

Land Tenure Lexicon

A glossary of terms from English and
French speaking West Africa

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Preface

This lexicon of tenure terminology stems from a broader programme of work on land tenure and resource access in West Africa. The programme is jointly financed by the UK's Department for International Development (DFID) and the French Ministère des Affaires Etrangères. Activities are being led by the Groupe de Recherche et d'Echanges Technologiques (GRET) Paris and the Drylands Programme, International Institute for Environment and Development, London.

The main objectives of this programme are to:

- enhance the research capacity of West African researchers and their institutions;
- foster collaboration between anglophone and francophone countries of West Africa;
- further the level of knowledge on land tenure and resource access issues in West Africa and their implications for policy and practice contributing to sustainable development;
- make such information accessible at all levels through publications, workshops and policy documents, thereby nourishing debate within the West African region regarding the options and implications of different tenure policies for equity, productivity, sustainable livelihoods and social justice.

This lexicon is thus intended to promote understanding, exchange and debate regarding land tenure issues in West Africa. Most particularly we hope it will encourage greater contact and mutual learning between English and French speaking professionals working on land tenure related issues in West Africa.

The lexicon has drawn particularly on an earlier French volume and on the recent publications of the Franco-British Initiative; the IIED Issue Papers (published in French and English); and the papers presented at DFID's Sunningdale workshop (DFID, 1999; Toulmin and Quan, 2000), as well as other current land tenure literature. The French *lexique* was published in 1998 along with a short bibliographic review of related francophone literature in a joint volume entitled *Bibliographie et lexique du foncier en Afrique noire* by Karthala and Coopération Française (Cubrilo and Goisard, 1998).

One of the problems we have faced in producing this lexicon has been the fact that terminology is continuously evolving, and at any given moment, different terms or translations may be favoured by different people. During the last three years of joint work with our French colleagues on this subject, we have 'invented' new terms such as 'derived rights', changed our minds about how best to use and translate other terms; and grappled with which translation to use depending on our intended audience. Although we have attempted to include francophone and anglophone West African usage where these terms differ from those used in Europe, the lexicon is targeted at researchers, policy-makers and development practitioners familiar with European terminology.

However, the attempt to clarify meanings and explain the problems associated with the use of certain terms is one best achieved in collaboration with other practitioners and researchers. We hope to receive feedback on the terms presented here and hope that the ensuing debates can enrich the understanding of this complex, fascinating and highly relevant subject. This volume, therefore, is presented as work in progress and, one of our reviewers suggested, it should be seen as a perpetual working document - 'no leather binding with gilt letters'!

Land and resource tenure is studied within several disciplinary areas: law, anthropology, geography, politics, economics as well as natural sciences. In development work, it features strongly in natural resource management, in urban planning, in policy debates on good governance, while there is also increased attention paid to ways in which legislative structures and procedures can reduce issues of conflict over land.

We have tried to cover each of these broad fields but we recognise that each discipline will have more detailed concerns which we have not treated in sufficient depth. Please write to us with your comments on this publication, suggestions for additional terms requiring coverage and errors of translation or interpretation.

Introduction

Anyone working on land tenure issues in West Africa soon finds that to understand the English or French terminology used, it is essential to have some knowledge of the land law and administrative systems introduced by the British and French colonial governments¹. Both these systems have been strongly influenced by the imprint of European history, such as the tensions resulting from the English civil war in the 17th century, the French revolution in 1789 and its repercussions in the 19th century. To a large extent, both the British and French legal systems were imposed on African countries during the colonial period and, even at independence, many colonial land laws were carried forward with few changes other than replacing the word 'Governor' with 'President' (see McAuslan, 2000)

The land tenure terms currently used are derived from historical and political processes. The rejection of the feudal land holding system which resulted from the French Revolution led to central importance being placed on an individual or citizen's right of ownership, free of ties of allegiance to 'superior' interests in the land. The concept of *propriété* is enshrined in the French Civil Code as the "right to enjoy and dispose of things in the most absolute manner". Its introduction into colonial land administration regimes had important consequences for the treatment of indigenous tenure systems, which were usually based on communal forms of resource management. Equally, the laws in the former French West Africa and some current administrative provisions (such as decentralisation) have been heavily influenced by the approach of the *Code Civil* which emphasises the importance of legal uniformity, the nationwide application of rules, and centralised decision making.

By contrast, in areas of English speaking Africa, with the exception of some areas set aside for urban development or plantations, during colonial times most areas were governed by indirect rule and customary law, via local courts, according to principles based on British common law. This system relies heavily on legal precedents, which derive from judgements on past cases and thus allows for new interpretations to be negotiated as circumstances change. Common law also maintains a close relationship with the structures and values of the social group from which it stems, which leads to several possible solutions, depending on local circumstances.

Given this diverse socio-legal and cultural background, it is difficult to arrive at clear equivalents between English and French terms. However, if the underlying concepts behind British and French colonial laws are difficult to align, it is even more difficult to interpret and classify indigenous West African tenure concepts using European or Western frames of reference. The assumption by the European colonial powers that there must be a 'rule book' governing African tenure relations provides one illustration of this problem (Mortimore, 1997). Although it may be thought that such prejudices have become less marked with the passage of time and events since the colonial period, such false assumptions have proven themselves to be fairly resilient to correction. For example, the *Plan Foncier Rural* in Ivory Coast, which has made a major effort to collect information from indigenous landholders in order to establish existing rights under customary law, originally adopted only two categories under which to classify customary rights – *gestionnaire des terres* (land manager) or *exploitant* (land user). This stemmed from the need to simplify customary concepts to fit into a national framework, an idea inherited from the colonial state. This reliance on two categories has since been recognised to be inadequate to describe the highly specific, locally adapted and interlinked rights that characterise customary arrangements. From 1998 onwards, these pre-established simplistic categories are no longer used in the collection of data (Stamm, 2000).

Equally, it is important to be clear about the meaning and implication of imported terms, in order to avoid projecting a set of ideas and concepts from an alien culture and society. This is particularly necessary when attempting the definition of rights which have not previously been written down.

Terms are listed in the lexicon mainly in English alphabetical order. However, those terms arising originally from the Francophone literature that are difficult to translate properly are commonly referred

¹ This document does not cover the lusophone terminology in the region, nor the influence that the German colonial land tenure systems have had in certain countries (notably Cameroon).

to in the original French. In these cases, the term is listed alphabetically in both English and French, though the main entry will be found under the French term. There is also an index of all French translations/terms at the end of this publication. We regret that it has been beyond the scope of this lexicon to include terms of West African origin².

Acknowledgements

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² There is an ongoing exercise in Côte d'Ivoire to compile a repertoire of African land tenure concepts and local definitions of land rights.

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Access right - Droit d'accès

An access right is a locally or legally recognised right to enter a defined physical area. In many parts of Africa, rights of access to land stem from membership of a particular social group. The nature and strength of the access rights held by a given member of society are determined by his or her participation in a network of social relations (Okoth-Ogendo, in Raintree, 1987: 226).

Hence, for example, an incoming settler will hope to gain access to land by establishing a social link with a patron in the community concerned. Conversely, a woman frequently will lose access to land following divorce. **See also: Common property resources, Open access resources, Property rights, Servitude**

Alienation (transfer) - Aliénation de la terre

Under French civil law this is a voluntary act transferring ownership or rights, either without charge (donation, legacy) or involving a fee (sale, assignment) between living persons or as a result of death (Cornu, 1994: 43). As far as legal and economic theories are concerned, the right to transfer land to anyone, regardless of status, is based on two fundamental concepts: private property (which implies that land is a commodity freed of social claims by others) and freedom of will. So, in cases of land sale where the transaction between individuals is free of restrictive ties of community, the buyer has no further obligations towards the vendor (Karsenty, 1996b: 22).

In the context of African land tenure, traditionally the relationship between people and land cannot be analysed solely in terms of property, while transactions are not made between individuals but between representatives of particular social groups. Land is rarely a commodity that can be traded at will. It is vested with symbolic, religious, ancestral and community values.

As Madjarian (1991) puts it, land is “the support and the mediator of a community, between the generations, between the living and the invisible”. Thus, it is people who belong to the land, and not the other way round. In general, therefore, alienation of land from the social group has been taboo. Circulation of land is possible within the community, but “trade remains dependent on, restricted by and integrated into the spheres of community and religion”. Thus, the taboo serves to avoid “the land becoming estranged from the community, or more precisely, the community becoming estranged from its roots” (Madjarian, 1991: 15-80).

Recent years have witnessed a trend towards land acquiring the status of a commodity. However, in many cases, parties still cannot act as autonomous individuals, able to sign a contract for the transfer of property titles, since they remain linked to a complex social network. For example, field studies reveal sales where the buyer is often subject to various obligations to the seller, such as annual gifts, shares of the harvest or hours of labour. Buyers may not be sure they will be entitled to bequeath the acquired land to their own heirs. Also in such cases, the motive for the ‘sale’ of land may involve the establishment of a personal hold over the buyer as much as the cash received (Heath, 1992 in Karsenty, 1996: 22; Dozon, 1982: 59). **See also: Ownership, Property rights, Property, Sacred area**

Allocation - Affectation

According to the dictionary definition, ‘allocation’ is the assignation of a piece of property to a specific person or group of persons, or a specific use, or both. In most customary African tenure systems, an area of land is allocated to a family, household or individual by a chief, village headman or family elder, for use as their own farm. In this case, the rights conferred are

considered neither permanent nor alienable. Hence, traditionally, land cannot be passed to a third party without seeking permission (Lloyd, 1963). **See also: Alienation, Allotment, Appropriation, Land chief**

Allodial title - Titre allodial

'Allodium' is an estate not subject to a feudal superior. According to Bentsi-Enchill (1965), "Allodial ownership represents the most comprehensive interest in land (i.e. the one embracing the maximum cluster of rights of use and disposal). Allodium is the opposite of feodum i.e. derived property". Kasanga (1999) states that the holder of allodial title is the ultimate authority on tenure issues. Allodial title holders are customary trustees, holding the land on behalf of the whole community. Allodial title is also known as 'paramount', 'absolute' or 'radical' title. In the case of compulsory purchase, allodial ownership is acquired by the state. Although not widely used in French, the adjective *allodial* refers to that which applies to a *Franc-Allieu*, which is land that is free from obligation or rent (Petit Robert, 1988). **See also: Compulsory purchase, Eminent domain, Feudal system**

Allotment - Lotissement

Allotment is the operation of dividing an estate, whether publicly or privately owned, usually within an urban or peri-urban area, into lots or plots, with a view to leasing or selling them. Such transfers may be subject to constraints on size of plot, its use and development, imposed either by the seller or by the planning authorities, on the basis of legislation and a development plan. Also known as land subdivision. **See also: Parcellaire, Zoning**

Aménagement des terroirs - Village lands management

See: Gestion des terroirs

Appropriation - Appropriation

Appropriation means "the act of setting apart or taking for one's own use" (Chambers, 1998) but does not describe the type of rights gained as a result of appropriation. The contemporary African situation is characterised by diverse modes of appropriation which correspond to different types of control over land. The mode of appropriation varies according to the degree of co-management, and depending on the status of the resource, and may range from complete public control to absolute private control (Le Roy, 1991c: 31).

Ownership constitutes one specific and restrictive form of land appropriation, limited to particular rights to control access and transfer the resource which are independent of both the nature and the use of the thing. Schlager and Ostrom put forward a broad range of appropriation rights which can be found within common property systems, from the simple right of access to the right of alienation/transfer (Schlager and Ostrom, 1992). **See also: Common property resources, Landholding, Land tenure, Ownership, Property, Property rights**

B

Bien/chose - Good/thing

In French law, this term includes all kinds of property - real and personal - which can be divided into *biens mobiliers* and *biens immobiliers*. It should therefore be distinguished from the English term 'good' which refers to movable property only (Campbell Black, 1979).

French legal terminology distinguishes between the general term '*chose*' (translated as 'thing' in English) and the precise term *bien*. According to Le Roy (1991c: 30), under a strict legal definition a *chose* becomes a *bien* if, and only if, it fulfils two conditions. The first is that, it must have a market value and secondly, it must be capable of being 'owned', that is, it must be capable of being the subject of full property rights as defined under Article 544 of the French Civil Code. This article defines *propriété* as the right to enjoy and dispose of things "in the most absolute manner", provided that these rights do not contravene other laws in force.

Most things are definable as *biens* as they are subject to a right of property, whether individual or collective. Resources which are non-appropriated (not being subject to property rights) are therefore things (*choses*). Examples of non-appropriated resources are common property resources, or property in the public domain. Thus, the French term *bien* is used wrongly in expressions such as *bien public*, *bien commun*, *bien non approprié* (i.e. public property, common property, non-appropriated property). Common property resources can become the subject of ownership; for example, when a community acquires a recognised authority over a forest, and starts selling timber through a co-operative. The forest in question then becomes a '*bien*'.

In Africa, a large part of the natural wealth and resources cannot be legally defined as *biens*. This is because such resources cannot, as yet, be freely transferred and have not, so far, been widely marketed. Thus, they have not yet acquired monetary value (Le Roy, 1995: 455-72). Translation into French of the term "common property resources" should not be taken as *biens communs*, but as *ressources communes* or *ressources collectives*. **See also: Alienation, Common property, Common property resources, Commoditisation of land, Good/thing, Land markets, Ownership**

Bilan foncier - Land evaluation

Land evaluation as a discipline is new, and should be distinguished from survey and planning (Abdulkadir, 1987: 210). This is an evaluation of the general pattern of land tenure and any associated problems. There are two main methods:

- a) a quantitative survey: a statistical and quantitative assessment of data from which it is possible to identify the causes of a specific conflict. It involves an interpretation of the diverse relations concerning land with a view to understanding trends and thresholds.
- b) a qualitative or 'operational' survey: based on a participatory, informal method, it identifies the expectations and norms of different social groups, such as urban and rural, indigenous and non-indigenous populations, wealthy and poorer households. This is a more subjective approach that requires a micro-sociological or anthropological interpretation.

Such a land tenure evaluation provides a basis for considering land tenure policy options and interventions. **See also: Champ foncier**

Bush-fallow rotation system - Culture sur jachère

Bush fallow rotation is a modification of the practice of shifting cultivation, where land is re-used after a period of fallow, during which soil nutrients are replenished through natural processes. Bush-fallow rotation develops as population density rises, where there is greater pressure for land to be used more intensively and for farmers to acquire claims over land. Under customary systems, farmers are usually entitled to return to fallow land they had previously farmed.

"The main characteristics of the bush fallow system are rotation of fields rather than of crops, easy acquisition of land for cultivation, use of fire for the clearing of vegetation, dependence on muscle power, use of simple implements for cultivation, mixed cropping, and the restoration of the fertility of the soil by fallow vegetation. Under the bush fallow system, that member of the land owning group who is the first to cultivate a piece of unclaimed land establishes for himself and his descendants the right to use that land for cultivation. His rights extend to the fallow vegetation. Boundaries of individual farm lands are not well defined, but they can be determined in times of dispute (Benneh, 1987: 164-5). **See also: Fallow, First occupancy (rights of), Fragmentation, Shifting cultivation, Slash and burn agriculture**

Cadastral survey - Cadastre

A cadastral survey is the measuring of land areas and property boundaries, to be recorded in a cadastral record (*cadastre*). This official public register of the ownership, boundaries and value of landed property of an administrative area, is carried out for taxation or other official purposes. **See also: Land register, Survey**

Catchment area - Bassin hydrographique

An area which contributes surface water to a river. While rivers may gain some water from springs drawing on underground reservoirs fed by rainfall from a long way away, drainage basins generally operate as self-contained units of water collection and transmission. Catchment areas are largely moulded by processes which involve close interdependence between the movement of water, and their slopes and channels (OIE, 1998). **See also: Water rights**

Capital - Capital

See: Factor of production

Champ foncier - Scope of land tenure

Francophone authors refer to the *champ foncier* to designate the interplay of different factors related to disciplinary scope of land tenure issues (see Durand-Lasserve and Tribillion, 1982). Each land tenure system generates over time particular relations of possession, domination, exploitation and distribution of income. In depth study of such relations requires a recognition of the interplay of legal, economic, political, institutional and social issues over a period of time.

Thus, land tenure may be perceived as a 'total social phenomenon' in the sense used by Marcel Mauss (1872-1950) and any assessment must bear in mind its interdisciplinary and dynamic characteristics. **See also: Land tenure**

Chief - Chef

See: Land chief

Codification - Codification

In law, codification describes the action of codifying and, by extension, the outcome of this action. It can mean either the drawing up of a code, or bringing existing legislation and measures into a single form within a code. Codification presents the advantage of providing a unified regulatory framework. However, in the African customary legal context, it has the major disadvantage of attempting to set in stone a situation which is characterised by transition and flexibility, in order to create an institutional body of laws which claims to be exhaustive and general (Le Roy, 1991b: 178-9). In many parts of Africa, European inspired land or forestry codes apply nationwide, and are administered by local and national authorities. Islamic law is also based on a universal code of laws which are applicable to all Muslims.

The imposition of such national codes has not been wholly successful in superseding customary norms and tenure systems. Thus, in many African states, legal dualism prevails with important consequences for the security and exercise of rights established under either formal or informal systems. For example, as Bruce (1988) points out, most national legal codes allow land to be sold, while most indigenous tenure systems do not. Thus, land may be

legally transferred in terms of formal law, while such a transfer is not considered legitimate by the local community, who often have little or no knowledge of the provisions of the national land code.

The process of drawing up the Rural Code in Niger represents a recent attempt to clarify existing land tenure rights in rural areas (see Lund, 1998). Similarly, the *Plan Foncier Rural* in Ivory Coast aims to document the current pattern of rights and land use, through declarations by the various rights holders before relevant witnesses. In both cases, it is hoped that the local registration of rights, which have been validated by local stakeholders, will represent a relatively low cost system that is socially acceptable and will lay the groundwork for the consolidation or reform of the land laws. **See also: Colonial land tenure system, Indigenous tenure systems, Plan Foncier Rural**

Collateral security - Sécurité collatérale

This term is used to refer to the security required by a creditor, whereby an item of property may be appropriated by the creditor, if borrowed money is not repaid. In the west, title to land is often used as collateral to secure a loan in the form of a mortgage. However, since in many rural African contexts, land is non-transferable or is subject to several other inter-linked customary rights, it is not ideal for use as collateral security. Alternative credit schemes, therefore, need to be designed and promoted which focus on cattle and other valuable moveable assets as collateral for micro-finance initiatives. **See also: Security, Tenure Security**

Colonial land tenure system - Droit foncier colonial

The French colonial land tenure system can be characterised by the introduction of the concept of State property and the attempt to promote private property amongst the local population, via land registration programmes. While the French sought to promote conversion of public land to private ownership, and made legal provision for indigenous people to register land, this made little impact, and customary systems persisted to a high degree with little direct intervention by the authorities. Legislation in francophone West Africa followed the French Civil Code, with its emphasis on standardisation and codification. Nowhere did the French authorities recognise land ownership by traditional chiefs (IIED, 1999: 8).

The British colonial land tenure system corresponded to a different set of principles. Land was defined in terms of white colonial lands, on the one hand, and indigenous (or 'native') reserves and lands on the other. The distribution of land between the two groups was fixed, and no attempt was made to promote individual land ownership within the reserves. The British sought to establish territorial and administrative control by forming alliances with senior customary rulers, or paramount chiefs, in whom land ownership and authority were vested. In practice, the customary powers exercised by customary authorities in parts of English-speaking West Africa were often circumscribed by the colonial state, for instance by the gazettement of forest reserves and the establishment of mining concessions. In addition, the British introduced a system of freehold tenure in particular regions such as Sierra Leone (IIED, 1999: 8). There was widespread use of the leasehold system, usually under leases of 99 years, for property held by the colonists (Coquery-Vidrovitch, 1982).

"Recent studies indicate that by the end of the colonial era, in most [anglophone African] countries, indigenous systems of law in general, and of property law in particular, had become saturated by key concepts, doctrines and values drawn from imposed English law" (Okoth-Obendo in Raintree, 1987: 227).

