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# History and evolution of land tenure and administration in West Africa

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Michael Mortimore

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Michael Mortimore is a Senior Research Associate in the Department of Geography at Cambridge University and is presently concluding (with Dr W.M. Adams of Cambridge University and Dr J.A. Falola of Bayero University, Kano) a five year research project, *Soils, Cultivars and Livelihoods in North-East Nigeria*. He may be contacted either at the department of Geography, Downing Place, Cambridge CB2 3EN, UK, or at Cutters' Cottage, Glovers' Close, Milborne Port, Sherborne DT9 5ER, UK. Tel/Fax: 01935 850 812

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## INTRODUCTION

In this brief discussion I will consider, first, tenure relations as the British found them in Nigeria, Ghana, Sierra Leone and the Gambia at the beginning of the twentieth century; second, the impact of British rule on customary tenure of rural land; third, the major processes which, having their roots in the past, continue to influence the present-day dynamics of tenure relations; and finally legislative and administrative responses to these dynamics<sup>1</sup>. Although most of this discussion is about land tenure, I have tried to encompass broader questions of access to natural resources.

## TENURE RELATIONS AS THE BRITISH FOUND THEM

Understanding the impact of British rule and subsequent administration of land and other natural resources depends in part on how precolonial tenure relations are conceived. European concepts and terms grew out of European history and did not always serve well in Africa. This difficulty extends beyond the obvious challenge of applying a word such as 'ownership' to the customs governing African tenure relations to the deeper question whether the Europeans were correct to assume that there must be a 'rule-book' everywhere governing these relations. Four conceptual alternatives seem to emerge from the literature on land tenure in West Africa at the dawn of colonial rule, and each has been influential at one time or another. These are:

### A universal model of 'African' land tenure

In an age when generalisations about 'the African' were commonplace, a unifying principle was sought, at the beginning of the twentieth century, with which to understand unfamiliar cultural patterns and their expression in forms of tenure. Such a principle was discovered in the ideal of the community - the tribal, kinship or family group, or village - whose membership conferred rights of access to natural resources, including land, yet denied to individuals rights normally associated with ownership in European eyes - the rights of disposal and encumbrance, and of the private appropriation of all benefits.

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<sup>1</sup> In such a short paper it is impossible even to summarise the historical evolution of tenure in the four countries, which differ in several respects. For the period up to 1950, the reader is referred to Lugard (1922), Hailey (1938), and Meek (1946). I exclude Liberia.

Beginning with this concept, a generalised model was constructed (see Annex).

However, the communal basis of tenure could be easily misunderstood. 'It is clear...that African land tenure is not "communal" in the sense of tenure in common. Its fundamental characteristic seems rather to be an individual tenure of land derived from the common stock at the disposal of the tribe or family' (Lugard, 1922: 285). In view of such warnings, it is surprising that the myth that farmland was held collectively by a group, thereby denying security of tenure to individuals, persisted for so long. This insecurity was believed to be a major impediment to agricultural investment (see Feder and Noronha, 1987). 'In practice..., a reasonable security of tenure existed', and 'the element of collectivity shows itself mainly in the existence of the privilege of occupying lands hitherto undistributed but within the general control of the community' (Hailey, 1938: 834).

### A mosaic of customary tenure systems

An alternative view is that the colonial administrations had, in fact, imposed themselves upon a mosaic of ethnic landscapes and states, each having its own resolution of the fundamental relation between community and the land, in the form of its own tenurial concepts and rules. Ethno-linguistic classifications and maps emphasise the cultural diversity on which natural resource management is based in West Africa. For example, in Nigeria one survey identified 394 linguistic units each having a discrete territorial base (Hansford et al., 1976). The insufficiency of studies of native systems of tenure was regretted by Lugard (1922: 285), Hailey (1938: 836-42), and Meek (1946: 11-12).<sup>2</sup>

Yet for the members of every self-conscious ethno-linguistic community, there was 'a way' of managing the natural resources which did not necessarily equate with the way other communities did it. Probably there was much commonality, but in the absence of exhaustive inventories of tenure systems, it is difficult to be sure. Perhaps farming systems offer a better basis for discrimination, as they may occupy larger areas than the smaller ethnic groups, and the rationales of farming (crop and livestock production) systems

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<sup>2</sup> Only for a small fraction of these - albeit the major ones - do descriptions of customary resource tenure exist in the literature. For the provinces of Northern Nigeria, for example, the government commissioned a series of studies which, however, were not based on ethnic units; some descriptions of tenure relations in minority ethnic cultures were prepared by students of the Institute of Administration soon after Independence (Marshall et al., 1962).

link indigenous concepts of resource tenure directly with primary production and livelihood. But these too are inadequately classified and described in the literature.<sup>3</sup> There is of course a *real* mosaic of agro-ecological units in West Africa - of uplands, *fadamas* or flood plains and river valleys, lateritic *cuirasses*, intensively cultivated improved soils, etc. The relations between tenure systems and these agro-ecological units are likely to be specific to the farming system in question.

The administrative concept of 'customary tenure' allowed for the existence of a mosaic of tenure systems in the sense that it did not impose a standard interpretation but recognised custom in every area and the rights of community authorities to settle cases of dispute and to allocate land. Neither did it prejudice the case in the event of more than one tenurial system having applicability in a given place, as the third model postulates.

### A palimpsest or hierarchy of tenure relations

'Nothing, I imagine, is more certain than that the populations of this continent have been subject to constant displacement by more powerful neighbours' (Lugard, 1922: 283 fn). The effects on tenure relations might take two forms. Migration into others' territory might call for the adjustment of territorial boundaries and the *displacement* of the disadvantaged group. Land would become subject to the newcomers' system of tenure. Such displacements, if carried out peacefully, continued in the colonial period (an example is the movement of Tiv into the Nigerian Middle Belt).

On the other hand, *conquest* conferred rights on the newcomers which were superimposed on existing tenure systems. Such an heretical system was introduced when Muslim rule was imposed on conquered areas of northern Nigeria.

'Under a strict application of the Maliki system of Islamic law which was followed by the Fulani, all cultivated lands are on conquest treated as 'Wakf'; they may be retained by their owners on conversion to Islam, but are otherwise assigned to Moslems; land not under cultivation, including sites in cities, is at the disposal of the ruler. But this theory was not followed in practice: under the Fulani rule there

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<sup>3</sup> A search for characterisations of farming systems in the semi-arid zone of Africa produced a mixed bag, offering unequal treatment of administrative language areas, countries, and regions, and having limited compatibility; in many of these, the system of tenure is not described (Mortimore, 1991).

remained a strong residuum of the customary native tenures. The emir confined himself to exercising rights over waste land, the *Jajin Allah*, or 'God's bush'; as regards occupied land, his control mainly took the form (as in India) of levying land revenue based on cultivation, in this case fixed at one-tenth of the produce, the Koranic '*ushur*' (Hailey, 1938: 771).<sup>4</sup>

Empirical studies at the village level show that the Maliki code was superimposed on, rather than replacing, the pre-existing systems of tenure, the principal purpose being political control through the acquisition of ultimate title by the emir and titled aristocracy. Thus there may be, even today, ambiguities in practice concerning such matters as the freedom of individuals to alienate land, or to alienate it outside the community, even if these practices appear to be recognised in the Maliki law.

Hierarchical tenure relations are found today in some measure throughout Islamic areas of West Africa, but the degree of accommodation to pre-existing indigenous systems varied a great deal between, for example, orthodox practice in Sokoto or Kano on the one hand, and much more syncretistic custom in the Yoruba Emirate of Ilorin. However, such a model cannot fully reflect the dynamics of resource access, even in pre-colonial times.

