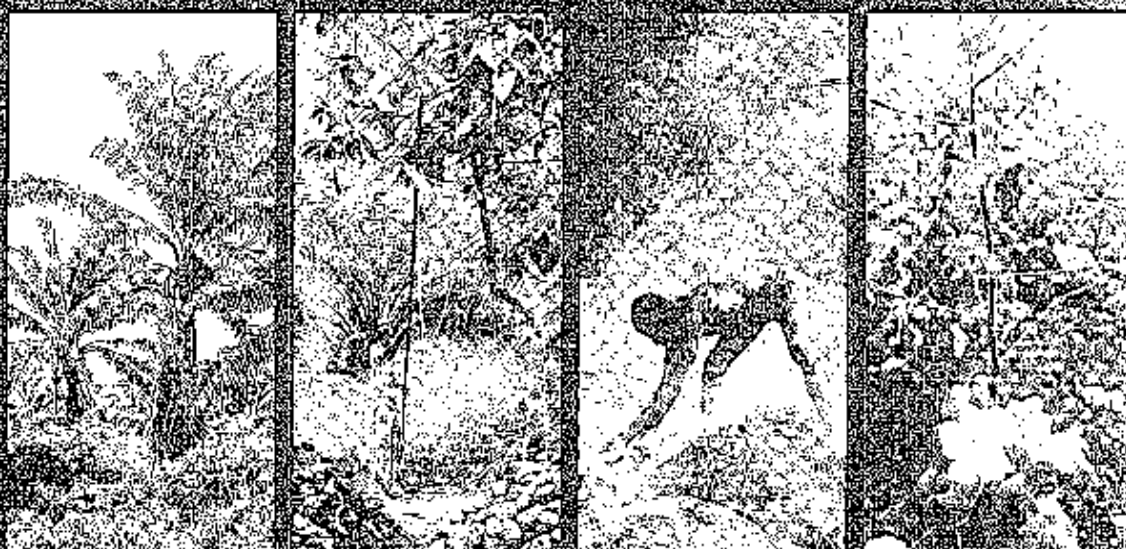


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# **Negotiating Access to Land in West Africa:** A Synthesis of Findings from Research on Derived Rights to Land

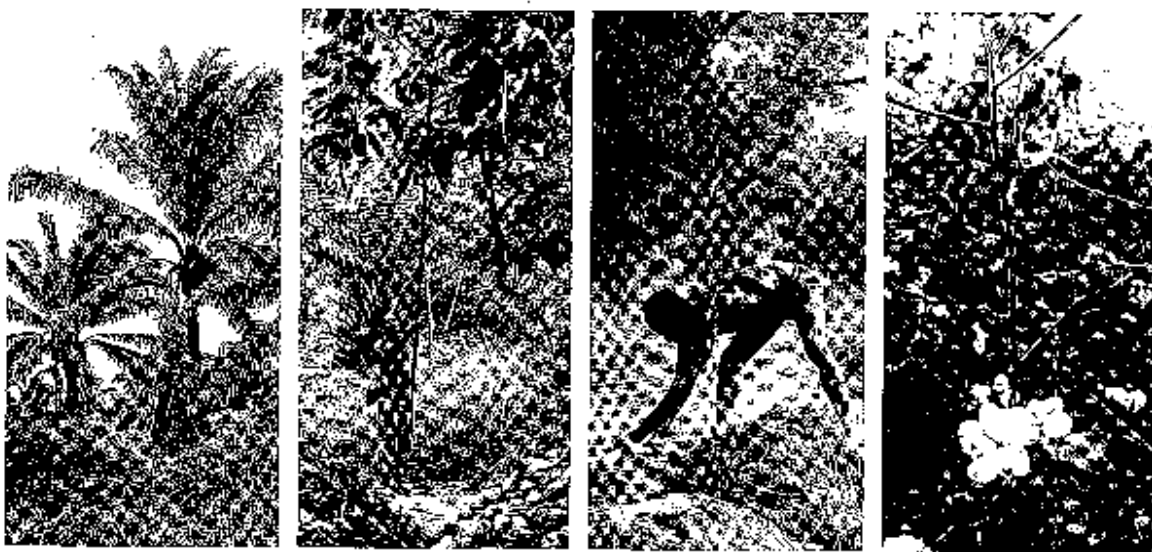
**Philippe Lavigne Delville, Camilla Toulmin,  
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Land Tenure and Resource Access in West Africa

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## **A Synthesis of Findings from Research on Derived Rights to Land**

**Philippe Lavigne Delville, Camilla Toulmin,  
Jean-Philippe Colin & Jean-Pierre Chauveau**

Land Tenure and Resource Access in West Africa

# **NEGOTIATING ACCESS TO LAND IN WEST AFRICA: A SYNTHESIS OF FINDINGS FROM RESEARCH ON DERIVED RIGHTS TO LAND**

by Philippe Lavigne Delville, Camilla Toulmin, Jean-Philippe Colin & Jean-Pierre Chauveau  
February 2002

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The synthesis is available in English and French and a summary has been published in both languages in the Drylands Issue Paper series (No 107, December 2001). The preparation of a synthesis of this nature involves the work of many people, not just the principal authors. For preparation of the English edition, we would particularly like to thank translators Claude Karnif, and Jean Lubbock, Drylands colleagues Christèle Riou and Judy Longbottom, and designer Andy Smith.

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**Camilla Toulmin, IIED & Philippe Lavigne Delville, GRET  
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## GLOSSARY

*Bas-fonds* – low-lying land, seasonally flooded such as valley bottoms or depressions, which accumulate moisture, soils and nutrients and hence are very fertile, if they heavier soils can be worked. They have become of increasing interest for many farmers, given greater access to plough equipment and access to markets for dry season vegetable gardening. Known as *fadama* in Nigeria, they are also used for dry season grazing.

*Decentralisation* – process of devolving administration and decision-making from central to lower levels of government; in the West African context, this has been associated in particular with the establishment of elected local councils, variously known as *communes rurales*, *communautés rurales*, District Assemblies, Local Government Areas, and Urban District Councils.

*Derived rights* – we refer in the text to “systems for delegating use rights” (or “derived rights” for short) to describe procedures whereby someone who controls rights of access over a plot of farmland, in his own name or that of his close family group, grants such rights of use to a third party, on a non-permanent basis and in accordance with specific rules. The word “rights” is used here to describe a set of locally recognised prerogatives and duties, rather than in a legal sense. Consequently, “delegation of use rights” covers a whole series of different procedures giving access to farmland for third parties, outside the family group, ranging from open-ended loans to systems more akin to rental or share-cropping. The term stresses the contractual relationship between the two parties and the continuum along which the various systems lie. We refer in the text to the ceder, giver or land rights owner who assigns rights of use to a taker, recipient, or tenant.

*FCFA* – Franc of the Communauté Financière Africaine, commonly known as the West African franc. This financial union brings together 14 countries in West and Central Africa, including Senegal, Benin, Burkina Faso and Côte d’Ivoire covered by this study. Current rates of exchange are: FCFA 1,000 = 10 French francs = 1.52 Euros.

*Groupement d’Intérêt Economique (GIE)* – ‘Economic Interest Group’ or economic organisation with recognised legal status in a number of francophone West African countries, set up to undertake productive activities in various fields, and conforming to certain rules. In the case described here, in Senegal, the GIE has taken over responsibility for managing an irrigation scheme, following the state’s withdrawal.

*Indigenous* – referring to people who claim to be responsible for original settlement of an area, and the associated rights to land. Such rights have been acquired through clearance of the bush, and regular ritual offerings made to the spirits of the area, propitiation of whom is necessary to assure a harvest can safely be reaped. Indigenous rights to land are contrasted with those acquired by incomers, later settlers and migrants who must negotiate with the original rights owners for access to land. Governments have not always recognised such indigenous rights, instead asserting that land rights should be acquired by the tiller. However, as a Ghanaian saying puts it: “Long occupation can never ripen into ownership”.

*Land chief, or chef des terres* – the chief responsible for maintaining rituals relating to the land, and propitiation of spirits, such as through sacrifice of chickens, and gifts of grain to ensure a good harvest. The office of land chief is usually inherited through a particular lineage and is not necessarily the same as that of the village chief, the latter being responsible for administrative rather than spiritual affairs.

*PFR, Plan Foncier Rural (Rural land tenure plan)* – a programme for registering rights in land which has been carried out in Côte d’Ivoire, Benin, and Burkina Faso.

*Préfet, sous-préfet* – government administrator to whom people turn with conflicts regarding land rights and tenure. Responsible for a district or province (known as *préfecture* or *sous-préfecture*) in a number of francophone West African countries.

*PVP, or Procès Verbal de Palabre* – a written minute of discussions held in the presence of a government official (such as a *préfet*), recording the terms of an agreement made, such as a contract to sell or rent land, or outlining the background to a particular land tenure conflict.



*RAF, or Réorganisation Agraire et Foncière* – land reform legislation brought in by the Sankara government of Burkina Faso in 1984, and subsequently revised in 1991 and 1996. The legislation asserted the state's ownership of all untitled land. It was intended to destroy the power of traditional chiefs who had formerly controlled rights of access to land, which was to be allocated according to the RAF by elected village committees. Subsequent amendments to the legislation have been necessary because of the impossibility of enacting the provisions of 1984, and government has been forced to give partial recognition to customary rights.

*Tuteur, patron, guardian* – the person to whom an incomer turns for help in establishing himself in a new settlement. The tuteur becomes responsible for the migrant's relations with the community, and provides access to land, as well as food and lodging in the early months and years. In return, the incomer owes a duty of service and loyalty to the tuteur, and must help out with various tasks, make regular visits, provide gifts of cash, and a share of the harvest.

## INTRODUCTION

### The Neglect of Derived Rights in Land Tenure Debate

Ownership and control over land have become of heightened political importance in much of sub-Saharan Africa. Many newly independent nations took the opportunity of self-governance to take all land into public ownership, in the name of the citizenry, with powers of attribution vested in the President or designated structures. Interventions, such as the Land Use Act of Nigeria of 1978, or Burkina Faso's Réorganisation Agraire et Foncière of 1984, were often carried out in the name of 'socialism' and the need to sweep away the powers of traditional chiefs. At the same time, acquisition of formal claims over this resource by the government gave it access to land for development projects, infrastructural development, and the means to reward political allies through land grants.

The question of who can claim rights to land has become of increasing importance today. It is all the more crucial in that successive laws, founded on principles far removed from local principles for land management, have resulted in a situation of legal pluralism, giving rise to many contradictions. Social and political developments in various countries, combined with high levels of migration, have also brought land claims based on indigenous rights to the fore.

Land tenure debate and reform have usually focused on questions of title and ownership, since it has often been considered necessary to introduce formal property rights over land, confirmed, recognised and supported by the state, by means for example of a cadastre, register of holdings, or certificates of occupancy. Such titles are considered essential to provide the security needed to encourage sound management of land, and increased investment (de Soto 2000; Platteau 1996). In contrast to formal land titles, 'customary' rights were, until recently, consigned to second class status by most legislative arrangements, at best tolerated for so long as the land and resources in question are not wanted by the state for other purposes. However, recent findings of economic research and new thinking about tenure policy have tended to call this viewpoint into question.<sup>1</sup>

Faced with the recurrent gap between legislation and local practice, there is nowadays a degree of consensus in favour of a "paradigm of adaptation" which takes existing, locally recognized rights as the foundation, with a view to according them greater legal recognition and fostering their development. The rural land-use plans in Côte d'Ivoire (before the 1998 Law), attempts to ensure greater security of tenure in Madagascar and the approaches tried out in Southern Africa (DFID, 1999) follow this newer approach. However, "although they obviously have a very important qualitative and quantitative role in particular agrarian situations, the various forms of indirect means for gaining access to land seem to be broadly underestimated in policy debates, which remain focused above all on ownership and rights of appropriation" (Le Roy, 1998 : 87).

Although extremely common in West Africa as a means to gain access to land and resources, these other types of rights, which are not rights of appropriation, are rarely taken into account. We include as "derived rights" all temporary rights obtained by delegation from holders of rights of first occupancy and which include both traditional forms of open-ended loan and more monetarized arrangements like rental or share-cropping. These are flexible tenure relations, which allow production systems to adapt to rapid changes in economic conditions and strategies, and play a vital role in regulating local land use. In areas receiving many migrants, they represent the main means of access to land.

But derived rights have received little attention from government and legislators and may even receive no mention at all in land tenure legislation (Rochegude, in annex). Even where these arrangements have been acknowledged, there has been a common thread running through much of the debate which depicts landlords as powerful and oppressive, whose powers need reining back, through legislation, if necessary. In some countries, sharecropping has been banned by law, on the grounds that it represents an exploitative arrangement more redolent of master-slave relationships, than those of the 21st century.

<sup>1</sup> Cf. earlier publications produced as part of the Franco-British initiative on land tenure. MAE, 1998; Lavigne Delville, (ed.) 1998; MED, 1999; and Toulmin and Quand (eds.) 2000.



But to understand local landholding systems means challenging that image and calling for clearer insight into the dynamics of derived rights and the issues they raise, based on field research and analysis. This has been the purpose of the research presented here, which seeks to shed more light on this underestimated aspect of the tenure policy debate. Its objectives have been to :

- analyse the dynamics of derived rights and their role in tenure development, in different parts of West Africa ;
- provide empirical evidence of their social and economic impact, in terms of equity and economic efficiency ;
- clarify how the issue of tenure security affects those rights and, in particular, their recognition, if at all, by the State.

Our research has focused on the diverse set of institutional arrangements found in West Africa through which people try to gain access to land and productive resources from those outside their familial group. These include a range of formal and informal contracts, which can be described in general terms, such as leasing, tenancy, share contracts and loans but cover in fact a much broader range of institutional arrangements. It is hoped that a fuller description and examination of the role of derived rights in West African agriculture will demonstrate the need to recognise the intrinsic validity of these arrangements, their areas of strength and weakness, and the importance of their continued existence, thereby contributing to their clearer recognition by policy makers.

## Systems for Delegating Use Rights: Definitions and Scope

We use the expression “systems for delegating use rights” (or “derived rights” for short) to describe procedures whereby someone who controls rights of access and use over a plot of farmland, in his own name or that of his close family group, grants such rights of use to a third party, on a non-permanent basis and in accordance with specific rules. The word “rights” is used here to describe a set of locally recognised prerogatives and duties, rather than in a legal sense.

Consequently, “delegation of use rights” covers a whole series of different procedures giving access to farmland for third parties, outside the family group, ranging from open-ended loans to systems more akin to rental or share-cropping. The term stresses the contractual relationship between the two parties and the continuum along which the various systems lie. It also avoids the connotations of ownership which underlie the term “indirect entitlements”, which presupposes privately owned land – something that is far removed from reality in most rural areas.

In rural Africa, access to land and its resources is still closely linked with social identity (Berry, 1993). The rules governing access to land reflect socio-political organization, family structures and systems used to control land and labour, as well as the social and political history of the society in question. Generally speaking, they cover various types of tenure relationship, combining individual rights and collective regulations in different ways according to the areas concerned.

In the classic scenario, it is the act of clearing the “bush”, changing its status to that of farmland, that underpins rights of appropriation. Having “settled” a piece of bushland, the family group which holds these rights of appropriation effectively has independent control over the area, its cultivation and the subsequent distribution of rights<sup>2</sup>: this usually covers management rights (regulating access and use) and powers of exclusion (the right to transfer use and management rights within and outside the group). Strictly speaking, land is not “owned” unless these various rights overlap<sup>3</sup>, which may apply to certain resources (e.g. orchards), to land acquired on an individual basis or when, as a result of social change and the dwindling role of the lineage, the farm household is also in charge of land management. Historical circumstances and intermarriage may enable some groups to consolidate such rights over land on which they have been allowed to settle.