However, throughout West Africa, because of the great difficulties in enforcing land law, decisions about land claims have more often reflected the power and influence of the different stakeholders, rather than enforcing the letter of the law (IIED, 1999: 8). **See also: Common Law, Custom/customary law, Domaine/Domanialité, Indigenous tenure systems, Land registration, Ownership, Prescription, Property rights, Terres vacantes et sans maître**

Commoditisation of land - Mobilisation de la terre

In political and economic terms, *mobilisation de la terre* means the transformation of the status of land into a marketable commodity (Le Roy, 1996a: 18). It refers to turning a good which is "immovable by nature" into one which is tradable, by recognising the exchange of rights over the land for money. **See also: Alienation, Good/thing, Immovable property, Land markets, Property rights, Real rights**

Common heritage / Common patrimony - Patrimoine commun

Use of the term common heritage or patrimony is based on the concept of the "common heritage of mankind" and can be seen as a possible alternative to exclusive ownership, within the context of land and natural resource management in Africa. It refers to common rights over a shared resource, which are governed by rules aimed at protecting and perpetuating these resources. This concept can be invested with a specific legal status and may involve various legal entities which share the objective of protection and conservation of the resource, declared to be the common heritage of the village community, region, nation or mankind. The term can be used to recognise the claims of groups that lack formal legal status, for example the nation, or a village community that does not have a recognised legal entity. **See also: Common heritage of mankind, Common property, Common property resources, Heritage, Heritage Management**

Common heritage of mankind - Patrimoine commun de l'humanité

The concept of the 'common heritage of mankind' has been developed with a view to protecting the environment. It implies an indivisible and non-transferable resource, bequeathed to mankind, whereby present resource users are themselves responsible for its subsequent bequest to future generations.

Several instruments of international law, have sought to invoke the principle of the 'common heritage of mankind', based on rights and obligations developed through consensus by governments as representatives of mankind. However, since humanity has no legal personality, it cannot bring an action for defence of its common heritage in a court of law. The UN Convention on the Law of the Sea, 1982, proclaims that the ocean floor and the resources beneath, beyond the limits of national jurisdiction, are the common heritage of mankind (Art 136). The area around the South Pole as defined by The Antarctic Treaty 1959 is a further example.

However, land and the resources relating thereto may not be the only components of the world's common heritage. The Convention on Biological Diversity, 1992, affirms in its preamble that 'the conservation of biological diversity is a common concern of humankind'. It stops short of making biological resources a component of the common heritage. States retain a sovereign right to exploit their own resources and to authorise access to their genetic resources. UNESCO has also moved to include the human genome as a fundamental component of the common heritage of mankind in order to emphasise the responsibilities of the human community and to raise global awareness. **See also: Common property, Common heritage, Common heritage of mankind, Heritage, Heritage management**

Common Law

The English common law derives from a body of general legal and moral principles which have been administered by the common law courts from 'time immemorial'. It applies in all cases except where such principles have been expressly abolished or modified by statute. Thus, the term is often used to distinguish law based on judicial precedent from statutory law. However when we talk of the common law system we refer to the legal system as a whole in which precedent and statute are interpreted and applied in the courts. The application of the doctrines of equity within this legal system leads to diverse and very specific judicial decisions.

These decisions are based on a variety of sources of law (usually a combination of statutes and precedents) which apply to the particular circumstances of any individual case. Therefore, a common law legal system is markedly different from codified systems, in which a centrally

defined set of rules must be applied uniformly throughout the country. **See also: Codification, Statutory law**

Common property - *Propriété collective*

There are several interpretations of the meaning of common property that derive from different legal systems and traditions. In French law, the term *bien commun* (common property) is used to designate a *res nullius* (a thing that does not belong to anyone) and is understood as 'public property', in the public domain, such as national parks, river systems or mountain lands.

In international law, the term 'global commons' refers to resources of value to the planet which are 'owned' internationally, such as marine resources, which have been defined as 'owned by no-one and belonging to everyone' (Berkes, 1989). Such global commons are sometimes also referred to as 'global public goods' (Kaul et al, 1999) or the 'common heritage of mankind' (see above).

According to Le Roy (1996b: 57), common property should never be translated in French as *propriété commune* as this is a contradiction in terms. *Propriété* is an exclusive and absolute right and cannot be circumscribed by common rights over its use and management. For this reason, the term *propriété commune* is avoided in French literature, when referring to African tenure systems. Weber considers that, in this context, it would be more appropriate to refer to common property as *propriété collective* (Le Roy, *ibid.*) which implies a specifically defined set of group rights.

Under Anglosaxon legal systems, common property refers to co-ownership rights. These cannot be divided, alienated or developed without the unanimous consent of all common property owners, or according to the rules established by the common owners. Thus, common property owners have full rights of ownership as long as they act with common consent.

In Africa, many areas of land used for grazing, gathering fuelwood and other forest resources, and hunting and fishing are appropriated by community groups within what is referred to by researchers as a common property regime. This is taken to include "any property regime which ensures that more than one user has free access to the same resource. It can involve restrictions on what technologies can be employed, who qualifies as a user, what level of use is allowed and so on. Moreover, it can include duties as regards resource maintenance" McGranahan (1991: 1277). The English terms currently favoured to describe these resources is "common property resources" or "common pool resources" (see below). **See also: *Bien/chose, Common heritage, Common heritage of mankind, Common property, Common property resources, Good/thing, Heritage management, Open access resources, Ownership, Property***

Common property resources - *Ressources d'appropriation commune*

There can be few terms in the development debate that have been more misused or ill defined than the terms 'common property resources', and 'common property regime'. In his article "The tragedy of the commons", Hardin, aims to demonstrate that resources considered to be common property (those which are not privately appropriated) are doomed to overuse and eventual destruction, given the pressures and demands from growing populations. He points out that everyone has an interest in exploiting that which does not belong to anyone in particular, such as grazing lands, fish stocks and certain forests. The sum of these individual actions results in a collective process which finally degrades and destroys the common natural resources, since it is in no-one's individual interest to hold back (Hardin, 1968).

For a number of years, Hardin's article was widely interpreted as arguing that collectively owned property should be reallocated into parcels of private property, to ensure more sustainable management of resources. However, it is now accepted that what Hardin termed 'the commons' were in fact "free or open access resources" which were not subject to management or 'property' rights at all.

In contrast to open access resources, common property resources are governed by institutions who claim ownership and management rights on behalf of a group over the resources in question. These rights include, in particular, the right to deny access to those who do not belong to the community (Bromley and Cernea, 1989), and to regulate the exploitation of the resource by members.

A substantial body of research indicates that the sustainability of resource management is not dependent on a particular property structure (such as private landownership) but rather on establishing a well-specified property rights regime and ensuring the congruence of the regime with its ecological and social context. Thus, for example, the problems associated with the management of grazing lands in areas, such as the Sahel, are not the result of inadequacies with collective management *per se*, but due to failure by the state to recognise the legitimacy of local management institutions (Mathieu, 1991b). **See also: Appropriation, Common heritage, Common heritage of mankind, Common property, Co-ownership, Evolutionary theories of land tenure, Open access resources, Ownership, Property**

Community territory - Finage

See: Finage, Terroir

Compulsory acquisition - Expropriation des terres

Compulsory acquisition describes the acquisition of land or property by the State for the purposes of redevelopment in the public interest, for example to enable the construction of roads, hospitals, schools, etc. The valuation of the lands to be expropriated is often a matter of contention between the landholders (or their customary authorities) and the State. This valuation forms the basis of the compensation payable for the loss of the land. Where this only takes into account market values, it fails to recognise the importance of land in terms of social identity, religious and cultural significance and of farming as the landholder's main livelihood strategy. Another problem is that, since land users often lack firmly recognised ownership rights, the State usually negotiates with customary authorities or representatives, who themselves may not be accountable to individual farmers using the land in question. Often the state acquires more land than is strictly necessary for the intended development and excess lands may lie unused for years or be sold or leased at low rates to developers or speculators who stand to make a substantial private profit (see Kotey, forthcoming). **See also: Eminent domain, Expropriation**

Concession - Concession

Under French administrative law, a concession is a general term covering a wide range of contracts through which the administration either confers special rights and privileges over an estate to an individual or company, or entrusts the execution of an administrative operation to a third party. A property concession is a long-term contract through which the owner of a site grants the use of that site, in exchange for the payment of an annual rent, to a person called the concessionary who may be allowed to change the purpose of the property, develop it or modify it for the requirements of his/her activity depending on the terms of the contract.

During colonisation, concessions were part of the policy of land development (*mise en valeur*) and encouragement of private ownership. Observing the absence of private property in the endogenous tenure system, the colonial state granted concessions to those likely to develop the land (usually Europeans). Once the development had been completed, a land title was usually granted, making it the private property of the concessionary (Coquery-Vidrovitch, 1982: 74). **See also: Domaine/domanialité, Eminent domain, Feudal system, Mise en valeur, Terres vacantes et sans maître**

Conditionnalité foncière - Conditionality re land tenure

This refers to the conditions imposed on a proposed investment whereby land tenure security must be guaranteed and provision made for the responsible development and management of natural resources. Applied by donors, especially the World Bank, such conditionality implies

making tenure reform a prior condition for loans and credits under, for example, Structural Adjustment Programmes.

Convention locale - Local resource management agreement

See: Local resource management agreement

Co-ownership - Co-propriété

Western property law recognises certain types of co-ownership, that is ownership held jointly by two or more persons. It constitutes a minor legal category, held as part of the property in marriage contract. Western property law usually handles a situation where two or more persons want to own something jointly by allowing them to organise themselves into an institution with legal status. The law then treats them as a single legal person owning the property. The rules about how the benefits of the property are divided and how the property is managed often form part of the law on partnerships and corporations, rather than the law of property (Bruce, 1993).

See also: Common property, Common property resources, Ownership

Conflict - Conflit

A conflict is a situation in which specific individual or collective interests are in confrontation. Differences arise between parties who see their interests being damaged by a particular course of action and may then develop a number of strategies to ensure their interests are satisfied. Conflict can be a catalyst for change and bringing practices up to date. It is an integral part of social dynamics in that it can institutionalise certain social behaviour patterns by demonstrating clearly the emergence of contradictory interests which then prompts changes in rules and practice.

Arenas of competition and conflict over land are several. They include the following: between herders and farmers, over access to pastoral resources and damage to crops; between different groups of herders, over grazing areas and associated water points; between neighbouring communities, as boundaries between the customary territories of villages and lineages are often poorly defined; between indigenous and migrant farmers; between urban elites and peri-urban populations, as cities expand and as the incentives for speculative land acquisitions and sales grow; between and within generations as land becomes scarcer and holdings smaller, particularly where senior customary landholders have already alienated land to migrants, thus reducing the land available to their own juniors; and between the state and customary landholders, particularly in areas of gazetted forests, where competition for agricultural land or non-timber forest products arises, or in areas which have the potential to support development projects, such as large-scale irrigation schemes (Hussein, 1998). Conflicts such as these may or may not lead to violence, depending on mechanisms for resolution and willingness of parties to abide by their outcome. **See also: Dispute resolution, Gazettement, Pastoral resources**

Custom / Customary law - Coutume / Droit coutumier

Customary law in the African context refers to the body of past and current indigenous laws and custom. The terms 'traditional' and 'customary', though still commonly used, are often avoided in recent literature when describing contemporary African tenure systems. Use of the term 'traditional', in particular, conveys a contrast with modernity and capacity to evolve, and conceals the fact that indigenous systems are, in fact, dynamic - constantly changing and being renegotiated by group members. The term 'customary' is perhaps best used to describe the derivation of authority under indigenous systems, rather than the nature of the rights themselves.

The French sought to obtain definitive consolidated records of local customs with the publication of *Grands Coutumiers de l'Afrique Occidentale Française* in 1939. The British also attempted to gather such knowledge but were less interested in codification. In the 1950s, A.N. Allot led a project to record systematically the customary laws in English speaking areas of Africa and their harmonisation with modern legal ideas and institutions. A number of writers

have questioned the validity of such laws and customs, and argue that the laws recorded by colonial administrators were often reconstructions, and even fabrications by customary chiefs, in a bid by them to gain colonial recognition of powers greater than existed in the pre-colonial setting (Allott, 1960; Berry, 1993; Oliver de Sardan, 1984; McAuslan, 2000). **See also: Codification, Indigenous tenure systems**



Decentralisation - Décentralisation

In English, the term 'decentralisation' is a general term incorporating the meanings of deconcentration, delegation, deregulation, and devolution (described below). In French usage, by contrast, 'decentralisation' corresponds to the term 'devolution' below (Thomson and Coulibaly, 1994).

Administrative 'deconcentration' is a form of decentralisation involving a transfer of decision making and executive powers within the administrative or technical structure concerned (e.g. from the national to the provincial office responsible for providing a service).

'Delegation' involves establishing local branches of central government departments in order to provide local services but involving no devolution of decision-making power. The provision of public services may also be delegated to non-governmental organisations or private companies.

'De-regulation' is a form of decentralisation whereby a sector of activity previously regulated by a public authority ceases to be subject to such regulation. Examples include the permission of activities by competitive service providers, where previously only state-sanctioned activities were permitted. Decisions relating to the provision of such a service are thereby decentralised to the level of private suppliers on a free market basis. An example of this is provided by the de-regulation of veterinary services, which no longer are supplied under the monopoly of state veterinary services.

Devolution is a form of decentralisation involving a total or partial transfer of power from a higher to a lower level of jurisdiction (for example, the transfer to local communities of the powers needed to manage resources within their village lands). Federal systems of government are a constitutionally guaranteed form of devolution or territorial decentralisation, whereby certain powers are transferred from national government to state levels.

Most systems of local government are a hybrid of devolution and delegation, since they can exercise limited powers to make decisions and carry them out within a legally defined framework (OIE, 1998). Decentralisation may arise in response to pressure for greater democracy and local accountability, or to the search for cost savings and greater efficiency. There is a strong push from the donor community to set decentralisation policies in place as a demonstration of good governance. The question of how to ensure effective democratic representation within decentralised authorities is one of the major issues to be tackled in African countries where such new structures are being established. **See also: Local government**

Demarcation - Délimitation / Bornage

Demarcation is an operation that involves setting out the boundaries of a plot of land and physically determining them by means of boundary markers (*bornes*) referred to as 'pillars' in Ghana (Abudulai, forthcoming). Demarcation carried out in accordance with legal provisions

has the effect of protecting the plot in the event of disputes between neighbours. “Joint demarcation” (*procédure contradictoire*) is where all parties concerned are heard before settling a particular boundary. Where the parties cannot agree, boundaries are settled by a court order known as “Judicial demarcation”. Demarcation is usually carried out by a professionally qualified surveyor (Kasser, *École Supérieure des Géomètres et Topographes, pers. comm.*). **See also: Pastoral areas, Survey**

Derived rights - Droits délégués

Derived rights are rights which are ‘delegated’ from the legitimate rights-holders through mechanisms such as lease, loans, pledges sharecropping and marriage gift. Derived rights normally stem from a negotiated agreement with the individual, lineage, or community claiming the proprietary right. These agreements vary in terms of how formal, individualised or secure they are. Such arrangements are of central importance in providing flexibility within the rural sector, allowing people to adjust their land use activities to changing availability of land, labour, and capital as well as shifts in the profitability of different kinds of activity.

Derived rights exist in several forms in different countries. In the case of farmland, examples are leasehold or tenancy, loan (short-term and long-term), pledge, sharecropping (many variants), gift, marriage gift (land allocated to wives), and temporary allocation to strangers. In the case of other natural resources, derived rights could include grazing rights to crop residues on farmland, harvesting rights to trees on others' land, fodder cutting on others' land, grazing, woodcutting, gathering on common land, fishing rights, or lifting water from wells. **See also: Indigenous tenure systems, Loan of land, Pledge/pawn, Sharecropping, Tree tenure**

Dispute resolution - Résolution des conflits

Dispute resolution is the settlement of conflict between groups or individuals. Among the more important factors affecting a society's approach to internal disputes are the presence or absence of forms of higher authority, such as chiefs or kings, and the existence of formal courts and written law. In many African societies, the prime purpose of dispute settlement may be to search for a consensus and the restoration of normal social relations, rather than the pursuit of abstract ideas of punishment and justice (OIE, 1998). The existence of many different bodies for dispute resolution can raise opportunities for specialised fora and rules of procedure. However, their proliferation also creates difficulties for obtaining a final decision in a given case. **See also: Conflict**

Domaine/Domanialité - State property

The French Civil Code (Arts 537 et seq.) makes the distinction between property belonging to private individuals and property which is the responsibility of the State. The latter is called *domaine*. The legal regime governing property that constitutes the state's *domaine* is known as the *domanialité*. Property belonging to the State may be classified into property in the public domain or property in the private domain.

The *domaine public* consists of property owned by public bodies and earmarked for public use, such as parks etc. The public domain is administered by a specific *domanialité*, which implies the inalienability of the property and its continuous public ownership, the inability to create real rights (e.g. usufruct, long lease or rights of way) and the impossibility of expropriation or seizure. Note that in French, the term *les biens du domaine public* is used, though it may be more accurate to consider property in the public domain not so much as ‘goods’ (*biens*) but rather as constituting heritage (*patrimoine*) or common property (*choses communes*).

The *domaine privé* consists of property belonging to public legal entities, which can be alienated, burdened with real rights, or acquired by prescription to the benefit of private individuals (Chapus, 1990: 268-406). **See also: Colonial land tenure system, Compulsory acquisition, Expropriation, Feudal system, Good/thing, Heritage, Mise en valeur, State property, Terres vacantes et sans maître**

Domaine (foncier) national - National property

The *domaine national* in Senegal and *domaine foncier national* in Togo are specific legal categories, distinct from state property and registered property, individual or collective. While the state reserves the right to manage these lands, this 'national property' belongs to the nation, and farmers can acquire access by obtaining permission from the state and adhering to state restrictions.

In Burkina Faso, the *domaine foncier national* is a legal construct of the *Réorganisation Agraire et Foncier* (RAF), which aims to ensure state tenure and control of all land. It includes all land located within the territorial boundaries of Burkina Faso (see Ouedraogo, 1989). Under the RAF, all land has become the exclusive property of the state, which is the sole landowner. All other public or private legal entities and individuals can only be owners of buildings. Since land forms part of the national property of Burkina Faso, it is not affected by the normal rules of prescription, it is also inalienable and cannot be seized. However, it can be the subject of various use rights, depending on the designated purpose of the land. These rights are granted on condition that the land be developed (*mise en valeur*), according to specific terms and provisions. The 1991 amendment to the RAF governs the allocation of land which remains the legal property of the state, but may, in future, be sold or transferred as private property to persons or legal entities subject to conditions established by decree. Land transferred in this way will subsequently cease to be the property of the state (see Ouédraogo, 1989). **See also: *Domaine/Domanialité, Expropriation, Landownership, Mise en valeur, Prescription, Périmètre irrigué, Permis d'exploiter***

Dominium directum - Dominium utile

See: *Feudal system*

Droit de hache - Axe rights

This term is used to describe the rights arising from clearing or cutting the bush with the agreement of the first occupier. These rights derive from and are based on continuous usage (Le Roy, 1991a: 149).

'Axe rights' are the right to cut trees and the usufruct rights, which then became a sign of the acquisition of the land. The 'axe right' went far beyond the internal boundaries of the kinship group and was the confirmation of the collective rights of the first occupants. It was and still is a constitutional right in the sense of being usually recognised by neighbours and strangers alike. In order to be constitutionally recognised, the designation of a territory demarcated by its boundaries (river, mountains, etc) has to be confirmed by the physical marking out of that territory through symbols of human occupation and productive use. It was mainly through the clearing of land that people established use rights over an area or areas of forest land. As the first act in forest agriculture, the axe rights thus symbolised the taking over of land by the founder of a lineage. In other areas of Africa, the axe right might be replaced by a 'fire right' as was the case with peoples of Senegambia. Almost everywhere, however, such rights could be supplanted by the 'unquestionable right' of conquest. In the forest, the exercise of the axe right is reflected in the occurrence of plants such as the bush mango which is one of the few fallow species to thrive in regrowth forest. Its presence in primary forest is a sign of ancient human use and thus of the past appropriation of the land (Diaw, 1997: 8-10). **See also: *Custom/customary law, First occupancy (rights of), Indigenous tenure systems, Land chief***

Droit de feu - Fire rights

Clearing land through burning of vegetation forms the basis of claims by the first occupant in Senegalese and Gambian societies. **See also: *Custom/customary law, First occupancy (rights of), Indigenous tenure systems, Land chief***

Eminent domain - *Domaine éminent*

Eminent domain is the right of the state to reassert temporarily, or permanently, its allodial ownership rights over any part of its territory for the public good (Campbell Black, 1979). Thus, in times of war, for example, property belonging to the enemy can be seized, or land may be expropriated for government purposes through compulsory acquisition. The principle is an important tenet in both Francophone and Anglophone legal traditions (Elbow et al, 1996).

The concept of eminent domain (entirely alien in African land tenure) was introduced by the colonial powers to establish a legal basis for their land tenure regime. In the new African states, the right of eminent domain is considered the legacy of powers which were exercised by the earlier colonial states by right of conquest. By invoking the pre-eminent rights of the state, eminent domain makes it possible to abolish all other forms of land tenure regime and to appropriate officially the legitimate right to organise how land is used and administered, by defining procedures for allocation, transfer and the regulation of rights (Chaumié, 1991: 55). **See also: *Allodial title, Colonial land tenure system, Compulsory acquisition, Expropriation, Feudal system***

Espace (modes d'organisation) - Perspectives for spatial organisation

The anthropologist Paul Bohannan suggested that: "people have their own representation of the country in which they live; they have a series of concepts to talk about and deal with relations between themselves and things. One way or another, the spatial aspect of their social organisation finds open expression in words and deeds" (1963: 106).