### Dynamic flux

In general, precolonial boundaries were frozen as the British found them. But they were in no doubt as to the conflicts, implicit or explicit, which they found between interested parties in questions of resource tenure and territorial control, which were closely related matters. Decisions to recognise certain regimes and to ignore the claims of others were not only political in content: they had major implications for resource management. An example is the recognition, through the policy known later as 'indirect rule', of the Fulani aristocracy's far-reaching rights to settle land questions between communities everywhere in the Caliphate of Sokoto. The comparatively recent origin of these powers in the Jihad which, beginning in 1803, was not extended to some areas until many years later, was ignored. In the southern Gold Coast, a very different situation had arisen from the new intensity of economic interaction with Europe. Before legislative instruments had been put in place to regulate land tenure, chiefs acting under cover of their customary powers had alienated substantial areas of land to mining concessionaires, and the growth of the

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<sup>4</sup> See also Lugard, 1922: 288-9.



cocoa trade led to extensive transfers of land under English conveyancing, sometimes of doubtful legal integrity (Meek, 1946: 169 ff.). Much wasteful litigation ensued. No attempt, however, was made by the government to undo these developments.

The historical dynamism of resource access stemmed ultimately from the fact that effective control of territory depended on commanding labour (which was more scarce than land) for farming, grazing, fishing, mining or collecting activities. These labour resources were subject, not only to the fluctuating political weight of competing rulers, outside interests, village or ethnic communities, and households, but also to differential rates of demographic change, differences in population density, and migration. Many of the dynamic processes identified in the third section of this paper had their roots in pre-British times.

At the level of the household and the individual, land rights might also have been in a state of continuous flux. Covering 'the whole relationship of man to the soil' (Meek, 1946: 1 fn, citing Malinowski), land tenure at a point in time reflects a balance between competing and complementary interests in the community (see Berry, 1993:101-34). Since effective claims to land depend on access to labour, which depends in turn on social position in the community, it is easy to see that even from year to year the spatial and social distribution of land may change, as empirical studies show. An African *cadastre* should never be confused either with a mediaeval European *terroir* or with a map of freeholds. It represents a set of mobile social relations which is valid for a point in time.<sup>5</sup>

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<sup>5</sup> This limitation does not diminish the value of cadastral plans such as those of the *Atlas des structures agraires au sud du Sahara* (Paris: ORSTOM, 1967-83). Such plans were rarely published for the anglophone areas of West Africa. But their dynamics can be understood only by 'the concrete method of tracing the actual history of plots of land' (Meek, 1946:11); to which the necessary sociological counterpart is the difficult task of establishing inter-generational and shorter-term histories of individuals' rights to the use of natural resources.

## THE IMPACT OF THE COLONIAL STATE

The British brought European and Indian experience to bear on the administration of land and other natural resources in West Africa.<sup>6</sup> The most important characteristic of their policy was a reluctance to disturb pre-existing tenure systems. Such disturbance was to be limited to the exigencies created by the colonial intrusion itself - an *ad hoc* approach which reflected, ultimately, the philosophy of indirect rule. These exigencies were four in number: the appropriation of ultimate rights by the government; the control of alienation; adjudication processes; and the codification of land rights.

### Appropriation of ultimate rights

A theory of suzerainty was necessary in order to provide a legal basis for the government in regulating land disputes and controlling the acquisition of land by non-natives (Lugard, 1922: 281-2). The case of Northern Nigeria is the most clear. After the conquest of Sokoto, the British High Commissioner read out in public:

'...The Government will, in future, hold the rights in land which the Fulani took by conquest from the people, and if Government requires land, it will take it for any purpose. The Government hold [sic] the right of taxation, and will tell the emirs and chiefs what taxes they may levy, and what part of them must be paid to Government. The Government will have the right to all minerals, but the people may dig for iron and work in it subject to the approval of the High Commissioner, and may take salt and other minerals subject to any excise imposed by law...' (Shaw, 1905:451).

The rights taken in conquest were four in number. First it claimed the right to dispose of unoccupied (or waste) lands. Second, it became *trustee* of lands which were the property of deposed rulers ('public' lands). Third, occupied lands remained in the hands of their owners, without payment of rent. Fourth, the government assumed *ownership* of lands used for public purposes ('crown' lands)<sup>7</sup> for which compensation in the form of alternative land was payable,

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<sup>6</sup> In what follows I admit the limitation of my competence to what was formerly known as Northern Nigeria, though I have attempted to confirm my statements in respect of Ghana, Sierra Leone and the Gambia.

<sup>7</sup> This usage of the term 'crown lands' differs from that of Kenya, where it denoted unoccupied lands that could be used only by authority of the government, a device used to prevent African farmers from settling in uninhabited areas surrounding the reserves.

and of land leased to aliens, for whom the government became the landlord (Lugard, 1922: 289). These rights, which reflected those recognised in Maliki law, were later summed in a formulation that has lived on from the Northern Nigeria Land and Native Rights Ordinance of 1910, through the Northern Region Land Tenure Law of 1962, to the Nigeria Land Use Act of 1978: that 'all land, whether occupied or unoccupied, is subject to the disposition of the Governor, to be held and administered for the use and common benefit of the natives of Northern Nigeria' (Hailey, 1938: 773).

The Northern Territories of the Gold Coast were the subject of similar legislation, enacted in the Land and Native Rights Ordinance of 1927. However in the remaining parts of Nigeria and the Gold Coast, and in Sierra Leone and the Gambia, the situations were very different (Hailey, 1938; Meek, 1947). In Lagos, which had been ceded to the British Crown in 1861, all customary rights in land were respected, including those held communally; and as unoccupied land was considered to be the property of communities, the government had virtually no direct interest, except for limited powers of administrative interference. In southern Nigeria, the colonial administration took over the rights which the Royal Niger Company had obtained by treaty with various rulers, and these did not extend to interference with customary rights over land, which had matured, through long occupation, into family rights. This situation prevented the foundation of freehold plantations by foreign enterprises after the 1914-18 war. The government (and the Company before it) owned some small areas for public or trading purposes.

In the Gold Coast, the Crown assumed no general rights over land in the south, nor in Ashanti where, even though it succeeded by conquest, the necessary proclamation had never been made.<sup>8</sup> In Ashanti the government acquired only the Kumasi town lands, and a controlling interest in giving concessions. In the south, land was allocated by the 'stools' and it has been mentioned above that this system had been misused, to alienate concessions. In neither area did the government assume ultimate rights, so land tenure was allowed considerable freedom to respond to market forces, resulting in dispossession, inequality, multiple claims and litigation. In Sierra Leone, the small Colony was owned absolutely by the Crown; but in the rest of the country (a Protectorate), land was vested in the tribal authorities in ordinances of 1905 and 1907, 'for and on behalf of the native communities concerned' according to the Protectorate Lands Ordinance of 1927. Concessions for plantations were, after 1922, allowed with the approval of tribal authorities. In

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<sup>8</sup> Lugard (1922: 303-4) considered that unless timely public proclamation of ultimate rights in land was made, the existing customary rights were upheld by default.

the Gambia, an Ordinance of 1896 gave the government rights over vacant land and the lands of deposed rulers; but that was all. Much later, in 1945, a Protectorate Lands Ordinance delegated ultimate rights in land to district authorities, to be 'held and administered for the common benefit of the communities concerned', an anomalous investiture in Hailey's view (Haswell, 1975: 90).

### Alienation

European settlement, in some areas of eastern and southern Africa, required a theory of land tenure which provided legitimacy for the alien occupation of unoccupied lands as well as the dispossession of native peoples from their cultivation, grazing or other customary rights in certain areas deemed to be advantageous for the new settlers. In Nigeria, Lugard (as High Commissioner of Northern Nigeria from 1899 to 1906, and Governor General of Nigeria from 1912 to 1919), and his successors, firmly excluded the private and permanent alienation of land to foreigners. The continuation of this policy up till, and after, independence in 1960 saved the country from some of the traumas experienced in eastern and southern Africa, while delaying the emergence of an enclave of large-scale, capital-intensive agriculture until very recent times (with the exception mentioned below). Land alienation to foreigners was also insignificant in agricultural areas in the Northern Territories of the Gold Coast, Sierra Leone and the Gambia.

However, Lugard (1922: 295-6) was in favour of plantations run by companies, which he thought could set an example to native farmers of new productive methods. The demand for plantations was in the forest zone, where tree products (especially rubber) lent themselves most profitably to this mode of production. Eventually ways were found of granting leasehold rights in apparently uninhabited land in the south-east of the country, with the approval of tribal authorities, and (as mentioned above) in Sierra Leone. In the Gold Coast, many concessions to foreigners had been granted earlier; there were few restraints on the use of these.