The type of grouping that exercises control over land varies from place to place depending on historical circumstances. In some regions, the lineage has lost any functional role in land management which is now a matter for

<sup>2</sup> Often subject to informing the land chief.

<sup>3</sup> Cf. Le Roy, 1997, on the theory of land control.

each lineage segment or production unit.<sup>4</sup> Conversely, in other regions, the lineage retains control over the land-holding, each member having access to cultivation rights over a portion of the holding, either as a compound head or as a dependant. In such cases, land management units, residence units and production units do not overlap.<sup>5</sup>

Control over land is therefore exercised through various types of rights, which may overlap, and be held and managed at different levels of social organization. Rights of inclusion and exclusion, and internal management are commonly exercised by a family group of varying dimensions, whose representative allocates use rights to the various sub-units making up the group, or temporarily transfers them outside the group. However, levels of management and the nature of rights are not always so clear cut. In addition, they are frequently the subject of challenge and negotiation.

Consequently, the process of delegation examined by our study applies only to land which has already been cleared for farming and over which rights of appropriation have been established: this includes cultivated and fallow land, as well as the wood or other resources it bears. Our work did not concern pastoral or fishing resources, or woodland. While it would undoubtedly be useful to look at the negotiation of access rules and institutional arrangements with regard to these, this was beyond the scope of our research. The progress achieved in methodological terms during this work should facilitate further study of these topics.

Moreover, our definition chose not to cover relationships within family units or procedures for allocating use rights between sub-units of the lineage or dependants (women and younger members) within the family group. For us, access to land for women and young people does not come under the heading of 'derived rights' except when it is arranged outside the family group (e.g. when a woman rents a plot from another family).

It is possible to distinguish, as Le Roy has done (1983; 1998), three processes whereby rights circulate at the level of these family groupings. The first occurs *within* the family unit and involves the allocation of use and sometimes management rights amongst household units and individuals. In Sine Saloum, for example, land is distributed between farming households, but adjustments can be arranged by the lineage chief if need be (Grigou et al., 1998). This process also extends to the small, individual fields allocated to young people and women, giving them a degree of economic independence, according to local social rules. As full members of the lineage or having married into it, women usually have access, in varying degrees, to land belonging to their families of origin and their husbands' families, depending on local rules. In such circumstances, "dependants, women, younger members, clients included within the household and captives enjoy rights reflecting their contribution – past in the case of widows, present in the case of clients and labourers, or future in the case of younger members – to the joint productive effort" (Le Roy, 1998: 89)<sup>6</sup>.

Breusers (1999) has made a detailed analysis of such mechanisms amongst the Mossi in West Africa: each lineage controls an often disparate set of territories, to which each member potentially has access. This right of access depends on social position within the lineage, but also on the history of the landholding concerned and the successive cultivation rights exercised there: in other words, long-term use is a way of establishing cultivation rights which may, however, be renegotiated to make room for another lineage member. Apart from the land belonging to his father's lineage, an individual may also claim access to land belonging to his mother's lineage, especially her brother. The practice of placing children in the care of relatives away from home also increases opportunities for access to land in other areas. Finally, demographic growth within the lineage and migration result in the expansion of lineage territories. The plantations developed by Mossi migrants in Côte d'Ivoire, as well as farms established by migrants in western Burkina Faso, have come to form part of these "sets of territories" within which a given individual can request access to land.

The second process is *external* and refers to use rights which are delegated outside the family grouping. This has provided the core of our research.

<sup>4</sup> Cf. attempted summaries in earlier work: MAE 1998; Lavigne Delville and Karsenty, 1990; Chauveau, 1998.

<sup>5</sup> Cf. analysis of the structure of family holdings: Saye and Benoit-Cattin, 1979.

<sup>6</sup> Cf. also Meillassoux, 1975, for a full analysis of these relationships.

The third and last category, *internal/external relationships*, refers to use rights acquired as a result of marriage alliances. This process, where transfers of land rights are essentially designed to consolidate such relationships, is not covered in this work.

What we call "delegation of rights" refers to a non-permanent transfer of rights and does not encompass land sales, which lead to a permanent transfer. The question of "sales" and their ambiguity raises specific problems<sup>7</sup> which will not be dealt with here, although the boundary between non-permanent transfer and disposal is not always clear, because of such ambiguity.

Systems of delegating rights refer to institutional arrangements and negotiations between two parties. "Derived rights" in the strict sense correspond to the prerogatives acquired by the recipient or "taker". Nevertheless, we shall use the term "derived rights" here as shorthand for the arrangements themselves. Agreement to delegate use rights are not simply based on economic or productive considerations. They are inextricably both economic and social, either because they are based on alliances or patronage between family groups, or because the arrangements include a certain number of "non-land related clauses" (Chauveau), which refers to the demand that those gaining access to land must observe a number of social rules and obligations towards the delegating party and his family.

Looking at institutional arrangements and procedures for negotiating rights gives new insight into the dynamics of tenure. It provides empirical knowledge of practices which cannot be gained by simply studying the legal framework or general customary principles. In practice, derived rights arrangements come in different forms, some of which are clearly similar to other types of arrangements. The boundaries of the concept can sometimes be rather blurred:

■ between relationships *inside* and *outside* the family group : it is increasingly common for younger members to have to negotiate access to land within their own families under what has become a largely contractual arrangement (e.g. sharecropping); conversely, patron/client relationships based around land access can become one of kinship through intermarriage.

Clearly, access to land within the family group<sup>8</sup> is affected by the delegation of rights to those outside the family group, because:

- the balance between access to labour, cultivable land and mouths to feed is of crucial importance when seeking cultivation rights;
- within family landholding groups, there may be a clash of interests between younger and older members, as the latter may prefer to allocate land to those outside the family in exchange for cash, than to provide access to younger kin;
- as a result of growing competition for land and social change, patterns of access to land for dependants are becoming similar to systems for delegating rights. For instance, Chauveau (1997: 335-336) demonstrates the emergence, in west-central Côte d'Ivoire, of "domestic clientelism", whereby young people must negotiate with their elders for access to land which would have been given automatically in the recent past. There are also forms of "intrafamily sharecropping", where the parent receives 'rent' while the young person acquires the beginnings of independence and establishes rights over the plot he is cultivating with a view to inheritance.

■ between the settlement process (when a land chief allocates a piece of open bush to a family settling in the village) and delegation of cultivation rights (when settlement and clearance do not give rights of appropriation to the party clearing ancient fallow land for cultivation);

<sup>7</sup> Cf. MAE, 1998: 45-47.

<sup>8</sup> This group corresponding to the land management unit which may be either the household, the production unit made up of several households, or the lineage segment.

- between temporary and permanent transfer, in the case of open-ended loans that are transmissible to the borrower's heirs<sup>9</sup>, or in the case of mortgages which may lead to effective transfer of the land, or "sales" which may be challenged by a customary rights-holder;
- between tenure contracts and credit provision (pledging without obligation to reimburse the principal) or between tenure and employment contracts (sharecropping, caretaking);
- according to new legal provisions (such as the law passed in Côte d'Ivoire in 1998, which transforms rights of appropriation, previously acquired on a customary basis, into leasehold).

This blurring of boundaries means that clauses in the arrangements must be described carefully, in order to clarify the status of these arrangements as far as possible. Moreover, some arrangements may evolve into other forms: a pledge can often drift into permanent transfer. Some arrangements based on crop sharing come close to employment contracts; in Côte d'Ivoire, the new tenure law is encouraging the renegotiation of former "sales" into leases. Equally, because of social change and the restructuring of the farm household, the boundaries of the family group may also vary.

The case study reports devote attention to these issues and also describe other types of arrangement, to provide a fuller description of the range of institutional solutions available to local people. However, detailed analysis of arrangements essentially focuses on derived rights in the strict sense.

## Structuring the Research

The research described in this report was commissioned and supervised by GRET and IIED, under the aegis of the Rural Tenure Steering Committee (*comité de pilotage*), set up by the French Ministry of Foreign Affairs. It has been carried out by ten researchers (5 English, 5 French-speaking West Africans) from 7 different countries: Bénin, Burkina Faso, Cameroun, Côte d'Ivoire, Ghana, Nigeria and Senegal. Terms of reference for the research programme were jointly drawn up and agreed by GRET, IIED and a range of advisers. These terms of reference provided the basis for calling for proposals from a range of West African researchers. Ten case studies were carried out, in areas where the dynamics of derived rights were likely to be especially interesting: tree plantation economies, old-established densely settled areas, zones newly opened up for farming, irrigation schemes, peri-urban areas.<sup>10</sup> The scale of change seen in these studies cannot therefore be extrapolated to West Africa as a whole: there are plenty of regions where "traditional" forms of land access are still the essential reference.

Initial research proposals were submitted for comment in mid-1998. Revised versions of these proposals were discussed at the first research programme workshop held in Accra, January 1999. This meeting allowed all researchers to meet, to present their proposals, discuss the sites to be studied, identify areas of potential common interest and examine methodological issues. A draft note on research methodology was drawn up at the meeting, and discussed. This was further circulated to act as guidance for researchers to refer to during the course of their fieldwork (Chauveau & Colin 1999, in annex). Field research was undertaken through much of 1999, and early 2000. Draft papers were prepared by each of the researchers for the workshop held in Ouagadougou in June 2000. Participants presented their detailed reports on findings and progress, which provided the basis for much valuable discussion on cross-cutting issues. The meeting was also an opportunity to start debate with a selected group of policy makers from certain countries to feedback their own interests, priorities and expectations regarding the research findings. A conceptual framework for the analysis of these contracts was developed, and discussion held regarding possible forms in which the research material might be published. Participating researchers were provided with comments and observations regarding the next steps required to finalise their reports, the texts of which were then received over the period to March 2001.

<sup>9</sup> Breusers (1999) shows how new lineage rights of appropriation can be consolidated in areas where migrants settle.

<sup>10</sup> One of the French-speaking researchers involved in the work suffered serious health problems, preventing him from finishing his studies.

**Box: Key questions & guide to fieldwork**

- i. Immersion phase. Get to know the field site, identify the key actors, find out local rules and terms used to describe ways of gaining access to land, make use of diverse sources of information.
- ii. Choice of informants, to include those letting out land, and gaining access from others. Describe the informants, characteristics of farm, social status, economic activities, & life histories.
- iii. Description of institutional arrangements, by field plot. Who manages labour and capital? Who controls output? How is the contract managed? What range of contracts are found? What do different actors feel about the contract terms? Are they written or oral? What forms of security underlie the arrangements?
- iv. Significance in qualitative and quantitative terms of different kinds of institutional arrangement for the local production system and pattern of social relations.
- v. Analysis of contracts. Identify and describe the main stakeholder groups involved in these various institutional arrangements, their relations and how these are changing. What are the implications of these changes for local livelihoods, equity, output, and agricultural sustainability?
- vi. How does national policy address derived rights, in legislative provisions, and in local practice?

Work to synthesize the research findings into the present report has involved the two coordinators of the research and the scientific committee (IRD), with collaboration from certain members of the *comité de pilotage*. At the same time, those final case study reports deemed worthy of publication in their entirety have been edited and prepared for printing (a list of which can be found in the annex).

This synthesis report presents firstly a summary of findings from each of the case study sites. This describes the social, economic and historical background to the site, the nature of the farming system and how it has been changing, as well as the range of derived rights arrangements found during the period of research. This is followed by an analysis of these arrangements, how they have been changing over time, and their implications for both economic efficiency and questions of equity. The report then turns to examine the extent to which different forms of derived right are subject to insecurity, the nature of such insecurity and strategies being pursued by actors to guarantee their claims over resources more firmly. The report concludes by examining how derived rights have been treated in land tenure policy and legislation, and suggests ways in which the strengths of these institutional arrangements might best be built upon.

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**Part one:**  
**DERIVED RIGHTS WITHIN**  
**CHANGING FARMING SYSTEMS:**  
**EVIDENCE FROM RESEARCH**





This section presents detailed findings from the different case study sites in Benin, Burkina Faso, Côte d'Ivoire, Ghana, Nigeria and Senegal. In each case, the background to the research site and setting is described, before presenting the principal forms of contract conferring access to land found in the area. Such derived rights arrangements are discussed in terms of their frequency, their main characteristics, the parties involved, and the terms and conditions which surround them. This is followed by an examination of major trends in the region, the nature of conflicts surrounding these contracts and the role played by the state in recognising or validating such agreements. A more detailed comparative analysis of these issues is presented in Part 2.

**Table 1. A comparison of the research sites studied**

Name of site	Rainfall mm/yr	Population density (p/km <sup>2</sup> )	Crops and farming system
Southern Benin	1250-1500	250-300	Palms for wine and oil, subsistence maize and manioc, intensive tomato plots.
South-west Burkina Faso	800-1000	40-70	Cotton, plus sorghum, millet and maize. Small vegetable gardens and fruit orchards near towns.
Côte d'Ivoire	1400	80-100	Coffee and cocoa plantations, rice, bananas, yam, maize, manioc.
Eastern Ghana	1500	90-100	Old cocoa area, now turning to oil palm and citrus plantations, plus food crops.
Northern Ghana	700-1000		Grains, yam, groundnuts, cotton, small areas of vegetables.
low density		10-25	
high density		100-200	
North-west Nigeria	600-800	250-300	Uplands with sorghum, millet, groundnuts and beans. Irrigated lands – rice, vegetables and fruit.
Northeast Nigeria, Lake Alau area	500-700	70	Uplands with sorghum, millet, groundnuts and beans. Irrigated lands – rice, vegetables and fruit.
Southeast Nigeria, Port Harcourt area	2500	360	Densely settled peri-urban zone, food crops and oil palm.
Northern Senegal	400	12-50	Irrigated plots of rice and vegetables, surrounded by dry uplands.

## I. DERIVED RIGHTS OF ACCESS TO LAND AND NATURAL RESOURCES IN SOUTHERN BENIN<sup>11</sup>

### Background

This study was carried out in two areas of southern Benin, in a region of dense population and highly developed market links. Many land holdings are small and fragmented, there is a growing class of landless farmers, as well as considerable investment by urban dwellers in rural land. Speculation in land is particularly marked around the main cities, as former farmland is converted to house construction. Population density is estimated at 250-300 people/km<sup>2</sup> and rainfall at 1250 – 1500 mm/year.

<sup>11</sup> Edja, H., 2000, *Land rights under pressure: Access to resources in southern Benin*, IIED/GRET, 23p.

Research was carried out in two areas. The first, in the coastal zone, was made up of a series of hamlets, known collectively as Dekouenou, which lie 28 km from Cotonou and 5 km from the old city of Ouidah. Patterns of settlement and social structure are strongly influenced here by the legacy of the slave trade which, on its abolition in mid-19th century, saw the establishment of major plantation estates for production of oil palm. Former slaves were settled on these plantations while their erstwhile masters resided in town. The legacy of such arrangements is still seen today, though their relative importance varies from hamlet to hamlet. Thus, most rural residents are descendants of former captives, who have acquired rights to use and manage the land. Such rights are permanent and transmissible from father to son, although underlying rights remain in the hands of their former masters. Today, the area receives a considerable number of young migrants from the Adja plateau seeking land for tomato cultivation. They are often younger sons, who cannot gain easy access to land within their own villages, much of which is devoted to palm wine stands. The area around Dekouenou is increasingly subject to land purchases by urban interests who foresee the day when it will be converted into building plots. Such land is usually not farmed, but planted with a few trees to demonstrate ownership.