There are two ways of conceiving the organisation of the land. The first is the topocentric perspective, in which space is made up of nodes and forces, with hazy boundaries. The land is organised around specific points from which are exercised various powers over the spirits, water, land, and trees or over people or minerals. These powers are associated with different strengths based on date of settlement, conquest, form of land use and so on. Thus, there may be a variety of rights which operate over the same space and overlap (Le Roy, 1991c: 15).

The second perspective may be termed geometric which requires clear boundaries and attaches importance to maps: "the surface of the earth is divided up by using an imaginary grid which is subject to manipulation and redefinition" (Bohannan, *ibid.*). This corresponds to the cartographical view of land and underlies the modern European concept of appropriation by strict division of land. This materialist representation was introduced in Africa with colonisation, and has served as a basis for registration programmes (*ibid.*). The dichotomy between traditional (topocentric) and Western (geometric) perspectives described above is probably no longer valid in Africa today. The established means of land management have been influenced by notions that were initially foreign (Piermay, 1986: 303). **See also: *Farmland, Espace ressource, Lineage land, Overlapping rights, Pastoral resources, Sacred area, Water rights***

Espace ressource - Resource area

An *espace ressource* combines location with a particular natural resource, often temporary in nature. Controlling access to such resources can be done at community (lineage, village, nomadic groups) or individual level (farming unit). This control is expressed in terms of rights, such as those of access, harvest, management, exclusion and transfer (Barrière and Barrière, 1996b: 124-125). **See also: *Land tenure - environment linkages, Land tenure, Property rights***

Espace pastoral - Pastoral area

See: Pastoral resources

Estate - Domaine foncier

An estate is a general term to describe an interest which a person has in real and personal property. The term 'estate' also describes the total property of whatever kind that is owned by a person after their death, and prior to the distribution of this property, in accordance with the terms of a will, or the laws of inheritance (Campbell Black, 1979). **See also: Personal property, Property, Real estate**

Eviction - Déguerpissement

Generally speaking, eviction describes the dispossession by law or enforced expulsion from a plot of land of the occupier, at the instigation of the landlord. Where a tenant or occupier does not have a title deed or enforceable lease, he/she cannot claim compensation. Eviction can be contrasted with compulsory purchase, where compensation is paid. **See also: Expropriation, Compulsory acquisition, Permit to occupy, Permit to reside**

Evolutionary theories of land tenure - Théories évolutionnistes du foncier

Evolutionary theories of land tenure are based on neoclassical economic theory, which stresses the allocative efficiency of the market. They hold that customary systems, based on common property and extensive practices, are efficient when there is weak pressure on resources. However, under pressure from demographic growth and the market, there is a gradual move towards individualisation of rights and expansion of commercial transactions. At the same time, the role of customary authorities in land allocation is eroded and eventually disappears. As a result of this process, private individual and family ownership become the rule (Lavigne Delville, 1998: 20). **See also: Commoditisation of land, Common property resources**

Expropriation - Expropriation

Expropriation describes the taking of land or property from the rightful owners. Land may be expropriated legally by the State under compulsory acquisition or compulsory purchase procedures. **See also: Compulsory acquisition, Colonial land tenure, Eminent domain**

Externality - Externalité

There is an externality when the activity of an agent has positive or negative effects on the activity of another, in the absence of a contract or market mechanism providing compensation. For example, the consequences of a private action may have negative externalities on the environment where the action affects the health, income or safety of people who are not parties to the activity that generates the problem. The policy of requiring private operators to compensate third parties (or non-contracting parties) for specific negative externalities, e.g. pollution of the water supply, is sometimes referred to as internalising the externalities, as it forces operators to take the negative effects of their activities into account.

Factors of production - Facteurs de production

According to classical economic theory, factors of production are the resources which may be exploited for the production of goods and services. They fall into three categories - natural resources, human resources and man-made resources - which are conventionally classified as land, labour and capital. Land should be taken here as comprising all natural capital, such as soils, water, vegetation and so on.

Faire valoir direct / indirect - Owner operated /non-owner operated

This French term describes who is making use of the land. *Faire valoir direct* describes a form of land use where the owner uses the land directly - equivalent to owner-operator; *faire valoir indirect* is used to describe various forms whereby someone other than the owner exploits the resource through, for example, tenancy, sharecropping or loan.

Fallow - Jachère

The term 'fallow' refers to setting aside of farmland, usually over at least one season, for the purposes of regenerating soil fertility. In some areas, land may lie fallow for over ten years. *Jachère*, on the other hand, may also refer simply to the state of a plot of land between the harvesting of one crop and the planting of the next crop (Sebillotte, 1985). The length of the fallow period is determined by the crop-growing techniques, and the roles fulfilled by the land. According to Barrière and Barrière (1996a: 154), fallow land in Africa usually remains allocated to the holder at the time of cultivation. However, the legal provisions under the French colonial system of putting land to productive use (*mise en valeur*) and appropriation of land considered unoccupied (*terres vacantes et sans maître*) have in the past served to undermine fallow practices by questioning rights over land put into fallow. **See also: *Mise en valeur, Terres vacantes et sans maître***

Farmland - Espace agricole

Land that is exclusively farmland is made up of cropped areas, which are on village, family or individually owned land (Barrière and Barrière, 1996a: 154-155). Widespread agricultural 'colonisation' due to population growth, the extension of cash crops, the introduction of animal traction and the reaction of farmers to the loss of soil fertility, leads to the gradual encroachment of farmland onto pastoral land and collective resources. **See also: *Espace ressource, Pastoral resources***

Feudal system - Système féodal

Under the Feudal system, which arose in mediaeval Europe, all land belonged to the Crown or the Church as the ultimate feudal superior. Portions of this land were feued to subordinates who could make use of the land, alienate it or in turn 'feu' it to their own subordinates. The most subordinate interest in the feudal hierarchy of landownership, that of the vassal (*tenancier*), was called the *dominium utile* or simply 'feu'. At this level, most if not all rights of ownership could be enjoyed, subject to service obligations towards the feudal superiors, such as unpaid labour (*corvées*) and loyalty and/or annual payments, called feu-duties.

The interest of the superiors (*seigneurs*) was called the *dominium directum* or superiority (*seigneurie*) with all its attendant prerogatives corresponding to political, military, judicial and economic powers. These prerogatives, in modern France for example, have been transferred

to the State following the French Revolution. **See also: Allodial title, Eminent domain, Freehold, Leasehold**

Finage - Community territory

According to Sautter (1968: 107), *finage* is the territory on which a settlement or community exercises its agricultural rights. A *finage* may include a nucleus of habitually cultivated land, as distinct from a more extensive and/or temporary area of use. For Mendras (1976), the term *finage* designates the physical area occupied and legally owned by a community, whatever the nature of the occupation. For Pélissier, a *finage* is “a territory and living environment with very precise and legally recognised boundaries” (1995: 316). By contrast, a *terroir* (village territory) is usually broader has variable dimensions and is not necessarily legally recognised. **See also: Espace ressource, Terroir**

First occupancy, rights of - Droit du premier occupant

Traditionally, arrival in an unoccupied area was always followed by a founding ritual. It created a pact between those clearing the land and the spiritual and terrestrial powers residing on that land. This pact was passed down through the generations and created an indissoluble link between the first occupier, his group and the land. The current land chief of a given area, who is generally a descendant of the first occupier, is responsible for observance of this pact and for mediation with the spirits of the land. **See also: Land chief, Droit de feu, Droit de hache, Pledge/pawn, Precolonial land tenure system**

Fisheries - Pêcheries

See: Water rights

Foncier-environnement - Land tenure-environment linkages

Foncier-environnement linkages refer to the interrelationship between, on the one hand, the spheres of social, individual and collective actions and institutions, and the dynamics of ecology on the other (Barrière and Barrière, 1996b: 137). A systems view of social and ecological interactions stresses the need for social adaptation to environmental change and the important role played by traditional ecological knowledge (Berkes and Folke, 1992).

Forest area - Espace forestier

In medieval France, an area known as forest was not necessarily planted with trees, for it was chiefly a hunting or fishing ground, or pastureland. The feudal lord exercised his prerogative to declare these areas part of the *dominium directum* (de Leener and Bertrand, 1991: 97). In France, the notion of ‘forest’ as separate from farmland emerged in the 19th century as a result of the agricultural revolution and new ways of using wood (Karsenty, 1996c: 104). This history enables us to understand how the state came to monopolise the management of forest areas during the colonial period: forest areas were considered unoccupied (*terres vacantes et sans maître*) and therefore state property. This conception of land is fundamentally foreign to Africa, but continues to be applied by most African states.

The following distinctions can be made. *Classified forests* are designated as such for the production of timber, in which case local use rights are restricted. *Protected forests* are areas where use rights are tolerated but strictly limited (clearing, bush fires and the commercial exploitation of the wood are forbidden). *Community forests* are used and managed by particular communities, but in many cases must gain governmental approval of their management plan.

Modern law makes a distinction between cleared areas and tree-covered areas. However, in endogenous systems, the forest supports a number of uses, and clearing forest land for agricultural purposes is only one aspect of this (Karsenty, 1996c: 103-112). **See also: Domaine/Domanialité, Feudal system, Gazettement, Mise en valeur, Terres vacantes et sans maître**

Fragmentation - Morcellement des terres

Fragmentation of plots may be considered the opposite to consolidation. However, as Berry (1988) points out, where a parastatal expropriates land from 100 holders and then distributes it in smaller plots to 1000 farmers for cultivation, we can speak of allocation rights having thus been concentrated, while use rights are fragmented. She suggests that it might be preferable to confine the terms *consolidation* and *fragmentation* to physical areas of land and to speak of *concentration* and *deconcentration* where rights over land are concerned. **See: Land redistribution, Land reform**

Freehold - Propriété privé

Freehold title is the right to private ownership of land, free of any pre-eminent rights, such as exist under the feudal system. In most cases, the term 'freehold' may be used interchangeably with private land ownership. Freehold (and leasehold) tenure rights were introduced by colonial regimes and have been adopted by post-Independence governments and promoted through registration schemes. In practice, however, private property rights in Africa are usually limited to urban areas (Bruce, 1988: 23) though the situation is changing. **See also: Eminent domain, Feudal system, Leasehold**



Gazettement - Classement

Gazettement refers to the publication of an official announcement in a state gazette or Official Journal. The event or decision being announced is thereby deemed to be public knowledge. Many laws require that such publication is made before a decision of the government may have legal effect. As far as forests are concerned, gazettement usually indicates that a forested area has been designated for protection by the State or other public authorities according to relevant legislation in force. The French term *classement* is not a direct translation, but conveys a similar meaning: the reservation of a certain area of land for protection by the public authorities. **See also: Forest area**

Gestion des terroirs - Community or village land management

The *gestion des terroirs* approach aims to encourage the development of rural communities through participation and capacity building activities. Villagers are encouraged to plan, manage and invest in the resources within their local area (terroir), over which they are assured a degree of tenure security.

During the 1980s, *gestion des terroirs* projects proliferated in several West African countries in an attempt to address the shortcomings or failure of previous projects, which were often too narrowly focused or too production oriented. The approach combines increasing rural participation (*animation*), with soil and water conservation and social development. It also attempts to respond to new concerns: greater participation in the development process by local communities, and promotion of private enterprises or service associations. The aim is to encourage a twin process of restoration and sustainable management of natural resources while intensifying crop and livestock production and diversifying marketing and technological options. Financial incentives and technical support are usually provided by donors. The idea is also to encourage the creation of representative village organisations which are able to motivate people and to instil respect for negotiated regulations relating to the use of natural resources by both the inhabitants of the village and their neighbours. The goal is to transfer

control, management and use of natural resources from the state to local communities. However, often no formal legal rights are conveyed in the process (Pederson, 1995).

Stressing the vagueness of the concept of community land management, Sally Falk Moore suggests that it might be better defined as “all those processes of organising local communities which involve concerted land-use planning in order to enhance the natural resources of their land and ensure sustainable development” (Falk Moore et al., 1991: 5).

Often the term is used interchangeably with *Aménagement des terroirs*. However, there is a distinction to be drawn (Toulmin, 1994). *Gestion des terroirs* refers to administration or management of natural resources in a given space (the *terroir*) while *aménagement de terroirs* refers to the improvement or development of natural resources. The term *gestion* is used to describe a series of interventions including resource use, the allocation of land to certain uses, the limiting of access at certain times, and the control of land use. The term *aménagement* relates to investments aimed at increasing productivity levels, reducing agronomic risks, soil and water conservation and improving cropping conditions. **See also: Decentralisation, Terroir**

Gestion patrimoniale - Heritage management
See: Heritage management

Global Positioning System - Système de positionnement par satellites

The Global Positioning System (GPS) is a means of locating a point according to its position on the globe. It works through a system of 24 satellites in orbit around the Earth at a distance of around 20,000 km which emit successive radio signals at synchronised times and dates. These data describe the position of the satellite in question. On the ground, a user with one, or several receivers, may decode these position signals and record precisely the date and time of reception. Calculating the satellites' position makes it possible to determine the position of the receiver in relation to a reference point with varying degrees of precision. Thus, GPS positioning methods are crucial for the surveyor, but they cannot replace all classical terrestrial method (Kasser, pers.comm). **See also: Survey**

Good/thing - Bien/chose

In Anglosaxon legal systems, the term 'good' is usually employed in the plural to denote movable or 'personal' property. The term may include every kind of personal property or alternatively may only refer to tangible personal property (as opposed to stocks, shares, copyrights and other intangibles) (Campbell Black, 1979). Although the term is often translated as *biens*, the latter term under French law is wider in scope. **See also: Bien/chose, Immovable property, Movable property, Personal property, Property**

Grazing reserve - Réserve pastorale
See: Pastoral resources

Ground rent - Canon emphytéotique

A perpetual rent reserved to the grantor of land in feu and his heirs (Campbell-Black, 1979). In some jurisdictions (eg Scotland) this obligation to pay feudal superiors on an annual basis has been all but extinguished. Elsewhere, such a rent may be paid for a long term lease (e.g. 99 year lease). **See also: Feudal system, Long lease, Rente foncière**



Heritage (Patrimony) - Patrimoine

Patrimony or heritage may refer to a concept of common heritage (described earlier) or to economic and land wealth held at a family or lineage level (Lavigne Delville, 1998: 18)

The standard concept of heritage as a single and indivisible entity has certain disadvantages. It has been proposed to replace the term *patrimoine* with that of *patrimoine d'affectation* (allocated heritage). This makes it possible to recognise one person's right to a number of special patrimonies, according to the particular purpose of certain goods. According to Le Roy *et al.* (1996b: 51-2), the theory of *patrimoine d'affectation*, particularly in the field of land tenure, is more in line with the African concept of the relationship between people and land, a relationship determined by the allocation of areas of land according to their various and complementary uses. **See also: Common heritage, Heritage management**

Heritage management - Gestion patrimoniale

The notion of patrimony rests on the concept of common heritage: it has been put forward as a new legal concept to move away from the idea of state ownership of natural resources, which is seen as too closely connected with state management. If land is to be considered the patrimony or heritage of all citizens, they could also be considered to have a legitimate right to manage this resource. This approach is aimed at recognising the various uses of land and resources by different groups of users. Heritage management explicitly introduces the well-being of future generations as a concern for whoever manages the patrimony, whether it be the state, a community or an individual (Karsenty, 1998). **See also: Common heritage, Common property resources, Property**

Home grazing territory - Terroir d'attache

See: Terroir d'attache

Immovable property - Propriété immobilière

Immovable property describes land, and fixtures to the land, such as buildings as well as the things attached thereto. It is also sometimes referred to as real property or realty (Campbell Black, 1979). Most systems of law find it necessary to distinguish land, and the buildings which go with it, from all other property, because of its intrinsic importance (Nicholas, 1962). The hierarchical and third party rights which are common in many land tenure regimes mean that a larger set of people may hold property rights in relation to immovable property than is likely to be the case with moveable property. Western legal systems also apply different legal rules to the transfer of immovable property. Greater standards of proof are usually required to establish ownership of immovable property, such as formal registration of transfer documents, or lengthy periods of unchallenged possession. Furthermore, immovable property is subject to a different

set of inheritance law rules as compared with moveable property. **See also: *Mobilisation de la terre, Movable property, Real estate, Personal property***

Indigenous tenure systems - Systèmes fonciers coutumiers

Indigenous land tenure systems remain poorly understood by outsider groups, including researchers. However, some general characteristics can be identified. Land tenure systems in Africa are commonly specific to particular ethnic groups and have evolved through the interaction of culture and environment over centuries. Indigenous tenure principles are implemented and arbitrated by authorities whose legitimacy is drawn both from prior occupancy (founding fathers) and acknowledgement of the magical-religious alliance into which they have entered with the spirits of the locality (Lavigne Delville, 1998). These authorities have territorial control which is in fact political power, since it enables them to give or refuse a family the right to settle. "By allowing or forbidding newcomers to settle and by fitting them, from the outset, within a network of alliances, the land chief regulated the process where a local community was constituted" (Raynaut, 1997: 289-290).

Far from being rigid, tenure relationships are permanently refashioned as a result of the historical, economic and social changes experienced by the societies involved. Bruce identifies a large number of variables that affect the development of land tenure systems: local climate and ecology, the quality of land resource, population density, level of agricultural technology, crops, markets, kinship organisation, inheritance patterns, settlement patterns, political organisation, religious significance of land patterns, ethnic conquest, dominance and rivalry (1988: 23).

The contents of indigenous tenure rights vary from place to place according to a combination of these factors. Indigenous rights regimes governing access and use of arable land are very different to those governing grazing land, forests and fishing grounds. However, as a general rule, two central features of indigenous land rights may be identified (IIED, 1999: 7). Many indigenous tenure systems tend to view land and resources as being inalienable, such that property rights cannot be wholly ceded by those to whom the land has been allocated. To a certain extent, this is a consequence of the widespread and deeply entrenched cultural system whereby social identity and kin group membership provide people with access to land and resources. So long as larger social groups remain functionally important, their members can expect to have access to land.

The second common feature is that the same piece of land can be subject to multiple claims which relate to the different ways in which it is used by different groups and individuals at different levels. In respect to arable land, whereas a chief may retain a right of allocation and reallocation of the plot of land, a lineage or family group may share rights to use the land at any given time. Within a single production unit or household, the land may be divided for use by different members of the family or may be ceded to wives, sharecroppers, tenants, immigrants, neighbours or clients (IIED, *ibid*). While the land user may have rights to cultivate the property, the landholder often retains the right to exploit the trees naturally growing within the farm plot. On the other hand, the planted trees are often regarded as the property of the person who planted them, even if his or her rights to use the land were of a temporary nature. Rights over land may also be held by different groups at different times. Outside the farming season, once the crop has been harvested, herders often have customary rights to graze their livestock on the residues left in the fields. Similarly, women may have access rights to gather firewood and other tree products in those fields (IIED, *ibid*).

Property rights are not the same for men and women within a household: gender-differentiated rules exist which govern rights to dispose, use, or harvest a given resource. Women's rights vary according to local traditions, but in many areas their rights are circumscribed as a result of their marriage to a man in another village, their lack of control over agricultural technology, or threats of violence from their male relatives (NEDA, 1997). On the other hand, taboos on female involvement in certain farming activities can be re-interpreted and bypassed by clever women. Similarly, wealthier women can use their influence to try to negotiate greater rights of access to certain resources (Bortei Doku, forthcoming).

Indigenous tenure systems in many areas of West Africa (notably parts of Guinea, Guinea Bissau, Chad, Niger, Nigeria, Gambia, and Mauritania) have also been influenced significantly by Islamic or Sharia law (IIED, 1999: 9). **See also: Appropriation, Common property resources, Customary law, Derived rights, Droit de hache, Droit de feu, Evolutionary theories of land tenure, First occupancy (rights of), Land chief, Overlapping rights, Pastoral land rights, Virilocal residence, Property, Sacred character of land, Sharia land rights, Use rights**

Institution - Institution

According to the Chambers dictionary, an institution is defined variously as that which is instituted or established; a society or organisation established for some object, especially cultural or charitable, or the building housing it; a custom or usage especially one familiar or characteristic; a system of principles or rules.

Social institutions may be defined as the rules that individuals share and use to regulate collective behaviour (Mearns, 1996). In this sense, they facilitate collective action, and as Johnson (1997) puts it, thereby enable individuals to transcend the limitations of acting in isolation. To the extent that they encourage conformity, however, institutions also maintain and reproduce the status quo (Johnson, 1997: 3).

