forms of evidence, receive almost no weight.

Larger commercial farmers enjoy relatively greater tenure security than smallholders but the formal administrative system has nevertheless been unable to construct a transparent and reliable tenure regime for even these larger interests. According to the Land Law and the Land Regulations, any party acquiring land for commercial agricultural purposes must register the holding through the formal tenure system and pay commensurate taxes. The registration process involves officials at the community level as well as at district, provincial, and central levels of DINAGECA (Direcção Nacional de Geografia e Cadastro). DINAGECA works under the purview of the Ministry of Agriculture. If DINAGECA officials grant a favorable report on its proposed usage, a usage permit would theoretically be granted or denied within four months. In reality, however, the government has not had the capacity to administer the formal land tenure system as presently constituted. This derives from a scarcity of qualified personnel, insufficient resources, and the extraordinary constraints imposed by Mozambique’s civil conflict and consequent insecurity and shifting populations. As a result, the formal process of land acquisition and registration has been time consuming, confusing, and laden with corruption.

For over a decade, the ruling Frelimo party has at least implicitly acknowledged the dissonance between these realities and the government’s statutory laws and extant institutional capacities. At its Fourth Party Congress in 1984, Frelimo conceded that all of its state farms were operating at a loss and that they were absorbing a disproportionate share of resources from programs aimed at smallholders. However, a vigorous debate raged within the government over whether these failures stemmed primarily from flawed policy design or from Renamo military activities which by then had spread to all the provinces. It was not until 1989, two years after the formal adoption of an IMF and World Bank approved macroeconomic structural adjustment program, that the Frelimo-led government officially recognized the need to completely restructure the state agricultural sector and privatize, lease, or close parastatal farms. The process by which this was done, however, was haphazard, nontransparent, and riddled with corruption (Myers and West 1993).

Despite the shift from state-led agricultural development schemes and the adoption of market-friendly macroeconomic policies, the government has not coupled these with simultaneous reforms in national land policy. This has produced negative consequences. First, formal land policy does not reflect realities in most rural communities where it is customary institutions rather than state officials that administer land and other resources. Second, the lack of consistency and transparency in the land laws, weak state capacity, and state officials' significant discretionary authority over land and their lack of formal accountability to societal groups have contributed to enormous corruption and land grabbing, even on land which had not been part of the state farm sector. In the period between 1992 and 1994, for example, at least 20 million hectares of land has been "acquired" as concessions by private (nonsmallholder) farmers or commercial interests, many of whom are themselves government officials. Third, land is more valuable as a consequence of improved security conditions in rural areas and a macroeconomic context in which agricultural producers receive higher prices for their commodities. As a result, competition over land has increased. Due to the highly centralized system of control over resources, the lack of clear procedural guidelines, government officials' malfeasance, and the maintenance of land tenure laws and policies originally designed for purposes of advancing socialist aims, confusing and conflict-ridden scenarios marked by competitive and overlapping land claims have proliferated. This has often had deleterious consequences for the tenure security of smallholders whose claims for tenure rights within customary structures remain unrecognized by statutory law and whose interests are often compromised on behalf of the interests of more powerful foreign investors, former colonial landholders, and selected government officials. Yet it should be pointed out that even the more powerful groups are themselves handicapped in the long term as they are also subject to unclear, non-transparent land policies and administrative mechanisms, giving rise to tenure insecurity.

Several steps aimed at reforming national land policy have been taken, though no substantive reforms have yet been implemented. In 1994, the Mozambican parliament approved a Municipalities Law designed to decentralize administrative authority in a broad array of arenas, including land. At present, however, the law does not clearly specify the discretionary authority of local officials on critical issues such as taxing authority, thereby leaving the central government with de facto control. In addition, in December 1996, the Mozambican parliament approved legislation authorizing elections in selected municipalities in 1997. The identity of the municipalities (selected cities and districts) where such elections would take place remained unspecified. In 1996, the government published a proposed draft of a new Land Code, which was widely debated at a National Land Conference in Maputo in June of that year. The proposed Land Code still vests control of land in the state. It does, however, move toward mechanisms which can better secure smallholder tenure security. These include: the legitimacy of customary dispute resolution for disputes between smallholders and the admission of oral testimony as evidence in dispute resolution procedures between small and large landholders. It remains uncertain when a final draft of the Land Code will go to parliament for approval.

In May 1992, with the assistance of the Land Tenure Center, the government formed the Ad Hoc Land Commission within the Ministry of Agriculture for purposes of evaluating and reformulating the country's land policy. But up until 1996, it has had neither substantive power nor meaningful domain within a government which appeared reticent to meaningfully address land tenure reforms. Since May 1995, however, a newly established Land Commission has emerged as an important player in drafting a new land policy designed to more effectively incorporate customary forms of tenure into the statutory land regime while decentralizing formal authority over land to district-level state institutions and local customary authorities. Its recently drafted Land Policy Statement, while still vesting landownership in the state, nevertheless recognizes the need for phased movement towards formal land markets and permitting the alienation of property, if appropriate changes in the 1990 Constitution are made.

## Replacement and adaptation of indigenous tenures

There is a rich diversity of indigenous tenure practices across Mozambique whose subtle differences belie clear cut categorization. In broad and admittedly simplified terms, however, one key difference in tenure regimes is rooted in the distinction between the societies organized according to patrilineal kinship principles south of the Zambezi River and those according to matrilineal principles to its north. Muslim beliefs on the coastal areas in the northern half of the country have also influenced indigenous land tenure practices. In addition, the trade in slaves and ivory and the Portuguese *prazero* system during the sixteenth to nineteenth centuries blended Portuguese and African tenure in a unique amalgam that continues to affect indigenous land tenure practices in the Zambezi valley (Negrao 1994).

From the country's independence in 1975 until the early 1990s, the Frelimo government viewed the customary institutions which managed indigenous tenure practices as archaic remnants of a pre-modern and exploitative colonial past. It therefore attempted to replace them with more "modern" state institutions and regulatory practices. In reality, due to insufficient state capacities and war-imposed constraints, the state has permitted indigenous tenure systems to operate in many rural communities. Yet the rights conferred by these institutions have always remained insecure and were frequently usurped if state officials perceived that doing so promoted the interests of villagization schemes (*aldeamentos*), state farms, or state-organized collectives. Indeed, some analysts, as well as many individuals within the Frelimo party itself, now argue that official hostility to customary institutions and practices (including community-based tenure systems) and the attempts to replace them alienated many rural communities from the Frelimo government (Geffray 1991).

Since 1992, and especially since the October 1994 elections, the Mozambican government has adopted a more conciliatory stance towards customary institutions. Rather than seeking to eliminate and thereupon replace them with "modern" state institutions, Frelimo has expressed a desire to better accommodate these institutions and clarify how they can be incorporated into a revised statutory land policy. Official Frelimo rhetoric no longer bashes all chiefs (*regulos*) for being little more than Portuguese lackeys. Nor does it characterize indigenous tenure practices as archaic and "obscurantist." Indeed, in the October 1994 election campaign, both Frelimo and Renamo candidates drew upon political imagery associated with more "traditional" practices and beliefs. More substantively, two of the articles of the 1994 Municipalities Law deal with the "involvement of traditional authorities," encouraging new local governments to coordinate their work with them in a broad range of areas including collection of taxes and the allocation of land. The law does not give traditional leaders the power to enforce their demands and decisions, however. More recently, the Ministry of Agriculture's new land policy statement (*política de terra*), which has been approved by the Council of Ministers, emphasizes the need for granting legitimacy to customary forms of evidence vis-à-vis rights to and control over property. How these aims will be translated into actual law is still under review, however, though the Land Commission did incorporate these objectives in its 1996 draft Land Code.

## Tenure constraints and opportunities

Due to cruel colonial legacies, periodic droughts, the country's devastating conflict, and flawed policy choices, post-independence Mozambique has been an economic basket case unable to meet its population's basic food requirements. Its estimated USD \$80 per capita is one of the world's lowest. According to a government paper presented in March 1995 at the World Bank Consultative Group on Mozambique in Paris, 60–70 % of rural households fall below the poverty line. In terms of nutrition, average daily caloric intake is only 77% of requirements. Since 1987 the government has been implementing a structural adjustment package designed to increase agricultural production through improved price incentives and deregulating the exchange of consumer commodities. Growth in the agricultural sector has, however, been slow due to unstable political conditions in rural areas up to 1992. The destruction of transport infrastructure and market channels, the near total breakdown



of state agricultural extension capacities, and continuing tenure insecurity which discourages productive investment have also combined to impede vibrant growth.

Security of tenure in Mozambique remains weak for all groups. Since the October 1992 cease-fire, government agencies at varying levels have been haphazardly distributing land rights to national and foreign capital, government officials, former soldiers, and returning refugees and displaced individuals. The process has been riddled by corruption. And even when officials have acted with integrity, state institutions have been poorly equipped to administer what is already a contradictory set of policies and procedures regarding land. As a result, activity surrounding the acquisition of land remains primarily speculative and focused on land grabbing rather than productive, long-term investment which might also be environmentally sustainable. Smallholders have been particularly vulnerable in this process and have also been hesitant to invest in capital improvements or undertake more ecologically sound practices on land from which they may be soon thereafter expelled.

Despite the fact that national land policy continues to proscribe formal land markets, informal land markets have emerged in selected areas of the country. These include the Green Zones of Maputo, land along the Beira corridor, and a variety of peri-urban areas near larger provincial and some district capitals. Although land cannot be legally sold or otherwise alienated, landholders and local government officials have relied upon a legal loophole which suggests that investments or improvements on land can be negotiated to exchange or otherwise alienate land. Transactions which are at core forms of illegal land alienation are therefore simply characterized by government officials as exchanges transacted on the basis of "improvements" in the land (Roth, Boucher, Francisco 1995). It is clear that in these peri-urban areas land is treated as a commodity which can be bought, sold, or retained.

A critical problem, however, is that these transactions take place in an environment marked by a lack of transparency and formal accountability as well as uncertainty regarding long-term tenure rights. This gives rise to corruption and tenure insecurity. It also distorts the price which is actually "paid" for a piece of land. Further, smallholders who may lack information regarding how best to retain or transfer land or who lack sufficient political or economic resources necessary for advancing their claims have been severely disadvantaged in the process.

The conflict in Mozambique devastated what had been a well-developed system of parks and reserves located in the interior as well as on the coast. Since the successful October 1994 elections, growing attention within the donor community and the Mozambican government has been paid to the rehabilitation of these parks and reserves. The World Bank in particular has been encouraging the creation of transfrontier areas that would connect game reserves in South Africa and Zimbabwe with territory in Maputo, Gaza and Manica provinces. The International Union for the Conservation of Nature (IUCN), in conjunction with the Department of Forestry and Wildlife in the Ministry of Agriculture, have begun plans to initiate a CAMPFIRE-like program in Magoi district in Tete province. Modeled after relatively successful pilot projects in Zimbabwe, the CAMPFIRE approach seeks to encourage wildlife and natural resource conservation by permitting local communities to participate in decisions on how best to protect these areas in ways commensurate with their own interests as well as to insure that they benefit financially from the tourist revenues these parks generate. Discussions have begun between the IUCN and the Ministry of Agriculture concerning how to replicate this elsewhere. In addition, the National Directorate of Tourism is recommending that approximately 20 areas of the country be reserved as protection zones for tourism. Most of these plans are still being debated and yet to be formally accepted and implemented. It is clear, however, that they will have profound implications for the land use rights of groups or individuals who currently reside on targeted areas and that their interests should also be taken into account.

The October 1994 presidential and parliamentary elections marked a formal end to the United Nations-monitored transition towards multi-party democracy as well as the formal cessation of the country's sixteen year civil conflict. Frelimo's presidential candidate, Joaquim Chissano, won an outright majority although his Renamo

opponent, Afonso Dhlakama, did better than expected, garnering 33.7% of the vote. In addition, while the Frelimo party enjoys a slim majority, Renamo won 112 of the 250 parliamentary seats and won an outright majority in five of the country's ten provinces. Future elections are therefore likely to be highly competitive.

Significantly, however, land policy and proposed land reforms did not emerge as an issue during the campaigns leading up to the 1994 elections. Indeed, current efforts to reform national land policy derive more from donor pressures or government recognition of policy mistakes than as a response to political pressures from rural populations or Renamo delegates to parliament. Vigorous debate within the parliament erupted in October 1995 over whether Afrikaners from South Africa should receive land concessions to farm in Mozambique. Yet the debate has centered primarily on nationalist and racial themes rather than treating the issue as an opportunity to investigate the process by which land concessions are granted or to meaningfully address the need for policy reform which encourages long-term investment. That land policy issues have not been a focal point of political debate undoubtedly derives from the fact that those groups who might benefit most from such reforms--smallholders--remain politically unorganized and weak. It will therefore be critical that external donors protect smallholder interests as the government reviews and revises its land policy.

Beyond electoral politics at the national level, the 1994 Municipalities Law, once clarified, could further empower local communities, thereby deepening the democratization process. In particular, it could be a first step in a process culminating in the granting of more local control and authority over land and other natural resources. The law proposes that municipal status and elections would be gradually extended to the country's 128 rural and 23 urban district (Maputo city already enjoys this status) once they meet certain minimal criteria such as sufficient qualified personnel and material resources. How many districts meet these criteria and therefore qualify for local elections planned for 1997 is, however, subject to intense debate. Renamo, whose political support is often strongest in those areas which lack minimum conditions, has opposed the gradualist approach and has favored granting municipality status and power to all rural and urban districts.

Under both patrilineal and matrilineal customary tenure systems, women generally obtain rights through men. The primary difference in the two systems relates to whether men receive land through their father's kin or through their mother's. In most cases, a woman receives relatively secure land use rights although they are dependent on a continuing relationship to the male who parceled land out to her. They are also, of course, dependent on the male's own tenure rights. Women generally do not own land and have little formal management authority. In practice, however, women have tended to be the primary cultivators of land and actually make many of the decisions regarding production activities within a given plot.

Decentralizing administrative authority and the movement towards official recognition of land markets will likely produce mixed results. Since independence, the Frelimo party has championed and, with varying success, implemented a fairly progressive agenda aimed at promoting gender equality. Moves toward strengthening customary authority and local officials may reverse some of the protections Frelimo has attempted to extend to women. On the other hand, by pursuing a less confrontational strategy towards customary structures, the government may not evoke such a powerful backlash which has often resulted in a further diminution of women's rights and status within rural communities. For women located near peri-urban areas where competition over land is more intense, the encouragement of formal land markets could prove beneficial. They could for the first time have land formally registered in their names. On the other hand, it will be some time before government institutions such as DINAGECA will have sufficient capacity to register lands and adjudicate conflicts between title holders with conflicting claims. As a result, the tenure rights of the weakest members of communities—women and smallholders in general—will likely remain insecure in the face of predatory activities of larger, more powerful groups and individuals.