The village of Dedomé and two neighbouring settlements form the second study site, which lies 50 km north-west of Cotonou, in the zone known as the *terre de barre*<sup>12</sup>. This area is also densely settled, having received migrants from the neighbouring Adja plateau from the early 20th century onwards. Early migrants have become sufficiently dominant numerically over time for them to have become accepted as landowners equal in authority to the indigenous people. People arriving in the 1950s were often settled on the edge of the village's lands, to establish clearly the boundaries to be asserted with regard to neighbouring communities. These former migrants have permanent rights to use the land and transmit it to their heirs, but they are not recognised as landowners and must refer when necessary to the original settlers. A further recent wave of migrants stems from the 1980s onwards, and is made up of those seeking land to rent and share-crop.

Social and economic structures are complex, with larger households no longer operating as the main production unit. Rather, many smaller groups, as well as individuals (such as women and younger men) have become the primary decision making units involved in agriculture and land management. In this study, thirty production units were questioned in each of the two sites, to investigate their involvement in different forms of institutional arrangements concerning land.

The agricultural system in southern Benin revolves around the following resources and activities: land, trees, and fallow, palm wine and distillation, palm nuts, subsistence farming of maize and manioc, small plots of tomatoes, and wood collection. Land is rarely fertilised, with people resorting to fallow rather than using livestock manure or chemical means. Tomato plots are the sole fields to receive many inputs. Control over land has become a principal means by which to acquire access to a range of other resources, such as labour and credit. Customary systems and institutions continue to play a central role in managing access to land and resolving conflicts. The *chef du village* is both the traditional village leader as well as being recognised by the government as its local representative. Government servants, police and tribunals play a lesser roles in relation to disputes but may be invoked on occasion to validate particular claims to land.

## Contracts

A number of institutional arrangements were found to exist linking access to land or trees, on a diverse set of terms, as shown in Table 2 below. These contracts have been changing over time with rising population pressure, increased commercialisation of farming and growing urbanisation. The relative importance of these different contracts is also linked to the poor availability of key inputs, such as credit, and land. Land has become a very marketable asset, which means that people use it to raise money, and gain access to other resources.

*Zunda* is the most dominant contractual form, which involves as many as 75% of non-landholders, and up to 40% of those who own their own land in the two sites. It is frequent for a household to have some land let out to others, as well as renting in land as well. Farmers seek to gain access to land which has had some time in fallow

<sup>12</sup> The *terre de barre* is the most important land type in southern Benin and although it only represents about 10% of the nation's land area, it shelters almost half of the population of the country. It is more fertile than other areas because it is rich in clay, but it now seems that intense pressure on land has caused the soils to become degraded.

and, hence, had a chance to regain its fertility. *Zunda* contracts tend to be shorter in Dekouenou than in Dedomé, rarely exceeding 2 years in length. This seems the result of landholders being unwilling to have their land tied up for too long, given the very rapid evolution of prices and land values in this peri-urban area. It is not uncommon for old people to seek land under a *zunda* agreement then pass this onto a sharecropper to cultivate. *Zunda* also takes place within the family, and may be a means to ensure family land is not put into the hands of non-kin through an *awoba* longer term mortgage arrangement.

*Dieudonné Aïnadjè, 40 years of age, and his three brothers inherited a plot of 8 hectares. Three of the brothers live in Cotonou involved in various employment. Jean-Jacques and Mathieu each have 40 kanti of land which they have rented out for 4 seasons to peasants for 40k and 60kFCFA respectively. Samson has 70 kanti of land currently being worked by a farmer under a four season zunda, for which he paid 100,000FCFA. Dieudonné has rented out 30 kanti, maintains 2 ha under fallow, and himself cultivates 40 kanti which he has rented on zunda terms from another. (Edja, 2000)*

**Lema contracts.** This sharecropping arrangement was formerly found with oil palm plantations during the pre-colonial period, when the labourer worked in the morning for the plantation owner, and cultivated his own plot of land in the afternoons. *Lema* contracts now cover, in particular, maize and manioc. These crops are particularly sought by the landowner because they are relatively easy to monitor and share at harvest time. Farmers say that they prefer to take land in through *zunda*, rather than *lema* contracts since then the fruits of all extra effort are reaped by the farmer. The owner of sharecropped land also tends to monitor and interfere with how the land is being farmed.

**Lema tomato contracts** have now become widespread. The market for tomatoes in southern Benin appears very buoyant, demand often having to be met from Nigerian production, due to lack of local supplies. Growing tomatoes has become a specialised activity, carried out by migrants from the Adja plateau. In the peri-urban region close to Ouidah, considerable areas have now been put under tomatoes, with some owners establishing 2-5 ha of land, under 20 or so sharecroppers.

**Kpama** is a contract involving palm wine extraction, to be distilled into alcohol. The owner of the land and palm wine trees arranges with a worker to cut the trees in preparation for their tapping, with 2/3 of the value of the wine being taken by the owner.

**Custodian contracts** involve absentee landowners and descendants of slave owners who live in town and ask their dependents to guard their plantation land. In return for their maintenance and protection, the guardian can farm the land between the trees, and collect palm nuts. However, the user is not entitled to tap palm wine nor to sell palm trees. Such arrangements are particularly frequent in villages where much of the land is still owned by absentee noble families. Rights to cultivate can also be delegated by the guardian to a third party. Once the trees have grown so much that they shade the crops, the guardian needs to move his farmland elsewhere.

**Awoba, or mortgage/pledge of land** involves the leasing out of land for an indeterminate period in return for a cash loan. The land will only be returned when the cash sum is repaid. The land acts as a guarantee for the loan, while cultivation rights serve as a form of interest payment on the capital sum granted. In times of crisis, many turn to pledge of land as a means to raise money. Creditors include urban dwellers (often emigrants from the village), as well as alcohol distillers, and fishermen, seeking ways to diversify their assets and activities. The original landowner may repeatedly request further loans from the person who has taken on the land. In some cases, the cumulative total of loans given to the original landowner reaches a sum equivalent to the value of the land, and the transaction becomes, in effect, a sale.

**Loans of land** involve the temporary ceding of land with no explicit payment. Rights usually cover farming and collection of nuts and wood, but not tree planting, nor delegation of rights to a third party. Some form of customary gift is usually made as a means of confirming the claims of the landowner. But loans are increasingly rare. In most cases they have been transformed into *zunda* or *lema* arrangements. Where loans still exist, the fee exacted is now assessed on a much more systematic basis, and may lie between 1/8 and 1/5 of the harvest. Loans within the family are recognised to be fraught with difficulty since, after some years, the relative may insist that they have acquired firm claim to the land.

**Palm contracts** concern the purchase of a plantation of young trees, aged 6-9 years, which will need another 5-8 years to mature before they are ready to tap for wine. It is not as such a derived right contract. Such rights are usually pur-

**Table 2. Institutional arrangements through which people gain access to land in southern Benin**

Contract form and parties to agreement	Type of land, crop	Rights conferred	Other terms & conditions
<i>Zunda</i> tenancy, between family members, also with outsiders	Land after fallow, often rested for less than 5 years	Cultivation, collect palm nuts, clear and sell wood. No rights to tap palm wine. Such rights may often be let out to a third party.	Rent paid at start of farming season, in cash. From 10k to 30kFCFA/ha depending on land quality. For 1 to 5 years.
<i>Lema</i> food crop sharecropping – usually old landowner, young tenant	Formerly with oil palm, now covers maize and manioc	Cultivation, with share after harvest; one third to landowner, two-thirds to cultivator.	Tenants complain of interference and would prefer <i>zunda</i> .
<i>Lema</i> tomato sharecropping, migrant tenants & indigenous landowners	Intensive tomato cropping	Cultivation and share of harvest, usually 2/3 to tenant once advanced costs paid off.	Landlord often advances food and other costs to migrant labourers.
<i>Kpama</i>	Palm wine	Extraction of palm wine, for alcohol.	Tenant cuts trees in preparation for tapping, sharing 1:2 with landowner.
Custodian contracts, between former masters and captives	Land under palm trees	Rights to cultivate between trees, and collect nuts. No rights to tap palm wine, nor sell trees. Protection of trees and land from others.	Longstanding relationship between parties, social obligations on both sides. Annual fee in kind or increasingly cash paid by tenant (e.g. 5kFCFA).
<i>Awoba</i> , pledge or mortgage	Farmland	All cultivation rights, not including trees, land to be returned on reimbursement of pledged amount. Delegation to others possible.	Means of raising money when urgent need for cash, creditors include urban dwellers, fishermen, alcohol distillers.
Loans of land	Farmland	Cultivation, collection of nuts and wood, no delegation to third parties.	Fee paid annually, formerly symbolic but now up to one fifth of harvest.
Palm contracts	Purchase of young palm trees (6-9 yrs)	Rights to harvest trees on maturity in 5-8 yrs. Land below trees may be farmed by another.	Purchase often by distiller needing assured supply of palm wine.

chased by a professional distiller needing an assured supply of trees for tapping. The land beneath the trees may be cultivated by another tenant or by the landowner himself, an activity which becomes less and less productive as the trees develop and grow. As a result, the landowner may exert considerable pressure on the plantation tenant to cut the trees as soon as possible, and free up the land for crop cultivation, rather than to let them grow to final maturity.

## Evolution of Arrangements

Southern Benin has been undergoing rapid change, with rising land values especially in the coastal zone near Cotonou. Control over land has become a highly marketable asset which can be traded for access to other resources, such as credit. Trees also constitute an important element of household capital, which can be offered to others for palmwine production, fuelwood and a source of branches used in fish trapping. The pattern of transactions in land, trees and labour needs to be understood in the light of the strategies being pursued by different actors, and the various options open to them. Thus, for example, the lack of easy access to credit has engendered the evolution of a set of relationships between people with differing needs and resources at their disposal. Those

with ready access to cash can, over time, gradually accumulate a substantial holding in land. Those seeking a cash loan, to address an urgent need, must try and mobilise whatever resources they have available to them in order to gain the help they need through arrangements such as *awoba*. New opportunities have also been developing, such as the profitable tomato growing business. Here, migrants from the neighbouring Adja plateau can trade the particular skills they have in this form of cultivation with those who control land and capital, through various *lema* sharecropping deals. However, the rapid increase in land values means that few people want to tie their land up in any particularly arrangement for too long, since would make them unable to seize new opportunities as they develop.

## Difficulties and Conflicts over Land

*Awoba* pledge arrangements tend not to take place between relatives, since it is clearly recognised that there are major risks of conflict between the parties. The creditor using the land is able to delegate rights to a third party, and may also take responsibility for the trees on the land, depending on the arrangement. But the creditor faces some insecurity since he must return the land when the loan is reimbursed. To address such uncertainty, one strategy pursued by the creditor is to agree a period in advance as the minimal amount of time before the sum will be repaid. Equally, some creditors make a succession of cash loans to the landowner, thereby making it increasingly difficult for the latter to repay the entire sum. Once the outstanding loan has grown to be broadly equivalent to the sale value of the land, the creditor negotiates the conversion of the *awoba* arrangement to be a sale contract. A particular worry arises with *awoba* when the owner of the land dies, since his heirs may not acknowledge the contract which their father had agreed, nor the size of the outstanding loan to the creditor.

As a result of such concerns, many transactions now take the form of written contracts. All sales of land are now systematically written and taken to the village chief as well as the *sous-préfet* for signature and an official stamp. Other transactions are also increasingly subject to written agreement, although the pieces of paper concerned are often very scant in details. They usually give the names of the two parties, sometimes accompanied by witnesses, but little detail concerning the plot of land concerned, its size and location, the period of the contract, nor conditions attaching to its use. Usually there is no validation of the paper from the government authorities, though the *chef du village* now provides a stamp on some contracts in return for a fee of 2,000FCFA. Nevertheless, the growing use of paper indicates the value of written testimony in establishing at the very least the existence of a contract between two parties. This is of particular use to the tenant in the event of the landowner's death. Such paper does not exclude negotiation, nor avoid dispute but it does make it easier.

## Role of Government

Government's role in land management and administration has been mixed. On occasions, the state has been highly interventionist, claiming all lands to be under its ownership, and alienating large tracts for oil palm and other agricultural development projects. In certain areas, this has led to substantial numbers of displaced farmers who must seek access to land elsewhere, through various derived rights arrangements. The *Plan Foncier Rural* (PFR) which started in 1994, has introduced a new element into land rights management, by planning to register all claims to land. One of the case study sites examined during this research had been part of the pilot PFR programme, which helps explain the growing interest in use of paper for supporting land transactions. As noted above, the village chiefs and *sous-préfets* are ready to provide a formal validation of transactions in land, regardless of their legal worth.

## II. AGRARIAN SETTLEMENT AND MONETARIZATION OF TRANSACTIONS IN SOUTH WESTERN BURKINA FASO<sup>13</sup>

### Background

This case study investigates changing patterns of access to land in the west and south-west regions of Burkina Faso. Rainfall in Burkina Faso varies from an annual average of 400-500mm in the far north, through 700-

<sup>13</sup> Paré, L., 2000, *Negotiating rights: Access to land in the cotton zone, Burkina Faso*. IIED/GRET, 28p.

800mm in the central plateau area, from which many migrants have come, to 800-1000 mm in the west and south-west of the country. Known as the *Zone de la Vieille Colonisation Agricole* (ZVCA), western areas of the country have been subject to settlement by farmers from elsewhere for the last 40-50 years, and are now starting to experience serious constraints on land availability. Here population densities are estimated to be 70p/km<sup>2</sup>. The far south-west of the country has been opened up much more recently, as a result of spraying programmes to eradicate river blindness. Currently, these areas have lower levels of population density than the ZVCA, estimated at 30-40p/km<sup>2</sup>. But these figures are rising fast. The research study has focused on four villages in the ZVCA and two around the town of Banfora in the south-west of the country.

Cotton and cereals are the main crops in west and south-west Burkina Faso, with diversification into fruit and vegetables in *bas-fonds*, or low-lying areas close to towns. Indigenous populations have become a minority in their own lands, with the arrival and settlement of migrants from further north, especially the Mossi Plateau. In some areas, more than 80% of the population is now composed of migrants who have arrived in the last 30-40 years, due to a combination of drought and land shortages elsewhere. Other interest groups are also seeking land for farming, including migrants returning from Côte d'Ivoire, and a range of 'new actors', such as traders and civil servants, who seek land to farm as an additional activity within their overall portfolio.

Cotton has been a crop of considerable importance for all groups farming in this area. The two south-west provinces provide 55% of the country's crop and have seen a steady growth in harvests, in contrast to a fall for drier parts of the country. Cotton is the principal agricultural export crop, providing 45-55% of export earnings from Burkina Faso over the last 6 years. Sorghum and millet are grown predominantly for subsistence, with maize constituting the main commercial grain crop. Farm size varies very considerably, with some cultivating a smallholding of 2-5 ha while others, with access to tractors, may be cultivating more than 10 ha.

## Contracts

Arrangements for gaining access to land are summarised in Table 3 below. Such agreements tend to cover upland fields for cotton and cereal cultivation. Loans of *bas-fonds* land have been scarcer in the past. But exhaustion of lighter soils has meant attention is now being paid to heavier clays which need ploughing to make them productive. Locals need help from migrants to work these lands since the latter often have oxen plough teams or tractors. As a result there are a growing number of arrangements concerning these heavier soils in low-lying areas.

As Table 3 shows, while there is a broad set of institutional forms, there are considerable variations between them which allow for people to negotiate conditions which suit their circumstances. Given that land is becoming increasingly in short supply, those people who control access to land are able to negotiate terms more favourable to their particular needs, whether it be the search for cash, ploughing, labour or other services. Where cotton is involved, tenants usually seek a 2-3 year period in order that the initial investment in fertilisers can properly be recouped over the subsequent farming seasons.