North (1990) makes a distinction between institutions and organisations: “*Institutions* are the rules of the game or a society or, more formally, the humanly devised constraints that structure human interaction. They are composed of formal rules, informal constraints and the enforcement characteristics of both. *Organisations* are the players: groups of individuals bound by a common purpose to achieve objectives” (North, 1995: 23). However, it is clear from the dictionary definition above, that this distinction is not always observed. Social institutions then, are the ties that bind individuals, to organisations, regulating intra and inter organisational behaviour. Informal institutions should not be confused with norms which lack the sanctions that empower social rules (Johnson, 1997).

The different meanings ascribed to the term ‘institution’ can lead to confusion between institution and organisation. Whereas ‘legal institution’ can be used to mean the rules that determine and describe a legal relationship (eg. tenancy), it can also be used to mean the courts and ministries of justice. Whereas courts and ministries are constructed by rules, they are also organisations, in North’s terms.

Power relations are embedded within institutional forms, making contest over institutional practices, rules and norms a contest over power relations. Institutions are dynamic, continually being shaped and reshaped over time. They are thus part of a process of social negotiation, rather than fixed objects or bounded social systems (Scoones, 1998: 12). **See also: Logique institutionelle**

Irrigated area - Périmètre irrigué

See: Périmètre irrigué



Land chief - Chef de terre

The land chief is generally a descendant of the first occupant of an area and, therefore, the guarantor that the original pact with spiritual and terrestrial powers of the earth will be

respected. Local names for the *chef de terre* translate literally as “master of the land”, “child of the land” or even “owner of the land”. The land chief holds substantial powers over land in customary societies and is an institution which is both socio-political and socio-religious. There may be different hierarchies of chiefs for war, sacred purposes, dispute settlement and land administration. French West African literature on land tenure pinpoints the importance of the *chef de terre* as opposed to other apparently more eminent functionaries (Bruce, 1988).

He is responsible for the sacrifices which are necessary from time to time to the mythical spirits who own the place, and it is through this mediation that the chief derives his power over the land. He is, traditionally, the highest authority on all issues concerning the land under his responsibility, but the land does not belong to him. His powers include: dividing the land between the clans making up the group, granting permission to settle to subsequent groups, guaranteeing the boundaries of the group’s land, and acting as arbiter in tenure disputes. Where population pressure on land is heavy, chiefs or elders sometimes have the right to take land from their own holdings for new households to cultivate, without involving the land chief, though this is unusual (ibid.). Once all arable land has been allocated and holdings become so small that reallocation loses its point, land passes from generation to generation in accordance with the customary rules of succession so that the land authorities’ role is increasingly limited to dispute resolution.

However, the land chief does not necessarily have to be indigenous and the role can be acquired by political or diplomatic means, or even by conquest. The British colonial authorities induced chiefs to become part of the colonial administration system, and where someone other than the land chief was appointed, the position of the latter tended to atrophy (Bruce, 1988). After Independence, in rural areas, the *de facto* power of land chiefs has been preserved, but it is becoming more limited, especially in the resolution of tenure disputes. Despite this, the local government structures introduced under the relatively recent wave of decentralisation programmes are still likely to have to contend with the customary authorities to acquire local legitimacy, unless innovative ways of bringing together the old and new can be fostered. **See also: *Droit de hache, Droit de feu, First occupancy (rights of), Indigenous tenure systems***

Land consolidation - Remembrement des terres

See: *Fragmentation*

Landholding/Landholder - Exploitation / Exploitant

A landholding is a term used to describe an area of land, usually a working farm. Depending on the scale of the farm, it may be referred to as a smallholding or largeholding. Landholding also describes the possession of an area of land. The term does not imply the extent of the rights held by the landholder, who may be a tenant or a proprietor/owner or other person with possession and use rights. The term landholder is a useful one to describe indigenous African tenure. It obviates the need to try to make Western traditional concepts such as ownership and tenancy fit where they are unsuitable, or to introduce terms to describe the exact nature of tenure rights under study, which are invariably locally specific. **See also: *Property rights, Use rights***

Landlord - Propriétaire foncier

A landlord is an owner of property which is leased out to tenants or lodgers on certain conditions, usually involving the payment of rent by the tenant. **See also: *Sharecropping, Tenant farming***

Land markets - Marchés fonciers

The transformation of the status of land into a marketable commodity is known in French as *marchandisation de la terre*. According to French legal doctrine, land can be defined as a commodity if two complementary conditions are fulfilled. It must first have a monetary value and second be capable of being the subject of full property rights. In the African context, these

two conditions are rarely both fulfilled, with the exception of peri-urban areas or rural areas where major agro-economic and population transformations are taking place due to increased immigration or increased capital investment. In most rural areas, either land does not have a monetary value, or transfer is controlled or impossible. As a general rule, land marketability is only achieved in an "imperfect" manner (Le Roy et al, 1996: 19). Customary systems tend not to accept permanent land alienation because even if the current user wishes to dispose of the land, the family and lineage, who also have rights in the land, are reluctant to see it alienated. Under the pressure of market forces and growing land values, particularly in peri-urban areas, many customary systems have come to accept and recognise such alienation (DFID, 1999).

However, as Bruce points out, land markets could be interpreted more broadly as markets in land rights (DFID, 1999). Thus, discussion of land markets should consider the whole range of possible transactions, such as temporary transfers and leases, long term and short term informal land borrowing, mortgages, land exchanges, land pooling and other informal arrangements. Such transactions take place not just between individuals but between social units such as lineages.

Land markets are active throughout Africa, whether within customary or formal systems, and do not need a titling programme in order to be activated. The development of land markets has an ambiguous effect on poverty, sometimes increasing and sometimes decreasing inequality in land holding (Platteau, 2000). Women, for example, are disadvantaged by land markets if their spouses alienate family land without their consent, but may also benefit by being able to acquire land in their own right (DFID, 1999).

Demands for a formalised land market are generally first voiced by individuals outside the community, such as officials and merchants, who want to acquire land to which they might not be entitled under custom. Formalisation can create greater security of tenure for those who purchase land, facilitate operation of the land market and increase the price of the properties transferred. However, where market forces are not well developed, formalisation of tenure will not produce land sales and where people have no options outside agriculture, there will be serious supply side constraints on the land market. Also, there may be many other simpler approaches to formalisation, such as announcement at public meetings of agreements entered into, or providing forms to record written transactions, facilities for notarisation of signatures, and facilities for registration of contracts (DFID, 1999).

Serious questions have been raised about whether the development of land markets in rural Africa will, as theory would suggest, allocate land to more efficient users. For example, wealthier people in the rural areas are often banking land for the next generation, leaving it unfarmed, rather than using it as a productive asset (DFID, 1999). **See also: Alienation, Commoditisation of land, Good/thing, Land saturation, Land scarcity, Land Speculation**

Land redistribution - Redistribution des terres

Land redistribution refers to the redistribution of landholdings and changes in agrarian structure, usually involving the resettlement of farmers or the landless. In cases where large scale farms are nationalised, land may be redistributed to the farm workers in which case little resettlement is involved. Although redistribution programmes are almost invariably accompanied by a redefinition of tenure rights, they should be contrasted with 'tenure reform' programmes, which leave people holding the same land, but with different rights (Bruce, 1993: 2).

There may be several objectives proposed within a land redistribution programme. In the past, many reforms have been proposed on ideological grounds of social justice or equity. Economic benefit may also be proposed on the basis of evidence that smallholder producers are more efficient land users than extensive production systems. However, the effect on the national economy is more complex, given that the types of crops or livestock produced by the two main sectors (large scale and small scale farms) fulfil different roles within the economy. Environmental sustainability has also been put forward in recent decades as an argument in favour of land redistribution in the face of problems in overcrowded, smallholder reserves, such

as those created in southern Africa. The prevention of political unrest may provide a further justification. **See also: *Fragmentation, Tenure reform***

Land reform - *Réforme foncière / Réforme agraire*

Land reform may refer either to land redistribution (also known as agrarian reform - *réforme agraire*) or to tenure reform (*réforme foncière*). **See: *Land redistribution, Tenure reform***

Land register - *Cadastre / Livre foncier*

In English, the term 'land register' is used to signify any officially organised and regularly maintained written record of land title or landholding rights, as well as the book containing such records.

In French there are two terms. The first of these is a *cadastre* which refers to a publicly managed and warranted register of all official documents on the location of built and non-built properties, the boundaries of these properties, their legal status and the identity of the owners of these properties. A *cadastre* is made up of two sets of information, written and cartographical. There may be different types of land register for fiscal, legal, technical and town-planning purposes (Durand-Lasserve, 1991).

The second term, *livre foncier*, describes the register document itself. Registration within the *livre foncier* provides an authoritative record and guarantees the existence of property rights. It also records the various interventions that may transform or limit the property rights, such as sales, donations, inheritances, seizures, pre-emption rights, leases, mortgages, etc. **See also: *Land registration, Cadastral survey***

Land registration - *Immatriculation foncière*

The aim of land registration is to guarantee the security of property transactions and to protect the owner from encroachment by third parties. The location and extent of the estate in question and the nature of rights affecting it are defined and recorded in the land register. Upon registration, title is granted to the owner of the estate. All subsequent changes in ownership and rights must refer to the rights bestowed under the registered title deed. Note that today, less than 5% of the land is registered in West African countries.

New ways to register land rights are being developed in a few West African states which seek to recognise indigenous tenure systems. The Ivory Coast's Rural Land Plan (*Plan Foncier Rural*) is registering all rural land tenure rights (customary and 'modern') and land uses and identifying plot boundaries in preparation for the new rural land code or law. The approach is to give official recognition to customary rights, and provide access to modern law for those who wish. The *Plan Foncier Rural* comprises a locally available register which includes maps, demographic information, a list of rights-holders, a land tenure register and reports of official proceedings concerning land disputes for each local area. At the sub-prefecture level, village land committees are required to register land rights, mediate disputes and ensure the maintenance of the register. In this sense, the Plan does not seek to create new rights, but allows land users and their immediate neighbours to reach consensus on their definition. Rather than impose a judgement, any contested rights are identified as such within the register until such time as an agreement may be reached by the stakeholders (Okoin, 1999).

As well as to clarify the rights held in land, registration is often proposed in order to promote formal credit schemes using land as collateral or to facilitate land taxation. **See also: *Collateral security, Colonial land tenure system, Land register, Land taxes, Ownership, Plan Foncier Rural***

Land reserve - *Réserve foncière*

A land reserve is a tract of land reserved for a special purpose, for example conservation of biodiversity habitats. **See also: *Finage, Forest areas, Protected area, Terroir***

Land scarcity - *Rareté des terres*

This is a general term that describes a situation in which people seeking land, say for agricultural purposes or housing construction, find it difficult to obtain access, due to decreasing availability of land resources. This may be the result of rising population density, changes in technology and/or political or institutional factors. As land becomes scarce, the value increases. This can have the effect of encouraging people to adopt more careful management techniques to ensure sustained and profitable production (Boserup, 1965; Tiffen et al, 1993). Land scarcity may be a relative concept, as is the case, for example where ownership of resources is restricted to a particular group of people and the remaining population is constrained to live within areas where population densities are high. Another example is where there may be abundant land resources, but they are unsuitable for production or other high density land use, e.g. in mountainous regions, desert zones, and so on, in which case people must make best use of the less abundant fertile and productive lands.

See also: *Land markets*

Land saturation - *Saturation foncière*

Refers to a situation in which the demand for land exceeds supply, in that the cultivable area has been fully utilised. Land that is left fallow for short periods is regarded as fully utilised. However, as Pélissier has argued (1995: 25) saturation only has meaning with reference to a particular system of production, or land use, and to current techniques. The saturation of available land is one factor leading to the evolution of land markets, as production systems generally shift to more intensive methods of land use once saturation is approached. **See also:** *Land markets, Land ratio, Land scarcity*

Land speculation - *Spéculation foncière*

Land speculation is an operation in which a person invests in buying land not for productive use, but because the land is expected to rise in value, and thereby generate a profit. For example, a developer buys land in a peripheral, undeveloped area, therefore at low cost, then waits some time before dividing it up into plots. During this sometimes lengthy period, the land increases in value without the developer having had to invest in any physical improvements to the land. The speculator aims to gain a return through price or rental increases generated by the development of the surrounding area and increased value of the land (Schteingart, 1986: 81-82). **See also:** *Land markets*

Land taxes - *Fiscalité foncière*

Land taxes are usually based on a rate levied per hectare with adjustment for land quality and use. If based on a standard fixed sum per ha, land taxation does not act as a disincentive to invest and increase agricultural productivity. The income foregone through tax for farmers, however, may mean that farmers increase the production of cash crops rather than food crops (see Tano, forthcoming). Land taxes have become of increased interest to West African governments as a means to raise revenue for local government services and activities. A *cadastre* is not necessary to institute a land taxation system, as shown in Cameroon (Comby in Lavigne Delville, 1998: 62). Indeed, a tax system based on a cadastral register is often costly to implement and results in tax evasion as well as failure to observe land tenure regulations.

Land tenure - *Foncier*

The English term 'tenure' is derived from the Latin term which means 'holding' or 'possessing'. However, land tenure is a legal term which refers to the right to hold land, rather than the fact of possession. The word 'tenure', used by itself, often refers to land tenure, but may have other meanings e.g. job security. Bohannan stresses the social nature of land access and control, a recurring theme in recent studies. He urges scholars to view land tenure in terms of relations not only between people and the land but also between different groups of people (Basset and Crummeay, 1993: 12).

The term *foncier* in French comes from the Latin word *fundus* meaning foundation. As a noun it is used to describe land tenure relations and the structure of land ownership. As an adjective it may be translated as 'pertaining to the land'. In both cases, however, it has a wider scope than its usual English translation. The *foncier* can cover flora, fauna, and water systems, in so far as they are associated with an area of land (de Zeeuw, 1995: 7). In this sense, *le foncier* can be better equated with the term 'resource tenure'.

Legally speaking, *foncier* is used to refer to the status of the land, which is by nature immovable. Thus, the ground and its fixed nature are the basic attributes of the *foncier*. In economics, *foncier* refers to the possibility of extracting value from the land in the form of rent. Fréchou uses it in its geographical sense to refer to the human inter-relationships implied by the organisation and use of physical space (Le Roy in Le Bris et al, 1982: 11). According to Le Bris et al (1991: 13), the multi-disciplinary definition of *le foncier* refers to a complete social system that connects all the components of a society. The term *tenure* is also used in French-speaking West African countries to refer to land tenure rights.

The concept of *maîtrises foncières* has an archaic meaning which is general, and a recent more precise meaning developed within Le Roy's model of tenure relations (see Le Roy, 1996c). The general concept of *maîtrises foncières* is used in anthropology in an all-embracing sense, to describe all forms of appropriation, powers of management and social control over land, including customary or contractual forms, and not only private ownership, as recognised under official law.

Le Roy's model is founded on his observation of the 'new law of practice' which is based on a mixture of the different tenure regulation systems that exist. Traditional systems are no more than partially operational, whilst modern property-based systems resulting from colonisation have only a marginal influence. His model goes beyond a simple polarisation between tradition and modernity and recognises the pluralistic strategies being pursued by different actors. Le Roy's model is partly inspired by the work of Schlager and Ostrom (1992) and takes into account traditional African conceptions of land rights as well as modern legal thinking. **See also: Evolutionary theories of land tenure, Ownership, Property, Property rights**

Land use - Utilisation des terres

Analysis of the way land is used according to a system of classification. The UN Food and Agriculture Organisation categorises land into cropland (over one-tenth of total world land surface area); permanent pasture (a quarter); forest and woodland (under a third); and other, including built-on areas, wetlands and (one-third) including land not used for cultivation or pasture (OIE, 1998). **See also: Zone/zoning**

Lease - Bail / Contrat de location

In legal terms, a lease is a contract according to which one party, the lessor (*bailleur*), agrees to allow the other party, the lessee (*preneur*), enjoyment of the use of a property (movable or immovable) for a specified period in return for a payment referred to as rent (*loyer*). In English, this may also be referred to as a let. Note that the term 'lease' can also be used as a verb, meaning to make a contract of lease.

Long lease - Bail emphytéotique

According to Cornu (1994: 94), an 'emphyteutic' or long lease is a contract whereby a landlord leases immovable property for a period of between 18 and 99 years, in return for a moderate annual rent known as a ground rent (*canon emphytéotique*). The tenant (or lessee) is usually subject to the obligation to maintain or improve the rented property. In English law, a long lease must exceed 21 years (Campbell Black, 1979)

Long leases were granted to white business under British colonial rule, usually for 99 years, although the colonists managed in certain cases to increase this to 999 years (e.g. in Kenya and Rhodesia) (Cornu, *ibid.*). During the 1960s, the practice of long leases was common in

most of the francophone African countries, not only in industrial areas, but also over land outside the towns which had been earmarked for major mining and agro-industrial operations.

According to Köbben (1956, in Coquéry-Vidrovitch, 1982: 68), the *bail emphytéotique* is also found within the context of some African land tenure systems, in cases of land being transferred by indigenous farmers to immigrant farmers for long term investment and use, such as for establishment of perennial tree crops, like cocoa and coffee, as in the Ivory Coast. **See also: Concession, Leasehold, Landlord, Real rights, Rent, Rente foncière, Sharecropping, Tenant, Tenant farming, Tenure security**

Leasehold - Terres en location

Leasehold is the right to land held under a lease. There are four principal types of leasehold: a fixed term tenancy, valid for a specified period; a continuing tenancy subject to regular review and possible termination (e.g. weekly, monthly, yearly); holding possession of premises by permission of owners, but without any formal security of tenure; and a 'tenancy at sufferance' whereby a tenant who after rightfully being in possession of rented premises continues after his rights have terminated (Campbell Black, 1979). **See also: Concession, Freehold, Lease, Landlord, Property, Real rights, Rent, Rente foncière, Sharecropping, Tenant, Tenant Farming, Tenure Security**

Lineage land - Espace lignager

A lineage refers to a group with common lines of ancestry or descent. Lineage land is that which is available for use by members of the lineage, the rights to which are customarily governed by the head of the lineage (Coquery-Vidrovitch, 1982: 67). **See also: Matrilineal inheritance, Patrilineal inheritance**

Livestock route / corridor - Couloir de passage du bétail / piste à bétail

Also known as stock routes or transhumance corridors, these serve the purpose of enabling animals to move through farming areas with minimum damage to crops. They are of particular value to transhumant herds which travel through areas under crops on their way to seasonal grazing lands. In some areas, farmers have ploughed up livestock routes, causing difficulties for herd-owners and increasing the likelihood of conflict over damage to crops. **See also: Pastoral Resources, Transhumance**

Loan of land - Prêt foncier

Loans of land are quite common in West Africa, and can be distinguished from tenancies in that a formal periodic payment (rent), representing the value of the land, is usually not due. Payments may be made to the lender by the borrower as a token recognition of the lender's superior and ongoing landholding rights.

Borrowing land is traditionally the option of later settlers to a village or younger members of the family. Land is shown to them by the village authorities or individuals with land to spare, to whom tribute and loyalty will be due in exchange. Arrangements tend to be made orally in front of witnesses which would include the main stakeholders and possibly other members of the community (Elbow et al, 1996). A recent study from Burkina found that "the only acceptable justification for refusing land to someone in need of it is that the person solicited does not have unused land at his disposal, or that the claimant is known to be a bad character" (Sawadogo and Stamm, forthcoming)

However, as de Zeeuw (1997) points out, even those who hold secure rights to lineage land may also decide to borrow land from others, for several reasons. For example, "the labour force in the farming unit changes constantly due to immigration, illness, and the developmental cycle of the family. In shifting cultivation as it is practised in Koin, it is difficult to forecast the exact moment when one field must be left in fallow and another fertile field must become available. With the flexibility offered by borrowing arrangements, a farmer will never be obliged to overexploit the non-lineage land at a crucial moment or to restart prematurely the cultivation

of lineage fields in fallow. In this way the borrowing and lending of land contribute positively to sustainable land use in Burkina Faso" (1997: 590-1).