## **Present policy position and reforms**

Since 1994, the Mozambican government has demonstrated a willingness to meaningfully address needed changes in national land policy and the mechanisms by which it will be administered. The government initiated a three phase, eighteen month program to revise national land policy in 1995 as part of the ongoing FAO supported Land Commission program within the Ministry of Agriculture. This has led to several important recommended policy shifts. These include: (1) creating a context in which land markets can operate, at least in peri-urban areas; (2) granting greater recognition to customary forms of land tenure; and (3) acknowledging the need for reforming mechanisms for administering land and other natural resources as well as the means by which conflicts are adjudicated.

While these represent welcome shifts in overall policy direction, their impact will clearly depend upon the final language and institutional frameworks constructed as the government actually drafts new land laws and an accompanying regulatory code. For example, as presently constituted, the proposed land policy still vests ownership of land in the state, thereby denying individuals or groups the right to alienate property. Such a clause is clearly in conflict with the new Land Policy Statement's expressed aim of encouraging the emergence of formal land markets. Some individuals drafting the new Land Policy Statement have recognized this fact. Indeed, some within the government have indicated that the primary reason that the Land Policy Statement continues to vest ownership rights in the state derives not from any deeply felt hostility to individual property rights but rather, because the country's constitution proscribes private property. National land policy is therefore premised on amending constitutional provisions which vests land ownership with the state. It is uncertain whether the needed constitutional modification will occur, however, as many within the state apparatus still believe that the state should retain its control over land.

The other significant proposed change addresses the issue of decentralizing administrative and adjudicative authority so that it will be more commensurate with state institutional capacity as well as to encourage more participatory mechanisms and procedures which will be viewed as more legitimate. The general policy orientation of the 1994 Municipalities Law is to be commended. At present, however, it remains vague on two key issues. First, for meaningful decentralization to occur, the central government will need to go beyond decentralizing costs and implementing authority. Local state institutions, to play a meaningful role, must have authority to raise revenue and receive discretionary authority to go beyond tinkering with policies formulated in Maputo. Second, the government will need to specify more clearly central-, provincial-, district-, and locality-level state institutions' relationships and division of responsibilities with customary authorities. The Municipalities Law encourages cooperation and "collaboration" with customary authorities but if they are to have meaningful power and input, the government will need to draw up more concrete directives and institutional frameworks. Given that they de facto administer much of the country's land and that much of the rural population perceives them as the most legitimate repositories of political power, clarifying and ensuring the role of customary authorities will be critical.

## **Implications for policy dialogue and programming**

As the Government of Mozambique proceeds in the process of revising its national land laws and administrative and adjudicative practices, it should be encouraged to denationalize control over land and natural resources, decentralize control to provincial and district level state institutions, and more formally integrate customary dispute resolution procedures and customary laws and evidence into statutory land administration. More specific recommendations include:

- ♦ As the government in Maputo revises its land policy, it should be encouraged to continue its dialogue with other levels of government (provincial, district, locality), Eduardo Mondlane University, the private sector, and other groups in civil society including commercial, agricultural, forestry, mining and tourist enterprises.

Special attention should be paid to incorporating smallholder concerns in the policy formulation process. Such a dialogue will likely lead a larger percentage of the population to view the tenure regime as legitimate.

- ♦ The government should be encouraged to begin a phased move towards denationalizing property rights and permitting formal land markets in areas marked by relatively high land competition and capable state institutions. At the same time, the government should focus on building capacity within institutions such as DINAGECA. It should also streamline procedures for securing rights in property, especially the registration process.
- ♦ The government should consider instituting a co-titling program for entire communities which would obviate the need for communities to go through the time-consuming and confusing process of first forming a formal association.
- ♦ The government should freeze the granting of land concessions until a new land policy has been formalized. In addition, to discourage unproductive land speculation, it should consider a sizable land tax which penalizes large unproductive holdings.
- ♦ The government should be encouraged to decentralize administrative authority over land. In particular, the 1994 Municipalities Law needs to be clarified, especially with regards to issues of taxation and spending authority. In addition, even if the government decides to pursue a gradualist approach which sets minimal conditions for achieving municipality status, the government should host local elections and begin devolving power to the selected municipalities in 1997.
- ♦ The government should continue its efforts to integrate customary institutions and forms of evidence into the statutory system. It should also consider creating a secondary-level court or tribunal which would allow disputants to present either customary or statutory evidence to support their claims and thereby serve as a bridge between community-based and statutory tenure systems.
- ♦ A national Bill of Rights should be considered which articulate the rights and obligations of each individual and group. Particular attention should be focused on protecting the rights of historically disadvantaged groups, especially women. The Bill of Rights should include the power to litigate against the state (at all levels) or any other party (including traditional structures) that contravenes the rights expressed in the bill.
- ♦ The creation of municipality-level participatory land commissions should also be considered. These would: (1) permit the variety of different customary tenure systems to be accommodated within the parameters of the national code, (2) advance the democratization process in a more localized context, and (3) protect the rights of groups and individuals—particularly women—as specified in a national Bill of Rights.
- ♦ Donors should also undertake effort to improve smallholders' and customary authorities' awareness of the land law and measures they can take to secure land titles or otherwise protect their individual or community interests. Beyond awareness-raising, donors should encourage the emergence of groups within civil society (especially groups of smallholders) which can develop informational, material, and organizational resources for purposes of protecting their groups' perceived interests.

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# NAMIBIA COUNTRY PROFILE

by Jyoti Subramanian

## Executive summary

Dispossession of the indigenous people of Namibia was a central feature of colonial rule. The ethnic groups inhabiting the central Namibian plateau (principally the Herero, Nama, Damara, and San) were forcefully expelled to make way for colonial settlers. At independence, some 45% of the total land area and 74% of the potentially arable land was owned by white commercial farmers who comprised less than 2% of the total population. With the advent of independence, expectations of redistribution were widespread. Although SWAPO never proposed full-scale nationalization of land in its 1989 election manifesto, it did commit itself to transfer some land from the few who held too much to the landless majority. Nearly four years after the departure of South African colonial forces, however, the formulation of a program of land reform is proceeding very cautiously and without widespread public debate on the issues.

## National policy and legal framework

At 82.4 million hectares, Namibia's total land area makes it one of the larger African countries. It is, however, also the driest country in sub-Saharan Africa, with all except the northeast receiving a mean rainfall of less than 400 mm a year. Below the 400 mm level rain-fed cultivation is possible only on a small scale and at high risk of crop failure. Stock farming with domesticated animals or wildlife, hunting, and gathering are the main forms of land use. Namibia has a population of 1.4 million, the distribution of which is heavily weighted toward the northern Communal Areas (CAs).

Rights to land have commonly been assigned to four categories: state land, used for nature conservation, game parks, and military bases; town land, where standard concepts of state, municipal, and private ownership apply within proclaimed boundaries under statute law; commercial farmland, which refers to all freehold agricultural land; and communal land, which groups together all land reserved by the German and South African colonial administrations for the exclusive use of indigenous Namibian communities.

About 44% of the country is freehold land which is sparsely settled. The status of freehold rural property is regulated by the Namibian constitution and the statutory tenure system, which states that all natural resources (including land) belong to the state if they are not otherwise lawfully owned. The overwhelmingly majority of freehold agricultural land is in private ownership. These freehold farms, which are virtually all ranches focused on extensive livestock production, are surveyed and have title deeds. While subdivision of farms is rare, multiple ownership is commonplace and acts as a protective device against the risk of rain-fall failure. Rural freehold land is regarded as a potentially major resource for land reform, and the new Agricultural Land Reform (ACLR) Bill is likely to become the chief instrument of acquiring rural freehold land for just this purpose. The ACLR Bill would vest in the state a general right to acquire agricultural land, which is defined to exclude proclaimed urban areas, resettlement schemes, and all land already in state ownership. "Underutilized" land (agricultural land which is not substantially being used for agricultural purposes) is also allowed to be taken over by the state. The state has the power to buy land on a "willing buyer-willing seller" basis.

Another 43% of Namibia is communal land, most of which is unsurveyed and unfenced, lying mainly in the north of the country. A fifth of communal land is not suitable for any kind of farming. The Namibian state inherited ownership of land in all the CAs at independence. Although inherited colonial legislation provides the president with wide powers to administer communal land, CAs continue to be allocated by traditional authorities

under differing customary rules in the absence of any functioning state mechanism following the dismantling of colonial regional institutions. Traditional pastoral and mixed farming systems dominate these areas, where at least half of the indigenous population lives. Although there are local variations, unenclosed grazing land is generally available to all as open access commonage. Most of the CAs in the south have been converted into de facto freehold and leasehold areas.

The remaining 13% of Namibia is state land, which is too dry for farming; much of it is leased for diamond mining or set aside as national park.

In June 1991, a Lands Conference was held in Windhoek to discuss the land question in Namibia. Beyond the establishment of a number of guiding principles, however, the conference provided no mandate for future action. The lack of urgency in addressing land issues in Namibia infers that land reform is not a top priority for the SWAPO government at present. Some believe that the consultative process served to buy time for the government to consolidate its rule.

Although none of the conclusions established at the conference have yet been implemented, they nonetheless are understood to broadly have the support of the current government. A summary of some of the relevant resolutions follows:

- ♦ As provided by the constitution, all Namibian citizens have the right to live wherever they choose within the national territory. In seeking access to communal land, applicants should take account of the rights and customs of the local communities living there. Priority should be given to the landless and those without adequate land for subsistence.
- ♦ Full restitution of claims to ancestral land is impossible, given the complexities in redressing them.
- ♦ Disadvantaged communities and groups (such as the San) should receive special protection of their land rights.
- ♦ No one may be forced to leave communal land, though large communal farmers with certain number of livestock should be encouraged to acquire commercial land outside communal areas. In the future, farmland used by large farmers in communal areas should be reduced to make space for small farmers.
- ♦ Commercial farmers should not have access to communal grazing land, and communal farmers who acquire commercial farms should not be allowed to keep their rights to communal grazing land.
- ♦ Very large farms and ownership of several farms by one owner should not be permitted in the future, and such land should be expropriated.
- ♦ CAs should be retained, developed, and expanded where necessary.
- ♦ Foreigners should not be allowed to own farmland, but should be able to use and develop it on a leasehold basis.
- ♦ Land owned by absentees should be expropriated.
- ♦ The role of traditional leaders in allocating communal land should be recognized and should work in coordination with regional and local government institutions in the area of land administration.
- ♦ Criteria used to determine which land should be appropriated for redistribution include absentee ownership, the underutilization and undercapitalization of land, and the multiple ownership of farms. Some 7 million hectares of land (roughly 10% of suitable farming land) have been identified under these criteria. The farms identified, however, are scattered throughout the country, which limits options for extending existing CAs.

Although it was concluded that CAs should be retained, developed, and extended where necessary, and that fencing of land by wealthy stock owners be halted, the Ministry of Agriculture is going ahead with credit schemes

to help farmers subdivide communal land in an effort to reduce poor environmental management. In addition, the transformation of traditional stock keepers into commercial farmers and the replacement of customary forms of communal land tenure with individual title has become common. These actions are based on the assumption that traditional techniques of pastoral and livestock management are environmentally destructive and that improvements in production and land management can only be achieved on fenced private farms. They also have to do with the fact that national elites are actively grabbing land via range enclosure in Ovamboland.

### **Replacement and adaptation of indigenous tenure**

Four main modes of land use were established before colonialism: hunting and gathering, small stock pastoralism, cattle pastoralism, and mixed farming. San hunter-gatherers, organized into small highly mobile communities, were the original inhabitants of Namibia. They occupied most of the interior, including the Kalahari sandveld and the inner Namib Desert. Each extended family group had exclusive use of an economic domain with gradually shifting boundaries between groups.

The Ovambo people are also a group indigenous to Namibia. There were complex and overlapping rights to land and other natural resources in Ovambo society. Land in each settlement cluster was formally vested in the king or clan elders on behalf of the community and administered by a hierarchy of territorial headmen. Households gained the lifetime use right to their arable fields and had the right to clear new land. Household heads were usually men, who gained the lifetime use-right to the family homestead and fields. Women occupied a subordinate position in Ovambo society but had substantial rights to property and land. They were entitled to their own plots within household fields and had the right to control output for family consumption. Local commons in pasturage and natural vegetation were common property which were loosely regulated on a neighborhood basis. Wells and forest belts were open access resources under community supervision.

The disappearance of the colonial administration combined with the lack of any new structures authorized to deal with land has led to the re-emergence of traditional leaders in allocating land in the CAs. The rights of traditional leaders to allocate and administer communal land are generally held to fall under customary law. The constitution gives explicit recognition to customary law so long as its content does not offend the constitution. The content of customary law affecting land rights and administration can be expected to vary greatly between broad zones and within small distances.

### **Tenure constraints and opportunities**

Production in the commercial farming sector dominates agriculture's contribution to gross domestic product (GDP) and to exports, which fluctuate in response to irregular rainfall and periodic drought. Although agriculture's contribution to GDP is small when set against mining, the agricultural sector as a whole is the country's dominant employer. It has been estimated that up to 70% of the country's population may be directly or indirectly dependent on agricultural production for their livelihood. Up to 90% of the population in the communal areas are engaged mainly in subsistence production, while the commercial agricultural sector is the country's single largest provider of wage employment. With capital-intensive and low-productivity farming systems co-existing in a resource-poor environment as in Namibia, sharply conflicting tenure perspectives are likely to emerge. On the one hand, surpluses from high-cost high-output agriculture contribute to national food self-sufficiency and exports. On the other, subsistence farming supplies the basic needs of far more people.

A sound land tenure system requires that rights in land be defined so that they may be defended and security of tenure guaranteed. For this reason, it is important to note that the customary tenure systems of the northern communal areas provide a form of social security for the people. The concept of usufruct as use only, and only for a lifetime, has shifted toward more stable private "ownership." Improvements in the form of fencing and housing undermine the possibility of headmen to evict "owners" or to change their allocations in the case of vacancy or nonuse. The prevalence of out-migrating labor further implies that it has not been customary to



reallocate unoccupied plots. In sum, tenure security over arable land is increasing in subtle but significant ways. The insecurity that does exist in communal areas is due primarily to the ambivalence of the state toward making/implementing policy with regard to land (especially with regard to the enclosure of communal pasturelands) and the de facto encouragement (acceptance) of land grabbing at the expense of the majority. There is little documentation regarding the extent that land rentals or interhousehold or intrahousehold land transfers are taking place, in what conceptual and tenurial framework chiefs and headmen are allocating pasture for enclosure, or where headmen and elders are “changing the rules” to accommodate land shortages, if at all.