## Evolution of Arrangements

In general there has been a shift in the kind of arrangements made from a relatively flexible, indefinite grant of access and certain rights to land and other resources, against a symbolic payment, to much tighter and well-defined terms, including a significant cash payment. Such shifts must be interpreted in the light of changing circumstances and the consequent shift in strategies of the different parties involved. Overall, land has become scarcer, due to high levels of migration into the area, leading to less favourable terms on which access may be gained. In some cases, people owning land have been able to insist on revised terms of contract with those using the land, such as by insisting on a much higher annual fee. In other cases, it seems to be difficult for the cedor of land to insist on re-negotiating terms with existing tenants. Rather, landowners seek to remove the existing land user in order that they may conclude more advantageous arrangements with someone new. It is often not until one or other of the original parties to the contract dies, that such a re-negotiation becomes possible.

Land purchase is becoming more frequent, with the main buyers coming from migrants who have done well from cotton farming and trading, returning migrants from Côte d'Ivoire, and new actors, such as traders and

**Table 3. Arrangements through which people gain access in south-west Burkina Faso.**

Name of arrangement	Type of land/crops	Nature of rights acquired	Other terms & conditions
<i>Falo siguily</i> , or first settlement of land	Clearance of bush, allocated by <i>chef de terre</i> .	First settler rights, including farming, investment, tree planting etc.	Participation in social life, and meeting obligations of community membership.
<i>Sissa siguily</i> , or recent settlement	Clearance of bush and/or old fallows.	Cultivation.	Ban on tree planting, well-digging, & other permanent improvements without prior agreement.
<i>Singuely</i> , or long term borrowing	Land borrowed from a lineage rather than <i>chef de terre</i> .	Cultivation, but no permanent improvements, social obligations.	Becoming less common & shift from annual symbolic payment to a cash rent.
<i>Dundonly</i> , short term loans, including payment in kind	Farmland, and land developed for tree plantation.	Cultivation rights for 2-3 years in exchange for ploughing, or help with establishing plantation.	Particularly common between old established migrants and newer arrivals.
<i>Lalle</i> , rental, often by urban dwellers	Farm land in both ZVCA and newly opened areas.	Cultivation rights for 2-4 years.	Rents from 5-10,000 FCFA/ha for upland fields to up to 20,000 FCFA/ha for <i>bas-fonds</i> .
<i>Sany-féré</i> (purchase-sale) by lineage members needing cash	Farmland in both areas.	All rights conferred on purchaser.	Prices depend on soils and parties. From 50-75,000 FCFA/ha in uplands to 100-150,000 FCFA/ha in <i>bas-fonds</i> in ZVCA.

government officials. The prices paid depend on the quality of the soils, relations between the parties, and the urgency with which the seller is seeking cash. Typically, sales within the community are at lower prices than when it concerns non-residents. Written contracts have grown in importance, especially to confirm land sales. Such sales usually transfer all rights, and are witnessed transactions, with varying degrees of authentication provided by the state authorities. Only the *procès verbal de palabre* (PVP) is recognised formally by law, although receipts and certificates are also widely used, despite their having no legal weight. New actors are particularly keen on trying to get formal papers stamped by the government administration, to ensure the money they have invested in buying land is given security, whereas paper receipts alone face the risk of re-negotiation and contest from the land seller's family.

Changes in practice are also the consequence of the break-up of larger domestic groups and weakening authority at village level. Thus, for example, arrangements used to be concluded with the *chef de terre* or lineage chief whereas in recent years, control over land has passed largely into the hands of families and household members.

New migrants to an area tend to adopt a strategy which, over time, they hope will confer greater claims over land. They invest considerable resources in establishing and strengthening social links with those in more powerful positions, who control land. Landowners themselves have strategies regarding control over land and labour, with older and younger members of the family often finding that their rights and interests differ. Young men, in particular, feel that their elders have sold off their birthright and are keen to try and renegotiate the terms on which family land has been let out to others. Hence, migrants may find that they face much less generous terms on the death of their landlord, when the heirs take up the deceased's responsibilities. Over time, those migrants who have been farming the land for a generation or more consider they have acquired firm rights, whereas those families who had lent out the land now want to take it back.

The original inhabitants of the area are trying to reassert their ownership rights. For them, *lalle* is attractive because it is a short term loan, so that landowners can easily get their land back. By contrast, incomers would prefer to purchase land, where possible, since this allows them to gain much more secure rights, and no longer be at risk from continuous re-negotiation with traditional landowners.

## Difficulties and Conflicts over Land

Conflicts over land are many and various, depending on the parties concerned, the claims they are asserting, and their longer term strategies. There are many stakeholders involved with differences in interest between them – for example between older migrants and new arrivals, and between older family heads and younger sons. Such conflicts are the consequence of the rising value and marketability of rights to land, and the differing views of migrants and indigenous inhabitants regarding the basis on which claims can be established. Those migrant households who have been settled in the area for a generation or more, feel they have acquired strong claims to the land which they have been farming. This is particularly the case for sons of the original migrants who may well have been born and brought up in this new area. On the death of their father, they may contest their continued obligation to provide regular gifts of grain and money to the family that gave them land more than a generation ago. Conversely, sons of indigenous families are increasingly trying to take back land which their forefathers had lent to incomers, on the grounds that land has become scarce due to their inheritance having been sold off. Land has acquired a considerable value as an asset to be traded against other resources, such as cash, labour, or access to ploughing. Hence, land is being withdrawn from often long-standing arrangements in order to be used in a series of new opportunities which have opened up. Some cases were noted, for example, in which landowners put persistent pressure on their tenants to loan them money and, where this was refused, they then took their land back. Cases were also mentioned of tenants with a *lalle* contract finding that their landlord had found a better offer and was therefore terminating their arrangement. Such disputes between local and migrant households lead occasionally to violent conflict. When brought before the government administration, the *prefet* tends to support the position of the migrants since, under the law, customary rights are not formally recognised.

## Role of Government

Legislation and administration of land in Burkina Faso have been subject to considerable changes over the last few decades. During colonial times, although the government claimed eminent rights of domain, in practice they left day to day management and control to the traditional chiefs. While it remained abundant, it was relatively easy to gain access to land. Indeed, in some areas, migrants were actively sought by local people to come and settle as a means of demarcating the area over which they wished to assert rights. Following independence in 1960, the government while claiming eminent domain over all lands continued to let traditional chiefs manage questions of land allocation and access. However, the revolution of 1984 brought in a new approach and legislation which formally expropriated land from the authority of traditional chiefs, since they represented a political counterweight to that of the new government. The first texts of the *Réorganisation Agricole et Foncière* (RAF) were developed in 1984, and have been followed by two subsequent re-readings in the National Assembly in 1991, and 1996. Major revisions have been necessary because of the difficulties encountered in translating this text into practical application but, as yet, there remains a very substantial gap between the provisions of the law and current practice.

In the last few years, the government has further revised arrangements concerning access to land by recognising the important role that traditional chiefs play in rural society and allowing them input into the re-reading of the RAF. This increased role for customary landowners has weakened the rights that migrants can claim in areas to which they moved. At the same time, the state has agreed to recognise a range of other measures being pursued by local people to try and make their claims to land more secure. These include the *Procès Verbal de Palabre* (PVP), which involves the preparation of a witnessed document outlining an agreement between parties. The PVP has been formally recognised by law<sup>14</sup>, as constituting a valid contract. A measure first used in colonial times, many PVPs date from 20-30 years ago.

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<sup>14</sup> Decree 97-054 of February 6th, 1997, in application of Law 14/96/ADP of May 23rd, 1996, which relates to the *Réorganisation Agricole et Foncière* (RAF).



### III. DERIVED RIGHTS AND ACCESS TO LAND IN WEST-CENTRAL CÔTE D'IVOIRE<sup>15</sup>

#### Background

This case study describes the major transformation in land use patterns and farming systems in west-central Côte d'Ivoire. Over the last 50 years, the area has witnessed an enormous expansion of the pioneer plantation farming system (cocoa and coffee), which has now come to an end, due to a shortage of forest land. The case study also shows how power relations have shifted substantially between local and migrant populations regarding access to land and the wealth this affords.

Two villages were studied: Bodiba (Oumé préfecture) and Zahia (Daloa préfecture). This is a region with around 1400 mm of rainfall each year, and originally under tropical forest cover, which has largely been cleared over the last 50 years, as people have settled and established plantations of coffee and cocoa. Food crops include upland and lowland rice, bananas, maize, yam and manioc. Population density is now estimated at 98 people/km<sup>2</sup> in the department of Daloa and 78 people/km<sup>2</sup> for Oumé. Annual rates of population growth are estimated to be 3.6% and 2.1%, respectively between 1988 and 1998 (compared with 3.3% for Côte d'Ivoire as a whole). Little new land is available, so that farmers seeking to expand their holdings must rely on taking old fallows back into production. A series of droughts over the last 25 years in combination with the ageing of many plantations and rising cost of agricultural inputs have brought falling yields and declining productivity.

The two sites, like many other parts of the forested lands of western Côte d'Ivoire, have experienced very high levels of in-migration by those from northern and central parts of the country and neighbouring Burkina Faso and Mali. A recent survey showed that 29% of the total population of Daloa department and 32% of Oumé are non-Ivorian in origin (as compared with 26% for the whole of Côte d'Ivoire), the majority of whom have come from Burkina Faso (56% of non Ivorians in Côte d'Ivoire are Burkinabè). In addition, there are a number of migrants from elsewhere in Côte d'Ivoire, such as Baoulé and Akan (21 % of the total population of Daloa Department, 32% that of Oumé), and Dioula, from the north of the country (16% of the population of Daloa department, 7% that of Oumé) or from Mali. The largest influx of migrants was in the 1960s, and 70s, though numbers slackened off greatly from the mid-1980s onwards. Burkinabè migrants are said to be more respectful of local people than Ivorian migrants, being willing to respect the prior rights of indigenous communities, and pay the dues demanded of them.

Migrant families each have a 'tuteur' in the local community (*diatigui* in Dioula, *gahansonba* in Mossi). This person was usually the first provider of land and acts as the intermediary in relations between the migrant and other villagers, regarding administrative matters. Migrants are expected to 'respect' their *tuteur*, make offerings on a regular basis, provide gifts, and contribute to social activities, such as funeral expenses. In the early years following their arrival, Burkinabè migrants would typically work for the *tuteur* as labourers either on a daily basis, or on longer term contracts involving residence and work for a local family, in exchange for board and lodging, plus a share of the harvest. Migrants also commonly hoped to gain sharecropping *bousan* contracts. After a few years, migrants asked for access to land from their employers who allocated them a portion to clear and establish a plantation.

There are a range of different stakeholders involved in land, including local people, migrants (both Ivorian and from neighbouring countries, especially Burkina Faso), urban interests, civil servants, traders, teachers, and politicians. A marked difference in interests has developed between younger and older men, in both the local and migrant communities, since their options, perceptions, and strategies have increasingly diverged. Many young Ivorian men, on their return from town, where prospects for employment are much less rosy than a decade ago, have found that their access to land has become much more difficult due to land having been given out, sold or traded in one form or another by their elders to migrant farmers. Equally, younger male migrants many of whom have been born and brought up in Côte d'Ivoire, feel they should no longer be subservient to local people, and claim rights equivalent to those of local youth.

<sup>15</sup> Koné, M., 2001, *Gaining rights of access to land in west central Côte d'Ivoire*, IFED/GRET, 40p. This case study also draws substantially on the work of Jean-Pierre Chauveau and Mahamadou Zongo (see reference list for details).

## Contracts

There are a wide range of contracts through which people can gain access to land, with a diverse array of conditions and terms, as shown in Table 4. These institutional arrangements are subject to considerable dispute and renegotiation as a result of the changing political situation and its implications for the rights of non-Ivorians. At the same time, contracts are subject to a number of taboos which, if broken, can lead to calls for land to be taken back. Access to land is closely linked to credit and labour availability. The absence of a credit market means that land is used as an asset against which to raise cash, through its mortgage. Equally, the limited supply of labour has meant that those needing to hire must get involved in a variety of arrangements, such as sharecropping, or land gifts or sales in exchange for labour. Local families can no longer rely on their young men for provision of labour services, given a major shift in expectations, roles and responsibilities within the family. Local youths now often work together in a group to earn money, whereas formerly this was freely given. Migrants tend to have a greater labour supply at their disposal and hence can trade labour for access to land. However, once they gain their own land, this source of labour becomes scarcer.

*Gifts of land* between the indigenous inhabitants and migrants have disappeared or have been transformed into 'sales'. Migrants coming prior to the 1980s could receive gifts of land, in return for ritual gifts, and small cash sums. They were also obliged to offer labour services to their 'tuteur', as well as other forms of support, in recognition of the landowner's prior claim to the land.

'*Bousan*' means 'divide in 3 parts', and is clearly similar to the term *abusa* in the Akan language (see also Amanor case study from Ghana). This general name covers a range of different contracts involving the sharing of costs and harvests (normally either in two or three parts), depending on the crop (coffee or cocoa), the age and productivity of the trees, labour inputs, and so on. In this part of Côte d'Ivoire, it is a relatively new arrangement, having become associated in the 1970s with coffee production. At that time, it involved a physical sharing of the harvest. Today, however, it is the cash returns from the harvest which are divided, generally in half, in the case of an established coffee plantation. The shares for cocoa are usually less advantageous for the worker who gains only one third of the harvest's value if the plantation is bearing well. *Bousan* as an arrangement is now being applied to other crops, such as rice, and to women seeking food crop land. Here, it is closer to a labour contract than a derived rights arrangement, unless the *bousantier* sharecropper can manage to find a way of buying the plantation on which he works. Plantation owners are said to prefer labouring contracts to *bousan* share contracts, since the share of the harvest going to the sharecropper is larger than the cost of wage labour. However, their limited access to cash for paying wages, means that landowners must frequently turn to *bousan* arrangements since payments are not due until after the harvest and sale of the crop. Sharecroppers, on the other hand, prefer to take on a *bousan* contract than work as a day or monthly labourer.

*Guarantee or mortgage of land* (*ahoba* in Baoulé<sup>16</sup>) is usually for a two year period, and involves the temporary transfer of all rights, except those of harvesting from palm trees. The person seeking to mortgage their land is usually a local landowner in need of cash. The sum advanced provides access to a specified field or plantation for a limited period, at the end of which the land is returned. The transaction is usually witnessed and recorded on paper in several copies, though these are normally kept confidential to the parties since the mortgage of land is considered a shameful act by the landowner. These contracts are said to generate little dispute because of the short term nature of the rights transferred and the clarity of the terms. *Ahoba* takes two different forms in the two villages studied. In the case of Bodiba, the loan is not repaid at the end of the two year period, the returns from the harvest being considered an adequate return for the cash advanced. In the second village of Zahia, the land is returned only once the sum loaned has been reimbursed. Due to problems of raising the cash needed to reimburse such loans, a considerable area of land has passed from local people to their Burkinabè creditors.

*Rental of land* concerns food crops, almost exclusively. The local terms used ('louage', *boloué*, or *louélouéba*) which are based on the French term *louer* suggest that this kind of arrangement is a new arrival. While food crops can be grown alongside young cocoa seedlings for the first few years, once the trees grow up, they provide too much shade for further food cropping. Hence, those families who have developed all their land under cocoa or coffee plantations must seek land from others for food crops. In addition, an increasing number of migrants are special-

<sup>16</sup> Similar to the term 'awoba' used in southern Benin for a comparable arrangement.