There was also a demand for mineral prospecting and mining leases, from European mining companies in Sierra Leone, Ghana and Nigeria. The rights of the government over minerals were admitted in all four countries, and land grants excluded mineral rights. Mining leases were given (in all four countries) for fixed terms, periods of time considered sufficient for the exploitation of minerals, all payments (except, later, compensation for disturbance) going to the government. In the tin-mining areas of the Jos

Plateau, attempts were made, many years later, to rehabilitate and restore mined land to its original 'owners' or their descendants.

In Northern Nigeria, the Northern Territories of the Gold Coast, and the Gambia, the Government gave itself the right to lease out vacant land. However, there was some controversy over whether such land existed. Opponents of forest reservation (by the government) in the Gold Coast averred, 'every acre of land is the property of some tribe, family, or individual' (Lugard, 1922: 284) - including forest and swamp. If there was unoccupied land, it was at the disposal of the 'stool' (Meek, 1946:169). However Lugard believed that in Northern Nigeria there was 'waste land' (a category recognised in Maliki law), where the Fulanis' slave wars had depopulated whole districts during the nineteenth century, and no survivors exercised any claim. Unlike in Kenya (where settlement was barred on crown lands), these unoccupied areas were left open for settlement under customary tenure. They provided an important safety valve for growing populations further north in later years. In the Northern Territories of the Gold Coast, too, there was unclaimed land at the disposal of the government (*ibid.*:170).

Government ownership was restricted to land required for railways, roads, ports and airports, schools and other government-owned institutions ('public land'), and for townships where housing for non-natives (Africans or others), business, and industry were concentrated. Townships, which were graded first, second or third class according to their administrative importance, had their own administrative structure under the central government and were run independently from the native authorities (which continued to administer the indigenous towns). Therefore they needed a separate system of land tenure.

In Northern Nigeria, the needs of the infant township system were met in a system of statutory tenure whereby all plots were held on long leases from the Government (with 'certificates of occupancy'), except where a government institution was the occupier. Compensation became payable to dispossessed persons for disturbance and the value of improvements - these only, as the Land and Native Rights Ordinance of 1910 only recognised, in practice, usufructuary rights.<sup>9</sup>

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<sup>9</sup> It is not clear from the texts I have seen to what extent urban land administration varied from this model in the other territories. As urban land lies outside the remit of this paper, it will not be discussed further. However, it should be noted that statutory tenure was applied to non-native agricultural or industrial land holdings in rural areas, which subsequently increased in number.

Some alienation notwithstanding, the great majority of landholdings continued to be held under customary tenure, even in the south of the Gold Coast, reflecting a coherent policy against alienation which was held to be in the best interests of native land holders and primary producers. While land alienated in concessions, public land, and land held under forms of statutory leasehold continued to increase with economic and urban growth, the most important function of government continued to be in the regulation or protection of customary forms of tenure.

### Adjudication

The case of southern Gold Coast was considered to be a prime example of the negative economic effects of excessive litigation over land. A policy to exclude English law from most territories by recognising local courts therefore strengthened customary tenure rules and the authority of chiefs. In the Muslim areas of Northern Nigeria the local Shari'a courts were already administering property law, and their supervision became an important priority for the colonial district officers. Where there were no formal courts, they were brought into existence.

The importance of the local courts can hardly be exaggerated. Although land cases could come before the higher courts (at great cost to the litigants), the systems of local courts had the practical responsibility of enforcing custom, and were at the forefront in interpreting the changes in customary tenure relations, in response to economic forces, that could be permitted. They also had to reconcile conflicts between interests in hierarchical tenure systems. The theory of indirect rule effectively disengaged the government from the question of defining an optimal direction for the evolution of tenure relations under conditions of increased market participation.<sup>10</sup>

### Codification

Sara Berry (1993), following Elizabeth Colson, has argued that the rigidities imposed on African land tenure systems by codification threatened to do away with the fluidity that was, in fact, a condition for the participation of people in 'processes of interpretation and adjudication' (p.104) of land rights. Participation in these processes was ensured by membership of social

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<sup>10</sup> This issue was often at the forefront of policy discussion in Kenya, for example, where both 'communal' and 'individual' tenure had their champions at different times: for an example, see Tiffen et al., 1994.

networks, whereas codified rights tend towards exclusivity, especially when misused by persons with political power. Colson argued that customary law in Africa was not traditional, but a creation of colonial rule. Under indirect rule, colonial authorities sought 'to enforce long-established custom rather than current opinion. Common official stereotypes about African customary land law thus came to be used by colonial officials in assessing the legality of current decisions, and so came to be incorporated in "customary" systems of tenure'(Colson, 1971; quoted in Berry, 1993: 103).

If this case was valid in some countries, or for some district officers, it is difficult to see how it can apply in a general sense to anglophone West African countries, where the administrations appear to have stood back from interfering in customary tenure systems. It is true that the Lands Committees of Northern Nigeria (1908-10) and of West Africa (1912-15) made fairly detailed enquiries into the nature of customary practice, and doubtless imported their own members' preconceptions; and that the Nigerian government authorised studies of land tenure by the anthropologist, C.K. Meek in the 1930s, and published a series of accounts of land tenure in its provinces between 1945 and independence (for example, Chubb, 1947; Rowling, 1952). But there is no evidence that these were used as legal authorities.

The Maliki law of property was already codified before the British arrived; but as they soon observed, it was not always applied, as local judges and Fulani rulers accommodated local custom in various ways (Lugard, 1922: 288-9). If the local courts tended to codify, or re-codify, tenure relations as time went by, it seems as likely that they were responding to local demand as to pressure from the district officers. The possible intensity of local demand is illustrated, once again, by the case of southern Gold Coast where the unregulated introduction of English law, in the context of the profits to be made from gold concessions and from cocoa, created conflicts with customary practice. Lugard (and others) saw the administration's prime responsibility in such circumstances as being to control or even stop alienation. Yet in the highly urbanised Colony of Lagos, where in 1910 an Acting Chief Justice predicted the death of family ownership of land, it was observed by Meek in 1945 (1946: 297) that it 'continues to be an integral feature of the social life and that any sweeping change in the system of land tenure would cause widespread disturbance'.

A measured view of the impact of the colonial administrations on the codification of tenure relations in West Africa needs to take account of the diversity of pressures for change as well as the differences between areas.

Two distinct questions arise about the effects of codification on customary practice. The first is whether it impedes changes that are necessary if production systems are to adapt successfully to economic development (in particular, intensified market participation), or whether in doing so, sections of the community are marginalised with regard to access to natural resources. One point of view on this question is that codification protects rights. This view is challenged by the discovery that there are important rights (such as those of women to gather wood or wild foods, or of pastoralists to graze livestock, or of animal owners to send them scavenging on private land) which are not encoded, and which may be threatened as the ratio of uncultivated to cultivated land diminishes.

The second question is whether the process of continuous adjustment of land and labour resources, in subsistence-oriented systems using much hand technology, relies on a measure of fluidity in local practice that codification implicitly contradicts. The answer to this question must vary from system to system. But under Maliki law in northern Nigeria, which can be said to be both customary and encoded, empirical observations at village level suggest that the methods of transfer provided (which include lease, loan, gift, pledge or 'mortgage' and the giving of land to wives, widows and divorcees; as well as sale in some areas) allowed the patterns of access to land to reflect quite accurately the current social order.<sup>11</sup>

In Northern Nigeria, the Land and Native Rights Ordinance of 1910 gave recognition to all rights under customary law, subject only to the Government's right to acquire land under compulsion for public purposes. In 1962, after Independence, the Land Tenure Law significantly extended the codification begun in 1910. On the one hand, the Law recognised statutory rights which were registered after application, survey and approval by the government, and were held subject to leasehold conditions for 99 years.