Colonial policy on wildlife management did more to encourage local communities to regard wildlife as a commercial benefit to the white minority, as opposed to an economically valuable resource which they themselves could make use of. As a result, wildlife populations declined in most CAs, due primarily to the pressure of expanding settlement. Upon reviewing relevant legislation in the constitution, which commits the state to actively promote and maintain the welfare of the people by adopting policies aimed at the utilization of living natural resources on a sustainable basis, the Ministry of Environment and Tourism has initiated a program in support of the sustainable utilization of wildlife resources. A major objective is effective wildlife conservation in the CAs coupled with sustainable income generation for local communities. Community-based wildlife management (CBWM) pilot programs are currently under way in the eastern Bushman CA and the eastern Caprivi CA. In areas where CBWM has already been attempted, there have been marked improvements, such as the nongovernmental organization (NGO)-run program in the Damara CA, which has been going for a decade. Local communities have made gains in terms of concession fees from both trophy hunting and safari operators as well as from meat supplied by controlled culling. Concession fees are channeled directly into community projects.

Since independence, traditional authorities no longer have the power or ability to effectively administer land tenure and administration, and as a result, the growth of individual tenure in CAs has intensified rather than relieved pressure on the remaining communal range. The risk of long-term degradation is heightened by intensified pressure, since owners of fenced farms still graze their livestock on communal rangeland in order to maximize their benefits and reduce risks. In addition, illegal fencing of land by wealthy stock owners (in Ovamboland and Hereroland) has adversely impacted the poorer sections of these communities. Legal enforcement machinery is lacking to prevent these illegal enclosures as well as other forms of encroachment in communal areas.

Herd movement is one of the principal techniques employed by African livestock producers to exploit environmental heterogeneity. The preservation of herd mobility requires the legal recognition of existing customary tenure arrangements, especially those which provide for the seasonal use of a wide variety of ecological resources. Environmental degradation frequently accompanies sedentarization due to an intensification of activity and overgrazing in one area. Thus, formal programs of land-use planning should attempt to coordinate movement and regulate access by different user groups, rather than restrict movement.

Sustainable range management is only possible by linking the cultural values and existing social organization which enable pastoral mobility to be continuously negotiated and maintained with the imperatives of livestock farming in a complex and highly variable environment. The recognition that it makes sense for communal farmers to expand their resource entitlements rather than reduce their herd size during times of stress is implicit to understanding why group ranches and grazing schemes have failed throughout dryland Africa. There is a clearly identified need to formulate an appropriate legal and administrative framework to regulate land use and tenure and to safeguard and define the rights of land users in communal areas.

Currently, the groups most vocal in their claims for restitution of land are those who were forcibly dispossessed of their land during colonial rule. Unlike the Ovambo communities in the north that practice mixed livestock and grain farming, farmers in the center and south of the country are predominantly pastoralists whose immediate needs are for additional grazing. These ethnic groups are numerically small and comprise no more than

6% of the national population. They also represent a political minority who have predominantly supported Namibia's opposition parties; SWAPO is governed primarily by the Ovambo, who have more of an immediate interest in Ovamboland in the north. Falling outside of the mainstream of ruling party politics, it can be assumed that these groups do not represent an important part of the SWAPO constituency, and that their claims are not a matter of immediate concern. Since their survival depends on their access to the land which they have historically occupied, these groups might require special protection, especially in light of the government's priorities. Furthermore, the needs of southern Namibians are not being met since the national leadership is heavily partaking in land grabbing in Ovamboland via range enclosure.

In Namibia, as elsewhere in southern Africa, arguments about land reform tend to be about the redistribution of formerly white-owned freehold ranches to blacks rather than to the landless. Not surprisingly, the winners in newly independent Namibia are the black elite. Their position is reinforced by the belief that the only environmentally sound way to manage the land is to subdivide it into ranches, since traditional open-range pastoralism is seen to be environmentally destructive. This opinion is sustained by the conservative political leadership.

NGOs play a strong role in communal areas by urging the government toward land reform, albeit with a considerable amount of tension, as demonstrated by a 1995 NGO conference on the lack of progress in land reform. The formulation of useful land tenure policy for the communal areas has, after all, not yet taken place, and some are beginning to question the political will of the current government to do so. This is especially the case since those who make policy are the same as those who are in favor of commercialization of the communal lands and may be involved in illegal fencing.

Women form the majority of agricultural producers in the CAs, but suffer discrimination under both customary and statutory law and have been historically marginalized. Arable land is allocated to individuals as heads of household, and formal rights are usually vested in men rather than women, who gain access as wives. Significant rights within the household do exist, however, for women to own crops and, in some cases, cropland. In the last few decades, more women have been acquiring land in their own right. The 1991 Land Conference resolved that women should have the right to own the land they cultivate and to inherit and bequeath land and fixed property. All discriminatory laws and all discriminatory practices that disadvantage women should be abolished or amended with immediate effect. In addition, women should be fairly represented on all future district councils, land boards, or other bodies which deal with the allocation or use of land in CAs.

### **Present policy position and reforms**

It appears that the terms of importance attached to issues of land reform by postcolonial leaders are: (1) factors relating to perceived personal and tribal self-interest; (2) the need for racial justice and for restoring land to Africans (arguments about land reform tend to be about the redistribution of formerly white-owned freehold ranches to blacks rather than the landless); and (3) those factors relating to social equity. Environmental arguments tend to be set aside or exploited in an opportunistic way.

Although two of the conclusions made at the Land Conference were that CAs should be retained, developed, and extended where necessary and that fencing of land by wealthy stock owners should be halted, the Ministry of Agriculture is going ahead with credit schemes to help farmers subdivide communal land in an effort to reduce poor environmental management. In addition, the transformation of traditional stock keepers into commercial farmers and the replacement of customary forms of communal land tenure with individual title have become common. These actions are based on the assumption that traditional techniques of pastoral and livestock management are environmentally destructive and that improvements in production and land management can be achieved only on fenced private farms. The growth of individual tenure in the CAs, however, has intensified rather than relieved pressure on the remaining communal range. The risk of long-term degradation is heightened

by intensified pressure, since owners of fenced farms still graze their livestock on communal rangeland in order to maximize their benefits and reduce risk. In addition, access is made more difficult for small farmers.

### **Implications for policy dialogue and programming**

Reform efforts will proceed on two fronts. There will be some movement toward ranch reform, though it is not clear how extensive this will be. The donor community should support this process and seek to contribute directly to a more rigorous thinking-through of alternative approaches. It is not at all clear that subdivision of existing ranches and distribution to reform beneficiaries is ecologically sound; merger of ranches to create still larger units with cattle of reform beneficiaries grazed on a common property range owned and regulated by an association might be a more prudent approach.

The second reform front concerns the communal areas. There is little reason to be optimistic that government will effectively implement programs to stop the land grabbing there, whether a reform law is passed or not. The most promising reform approach in these areas would involve the devolution of all authority with respect to land to provincial and local authorities.

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## SOUTH AFRICA COUNTRY PROFILE

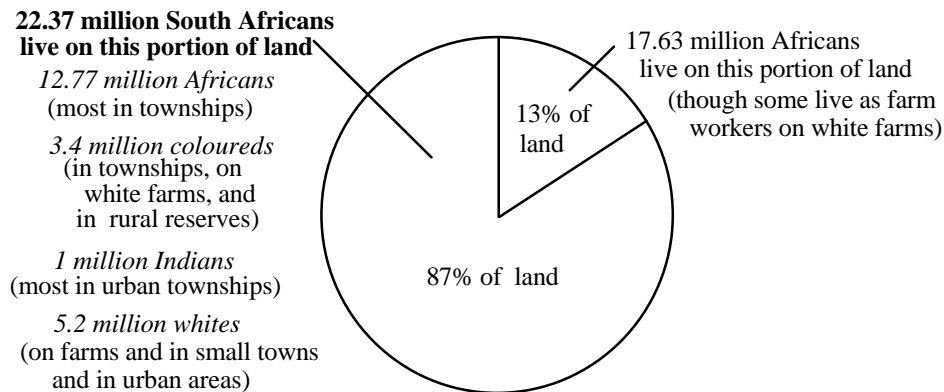
by Eva Jensen

### Executive summary

The Government of South Africa has begun to implement a major land reform program aimed at more equitably distributing the currently highly skewed racial distribution of land. From 1913 to 1992, the majority black population of South Africa was prohibited from owning land and excluded from participation in the land market. The government says it intends to redistribute land and natural resources in a way that establishes security of tenure for all South Africans, reduces poverty, and contributes to economic growth. The government's demand-driven and rights-based approach to tenure reform intends to build upon local initiatives, capacities, and relations. However, the government will commit resources to the effort: land acquisition/settlement grants, planning grants, state-owned land, and state-purchased land. It is not clear, however, whether the urban-based African National Congress (ANC) will commit enough resources to land reform in the light of other pressing needs. Public policy debates and program initiatives related to land reform will significantly impact the long-term development of not only South Africa, but all of Southern Africa.

### National policy and legal framework

According to the apartheid race classification system, about 76% of the population is African, 13% is White, 8.5% is Colored, and 2.5% is Asian.<sup>12</sup> On the basis of race, South Africa's population of approximately 40 million people is unevenly distributed over approximately 114,051,900 hectares of land. Colonial land dispossession and legislation, South Africa's Land Acts of 1913 and 1936, and apartheid laws solidified white control of 87% of South Africa's land and created extreme inequities between the white and black population.



### LAND AND POPULATION DISTRIBUTION

<sup>12</sup> The Population Registration Act of 1950 classified the population of South Africa according to four race-based categories: "white," "native" (or Bantu or African), "colored" (people of mixed race), and Indian (people of Asian decent). In this paper, the term "black" is used to refer to all who are disenfranchised and not referred to as "white"; it includes all the people officially classified as "native," "colored," or "Indian". Where it is necessary to distinguish between the different black population groups because of the differential impacts of apartheid, the terms "African," "colored," and "Indian" will be used.

Millions of black families were uprooted from their land and forced to live in overcrowded and resource-poor *bantustans*, reserves, or townships, which acted as pools of cheap migrant labor for white-owned farms, mines, and industries. Black people were stripped of their landholdings and rights. Successful black farmers were forced to seek employment as farm laborers or move to *bantustans* or townships. There, black people were not allowed to own land outright. They were issued residential and land use permits or leases to the land which belonged to trustees, generally the state or the South African Development Trust (SADT). The majority population became tenants on landholdings that were unable to sustain them. A small minority of black people retained freehold rights to land that has subsequently become overcrowded as well because of the severe land shortage and land hunger that exist in South Africa.

White property rights and claims consist largely of legally recognized title: title deeds, mineral rights, and leases which were originally established by the Dutch and British colonial governments. These legal forms are supported by laws, regulations, and institutions. In contrast, colonial and apartheid legislation prohibited black people from owning or leasing land, even in the *bantustan* areas, where most black rights to land exist in forms that are vulnerable and insecure. Blacks hold land in three basic categories: state-administered tenures, communal tenure, and freehold tenure.

*State-administered tenures* were implemented in *bantustans*, reserves, and townships. In urban areas, black-occupied land was owned by the state or white local authorities and occupation rights were granted by Certificates of Occupation or lodgers' permits. Land in the former *bantustans* was owned by the state, held in trust by the government, and regulated by centrally determined rules. Through a variety of systems, control of land was taken away from communities and granted to central administrative authorities: chief, headman and council, agricultural officers, or government ministers. In African rural areas and in 23 colored reserves, land was pegged and divided into residential, arable, and grazing areas. Residential and arable plots were allocated to individual families; grazing land was to be shared. Beginning in the mid-1980s, Deeds of Grant and Rights of Leasehold, both less than ownership, were introduced. Following the former government's 1991 *White Paper on Land Reform*, freehold title was made available to Africans by means of the Upgrading of Land Tenure Rights Act 112 of 1991 and the Less Formal Townships Establishment Act 113 of 1991.

*Communal tenure systems*, community-controlled landholdings which are flexible and include a variety of tenures, survive in some parts of the *bantustans* and tend to operate as informal systems. Within communal tenure systems, community membership conveys landholding rights. In theory, and in practice in some places in South Africa, the community retains the privilege to approve of any outsiders who want to obtain rights to land. Communal tenure systems were transformed by the postcolonial construction of customary law which gave chiefs the power to allocate land to individuals and families and failed to recognize the rights and power of the community. In some areas, chiefs are moving to formalize greater control over land, treating land as their private property. At the other extreme, some communal tenure systems have individualized property rights and allow for individual buying and selling.

*Freehold tenure* for blacks has survived to a limited extent in South Africa. Under severe demographic and social pressure, most privately owned black land carries tenancies, with tenants living under informal tenancy leaseholds in densely populated informal settlements, particularly in peri-urban areas.

In white-owned rural areas, black families live on freehold land as labor tenants and farmworkers. Though statistics are unreliable, it is estimated that there are approximately 3 to 6 million farmworkers, both permanent (mostly men) and part-time (many of them women and children), employed by white commercial farmers. On a minority of commercial farms, labor tenant communities have survived. They are estimated to be several thousand and are located primarily in KwaZulu-Natal and Mpumalanga.

Historically, land administration was clear and record keeping was well documented in white areas, while administration in the black areas was chaotic. In the townships, colored reserves, and *bantustans* different laws,

administrative systems, and responsible authorities existed to administer land matters. The existing legislative framework for land development is inappropriate, apartheid based, and duplicative. Over 12,000 pieces of land-related legislation apply to the former reserves and SADT land. In many areas administration and record-keeping systems have broken down.

Today, the national Department of Land Affairs (DLA) has been given responsibility for setting national land policy and embodying it in legislation as well as establishing, implementing, and funding land programs. The national government is also responsible for supporting the Commission on the Restitution of Land Rights in its efforts to restore land or otherwise compensate people who were dispossessed of their land rights under racially discriminatory laws and practices.

Provincial governments have concurrent responsibilities with national government with regard to critical areas that affect the sustainability of land reform, including development planning. Provincial steering committees are being created to plan, implement, and support land reform. However, land administration functions remain fragmented among disparate departments at national, regional, and local levels. There is a lack of clarity about intergovernmental relations, accountability, and commitment to devolution of authority to local government. The long-term aim of DLA is to establish a decentralized land administration system that is based at third-tier government levels, operating on the basis of a one-stop land services office, conveniently accessible to local people within district local government.

Extensive capacity-building in government is needed, but in the meantime, DLA is forging successful partnerships with NGOs in support of land reform. The National Land Committee and its regional affiliates and the Legal Resources Center have had a long history of land rights advocacy. While they themselves have limited capacities, they have established a strong base of trust, knowledge, and experience through their support of communities in resistance against forced removals. Some are already assisting in land restitution claims and redistribution pilots.