Table 4. Institutional arrangements for accessing land in west-central Côte d'Ivoire

Arrangement	Type of land, crops, etc.	Rights transferred	Other conditions
Gift between indigenous inhabitants.	All kinds.	Rights to establish food crops, cocoa and coffee.	Adherence to social norms, and taboos.
Gifts between local people and migrants, subject to certain conditions.	Plantation land.	Rights to establish food crops, cocoa and coffee.	Symbolic gifts from migrant farmer to 'tuteur'. Adherence to social norms, and taboos; labour services, respect, support and gifts for tuteur. Land can be taken back, but more common is conversion of loan into sale once the plantation has started bearing.
<i>Bousan</i> , sharecropping. Landlord often elderly local or Baoulé, sharecropper a younger migrant, also takes place between Baoulé.	Mainly plantation land – cocoa and coffee, increasingly food crops, such as involving young girls seeking land for rice plots.	Division of input costs and the harvest (either half or thirds) depending on arrangements made.	Other labour services to landowner, especially when sharecropper lives with landlord, e.g. 1 day/week on landlord's food crops. Tenant can consume but must not sell other crops growing on plantation, e.g. avocado, cola nuts, palm nuts.
Guarantee/mortgage (' <i>garantie</i> ', <i>ahoba</i> , in Baoulé, <i>tononmala</i> in Dioula). Two forms, depending on whether credit is reimbursed at end.	Established coffee or cocoa plantation.	Temporary transfer all rights, except collection of palm nuts and palm wine.	Generally 2-3 years, access in exchange for loan, equivalent to 50-100,000FCFA/ha. Bodiba – no reimbursement at end, Zahia – credit must be repaid.
Rental (' <i>louage</i> ', <i>boloué</i> , <i>louélouéba</i> ) between indigenous people and migrants.	Food crop land. <i>Bas-fonds</i> of increasing importance.	Contracts renewable at start of each season.	Not generally written. Cost FCFA 7,500-50,000/ha.
Re-open abandoned land between indigenous inhabitants and migrants.	Former plantation land, that has been neglected or left to recover.	For first 3 years, all harvest to the tenant. After this, on <i>bousan</i> terms.	Similar social conditions as for <i>bousan</i> , respect to landowner, etc.
Purchase and sale ( <i>sani-siéré</i> in Dioula, <i>ndagakohogo</i> in Moré). Normally between indigenous people and sometimes between migrants.	All kinds of land.	All rights transferred.	Costs of FCFA 100-150,000/ha, though may include certain additional social conditions, such as help to former landowner.
Loan ( <i>singani</i> ) indefinite, between indigenous people and migrants.	Food crop land.	Cultivation rights.	Land to be returned when demanded, no cash, no paper contract.
Short term loan ( <i>dandanli</i> ), between kin and friends.	Food crop land.	Cultivation rights.	Land to be returned after a limited number of seasons. No cash, no paper contract.
Guardianship between kin, especially amongst local inhabitants.	All kinds of land, particularly plantations.	Use rights and division of income from plantation, but no fixed shares.	Social clauses.
Division of newly established plantation ( <i>turukatha</i> in Dioula) between locals and migrants. Two forms.	Association of annual and perennial crops.	Plantation land.	Worker clears land, plants cocoa, or coffee, tenant grows food crops and weeds and maintains plot for 1 or 2 seasons.
	Division of land.	Plantation land.	Labourer establishes plantation which divided in half with landlord.

ising in food crops (rice, maize) for sale, on rented *bas-fonds* or fallow land. *Bas-fonds* valley bottom lands were formerly not cultivated but are now particularly sought after. Renting has become very important as a means to access land, and has largely replaced loans. Rented land is usually negotiated and renewed on a seasonal or yearly basis, and subject to certain conditions of use, such as the crop to be planted. Renting land costs between 7,500 and 50,000 FCFA/ha depending on the crop.

**Sales of land**, according to customary procedures have always taken place, despite their lack of legal recognition. Typically land costs FCFA 100-150,000/ha, in comparison with earlier times when all that was needed was 15,000 FCFA for an area of land with no clearly marked boundaries, a cock and some bottles of wine or liquor. However, the terms of such sales are by no means unambiguous, with land sellers continuing to expect the buyer to provide help, and labour when needed. Sales have evolved from the former practice of giving or loaning land.

**Loans of land** (*singanli* in Dioula) are made under the explicit understanding that the land-owner can take back the land whenever they so wish. No cash passes hands, and the agreement is not written down.

**Short term loans of land** (known as *dondonli* in Dioula), are usually based on confidence and trust between people of the same community, and involve no money, nor written agreements.

**Guardianship contracts** concern cases where those living in town ask another to act as custodian of their plantation.

**'Turukatla'** means 'plant and divide into two', in Dioula, and normally involves an agreement between an indigenous landowner and a migrant. There are two main forms. The first concerns a plot of land cleared by the migrant labourer, on which the landlord plants perennial crops and where the tenant can grow food crops for a few years, in return for his effort. As the tree canopy develops, the tenant gains less and less benefit from the food cultivation rights, and moves on after a couple of years. In Zahia, a form of *turukatla* was found in which the labourer plants a plantation of coffee or cocoa, which is then divided between landowner and labourer once the trees have started to bear.

## Evolution of Arrangements

This region of Côte d'Ivoire has witnessed major changes in institutional arrangements by which people gain access to land, as a result of its declining availability, and changes in political, economic and social conditions. Migrants formerly could gain land in exchange for ritual gifts (a small cash sum, a chicken and bottle of alcohol), combined with several years' of labour service, and ongoing support. However, from the 1970s onwards, such 'gifts' of land became rarer, given the increasing scarcity of land, and were replaced by sales. However, sales have also now become less frequent, since only small areas of land are still available.

The political situation in Côte d'Ivoire has changed very substantially over the last 30 years, bringing about a major shift in the rights of migrants to secure their claims to land. In the 1960s, following independence, the then President Houphouët Boigny was eager to encourage migration from central and north Côte d'Ivoire and from neighbouring Burkina Faso and Mali, to help develop the emerging cocoa and coffee plantation sector. The principle underlying land rights – 'land belongs to he who cultivates it' – provided migrants with firm claims to the land which they had developed into plantations. As a consequence, migrants were usually supported by the government administration, in cases of dispute with their neighbours, and many neglected to pay the customary dues expected by their *tuteurs*. In many areas, local people came to resent their effective dispossession of land, given the high levels of in-migration. Growth in multi-party political activity has allowed freer expression of resentment towards migrant communities, who had formerly received the backing of the state. Now their rights are contested by local people, and politicians see such contest as a powerful political force to use for their own ends, and to mobilise support.

The economic downturn of the mid 1980s, which continues today, brought back many young men who had hoped to find work in town. They now seek land to farm, but this is no longer in such abundant supply, given the extensive areas transferred earlier by their fathers to migrants. This has generated tensions between young men and lineage elders within the local population. There has been a gradual shift in social relations from those based on kinship and alliance, to those of patron and client. Family heads can no longer rely on their sons providing free

labour, and must pay for this. Access to land is now much more commodified with cash payments proportional to the size and quality of the land, though social clauses remain important (rising prices for land being sold, increasing incidence and cost of renting land, growing rise of *ahoba* mortgages, diversification in *bousan* contracts). The decline in cocoa prices in world markets has led to farmers seeking to diversify their crops. Migrants, who are often richer than their neighbours, are also investing in a range of non-agricultural activities, such as transport, trade, and construction as a means to diversify their incomes and assets.

## Difficulties and Conflicts over Land

There has been a rising number of open conflicts between different stakeholders regarding access to and control over land. Younger men are contesting the validity of transactions carried out by their elders and demanding that these agreements be revoked. They reproach their parents for having allowed too many people to come and settle, and for selling off their land for personal gain. This has led to a loss of authority amongst *chefs de terre* and elders who are seen as having profited personally from land sales and rentals, at the expense of the family inheritance. As a result, young men are now denying the legitimacy of past transactions, particularly on the death of one of the parties, calling into question those where there is no paper evidence, and demanding additional payments and a share in the land. In some places, there is now a ban imposed by local people on all sales and rental of land to 'strangers'. While in the past, land could be inherited by the heirs of a migrant family, increasingly the family of the original landowner demands the land back. Negotiations regarding land claims are strongly influenced by political debate and the new rural land law of 1998 which does not allow for non-Ivorians to own land as property. Indigenous inhabitants are demanding that land formally 'sold' be considered a rental or loan which can be called back by the landowner when need be, and which is not heritable by the children of the migrant farmer.

The change in generation has also affected relations on the side of the migrants, with children of migrants, many of whom were born in Côte d'Ivoire who feel that their parents have paid in cash and labour for the right to 'own' their plantation land. However, they are not perceived by local people themselves as having the same strength of rights, and continue to be seen as 'migrants', with only secondary claims over land.

Land transactions generate many grounds for conflict, such as trespassing beyond the boundaries agreed for a field; selling a plot to two different people, or selling a plot which is not your property; settling and farming without the owner's permission; the landowner taking land back when a plantation has aged and is no longer so productive; and women complaining that the rights of their children to inherit their dead husband's land have been transgressed by uncles. Conflicts are taken first to the village chief, who charges FCFA 6,000 per litigant. Disputes are then taken to the *sous-préfet*, or police if necessary, who carry out dispute resolution, officially at no cost. This process is much preferred to the court which is lengthy and much more costly. In many such cases of conflict, local agricultural officers are asked to undertake a survey of the land in question, and produce a map which, while having no formal legal status, nevertheless carries the presumption of ownership.

The use of paper to record land transactions started appearing from 1970 onwards. People seek, where possible, to document the existence and nature of the transaction, to demonstrate that there has been an agreement between A and B. Certain *sous-préfets* (in Daloa and Oumé) have encouraged the use of such procedures despite their informal and non-legal nature, as a way of providing greater security over land, and will provide an official stamp on such documents. People are also keen to document their rights to a piece of land, by seeking an *attestation de plantation* from the local agricultural officer. This involves measuring and mapping the plot in question, and costs around FCFA 20-30,000, plus the transport costs of those who come to measure the plot. This attestation does not, however, constitute a legal title to the land, which would require further procedures and is not available to those who do not hold Ivorian nationality.

In most cases, migrants continue to maintain respectful relations with their *tuteur*, in terms of presenting gifts, providing support, and contributing to wedding and funeral expenses. Those migrants who do not maintain good relations run into considerable difficulties, and have suffered the loss of their land in some cases. But such subservience is increasingly being called into question by younger non-Ivorian migrants who resent having to contribute financially on a regular basis, especially to the costs of extravagant funerals which are customary amongst the local people of the western part of Côte d'Ivoire, but which the Mossi find to be a large waste of money. Equally, the Mossi are reproached for not taking part in some of the village co-operative society activities.

## Role of Government

The state has played a central role in relation to land since colonial times. However, there is a large gap between the provisions of the law and actual practice on the ground. The law of 1962 restated the principle established during the colonial period that all land belongs to the state, with use rights passed to people according to their capacity to make use of the land productively. However, this legislation was abandoned under pressure from chiefs and the elite. In practice, local people consider that they are the owners and managers of land in their area. Equally, a law passed in 1964, forbids the sales of land. But in practice, local people have been engaged in a wide variety of land transactions for many years, whether sales, rentals, sharecropping agreements, or mortgage.

The *Plan Foncier Rural* (PFR) was launched in 1989, and sought to document all current forms of land use, with the aim of establishing a register of who claims ownership of land, and the various arrangements by which others have rights of access. The careful approach adopted by the PFR was abandoned with the passing of a new law in late 1998<sup>17</sup>, which states clearly that only Ivorians can be landowners, with foreigners being able to hold land solely through tenancy and leasehold. Under the law, all land must be registered within ten years from the 1998, with certificates of occupancy being transformed into formal titles within three further years. All land which has not been titled by that deadline will be deemed to revert to the state.

Thus, this new law has wrought fundamental changes in relations between local people and foreign migrants. Until the death of President Houphouët Boigny in 1993, migrants were considered to have the same rights as Ivorian citizens and could vote in elections. This is no longer the case, and since the mid-90s, non-Ivorians must pay for a *carte de séjour* to remain in the country. Migrants are frequently harassed and fined by the police if their identity cards are not in order. The new land law of 1998 brings a further shift in favour of the rights of local people in relation to migrants. While local people do not know the detail of the law, they do know that it makes a clear distinction between Ivorian and non-Ivorian rights to land.

## IV. LAND AND LABOUR CONTRACTS IN THE OIL PALM AND CITRUS BELT OF GHANA<sup>18</sup>

### Background

Share contracts are very common in Ghana, having stemmed originally from the gold mining business. They have also been apparent in fishing, and timber, and have spread over the years to a large number of crops. They have been of particular importance in the development of the cocoa plantation sector in Ghana from the 19th century onwards, since they provided a means by which land could be made available to stranger farmers to turn into plantations, while the lineage retained long term rights over the holding<sup>19</sup>. As a result, those who controlled land but had insufficient labour could gain access to the substantial revenues being generated by cocoa. Such 'stranger farmers' came both from elsewhere in Ghana and also from neighbouring countries, particularly Burkina Faso. Following the Aliens Compliance Order of 1970 which led to the expulsion of many thousands of such migrants, labour became much scarcer in the cocoa sector, forcing a shift in different share arrangements. As cocoa's importance in the area of study has declined, the share contract institution has re-emerged in the growth and development of citrus and oil palm plantation enterprises, as well as with food crops.

Research was carried out at the settlement of Mamanso, in the new Abirem district of Eastern Ghana. Mamanso is a village of some 1,500 people, living in 116 households. It lies in an area which was formerly of great importance for cocoa production, but since the 1960s, other crops such as oil palm have been promoted. The decline of cocoa came about due to swollen shoot disease, the need for major re-investment to rehabilitate and re-plant cocoa plantations that had reached the end of their productive life, and exhaustion of soils. The main centre of cocoa production in Ghana has shifted to the Western Region, where new lands are being opened up, although overall

<sup>17</sup> Loi no. 98-750 23 décembre 1998.

<sup>18</sup> Amanor, K.S. and Diderutuah, M.K., 2001, *Share contracts in the oil palm and citrus belt of Ghana*, IIED/GRET, 28 p.

<sup>19</sup> Hill, P., 1963; Robertson, S., 1987.

Ghana's dominant position in the world cocoa market has collapsed in favour of its neighbour, Côte d'Ivoire. The dominant crops in Mamanso are orchard crops, with three-quarters of farms in the survey planted with trees alone, the remainder a mix of food and tree crops intermixed. Oil palm, citrus, coffee and cola are the main tree crops, while plantain, cassava and coco yam are complemented by maize, yams and vegetables.

## Contracts

Research on institutional arrangements for gaining access to land in Mamanso focused on informal surveys of 106 farmers who together managed 253 farm plots. Table 5 shows the main forms of contract permitting access to land. Land sales are extremely rare, with no cases recorded amongst the farms surveyed. Equally there were no cases encountered of leasing of land for monetary rents.

*Table 5. Institutional arrangements for gaining access to land in Mamanso*

Name of contract	Land and crops	Main terms & conditions	Other terms & conditions
User rights, from gift & inheritance.	33% of farms surveyed.	All rights, except sale.	
Leasing.	Rare.		
Share contracts ( <i>abusa</i> & <i>abunu</i> ).	Covering 65% of farms surveyed. <i>Abusa</i> – maize and oil palm. <i>Abunu</i> – other trees and food crops, like yam, plantain.	<i>Abusa</i> – division into 3 shares; <i>Abunu</i> division into halves (see box below for details).	When <i>abusa</i> with migrants, other terms included help with household tasks, water collection, etc. Requires <i>aseda</i> payment.
Weeding contracts.	Land from those who cannot afford to hire labour to weed (on 2.4% of farms).	Contracts taken by those who seek land for food crops, in return for weeding the tree crop area.	A means by which those without <i>aseda</i> money can get land to farm.