On the other hand, it defined customary tenure - all those systems administered by communities or their leaders, under which the great majority of holdings were held under rights of inheritance derived ultimately from community membership, rights which were defensible in the local courts. However, the Law attempted no codification of these rights, and neither was an attempt made to register titles, which remained undocumented (with the notable exception of the Revenue Survey of the Kano Native Authority,

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<sup>11</sup> Those who maintain that under African customary tenure, property rights are not clearly defined or consistently enforced (Feder and Noronha, 1987), an hypothesis which seems intuitively implausible, fail to cite specific cases.



which, begun in a few districts of Kano Province during the 1930s, was discontinued in 1957; see MacBride, 1938).

How secure are customary rights? The relative weakness of landholders faced with government acquisition (an event that occurred with increasing frequency after Independence in Nigeria) exposes the ambiguity of the concept of 'ownership' in West African conditions. In most parts of the savannah, it is impossible for a farmer to exclude from his land, outside the farming season, the livestock belonging to other people, or to prevent graziers from using his fodder grasses, or even cutting the trees for fodder; except by pre-emptive removal of harvested products. The enclosure of land or privatisation of fodder grasses has often been met with resentment on the part of livestock specialists. It is clear that, in custom (if not in present practice) - even on inherited land under permanent cultivation - the essential right is that of usufruct, as was recognised at the beginning of the colonial period. Thus the usufruct lacks rights normally associated with ownership in Europe. There is, however, much danger in trying to introduce rigidities - in the interests of unifying statutory and customary tenure, or of pushing market-based economic development - without a close inspection of the implications for all rightholders.

A major impetus for the Land Use Act in Nigeria in 1978 was a need, felt in government, to simplify the acquisition of land for development or public purposes. Hence the Act attempted to consolidate the legal framework in all the states of the Federation by imposing the essentials of the hierarchical system of Northern Nigeria on the community-based systems of the south. This incident illustrates the ambiguities of legal codification in land tenure. Whereas, in Northern Nigeria, the suzerainty of the Governor over all lands was intended, according to Fulani precedent, to recognise and protect the rights of all members of the communities, when the same ultimate right was appropriated in the south of the country, it provoked widespread criticism from those who saw it as a threat to family land ownership. This fear was not without cause: as in the North, state governments had become prone to arbitrary compulsory acquisitions 'for public purposes', and the payment - or non-payment - of compensation had become a controversial issue.<sup>12</sup> The pressures created by the oil boom of 1970-78, and corruption in the land administration process, undermined the concept of trusteeship and began to limit the security enjoyed by rural people under customary tenure in areas

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<sup>12</sup> As mentioned above, compensation is only legally payable for the cost of disturbance and the value of improvements, notwithstanding the fact that the premise of this practice, the availability of alternative land to the dispossessed, is no longer valid in densely populated or urbanised areas.

where development projects were planned. Violence and deaths attended the intervention of the state government in such a dispute at Bakolori in Sokoto State in 1980 (Jega, 1987).

Most attempts, even under customary law, stopped short of encoding the rights of graziers to pastures, fallows, crop residues, trees and water. Under the conditions operating at the time of the British occupation, there was no good reason for doing so. The majority of nomadic and semi-nomadic pastoralists - though not all - were members of Fulani groups, who were allied by kinship or political affiliation to ruling dynasties, or had reached a *modus vivendi* with them. They were understood to have little interest in rights to land as such. Subsequent movements in the relativities of political power - the weakening of 'traditional' rulers *vis-à-vis* the central government - and demographic growth, with the appropriation of land for cultivation, have created a 'crisis of pastoralism' from the laissez-faire policies of successive administrations. Neglect has also had the effect that no practicable proposals for the protection of such rights are yet under discussion. It would seem that, for them, some form of codification is the only alternative to oblivion.

Thus the policy choice is between, on the one hand, a *laissez-faire* strategy that sees a need to allow the historical dynamic of resource tenure, and the social fluidity of access to natural resources, to continue unmolested by codification, and on the other hand a policy that sees codification as the only way of preserving rights that are threatened by political change, demographic and market growth, and unpredictable state appropriations.

## **DYNAMIC PROCESSES**

'Important, however, as it is that the traditional systems of native land tenure should be adequately studied, it is equally necessary to investigate the changes to which these systems are being subjected by modern conditions. Inquiry into such changes presupposes some knowledge of the traditional systems: without such knowledge, the significance of the changes cannot be fully appreciated. The influences making for change are twofold: first, those due to economic circumstances, such as the increasing pressure of population, new methods of cultivation, or growth in a marketing economy; and second, those due more directly to the actions of administrations in introducing forms of tenure based on European conceptions' (Hailey, 1938: 842).

To place importance on change is not to commit oneself to a particular theory of the evolution of tenure relations. Lugard (1922), for example, believed that land tenure had evolved from communal through family and tribal to individual stages (Annex). While remaining agnostic with regard to such general models of change, we can, nevertheless, identify ten dynamic processes which all have a direct impact on tenure relations in rural areas (the list is not necessarily complete: see Mortimore et al., 1987): (1) the 'saturation' of rural space; (2) land division; (3) land degradation; (4) migration; (5) market participation; (6) capitalisation and technical change; (7) the redefinition of 'ownership'; (8) family change;<sup>13</sup> (9) competition and conflict; and (10) state intervention.

### The 'saturation' of rural space

The extension of the cultivated area has been documented in numerous studies at the local scale, and is testified in national land use statistics. It is susceptible to analysis using air photography dating from around 1950. The increase in the cultivated fraction reflects two processes, each of which, being less visible, is harder to quantify. The first is the shortening of fallow periods, as cultivation cycles become more frequent. The second is the transition from fallowing to annual or permanent cultivation. The process has developed furthest in, for example, the Kano Close-Settled Zone of Nigeria, where rural population densities in excess of 300 per square km are associated with a cultivated fraction of about 85 percent, family holdings of one hectare or less, and the cessation of fallowing.

However, running well ahead of these processes, and more urgent from the standpoint of rightholders, is the exhaustion of the supply of land that is not yet claimed by individuals. Under the colonial administrations and subsequently, such land was demarcated by village boundaries and, within such boundaries, was usually allocated by the chief. Since there is no formal register of titles, the exhaustion of unclaimed land is only visible to members of the community, whose claims may be effected, not only by clearance, or enclosure, but also by the appropriation of rights to cultivate in future, to graze, or to cut wood.

Arrival at the point of 'saturation' is not a well-marked event but a transition. As the supply of land available for allocation becomes scarce, it is restricted

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<sup>13</sup> Owing to a limitation of space, these will be discussed in outline without citation from the extensive literature.

to poor land (for example, with shallow soil, or seasonally flooded) whose costs of reclamation are increasingly high. This shifts priority, for those wishing to extend the scale of their farming operations, to various forms of transfer within the community, promoting the sale of land and the increase of its price.<sup>14</sup> Such transfers assist not only the better off but also the resource-poor who make increasing use of land to raise finance either by sale or temporary alienation.

### Land division

Divisible inheritance is practised in most systems, and has obstructed both the accumulation of land between generations and the emergence of landless people. Under conditions of hand technology, there tends to be an association between family size and the size of holding, so that the larger the holding, the greater the extent of subdivision, either before or after the death of the principal rightholder. Population growth in the medium term, and the growing scarcity of unclaimed land, obstructs the enlargement of subdivided holdings after inheritance, so there is a trend towards smaller holdings over time. The increasing cost of transfers obstructs the consolidation of fragmented holdings, even though the small size of fields and their distance from one another may increase labour costs. There are exceptions to this simple model, but without doubt the question that arises is whether large numbers of family holdings, especially in densely populated areas, are slipping below the threshold of economic viability.

Because the governments of the West African anglophone countries did not involve themselves, by and large, in the redistribution of land (as they did in the settler economies of eastern Africa), the question of a minimal economic holding was left to the indigenous people to settle. Even the managements of irrigation projects generally limited themselves to re-arranging existing rights for optimal water management. At South Chad in Nigeria, some opportunities for significant accumulation were created for privileged farmers in an area of relatively low population density. On World Bank-supported programmes in northern Nigeria, new technologies and subsidies having major implications for tenure relations were promoted, while turning a blind eye to the means used by adopters to gain access to irrigable land.