The pre-eminent policy challenge is to reconcile the need for land reform with creating an atmosphere in which property rights are respected. The 1996 Constitution of South Africa includes a property clause which provides for the protection of property and expropriation only “for public purposes or in the public interest; and subject to compensation, the amount, timing, and manner of payment, of which must be agreed, or decided or approved by a court.” In addition, the constitution specifies “the public interest includes the nation’s commitment to land reform” and indicates “[t]he State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.” The national land reform program consists of three main thrusts:

- ◆ *Restitution:* The goal of the land restitution policy is to restore land and provide other restitutive remedies to people dispossessed of their rights in land since 1913 under racially discriminatory laws and practices. The Restitution of Land Rights Act, 1994, specifies the procedures for implementation of the program. People must submit their claims before 1 May 1998 to one of the four Land Claims Commissioner’s offices. The Land Claims Commission and Court proposes to finalize all claims by 1 May 2000. A 10-year period is allowed for the implementation of all court orders. As of March 1996, over 6,800 claims had been lodged, many of them group claims representing multiple claimants.
- ◆ *Redistribution:* This reform is to proceed on a willing seller–willing buyer basis. The plan is to facilitate such redistribution through the provision of government grants and services. Eligible households may apply for a maximum R15,000 Settlement/Land Acquisition Grant in order to obtain land. Based upon voluntary transactions between willing buyers and sellers, over the next 10-year period, the government claims rights in land will be secured for a significant proportion of eligible citizens. A variety of tenure forms will be available, including holding of land as individuals, as communal property associations, and as traditional communities.

- ◆ *Tenure reform*: The intent of the tenure reform program is to extend security of tenure to all South Africans under diverse forms of tenure. Government says it is committed to converting all permit-based and informal systems of landholding into legally enforceable rights to land. The legal position would be brought into line with practices and realities that exist on the ground. Pre-existing rights and interests, both formal and informal, will be used as a basis for clarifying and formalizing land rights. Multiple and overlapping rights to specific parcels of land will have to be identified and defined, a challenging task. Additional land under the land reform will be required in order to accommodate the rights of all stakeholders.

### **Replacement and adaptation of indigenous tenure**

Contemporary black “communal” tenures in South Africa were distorted by colonial and apartheid policies. Chiefs administered unpopular colonial and apartheid policies and were in the process deeply compromised in many communities. Colonial laws and governments imposed their ideas and models on African practices. Indigenous tenure systems in some areas may involve processes of consultation which are democratic in spirit, but in many cases characterized by undemocratic and arbitrary control by chiefs. In KwaZulu-Natal, traditional authorities have become heavily politicized. Their opposition to the present central government has complicated the development of national policy on indigenous tenure systems and authorities.

There are aspects of communal tenure that have been valued and retained by local communities. As discussed above (existing tenures) these systems have endured, in spite of the legislative tenures imposed on communities, because they have served the needs, values, and interests of people in various ways, when the central legal system provided them no other options. One of the challenges of land reform is to find ways of preserving the benefits of communal tenure while eliminating the abuses which have occurred under it.

### **Tenure constraints and opportunities**

Research conducted in the early 1990s found that 49% of the South African population is living in poverty, with blacks and females disproportionately represented among the poor. Black South Africans living in rural areas have been forced to diversify their income strategies in order to live. The three most frequently attempted livelihood tactics are: claims against the incomes of migrant-labor household members (38% of all households), employment in the informal or secondary economy (37%), and agricultural production (36%). Pension and social welfare claims are the fourth most important survival strategy (20%). Agricultural production provides only 10% of the income of rural African households (an average of R91/month); however, it is the third most popular source of livelihood and is a particularly important source of income for women.

South Africa has achieved national food self-sufficiency. Field crop production exceeds consumption rates by approximately 30%. Both field crops and horticultural products are exported. Livestock production, red meats, and industrial milk production are close to self-sufficiency, but some products are imported. Food security, however, has not been achieved. Hunger and malnutrition rates among the black population are high with 2 million people identified as malnourished. The skewed distribution of resources and income results in unbalanced food consumption and low household food security levels for many black people. The solution to these problems does not lie wholly in the agricultural sector, but in enhancing the already varied streams of income of rural households.

Rural land-use planning in South Africa has been strongly polarized. One system was developed to serve the needs of large-scale commercial farming. Approximately 77 million hectares of land are held by 50–55,000 white farmers engaged in commercial farming and agribusiness. Of these, 30% are responsible for 80% of the country’s agricultural output. This land-use system has stressed exclusive land uses, with the Subdivision of Agricultural Land Act (Act 70, 1970) being the main instrument to implement zoning regulations and prevent land subdivision (DLA 1996, p. 17). Generous subsidies to scale have resulted in high levels of productivity for large-scale operations.

The other rural land-use system, small-scale farming, was devised for the overcrowded reserves and bantustans. Where it has survived, it has been forced to conform to bantustan policies and “betterment” planning. In some areas this has led to distant arable lands being abandoned in favor of intensively cultivated gardens near the homestead, often on plots too small to produce significant benefits. While the average size of white farms in South Africa is over 1,000 hectares, the average black farm is 2 hectares. In many crowded areas grazing and arable land has given way to residential needs. Black farmers have received little support from state agricultural extension.

The agricultural sector contributed only 4.6% to the gross domestic product in 1994, but because of extensive forward and backward linkages, agriculture has a significant impact on the economy. In spite of the fact that employment rates have dropped, it still employs a large work force. Agriculture makes up approximately 35% of the income of the poorest black rural population.

The Ministry of Water Affairs and Forestry is the lead ministry on most environmental issues and is currently conducting a review of legislation and regulation on water rights (Water Act, Act 54 of 1956) and forestry.

Water is a scarce resource in South Africa. Historically, water rights were allocated in agricultural areas, with the rights of farmers along rivers protected. With an increase in demands from the industrial sector and the growth of cities and towns, the Water Act, 1956, was adopted to ensure equitable distribution of water between the rural agricultural sector and the urban industrial sector. Water law has been written in the interests of commercial agriculture and industry and little attention has been given to the customs and practices of the majority population with regard to water rights.

Commercial forest plantations cover 1.2 million hectares, 1% of South Africa’s land surface, compared to 0.14% covered by indigenous forest. The expansion of commercial forestry has often involved forcible removal of black residents from the land, and the rate of growth of the industry, at 4% a year, poses potential problems in regard to its future land demands. Conflict may arise over plantations on South African Development Trust land. There is a need to explore new participatory models of social forestry which provide direct benefits to local communities. The Department of Water Affairs and Forestry held a National Forestry Policy Conference in March 1995 and has issued a policy discussion document which calls for a new Forest Act.

Turning to broader conservation efforts, land in state forests, national parks, provincial nature reserves, and private farms exists alongside overcrowded rural areas of poverty and environmental degradation. In some cases, people were dispossessed of land and/or forcibly removed in order to create nature reserves. Fences have denied people access to water and other natural resources, sources of traditional medicine, and craft material. Parks have experienced tense relations with neighboring communities, which question the importance of protected areas when they experience great need for natural resources. In some areas, consideration is being given to establishing game reserves as part of the rural livelihood strategies for beneficiaries of redistribution. Game farming has already become a lucrative business for many white landholders.

Overstocking and environmental degradation of grazing commons in South Africa is a concern of many. Indeed, rural pastoralists need and desire additional land for grazing. The declining availability of grazing land in the *bantustans*, resulting from the need for residential sites, has contributed to high stocking rates which are often criticized as overstocked and contributing to erosion and degradation of the land resource. Cousins’ review of more recent research leads him to question the reliability and usefulness of standard stocking rates. Heavily grazed communal land has demonstrated resiliency and a capacity to support larger herds than previously accepted (Cousins 1994, pp. 20–22).

Land reform in South Africa is one of the outcomes of democratization and the first democratic elections which were held in 1994. Today, the focus of democratization efforts is on local governing structures, with the first elections under the new dispensation held in 1996. The lack of popular experience in local government is a



legacy of apartheid, and management and administration training programs are needed. Lack of adequate government services are a major constraint in land reform implementation.

Traditional leadership and authority in many areas is not recognized as legitimate or democratic. Many chiefs and community councils are under pressure to cede their power and authority to new local government structures. On the other hand, there are traditional leaders who are eager to retain their positions of authority and leadership, and in some areas they have broad public support. They seek to retain their traditional role in allocating land and the power that comes with that authority. Women are particularly disadvantaged by traditional governing systems and the tenure systems administered by chiefs and community councils. Tensions between the role and functions of traditional authorities and those of elected local governments are likely to persist for some time. Where traditional authorities or other more democratically chosen local authorities abuse their powers, people now have constitutionally established equity rights to which they can appeal.

Under communal tenure, land rights are usually granted to married men, who hold the land with their families and operate their own production. Inheritance by male heirs is usually automatic, though land may be given to married or widowed daughters. A widowed woman in most cases is allowed to stay on the homestead, under the tutelage of a male relative of the husband. She continues to occupy her homestead only with the good will of her husband's family. Generally, unmarried people are denied access to land. The legal position of many white women is also unsatisfactory. If married in community of property, the usual case, the wife is regarded as a perpetual minor and incapable of dealing with her own land.

By the 1996 South African Constitution, SECTION 9(1) of The Bill of Rights: "Everyone is equal before the law and has the right to equal protection and benefit of the law." The constitution prohibits unfair discrimination "directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth." The equity clause provides women the possibility of gaining independent access to land, unmediated by their relationships to male kin. The critical challenge will be translating these abstract rights into benefits for women.

In the design and implementation of land reform, issues related to gender and the status of women are critical. The DLA in its *Green Paper on South African Land Policy* identifies women as a group whose needs must be specifically addressed and calls for the removal of all legal restrictions on participation by women in land reform.

### **Present policy position and reforms**

There are several debates about the most effective means of redressing the injustices and inequities of apartheid-based land distribution. They include issues related to the market-based approach to land reform, the necessity of supporting communities in their expression of need, the level of financial and development support that land reform beneficiaries should receive, the democratizing of local government, the role of traditional authorities, and the viability of various group ownership schemes through which most people will receive land rights.

The market-based approach to land reform necessitates the provision of support to individuals and groups or communities in their expression of need. The capacities of government and NGOs to facilitate local capacity building, support people in their land rights claims, and conduct tenure research must be enhanced through training and additional recruitment.

The market-based approach to land reform is critiqued because the majority population in South Africa does not have the resources to participate freely in a land market. The government is responding to this reality by providing a maximum R15,000 subsidy to all households with an average income less than R1,500 per month. The intent of these grants, as well as settlement and district planning grants and facilitation services, is to make it

possible for the poor to participate in the land market. Questions about the adequacy of the grants and the sustainability of agrarian reform and rural economic development persist, given the poverty of the beneficiaries.

While the state may compulsorily acquire land for land reform, the formula appropriate for “just compensation” is hotly debated. Private procedures for market valuation have an upward bias. Government is suggesting that use value (the value that a property has for a specific user) in the case of residential land and productive value (the present value of the income that can be earned) in the case of agricultural land be applied in the pricing of public land for redistribution and housing programs (DLA 1996, p. 69).

Past agricultural policy has neglected and undermined small-scale farming. With the Department of Land Affairs and Agriculture now the responsibility of a single minister, the opportunities to coordinate efforts in support of the land reform should be enhanced. Both within and outside the reform sector, agricultural policies, and particularly credit policies, must be modified to service small-scale farmers, including women. Research, training, education, and extension programs appropriate to small-scale farming need to be established.

The Communal Property Associations Act of 1996, modeled on community land trusts, provides the possibility for reform programs to deliver land to groups of purchasers, with title held communally but use rights to at least some of the land held individually. The performance of these models must be monitored to ensure that the landholding or governing body is supported by and representing the interests of all members. Group ownership involves complex management responsibilities and government will need to support these efforts with training. There is some confusion between models of group landowning and models of governance, even among DLA staff.

### **Implications for policy dialogue and programming**

As the South African government continues to implement its land reform program, it should be supported by international partners in its efforts to establish an equitable and nonracial distribution of land and natural resources, decentralize land management to provincial and district levels, develop local capacities, and expand socioeconomic growth. Specific recommendations to support this process include:

1. Affirm and support the demand-driven process of land reform by funding the expansion of local community-organizing and -training capacities of NGOs which have been involved with black communities in land rights and land reform efforts. Creating and supporting top-down and interventionist approaches will undermine local capacity building, economic development, and the creation of social stability.
2. Fund land tenure research initiatives which are necessary to identify the rights that people have and the resources required to ensure those rights.
3. Fund research and monitoring initiatives which will identify the benefits and needs of group landownership schemes through which the majority population will receive land rights. It is necessary to identify and provide the support and resources needed to sustain these community-based initiatives if they are to become viable socioeconomic development options for the people of South Africa.
4. Support government policies and fund programs that will enable those historically excluded from agricultural credit, extension, training, production, and markets in order to facilitate their entry into the market and expansion of the smallholder agricultural sector. This will necessarily require shifting resources historically allocated to highly capitalized commercial agriculture to other programs.
5. Support and fund other grassroots community development initiatives that will enable people to remain on their land and develop viable rural communities, rather than turn to urban migration which often results in failed job-seeking initiatives and exacerbates urban poverty and development problems.

6. Support and fund the initiatives of rural women's movements which advocate women's rights and their full participation in social, political, and economic development. Such initiatives will be required if the legal rights which women have obtained are to be realized in their daily lives.

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## SWAZILAND COUNTRY PROFILE

by Jyoti Subramanian

### Executive summary

The traditional land tenure system of Swaziland retains considerable vitality, in part because the traditional polity as a whole has been changing only gradually. The dual system of land tenure governing the country—customary tenure and freehold tenure—can be traced back to the 1900s. Since most freehold tenure is held by white South Africans and foreigners in the form of private property, however, an antipathy toward individual tenure has developed on the part of the Swazis. While the traditional land tenure system has been critiqued by some observers, it has been concluded that for socioeconomic advancement, political stability and sustainable development, both systems have to co-exist.

### National policy and legal framework

Swaziland is a small country in Southern Africa, covering approximately 1,736,000 hectares. It is surrounded by the Republic of South Africa for the most part, except for a small area in the north east where the country shares a border with Mozambique. As of 1993, the total population was estimated at 809,000. There is a 3–30% (191,000 hectares) range of arable land available across the different physiographic regions of the country, and 78% of Swazis are engaged primarily in subsistence agriculture. Of the total land area, grazing land accounts for over 60%, cropland accounts for 11% and commercial forests (owned by large commercial companies which export most of the wood products) account for 6%.