In the case of Mamanso, the most important institution concerns a range of share contracts, which covered 65% of all farms plots surveyed. They thus represent the dominant means by which people gain access to land. While in the past, these contracts were largely initiated between strangers, they now dominate relations within kin groups. Within this grouping of share contracts, the *abusa* tenant was rare in Mamanso, while 17% of the farms surveyed were on *abusa* labourer terms, and *abunu* accounted for the main share at 47% of farms. These two main forms of share farming – *abusa* and *abunu* – are described below.

### **Abusa and Abunu**

*These share contracts involve a range of different arrangements regarding share of inputs and of products. Abusa concerns an arrangement in which the proceeds of an enterprise are divided into thirds. In the cocoa sector, abusa takes several forms.*

\* *Abusa labourer, who works on an already established cocoa plantation, and earns one third of the harvest, as a sharecropper. The landlord reaps the other two thirds, in return for contributing the land, and the capital as represented by the mature plantation.*

\* *Abusa tenant was allocated virgin forest by a chief, which he then cleared and where he established a cocoa farm, using his own tools, food, seeds and other inputs. Once the cocoa trees started bearing, he paid one third of the harvest to the landowner in recognition of his land-ownership rights.*

\* *Abusa land tenant was a system whereby a stranger farmer was allocated uncleared land on which to establish a cocoa farm. Once the farm started bearing, it was divided into two parts, with the tenant receiving a one-third share of the total area. The landlord is responsible for looking after his share of the land once the plantation is bearing.*

*Under abunu contracts, the landowner asserts the right to a one half (rather than one third) share for contributing this resource to the production of a crop. It can also involve the division into two equal parts of land which the tenant has developed into a plantation. This arrangement is found where land has become in-*

*creasingly scarce. Land which has been acquired through division into two halves, by abunu, has lost many of the ties and constraints associated with kin, the matrilineage, and other claims which family members might make. Hence, it has been transformed into more of a commodity, which can be transacted, for cash, with few if any strings.*

*The validity of these agreements depends on the recipient making an aseda "thank you" payment to the land ceder which comprises a bottle of schnapps and a substantial cash sum, including witness fees.*

## Old arrangement, new crop – Oil Palm development

A large oil palm business was set up as a government-owned enterprise in the 1970s (the Ghana Oil Palm Development Corporation – GOPDC), with support from the World Bank, on 8,800 ha of land in the Kwae area, close to Mamanso. Local farmers displaced by the scheme were offered land as outgrowers, using a contract considered locally as being based on *abusa*. Under the outgrower contract, farmers receive from the GOPDC various inputs on credit, which include: seedlings, two bags of fertiliser, seeds, and money for hiring labour. When the oil palms start to bear fruit from 3 to 5 years after establishment, the farmer must start to repay the interest and costs of the loan, and other charges levied on outgrowers. Such charges are taken off the revenue generated from purchases of fruit by the GOPDC, prior to the *abusa* division being made, with two thirds of the remainder going to the tenant. The oil palm fruit are bought at a price set by the GOPDC at 10% of the world market price, which is substantially below the local market price. The GOPDC undertakes to collect the fruit from the farm gate, and in return the farmer must commit to sell his fruit only to the GOPDC, until the loans taken out have been paid off. This can take up to 25 years, which is the usual productive life of the plantation. However, this may not be achieved, especially where the farmer successfully manages to sell much of his crop for the higher prices gained in local markets. The GOPDC has also established a further form of *abusa* contract with landowners outside the scheme, under which the landowner finds a tenant to establish the plantation under the same terms as above, but with the net returns being divided into thirds, between GOPDC, landowner and tenant.

## Evolution of Arrangements

There have been major changes affecting the arrangements for accessing land and labour in this area of Ghana. These include the changing patterns and expectations between elders and youth within the household, the growing scarcity of land, the evolution of new crops with the ageing of cocoa farms, and impacts stemming from changing patterns of labour migration. The evolution of contracts can only be understood in the light of heightened tensions between elders and younger family members regarding control over land. There has been a major change in social relations within the family and kin groups, associated with the re-definition of rights and responsibilities between elders and youth. The principal characteristics concern the withdrawal of labour services from the joint household estate by younger men, and the retention of family and lineage land in the hands of elders, rather than promoting its transmission to younger family members. Hence, relations which formerly were based on longer term obligations, have been replaced by much more immediate, calculated transactions between elders, on the one hand, who continue to control land, and youth on the other, who pursue the option of selling their labour services for cash to neighbours, rather than contributing it freely to the family enterprise. Share-cropping contracts have become increasingly common between family members, rather than land being transferred directly between kin as in inheritance or gift.

The decline of cocoa has led to the search for new crops, of which oil palm and citrus are the most notable. But, since citrus plantations can tie land up for 50 years or more, this effectively alienates it for two generations. As a result, there has been growing reluctance to let this land out beyond family members.

## Difficulties and Conflicts over Land

A number of problems are expressed by parties to these contracts. Under *abusa*, tenants remarked on the tendency of some land-owners to harass them to weed more intensively. They also noted the incidence of cocoa pod theft by children of the land-owner. Tenants with contracts from the GOPDC were particularly dissatisfied with the terms of the contract, and the lack of transparency in various deductions made from their harvest to cover repayment of credit, and other costs, prior to receiving their share. Being outgrowers to the GOPDC also meant they had to accept a price for their fruit which was substantially lower than that on the local market. The terms of the contract



drawn up with the GOPDC also give the latter the right to take back land from outgrowers who did not deliver their crop to the company.

Parties to different kinds of contract have taken a number of steps to increase the security of the agreement. The GOPDC has official, written contracts with the outgrowers which specify the various charges and conditions which tenants must fulfil. In the case of share contracts and other means of accessing land, it has become customary to make a 'thank you' or *aseda* payment to the land giver. This occurs as part of a public ceremony involving members of the lineage to whom the land belongs, as well as various formal witnesses who act as guarantors to the contract. Increasingly, these contracts are also being written down, often in terms which mirror those of the GOPDC contracts. *Aseda* payments have been rising considerably and have become a means by which access to land is in effect 'sold'. It is also said by land-owners to be a good way of a tenant demonstrating his seriousness and ability to put the land to productive use.

While in the past, share contracts may have provided a means for landless poor farmers to become independent, today this is much less the case. Both land and labour have become highly commoditised, with access to these resources now dependent on having access to cash. As a result, poorer farmers find it very difficult to gain access to land through these means. Equally, poor youths find that their elders are often tempted into agreeing share contracts with those who can afford to pay, from outside the family rather than allocating the land within the kin group. There is thus a growing number of young, landless rural poor who must sell their labour and have few chances of gaining access to land themselves.

#### *Difficulties for poor farmers*

*Maari has recently returned to her home in Mamanso with her husband, having left many years back. Maari went to see her family head to enquire about getting some land. Although he offered her some land on *abunu* terms, she would have to pay an *aseda* payment of 150,000 cedis (US\$20) before it would be released to her.*

## Role of Government

The system of land administration in Ghana is strongly dualistic. A complex structure of state machinery, involving many levels and overlapping bodies, lies alongside a system for management by customary chiefs which remains very strong. Neither system works as effectively as might be hoped, while their co-existence produces serious complications and contradictions. The National Land Policy of 1999 sets out the principles underlying the future management of land. It affirms the commitment of government to respect and support customary arrangements, although there is no explicit treatment of tenancy and share-cropping within the text. The government has also set up a series of committees that have been investigating different aspects of land affairs. The report from one such committee examining tenancy issues takes the view that sharecropping arrangements are inherently exploitative of the tenant, and recommends the phasing out of *abusa* and *abunu*, in favour of written rental contracts.

It is not yet clear how government plans to take forward measures in the field of reforming land legislation and the institutions with responsibility for land administration. The new government elected in January 2001 appears to be more favourable towards restoring the powers of the 'customary' sector, although with provision for greater transparency in decision-making and distribution of resources generated from transactions in land.

## V. AGRICULTURAL LAND USE AND DERIVED RIGHTS IN NORTHERN GHANA<sup>20</sup>

### Background

Much of the savannah region of Northern Ghana remains lightly settled, with population densities of 10-25 people/km<sup>2</sup>. Fallowing predominates as the main means to restore soil fertility. Households farm up to 10 hectares divided between bush and village fields. The Upper East Region (UER) provides an exception to this pattern, and

<sup>20</sup> Dittoh, S., 2000, *Agricultural land use arrangements and derived rights for gaining access to farm land in Northern Ghana*, IIED/GRET, 35 p.

demonstrates strong pressures on land, and a high level of fragmentation of holdings. Here, average farm sizes vary from 1-1.5ha. With average annual rainfall of 700-1,000 mm, farming relies on a mix of grains (millet and sorghum), beans, groundnuts, cassava, cotton and vegetables. Off-farm incomes are a significant component of rural incomes, and migration to urban centres is common. There are also significant flows of people within the region, such as those from land scarce areas seeking land to farm in lower density areas.

The low density area studied lies more than 50km to the north of Tamale. The pattern of land management and allocation follows a pattern typical of many areas where land is relatively abundant, with powers exercised either by the land chief (*tendanama*) or by the customary chief of the area. Primary rights over land are held by the original settlers of the area, who transformed the bush into cultivated fields. Those seeking land address the land chief, requesting they be allocated an unclaimed area which they too can clear and establish as crop land. In exchange, ritual gifts of kola are provided. Once a family gains access to virgin land to farm, they gain rights over this land, may farm it, leave it in fallow and pass it on to their heirs. The land chief cannot re-allocate the land to another family. Where little unclaimed land remains, incoming settlers may need to approach particular families, and request they be allocated a portion of their family land. Again, ritual gifts of kola are required to seal the agreement. In the latter case, the *tendanama* will usually act as witness to the transaction.

The family which gives land to the incomers may also provide food and lodging in the initial period to help their guests establish themselves prior to the first harvest. Once established, the incomer will be expected to maintain a continuous pattern of gift giving and support to the host family, such as bowls of millet at harvest time, cash gifts at weddings and funerals, and willingness to help out when need be. While it is said that such gifts are entirely voluntary, both parties recognise the need to maintain and strengthen the social relationship. Such arrangements are heritable, as long as the children of the deceased incoming household head continue to recognise the original landowner and pay them respect and gifts. Problems arise when the children of incomers consider the land they farm as their own, and no longer recognise the underlying rights of those who gave their parents this land. Incomers are also required to conform to the values of the host community. This is made relatively easy since the different ethnic groups in northern Ghana consider themselves to be part of a larger family, so that 'a brother from a different clan should not be denied land'.

Loaning of land in the high density Upper East Region (UER) used to be common. However, as land has become increasingly scarce, these loans have become of much shorter duration, rarely exceeding 2-3 years. While a ritual gift of millet might have been acceptable a decade or more ago, those borrowing land are now expected to provide as much as one-third of the harvest. On the death of the landowner, his heirs usually call for the land to be returned, giving the tenant a year or two to organise a new arrangement elsewhere. Continued access to land is also dependent on the tenant behaving properly towards the landowner's family. One case was noted where land had to be returned because it was reported that the tenant had been heard speaking ill of his landlord.

**Table 6. Institutional arrangements for access to land in north-east Ghana**

High density areas	Arrangement	Observations
Loans	Farmer requests land from another, ritual gifts have now become substantial payments.	From indefinite grants to 2-3 year agreements, conditions may include planting of certain crops.
Sharecropping within the season	Borrower plants, weeds and harvests early crop, landowner gains later crop.	Landowner benefits from weeding labour. Borrower gains an early millet crop.
Access against ploughing	Land ploughed in exchange for access to farm a share of this area.	A means by which those with more land than labour can get their field cultivated, and vice versa.
Mortgage	Cash loan provided in exchange for access to a field.	Short term arrangement, usually covers 2-3 years.

Given high levels of outmigration from the UER, some families are left with more land than they can manage. Hence, a series of arrangements have developed to permit exchanges between labour scarce/land rich and labour abundant/land poor households. For example, a widow with little labour at her disposal can arrange for a relatively labour abundant family to sow and weed her field, with the latter reaping as recompense the harvest of early maturing millet, while she gains the later maturing sorghum crop. Equally, those needing access to ploughing services can negotiate for this work to be done in exchange for handing over access to part of the ploughed land for the plough team owner to crop. On occasion, landowners will also insist that someone borrowing their land plant only groundnuts, as a means of getting their impoverished soils partially restored. Where tenants are able to invest in a little inorganic fertiliser, the landowner usually lets them off paying any fee. The pledging or mortgaging of land against receipt of a loan also occurs, as a means to satisfy an urgent need for cash. However, such arrangements are prone to dispute since the detailed terms of the lease are rarely discussed, leading to uncertainty regarding the likely length of time before the loan will be paid off and the land returned. There was also no evidence found of written contracts existing.

In neither the low density areas north of Tamale, nor the UER have land markets developed, and a strong belief remains that land itself cannot be bought and sold. However, in the urban and peri-urban zone around cities such as Tamale, strong demand for building land has led to very active markets, multiple transactions in land and rapidly rising prices.

## VI. THE INCIDENCE AND NATURE OF DERIVED RIGHTS IN THE SOKOTO RIMA BASIN<sup>21</sup>

### Background

Research was carried out in the Sokoto region, of north-west Nigeria. This semi-arid area with annual rainfall of 600–800mm, has long been settled by Hausa and Fulani people. Population density rises to as much as 300 p/km<sup>2</sup>, in the most heavily populated areas. In this dry region, access to irrigated wetland areas has for long been of great importance for assuring livelihoods. Most farmers combine cultivation of both wetland *fadama*<sup>22</sup> land and upland rainfed farm lands. The main crops on irrigated land comprise vegetables (onions, tomatoes) rice, wheat, and sugar, while millet, guinea corn, beans and groundnuts are predominant amongst upland crops. This study focused on derived rights relating to irrigated *fadama* land. The area is transected by the Sokoto Rima river system and their various tributaries, along which traditional irrigation has been practised for centuries.

Land in northern Nigeria is coming under increasing pressure, with growth in urban populations and markets, particularly around major cities such as Kano and Sokoto, each of which hosts several million people. There is long standing evidence for many different forms of transaction in land, such as purchase and rental, as well as other forms such as loan, share-cropping, etc. While there are few landless people in Sokoto state, there are a large number of farmers with insufficient land for their needs who must rely on selling their labour to others for much of the season<sup>23</sup>.

Traditionally, Hausa farmers lived in very large extended households or *gida*, through which a large body of labour could be mobilised<sup>24</sup>, and in which there was considerable devolution of responsibilities. However, these large domestic groups have declined much in size and incidence over the last 40 years. Increasing economic independence within the household, primary education, and seclusion of women have all reduced access to family controlled labour, and increased reliance on hired labour.

State involvement in the development of irrigation in northern Nigeria began in the 1970s, with the construction of dams, and resettlement of many displaced farmers<sup>25</sup>. Within these irrigation schemes, new systems of land

<sup>21</sup> Mamman, A.B., 2000. *The incidence and nature of derived rights in the Sokoto Rima Basin, N W Nigeria*, IIED/GRET, 83 p. + ann.

<sup>22</sup> *Fadama* is widely used in Nigeria to describe valley bottom lands, receiving rainfall run-off. Hence, they boast more silty, clay soils and remain damp for much of the dry season, affording a valuable site for fruit and vegetable gardens.

<sup>23</sup> Swindell, K. and Mamman, A.B.

<sup>24</sup> Smith, M.G., 1954, Watts, 1984.

<sup>25</sup> *Geographical Journal*, Adams, W.M., 1985.