Loans may be short term (e.g. seasonal) or long term, though this is not necessarily clear from the outset of negotiations. Indeed, the distinction between a loan and a gift may not be easy to draw in some cases. Examples may be cited from various parts of West Africa where families have borrowed land for decades. Long term loans of land may be inherited, especially lands that are farmed communally by the borrowing household (Matlon, 1994). In areas where land is becoming increasingly scarce, Vierich and Drabo report that farmers are becoming less willing to lend good quality fields to other households for more than a season (in Bruce and Migot-Adholla, 1994: 54). This is because, according to formal law in some countries, rights in property accrue to individuals "out of their investment of labour, in harnessing, utilising and maintaining the resource" (Juma and Ojwang, 1996). Thus borrowing may give rise to the potential appropriation of property rights by those who originally were granted only temporary rights. **See also: *Derived rights, Pledge/pawn, Sharecropping***

Local community management - *Gestion communautaire locale*

This describes the transfer by central or local government of responsibility for natural resources, to local communities, although there may be no formal rights conferred. **See also: *Decentralisation, Gestion des terroirs, Open access resources***

Local resource management agreement - *Convention locale*

A local management convention is a contract between one or several villages and the government administration to regulate the use of land and other natural resources within a given area and according to a set of agreed by-laws concerning access and use. It is signed by village representatives and the administration, and both parties are responsible for it being carried out. This type of local agreement has been developed in several countries as a means of facilitating participatory natural resource management, but is often not formally recognised in law (Hilhorst and Coulibaly, 1998). **See also: *Gestion des terroirs***

Local government - *Collectivité territoriale*

Local government constitutes a varied hierarchy of institutions operating at different levels with a range of mandates and powers. Each country in West Africa has a slightly different set of such structures, which may include District Assemblies, Rural Communes, and Regional Councils. These structures vary in the powers they may exercise and the extent to which their members are elected, or appointed by central government.

The term *Collectivité territoriale locale* refers to an administrative body which is a legal entity with a range of powers covering a certain geographical area and an autonomous management structure. Local assemblies or *collectivités*, set up under state laws and decrees, are made up of elected representatives responsible for governing their affairs, under the supervision of state representatives. They have their own staff, services, property and budget (Chapus, 1994: 216).

In some cases, it has been possible to integrate traditional forms of representation more fully into local consultation and decision-making mechanisms. It has been suggested that representational structures that have a functional role, such as village assemblies and traditional hierarchies, should be integrated within the local government structure. In many places, however, there is evident conflict and contradiction between the powers and perceived legitimacy of customary structures and new systems of elected local government. **See also: *Decentralisation, Institutional approach***

Logiques foncières - Rationale underlying the land tenure system

According to Le Roy (1993), the *logiques foncières* constitute the body of explanations given by actors to justify the choices that they have made or could make regarding control over and use of land. Each level - local, national, international - has its own particular logic and perspective: colonialist, developmental, state, capitalist, traditional, rural. According to Gruenais (1986: 295)

western logic or state intervention logic is often based on developing the productive value of land (*mise en valeur*) and the possibility of treating land as a commodity, which can be freely transferred, bought or sold. Traditional authorities might have a different approach and set of values, arguing that there is a privileged relationship between a certain group of people and a particular piece of land. **See also: *First occupancy (rights of), Land chief, Mise en valeur, Spatial scale***

Logique institutionnelle - Institutional approach

An institutional approach presupposes a legal framework that governs society, which is maintained through formal law and by a complex system of socio-legal institutions. It also refers to the more informal set of institutions and rules which guide human behaviour along broadly predictable lines. This approach should be contrasted with the “functional” approach considered as more common to customary societies. This presupposes that the type and degree of organisation are determined by the ends being sought (ie the functions required of it and the goals to be pursued collectively) (see Le Roy, 1996d: 262-3; Le Roy, 1992: 263). **See also: *Institution***



Maîtrises foncières - Theory of land tenure

See: Land tenure

Management of village lands - Gestion des terroirs

See: Gestion des terroirs

Matrilineal inheritance - Succession matrilineale

Matrilineal inheritance is the system by which, according to law or custom, land passes from the deceased owner through the female line to his or her heirs. This does not necessarily mean that property is held by women in matrilineal systems. For example, the Akan tradition in Ghana was for land to pass from a deceased male to the eldest son of his sister (Knox, 1996). This means that men inherit land from their maternal grandfathers or uncles. However, in general, females in matrilineal societies tend to have better access to land than women in patrilineal societies (Longway, 1999). This is because it is usually the case in matrilineal societies that, following marriage, men move to join the woman's household rather than the converse. **See also: *Matrilocal residence, Patrilineal inheritance, Virilocal residence***

Matrilocal residence - Résidence matrilocale

Matrilocal residence is structured by a rule that a woman remains in her mother's house after reaching maturity and brings her husband to live with her family after marriage. Sons, conversely, move out of their natal household after marriage. Matrilocal residence is almost always found in matrilineal societies. It brings the women of a matrilineage into the same household but disperses the group's men into many different locations. For this reason, alternative residential rules, such as 'avunculocality', are more commonly employed. According to rules of avunculocal residence, women usually take up residence with their husbands after marriage, and the couple's children reside with them until adulthood. Upon reaching maturity, sons are expected to move out of their parental home into their maternal uncle's households. Daughters continue to follow a virilocal pattern, by moving to their husbands' households after

marriage. Avunculocal residence is a common pattern in matrilineal societies, as it brings the adult male members of a matrilineage into a single residential unit.

Whether women settle in her husband's natal household, or her own after marriage is a crucial factor in determining women's legal status in relation to land. If women continue to live with or near their family of birth, they generally enjoy much stronger rights to land than if they move far away. Women living far away from their families are usually unable to assert any inheritance right they may have (NEDA, 1997). **See also: *Matrilineal inheritance, Patrilineal inheritance, Virilocal residence***

Mise en valeur - Productive use / development

In economics, land that is *mise en valeur* (literally - "put to valuable use") is land transformed into a means of production, and establishes a claim over the land for the person who has rendered the land productive.

This concept was introduced initially by colonial administrations as a means to bring more land into production, by encouraging investment in land development, and was subsequently adopted by governments after independence. It stands in opposition to the traditional understanding of people's rights to land which requires the creation and maintenance of a special link between a group and an area of land. Thus, the cornerstone of the traditional relationship between people and land is eliminated by the concept of *mise en valeur*: customary norms are replaced by the state and by the ability to invest in land improvement. From a legal point of view, whether the land has been developed *mise en valeur* is a question of fact and can be ascertained by referring to the list of activities which are considered to constitute such a proof.

French colonial legislation held that any land not developed (*mise en valeur*) after 10 years may be claimed by the state. However, this presented problems for farmers in areas of land abundance in which fields may be left fallow for more than ten years and created incentives to keep land in more intensive cultivation than was environmentally sound. A further problem is faced by herders in the extensive rangelands of the Sahel region. The implementation of the *mise en valeur* principle fails to recognise grazing as a productive use of land. In this way, large expanses of grazing land have been appropriated by the state and pastoral rights have often been systematically marginalised. In cases of dispute between herders and farmers, it is usually the latter who win, given their more secure tenure rights over a particular stretch of land due to their cultivation rights. **See also: *Appropriation, Pastoral resources, Terres vacantes et sans maître***

Monopole foncier étatique - State monopoly over land tenure

This refers to the appropriation by the state of a large proportion of all land within the national territory. The axiom is that the state is intervening in the name of the public interest, and therefore their tenure demands take precedence over the demands of individuals. The colonial state built its tenure monopoly by applying the principle of eminent domain and by inventing a category of land deemed unoccupied, *terres vacantes et sans maître*. Contemporary states have often claimed a land tenure monopoly, although sometimes with a degree of compromise.

The state monopoly on tenure, applied at national level, is in competition with other forms of organisation at local level (Le Roy, 1987). **See also: *Colonial land tenure system, Eminent domain, Space (organisation of), Terres vacantes et sans maître***

Mortgage - Hypothèque

A mortgage is a form of security granted by a debtor to a creditor, as a condition for the loan of money by the creditor. Accordingly, a piece of land or property is transferred 'in security' (mortgaged) to the creditor's name, such that the debtor's rights to dispose of that property are curtailed. In most cases, the person who has borrowed money continues to live on the property held in security. But there are also "possessory mortgages" which involve the use of the property by the creditor until such time as the debt is repaid (Bruce, 1993). If the debt is

not repaid in full, the right to sell the property may be claimed by the creditor in order to recover payment of the debt.

Since the 1960s, in order to increase investment in land and infrastructure in Africa, the development of formal credit systems has been proposed under various external aid programmes and national government policies. However, as most rural landholders lacked formal title, land could not be transferred to creditors in security for a loan in the same way as under Western legal systems. This led donors, such as the World Bank, to renew calls for registration schemes in order to establish and guarantee land title which could be used as formal security. However, Platteau (2000) points out there are no grounds for believing that titling significantly increases investment in land or improves access to credit. **See also: Collateral security, Immovable property, Land markets, Land registration, Real rights, Security**

Movable property - Biens mobiliers

Movable property describes the category of property that is capable of being moved, sometimes referred to as personal property, and can be contrasted with immovable property such as land. **See also: Good/thing, Immovable property, Personal property**

Multiple rights - Droits multiples

See: Overlapping rights

N

Natural resources - Ressources naturelles

Environmental science defines natural resources as the body of natural products, ecosystems and abiotic elements that constitute the Earth, as well as the various forms of natural energy (Parent, 1991: 498). These can be subdivided into two distinct groups: non-renewable natural resources which comprise raw mineral materials: metals, metalloids, minerals with a wide variety of uses, fossil fuels, etc. and renewable natural resources which are continually renewed. The latter include water, cultivable land and “biological” resources, so-called because they are formed by living communities and exploited by human beings, such as forests, pastures, maritime fishing grounds, and biodiversity (Ramade, 1993: 578). **See also: Eminent domain, Land tenure, Ownership, Protected area, Solum, Tree tenure**

O

Observatoire foncier - Land tenure monitoring centre

On the basis of experience from Morocco and elsewhere (Crousse, 1991: 229-31), the *Observatoire foncier* (Land tenure monitoring centre) has been presented as a “a tool for monitoring development and change”. It provides a system for gathering, recording and processing data related to land tenure and use, using a series of indicators. The aim of an

observatoire is to identify new developments, dynamic processes, areas of emerging conflict and thereby to guide the design of tenure policy (Le Roy, 1993: 6).

Open access resources - Ressources en accès libre

These may be defined as resources to which everyone has unrestricted access. Hardin (1968) famously pointed out that everyone has an interest in over-exploiting resources that are not considered to be the property of anyone in particular, on the basis that if you do not, somebody else will. Theoretically, this could cause a serious problem, since the sum of these individual acts of unrestricted over-exploitation results in a 'collective' degradation of the resources exploited in this way.

Today, however, areas where resources may be exploited on the principle of completely 'open access' are in fact rare. Though large areas of land may look as if they are unoccupied or unmanaged, most African lands are in fact governed by some form of communal management or appropriation system. Care should therefore be taken to distinguish 'Open Access Resources' from the more prevalent 'Common Property Resources' which are subject to customary use rights of local groups and managed by local institutions. **See also: Common property resources, Indigenous land tenure system**

Ownership of land - Propriété foncière

Whereas English has two words to describe the distinct concepts of 'ownership' (specific rights to land) and 'property' (an item capable of being owned), it should be noted that French has only the single term *propriété*, which can refer to either the body of rights and obligations relating to a particular thing, or the thing itself. However, in many English texts and in common colloquial usage, 'property' is used synonymously with 'ownership'. Below, we describe the term as far as it relates to the rights of an owner.

"Ownership is a concept within European law which represents the appropriation of all rights of use, abuse and disposition of specific parcels of land" (Okoth-Ogendo, 1987: 226). Through this definition of land ownership, land is considered an asset that can be exploited and turned to profit. The three prerogatives conveyed in the real right of property are the right to use, to dispose of and to enjoy the fruits obtained from the property. The characteristic which usually distinguishes full ownership from other rights to property, is the right to transfer it, including the right to alienate it to non-relatives or non-group members. Okoth-Ogendo explains that "therein lies the fundamental distinction between African and imposed English property law. For, not only does English property law admit of ownership of resources, such ownership is conceived of basically in nucleated (or individualised) terms. To own is to exclude any possibility of others having simultaneous rights" (1987: 227).

The concept of exclusive land ownership was introduced into West Africa in 1830, by the French in Senegal. Observing that the concept of ownership did not exist in the endogenous land regime, the colonial state attempted to promote the concept of private ownership through the introduction of a public property regime, granting concessions and the establishment of land registration. However, the impact of such policies has been very limited. While structural adjustment programmes in the 1980s and 90s have vigorously promoted privatisation and many still advocate private property regimes as the only remedy against the degradation of natural resources, today in Senegal, less than 3% of the land is privately owned. A similarly low figure for formal ownership applies throughout West Africa.

A further distinction between European and 'African law' is that for the former, ownership of natural resources above and below ground generally depends on the ownership of that part of land which is used for agriculture - the ground or the solum (*le fonds*). Exceptions to this rule are mining and fishing rights which may be acquired separately. Such ownership of the above-, below-, and ground-level resources, runs counter to the African "topocentric" system which allows the exercise of several rights to a single area of land with uses that are considered complementary (Le Roy et al, 1996: 26). For example, under several endogenous legal systems, a particular piece of land may be subject to rights of herders once the crops have been harvested, while different members of the family may be entitled to exercise rights to pick

produce from trees on someone else's farm land. **See also: Alienation, Appropriation, Common property, Concession, Domaine/Domanialité, Good/thing, Land markets, Land register, Land tenure, Multiple rights, Property, Property rights, Real rights, Terres vacantes et sans maître, Tree tenure, Usufruct**

Orthophotography - Orthophotographie

Literally, orthophotography, means straight or correct photography, though it is better described as the interpretation of aerial photographic images by means which compensate for distortion of perspective. Aerial photo interpretation is one of the oldest techniques of remote sensing. This technique has been applied in many parts of the world to create land resource inventories, especially soil mapping and land classification (Lillesand and Kiefer, 1979). The technically delicate operation is now entirely digital and they are easy to update, making them particularly suitable for cadastral land registers (Kasser, Ecole Supérieur des Géomètres et Topographes, pers.comm.).

Overlapping rights - Droits multiples

In many legal systems, rights of ownership are subject to the exercise of rights by others. However, the French civil law accords a particularly strong emphasis to reducing the number of different rights that can apply to piece of land, and to the unity of ownership whose "essence" according to the French revolutionary politician Mirabeau is "to belong to a single person" (Cubriilo and Goislard, 1998: 353). Under European law as derived from the Roman civil legal system, the owner of land is deemed to own not just the ground level but all property within its boundaries *a coelo usque ad centrum* (from the heavens to the centre of the earth) subject to rights to minerals and fishing rights etc.

In Africa, most indigenous systems recognise multiple rights over a parcel of land whether it is held by different levels of rights-holders or by different groups at different times. Thus, at any one time the chief, the lineage, the landholder, the tenant, sharecropper, or borrower, their wives, relations, and neighbours may have coexisting rights over a particular piece of land. Moreover, these rights may be limited to a particular period of time such that a different set of people may have rights to use the land once the cropping season is over, or when the trees begin to bear fruit, etc. **See also: Indigenous land tenure system, Ownership, Solum, Tree tenure**

P

Parcelle - Block of plots

The term *parcelle* refers to a block of plots, divided up on the basis of stable boundaries and temporary subdivisions linked to agricultural use. The term *parcelle foncier* refers to agricultural land divided into units where all plots have the same legal status. A register is then established at the village or higher level which includes a register containing information on the status of each plot. In the absence of a cadastral survey, researchers may draw up a map of plots (*plan parcellaire*). This has no legal value, however, since it is not accompanied by any official demarcation of boundaries. **See also: Allotment, Cadastral survey, Land register, Land tenure**

Parcelling - Lotissement

See: Allotment, Parcelle

Pastoral organisation - Organisation pastorale

Pastoral organisation is used as a generic term to cover all types of institutional arrangements that regulate individual and collective actions by pastoralists to safeguard and promote their economic social cultural and political interest. The functions of pastoral organisations vary over a wide range. Sandford (1981) classifies them into six groups: land tenure, resource management, provision of services, communication of information, external relations, and the building and maintenance of community cohesion and morale. A pastoral organisation may be responsible for one or more of these functions (Shanmugaratnam et al, 1992). **See also: Livestock routes, Local government, Pastoral resources, Transhumance**

Pastoral resources - Ressources pastorales

Pastoral resources comprise those resources that are vital to the survival and nourishment of livestock, such as traditional watering places, grazing and browsing areas.

Currently, pastoralists in West African drylands have little legally recognised tenure security over their traditional grazing lands. In many countries, pastoralism is not legally recognised as a productive use of land (*mise en valeur*) and as a consequence, pastoral lands have been subject to expropriation by the state and marginalised in favour of agricultural use. Equally, there is little pastoralists can do to resist the steady encroachment of farmers onto the arid rangelands or into wetlands such as the inner Niger Delta in Mali, which are vital to Sahelian pastoralism (Vedeld, 1993).

In some countries, such as Niger and Nigeria, legislation has sought to define and enclose what are known as *espaces pastorales* (pastoral areas) or 'grazing reserves' in order to fix the areas over which pastoralist communities may obtain secure rights. Although demarcated grazing areas and stock routes have a long history in Nigeria, these have been steadily undermined by colonial appropriation and post-Independence policies to support sedentarisation and agriculture. According to the Nigerian national agricultural policy of 1988, 10 percent of the national territory should be put into reserves for lease to herders. However the policy has not been implemented and of those which have been set up, almost all reserves have been encroached upon by crop farmers and others (Maina, 1999).

The attempt to identify pastoral areas does not take into account the need for pastoralists to remain mobile in order to access fresh pastures, particularly in areas where rainfall and vegetation cover are highly variable from season to season. Pastoralists have continued to prefer transhumance to sedentarisation (see Kintz, 1991: 37-48), leading in recent years in Nigeria to the financing of a comprehensive stock route development programme (Maina, 1999).

In the francophone Sahelian countries, in order to obtain rights to such pastoral areas, herders must demonstrate *mise en valeur*, which is still defined in terms of physical investment in and development of land rather than regular occupation and use by grazing animals. Thus, though these areas are earmarked for appropriation by herder groups, the sorts of use made of them may not be sufficient under the law in order for herder's tenure rights to be recognised. **See also: Land scarcity, Livestock routes, Mise en valeur, Pastoral organisations, Sedentarisation, Terroirs d'attache, Transhumance**

Patrilineal inheritance - Succession patrilinéale

Inheritance from father to son or through the male line alone. The vast majority of traditional societies in Africa follow patrilineal inheritance systems. **See also: Matrilineal inheritance, Virilocal residence**

Pawn - Mise en gage

See: Pledge

Périmètre irrigué - Irrigated area

A *périmètre* is a defined physical area which is subject to a specific set of regulations (Cornu, 1994: 592). A *périmètre irrigué* is an area of land intended for agricultural purposes subject to specific developments designed to ensure water supply. The establishment of such an area may be decided by the State (which may expropriate land if necessary and evict the landholders), or be carried out by private initiatives.

According to FAO (1992: 6,14), the following four principles usually apply in cases of the establishment of *périmètres irrigués* as a result of state acquisition or expropriation: the existing rights of ownership are curtailed according to certain criteria; those people granted cultivation rights are obliged to develop the land (*mettre en valeur*) and make a financial contribution. However, State land ownership is often merely formal. Over a period of years, there is usually a considerable change in practice and divergence from those officially sanctioned. These include changes in land tenure status such as absentee allottees, the pledging or pawning of land, share cropping, the leasing of plots and the emergence of an unofficial land market (Mathieu, 1991a: 66). **See also: *Compulsory acquisition, Expropriation***

Permis d'exploiter - Permit to use

Granted to persons or legal entities, this is a 'permanent' authorisation to use land which is public property. **See also: *Domaine/domanialité, Domaine national***

Permit to occupy - Permis d'occuper

Referring to legislation governing state property. In several African states the permit to occupy is an authorisation granted for a specified period which gives a private individual the right to occupy the property of a public authority (Tribillon, 1991: 215-6). The term "permit to occupy" is sometimes a minor form of the permit to reside. That is, it is an authorisation to reside for a specified period which does not permit the holder, at the end of the period of residence, to request the title deed of the property or to claim compensation in the event of eviction. In some cases, the rights granted are considerably less and may expose the permit holder to eviction at any time. Only light buildings are allowed and no compensation is due in the event of the non-renewal of the permit or eviction of permit holders (Tribillon, 1991: 215-6). **See also: *Domaine/domanialité, Eviction, Expropriation, Permis d'exploiter, Permit to prospect, Permit to reside***

Permit to prospect - Permis de prospection

This is a revocable permit usually granted by the Minister responsible for mining to persons or corporate legal entities wishing to carry out activities related to mining, quarrying or extracting hydrocarbons. **See also: *Permis d'exploiter, Permit to occupy, Permit to reside***

Permit to reside - Permis d'habiter

Initially, permits to reside were granted by the municipal or local authority to the head of a family, entitling them to reside on a plot of land owned by the state or the local authorities. The permit to reside was granted free of charge to local people possessing few financial resources. Beneficiaries did not pay rent but had to occupy and reside on their plot in person. They could not lease, sell or use it for commercial purposes. If the permit holder left the region, the plot reverted to the authorities without any compensation for developments made on the land (Tribillon, 1991: 215-6).