Until the last quarter of the nineteenth century, the Swazi monarchy controlled all the land through chiefs. In the early 1900s, however, the rulers of Swaziland granted numerous land concessions to foreign interests. As a result of overlaps and conflicting claims concerning concessions, in 1907 the British assumed direct administration of Swaziland as a protectorate, and in the following decade effected a tripartite partition of all the land in the country. Land was divided into Swazi Nation Land (SNL)—governed by community-based tenure, Individual Tenure Farms (ITF)—governed by private ownership, and Crown Land. Because Swaziland is a kingdom, the term “Crown Land” is still used, although given the nonbureaucratic, traditional mode of its administration, it is better characterized as SNL under direct control of the king. In the process of land division, approximately 2/3 of Swaziland was lost to foreign concessionaires and private land owners. By repurchasing the alienated land, however, the Swazi nation has been able to expand to about 56.7% of the total land area of the country. The dual land tenure structure permeates the entire economic, political, and social system of the country.

ITF land covers an area of about 750,000 hectares, and comprises roughly 37% of the country. About 3/4 of the freehold title holdings are held in equal proportions between Swazis and expatriates (the majority of whom are white South Africans) and the balance belongs to large companies. Very little individual tenure land is owned by Swazis. Thus, ITF consists of commercial large-scale estates, medium-sized farms and urban areas. Individuals/companies obtain land through the Deeds Registry Office. Owners of land titles can sell or use the land as collateral in order to make investments. The Swazi state has the right to withdraw title in land required for national development, but only after making appropriate compensation. Some ITF land has been returned to the status of Swazi Nation Land, but most lands acquired through repurchase have been retained for state development activities, such as parastatal operations and experimental farms.

Freehold tenure is regulated by Roman-Dutch law and administered by the Deeds Registry Office. Some freehold land is in highly mechanized, totally market oriented modern agriculture, and is said to generate quite a

substantial percentage of the country's export earnings. Primarily large commercial activities are carried out on individual tenure land, such as forest, fruit and sugar plantations. Land of lesser potential serves as seasonal grazing for sheep. Sugar and timber are the principal commodities of ITF, and account for a sizable proportion of total merchandise exports.

ITF is regarded as advantageous because of high productivity, high income returns, and good management and utilization of modern agronomic techniques. Loans can be obtained by owners on the security of lands or buildings. There is security of tenure, and so good farming and conservation practices are possible, as well as the cultivation of long term crops, since one can fence and thus obtain security from one's neighbors.

Although individual tenure land has been held to be the best policy option for ensuring maximum production and development, the system keeps most of the land in the hands of a few people. It has created landlessness and economic insecurity for traditional families. As a result, many disputes have arisen between farmers and squatters, because the latter believe they have the moral right to inhabit the land, having lived there for many generations.

### **Replacement and adaptation of indigenous tenure**

The nation of Swaziland consists of a single ethnic group which practices community-based tenure on Swazi Nation Land. At present, SNL constitutes 63 % of Swaziland. This land is held by the King (he does not own it) in trust for the nation and is controlled through chiefs, who act as the main administrators of the land tenure system. The land is in fact owned by the entire community and can be used by everyone, although it cannot be individually owned, sold, or used as collateral. The chiefs allocate land to homestead heads—primarily males—in their respective areas, who then distribute fields to wives, descendants, kin or even nonfamily members. Each “house” (consisting of a wife and children) in the homestead is entitled to its own fields for cultivation. The majority of SNL homesteads engage in subsistence cropping and livestock raising. Grazing is communal and the location of grazing pastures is determined by the chief on the advice of district representatives.

All Swazi citizens can be allocated land by virtue of membership in a local community, although the manner in which a Swazi is granted land is dependent upon his/her position in the household, determined chiefly by age, sex, seniority and marital status. The size of the parcel of land allocated to individuals is supposed to be based on need and ability, but it is not uncommon for a chief to allocate large expanses of land to himself and his close associates. Since SNL cannot be bought, rights of ownership are derived more from political than economic bases—traditionally, a person pledges loyalty to a chief in return for a plot of land.

Inheritance of SNL held under traditional tenure is governed by community-based law as well, and goes into effect when a homestead head dies. Land rights are normatively passed down patrilineally through the male line. The eldest son of the principal wife in a polygamous household or the only wife in a single household is the main heir, while provisions are made for the younger sons.

The community-based land tenure system, though highly criticized on developmental grounds, is defended by many Swazis as an indispensable element in the traditional polity, and continues as the dominant tenure form for smallholder agriculture. As a member of the community, a Swazi is entitled by right to the nation's resources and productive land. Thus, a Swazi who has tended to his family and social obligations is always ensured of a place of residence as well as a place where s/he is entitled to derive a living from both arable and pastoral land. Swazis fear that individual land tenure would result in the emergence of a landless group, in addition to a loss of power by the King and local chiefs.

### **Tenure constraints and opportunities**

Swazi Nation Land tenure arrangements have been criticized by “developers” on the grounds that they slow agricultural commercialization. It is argued that only 10% of the households produce for the market and that

agricultural production, which accounts for only 12% of GNP, cannot cope with the growing population. Factors contributing to this lack of production are small and fragmented holdings, lack of tenure security, erosion due to overgrazing, fallow land, and lack of modern innovations such as fencing and credit. In addition, the communal tenure system has not been able to create enough employment opportunities since production is mainly during a single season, leaving most people unemployed for the rest of the year.

The Government of Swaziland is aware of the crucial contribution freehold tenure makes both to export growth and economic development. It is estimated that ITFs generate about 31% of the country's GDP, contribute to over 70% of the country's export earnings and provide up to 75% of employment of Swazis. Given their well established infrastructure, ITFs do not have marketing problems because they usually have written contracts with processing companies, marketing firms and consumer institutions both within and outside the country. The freehold tenure system allows for more employment opportunities than the community-based tenure system, because the large sizes of enterprises allow for a variety of activities which can be carried out throughout the year, such as marketing, machine operations, servicing and repair of machinery. Since agriculture on freehold tenure is regarded as self-sustaining, government funding, marketing and production support policies have been focusing on mobilizing local and foreign financing and expertise for purposes of increasing rural employment and production on Swazi Nation Land.

Various critics of the community-based tenure system have argued that it is disadvantageous in the following ways:

- 1) There is an inability for more productive farmers to obtain enough land to farm at the desired scale, since the average size of a farm plot is less than 2 hectares.
- 2) The division of the original homestead among family members (from fathers to sons and from unplanned allocations by chiefs and households to other families who live far from the holdings) results in a fragmentation of land, lack of motivation to engage in soil/water conservation practices, reduction in the efficiency of cultivation, low productivity and limited farm investments.
- 3) The fragmentation of holdings is also identified as inefficient because it is an obstacle to the introduction of mechanization, though it clearly also has certain advantages in risk-spreading strategies.
- 4) Since individuals only have usufruct rights to the land, tenure insecurity is assumed to exist for members of the community; albeit rare, there is the threat of eviction by political authorities (chiefs).
- 5) Farmers do not have the tenure security needed to obtain loans for agricultural investment.
- 6) Farmers' independent management of their holdings is said to be limited by community uses, such as communal grazing after harvest.
- 7) Significant amounts of land are said to be idle in the hands of rural residents who derive their livelihood from alternative sources of employment in the modern sector.
- 8) There is a marked discrepancy between the major role which women play in agriculture and their inability to own land in their own right.

These critiques have been repeated regularly but most have not been very well substantiated. Insofar as they do exist, their extent and seriousness remain to be established.

Although individual tenure land has been held to be the best policy option for ensuring maximum production and development, the system might not be the best option for residents of SNL. Although private ownership would instill a sense of tenure security for homestead heads, many Swazis harbor antipathy toward the system of individual tenure farms due to the bitter experiences they had in the early 1900s when two-thirds of their land was sold to foreign concessionaires by the king. Although individuals on SNL might not have the tenure security

necessary to invest in commercial agriculture, they do have tenure security in the sense that they are guaranteed rights to the nation's resources. As such, they can always obtain usufruct rights to a piece of land which they can use for subsistence agriculture. The problem is to balance social security and productivity needs in a single tenure system for the SNL.

Rangelands, forests, and water resources fall under community-based tenure systems and are open to all members of the community. This system of tenure has been criticized on the basis of the "tragedy of the commons," particularly in terms of grazing practices. Studies have shown that grazing lands in recent years have been subject to levels of overgrazing and extensive soil erosion in many areas of SNL. Evidence indicates that households under present institutional arrangements are given incentives to accumulate as much livestock as they can without due consideration of the impact on the environment. Since privately held animals are grazed on publicly held land, there are no incentives for individuals to reduce herd size and to improve pasture. There is no effective social control of use of land for grazing. This scenario is not a problem on ITF land.

Since the fragmented nature of farm holdings on SNL limits the level of investment an individual can make on them, there has consequently been limited investment in soil conservation practices. Although the individual tenure system is recognized for its use of good farming practices and adoption of soil conservation measures, commercialization involves the use of farm inputs such as chemical fertilizers. Recent studies have indicated a general increase in soil toxicity as a result of these practices.

Tenure arrangements also impact democratization objectives. Swaziland is not remotely a democratic nation, and tenure is closely linked to the traditional system of authority. Although the communal tenure system is equitable in the sense that every person is eligible to obtain usufructuary rights to a piece of land as long as s/he is a legitimate member of the community, the system also provides the basis from which the government derives its authority. Land is the basis of power in Swaziland, as demonstrated by the fact that the king controls land through chiefs in a hierarchical manner. A king's or chief's position is largely derived from the fact that he has the power to assign land to people. For example, transformations involved in the different tenurial systems, such as the repurchasing of freehold tenure land into SNL, are under the control of the monarchy. If an individualized tenure system is adopted by the Swazi nation, therefore, a mechanism needs to be designed which will ensure that the majority of the land does not end up in the hands of only a few people, causing landlessness and insecurity to the traditional family.

Tenure also has important gender dimensions. According to traditional Swazi law and custom, all land attached to a homestead belongs to the head of that homestead—usually a male—although in some cases it might be a grandmother or the most senior wife in a polygamous household. The power of land allocation is also vested primarily in males and is allocated by them to their sons. A wife and her children are treated as constituting a "house" within the homestead, a division especially relevant to the allocation and inheritance of land and livestock as well as other property. Only men can assume primary roles as members of chief councils entrusted with important decision making responsibilities regarding land. Women are only accounted for in the sense that they can expect to receive land from their husbands and be represented by their husbands in dispute situations.

Access for women remains a problem. Although it is often found that women oversee much of the production process, consumption patterns and the process of surplus disposal with regard to land, they can only use land which has been acquired by a man. The normative pattern for women to gain access to land is by marrying, or through male children. If a woman approaches the chief through a male relative and is unmarried with children to support, she might be allocated some land as well. According to the system of community-based tenure, each individual field belongs to the woman who tills it. She may defend her rights to that field against anyone seeking to take it away, including other members of the homestead. She also has the right to the produce of her fields, although some of that produce must be contributed to the common stores of the homestead.

Many Swazi women have developed creative strategies for gaining access to land. These strategies fall into three different categories: (1) strategies of control (women assume person control over land access processes by either openly rejecting or minimizing the ideal standard of male control); (2) strategies of avoidance (women avoid individuals and legal measures which might deny them access to land); and (3) strategies of deception (women deceive decision-makers about personal circumstances, such as marital status, and deceive the legal system about land rights). These strategies are used within the context of Swaziland's customary legal system as well as the modern legal system, with a varying degree of frequency and success.

### **Present policy position and reforms**

Many arguments have been advanced in favor of land reform in Swaziland which encourage conversion from community-based tenure to individualized tenure. Such arguments are founded on the belief that various components of the community-based tenure system—such as a lack of tenure security, the inability of women to own their own land and soil erosion/environmental degradation—are hindering national development.

The individualized tenure system fares more favorably in terms of productivity, income generation, employment and the general contribution to GDP and external trade. Such a system would create private individual ownership of land whereby rights are adjudicated, fragmented holdings are consolidated, land areas are surveyed and owners determined and registered. Such a system, however, has the tendency to promote self-centered objectives that may work against the needs of the majority of the people. It eliminates use rights of other individuals, tends to keep most of the land in the hands of a few, creates landlessness and economic insecurity, and requires a dramatic change in policy.

If such a system were adopted, it would be necessary to drastically alter the terms and conditions on which land is held so that community controls over land are reduced. Furthermore, the family, the clan and the community at large are significant components of the Swazi community-based tenure system which would be threatened if the system were replaced. In sum, individualized tenure conditions under freehold tenure would likely undermine social cohesion in the Swazi culture.

It is easier to enhance development if people are considered as cohesive communities rather than individuals or individual families. Since community ideals are promoted under the community-based tenure system, this would ideally be the basis of social development. Although this system of tenure does not score as highly on economic indicators, it has very positive attributes of community welfare, social cohesion and group solidarity. Both systems of tenure, therefore, have attributes—either social or economic—which are important to the development of the Swazi nation as a whole. The decision to discard one tenure system in place of another, therefore, is not likely to enhance development in its true sense. If genuine national and social development is to emerge in Swaziland, there needs to be a compromise between the two existing tenure systems.

### **Implications for policy dialogue and programming**

Clearly there is a need for improved land policy in Swaziland—one that will not only ensure equitable social development, but will also guarantee increased productivity and production on both ITF land as well as SNL. Any objective evaluation of the development process cannot overlook the fact, however, that the traditional dispensation is still very strong in Swaziland, and it prohibits the selling and buying of land. Swazi society is very much tied to the community-based tenure system. If changes are to be introduced, therefore, they should be gradual so that the fundamental social framework is not dismantled. Reforms are needed in the repurchase areas, perhaps more urgently than in the SNL. Efforts to redistribute land to the peasantry (such as the repurchasing program) must not simply end up creating more inefficient “royal” parastatals which serve primarily to increase the power of the monarchy.



## TANZANIA COUNTRY PROFILE

by John W. Bruce

### Executive summary

Landholding in Tanzania was profoundly disrupted by *vijiji* (villagization) and *ujamaa* (communal farming) reforms during the 1960s and 1970s. These programs were carried out without legal authority and have left a heritage of normative confusion and tenure insecurity, reflected today in growing litigation to regain land lost during the reforms. A decade of struggling to reformulate national land policy has produced innovative proposals, but clear decisions on policy have been delayed by resistance to change in the large land administration bureaucracy.

### National land policy and legal framework

The population of Tanzania is 28.8 million, of which 22.2 million depend directly on agriculture. The land area of the country is about 88.6 million hectares, of which only 3.5 million hectares are cultivable. About 5% of the land area is cultivated under customary tenure, and 1% under commercial agriculture, while 40% is in rough grazing and 25% gazetted as reserves or parks.