**Table 7. Principal differences between the two study sites**

	Talata Mafara	Wurno
Household size > 8 people	67%	33%
Distance from Sokoto city	110km	40km
Role of urban actors	Weak	Strong
% of contracts which involve:		
sharecropping	60%	10%
rental	20%	73%
loan/trust/pledge	20%	17%
% of contracts for single season	85%	38%
Number of people interviewed	51	37

allocation and management have been established, involving tenancy agreements between farmers and the irrigation project authority. During the oil boom years of the 1970s and early 80s, government provided substantial subsidies for commercial agriculture, mechanisation, irrigation, inputs and credit, which went mainly to larger scale farmers, such as traders, civil servants and businessmen, who had good connections to government. Such advantages have been cut in recent years, with the economic downturn from the mid-80s onwards. Poor farmers have always found it difficult to gain access to such inputs, and must let out some of their land in order to raise the cash needed to purchase inputs for the remaining area. Economic decline has brought a cutback in formal employment opportunities and renewed interest shown by a range of different actors in farming, especially on *fadama* land.

Research was carried out in two case study sites: Wurno irrigation project area and Talata Mafara where many farmers are those resettled on a 23,000 ha irrigation scheme, following their having been displaced by construction of Bakalori Dam, in the late 1970s. The former comprises a state-managed scheme of 7,600 ha. In both sites, the project authority owns the land and issues tenancy contracts. Farmers must pay water rates, maintain canals and ditches, hire labour and pay for other inputs. Many farmers find it very difficult to raise the cash required for such outlays and, hence, must let out their land.

## Contracts

The literature on Hausa society describes a wide range of institutions through which people gain access to land<sup>26</sup>. These are shown in the box below.

### **Hausa institutions for accessing land**

*inheritance (gado), sale or purchase (saya), exchange barter (musaya, fufura), confiscation (kwacewa), gift (kyuta), allocation (kyuata), compulsory acquisition (diyya), trust (riko, amana), share-cropping (noma mu raba), pledge/pawn (jingina), loan (aro), lease/rent (haya, sufuri).*

The long standing nature of many of these arrangements, is seen by the existence of well-established terms in the local Hausa language. Contracts are drawn up between a wide range of actors, such as kin and in-laws, patron-client, neighbours, and landowners. Land agents, or brokers often play an important role in seeking tenants for their client landlords, witnessing agreements, and monitoring the subsequent contracts. Irrigated land requires a high level of inputs and labour effort, which many farmers cannot afford. They must also maintain the canals. Hence, plot holders may rent out some part of their land as a means of raising cash to put the rest of their land into cultiva-

<sup>26</sup> Goddard, A.D. et al, 1967, *A socio-economic survey of three villages in the Sokoto Closed Settled Zone, Institute of Agricultural Research, Samaru, Zaria.* McDowell, C.M. "The breakdown of traditional land tenure in northern Nigeria" in Gluckman, M. (ed.) *Ideas and procedures in African Customary Law*, Oxford.

**Table 8. Institutional arrangements for accessing land in north-west Nigeria**

Contract form	Land and crop	Main terms & conditions	Other aspects of contract
Sharecropping	No particular restriction on crop. Irrigated and rainfed.	Payment after harvest. 2/3 going to the party providing the inputs.	Use of trees not covered by contract. Social obligations attached – attendance at weddings, gifts at festivals, help on landowner's farm.
Rental	No particular restrictions on crop. Irrigated and rainfed.	Rent paid in cash after harvest.	Use of trees not covered by contract. Social obligations attached – attendance at weddings, gifts at festivals, help on landowner's farm.
Loan	Land belongs to giver, recipient only has use rights	Short term, usually limited to one cropping season, may be witnessed by a third party or land agent.	Use of economic trees on land by tenant is prohibited. Land must be returned at end of season, unless a renewal contract is agreed.
Pledge/trust	Recipient has rights of use alone.	Money transferred to landowner, in return for pledged land. This must be returned when loan is repaid. Mostly short term.	Lasts for as long as the outstanding debt has not been repaid. Usually witnessed.

tion. Additionally, there is considerable uncertainty regarding the timing and availability of irrigation water, which means that farmers cannot be sure of the likely yields. Plots may be flooded where too great a release of water is made. Conversely, the dam authorities may not release sufficient water on time and hence damage crops. This may in part account for the prevalence of sharecropping in the site of Talata Mafara.

## Evolution of Arrangements

In most cases, these agreements are made in the form of an oral contract, but there is growing use of paper. In either case, agreements are normally witnessed. Written contracts tend to follow the model of the formal tenancy agreements between land users and irrigation project authorities. While there is no evidence of changing terms within contracts, there has been a marked decline in trust and loan of land, and a rising importance of rent, lease and sharecropping. Increasing difficulty in gaining access to the necessary credit, inputs, and machinery combined with labour shortages and the high cost of early weeding labour means that people are choosing to let out their irrigable land rather than use it themselves. The short term nature of contracts also provides flexibility and means that people can get land back if their conditions improve.

## Difficulties and Conflicts over Land

There were relatively few problems noted during the research, probably due to contracts frequently being between friends, kin, and neighbours. Of the 88 contracts studied in the two sites, 11 (12.5%) were said to have generated conflicts between the parties, due for example to non-payment of the water charges. Farmers recognise the risks involved with leasing out land, as well as leaving it idle. There were three cases of contracts where relations had deteriorated badly. Two involved double dealing, in which the landowner had rented the land out twice to two different people in the same year. The third case involved a tenant who successfully asserted his ownership of the land which he had farmed for the last five years on the grounds that "land belongs to the tiller". Disputes are brought before a number of different structures, with considerable manoeuvring by different parties to a dispute between the different systems depending on where they feel their advantage to lie. This leads to the interplay of contradictory systems for regulating disputes, depending on whether the parties refer to traditional, Islamic or modern government structures and institutions.

## Role of Government

The Government of Nigeria's Land Use Act of 1978 does not recognise the many informal arrangements into which people enter. All transactions in land are meant to be submitted to the State Governor for his approval. However, this legislation has had limited impact in many areas. It has served mainly to provide the basis for government to take land over when it needs this for development projects, infrastructural development, or gifts to important political allies. Formal tenancy agreements on irrigation project land prohibit plots being sub-let to others but, as this study shows, there is in fact an active market in irrigated land for rent and sharecropping.

## VII. OBIGBO LOCAL GOVERNMENT AREA, RIVERS STATE, NIGERIA<sup>27</sup>

### Background

The case study covers two peri-urban sites close to the major city of Port Harcourt in south-east Nigeria. This setting provides an example of very strong demand for land, given the very high population density, the powerful economic and commercial forces generated by Port Harcourt and the petroleum industry, and the impact of government legislation, especially the the Land Use Act of 1978.

Port Harcourt was established in 1912, as a colonial administrative base, which rapidly became of considerable importance as a commercial centre and entrepot for shipment of goods into and out of the country. It experienced further growth and expansion with development of the petroleum industry in this region of Nigeria, from the late 1960s onwards. The estimated population of the city is now some 800,000 people. Obigbo with 40,000 people is 40km from Port Harcourt. There is less and less interest in land for farming here, with rapid speculation in land prices, as people seek a plot on which to build a house. Thus, despite a very large potential food market on its doorstep, in the form of Port Harcourt, this region has not opted for intense, high value food crops, but rather land for urban development. This mirrors the general neglect of agriculture in the Nigerian economy, which is now less than 10% of GDP. Rather the government has relied on cheap food through importing much of its needs.

Many migrants come to this area hoping to find work in the oil industry or associated sectors, but must find temporary shelter and a means to make ends meet. Hence, they seek temporary use of land for cultivating a little food, and a place to stay or build their own dwelling. Many people seeking land are also civil servants, some retired military officers, traders, and others. Land has become an asset that many people want to acquire, because of its rising value.

The Obigbo Local Government Area has an average density of 360p/km<sup>2</sup>. Interviews were carried out in Obigbo town as well as in neighbouring Ndoki, where land is less densely settled. In the case of Obigbo, most people are almost entirely migrants, having been drawn to the town by hopes of employment in nearby Port Harcourt. Access to land is almost entirely monetised, with many sales of land. By contrast, Ndoki is still dominated by indigenous groups, and where access to land is often achieved through various informal agreements.

### Contracts

There are a variety of ways in which people gain access to land, as shown in Table 9 below. Contracts between parties are rarely specific to a given crop, except in the cases of palm oil and palm wine. In very many cases, tenants are not allowed to plant trees or establish permanent structures on the land being rented. Equally, new settlers are no longer allowed to build any structure and must live in a house constructed and owned by the landowner, to avoid the former acquiring a claim over the property. Hence, crops usually comprise annuals, such as yam, and vegetables. As in many other places, there is a clear distinction made between rights to farm land and rights in trees. Thus, a landowner commonly makes one arrangement with someone to come and harvest a tree crop, while the land below is let out for someone else to farm.

<sup>27</sup> Anikpo, M., 2000, *Derived rights and the security of tenancy in Obigbo Local Government Area (LGA), Rivers State, Nigeria. A case study of Obigbo and Ndoki communities*, IIED/GRET, 35 p.

**Table 9. Institutional arrangements for gaining access to land in Obigbo, south-east Nigeria**

Name of arrangement	Conditions and terms
<i>Okwa-oru</i> "community land"	Rights associated with first settlers to an area, managed collectively. Residence and commitment to social and community activities are required to maintain these rights.
<i>Ala-ubi</i> "ancestral land"	Originally, rights of later settlers, gained from those with <i>okwa-oru</i> rights. Now refers to agreement between members of different households as well as between migrant and landlord "Drinks money" paid to formalise arrangement between households. For migrant-landlord cases, access to house or rights to build temporary dwelling, plus small plot to farm often require labour services to be provided to landlord in return.
<i>Okpu-uhu</i> "family land"	Rights pertaining to a particular family or household, within broader " <i>okwa-oru</i> " group with primary rights.
<i>Ala-ibe</i> , or <i>ala-uzi</i> "pledged land"	Land given out in return for a loan, for a specified period. Land to be returned when the debt is repaid. Temporary rights of use. He cannot sell the plot nor build a house. Landlord retains rights to tree crops. Land can be transferred to a third party as long as conditions are preserved.
<i>Kwakwa-ohia</i> "rented land"	Temporary, seasonal rights to farm and harvest within the season. Landlord retains rights over trees. Land is frequently put into fallow to rest for several years before being let out again for a season.
<i>Iwu-nkwa</i> "palm tree contracts"	Labourers (often migrants) purchase rights to harvest palm nuts for a season in exchange for cash. No rights are acquired to cultivate the land on which the trees grow.
Share-cropping, such as palm wine tapping, and yams	Tappers are allowed access to trees in return for a share of the wine being paid to the owners. Equally, tenants are allocated land, with half the yam crop being paid to the landlord.

## Evolution of Arrangements

Contractual terms are seen as being increasingly disadvantageous to tenants, given the scarcity of land and its increasing value. Those migrants with cash would prefer to purchase land outright, rather than remaining in a position of dependence on land rights holders, who make use of their control over land to exercise increasing demands on the tenant, in terms of cash payments, labour services, etc. In a number of cases, the tenant had been able to gain access to a plot of land by loaning a cash sum to the landowner, on the understanding that the land would return to the owner when the cash sum has been reimbursed. The tenant can feel reasonably secure where the cash sum has been very substantial but, even here, there is no absolute security, since the landowner may be able to reimburse the loan by selling the land behind the tenant's back.

## Difficulties and Conflicts over Land

Conflicts associated with the various forms of derived rights arrangements are many and diverse. People seek to take land back, and throw the tenant off the land, either to sell the land, or rent it to someone else for more money. In some cases land has been sold to two different people, by different members of the family. Land transactions rarely have formal legal status, since by law they are not legal. Hence there are no certificates of occupancy or deeds of conveyance. People prefer to take these conflicts to customary structures for regulation, rather than to the law courts, since the latter is seen as slow and expensive.

## Role of Government

The Nigerian Land Use Act of 1978 allows government to acquire land legally and by force, if necessary, with little or no compensation. This has been done for development projects (such as irrigation schemes), government housing, construction of roads and other infrastructure, for electric power stations, and for exploration and mining of oil and other minerals. It has generated a substantial level of insecurity amongst inhabitants of the region, in combination with the very high value of land when transacted on informal markets.

## VIII. DERIVED RIGHTS IN THE LAKE ALAU REGION, NORTH-EASTERN NIGERIA<sup>28</sup>

### Background

Lake Alau lies 16km to the south-east of the large city of Maiduguri, capital of Borno State in north-east Nigeria. Maiduguri is a major administrative and commercial centre with an estimated 700,000 people. The region is semi-arid with an average of 500-700 mm of rainfall per year, but subject to considerable variability. It supports a mix of rainfed and irrigated agriculture, transhumant and settled livestock production, trade and petty enterprise. Active and retired civil servants employed in the public administration in Maiduguri constitute a significant group with interests in farming and good connections to government services.

This region has long been home to the Gamergou people, and subsequently to the Kanuri, who have traditionally kept cattle and engaged in a little cultivation. The 19th century brought substantial immigration by Fulani and Hausa populations. Upland sandy soils are used for rainfed cultivation of millet, sorghum, groundnuts, and beans, much of which is for domestic consumption. The heavier clays found in low lying areas and irrigated plots, are sown with tomatoes, onions, okra, pepper, cassava, sorrel and other vegetables, mainly for sale. Wetland plots are much smaller in area than upland fields.

The study was carried out in the Lake Alau area, which has a population of approximately 28,000 people in and around the lake, with an estimated population density of 70 p/km<sup>2</sup>. Three villages were studied, with a total of 148 respondents questioned in detail regarding the different institutional arrangements by which they have access to land. Lake Alau is relatively recent, having been created by a dam constructed in the 1960s primarily to serve as a reservoir for Maiduguri's water supply. The existence of the lake now permits the irrigation of land in the immediate vicinity, as well as cultivation of the flood plain, during the dry season when the lake level subsides. Construction of the dam and associated flooding led to some resettlement and regrouping of villages. Introduction of pump irrigation has allowed people to abandon the more labour intensive *shaduf* system, and cultivate somewhat larger irrigated plots. Unlike the case of the Sokoto Rima irrigation schemes, described by Mamman (2000), this area has not been developed as a formal irrigation project. Hence, there is no irrigation authority issuing tenancy contracts to farmers. Rather, people are continuing to negotiate access to land through traditional mechanisms. Despite the enactment of the Land Use Act of 1978, much remains of the former customary system for land management and allocation of rights. Traditionally, land rights were held by the feudal ruler or *shehu*, with day to day management in the hands of the village head. Payment of a tithe (*butu*) to the village head formally recognises his rights over the land, and continues to this day.

The policy of the Nigerian government towards agriculture has followed a variety of phases. There have been periods when government gave strong emphasis to increasing food production – such as Operation Feed the Nation in 1976, and the Green Revolution 1979-83. The state has promoted large scale commercial farming, through the construction of large irrigation schemes in the northern part of the country, and provision of credit and inputs to commercial farmers on a preferential basis. These subsidies have gradually been withdrawn, given the country's economic problem and growing indebtedness. The country's great dependence on the oil sector has led to a neglect of agriculture, and reliance on cheap imports of food. Many people thus turned away from farming until the late 80s, when economic difficulties became more acute. Maiduguri's position in the far north-east of the country

<sup>28</sup> Tijani, A.I., Daura, M.M. and Gazali W.A., 2000, *Derived land rights in Lake Alau, north-east Nigeria*. IIED/GRET, 37 p.