This kind of permit has since evolved. Today, there is a tendency to require some form of annual rent from beneficiaries. If they are evicted from the plot or if it is reduced in size, most legal systems now make provision for the payment of compensation corresponding to the damage sustained as a result of such changes. In addition, beneficiaries are able to transfer their rights to another person in return for payment, subject to prior authorisation from the administrative authority concerned. In some countries, the holder of the "permit to reside" is allowed after a period of years to become the owner of the plot (Tribillon, 1991: 215-6). **See also: *Domaine/domanialité, Eviction, Expropriation, Permit to occupy***

Personal property - *Propriété personnelle*

In the broad sense, this includes everything that is the subject of ownership, except that which is called "real estate" (Campbell Black, 1979). **See also: *Movable property, Property, Real estate***

Plan Foncier Rural - Rural Land Plan

The *Plan Foncier Rural* is the Rural Land Plan of Côte d'Ivoire which seeks to give official recognition to customary rights by recording them in locally established registers. Thus, the approach aims to clarify and improve the security of customary rights without imposing exogenous legal concepts or redefining these rights (Chauveau et al, 1998; Okoin, 1999; Stamm, 2000). **See: *Land registration***

Pledge - *Mise en gage (Mise en garde)*

A pledge contract is one in which a debtor places an item of personal property in the possession of the creditor, giving the creditor the right to keep the item until the debt has been paid or, in case of default, the right to sell it and pay himself from the proceeds (Cornu, 1994: 376).

In the context of pre-colonial African law, land was rarely considered a marketable commodity and pledge contracts tend to involve an exchange of services rather than payment of money in return for use of the land. With the expansion of the monetary economy, pledges of land in return for loans of money have become more widespread. A pledge of land under customary law, however does not negate the strong association and claims of right which the original land holder has to that land. One who pledges land under African law generally keeps the right to recover it, leaving the recipient of the pledge in a weak position to insist on the reimbursement of the debt. In practice, however, the lender can usually farm the land until the debt is entirely paid off.

The transfer of land rights through a pledge is often linked to interpersonal and interlineage relations of dependence within which land may circulate. Land is often pledged when exceptional resources are needed for a funeral, a dowry payment, or in times of war or bad harvest (Snyder, 1975: 43).

Where the contract is essentially an exchange of services, the correct term in French to use in this case is not *mise en gage* (pledge), but *mise en garde* (placing land in custody). Note also that while in English law the term 'pledge' (and its synonym 'pawn') does not ordinarily apply to land, it is invariably used with respect to land in literature relating to African land tenure. **See also: *Derived rights, Possessory mortgage, Sharecropping***

Possession right - *Droit de jouissance*

See: *Ownership, Property rights, Usufruct*

Possessory mortgage

See: *Mortgage, Pledge*

Pre-emption right - *Droit de préemption*

A pre-emption right is the right to be offered the opportunity to buy a particular property, before it is put on the market. The State may hold the right of pre-emption on certain kinds of property.

Prescription - Prescription

According to Cornu (1994: 621), prescription is a means of acquiring or abolishing a right after a certain lapse of time. Many property regimes provide for the acquisition of land rights through continuous use and/or settlement of an area of land. The period of time which needs to have passed is usually set at several years, in order to give ample opportunity for any competing claims to be raised and settled before definitive rights are acquired in this way. **See also: Ownership, Servitude**

Productive use of land - Mise en valeur

See: Mise en valeur

Property - Propriété

The concept of property is ambiguous and the term is used in several distinct ways. It can mean the set of rights and obligations concerning a thing; it can also mean the thing itself. When used in the former sense, the term 'property rights' is often used. Property rights refer to a range of rights, from access, to transfer (see below). In this sense, Moorehead defines property as a social convention that defines the relationship of people to things, backed up by the sanctions and administrative structure of the society in question (1997).

Private property is property held by private persons including 'legal persons', such as corporations or partnerships. Public property is property held by the government. Property is not synonymous with 'ownership' which is just one type of property. Often 'private property' is misused, as if it meant 'private ownership' (Bruce, 1993).

Under Roman civil law, from which many European systems evolved, property is classified as either real ('immovable', such as land resources and buildings) or personal ('movable', all other items) (Campbell Black, 1979). Different bodies of law apply to real and personal property (Bruce, 1993).

Article 544 of the French Civil Code defines *propriété* as "the right to enjoy and dispose of things the most absolute manner", provided that they are not used in a way that is forbidden by laws and regulations. This refers to an exclusive and absolute ownership that can only be exercised over a *bien* (good) and its best equivalent in English is private ownership. Therefore, the more general French term *droits d'appropriation* is a better translation of the English term 'property rights' when used to refer to rights relating to property which do not amount to ownership. **See also: Bien/chose, Common property, Good/thing, Immovable property, Movable property, Ownership, Property rights, Real estate**

Property rights - Droits d'appropriation

The African concept of property rights denotes the allocation of land or resources to a specific use. There are as many rights over land as there are accepted uses and the same object can be invested with different functions in different cultures (Le Roy, 1991c: 31).

Starting from the fundamental principle that an analysis of property rights is more than the simple opposition of the status of ownership and non-ownership, Schlager and Ostrom (1992) propose the use of the term "bundle of rights" in order to make the distinction between property rights at an operational level (the level at which events occur) and property rights at collective level (the level at which decisions are made). At an operational level, a further distinction is made between rights of access to a defined physical area and the right of withdrawal. At the collective level, the authors also distinguish between the right to manage, the right to exclude and the right to alienate (see below). **See also: Access, Appropriation, Maîtrises foncières, Ownership, Usufruct**

1. Access right (Droit d'accès)

The right of access is an operational right enjoyed simultaneously by a legal owner, the proprietor owner, the claimant, authorised users as well as those not authorised to use but who may nevertheless have right of way over the land.

2. Withdrawal right (*Droit de soustraction*)

The right to remove a resource or harvest the product of a resource.

3. Management right (*Droit de gestion*)

According to Schlager and Ostrom (1992), this is the right to regulate land use patterns and to transform the resource by making improvements. The right to manage makes it possible to identify potential beneficiaries of other rights pertaining to the land and to define the conditions under which these rights may be acquired, lost or transferred. The management right can be a collective right when several such rights holders participate in collective decision making. In Schlager and Ostrom's terminology, this right is enjoyed by the 'legitimate owners', 'de facto owners', or 'claimants' but not mere 'users'.

4. Exclusion right (*Droit d'exclusion*)

The right of exclusion makes it possible to determine the potential beneficiaries of access rights to the property and the conditions under which access rights may be obtained, lost or transferred. This can also be a collective right. As such, it likewise offers the opportunity to take part in developments and in the definition of future operational rights. This right is only enjoyed by the legitimate and/or *de facto* owners.

5. Alienation right (*Droit d'aliénation*)

The right to sell or lease land, a right only exercised by lawful owners.

Protected area - Aire protégée

The International Union for the Conservation of Nature (IUCN) defines a protected area as an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means. The main purposes of management are scientific research, wilderness protection, preservation of species and genetic diversity, maintenance of environmental services, protection of specific natural and cultural features, tourism and recreation, education, sustainable use of resources from natural ecosystems, maintenance of cultural and traditional attributes.

IUCN lists six categories of protection in descending order of importance as follows:

1a. Strict Nature Reserve. Area of land and/or sea possessing some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.

1b. Wilderness Area. Large area of unmodified or slightly modified land, and/or sea, retaining its natural character and influence, without permanent or significant habitation, which is protected and managed so as to preserve its natural condition.

2. National Park. Natural area of land and/or sea, designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations, (b) exclude exploitation or occupation inimical to the purposes of designation of the area and (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.

3. Natural Monument. Area containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

4. Habitat/Species Management Area. Area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species.

5. Protected Landscape/Seascape. Area of land, with coast and sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with

significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area.

6. Managed Resource Protected Area. Area containing predominantly unmodified natural systems, managed to ensure long term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.

In addition to these IUCN categories, there are also biosphere reserves and the UNESCO world heritage sites. **See also: *Domaine/Domanialité, Heritage, Logiques foncières***

R

Radical right

See: *Allodial rights*

Real estate - *Fonds de terre* or *Propriété immobilière*

Real estate or 'real property' refers to property consisting of land and anything permanently affixed to the land such as buildings and fences, as well as things attached to the buildings. It contrasts with 'personal property' or 'movable property' (Campbell Black, 1979). **See also: *Estate, Immovable property, Movable property, Property, Real rights***

Real rights - *Droits réels*

Real rights are rights pertaining to a thing (from *res* meaning 'thing' in Latin) such as land ownership, long leases, securities and servitudes. Real rights may be contrasted with 'personal rights' which are bound not to the thing, but to a particular person or group of persons (e.g. the parties to a contract).

Rent - *Loyer*

Rent is a payment made periodically by a tenant to a landlord or owner for the occupation or use of land, buildings or other property (Chambers, 1998). **See also: *Derived rights, Lease, Leasehold, Landlord, Rente, Rente foncière, Sharecropping, Tenant, Tenant farming, Tenure security***

Rente - *Annuity*

In French law, *rente* is the annual return, and thereby the revenue, stemming from a capital sum or immovable property. It is synonymous with the term 'annuity' (Campbell Black, 1979). **See also: *Lease, Leasehold, Landlord, Rent, Rente foncière, Sharecropping, Tenant, Tenant farming, Tenure security***

Rente foncière - *Ground rent*

Rente foncière is a rent paid on land, and generally forms part of a long term lease (e.g. 99 year lease) and should therefore be distinguished from payment under a lease of a shorter duration (Campbell Black, 1979). **See also: *Lease, Leasehold, Landlord, Rent, Rente, Sharecropping, Tenant, Tenant farming, Tenure security***

Right of disposal - *Disposition (droit de)*

This is one of the three principal attributes of land ownership rights, sometimes referred to as *abusus* - the right to dispose of or sell the land (the other two being *usus* - the right to use and *fructus* - the right to harvest). It refers to the owner's right to carry out any material and legal act of alteration, consumption, destruction, alienation or abandonment. According to Cornu, the owner exercises his/her right to dispose of his/her property when he/she alienates it (by sale, gift or bequest), mortgages or destroys it (1994: 6, 276). **See also: *Alienation, Ownership***



Sacred area - *Espace sacré*

In many traditional African societies, land is sacred because it is an intermediary between the living and their ancestors. In some places, such as sacred woods or ancestral burial places, the non-material character of the land is particularly respected and ownership of these areas is regarded as vested in the spirits. Commonly, the first settlers on a piece of land must make an offering to the local spirits, to ensure they can reap a harvest, an offering which must usually be renewed each year. **See also: *Custom/customary law, First occupancy (rights of), Indigenous tenure systems***

Satellite map - *Spatio carte*

A satellite map is a cartographic document drawn up from a satellite image, in exactly the same way as an orthophotograph is created from aerial images (Kasser, Ecole Supérieure des Géomètres et Topographes, pers. comm.). **See also: *Global Positioning System, Orthophotography***

Scale of a map - *Echelle d'un lever ou d'une carte*

The ratio between the distance on a map and the actual distance on the ground. A large-scale map would, for example, have a scale of 1/200, while a scale of 1/500,000 would be considered a small-scale map. With regard to graphic documents, so-called 'regular' cartography is represented on a scale for which errors of measurement have a graphic value of 0.1mm (the size of the smallest detail visible to the eye at a short distance). For geographical data in digital form, the notion of scale no longer strictly applies; their "scale" is linked to their precision of determination. For example, to a scale of 1/1000, theoretically the corresponding precision of determination is 10 cm (Kasser, pers. comm.). **See also: *Survey***

Schéma d'aménagement foncier - Land ownership survey

A *schéma d'aménagement foncier* should be distinguished from a land development survey (*schéma d'aménagement du territoire*) of which it normally forms part. The *schéma d'aménagement foncier* is a map which illustrates the various forms of appropriation recognised at the local level and regional level, but without this constituting a legal document which accords individuals any real rights. **See also: *Allotment, Real rights, Zone/zoning***

Security - *Sécurité*

Narrowly defined, a security is a form of loan guarantee, whereby a piece of property is promised to the lender in the event that the loan is not repaid according to the terms of the agreement. This may also be known as collateral. **See also: *Tenure security***

Sedentarisation - Sédentarisation

Sedentarisation is the process by which nomadic or transhumant pastoralists become settled. Over past decades, governments all over Africa have attempted to sedentarise their pastoral populations. This may involve the demarcation of communal rangelands into discrete grazing units within which herders are expected to remain. While the intention is said to be to provide improved services to the population, the strategies are often founded on the belief that pastoralists are unable to manage land effectively, and that the mobility of their way of life is evidence of a disorganised system. Several studies have demonstrated, however, that the dry rangelands of the Sahel are ideally suited to mobile livestock keeping. Transhumant herds are well placed to make use of the marked shift in water and pasture availability between the short rains and the long dry season. Hence, in recent years, several governments have adopted a more flexible approach to pastoral land use, and recognised the need to maintain mobility (Scoones, 1995; Nicholson et al, 1998; Lane, 1998). **See also: Demarcation, Livestock routes, Pastoral associations, Pastoral resources, Transhumance**

Servitude - Servitude foncière

In European law, a servitude is "a charge placed on a building for the use and utility of another building belonging to another owner" (Cornu, 1994: 759). For example, a servitude right of way confers on the owner of property A the right of way through property B, which belongs to a different owner. A servitude is a real right and therefore cannot, according to law, be challenged by any subsequent owners of property B. If, however, over a very long period of time, the servitude is not exercised, this right may be extinguished (through prescription). Other examples of servitudes are rights of access to water sources, rights to light, and rights to structural support. **See also: Real rights, Prescription**

Sharecropping - Métayage

Sharecropping is a contract made between the owner of rural land (lessor) and a share-cropper (tenant) according to which the latter agrees to cultivate an area of land for a fixed period on condition that a percentage of the yield be handed over to the owner (Cornu, 1994: 94). This division of the harvest constitutes a form of rent which is in proportion to the size of the harvest. This means that in a bad year, the land owner shares part of the risk with the tenant, unlike where a fixed amount of rent must be paid, regardless of the harvest (see *Tenant farming*). Sharecropping is found all over the world, but "especially among rural societies in developing countries; for example, it is widespread in many parts of Asia, especially in areas where rural population densities are high" (OIE, 1998). There is controversy over whether share-cropping in Africa is "the result of a degradation of custom" linked to the development of the market economy, to enforced population displacements or to the fact that land has become scarce (Snyder, in Le Bris et al, 1982: 163). Studies have shown, that sharecropping is becoming a more prevalent feature of the land use in Africa (Raintree, 1987: 336). Sharecropping has also become more common in Europe and North America, due to the very heavy costs involved in equipping and running a large farm, and the consequent need to share the risks involved.

There is substantial variation in the form of sharecropping agreements. Sometimes the landlord may share production costs (seeds, labour, etc.). Tenants may face a variety of restrictions, such as in the type of crops produced (OIE, 1998). In Ghana, there are two main types of sharecropping tenancy agreements. Under an '*abusa*' agreement, the tenant at his own expense, clears and cultivates a tract of virgin land allocated to him by a land holder. Thus, the farmer enjoys the beneficial use of the land and owes a third share of the annual produce to the land donor. With the '*abunu*' agreement, in return for half the annual produce, a landholder either gives out a farm to the tenant to cultivate or provides the tenant with funds to establish a farm, which is operated by the tenant, but ultimately belongs to the original landholder/donor (Kasanga, forthcoming). Another example is the *dibi-ma-dibi* (literally, "I eat, you eat") arrangement observed in the cocoa- and coffee-growing region straddling the frontier between Togo and Ghana. Originally, *dibi-ma-dibi* enabled an immigrant, in exchange for clearing and planting cocoa on a plot of land, to acquire a quasi-permanent right of occupation and possession over the plot, which could be passed on to his heirs as long as the plantation was farmed (Crousse et al, 1986: 243-252).

Bruce (1988: 28) observes that one must be careful not to assume that sharecropping implies an inferior status for the tenant. "For instance, there are circumstances in which sharecroppers are typically the more successful farmers who own a plough and oxen, while landlords are typically poorer households with land but which cannot afford oxen" (Bauer, 1975: 235). **See also: *Tenant Farming***

Sharia land rights - *Droit foncier islamique*

Islamic laws and principles called the Sharia (literally "the path of life") recognise universal land rights for all Muslims. Private rights are generally established through positive prescription, that is by ten years of continuous occupation and land use (the principle of *indirass*). Landholders who do not cultivate their own land are obliged to have it worked by others (tenants, sharecroppers, borrowers) or risk losing their rights of ownership. Women may own land but do not inherit it, a situation which has led to conflict with some other customary principles of succession, especially among matrilineal societies. Some women are prevented from using land which is theirs, for example, by inheritance due to *purdah* (the custom in some Islamic societies whereby women must remain secluded in the home, away from strangers). Land exchanges are permitted under the Sharia (IIED, 1999: 9).

Village level studies in parts of West Africa show that the Maliki code of Islamic law which was followed by the Fulani, was superimposed upon, rather than replaced, pre-existing systems of tenure (Mortimore, 1997). Hailey (1938) writing about Northern Nigeria states that under a strict interpretation of the Maliki code, "all the cultivated lands on conquest 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 Fulani rule there remained a strong residuum of the customary native tenures. The emir confined himself to exercising rights over waste land; as regards occupied land, his control mainly took the form of levying land revenue based on cultivation - in this case, fixed at one tenth of the produce from the land." **See also: *Indigenous land tenure system, Prescription, Land taxes***

Shifting cultivation - *Agriculture itinérante*

Shifting cultivation involves the progressive clearance of primary forest and its subsequent use for farming. Once the forest around the settlement has been cleared and the soil has been exhausted through cultivation, the group moves on. Shifting cultivation involves no system to allow land to lie fallow on a regular basis, nor does it presuppose permanent settlement. Lloyd, writing in 1963, stated that "I designate [shifting cultivation] as a system where a large body of people, an entire tribe perhaps, slowly gyrates within its tribal area, individual villages being abandoned every few years and their people founding new ones in unfarmed areas, the land is cultivated for a few seasons and then abandoned without any intention on the part of the cultivators that they should one day return to the same area." **See also: *Slash and burn agriculture, Bush fallow rotation system***

Slash and burn agriculture - *Agriculture sur brûlis*

This is a method of agriculture in which trees and natural undergrowth are cut down and burned, leaving the soil bare before cultivation begins. Farming begins on the cleared land for a few years until the soil has become depleted, before moving on to another patch of land. In practice, the terms 'shifting cultivation' and 'slash and burn' agriculture are often used interchangeably. However, strictly speaking, shifting cultivation refers to a variety of techniques which includes slash and burn.

Today, slash and burn agriculture has disappeared from many areas of the world. On a global scale, however, the system still constitutes the basis for the livelihoods of an estimated 300-500 million people and is practised on about 30% of all arable land (Brady, 1996). In the tropical rainforests of central Africa, it is still the dominant cultivation system, and it has been much more than a way to manage soil fertility and agricultural productivity. It also provided an essential feature underlying the territorial expansion of the Bantu peoples and was an important

mechanism for establishing tenurial rights over vast expanses of land. **See also: *Bush-fallow rotation, Shifting cultivation***

Smallholder - *Petit exploitant / petit agriculteur*

See: *Landholding*

Spatial scale - *Echelle spatiale*

Spatial scale refers to the fact that in every society, there tend to be several levels of organisation (such as local, national and international), which correspond to different scales. Each scale tends to have its own characteristics and, as a basic principle, what is valid at one scale cannot be directly transposed to another. **See also: *Logiques foncières***

State property - *Propriété de l'État*

In Africa, the state property regime established by the colonial powers 'by right of conquest' and later 'in the general interest', incorporated unregistered land, *terres vacantes et sans maître*, as well as land considered to be illegally occupied into private ownership. In the French colonies, this resulted in a state monopoly ownership of land which was renewed by most African countries after Independence. The British colonial authorities on the other hand, developed territorial alliances to acquire land. State or crown property was also acquired through compulsory acquisition procedures. **See: *Compulsory acquisition, Domaine/Domanialité, Expropriation, Terres vacantes et sans maître***

Statutory law - *Droit moderne / Droit positif*

Statutory law refers to legislation (or other legal instruments also referred to as statutes) promulgated by the state. The term is used to denote law as made by the state, in contrast with customary law, which derives from the customary institutions specific to a particular locality. The prevailing existence and legitimacy of indigenous legal systems in Africa mean that in practice, statutory laws have very limited application in rural areas. Statutory laws, designed and enacted by central government, are hence often not recognised, understood or even known about by local communities (Bruce, 1988). Their formulation and the language in which they are expressed both serve to distance statutory legislation from local people. **See also: *Colonial land tenure system, Indigenous tenure systems***

Solum - *Fonds*

This is a legal term derived from Roman law for the land at ground level as opposed to the minerals beneath, or trees and buildings above. According to Okoth-Ogendo (1987: 226), "throughout Africa, the legal conception of land as a resource is confined to the physical solum only. This much is evident in the clear separation in indigenous law of the soil from buildings, trees and other objects affixed to the soil. These are generally regarded as the property of the labourer rather than of the authority in whom control rights are vested or the person entitled to immediate access to the use of the soil. This position would also seem to apply to systems of property based on Islamic law. It contrasts with British property law whereby whoever owns the solum also owns what is above and below it, other than minerals whose ownership has been nationalised" (Okoth-Ogendo, 1987: 227). **See also: *Ownership, Tree tenure***

Superiority - *Seigneurie*

See: *Feudal system*

Survey - *Lever*

The term "survey" refers to the body of techniques used to collect the geographical coordinates of many points in the landscape with a view to compiling maps and creating a geographical database. Surveys may either be direct (carried out in the field) or aerial. Direct surveys, in which the surveyor covers all the points chosen and takes measurements, are carried out on a

limited number of sites. Aerial or photogrammetric surveys use photogrammetry and are reserved for major land survey (Kasser, École Supérieure des Géomètres et Topographes, pers. comm.) **See also: Cadastral survey**



Tenancy - Location

A tenancy is a temporary occupation or holding of land or property by a tenant. Equally, it can describe the duration of such a holding (*durée de location*) (Chambers, 1998).