Under the leadership of Julius Nyerere, the government of newly independent Tanzania emphasized the virtues of an egalitarian society characterized by mutual aid and cooperation. It intervened decisively to bring an end to a developing market in land under customary tenure and to thwart growing peasant differentiation. Most land in Tanzania was already owned by the state under colonial legislation, but a modest amount of freehold had been created under the German colonial administration, primarily in the coastal areas. In 1963 the Freehold Titles (Conversion and Government Leases) Act converted all freehold titles, totaling about 1 million acres, into 99-year government leaseholds.

Between 1967 and 1973 government mounted a major effort to create *ujamaa* villages, settlements in which communal agricultural production was to be initiated. Collective production was unpopular and bedeviled by the same factors which undermine it elsewhere: inefficient management, free-rider problems arising from the difficulty of rewarding labor contributions fairly, and the priority given by households to their own holdings.

By 1973 government was soft-pedaling collective farming, but pressed forward with the associated program of compulsory villagization (Operation Vijiji), which aimed to make it easier to reach rural people with educational, medical, and agricultural services. This program has in the end had a far greater long-term effect on rural Tanzania than *ujamaa*. Eleven million households were relocated, often by force, and resentment over the compulsion and loss of traditional lands was compounded by the fact that the promised services often never materialized. In some areas the new concentrations of population meant concentrations of livestock which resulted in serious environmental degradation in the surrounding areas, leading to draconian programs of livestock clearing.

These programs are generally recognized among Tanzanians to have been ill-conceived and to have led to major reductions in agricultural productivity. Today, the struggle is to disentangle producers from the confusion and uncertainty which is their heritage. The reform program did not explicitly concern themselves with land tenure. Indeed, they were largely extralegal, relying on government's ownership of land and overriding customary and other rights. This has led to growing litigation by those who wish to reassert customary rights ignored in the reforms. To block those claims, government in 1992 attempted to legislate to nullify those prior customary rights

in the Regulation of Land Tenure (Established Villages) Act. This attempt has been held unconstitutional by one court, and the matter is still under litigation in multiple cases before the Tanzanian courts.

In the absence of legislation spelling out a new system of rural land tenure, the basic rights available to rural Tanzanians remain the “right of occupancy” established under the Land Ordinance, 1923. The Ordinance provides for “granted rights of occupancy,” written grants of land use rights by government to noncustomary holders, which are rather like leases. The Ordinance also recognizes “deemed rights of occupancy” for peasant land users. This is simply a general recognition of their rights under custom or implied by allocations under the reform programs, without any documentary proof in the individual case.

In 1983, an Agricultural Policy Paper adopted a policy of long-term (99 years) leaseholds to villages by government, and from the villages to households (33 years). No legislation was deemed necessary to implement this, again apparently on the theory that government could act solely on the basis of its ownership of the land, whatever customary or other rights of use might have been recognized earlier. A program of village demarcation and registration was initiated and by June 1991, out of some 8,471 registered villages, 1,836 (22%) had been surveyed; some 1,303 (15%) village certificates prepared and only 183 (2%) of the certificates had been registered. No individual certificates had been issued.

A 1992 Presidential Commission on Land Matters (“the Shivji Report”) suggested that the leasehold/sub-leaseholds policy be dropped and replaced by a major decentralization which would confer greater discretion on local communities to define tenure and manage land. That report was extremely critical of the Ministry of Lands, Housing and Urban Development, recommending its replacement by a quasi-judicial institution, and the period since 1992 has seen that Ministry struggle to retain its prerogatives and the centralized system of land administration against the reform impetus.

### **Replacement and adaptation of indigenous tenures**

Customary tenure practices in pre-colonial Tanzania varied widely, the product of a complex interaction between land, man, and crops whose purpose was to minimize the risk of famine. As a rule, clearing and cultivating land established rights to it, rights that were then held collectively by descendants of the original land-clearer. Although certain activities might be done communally, the farming unit was usually the individual household. Among most groups inheritance was patrilineal, and land passed from a father to his sons. (The Zaramo, Luguru, Mwera, and Makonde in the southeast of the country are exceptions and are matrilineal.) Land was relatively plentiful in most areas of the country, and when holdings had become subdivided beyond an economical size or when productivity had begun to fall, new lands could be cleared and brought under cultivation.

In a few areas of the country, notably Buhaya and Bugufi west of Lake Victoria, land tenure relations were more hierarchical. Here powerful chiefs allocated large estates of land to officers who in turn allowed tenants to work the land in exchange for services and tribute (that is, a portion of the crop). This system of landholding and use, referred to as *nyarubanja*, survived in the colonial period despite the fact that the military caste it had served no longer existed.

Under German and British colonial rule, customary land tenure systems survived with only slight alteration. Large tracts of land were not alienated for European settlement, and as long as the supply of land was adequate, customary practices continued to be followed. Although both colonial administrations declared unoccupied land to be the property of the crown, customary practices were little affected. There were, however, innovations in tenure systems introduced in areas where permanent crops were planted. Among the Chagga around Mount Kilimanjaro, for example, the introduction of coffee meant that land with coffee bushes on it remained under permanent cultivation. And because of the commercial value of the crop rights to coffee land became increasingly individualized. In addition, in some areas new tenancy arrangements were introduced. Such arrangements were

prevalent in areas around Lake Victoria where tenants had been used in the past and where there were now migrant newcomers who wished to farm.

The evolutionary trends evident in the customary tenure systems in the years prior to independence were cut short by the post-independence reform programs. But communities with substantial permanent improvements on their land, such as the Chagga, tended not to be shifted in villagization and have retained traditions of strong clan and household rights over land, and an informal land market is re-emerging.

In most villages there is today a village committee under the Local Government (District Authorities) Act (No. 7 of 1982) which allocates land. These committees were until 1992 headed by law by the local party chairman, and had little legal autonomy in land administration, though control from the center was often weak. The chairman is now elected, but it remains an open question whether these committees can rebuild legitimacy. In the absence of secure property rights, abuses by local officials still occur.

### **Tenure constraints and opportunities**

Agricultural production in Tanzania is depressed, and insecurity of land tenure is one of the factors in this low level of production. Tenure in the villages remains profoundly confused. There have been some false starts post-*ujamaa*, largely on the legal or national policy level rather than on the ground. There have been some promising pilot activities, as in a Dutch-funded project near Dodoma which maps and documents holdings, but no adequate legal framework exists for these efforts.

Pastoralist land use is under increasing pressure from extensions of cultivation. These occur through natural processes of increases in population and needs for land in farming communities, but they were intensified by the reform policies in some areas, and in others by grants of land by government to commercial producers. Donor projects have sometimes exacerbated these problems, as in the case of the Canadian wheat production program. In recent years, pastoralist populations assisted by NGOs have actively litigated to defend their land rights.

The impasse on privatization of rights to agricultural land has prevented policy discussions from moving on to the development of adequate regimes for common property management of natural resources. There is an adequate legal basis for management of common property pastures under the Range Development and Management Act (1964), though the experiences with ranching associations has not been a positive one. There is no adequate legal regime for protecting traditional migratory routes of pastoralists, and indeed these are under intense pressure. There is a further important need for a legal regime for common property management of woodland resources, as has been recognized in recent World Bank forestry project reports. There is currently an intensive debate over whether resources such as miombo woodlands should be included within village territories for development on a community forestry model or held by government for allocation to mechanized commercial farming.

While national legislation on inheritance rights in Tanzania is relatively progressive, insisting on equal treatment of male and female children, the situation in practice is that under both patrilineal and matrilineal systems of inheritance, women in rural Tanzania generally have access to land only through their husbands. Recent policy discussion have reiterated equality of treatment as the objective, but have also identified immediate measures which may be strategically important: in government land allocations, single women should be eligible to receive titles in their own right; land titles issued to households should be joint titles to husbands and wives; and wills which leave lands to daughters should be honored.

The prospects for progress in the area of tenure reform are intimately connected with efforts to develop multiparty democracy. The domination of village committees by the single party of the post-independence period long posed a fundamental problem for reform strategies such as decentralization of land administration. These are now being resolved. At the same time, secure land tenure is needed to provide rural people with the independence to effectively challenge national policies on land rights and resource use which they oppose.

## Present policy position and reform directions

The next few years may well be critical for land policy. The Shivji Report is on the table, and numerous workshops have reacted to the recommendations, generating counter-proposals. Government has before it well-elaborated reform options. It remains to be seen if government will find the political will to follow through on these reforms.

The case made in the Shivji Report for decentralization of tenure arrangements to local communities is compelling and has considerable support in the donor community, but government will likely continue to assert strong control over land outside traditional agriculture, as in the former freehold sector and in and around municipalities. It remains profoundly reluctant to surrender state ownership of land, leery of land markets, and still largely unconvinced of the efficiency of smallholder agriculture. Areas of unintensive use by local communities seem destined to be the focus of intensive competition between local communities and government as the latter seeks to allocate this land to commercial agriculture.

## Implications for policy discussions and programming

Throughout most of the twentieth century Tanzanian farmers have been told what, where, and how to produce and have generally chosen to cooperate only selectively—a not surprising fact given that most programs provided little return to them.

A clear focus on the restoration of tenure security is essential. This appears attainable only through the decentralization of authority to local communities proposed in the Shivji Report. That report would allow return of households to land taken from them in the reforms which is not used and occupied, and calls for compensation for all those whose land was taken outside the terms of legislation then in force; but it concludes that the new patterns of residence and landholding created in the reforms must stand. The alternative of trying to restore post-reform land use patterns is not feasible.

The strengthening of land management by democratic village institutions seems the best hope for re-establishing an effective system of land tenure. While many villages may be content to work within customary frameworks for years to come, there should be the option for villages with strong private rights in land to seeking formal registration and titling of individual holdings. Existing rural development projects can make an important contribution by piloting low cost systems for this purpose. Funders of rural projects could The report correctly suggests that some limitations on opening villages to land markets may be needed, but perhaps overstates the danger of landlessness. In urban and peri-urban areas there is a need for more elaborate land management institutions.

There is also a fundamental need across the board for policy to allow the value of land to be recognized in markets. Many of the problems with land in Tanzania have resulted from treating it as a free good, creating extensive opportunities for rent seeking on the part of officials.

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## **ZAMBIA COUNTRY PROFILE**

**by Jyoti Subramanian**

### **Executive summary**

Zambia has a land tenure system characterized by the co-existence of statutory leasehold tenure in state land and customary tenure in reserves and trust land. This dualism means that land owners and tenants often must relate to two separate sets of rights: one dictated by government through national law and one dictated by custom. In 1964, the year of Zambia's independence, all land was vested in the hands of the president. Subsequently, although community-based tenure systems still operate, private freehold has been repressed if not prohibited, and land legally has no value.

Zambia's land management style has tended to emphasize administrative rather than market control. As a consequence, the government has denied itself income from the country's most valuable resource—land. Currently, the Movement for Multiparty Democracy (MMD) government of Zambia, is calling for the institutionalization of a new land code and land administration system, in an effort to overcome some of the obstacles mentioned above. As of 1993, a number of reforms calling for both immediate and long-term action were declared by the MMD at the National Conference on Legal Policy and Land Reform.

### **National policy and legal framework**

Zambia is a country in southern Africa which comprises roughly 75 million hectares. Of these, approximately 16 million hectares are considered suitable for rough livestock grazing and 9 million hectares are considered to be arable land with good potential for crop cultivation. Only 1.3 million hectares—14% of the nation's arable land—are currently under crop cultivation, however. The majority of arable land has not been cultivated because of the fact that Zambia has one of the highest rates of urbanization in Africa. As of 1990, the population was estimated at 7.8 million with about 42% of the total (3.3 million) residing in urban areas.

At independence in 1964, all Zambian land was vested in the hands of the president for and on behalf of the Zambian people. At this time, Zambia inherited three categories of land: Crown land (now state land), native reserves and native trust land (now trust land). State land constitutes 6.3% of the total land area of Zambia and is governed according to the principles of English statutory law. Trust and reserve land constitute 57.7% and 36.0% of the land area respectively, and are governed by varying systems of community-based tenure.

In 1975, a Land (Conversion of Title) Act was passed which enabled the president to convert all freehold titles to statutory leaseholds of up to 100 years duration. Upon expiry, the lease can be extended for another 100 years or less as the president sees fit. The Act allows all unutilized tracts of farm land to be immediately taken over by the state, and requires presidential consent before any dealing in land can conclude. In addition, the Act abolished the sale of bare land in urban areas, municipalized all vacant land and undeveloped land in and around major urban centers, and ordered all real estate agencies to close down.

Under this legislation, improvements are valued and sold when leaseholds change hands, but the land itself is transferred without any compensation. Such policy adheres to the assumption that individuals should not reap benefits from values in land which may be created by nature or by acts of the government, because such values belong to society as a whole. The fact that land is not sold, however, does not mean that land has no value. Legislation to tax or increase the rent on land in an active and functioning land market would raise the cost of holding such land and thus diminish its value. Such a tax would also encourage more intensive use of the land or its transfer to another owner who would use the land more intensively. Although the concept of land as a free

good without value might create little problem in a purely subsistence economy, it is difficult to conceive of land in this way in Zambia, where private entrepreneurs actively work to improve their leaseholds in a mixed economy.

The Act also imposes high and rigorous standards of ground survey before one can obtain a title certificate. The Land Survey Division of the Ministry of Land has a severely limited staff for meeting these standards and is badly behind in survey work. Currently, the MOL estimates a backlog of roughly 30,000 applications in various stages. To avoid long delays in the issuance of certificates, the Land Survey Division and the registry have for many years adopted a policy of registering leases of up to 14 years if accompanied by an adequate sketch plan. The 14-year lease title certificate confers the benefits and privileges normally enjoyed by the holder of a 99-year lease title upon the lessee. Once a survey is eventually conducted, the 14-year lease is surrendered and a 99-year lease is granted, covered by a final Certificate of Title. At present, there are between 70,000 and 100,000 titles issued nationwide.

The Land Act did not abolish interests in reserves and trust land nor their governance by community-based law. The administration of reserve land is governed by the Zambia Orders, which sets apart the land for the exclusive use of the indigenous people. Although this land is governed by community-based tenure, the president still retains the right to make grants or dispositions of land to Zambians and non-natives alike for up to 99 years. In trust land areas, the president can grant a Right of Occupancy of up to 99 years to non-Zambians and demand rent for the use of the land.

Currently, the MMD is calling for the institutionalization of a modern, coherent, simplified, and relevant land code and land administration system. The 1993 National Conference on Land Policy and Legal Reform specified a number of reforms. Specifically, the MMD called for immediate repeal of Act No. 15 of 1985, which prohibited land from being granted, transferred, alienated, or leased to non-Zambians, and repeal of the section of the 1975 Act that allows government, in fixing rents, to recognize the value of improvements only and not the land itself.