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<sup>14</sup> Where land is very scarce, even as sale (permanent alienation) becomes more widely acceptable, the frequency of land sales may nevertheless diminish, owing to social resistance to alienation (e.g., the Kano Close-Settled Zone in Nigeria).

A corollary of land subdivision and fragmentation is the multiplication of claims to land, both by resident and absent members of the community.

### Land degradation

It is not possible to separate, without ambiguity, the effects of rainfall diminution from those of management, partly because few trustworthy assessments of degradation exist. However it is clear that degradation, if it is occurring, has tenurial implications, as the following examples show.

(a) In an extreme case of sand dune mobilisation in grazing land, the amount of land available was reduced by up to 20 percent between 1950 and 1986 (Mortimore, 1989). This reduced the stock-carrying capacity. In the same area, village sites were invaded by moving sand and valuable irrigable sites were lost to a combination of sand deposition and lowering water tables. The loss of farmland to gully erosion in the sub-humid and humid zones of West Africa is analogous and more widespread. Intensified scarcity of land may be expected to accentuate the process of saturation described above.

(b) Lowering crop yields, on account of the loss of soil nutrients, call either for crop substitution, or for extended cultivated areas to compensate for lost production. To extend the cultivated area requires additional labour or technological change, either of them putting a premium on capital resources and thereby accentuating economic inequality. Inequality drives the definition, appropriation and transfer of rights of access to land.

(c) Environmental change can stimulate crop or livestock enterprise switches as primary producers adapt to changes in bioproductivity. For example, the ratio of cattle to small ruminants has tended to change after drought episodes, when the mortality of cattle and their higher replacement costs tended to favour small ruminants in the recovery strategies of livestock producers. There are many examples of farmers adopting fast-maturing millet, cowpea or sorghum varieties in order to cope with reduced rainfall reliability. In the Sahel, the drought cycle of the 1980s was followed by an accelerated development of irrigated and flood-recession agriculture. It has long been orthodox to believe that the popularity of cassava in forest systems owed something to its nutrient demands being less than those of yams. Such switches alter the relative

demand for ecological niches - fodder plants, wet soils, dry soils - to which tenurial relations at the micro-scale must adapt.

### Migration

The imposition of an alien administration facilitated ethnic intermingling in rural areas, as previously concentrated populations dispersed into the woodlands, mobile livestock producers penetrated further south in their search for dry season pastures, and farmers migrated into the territories of other groups (or countries), looking for land on which to grow market crops such as cotton or cocoa. Today it is not unusual to find two or three languages spoken in the same village, and the co-existence of such communities must be resolved in tenurial terms, as questions of resource access arise. These questions may concern the distribution of farm land and the terms under which it is allocated to the new arrivals (some form of lease, or heritable). Or they may concern the *modus vivendi* between farmers and pastoralists, whether customary visitors or new arrivals. Similar questions, though having a shorter time-horizon, arise when more than one group of pastoralists arrive in the same area.<sup>15</sup>

A second area of interest in relation to migration (or rather, short-term mobility) arises when 'strange farmers', seasonal tenant farmers, or labourers (who may gain access to local resources on a temporary basis) enter an area in some form of economic symbiosis with the indigenous population. There are many forms of agreement that reflect both the over-riding interest of the indigenous rightholders and the short-term requirements of the visitors; and many cases of migrants settling and achieving permanent rights to land. There are also many examples of abuse, such as chiefs using their authority to alienate community land for payment.

The mobility of farmers and farm labourers allows the continuous adjustment of the land and labour resources of West Africa under changing economic circumstances. In the anglophone countries, there has been very little governmental interference in the resolution of local institutional problems arising from these movements, and in particular those of land tenure; so the fact that tenurial questions have so little impeded economic change speaks loudly of the adaptability of these institutions.

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<sup>15</sup> The evident success of thousands of communities in resolving tenurial questions involving more than one ethnic group at the local level invalidates the thesis that ethnic diversity causes resource conflict in rural areas.

## Market participation

Much has been written about the incorporation of West African communities into world and national markets. Some of the tenurial issues are highlighted in the following examples.

(a) In southern Ghana and south-west Nigeria, demand for land for planting tree crops and the profits of cocoa production set up stresses on the system of family land and pushed it towards more individualised tenure. Since cocoa shades out farm crops as it becomes mature, it has to be grown separately from them. Many cocoa farms were set up in newly cleared forest, by independent producers, with new field systems.

(b) Palm production in south-east Nigeria was more compatible with existing farming systems which already incorporated the tree, intercropped with annuals with which it does not compete for light and nutrients like cocoa. The impact of market production was not necessarily disruptive of customary tenure relations.

(c) Annual crops such as cotton and groundnuts had their principal effects through generating a demand for additional land, obtained either through clearing fallows or by obtaining new allocations on the village perimeter. The individualisation of groundnut profits precipitated the subdivision of family farm holdings - first by gift, later by inheritance - as sons wanted to break away from their fathers and farm independently.

(d) Small-scale irrigators might take up short-term leases, or borrow land for one dry season at a time, in river valleys, by paying chiefs or communities; their output was directed to urban markets. Although the small scale of their individual operations posed little threat to other users, collectively they obstructed customary access to grazing and water.

These examples illustrate the diversity of impacts that increased market participation has had on tenurial relations.

## Capitalisation and technical change

Market participation and the profits to be made from it may engender three divergent responses.

(a) Where annual crops are concerned, a 'soil mining' strategy is possible where land is still abundant - that is, the cultivated area is extended in order to increase production, or the pastures are stocked up to higher levels. West African farmers have often been accused of adopting such a strategy, as they have been assumed to have short-term planning horizons. Cotton has attracted this diagnosis as it is difficult to integrate with other crops on account of its seasonal requirements for labour and soil nutrients, so it has often been grown on peripheral fields - with insufficient inorganic fertiliser - which are quickly exhausted and returned to fallow. But such strategies are unsustainable in a context of increasing land scarcity and rigidities in tenurial relations.

(b) Capitalisation, based on inorganic fertilisers and mechanised cultivation, is economic only on holdings above a threshold size. This threshold has increased in recent years, with the falling value of local currencies and increased costs of machinery and inputs, so that in most areas, the impetus of agricultural capitalisation is failing. While the Nigerian naira was over-valued (before 1986), the hugely increased demand for food crops in the oil-fired urban economy created profitable opportunities for a new class of large-scale farms, which were set up on cleared woodlands, allocated under statutory tenure to urban entrepreneurs, politicians or army officers. But profits fell with rising costs, and inadequate fertilisation is likely to have reduced some of them to unsustainable soil-mining.

In Nigeria statutory leases (which may be for 99 years) have been used to establish precedence over customary claims to large areas of uncultivated woodland, but there are some cases of middle-sized farms being built up through purchase and consolidation under customary tenure, as in Sokoto, where influential persons could bring market or other forms of pressure to bear on particular smallholders. It may be observed that the role of political influence in large scale farming has changed historically. When the command of labour was a necessary condition for the mobilisation of natural resources (see Berry, 1993), the precolonial slave estate, which was based on labour forcibly imported from non-Muslim areas, became the natural expression of capitalised farming. Now, access to state governments' land allocation



procedures, and to technological inputs (which have been known to be diverted from government operations) are similarly dependent on political or financial influence.

Some governments have tried to capitalise large-scale state farms - notably in Ghana, and (in the 1980s) some states in drought-affected areas of northern Nigeria (where state involvement in food production failed). The acquisition of land for such enterprises - for 'over-riding public purposes' - was attended by the usual problems of displacement and compensation.

(c) Of greater general importance are the conditions favouring the capitalisation of smallholdings, which are used for the production of food and market crops, and often incorporate livestock. Recent research suggests that both the true extent and the potential of such capitalisation have been underestimated in tropical Africa. The debate has not been helped by the dearth of data on capital investments in smallholdings, and in particular, improvements created by labour - such as soil amelioration, irrigation works, enclosures, and tree planting and protection. Thus the controversy concerning security of tenure as a precondition for investment has been preoccupied with new technological packages and the use of land as collateral for credit.