Tenant - Locataire

A tenant is a person who, according to an informal or formal agreement, temporarily occupies a property owned by another person (referred to as the landlord) in return for rent or service. **See also: Landlord, Rent**

Tenant farming - Fermage

This is a contract entered into by a rural landowner (the lessor) and the tenant farmer (the lessee), according to which the latter agrees to cultivate a certain piece of land for a specified period and subject to the payment of rent, the amount of which is fixed in advance by mutual agreement. **See also: Sharecropping**

Tenure - Foncier

See: Land tenure

Tenure reform - Réforme foncière

Tenure reform (*réforme foncière*) is a process aimed at modifying the nature of land tenure rights. The term should be distinguished from land redistribution (*réforme agraire, redistribution des terres*) which aims at reform of the agrarian structure to arrive at greater equality in size of landholding among producers.

Tenure reform in sub-Saharan Africa has mainly focused on improving security of tenure with a view to increase investment in land based assets, mobilise credit facilities and activate land markets, in the hopes of encouraging agricultural development and growth. Strong pressure has been placed on countries, particularly those undergoing structural adjustment programmes, to encourage private ownership and introduce a title registration programme as a means to increase tenure security. This stems from a misplaced belief that only systems of formally registered land rights can offer real security for landholders, potential investors and credit suppliers. However, more recent analyses confirm that many indigenous tenure systems do in fact confer secure rights of tenure to landholders, which are sufficient to stimulate investment and longer term land improvements (Platteau, 2000).

The legal duality that exists in many countries in which statutory law at national level stands in contradiction to local customary law, and where neither is entirely authoritative, is a more significant factor in bringing about tenure insecurity. Thus, tenure reform programmes could usefully seek to clarify the position of landholding rights held under customary legal systems vis à vis national property laws. Several countries in sub-Saharan Africa are currently engaged in

such reform programmes (Toulmin and Quan, 2000). **See also: Collateral security, Land redistribution, Tenure security**

Tenure security - Sécurité foncière

Land tenure security is the situation in which landholders consider their continued occupancy rights to be guaranteed whether by virtue of formal rights, customary rules or some other form of assurance. Conversely, insecurity of tenure describes the situation whereby tenure rights are considered precarious, due to the risk of dispossession by the actions of other individuals, communities, or the state.

There are various debates about what constitutes secure tenure. A key work on this issue has been Bruce and Migot-Adholla (1994). Place, Roth and Hazell's chapter in this book suggest that there are three components of security. These are:

- breadth, which considers what rights are held (use, transfer, exclusion)
- duration, which refers to the length of time during which the rights are valid, and
- assurance, which concerns the certainty of the rights.

A major discussion of this theme in the francophone literature is provided in the book *La sécurisation foncière*. *Sécurisation* is a process of creating greater security for those concerned in relation to tenure law. This presupposes the possibility of designing and implementing appropriate and legitimate rules of land management. "To go from 'security' to 'securing the validity of tenure rights' is to express the idea that security is not a stable state but the result of a whole series of factors to be taken into consideration on a case by case basis" (Le Roy et al, 1996: 21).

One of the supposed inadequacies of indigenous tenure regimes as perceived by outside observers is the lack of tenure security that is conferred on a customary landholder, given that the chief or lineage head often has residual rights to reallocate his/her land, or that the duration or strength of secondary rights (such as women's rights of access to land, tenancies or loan arrangements) may not be clearly determined, being subject to negotiation. This analysis, however, overlooks the importance of social relations in the landholding relations in Africa in building trust between the parties involved. Thus, for example, members of a particular social group may feel a strong sense of security about the claims to land which they can exercise in their home area. By contrast, immigrant households are likely to feel less secure in their access to land, because of the weaker social bonds which link them to others in the local community. Braselle et al point out that "immigrant farmers, who have comparatively low levels of tenure security as measured by standard yardsticks, may feel it worthwhile making long-term improvements in view of the stable relationship prevailing between them and the household by whom they have been given land. Such improvements, in turn, may enhance their tenure security further" (in Platteau, 2000).

Individualised private ownership and registration of title have been widely promoted in Africa and elsewhere as a means to improve security of access to land, define ownership rights and encourage contractual arrangements. However, this form of tenure may not be compatible with the production strategies of certain groups such as those of transhumant pastoralists (Lavigne Delville, 1998). Indeed, empirical evidence discussed by Atwood (1990: 663) suggests that "registration can create rather than reduce uncertainty and conflict over land rights" (see Platteau, 2000). It is also possible that indigenous tenure systems will gradually evolve institutional innovations that are less costly than registration and titling yet serve the same purpose (ibid). **See also: Collateral security, Derived rights, Indigenous tenure systems, Land markets, Land registration, Security**

Tenure system - Régime foncier

Durand-Lasserve and Tribillon (1982: 331) define the *régime foncier* as the legal relationship between people and an area of land or ground. The tenure system is thus the expression of the relationship between the social, institutional and physical dimensions of an area. **See also: Colonial land tenure system, Indigenous tenure system, Land tenure**

Terrain - Terrain

In French, a *terrain* is:

- a portion of undefined space considered from the point of view of its relief, its situation, the activities which come from it and its potential, and
- a portion of space or scope of the land, the form and dimensions having a particular use (*terrain à vendre, à bâtir, terrain de sport* etc.)

Terres vacantes et sans maître - Vacant land without owner

According to Articles 537 and 539 of the French Civil Code, the term *Terres vacantes et sans maître* applies to all land that is not registered or owned in accordance with the regulations of the Code. Such land is deemed to be part of the private property of the state.

This category of land was used by the French colonial administration as a means to acquire land, either for colonial purposes or for private development. This was antithetical to local traditions which perceived all land to be owned already (Okoin, 1999). It led to the presumption of state ownership of all land held and cultivated by the indigenous population with the burden of proof falling on the customary claimant to prove that the land had an owner. However, indigenous landholders did not have written proof of ownership and their cases were therefore usually dismissed.

Following unrest in Ivory Coast in 1935, a French decree limited state property claims in the colonies to land that had been abandoned for 10 years or more. Thus the emphasis was placed on proving vacancy on the basis of the absence of development (*mise en valeur*), while the requirement to prove that the land had no owner was left aside. It was not until the decree of 1955, issued following considerable pressure from indigenous communities, that the burden of proof was reversed. Most independent francophone African countries retained the concept of *terres vacantes et sans maître* in their land legislation, and placed particular emphasis on the concept of *mise en valeur* (as opposed to proof of ownership by title deed of property). According to Gruenais (1986: 294), it is now generally accepted that there is no basis for the concept of *terres vacantes et sans maître*, since uncultivated lands such as fallow land, land reserves, or the “bush” usually fall under the authority of a particular person or group. **See also: Colonial land tenure system, Domaine/Domanialité, Mise en valeur**

Territoire - Territory

This term may be used in four ways. It can be a defined extensive area where a human community live (CILF, 1976). It can cover a rural area over which an authority is exercised (Petit Robert, 1988). In human or animal behavioural science, a territory is the space within which individuals or groups carry out their activities (reproduction, feeding etc), and which is, in general, defended against other individuals of the same species. In livestock systems, a territory is “a structured environment, which holds contrasting resources and constraints in space and time” which is of value to the herding group (Landais, Lhoste and Milleville, 1986). **See also: Finage, Gestion des terroirs, Pastoral resources, Terrain, Terroir**

Terroir - Village territory or village lands

Terroir refers to a defined social and geographic space comprising the resources covered by rights of use which allow a defined community the majority of its needs (Toulmin, 1994). It may have variable dimensions and is not a precisely defined area with a clear boundary (community territory) (Pélissier, 1995). *Terroir* is generally translated into English as ‘village territory’ or ‘village lands’, though ‘community lands’ is also used.

Gallais defines a *terroir* as an area of land where the cultivation of the environment by a community creates a particular type of landscape. It is therefore possible to draw, extremely roughly, the boundaries of a village territory around each village, i.e. it is a not a legal but rather a *de facto* domain, in which people grow their crops, collect firewood, seek fruit and game, as well as graze their herds (Sautter, 1968).

Some definitions extend these boundaries. Cormier-Salem (1995: 71), for example, states that the *terroir* also includes areas of uncultivated territory, generally classified as bush, but which includes forests, savannah, lowlands and rivers. These areas are used for hunting, gathering, fishing but are also often perceived as land reserves belonging to the village in question.

Terroir has also been defined as a "*territoire* presenting certain characteristics which distinguish it in terms of agriculture from its neighbouring *territoires*". The word *terroir* can be used to mean part of a field, several fields, or even whole valleys, coastal areas, etc. The agronomic unit of a *terroir* comes from its original physical qualities (relief, climate, exposure, soils) or qualities acquired by human intervention (irrigation, drainage, terracing...) (de Bonneval, 1993). **See also: *Finage, Gestion des terroirs, Territoire, Terroir d'attache***

Terroir d'attache - Home grazing territory

The term *terroir d'attache* was developed in Niger in 1990 under the Rural Code to deal with pastoral land holding systems. Translated as 'home grazing territory', it refers to a legally identified area in which pastoralists and agro-pastoralists reside for a large part of the year and to which they return following the period of transhumance. These *terroirs* are organised according to a topocentric sense of space, based on key resources, such as watering places and the location of certain types of pasture and crops. These sometimes include places where wild produce may be gathered. Several groups may have non-exclusive rights in these territories and, therefore, need to negotiate with others regarding the terms of which each can make use of certain resources (Marty, in Lavigne Delville, 1998: 80). **See also: *Livestock route, Pastoral resources, Transhumance***

Title deed - Titre foncier

A title deed is the contract document that transfers ownership in land. Registration of this deed is, in many Western jurisdictions, sufficient to prove right to ownership. **See: *Land registration***

Topography - Topographie

The discipline of "topography" describes, measures and represents land forms and features at local level. The topographer carries out surveys, either by taking direct measurements or by using aerial or satellite photographs. The term topography is also used to describe the geographical features of an area (Kasser, École Supérieure des Géomètres et Topographes, pers. comm.). **See also: *Orthophotography, Satellite map, Survey***

Transaction costs - Coûts de transaction

These are the costs of coming to an agreement over property rights and the costs of enforcing those rights. For example, purchase of land may require not only payment of the negotiation asking price but also legal fees to establish who is the rightful owner, survey costs, arrangement of credit and drafting the legal transfer document. **See also: *Externality***

Transhumance - Transhumance

Transhumance is the seasonal search for fodder and water usually involving long distance movement from the village territory. Transhumant herds can cover hundreds of kilometres, crossing frontiers, especially during the dry season, in order to make use of the marked variation in water and pasture availability found in certain regions, such as West Africa, or in lowland-mountain areas (Scoones, 1995). Transhumance forms part of a balanced pattern of land use in many parts of the West African Sahel. Following the crop harvest, transhumant cattle herds may be allowed to enter the villages and graze on the stubble while depositing their dung. In addition, in return for access to wells, or provision of cereals by farmers to herders, cattle could be kept on the fields overnight, depositing large quantities of dung as a result. These arrangements are known as 'manure contracts'. Once stubble and other fodder had been used up and water pools had dwindled, the herds move on. During the dry season,

farmers often sent their own cattle with the transhumant herders who, in exchange, were entitled to keep the milk and some of the calves.

However, the incidence of severe droughts, increased village herd sizes due to successful livestock health programmes and greater agricultural land use have served to increase tensions between transhumant groups and farmers. Sedentarisation programmes have also limited the practice of transhumance. **See also: Conflict, Livestock route, Pastoral resources, Sedentarisation, Terroir d'attache**

Transition foncière - Land tenure transition

The theory of *transition foncière* was developed by the French group AMIRA - *Amélioration des méthodes d'investigation en milieu rural Africain* - on the basis of hypotheses advanced by Charmes (1982). It proposes a three-phase explanation for the transition of a social grouping that has not been significantly affected by market forces to another type of grouping in which market forces, even if they have not become entirely widespread, play a decisive role. This process sees the question of property in terms of the dissolution of old production systems and the issue of land distribution. Paul Mathieu, in particular, argues that land tenure no longer reflects earlier systems, nor does it bring into play the right of land ownership. It reflects a 'in-between' situation by facilitating certain transitions from non- market-led to market-led forms of agricultural production (Mathieu, 1987 in Le Roy et al, 1996: 10).

Another French group APREFA - *Association pour la promotion des recherches et études foncières en Afrique* - stresses that the term 'transition' refers to an evolutionary concept of history and humanity and presupposes a clearly identified end point. Given that the concept of absolute and exclusive land ownership encounters major limitations, it does not appear necessarily as the objective of the evolution of the African land tenure system. Other possibilities are proposed, in particular the possibility of abandoning the term 'transition' and replacing it with the expression 'contemporary situations', which avoids the opposition of tradition and modernity. **See also: Commoditisation of land, Land markets, Land tenure, Ownership**

Tréfonds - Below-ground resources

The *tréfonds* are the "subsoil" or "below ground" resources, which include mines and mineral reserves. **See also: Natural resources, Solum**

Tree tenure - Droits sur les arbres

In Africa, trees have played a very important role as assets associated with the long term use of land. Tree crops, such as cocoa, oil palm, etc., quickly became integrated into local economies in the moist forest belt with corresponding changes in land tenure systems, and generated a new set of arrangements regarding rental, tenancy and share-cropping. In semi-arid regions, governments' emphasis on peanuts and cash crops has undercut the traditional Acacia gum groves, village woodlots and sacred wood stands (Sene, 1980 cited by Riddell, 1987: 5).

Fortman (1987: 17) explains that "tree tenure consists of a bundle of rights which may be held by different people at different times. Four major categories of rights make up this bundle, the right to own or inherit, the right to plant, the right to use and the right of disposal". Planting a tree in Africa may give the planter rights over the land on which it is planted, even if the land belonged to another at the time of planting. Consequently, planting trees may be used as a means to acquire or maintain rights over land and may be regarded with hostility by the original land owner. As Riddell points out (1987: 4), all across the continent there is a great reluctance to allow sharecroppers, renters and other indirect tenure holders to plant trees. "In other cases, the planter may retain ownership of the tree and acquires the right of access to it. Such rights of access may encourage the planting of trees but can be extremely disruptive to other uses of the land" (Fortman, 1987: 18).

“Different rules may attach to the tree depending on whether it has been planted deliberately or whether it is self propagated. This distinction is based on the principle that labour creates rights. The general rule of thumb is that wild or self propagated trees are community property” (Brokensha and Glazier, 1973; Cory, 1970; Crocombe, 1964; Duncan, 1960; Swanson, 1979). Yet in some places, wild trees growing on private land have been reported to be the property of the land owners (Lloyd, 1963). “Planted trees generally belong either to the planter or to the owner of the land” (Fortman, 1987: 21).

“The rules which apply to subsistence use often differ from those which apply to commercial use. Trees which are used for subsistence, particularly those which are growing on the commons, are often free for use by all. In contrast, the use of trees for commercial purposes may be restricted to trees growing on the seller’s property or may be forbidden altogether depending on the particular use (Brokensha and Njeru, 1977; Pogucki, 1970)” (cited in Fortman, 1987: 22). Fuelwood has also traditionally been an open access resource, although the rules governing its access may tighten as it becomes increasingly scarce. The use of trees serving community purposes, such as sacred groves or shade trees, may be restricted (Fortman, 1987: 22).

“Women as a category do not always have restricted rights. Among the Ibo, women have very detailed rights to trees (Obi, 1963). ... However, in societies where women are not permitted to own land, their rights in trees are often restricted. Women may be forbidden to plant trees in order to prevent them from using this to obtain land. Women’s rights to both trees and land may be a function of residence and marriage” (Fortman, 1987: 25). **See also: *Derived rights, Ownership, Sharecropping***

Triangulation point - Point géodésique

Triangulation is the act of surveying by means of a series of triangles, e.g. for map making or pinpointing a location (Chambers, 1998). A triangulation (trig) point is a permanent, fixed reference point. The grid reference for the triangulation point is identified and published. High points, water towers, pylons, or tall buildings are used where it is not possible to install a permanent trig point, as is also the case where land is in multiple use or densely developed. Triangulation points can only be readily used for traditional cadastral surveys when they include a correctly recorded grid reference. The grid reference is discovered by triangulation with another, easily visible triangulation point, or by a natural feature (e.g. the corner of a building) whose location has been precisely measured. Global positioning systems are increasingly being used for fixing exact grid coordinates, but do not replace terrestrial cartographic methods (Kasser, École Supérieure des Géomètres et Topographes, pers.comm.). **See also: *Cadastral survey, Global positioning system***

Trust

An arrangement in which a person (the settlor) transfers property to one or more trustees who will hold it for a defined set of beneficiaries (who may include the trustee) who are entitled to enforce the trust, if necessary by action in court (Martin, 1997). Thus a trust may be set up to manage property on behalf of minors or people who are not able themselves to manage a property which is theirs by right. Another example is a charitable trust which may be set up to administer a fund or income from property on behalf of a very large group of people who qualify as beneficiaries under the conditions of the trust agreement.

In several countries of Africa, large tracts of customary lands have been transferred by statute to the State ostensibly in trust for the people eg Land Use Decree in Nigeria 1978. Another example is the 1962 Administration of Lands Act in Ghana which provides a facility by which the administration and management of customary 'Stool land' may be vested in the State in trust for the Stool group concerned (Kotey, forthcoming). Kotey describes this power as an alternative to compulsory acquisition according to which the government is not required to pay any compensation to the customary authorities (as the land has not been appropriated but simply held in trust). Many authors testify to abuses of government when handling property in the public trust and advocate the enactment of measures to ensure that the state as trustee is

accountable to the beneficiaries when decisions are taken to use public lands 'in the public interest'. **See also: *Compulsory acquisition***

Trustee - *Administrateur / curateur*

A trustee is a person having a nominal title to property that he holds for the benefit of one or more others. A trustee must show a high standard of care toward his beneficiaries, must not allow his interests to conflict with those of his beneficiaries, and must not profit from his trust. He is not usually entitled to remuneration, although he may recover expenses necessarily incurred. Trustees may refuse their office, resign or retire but they remain liable for acts carried out during their trusteeship. The power to appoint replacement trustees is usually given either to the beneficiaries or to the remaining trustees (Martin, 1997).



Urban land - *Terrain urbain*

Urban development and the growing value of land for uses other than agriculture are major forces driving the development of a market in land ownership rights (DFID, 1999). With the rapid expansion of urban areas, surrounding agricultural land acquires high potential value, encouraging speculative purchases or unscrupulous 'land grabbing' by rich urban elites. Often such land is left idle while speculators wait for prices to rise as a result of increased amenity and service provision in the area. Speculative developments in high density central locations can also operate to increase homelessness amongst poorer urban dwellers, forcing some to set up homes in squatter settlements.

Communities in urban areas are likely to adhere to different social norms than those in rural areas. Lineage group hierarchies and structures are able to exert less influence in the more fragmented and individualised family groups living within towns and city areas. The corollary of this is that customary legal systems are likely to become eroded due to the lack of traditional institutions and networks. As a result, national laws are more likely to take precedence over customary rules in urban areas, though this is not uniformly the case, and in many areas, confusion remains as to the validity of customary or contractual arrangements. The enforceability of such rules is still likely to depend on the political power behind the parties seeking to apply them. Legislation governing the use of land in cities is also, in many cases, extremely complex and intricate, as a plethora of planning regulations coexist with more general property laws, commercial property laws, taxation regulations, and other administrative legislation. This complexity provides an opportunity for those with the means and knowledge to exploit loopholes or administrative delays. As a result, there is a high incidence of land-related litigation in many of the cities of West Africa.