Additionally, the MMD proposed to combine reserve and trust land categories into a single customary land category, allow for uniform 99-year leaseholds on all state land and a variable duration on customary land, extend an automatic renewal of 99-year leaseholds provided that lease conditions are met, identify unutilized land to be made available to all investors, permit mortgaging and leasehold transfers of one year to take place without presidential consent, formally recognize the role of chiefs and customary rights, recognize the universal principle of equality for women and other disadvantaged groups, and repeal all undesirable land legislation.

## **Replacement and adaptation of indigenous tenure**

Despite the application of English common law in Zambia, most Zambians still conduct their activities in accordance with a system of community-based tenure. There is no single uniform set of customs prevailing across the country, however; the term customary law encompasses a host of customs which are somewhat different for each ethnic group.

There are three modes of acquiring land according to customary law: original acquisition, derivative acquisition, and acquisition by inheritance. Land governed by community-based tenure is never sold. What is sold, however, are improvements on land such as permanent structures (that is, buildings). The cornerstone of customary land tenure is the communal ownership of land resources. People in most ethnic groups have relatively equal access to resources and there is an equitable distribution of cropping land. Once a piece of land is acquired by a family, it stays with that family for as long as they exist. Even if people leave their villages to get jobs in the city, they retain ownership of the cropping land they used to cultivate. This ownership is perpetual. In the individual's absence, the field may be temporarily assigned to a relative who cultivates it on the understanding that when the owner returns, the field will have to be surrendered.

Ownership and the use of land is determined by the local community through their traditional leader in whom this power is entrusted. The chief, as a center of political, traditional and cultural power, stands as a symbol of the ultimate ownership. Traditionally, an individual wishing land would go to his or her native village and ask the chief for an allocation. Ties between the urban population and the chiefs have however weakened considerably with time in some areas. Children, whose parents and grandparents are one or more generations removed from rural life, in some cases find that chiefs no longer recognize their traditional rights to land. The consent of chiefs and district councils continues to be the basis for any approval of applications by outsiders for both Reserve Land and Trust Land.

Chiefs also establish the rules of land use in communal woodlands and grazing areas. These use rights are generally not regulated, and there are no formal limits on stocking rates or extraction from the forests. Likewise, stocking rates on grazing lands are rarely monitored or controlled. Customary law does not have distinct principles on the ownership of and access to trees. Generally, a landowner has rights to the trees and crops grown on his land, and all trees on land without a landlord belong to all.

With regard to inheritance, when a man dies leaving children and a widow, his entire estate devolves on a specific male heir in whom the property vests for his use and distribution to other relatives entitled to a share. Sons who do not receive an inheritance but wish to farm in the village may seek land from the headman, but they must first seek land from within the extended family. Women do not generally inherit land or receive land as permanent gifts. In the case where sons are too young at the time of the father's death, the woman may retain the use of family gardens, but only until the sons reach maturity. There are exceptions in the case of unmarried, divorced, or widowed women.

Studies indicate that the majority of farmers do not have documents or title to their land. In Southern Province, 75% of respondents to a study had no form of documentation, and in Eastern province, as many as 94% did not hold written documentation to land. Only one Eastern Province farmer had obtained a formal title deed. The remainder of the document holders held a letter from the chief.

### **Tenure constraints and opportunities**

The current system of land legislation, based on antiquated English law, is badly in need of modernization. Private landownership is effectively repressed if not prohibited by Zambia's current legal framework, and land cannot legally have value. Lack of private ownership and a land market is constraining the development of formal credit and real estate markets. In addition, delays and costs in processing leasehold issuances and property transfers are constraining land markets and inhibiting economic growth.

Zambia's land management style has been that of a planned economy with direct administrative control, rather than through managed markets and land use regulation as in market economies. It has involved state ownership of land, administrative rather than market determination of land allocation, reliance upon development conditions, restrictions on transactions, and undervaluing of land in the context of both transactions and taxation. These policy decisions have impoverished Zambia's public sector and undermined development in its private sector.

At the present time, there are two primary sources of tenure insecurity in Zambia. First, there is the fact that the leasehold system allows for large land allocations to outsiders. This can result in tenure insecurity for those lacking title or the means to acquire it. Included is the risk of land speculation where people acquire land but make no investment to develop it. Second, there is the possibility of maladministration in the customary sector by some chiefs on reserve and trust lands, characterized by the allocation or selling of large tracts of land to outsiders—most often wealthier claimants of influence—or by preventing the inheritance or transfer of land.

Aside from the potential deficiencies mentioned above, however, the community-based system of land tenure does in fact play a significant role in providing security of tenure and access to the members of a community.

Most farmers feel quite secure in their ability to cultivate crops on their land, and the high percentage of rights to fence and plant trees conveys the notion that cultivation rights are long term in nature. In the communal area surveyed in the Mazabuka district, 30.8% of the farmers felt they needed title deeds to secure their land rights. In terms of security for credit access, the majority of farmers feel that title deeds are not necessary to obtain loans.

Even though all land belongs to the state according to the 1975 Land Act, studies show that nearly 60% of households on reserve and trust land in Eastern Province believe that the household head is the owner of the land, while 31% attribute ownership to the chief or headman. The households who perceived themselves as owners of their farmland tended to adopt more development measures, such as earthwork improvements and tree planting. Most of these farmers used livestock or crops as collateral as opposed to land or land title.

Markets for land are poor for several reasons, but the major reason in areas studied is the relative abundance of land. Households are able to find adequate land on which to satisfy their consumption needs and even to produce a surplus for the market. It is public knowledge, however, that some of the people who were assigned land in leasehold by the state are demarcating and selling undeveloped pieces of it. Although this practice is illegal, the parties involved get around the law by entering into an agreement in which the buyer refrains from seeking legal title or transfer to the land until after developing it. The law is also avoided by purporting to transfer land to someone else as a gift or at nominal value.

The present forest code in Zambia discourages sustainable and regulated forest use by claiming that all forest products belong to the state. On lands under traditional tenure, individuals or local communities cannot legally restrict access, cut trees, or charge others a cutting fee, even if they have protected and managed a forest area. Without an incentive to protect and manage forest areas, therefore, clandestine cutting to avoid government fees has become the norm. In order to adequately manage or even protect the 7 million ha of gazetted forest estate in Zambia, the Forest Department needs to engage the participation of individuals and local communities. Community forestry will have significant potential in this respect. The integration of women in forest activities needs to be given priority as well, since women are the primary gatherers of many of the forest products and by-products and outnumber men in the rural communities.

The systems of community-based tenure in Zambia are equitable in the sense that each household within a community has an equal share to the natural resources available. The system of statutory tenure governing state land, on the other hand, is highly centralized in that control over all land is vested in the hands of the president. The Act of 1970, which makes provisions for the compulsory acquisition of land and property is still in effect. There is no appeal on such matters, since they lie in the discretion of the president. This act has been severely abused in the past, and the government has been known to expropriate land without adequate levels of compensation.

The current titling system, which is in theory open to traditional farmers in the rural areas, is by reasons of expense and complexity really open only to the relatively wealthy, well-informed, and influential. It is exceptional for traditional farmers to apply for or receive titles. The system as it is now working is not so much a system for providing title as evidence of rights to land, as it is a mechanism for taking land away from communities which customarily have had access to it.

If the land is actually allocated to those who will develop it, if reasonable compensation is provided to the community which loses access to it, and if the community consents to the transaction, some transfers might be appropriate. However, local people see the leasehold system as something which continues to reduce their supply of land. The vast majority of traditional farmers do not understand the pros and cons of leasehold tenure and are not in a position to evaluate its relevance to the development of their land.

Women have very limited access to land under both statutory and community-based tenure systems. Most women have to get permission from the household head to use land and some are denied rights altogether. A study done by Michael Roth showed that wives in Southern province appear to be completely excluded from fencing



and tree planting decisions in about half of the households. Women in Eastern province, however, are allowed to take part in some decisions; in about 11% of male-headed households interviewed, women were able to plant trees without asking permission, and in two-thirds of all households women were allowed to plant following their husband's permission.

Where custom dictates that a married woman move in with the family of her husband, she cultivates the same fields as her husband; the field belongs to the husband, however, and the wife merely has the right of cultivation. It is now generally accepted, however, that if a married woman acquires land on her own initiative independently of her husband, she has exclusive rights over ownership of that piece of land, notwithstanding the dissolution of the marriage. According to the systems of inheritance under customary law, women do not inherit land or receive gifts of land from their parents or mother's brothers.

Although a procedure for obtaining title to land in areas under customary land tenure has been available since 1985, most rural women are unlikely to take advantage of this opportunity since they are much less familiar with bureaucratic procedures than men. Furthermore, traditional authorities demand that a married woman obtain her husband's consent in such a transaction.

### **Present policy position and reforms**

The administration of land rights in state land are highly inefficient and often corrupt. The main cause for this inefficiency is the requirement for cadastral survey of the property before title deeds are issued. Unless the farmer is willing to pay very high survey fees to private surveyors, he has to wait a long time before a public surveyor is available to attend to his needs. Consequently, the proportion of land under leasehold tenure has for a long time remained under 10% .

Supporters of leasehold tenure argue that it is beneficial because it allows state intervention in the event that a tenant fails to appropriately utilize a piece of land. Transfers enhance efficiency by relocating land from bad farmers to good farmers, and help to facilitate the use of land as collateral. Opponents of leasehold tenure argue that it does not convey the absolute ownership needed for tenure security. Instead, it is essentially a qualified right to occupy land for a fixed term which may or may not be renewed. The tenant is therefore under the constant fear of dispossession or state refusal to renew the lease. The degree of administrative discretion in land allocation, coupled with the allocation of a valuable good at almost no cost, has led to widespread corruption in land administration.

The community-based tenure system has by and large been more successful than leasehold tenure in meeting the needs of the Zambian people. Customary systems seem to have weakened, however, for three reasons: (1) rising land values, increased competition for land, and increased rent-seeking by chiefs; (2) little incentive to make long-term improvements without clearly defined long-term land use rights; and (3) increased central government control and reduced powers of local leaders.

### **Implications for policy dialogue and programming**

Despite the strengths and weaknesses of both tenure systems, they have become so entrenched that the substitution of one for the other is neither feasible nor practical. Priority areas should be identified for limited tenure "replacement." Replacement is likely to be most effective in rather limited geographic areas where market forces are well developed—for instance, in peri-urban situations. For other areas, there is a need for tenure-change strategies which stress more evolutionary processes and may involve continued reliance for some time on the relatively cost-effective customary institutions of land administration. One source of potential conflict in this process could result from the fact that land rights in the customary tenure system are never registered although their recognition is guaranteed.

A land law that would serve different interests throughout Zambia is needed. This law should stress the need for some forms of community title with regard to common property resources such as communal pastures, forests and marginal lands, which constitute an important safety net for the rural poor. Special attention also needs to be given to the needs of women.

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# **ZIMBABWE COUNTRY PROFILE**

**by Jyoti Subramanian**

## **Executive summary**

Zimbabwe's agrarian question is one of the country's most enduring colonial legacies fifteen years after independence. For about ninety years the country was a settler colony in which the alienation of most of the fertile land to European settlers and the adoption of discriminatory agricultural policies resulted in the oppression, marginalization and impoverishment of indigenous producers. In an effort to redress these inequities, the government of Zimbabwe enacted a series of land reform measures after independence in the late 1980s. In 1992, the Land Acquisition Bill was passed, which enables the government to acquire 6.9 million hectares of land from the large-scale commercial sector for purposes of resettlement. Proponents of land reform have aggressively called for an expansion of the resettlement program to help redress the unequal distribution of land resources and to rectify acute land scarcity in communal areas. Opponents of rapid and substantial land reform have asserted the superior efficiency of the commercial farming sector and the adverse consequences that a substantially expanded resettlement sector would have on agricultural output and the balance of trade. In 1993, the government appointed a commission of land experts to assess the current tenure systems and make suggestions of alternative systems. Its recommendations have not yet been acted upon.

## **National policy and legal framework**

One of the smaller countries in southern Africa, Zimbabwe covers an area of 39,760,000 hectares; only 7% of this area is arable (2,876,000 hectares). As of 1993, the total population was estimated to be 10,739,000, with 7,161,000 living in rural areas. Two main ethnic groups comprise the African population of Zimbabwe, the Ndebele and the Shona; the former primarily occupy land in the western half of the country and the latter in the eastern areas. Among both tribes, the traditional pattern of agriculture prior to white settlement was shifting cultivation, a product of sparse vegetation and a relative abundance of land.

The current pattern of land distribution in Zimbabwe can be traced back to the 1890s, when an enforced racial division of land was first implemented. This division was formalized under the 1930 Land Apportionment Act, when approximately 50% of the country was given to the African population and 50% to the Europeans. Although land was divided equally in terms of hectares, the fact that the European population has historically been a very small percentage—less than 5 %—of the total population, illustrates a great disparity in the amount of distributed land. This inequality is further compounded by the fact that the land allocated to white farmers by the colonial government was of superior quality, while the black population was forced onto generally inferior land in what became the “reserves.”

After independence in 1980, land categories in Zimbabwe have been redefined: the large-scale commercial sector (LSCS) contains lands formerly held by Europeans; the small-scale commercial sector (SSCS) contains lands formerly classified as Native Purchase Areas; the communal areas (CAs) contain lands formerly held by Africans in the reserves; the resettlement areas are lands which have been acquired and redistributed to smallholders under state-sponsored resettlement schemes since 1980; public lands contain former parks, preserves, and unassigned lands.

Fifty-seven percent of Zimbabweans live in CAs and are often referred to as a “peasantry.” These areas constitute 42% of Zimbabwe's land area, and 85% of them are in the drier agroecological areas. Despite the label, CAs are not composed of communal holdings. Their boundaries and farming systems are instead the creation of a colonial regime which wanted to make room for white farmers. The farming system in these areas

involves rain-fed and ox-plow cultivation focused heavily on maize production. Differences in landholding sizes reflect differences in the ability of households to place land under cultivation with respect to household labor and ownership of oxen.

Following independence, the resettlement program became the government's main policy instrument to redress inequities in land distribution. The Lancaster House Constitution, Zimbabwe's 1981 independence constitution, required that the government acquire land to redistribute on a willing buyer-willing seller basis. Before the constitution expired in April 1990, this provision was often cited as the principal limitation of the government's program of land acquisition for resettlement, since it included a clause which protected European landowners against confiscation of their lands.

The government was also able to obtain land through the Land Acquisition Act of 1985, which gave it the right to "compulsory acquisition" for purposes such as settlement, agricultural use, land reorganization, forestry, wildlife, or other natural resource utilization, or the relocation of persons dispossessed in consequence of the utilization of land for the above purposes. The law enabled the president to acquire underutilized land and land which had been declared derelict (abandoned by the owner). The government was required to provide adequate compensation for both types of land. Through 1989, the provisions on underutilization had not yet been used to acquire land, but a small amount of derelict land had been procured.