We are confronted with a paradox. On the one hand, there is very little evidence that an absence of security of tenure (which means, in practice, the right to appropriate the benefits from personal investments in the land) has significantly impeded participation in market production of cocoa, palm products, groundnuts, cotton, food grain and root crops and others. In many areas, such participation has been maintained for many decades; there have been important technological innovations; and it is not convincing to argue that these systems are unimproved and unsustainable. On the other hand, credit (both formal and informal) is nearly always given on collateral other than land, as the borrowers' right to encumber his land is not considered by creditors to be defensible. Formal credit, such as it is, suffers from repayment failures on a large scale, while informal credit is usually obtained for use outside agriculture. It is reasonable to argue, therefore, that in general, customary tenure has given the *best*, not the worst of both worlds, as it favours the use of private capital and investments created by family

labour. It is undeniable that indebtedness and landlessness on an Indian scale are absent from anglophone West Africa.<sup>16</sup>

Agricultural profits, except in the heyday of cocoa production, may often have been inadequate both to support consumption and to finance farm investments. But recent research has shown that many West African systems of livelihood have diversified beyond farming and, although data is scarce, the once conventional view that earned income is largely consumed on non-productive expenditures is being questioned - indeed, as Sara Berry argues (1993), the concept of non-productive expenditure cannot be defended in the context of the social system viewed as a whole. In semi-arid Kenya, incomes earned off-farm, and from outside the district, were used to pay for soil and water conservation, coffee plantations and other farm improvements (Tiffen et al., 1994). There is plenty of anecdotal evidence that the same is occurring in the Kano area of Nigeria.

The condition for increasing investment in farm productivity is, on this argument, less to do with the supply of capital (or credit) and more to do with the value of farmland. As rights to land coincide with membership of the social community, most customary tenure systems do not impede it. The logic of smallholder capitalisation is consistent with 'low external input' intensification and conservation, and quite inconsistent with 'extensification' and soil-mining strategies.<sup>17</sup>

### The redefinition of ownership

The 'commoditisation' of the factors of production which follows logically from intensified market participation calls for the redefinition of rights of access to natural resources. If land, labour, livestock or farm inputs can be bought in the market, can they not also be sold? However, how are multiple rights - not to mention multiple claims to the same rights - to be resolved?

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<sup>16</sup> The avoidance of these was an objective of government policy advocated by Lugard (1922).

<sup>17</sup> I do not discuss the arguments for 'land reform' as a condition for successful smallholder farming, as the evidence shows that the preconditions for land reform, namely severe inequality in the distribution of land, debt encumbrance, and landlessness do not exist in West Africa. However, the possibility that legislation to control unequal access to land (a prominent objective of Nigeria's Land Use Act of 1978) is too weak to prevent such problems emerging in future needs to be taken seriously, on account of the impending exhaustion of the supply of unclaimed land in most areas.

In some areas, such as south-west Nigeria, family tenure has long ago evolved into private rights that lawyers have no hesitation in describing as 'fee simple' or freehold (Omotola, 1980). Elsewhere, as in northern Nigeria, the privatisation of usufructuary rights to farm land is moving beyond the right to appropriate the economic crop - the product of labour - to the appropriation of fodder residues and the exclusion of others' livestock from grazing trash or woods, by enclosure; there is resentment at the use of foliage from private trees by visiting livestock herders; customary livestock routes and grazing areas are being encroached by cultivators who enclose their fields against incursions by animals. Since farmers' rights are easier to establish, they tend to be defended in the courts when cases arise between them and livestock herders.

Grazing rights, on the other hand, have failed to move towards privatisation to the extent advocated by those who see registered title to grazing areas as the only solution to the intensifying marginalisation of mobile livestock producers. They are usually still undefined, though there are areas where livestock producers have been given essentially private rights (such as on the Mambilla Plateau of Nigeria), or collective rights protected by administrative recognition (such as in northern Jigawa and Yobe States of Nigeria). In the second case, the rights are not exclusive to the local users, and the reservations may be invaded by visiting livestock at will. The response of mobile livestock herders to pressure on communal grazings has usually been to move elsewhere, but this strategy will soon cease to be a viable one in West Africa.

So far, privatisation affects water use only where private wells have been dug and the owners wish to exclude other users (which for social reasons is often undesirable). However, access to water can be limited in other ways: by farm encroachments (in the case of livestock), or by village authorities (in the case of regulated supply). River water becomes both less accessible and less abundant when irrigators set up along the banks. Irrigators upstream can remove water customarily enjoyed by those downstream, especially in dry years. None of the countries under discussion is believed to have enacted legislation governing access to water, though a law has been under discussion in Nigeria for several years. It is likely that such legislation will be more concerned about the geopolitics of water access (dam constructions, diversions, and water sharing) than with protecting or defining small-scale users' rights.

The redefinition of 'ownership' in favour of more privatised, exclusive rights favours the economically strong at the expense of the weak or marginalised,

whose rights depend on customary access, for example by gift (such as wives' fields in many areas), tolerance (such as women's access to fuel on others' farms or fallows), or sharing (such as communal access to economic products - palm leaves, edibles, timber, medicines, etc.). On such eroding rights, however, depend many important household activities, which benefit the whole community.

### Family change

The household may be conceived as 'a network of implicit contracts' (Netting, 1993) between men and women, old and young, family, kin or strangers. Both the relations between households in the community, and those within them, are subject to a process of continuous renegotiation, in which the influences of new economic conditions, and of education, play large roles. Thus the opportunities for market production stimulated the breaking up of extended family farms in Hausaland as sons became anxious to appropriate profits privately, at the expense of contributing to subsistence production under the direction of their fathers. On the other hand, the increasing importance of income diversification through short-term mobility has tended to intensify patterns of inter-dependence amongst the men of large households, as absence calls for assistance with farming work, and farming work calls for more capital. The more educated retain (most of them) direct links with their villages - under present conditions of political uncertainty (such as those produced by statism in Nigeria) it would be folly to do otherwise. Greater complexity in residence behaviour, income sources, and working arrangements between individuals must make for a corresponding complication of tenorial arrangements, as solutions are sought to a wide variety of specific situations. To generalise on this theme would therefore be premature; though it is clear that the resilience of the family is proving far greater than was expected by some early observers of the process of individualisation.<sup>18</sup>

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<sup>18</sup> The Nigerian family has burst the bounds of space and transcends distance, proving itself capable of managing simultaneous claims on urban, institutional, and rural resources in a variety of locations. In recent years it has been suggested that net income transfers, through these family networks, from urban to rural locations have reversed, owing to recession in the urban sector. Subsistence claims of urban residents, through family membership, on rural systems of production suggest the existence of a 'shadow tenure'.

## Competition and conflict

Violent conflicts between contestants for the use of land have embarked on a steepening frequency curve in recent years (for example, conflict between ethnic groups in eastern Ghana in 1995; clashes between graziers and farmers in the river valleys of northern Nigeria; and violence by the Sokoto state government against displaced farmers at Bakolori in 1980). Behind these publicised incidents lies a larger and unknown number of litigations, mostly resolved in local courts, and administrative adjudications. If, as it appears, conflict is increasing in natural resource matters, this development reflects an inability on the part of market mechanisms to resolve the competition between alternate land users that arises inevitably in a market-based economy.

The position of tenure systems on the interface between market forces and economic pressures on the one hand, and custom and ethnic territories on the other, accords them a strategic significance in the process of social and economic change which has been very inadequately recognised by independent governments. One hypothesis is that economic competition for natural resources, linked to world market pressures, sits unconformably on customary institutions, and that radical transformation of these institutions is necessary. Such an hypothesis underlay the controversies about freehold tenure in African areas of Kenya, for example, and the decision to transform customary tenure rules into something approximating freehold, by adjudicating and registering individual title to land. But the numbers of holdings in West Africa would make such a solution impracticable, even if it were desirable.

On the other hand, a continuation of a *laissez-faire* policy, to allow the 'natural evolution' of customary tenure (Lugard, 1922), threatens the elimination of resource access rights held by weaker groups which depend on the recognition of custom. The solution adopted by the early colonial administrations, that of protecting custom (which was uncodified) behind a bulwark of state suzerainty over land, is no longer workable, as the state itself has all too often become the instrument of interest groups, and the doctrine of stewardship 'on behalf of the native peoples' merely conceals the conflicts that can arise between the interests of central government and those of local rightholders.