Urban or peri-urban areas are more often the subject of compulsory acquisition orders than rural land. Compulsory purchase powers may be used by the government to appropriate privately owned or customarily held land for development in the public interest. Kotey (forthcoming) presents various examples of the misuse of such powers to expropriate land in Ghana. The right of the government to acquire land in this way may be justified through a claim of eminent domain, but is nowadays much more likely to be enshrined in specific legislation or the Constitution. Given that these powers can be used to obtain substantial areas of land, careful drafting of such legislation with provisions for compensation to the landholders is vital, and must be properly monitored and subject to rights of appeal. The displacement of the indigenous population with little or no compensation has resulted in disquiet, misunderstanding, and sometimes open hostility between displaced families on the one hand, and traditional land custodians and the new developers on the other hand (Kasanga, 1999).

Peri-urban denotes neighbourhoods, suburbs or villages in or around the boundaries of a city or town, characterised by urban physical development activities, based on active land market transactions. In effect, property rights are actively changing hands and land uses are changing from predominantly agricultural to urban uses (Kasanga, 1999). **See also: Allotment, Compulsory acquisition, Expropriation, Eviction, Institutions, Land markets, Parcellaire, Terrain**

Use rights - Droits d'usage

Under French civil law, a use right is the right to use a thing in accordance with its designated purpose. More specifically, according to Cornu (1994: 830), it is a limited form of usufruct which is temporary, non-transferrable and cannot be expropriated. It entitles the holder to use something belonging to somebody else.

With respect to African land tenure regimes, however, the term 'use' right is more broadly interpreted. According to Gastellu (1982: 276), it is linked to membership of the resident community and perpetuated by stable and continuous occupation, confirmed by the work carried out by a family of farmers. The planting of crops, trees and shrubs, or gathering fruits and bark is sufficient proof of the existence of a use right in the eyes of the local village community. Use is established by the work invested in the land by an individual and his or her ancestors.

According to Le Roy (1996c: 65), the status of an area can change as a result of its use. Barrière and Barrière (1996b: 9) points out that successive or multiple uses of a particular environment change according to the resource or area concerned. For example, a flood plain constitutes a resource which is used both for grazing between low and high water, and for fishing and hunting. Furthermore, according to Do Felli (in Crousse et al, 1986: 44-5), the use right may be direct (exercised by the descendants of the first occupier), or granted in the form of a loan, possibly subject to conditions. **See also: Indigenous tenure systems, Usufruct**

Usufruct - Usufruit

This is a technical legal term which brings together two aspects of property law, the *usus* and the *fructus*. It is the right to use, harvest and profit from the use of a property. If the property in question belongs to another person, then there is an implied condition that the property itself remain uninjured through such use. **See also: Alienation, Ownership, Property rights**



Vacant land without owner - Terres vacantes et sans maître

See: Terres vacantes et sans maître

Vassal - Tenancier

See: Feudal system

Vest - Attribuer

To confer legal ownership of land or other rights on someone. Vested rights are rights that have accrued to a person as opposed to rights that are yet to be acquired (Martin, 1997). Thus, the right of ownership of land, although agreed on a certain date, may not be vested until a later date by common agreement of the parties.

Virilocal residence - Résidence virilocale

Virilocal residence refers to the custom according to which, upon marriage, the wife leaves her natal household and goes to live in her husband's village or group. **See also: Matrilocal residence**



Water resources - Ressources en eau / Espace aquatique

Water resources are understood as a spatial entity structured by multiple uses. There are two distinct spatial structures. The first of these is made up of aquatic territories: lagoons, deltas, estuaries, reefs and mangrove swamps, enclosed or semi-open areas made up of continuous, adjacent stretches of water. They may be considered the extension of land territories. They are often demarcated areas, appropriated and controlled by a community and managed collectively.

The second is comprised of maritime resources, such as the oceans. By nature, the oceans are not controllable. Territorial areas may be determined, however, which have moveable boundaries and permeable limits.

Aquatic and maritime resources represent the opposition between inland waters and marine waters, between inland and sea fisheries, between the sedentary farmer-fisherman society and that of the migrant sailor-fisherman. This opposition may not be so clear cut in reality, given the diversity of aquatic resources. **See also: Finage, Territory, Water rights, Wetlands**

Water rights - Droits de l'eau

There are many aspects to water rights which are of relevance to land tenure issues. Access to water resources is crucial for basic subsistence needs, and also important for agricultural and industrial production, sanitation, watering livestock, fisheries and navigation, and generating electricity.

"The distinction between naturally available water and water supplied through infrastructure is of vital importance for water rights. Often, naturally available water is considered an open access resource. Rights to groundwater are usually granted to the owner of the land above it, if he owns a pump. Rights to water supplied through the infrastructure, are generally granted to those who have built and who maintain this infrastructure. Practically everywhere, investments in infrastructure strongly legitimise claims to the water supplied through it" (NEDA, 1997: 31). The need for substantial capital investments for major irrigation works will often imply public (state/donor) or private sector involvement. In these cases, the land served by such infrastructure may be expropriated or purchased by the government, which raises issues of equity for traditional land rights holders (IIED, 1999).

As population density increases and land use intensifies, conflicts in the use of water resources, particularly in drier areas, are set to increase. The availability of irrigation water increases the value of land which may have the effect of landholders claiming back rights which they have leased, 'given' or lent to others (women, tenants, relatives etc.) (NEDA, 1997). Due to the expansion of farming into low-lying wetland areas, it is increasingly difficult for transhumant livestock herders to maintain their former access to these valuable watering and grazing areas (IIED, 1999). Conflict may also arise in future at the international level where

important water bodies cross one or more national boundaries, such as the Niger, Senegal, Volta, Chari and Logone Rivers, as more intensive demands are made on limited supplies of water for industry and agriculture.

The traditional appropriation and management of inland fisheries are based on control of water. In many ways, the appropriation of such rights is analogous to the traditions surrounding the appropriation of land. Occupation rights were granted, in popular imagery, by the local spirits who are the true owners of the resource base, to the first arrivals in the area. This provides the religious basis for control of water and fish resources, and explains the emergence of chiefs who control water, land and grazing, etc. Kassibo (forthcoming) describes how the resource base of the inland Niger Delta in central Mali has been appropriated in a symbolic way by the longest settled groups by virtue of the right of first occupancy and he identifies how the rights to these fisheries are controlled.

He explains that the *ji tigiya* (literally control of waters) is “an exclusive right to exploit the fisheries which can be sub-divided into pools, floodplain, lake, channel, backwater, branch of a river, etc..” A similar but separate right exists in respect of the open rivers. “It belongs to a lineage and is handed down along the male line, according to the principle of seniority. This right can be transferred in three ways: through marriage (bequest to the daughters of the lineage); as blood money - compensation for a murder committed by a member of the lineage - or; in recognition of services rendered to the water chief. It may be freely granted during collective fishing operations, without alienating the privileges of the holding lineages and may temporarily be granted to third parties outside the lineage, by paying a symbolic fee, equivalent to a third of the catch.”

“The water chief, is a manager of the aquatic territory and the chief of his lineage. His functions include establishing the fishing calendar, making sacrifices to the spirit to ensure the protection of fishermen, the reproduction and renewal of the resource and reparation for any faults committed, prohibition of bad fishing practices, regulation of resource access and arranging for stretches of water to be set aside to ensure resource conservation, arbitrating in disputes and imposing fines on offenders, including supervising settlement, organising special fishing expeditions and granting temporary use-rights against payment of a fee. The water chief enjoys certain prerogatives such as the best fishing station and the right to be the first to begin fishing” (Kassibo, forthcoming).

In many countries, water resources have been nationalised and the rights of traditional chiefs to manage and control the use of water have been largely circumscribed by national regulations and institutions. **See also: Conflict, First occupancy (rights of), Indigenous tenure systems, Land chief, Water resources, Wetlands**

Wetlands - Zones humides or Bas fonds

Wetlands are not restricted to areas of high annual rainfall. Within dryland agro-ecosystems, there are often areas which constitute a small proportion of total area, but are highly significant to the overall productivity of the system. These patches are known by a variety of local names. Two of the most widely used in West Africa are *fadama* and *bas-fonds*.

Fadama is a Hausa term originating in Nigeria which refers to moist, fertile flood plain land which is highly prized. (Labaran in Mortimore et al, 1987: 52). Traditionally fadama land has been grazed by cattle herds (mainly Fulani herders) throughout the year, but increasingly is being ploughed up for farming. The question of who has priority rights to the fadama lands is therefore becoming increasingly important (Gillett, in Mortimore et al, 1987: 58).

Bas-fonds is a French term given to the wetlands of Burkina Faso and other countries of the Sahel. Berton (1988) describes how changes in use of these areas have occurred in past decades. Relative land abundance in the past made some form of shifting cultivation feasible; the *bas-fonds* were generally avoided as sites for cultivation, as the effort involved in their clearing and weeding was too large. Under these conditions, the *bas-fonds* were left for animal grazing (plus wood, fruit, and water collection). However, since the 1970s, *bas-fonds* have

increasingly been cultivated with maize, sorghum, rice, and vegetables (Lavigne Delville and Camphuis, 1999). **See also: *Water resources, Water rights***



Zone / zoning - Zone / zonage

According to Cornu (1994: 853), a zone is a territorial area which is defined with a view to applying a specific set of regulations. The term is commonly used in urban and regional development. Zoning is a term used in urban planning to refer to types of land occupation (housing, activity, etc.). According to Karsenty (1996c: 119), zoning is used in general terms to designate any operation involving the definition of territories according to various uses. For example, a zoning operation aiming to define an area of permanent forest may identify “zones free of human influence”, “community forests” and “village forests”, alongside state-owned forests for the production of timber. A zoning order does not generally define the nature of the ownership or use rights to the area but lays down regulations about how the resources in question may be used.

The National Domain Law of 1964 in Senegal, for example, which expropriated all previously unregistered lands, divided land into four categories: urban zones, classified zones, *terroir* zones and pioneer zones. Urban zones included all lands situated in urban centres or community settlements. Classified zones contained all government classified forest areas and national parks. *Terroir* zones were all lands which, in 1964, remained unregistered but which were exploited for agricultural purposes, pasture or rural housing: these lands were placed under the direct control of the rural councils, though the decisions of the councils were made subject to approval by local administrative officials. Pioneer zones encompass all other lands (Furth, 1996). **See also: *Allotment, Domaine (foncier) national, Forest area, Land tenure, Schéma d'aménagement foncier, Space (organisation of), Urban land***

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Index of French terms

A

<i>Affectation</i>	10	Allocation
<i>Agriculture itinérante</i>	51	Shifting cultivation
<i>Agriculture sur brûlis</i>	51	Slash and burn agriculture
<i>Aire protégée</i>	47	Protected area
<i>Aliénation de la terre</i>	10	Alienation (transfer)
<i>Aménagement des terroirs</i>	11	Village lands management
<i>Appropriation</i>	11	Appropriation

B

<i>Bail / Contrat de location</i>	35	Lease
<i>Bas fonds</i>	62	Wetlands
<i>Bassin hydrographique</i>	13	Catchment area
<i>Bien/chose</i>	11	Good/thing
<i>Biens mobiliers</i>	40	Movable property
<i>Bilan foncier</i>	12	Land evaluation

C

<i>Cadastré</i>	13	Cadastral survey
<i>Cadastré / Livre foncier</i>	33	Land register
<i>Canon emphytéotique</i>	27	Ground rent
<i>Capital</i>	13	Capital
<i>Champ foncier</i>	13	Scope of land tenure
<i>Chef</i>	13	Chief
<i>Chef de terre</i>	30	Land chief
<i>Classement</i>	26	Gazettement
<i>Codification</i>	13	Codification
<i>Collectivité territoriale</i>	37	Local government
<i>Concession</i>	17	Concession
<i>Conditionnalité foncière</i>	17	Conditionality re land tenure
<i>Conflit</i>	18	Conflict
<i>Convention locale</i>	37	Local resource management agreement
<i>Co-propriété</i>	18	Co-ownership
<i>Couloir de passage du bétail / piste à bétail</i>	36	Livestock route / corridor
<i>Coûts de transaction</i>	56	Transaction costs
<i>Coutume / Droit coutumier</i>	18	Custom / Customary law
<i>Culture sur jachère</i>	12	Bush - fallow rotation system

D

<i>Décentralisation</i>	19	Decentralisation
<i>Déguerpissement</i>	23	Eviction
<i>Délimitation / Bornage</i>	19	Demarcation
<i>Disposition (droit de)</i>	49	Right of disposal
<i>Domaine (foncier) national</i>	21	National property
<i>Domaine éminent</i>	22	Eminent domain
<i>Domaine foncier</i>	23	Estate
<i>Domaine/Domanialité</i>	20	State property
<i>Droit d'accès</i>	10	Access right
<i>Droit de feu</i>	21	Fire rights
<i>Droit de hache</i>	21	Axe rights
<i>Droit de jouissance</i>	45	Possession right

<i>Droit de préemption</i>	45	Pre-emption right
<i>Droit du premier occupant</i>	25	First occupancy, rights of
<i>Droit foncier colonial</i>	14	Colonial land tenure system
<i>Droit foncier islamique</i>	51	Sharia land rights
<i>Droit moderne / Droit positif</i>	52	Statutory law
<i>Droits d'appropriation</i>	46	Property rights
<i>Droits de l'eau</i>	61	Water rights
<i>Droits délégués</i>	20	Derived rights
<i>Droits d'usage</i>	60	Use rights
<i>Droits multiples</i>	40	Multiple rights
<i>Droits multiples</i>	42	Overlapping rights
<i>Droits réels</i>	48	Real rights
<i>Droits sur les arbres</i>	57	Tree tenure

E

<i>Echelle d'un lever ou d'une carte</i>	49	Scale of a map
<i>Echelle spatiale</i>	52	Spatial scale
<i>Espace (modes d'organisation)</i>	22	Perspectives for spatial organisation
<i>Espace agricole</i>	24	Farmland
<i>Espace forestier</i>	25	Forest area
<i>Espace lignager</i>	36	Lineage land
<i>Espace pastoral</i>	23	Pastoral area
<i>Espace ressource</i>	22	Resource area
<i>Espace sacré</i>	49	Sacred area
<i>Exploitation / Exploitant</i>	31	Landholding/Landholder
<i>Expropriation</i>	23	Expropriation
<i>Expropriation des terres</i>	17	Compulsory acquisition
<i>Externalité</i>	23	Externality

F

<i>Facteurs de production</i>	24	Factors of production
<i>Faire valoir direct / indirect</i>	24	Owner operated / non-owner operated
<i>Fermage</i>	53	Tenant farming
<i>Finage</i>	25	Community territory
<i>Fiscalité foncière</i>	34	Land taxes
<i>Foncier</i>	34	Land tenure
<i>Foncier - environnement</i>	25	Land tenure - environment linkages
<i>Fonds</i>	52	Solum
<i>Fonds de terre</i>	48	Real estate

G

<i>Gestion communautaire locale</i>	37	Local community management
<i>Gestion des terroirs</i>	26	Community or village land management
<i>Gestion patrimoniale</i>	28	Heritage management

H

<i>Hypothèque</i>	39	Mortgage
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I

<i>Immatriculation foncière</i>	33	Land registration
<i>Institution</i>	30	Institution

J

<i>Jachère</i>	24	Fallow
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L

<i>Lever</i>	52	Survey
<i>Locataire</i>	53	Tenant
<i>Location</i>	53	Tenancy
<i>Logique institutionnelle</i>	38	Institutional approach
<i>Logiques foncières</i>	37	Rationale underlying the land tenure system
<i>Lotissement</i>	11	Allotment

Loyer	48	Rent
M		
<i>Maîtrises foncières</i>	38	Theory of land tenure
<i>Marchés fonciers</i>	31	Land markets
<i>Métayage</i>	50	Sharecropping
<i>Mise en gage (Mise en garde)</i>	45	Pledge
<i>Mise en valeur</i>	39	Productive use / development
<i>Mobilisation de la terre</i>	15	Commoditisation of land
<i>Monopole foncier étatique</i>	39	State monopoly over land tenure
<i>Morcellement des terres</i>	26	Fragmentation
O		
<i>Observatoire foncier</i>	40	Land tenure monitoring centre
<i>Organisation pastorale</i>	43	Pastoral organisation
<i>Orthophotographie</i>	42	Orthophotography
P		
<i>Parcelle</i>	42	Block of plots
<i>Patrimoine</i>	28	Heritage (Patrimony)
<i>Patrimoine commun</i>	15	Common heritage / Common patrimony
<i>Patrimoine commun de l'humanité</i>	15	Common heritage of mankind
<i>Pêcheries</i>	25	Fisheries
<i>Périmètre irrigué</i>	44	Irrigated area
<i>Permis de prospection</i>	44	Permit to prospect
<i>Permis d'exploiter</i>	44	Permit to use
<i>Permis d'habiter</i>	44	Permit to reside
<i>Permis d'occuper</i>	44	Permit to occupy
<i>Petit exploitant / petit agriculteur</i>	52	Smallholder
<i>Plan Foncier Rural</i>	45	Rural Land Plan
<i>Point géodésique</i>	58	Triangulation point
<i>Prescription</i>	46	Prescription
<i>Prêt foncier</i>	36	Loan of land
<i>Propriétaire foncier</i>	31	Landlord
<i>Propriété</i>	46	Property
<i>Propriété collective</i>	16	Common property
<i>Propriété de l'État</i>	52	State property
<i>Propriété foncière</i>	41	Ownership of land
<i>Propriété immobilière</i>	28	Immovable property
<i>Propriété immobilière</i>	48	Real estate
<i>Propriété personnelle</i>	45	Personal property
<i>Propriété privé</i>	26	Freehold
R		
<i>Rareté des terres</i>	34	Land scarcity
<i>Redistribution des terres</i>	32	Land redistribution
<i>Réforme foncière</i>	53	Tenure reform
<i>Réforme foncière / Réforme agraire</i>	33	Land reform
<i>Régime foncier</i>	54	Tenure system
<i>Remembrement des terres</i>	31	Land consolidation
<i>Rente</i>	48	Annuity
<i>Rente foncière</i>	48	Ground rent
<i>Réserve foncière</i>	33	Land reserve
<i>Réserve pastorale</i>	27	Grazing reserve
<i>Résidence matrilocale</i>	38	Matrilocal residence
<i>Résidence virilocale</i>	61	Virilocal residence
<i>Résolution des conflits</i>	20	Dispute resolution
<i>Ressources d'appropriation commune</i>	16	Common property resources
<i>Ressources en accès libre</i>	41	Open access resources
<i>Ressources en eau / Espace aquatique</i>	61	Water resources
<i>Ressources naturelles</i>	40	Natural resources

<i>Ressources pastorales</i>	43	Pastoral resources
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S

<i>Saturation foncière</i>	34	Land saturation
<i>Schéma d'aménagement foncier</i>	49	Land ownership survey
<i>Sécurité</i>	49	Security
<i>Sécurité collatérale</i>	14	Collateral security
<i>Sécurité foncière</i>	54	Tenure security
<i>Sédentarisation</i>	50	Sedentarisation
<i>Seigneurie</i>	52	Superiority
<i>Servitude foncière</i>	50	Servitude
<i>Spatio carte</i>	49	Satellite map
<i>Spéculation foncière</i>	34	Land speculation
<i>Succession matrilineale</i>	38	Matrilineal inheritance
<i>Succession patrilinéale</i>	43	Patrilineal inheritance
<i>Système de positionnement par satellites</i>	27	Global Positioning System
<i>Système féodal</i>	24	Feudal system
<i>Systèmes fonciers coutumiers</i>	29	Indigenous tenure systems

T

<i>Tenancier</i>	60	Vassal
<i>Terrain</i>	55	Terrain
<i>Terrain urbain</i>	59	Urban land
<i>Terres en location</i>	36	Leasehold
<i>Terres vacantes et sans maître</i>	55	Vacant land without owner
<i>Territoire</i>	55	Territory
<i>Terroir</i>	55	Village territory or village lands
<i>Terroir d'attache</i>	56	Home grazing territory
<i>Théories évolutionnistes du foncier</i>	23	Evolutionary theories of land tenure
<i>Titre allodial</i>	11	Allodial title
<i>Titre foncier</i>	56	Title deed
<i>Topographie</i>	56	Topography
<i>Transhumance</i>	56	Transhumance
<i>Transition foncière</i>	57	Land tenure transition
<i>Tréfonds</i>	57	Below-ground resources

U

<i>Usufruit</i>	60	Usufruct
<i>Utilisation des terres</i>	35	Land use

Z

<i>Zone / zonage</i>	63	Zone / zoning
<i>Zones humides or Bas fonds</i>	62	Wetlands