The Land Acquisition Bill of 1992 enabled the government to acquire 6.9 million hectares of land from the LSCS. Of this amount, 5.0 million hectares was added to the resettlement sector, expanding its size from 3.3 million hectares to 8.3 million hectares, and 1.9 million hectares was added to the state farm sector, increasing its size from 0.5 million hectares to 2.4 million hectares. Land allocations in the communal and small-scale commercial sectors remained unchanged at 16.3 million hectares and 1.2 million hectares, respectively. The government intends to first acquire underutilized land, and only later acquire more intensively utilized farms.

Thus far, most resettlement has taken place in the more barren regions of Zimbabwe in the form of a "model A" scheme. Each model A settlement has about 500 families divided into roughly 15 nucleated villages of 25–50 families, with 3–4 schools and a clinic for each village. Land allocations within each scheme are based on the different types of land use found in CAs: residential, arable and common. Each family is given a residential stand of 2,500 square meters, an arable allocation of 5–6 hectares, and access to communal pasture sufficient to support a herd for draft power. Land is occupied on the basis of a number of temporary permits. Grazing is shared communally within village grazing areas, and the number of livestock units varies according to agroecological zone. Specific settler criteria include: (a) no land or too little land, (b) unemployed, (c) poor, (d) married or widowed with dependents, (e) aged 18–55 years and physically fit, (g) returned Zimbabwean refugee, or (h) experienced and master farmer. The most difficult settler-selection issue facing government now is that of displaced labor from the large-scale commercial farms which are being taken over for resettlement. There are also concerns regarding whether the intensity of land use and productivity in the model A schemes can justify the replacement of large-scale commercial farms.

The model B scheme is based on communal living and a cooperative mode of farming. Livestock may be privately owned, but all other property, including land and equipment, are owned cooperatively. The model is intended to enable those with limited resources to participate in viable agricultural activities. By 1989, less than 6% of the land area had been resettled using model B. In the model C scheme, a core estate provides production and marketing services for settlers. As in model A, individuals are allocated parcels of arable land, and grazing land is communally managed. By 1989, this model represented less than 1 % of the resettlement area. The model D scheme attempts to integrate acquired grazing land into a land use plan for adjoining communities in the communal areas. Although it has only been tried in one case, it comprises 12.4% of the total resettlement areas.

Despite its achievements, Zimbabwe's land distribution still remains highly skewed. As of 1988, 4,660 farms still held 11.2 million hectares, while over 1 million African families in the communal sector lived on 16.4

million hectares. Furthermore, farms in the large farm sector have land in the best rainfall zones, while the majority of the rural population in CAs farm the most arid lands.

Freehold tenure governs the commercial sectors of Zimbabwe. All freehold land is registered; leases can be obtained for ten years or more, or for the life of one of the parties. The easy transferability of freehold land has made it attractive collateral for loans, and it has served as a form of security in the LSCS and SSCS sectors, providing a great incentive for long-term investment in land.

### **Replacement and adaptation of indigenous tenure**

Despite diversity in rainfall, soil quality and population density, CAs share a system of communal land tenure. The community, represented by the chief, “owns” the land but allocates households’ heritable rights and permits livestock grazing on an unallocated commons. The system of land allocation in CAs originated with the colonial government, as it rearranged the population in an effort to accommodate European settlement. Thus, many believe that communal tenure is largely a colonial construct, useful for indirect rule and the control of land resources through chiefs.

With a redistribution of land came a redistribution of power. This is expressed by the passage of the Communal Land Act of 1982, which vests ownership of communal land in the president. While the government affirmed its support for customary law regarding access to and use of land, it removed the authority for its allocation from customary institutions (such as local chiefs) and vested it in elected local government institutions (district councils under the Ministry of Local Government, Rural and Urban Development). Land ownership (title) continues to vest in the President, since the government sees itself as the executive authority of the people’s interests. In fact, the provision that vests land allocation in elected institutions has been the only significant departure from colonial practices relating to the allocation of land. The Act may be seen as another effort of the state to gain control over communities.

### **Tenure constraints and opportunities**

The arguments against agrarian reform have focused on its implications of the necessity of radical land redistribution for economic growth. These implications are illustrated by the fact that the resettlement program was conceived as a project for modernizing peasant production processes through strict state management and regulation. The basic argument is that the equity gains that would ensue from reform would be nullified by losses in efficiency and productivity, and that this would have adverse implications for employment, food security, and export earnings. There has been huge productivity in food grains (maize, in particular) from the communal sector, however. In addition, the historical circumstances which gave rise to the efficiency and productivity of large scale capitalist farms (lavish state support and protection from competition), however, should not be ignored. Moreover, the efficiency of these farms continues to be based on indirect subsidies of cheap labor, as evidenced by the poor conditions of employment for farm workers and the high levels of malnutrition among their children.

A number of commentators do feel, however, that land redistribution will lead to an increase in incomes which will lead to increased consumption and savings, and a subsequent increased demand for industrial goods, which will in turn translate into increased industrial production. It is assumed that increased production, in turn, will lead to an increased demand for labor and a reduction in unemployment.

The conventional critique of land tenure arrangements in CAs holds that the lack of individual security of tenure derived from the communal control of landholdings weakens incentives to invest in agriculture. Similarly, because land cannot be sold and thus not mortgaged under the customary tenure system, the system is seen as a constraint on the ability of CA farmers to obtain credit for investment. There is evidence of success, however, in CA production, in response to the lifting of other constraints. In the years following independence, CA farmers

showed a remarkable ability to respond to new opportunities and were successful in growing maize and cotton. This suggests that tenure has not been a binding restriction.

Land redistribution is predicated on the idea of modernizing peasant agriculture, which is founded on the belief that peasants are traditional and subsistence-oriented. Hence, if left to themselves, it is assumed that they would employ less productive methods of farming. Thus, the government has implemented strict administrative regulations based on the permit system of tenure. The land tenure system in model A schemes is based on three permits: a permit to reside, a permit to cultivate, and a permit to depasture stock. In each case, the use of the land is strictly limited to the purpose for which the permit is granted, and the permit holder has no right to build upon, cultivate, or depasture livestock on the grazing commons.

Tenure insecurity exists in these areas; according to the Land Tenure Commission, settlers are not prepared to make long term investments on their land due to the fact that permanent improvements are prohibited, compensation for them may be made only at the discretion of the Minister, and utilized land can be taken by the government at any time. Although homestead entitlements are secure with respect to other households, insecurity does arise when the state uses its ownership rights to regulate land use.

As a result of this insecurity, many resettled farmers have not surrendered their customary entitlements to land in the CAs. In some cases, resettled farmers have ignored the conditions imposed on them by the permit system altogether. Despite the fact that the land formally belongs to the state, some settlers have sold their rights while others have sublet their plots. There is also evidence that a land-rental market is emerging in the CAs, involving successful farmers who rent land occupied by households under-utilizing all or part of their land as a result of capital and/or labor shortages. Payment is usually by way of cash, food, and plowing services.

Examples abound of the destruction of the economy, environment and community in Zimbabwe. Rural community structures and self-sufficiency have been undermined by successive replacement of traditional institutions, first by colonial structures and following independence, by post-colonial centrally dictated local government structures. Land apportionment, the designation of marginal communal lands as labor reserves for commercial farming areas, increasing population, land degradation, as well as national parks pressures have all resulted in an environmental crisis in Zimbabwe's communal lands.

Zimbabwe's CAMPFIRE (Communal Areas Management Programme for Indigenous Resources) program is an attempt to implement, recreate, and support community based management of natural resources, including, but not restricted to wildlife, in the marginal, pressured environment of the communal lands. CAMPFIRE was initiated in the mid 1980s by the Department of National Parks and Wildlife Management, to decentralize natural resource management to the local level and to provide incentives for conservation by ensuring benefits, proprietorship and decision-making power to the communities most affected by wildlife and other resources. It is based on the premise that those who bear the costs of living with and managing resources should benefit from the utilization of those resources. CAMPFIRE is seen as an alternative land use and livelihood strategy for marginal lands unsuited to many forms of agriculture.

The implementation of CAMPFIRE can be considered as a five-stage process. The first stage is the development of a supportive legislative and political environment. The second stage is to make district councils aware of the potentials of wildlife and to wait for them to request the program. The third stage is to earn money by identifying and marketing commercial opportunities, such as hunting wildlife products (elephants, ivory) or tourism (safari operations). Money is returned directly to the councils. The fourth stage involves effectively using the revenues gained to achieve the kinds of development desired by communities. The fifth stage is the improvement of wildlife management and institutions, which is assumed to be an inherent by-product of the empowerment of local communities. The government's role in this process is one of monitoring program sustainability, measured by three factors: harvesting of wildlife, returning revenues to producer communities, and following guidelines which aim to ensure economically sound and democratic management.

Some critics of the program feel that the government has not gone far enough to devolve responsibility beyond the district level, which for many communities is too remote. Authority over and ownership of park resources may need to be handed down to village level if CAMPFIRE's aim of turning former poachers into gamekeepers is to succeed.

While the land reform program is making important achievements in terms of equity, it has itself come under criticism. The resettlement program does not include participation by, or representation of, the beneficiaries in the planning and implementation process. Consequently, the conception of resettlement models and their implementation have tended to be bureaucratic and statist. The permit system is authoritarian both in its form and content, and is a good example of a law which confers unrestricted discretionary powers on an administration and imposes obligations on citizens without conferring any rights. The Constitution does not grant permit holders the right to question the fairness or reasonableness of administrative decisions (such as compulsory land acquisition) through administrative review. This is clear evidence of the continuation of the colonial practice of fusing sovereignty and proprietary title to land in the state.

There are important gender/tenure issues in the communal areas, the resettlement areas, and the freehold sector. Although women farmers provide most of the labor for CA agriculture, male heads of household make the basic farm-management decisions. Often, they will also claim control of any cash earnings from women's work on the farm or even off-farm. Land is distributed from chiefs and headmen to male lineage heads, who then allocate this land within their subsistence units. Women are allocated land use rights as wives and daughters. While women are entitled to acquire rights to land from their husbands upon marriage, not all wives actually have plots. In a recent study, one-third of the married women in a sample did not have parcels. Often this was a voluntary decision on the part of women, if they had an alternative source of cash. Women who had plots did not expect to get them every year, since sometimes there was a rotation system among wives. Women have no rights of inheritance under this system, and feel that control over the proceeds of the land is more important than gaining formal rights to land.

In the resettlement areas, widows and unmarried women with dependents qualify to have land allocated to them, while only widowed and divorced women are considered as household heads for purposes of resettlement. With respect to married women, however, permits are issued in the name of the husband. In an area studied, 98% of married permit holders were male while only 2% were women. Unmarried women constituted 11.6% of all permit holders in the area. The rationale for issuing permits in the husband's name is that he is the head of the household, and that traditionally, only males had primary rights to arable land. This has served to reproduce and perpetuate the patriarchal division of labor found in communal areas, since many polygynists prefer to marry additional wives for labor as opposed to hiring workers. In the event of a divorce, the fact that permits are issued in the name of the male spouse extinguishes women's rights of access to land. This lack of access to land inhibits women's access to institutional credit, which is constrained because of the inability to produce collateral. Collateral is obtained by the marketing of cash crops, which is traditionally done by men. Group lending may have special importance for women who can form groups and obtain credit in this way.

From a production standpoint, women's land rights are less important for the LSCS than for the SSCS. In the LSCS, women do not act as field managers to any important extent, and very few women own freehold land. A freeholder has been able to pass land to a daughter by will, though in cases of intestacy, customary rules prohibit daughters from being heirs. The same holds true in situations of divorce and widowhood.

### **Present policy position and reforms**

While private property rights and freehold tenure protect the sphere of private interests and activity of some sections of society from the sovereign power of the state, the fusion of sovereignty and property facilitates state intervention in the interests and activities of other sections of society. The marginal land that the majority of the

peasantry occupy and use is subject to administrative and bureaucratic control by state functionaries in the name of development, and the administrative authoritarianism of the state has exposed the peasantry to an abuse of state power, racial and class domination and gender differentiation. The Zimbabwean government's constrained attempts to promote democratization and substantive equality through land redistribution have not fully succeeded.

On 1 November 1993, the government appointed a commission of land experts to assess the current tenure systems and make recommendations on alternative systems. The Commission recommended that communal tenure be maintained and strengthened, both to improve tenure security as well as the legal and administrative mechanisms necessary for long-term evolution of the system. The Commission also stated that traditional freehold tenure for arable and residential areas is secure, and that this security should improve if the State relinquishes the *de jure* ownership of communal land to village communities. Title to land in CAs is still vested in the President, however, and while the use rights of the peasantry may be secure from other peasants, they are not secure from the state as the owner of the land.

On land administration, the Commission recommends that members of the CAs be given rights over land and all village resources. In addition, it is recommended that all CAs be surveyed using low cost techniques, which would start with the adjudication and mapping of traditional villages so that they could receive a village registration title. In the medium to long term the Commission recommends that villages or districts which have fulfilled requirements for effective village level land administration should cease to be state land, and that all communal land should ultimately be deemed "Traditional Village Land." The significance of village registration titles is unclear in this respect with regard to ownership, if land continues to vest in the state until villages have met the requirements for effective village-level land administration.

The Land Tenure Commission has no coherent position on the issue of gender discrimination. For example, it recommends that the legal rights for arable, residential and grazing areas must be held by the head of the family in trust for the rest of the family. In addition, it urges heads of households not to dispose of or subdivide arable land or residential land without the consent of the spouse and dependent children. If the Commission truly intended to protect the rights of women, however, it should have recommended that Land Registration Certificates be issued in the name of both spouses.

### **Implications for policy dialogue and programming**

If the Government of Zimbabwe is sincere about wanting to democratize the social relations of both class and production, it needs to seriously consider removing landownership from its sovereign authority. The community should not, however, be romanticized as the repository of democratic and egalitarian agrarian practices. Unlike the state, however, which is highly capable of repression, the community comprises local level social relations which are amenable to democratic regulation and control. The government, therefore, needs to vest land in communities themselves rather than in the state. Individual entitlements to land should be embedded and defined within the community, which should allow for transfer and accumulation restraints, so as not to threaten the stability of communal relations. Individual access to land should continue to be determined by community membership. The role of the state should be to promote the establishment of local level institutional structures that would foster democratic regulation and control on the one hand, and prevent the discrimination and oppression of weaker members of the community on the other. In addition, state power should be used to enhance the rights of those sections of society which have been marginalized within the political economy.

The government should build upon the principles laid out in the CAMPFIRE program, which are founded on involving, organizing and empowering all members and sectors of local communities, and enabling them to define and organize themselves on their own terms.



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