Much research and policy debate are desirable on this issue, as the evidence suggests that West African resource tenure is approaching a critical point in its history. There are severe warnings in some other parts of Africa with regard to the possible consequences of neglect.

## State Intervention

As both a principal player in the competition for access to natural resources and the match referee, the state has a complicated and sometimes contradictory role. The colonial administrations, owing to their limited resources and lack of familiarity with the existing tenure systems, preferred the part of the referee, which was duly dignified in the doctrine of indirect rule. The independent governments, however, endowed with more resources (through aid funds) and inspired by centrist, interventionist doctrines of economic development, tended to emphasise their powers as players, acquiring large areas of land for urban development, infrastructure, and agricultural projects.

In such a conception of the role of government, there is a danger that customary rights are seen as impediments to development, especially if they appear to be ill-defined or fluid. Thus the Land Use Act of Nigeria (1978) gave scant regard to the rights of mobile livestock herders, for example; and in the debate which preceded its enactment, the difficulties the government was having in obtaining land in the south of the country were influential as justification for extending the Northern Nigeria Land Tenure Law (1962) to the south of the country, which, in effect, is what the Act did.

The retreat of the state, under various forms of structural adjustment policy, has created an ambiguity in the theory of tenure, as the history of the twentieth century shows that this tends to reflect the prevailing philosophy of government. It may also provide a breathing space in which the relations between the role of the state and tenure law could be profitably reconsidered - were it not for the parlous state of democratic institutions in all four countries.

## STRATEGIC ISSUES

In conclusion, there appear to be three strategic alternatives contending for preference in the future evolution of resource tenure policy.

### Dualism

A continuation of the essentially dualistic tenure regimes, evolved historically in response to the specific needs of different areas, has the advantages of minimising disturbance to the status quo, minimising administrative costs, and interfering least with the 'natural evolution' of tenure relations. However, in the long run, dualistic tenure may be unsustainable, for the following reasons:

(a) Statutory tenure, which is based on trigonometrical survey and registered titles, offers advantages over customary tenure to those in a position to afford its costs. It has been used to assert title over land disputed by customary claimants. Notwithstanding the *general* recognition given to customary tenure in such instruments as the Land Use Act (1978) of Nigeria, and the possibility of recording *specific* (but unsurveyed) customary claims in local government offices, it seems most likely that as capitalised land uses are extended into rural areas, the instabilities engendered by such ambiguities will increase rather than decrease, to the detriment of investment on customary land.<sup>19</sup>

(b) Transfers under customary tenure are subject to the approval of the governor, according to the Land Use Act. This is a fiction, as customary rightholders are mostly ignorant of it, and the government lacks the survey and administrative infrastructure necessary to record such transfers. Yet the frequency and complexity of transfers (other than inheritance) are bound to increase under conditions of increasing scarcity of land and intensifying market pressure. The question arises whether local authorities and courts can resolve the expected stresses.

(c) In the past, the existence of unclaimed land provided a safety-valve for those who lost out in disputes, and rights of common access, as mentioned above, were especially important to marginal groups such as

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<sup>19</sup> In Nigeria, and doubtless elsewhere, the costs of converting customary into statutory rights, and ignorance of what is involved, prohibit the great majority of rural rightholders from securing statutory rights. There is an additional ambiguity concerning rights of alienation and inheritance under statutory tenure, which was designed with urban uses in mind.

women or the very poor. The future evolution of customary tenure is somewhat uncertain, and it is not clear what safeguards it contains for the protection of rights against advantaged interests, even within the community, and still less from without.

### Formalisation

The enactment of legislation to regulate customary tenure, or replace it with new forms of ownership<sup>20</sup>, offers three possibilities: the government can attempt to engineer the direction in which tenurial relations evolve in the future; it can introduce equality by setting limits to landholdings; and it can increase the convergence of tenure with market desiderata such as providing debt collateral or easier transfer. Against such intervention there are, however, several disadvantages:

- (a) The government assumes the right to define the goals. But governments, as mentioned above, are interested parties, and not always democratically representative. In land matters, above all others, the interests of centre and periphery may not coincide.
- (b) Marginalised, common access, and multiple rights are certain to be over-ridden as they are complex, little understood outside the local community, and variable from place to place. Formalisation includes an in-built bias towards individual and exclusive rights, and threatens those of the community.
- (c) The costs of reorganising land or other natural resource rights and registering them are high. The likely outcome of such costs is a very long implementation period.<sup>21</sup> The costs of maintaining systems of registration are a burden on local governments.
- (d) The regulation of subdivision and transfers and of subleasing or other informal arrangements can easily be circumvented where recognition of these transactions is given by the community, regardless of their legal standing.

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<sup>20</sup> According to Omotola (1980), the Land Use Act (1978) in Nigeria defined a new form of ownership in the statutory right of occupancy, midway between leasehold and ownership, in which the holder of a certificate of occupancy pays rent to the government in respect of the land, but enjoys exclusive rights in respect of improvements, including buildings.

<sup>21</sup> In Kenya, land adjudication and registration, set up in the 1960s, is still in progress in some districts.



## Decentralisation

This approach seeks to strengthen community management of land resources and is reflected in the currently popular *gestion du terroir* programmes in francophone West Africa, as well as being consistent with the political and economic slogans associated with structural adjustment plans. It offers social accountability at the community level, a possibility for the community to define its own priorities, to reassert its autonomy *vis-à-vis* the state, and to police its own decisions within its territorial boundaries. Several implications of decentralisation for resource tenure may, however, be suggested:

(a) Enough has been written above to show that the concept of customary tenure, as developed by the British administrations, was decentralised in nature. It was regarded as codified (either in written or in customary law), under local regulation and adjudication, and free to evolve as the local courts decided. The few attempts to register rights to land (those of the Kano Native Authority in Nigeria from the 1930s to 1957, and the local government authorities under the Land Use Act of 1978, being examples) were locally responsible and did not interfere with the definition of customary rights.<sup>22</sup>

(b) The rhetoric of decentralisation does not solve the question of representation within the community in the administration of land or other matters. There are many stories of chiefs appropriating rents from their allocative or adjudicative responsibilities. But alternative structures are vulnerable to hijacking by influential interests, with the added disadvantages of novelty and instability.

(c) Conflicts of interest which are embedded within the community may be difficult to settle within the context of the local political economy, and disadvantaged interests may lack a protagonist.

(d) Conflicts which originate outside the community - translocal problems - cannot be resolved satisfactorily within it. For example, the problems associated with transhumance affect more than two communities and places; or the disturbance of river regimes by dams upstream may cause conflicts which are virtually incapable of resolution within the village boundary.

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<sup>22</sup> In a northern Nigerian village, the Village or Hamlet Head (*Maigari* or *Maiunguwa*) allocates land, regulates access to wells, administers relations between farmers and pastoralists, controls village development, authorises the cutting of trees and a host of other environmental management matters, on behalf of the community.

(e) Longer term dynamic processes are driven by factors such as demographic change, market expansion, or policy vacillations which are 'given' as far as the community is concerned, yet demand local responses. Village communities cannot resolve the problems raised by state incursions, such as agricultural projects.

For these reasons, it is suggested that decentralisation can only provide a part of the answer to tenurial questions.

It should not be taken for granted that, because land administration has for the most part been successfully conducted in the anglophone countries of West Africa, it can continue indefinitely on the present basis. The increasing scarcity of land is alone sufficient cause for intensive research and debate on the impact of the dynamic factors and the desirable direction of change in future. There is much to be gained for integrating the experience of the four countries discussed here, to confront common problems, as well as benefiting from comparison with the francophone countries. Resource tenure policy cannot be isolated from social goals, nor from the resolution of major conflicts between market economics and custom on the one hand, and between privilege and social justice on the other.

## REFERENCES

- Berry, S. (1993) *No condition is permanent. The social dynamics of agrarian change in sub-Saharan Africa*. University of Wisconsin Press.
- Chubb, L.T. (1947) *Ibo land tenure*. Enugu: Government Printer.
- Feder, Gershon, and R. Noronha (1987) 'Land rights systems and agricultural development in sub-Saharan Africa'. *World bank Research Observer*, 2: 143-69.
- Hailey, Lord (1938) *An African survey. A study of the problems arising in Africa south of the Sahara*. Oxford University Press.
- Hansford, K., Bendor-Samuel J. and Stanford R. (1976) 'An index of Nigerian languages'. *Studies in Nigerian Languages*, 5 (Accra: Summer Institute of Linguistics).
- Haswell, M. (1975) *The nature of poverty. The first quarter-century after World War II*. London: Macmillan.
- Jega, Attahiru M. (1987) 'The state, agrarian reformism, and land administration in the Bakolori Irrigation Project', in: Mortimore, et al.: 141-52.
- Lugard, Sir F.D. (1922) *The dual mandate in British tropical Africa*. Edinburgh and London: William Blackwood.
- Marshall, N. et al. (1962) *Studies of customary tenure systems in Northern Nigeria*. Zaria: Institute of Administration, Ahmadu Bello University.
- Macbride, D.F.H. (1938) 'Land survey in the Kano Emirate, Northern Provinces, Nigeria', *Journal of the Royal African Society*, 37: 75-91
- Meek, C.K. (1946) *Land law and custom in the Colonies*. Oxford University Press.
- Mortimore, M. (1989) *Adapting to drought: farmers, famines and desertification in West Africa*. Cambridge University Press.

Mortimore, M. (1991) 'A review of mixed farming systems in the semi-arid zone of sub-Saharan Africa', *Working Document 17*. Addis Ababa: International Livestock Centre for Africa.

Mortimore, M., Emmanuel A. Olofin, Reginald A. Cline-Cole and Ahmadu Abdulkadir, eds. (1987), *Perspectives on land administration and development in Northern Nigeria*. Kano: Department of Geography, Bayero University.

Netting, Robert McC. (1993) *Smallholders, householders. Farm families and the ecology of intensive, sustainable agriculture*. Stanford University Press.

Omotola, J.A. (1980) *Essays on the Land Use Act, 1978*. Lagos University Press.

Rowling, C.W. (1952) *Report on land tenure, Kano Province*. Kaduna: Government Printer.

Shaw Flora, L. (Lady Lugard)(1905) *A tropical dependency. An outline of the ancient history of the Western Sudan, with an account of the modern settlement of Northern Nigeria*. London: James Nisbet & Co.

Tiffen, M., Mortimore, M. and Gichuki F. (1994) *More people, less erosion. Environmental recovery in Kenya*. Chichester: John Wiley.

## ANNEX

### Lugard's model of African land tenure

'It is not easy to focus into a paragraph a general conception of African land tenure. The general principles would seem to be that the assignment of land to the individual is entrusted to tribal or family authorities, who, however, have no claim to ownership in it themselves; that every individual has a right to share in the use of the land, and holds it in perpetuity, subject to the performance of tribal obligations, but may not alienate it; that these principles are held more tenaciously by the forest tribes than by those farther north, where, in some cases, it is the representative of the earth-god who assigns the land, in others an individual chief, while pastoral nomads are indifferent to questions of land ownership and value grazing rights only. The forest tribes jealously maintain that all unoccupied land belongs to some community or other, while the northern tribes are less insistent on such claims. All alike recognise the right of the conqueror to dispose of the land. The inevitable tendency to individual ownership is meanwhile constantly asserting itself, with the evolution of the tribe, and is fostered by pressure of population, by foreign example, and by the replacement of annual by permanent crops' (Lugard, 1922: 287).

'The tribal land at the disposal of the chief might be allotted either to families that had outgrown their family lands, or to strangers who desired to settle among the tribe, provided that they paid the customary tribute and dues. Family lands are at the disposal of the head of the family, and every member of the family has a right to a share in the land - a right which is not forfeited even by prolonged absence. The holder and his descendants have undisturbed possession in perpetuity, and all rights of ownership, except that they cannot alienate the land so as to deprive the chief of ultimate control over it. The occupier's title is held by virtue of his membership of the family, and perpetuates the name of its head.

'The produce is the property of the occupier, and he may own trees planted by himself, either on unoccupied land or on land occupied by another. He may sell or pawn the crops on his land, or trees owned by him, but not the land itself. He may not be ousted from his land for offences against the community, including failure to pay customary tribute; and upon the general acknowledgement of their right to allocate land, and to enforce punishment in respect of it, depends the prestige of the chiefs. Hence the system of ruling through the chiefs depends on the recognition by Government of these powers.

A chief acts as trustee for the tribe in regard to land. "He is joint owner with his people, and he cannot exercise any proprietary rights without the co-operation of his people," said the deputation on the Gold Coast Forest Bill. Consequent on these assumptions, it is maintained that "every acre of land is the property of some tribe, family, or individual", including forest and swamp' (Lugard, 1922: 284).

### Meek's model of indigenous tenure in the colonies

'Summing up the main characteristics of indigenous systems of land-holding, it may be said generally that these are devised to meet the needs of a subsistence system of agriculture and depend on a sufficiency of land to allow a rotation which includes a long period of fallow. Land is held on (a) kinship, and/or (b) a local group basis. Individuals have definite rights, but these are qualified by membership of a family, kindred and ward (small village). Similarly, the individual claims of families exist concurrently with the wider claims of the clan or local group. Title, therefore, has a community character. It is also usufructuary rather than absolute. Land may only be sold under conditions which do not conflict with the rights of the kin or local group. The chief is the custodian of land, but not its owner. The normal unit of land ownership is the extended-family, or kindred. Land once granted to a family remains the property of that family, and the chief has no right to any say in its disposal. This constitutes a definite limitation on the conception of land as the collective property of the tribe or local group. The kinship basis of land-holding ensures social stability, but the absence of individual proprietary rights prevents the raising of money on land and so is a hindrance to development. Land may be pledged or redeemed at any time. The principle of redeemability ensures that land shall not be permanently lost, but it may be an impediment to progress since no one will attempt to improve land of which he may be deprived at short notice. The restrictions on the sale of land, the limitation of possession to the period of effective use, and the periodic re-allocation of land, all ensure that land shall not be uselessly withheld from cultivation or lost to the community' (Meek, 1946: 26-7).

### Lugard's model of the evolution of land tenure

'Speaking generally, it may, I think, be said that conceptions as to the tenure of land are subject to a steady evolution, side by side with the evolution of social progress, from the most primitive stages to the organisation of the modern State. In the earliest stage the land and its produce is shared by the

community as a whole; later the produce is the property of the family or individuals by whose toil it is won, and the control of the land becomes vested in the head of the family. When the tribal stage is reached, the control passes to the chief, who allots unoccupied land at will, but is not justified in dispossessing any family or person who is using the land. Later still, especially when the pressure of population has given to the land an exchange value, the conception of proprietary rights in it emerges, and sale, mortgage, and lease of the land, apart from its user, is recognised.

‘Conquest vests the control of the land in the conqueror, who in savage warfare also disposes of the lives and chattels of the conquered, but he usually finds it necessary to conform largely to the existing law and custom. In civilised countries conquest does not justify confiscation of private rights in land.

‘These processes of natural evolution, leading up to individual ownership, may, I believe, be traced in every civilisation known to history’ (Lugard, 1922: 280-1).

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The Drylands Programme aims to contribute towards more effective and equitable management of natural resources in semi-arid Africa. It has built up a diverse pattern of collaboration with many organisations. It has a particular focus on soil conservation and nutrient management, pastoral development, land tenure and resource access. Key objectives of the programme are to: strengthen communication between English and French speaking parts of Africa; support the development of an effective research and NGO sector; and promote locally-based management of resources, build on local skills, encourage participation and provide firmer rights to local users.

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International Institute for  
Environment and Development  
3 Endsleigh Street  
London WC1H 0DD  
UK

Tel: (+44 171) 388 2117  
Fax: (+44 171) 388 2826  
E-mail: [drylands@iiied.org](mailto:drylands@iiied.org)

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