**Table 10. Derived rights to land in the Lake Alau area, north-eastern Nigeria**

Name of arrangement	% of cases examined	Type of land and crop	Terms and conditions	Other aspects
Rental ( <i>ara</i> ), usually between non-kin	67%	Rainfed & irrigated.	Annual negotiation. Payment of <i>butu tithe</i> for rainfed land, after harvest. No tree planting or permanent improvements.	Irrigated rents of 20-30,000N/ha. Rainfed rentals much lower, e.g. 1,250naira/ha.
Borrowing ( <i>sara</i> ), usually between relatives & friends	28%	Rainfed.	Payment of annual tithe <i>butu</i> essential to demonstrate recognised owner. No tree planting or permanent improvements.	Becoming less common, due to fears of borrowers asserting claims.
Sharecropping - <i>reta</i> - <i>mukko kel</i>	4%	Rainfed and irrigated <i>Mukko kel</i> often for labour intensive crops	No tree planting or permanent improvements.	<i>Reta</i> : a division of input costs and harvest between landlord & tenant. <i>Mukko kel</i> a partnership between two farmers to share inputs, labour and harvest.
Mortgaged land	1%	Rainfed and irrigated.	No tree planting or permanent improvements.	A minimum period agreed before land-owner can claim back his land.

has meant it relies to a much greater extent on local production of foodstuffs than for the large southern cities, such as Lagos and Port Harcourt. Thus there is a well-established process of intensification of land taking place around this large city, made more productive by access to irrigated land, such as around Lake Alau.

## Contracts

There are a number of means by which people gain access to land. These include inheritance, allocation by the village head, gift, purchase, renting, borrowing, sharecropping, and mortgaging. The first four are always done in the presence of witnesses to try and avoid subsequent disputed claims. The last four constitute the various 'derived rights' studied here. Land purchases used to be more common but have declined, due to the very high prices being demanded, with good irrigated land selling for as much as 200,000 naira/ha (equivalent to \$2,000/ha). Land-owners are also reluctant to sell off an asset which brings in a good annual return. Poorer farmers cannot begin to think of buying land and must negotiate other terms on which to gain access to land, through rental and sharecropping agreements. Of the 183 contracts examined, 84 concerned rainfed and 99 irrigated land.

## Evolution of Arrangements

There have been major changes to the institutional arrangements by which people have access to land in this area. Borrowing has declined as a means to acquire land, in favour of renting, which allows landowners to retain firmer control of their land and earn an annual income. There have been cases in the past of people on borrowed land subsequently claiming ownership rights, due to long residence and use of the field.

The introduction of new irrigation technology has also influenced derived rights arrangements. The replacement of the highly labour intensive *shaduf* irrigation system with pumps has increased the area under irrigation and the ease of assuring a good water supply. This has brought more actors into the area in search of plots from which to earn money. This inflow of urban actors has also been caused by the economic downturn, which led to the loss of many formal sector jobs. As a result, many people formerly employed in government administration have turned to farming as one of several income-generating activities.

## Difficulties and Conflicts over Land

Renting and borrowing of land are both now done on an annual basis, with re-negotiation possible after each season. This has been a major change for loans of land which were formerly at risk of appropriation by the cultivator using the land, who could try and claim rights based on long term occupation. Disputes are usually taken first to the family head, and then to the village and district heads. In the rare cases of no solution being found, the disputants then go to court. Prompt payment of rental fees and of *butu* are means by which tenants try to ensure they maintain a good relationship with the landowner.

## Role of Government

The Government of Nigeria introduced the Land Use Decree in 1976, converted into the Land Use Act in 1978. As noted for the other two case studies from Nigeria presented here, the impact of this legislation has been uneven. It has principally allowed government to alienate land, where needed for its own purposes, at little or no cost. The provisions for land management and control of transactions in land are largely ignored. Despite its espoused objective of limiting land speculation, the legislation has probably further fuelled such processes.

## IX. IRRIGATED AREAS OF MBOOYO AND GUÉDÉ WURO, PODOR REGION, SENEGAL<sup>29</sup>

### Background

The Senegal river valley has been the scene of large hydro-agricultural development programmes since the 1960s. The major government-controlled schemes were joined in the 1970s and 80s by village irrigation schemes (PIV) which were initially a great success: they provided an opportunity to cultivate against a background of drought and deep crisis in production systems, while allowing farmers a degree of autonomy in the group's internal organization. This enabled the Haalpulaar farmers in the Senegal River valley to come up with organizational forms consistent with their patterns of collective action. Moreover, until the State began to disengage from agricultural interventions (from the end of the 1980s), irrigation was subsidized to a large extent, which kept the cost of irrigation down and made it possible to cope with the many mechanical or institutional uncertainties. The rolling back of the State and devaluation of the CFA franc in 1994 altered the picture, increasing production costs considerably and making the many uncertainties unbearable. Many PIVs were no longer profitable and were sometimes abandoned, especially in the middle and upper valley, where resources generated by emigration provided an alternative and surer income.

As in the case of most irrigation schemes, the State allocated plots to the farmers on the basis of household size, regardless of pre-existing social hierarchies. Various studies in the middle and upper valley have shown that, as the irrigated areas expanded, differentiation according to social status began to break down: each household had access to a plot (including captives, a small social revolution in itself), while some better-off households managed to accumulate several. The studies also showed the existence and development of various forms of temporary transfer of plots, involving as many as 25% or 30% of the plots.

Very isolated and accessible only by ferry or canoe in the rainy season, Mboyo village is located on Morphil island, a strip of land between the river Senegal and one of its branches. In a region receiving approximately 400 mm of rainfall per year, it is heavily dependent on irrigated land along the Senegal river. The main crops are rice, grown on irrigated fields. Households formerly would combine seasonally flooded *waalo* plots with upland farms, livestock, trade, and migration. Now cultivation is largely focused on PIV land. The area available for cultivation is small, especially as the seasonally flooded basins where the village grew sorghum are on the Mauritanian side of the river to which they have been unable to gain access since the dispute between Senegal

<sup>29</sup> Ndiaye, I.C., 2001, *Dynamiques régulatrices de transferts temporaires et définitifs de droits de la terre à Mboyo et à Guede Wuro* (Podor, Sénégal). GRET/IIED, 80 p.

Table 11. Institutional arrangements for accessing land in Mbooyo, northern Senegal

Name of arrangement	Parties involved	Type of land and crop	Terms and conditions
Unconditional loans, become frequent given rise in outmigration.	Between kin and neighbours. Typically migrants loan land to others during their absence.	Irrigated land in all sites, and also dry upland <i>jeeri</i> fields. Crops include rice, onions, okra, maize.	Access, management and control over land, plus recipient can let out to third parties. Recipient expected to make gifts to landowner's family, provide help, such as house repairs during landowner's absence on migration, attend family rituals. Tenant pays tithe, or <i>assakal</i> to landowner after harvest. Agreement is usually witnessed.
Sharecropping, <i>rempeccen</i> , means 'you work, we share'.	Traditionally between noble landowners and former captives. Now involving GIE and those seeking land.	Irrigated plots for rice cultivation.	Rights to farm land for one or several seasons (6-18 months) but never exceeding 24 months, since this provides grounds for land claim by tenant under government legislation. Harvest shared once water fees have been paid. In normal years, 1/3 to landowner (or GIE) and remainder to tenant. In bad years, one tenth to the landowner.
Rental, <i>luwaas</i> . Common in Guédé wuro 2, where 25 of 54 plots are rented out. Not found in Mbooyo.	Land seekers include women & young men, who find this an easier means to gain access to land, if they have the cash.	Irrigated plots for rice, okra, onions.	Rental fixed in advance, at 30,000FCFA/plot of 0.4ha, per season. Oral contract, agreed with leaders of the GIE, and concluded in front of witnesses. Rental agreed for one season with renegotiation. Rationale for rentals in Guédé wuro - GIE trying to gain cash for repayment of outstanding loan to CNCAS, the government's credit agency for agriculture.

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and Mauritania in 1989. Irrigation is recent: the seven schemes at Mboyo were built between 1987 and 1990, just as the roll back of the State was beginning. Each has an informal producer group, while the GIE (Economic Interest Group, a legal structure needed to gain access to credit) covers all the PIVs. A total of 279 plots, of some 0.4 hectares each, have been allocated. A private scheme was set up at the initiative of the young people and has 270 members. It was then taken over by the "old people" who have plots there.

As in the rest of the region, the rate of exploitation of the PIVs varies substantially depending on the soil, the quality of the facilities and the economic context: schemes on light soils are not suitable for rice and the farmers try to grow vegetables there, when they can find an outlet. PIV 6 in Mboyo was only cultivated for one season (the 1991 dry season). In 1999, the 8 pumps had broken down and some PIVs were flooded. Problems with access to credit and markets have encouraged some farmers to take up contracts for credit, seed and transport to market with vegetable traders from Dakar, for production of okra.

## Contracts

Since the PIVs were first set up, a considerable number of plot transfers have taken place.

**Inheritance.** Some plots have been passed on (35 of the 279 original holders having died between 1989 and 1999). Transfer to the heirs (who sometimes share out the plot) is automatic, even though it is never legally registered.

**Loans.** Because of absence (emigration is substantial) or temporary incapacity, some plots are loaned on an unconditional basis to a close relative from another household<sup>30</sup>. However, it is always up to the plot holder (the

<sup>30</sup> The Haalpulaar family organization makes a distinction between the *galle*, a residence unit in which there may be several households (generally brothers and their sons), and the *foyre*, or production unit which usually corresponds to the polygamous household. When a plot is cultivated by another member of the *foyre* due to the absence of the holder, there is no delegation (same production unit, same granary). On the other hand, when the *foyre* had only one man, his departure leads to the plot being loaned to another *foyre*, often in exchange for assistance to the remaining members.

only one the group deals with) to pay the scheme fee. Faced with the lack of rain-fed or seasonally flooded land and inadequate remittances from emigrants, it seems that there are hardly any holders choosing not to cultivate their own plots and parting with them under indirect entitlement arrangements.<sup>31</sup> Those who have several plots can hire paid labour, if they have access to remittances, such as the father of A.B. Ly and M.B. Ly, both of whom have left to seek work elsewhere. He has eight plots including those of his sons, who send him money to support labour hire costs. Those holding land under such arrangements may also let it out under *rempeccem* to others. There are no formal contracts associated with these agreements. Recipients of this land face certain obligations vis-à-vis the family who has made such a loan, such as the need to make gifts and help with certain tasks. These forms of transfer have become of particular importance where there is a significant level of out-migration.

**Share-cropping.** The majority of transfers result from the GIE's intervention in land-use management, which is not legal but is common.<sup>32</sup> Such transfers have followed a variant of former share-cropping arrangements (*rempeccem*), in which one third of the harvest is given to the 'land-owner'. The irrigation charges (*redevance*) must be paid out of the harvest before the share of the crop takes place. In case of very poor harvest, the farmer may try and renegotiate the share which must be paid to the GIE from one third, to one tenth (the traditional Islamic tithe, or *assakaf*). These sharecropping arrangements are witnessed by members of the GIE at their annual assembly.

**Rentals** (known locally as *luwaas*). In Mboyo, rentals are forbidden. The GIE in the neighbouring village has also been faced with a high level of indebtedness amongst its members, and decided to let out land within the PIV to those able to pay rent. The GIE has been given until 2001 to repay outstanding debts of nearly 12m FCFA. It was considered by GIE leaders that rental would be likely to bring in a larger sum than letting the land out on a *rempeccem* basis. As a result, people from neighbouring Mboyo can come and farm rented plots, available at 750FCFA/are (equivalent to FCFA 30,000 per plot (0.4 ha.)/season). Inhabitants of Mboyo and government officials rent plots there. On the Guédé Wuro II PIV, 25 of the 54 plots are rented, 8 by people from Guédé Wuro, 16 by people from Mboyo and 1 by a government official. There is just one unconditional loan.

## Evolution of Arrangements

Land management throughout the valley has been completely restructured over the last few years, given the loss of seasonally flooded fields in Mauritania, in 1989, and the establishment of the various village irrigation schemes. The arrangements which predominated in flood retreat or even rain-fed agriculture disappeared along with the areas in question. Apart from forms of adjustment between families (loans), the growing ascendancy of the GIE is the most striking aspect. In Mboyo, the first cases of delegation of rights by the GIE involved the tree nurseries where crops have been grown (but the area is very small). It was apparently in 1992, that the GIE began to take on responsibility for land-use on plots that had been abandoned by Mauritanian farmers from villages located on the right bank. Following the dispute between Senegal and Mauritania in 1989, they were no longer able to come and cultivate them, so the GIE took back the plots and entrusted them to farmers who were already members of the group, against payment of one-third of the harvest. At the same time, mediocre yields and increasing production costs led to problems of indebtedness. The GIE, which receives credit in the name of producers as a whole and is guarantor vis-à-vis the credit institution, is obliged to make good payers liable for the default of others. This situation led it to suspend the right of use of indebted plot holders and pass the plot to someone else for so long as the debt has not been repaid. On the Mboyo I PIV, 11 out of 112 plots fall into this category. This method does not solve the problem of arrears, but prevents it from getting worse.<sup>33</sup> This power to distribute plots is, in addition, a socio-political weapon in the hands of group officials who choose the new beneficiaries, thereby exercising local patronage. The GIE has also parcelled out the tree nurseries in the same way.

<sup>31</sup> Something which does happen in the Matam area, further upstream, where households receiving regular remittances and having several plots do not cultivate all of them.

<sup>32</sup> Something similar has been observed on the Mogtédou gravity-fed scheme in Burkina Faso (Durgeat & Deram, 1999). At the *Office du Niger* (Mali), village associations have a recognized role in this regard. Modalities vary from place to place.

<sup>33</sup> In Mogtédou, Burkina Faso the new holder must pay off the debts of the previous user and pays just the normal irrigation charge, making this a form of pledging organized by the group.

### **Growing ascendancy of the GIE on the PIVs - the case of Mboyo 3**

At the Mboyo 3 PIV, during the 1989 rainy season, rights were transferred over six plots, four due to inheritance and two as loans to the holder's father because of emigration. Five people obtained cultivation rights from the GIE, including 4 for the tree nurseries (areas of 0.8 to 0.12 ares). In 1992, the position of the two loaned plots and the five granted by the GIE was still the same. The GIE allocated nine plots belonging to Mauritians and three additional tree nurseries, totalling 4.85 out of 40 hectares. In 1996, ten plots were allocated, half of them to the same users. Only one was still cultivating the tree nursery, the others having given up because the area was so small. In 1998, one case of delegation between users was recorded, the crop being shared equally by the two parties. Fourteen plots were transferred by the GIE. Four of the beneficiaries had been there since 1989 or 1992 and already held two or three plots, thus accumulating even more. The others were new, illustrating some rotation of beneficiaries of GIE plots, alongside a hard core of well-off people.

## **Difficulties and Conflicts over Land**

There were few cases of conflict involving these forms of delegated rights of access to land in Mbooyo. A few informants noted that indefinite loans of land can cause difficulties when the original landowner returns and wishes to reclaim the plot. So far as *rempeccen* and rentals are concerned, those gaining rights of use are selected and named at the annual assembly of GIE members. The main risks involved relate to the returns gained from the irrigated plots, which depend on the kind of soils, the crop grown and broader economic and market conditions. It is these risks of low return to irrigated agriculture which place the GIE in a difficult position, due to non-reimbursement of loans, and which have led to the GIE taking responsibility for allocating and withdrawing land.

## **Role of Government**

According to the 1964 law on the National Domain (*Domaine National*), all transfers of land (whether temporary or permanent) are officially illegal. The fundamental political objective behind the law was to shift power away from old established noble families, and open up access to land for less powerful groups – former slaves, women, etc.. However, in practice, the law had only limited impact given the strength of customary institutions on the ground. Noble families were able to retain power through domination of new institutions, such as the *communauté rurale*, and the GIE. Implemented in the river valley as of 1980, the law has given power to allocate land to elected Rural Councils. This was meant to be done in accordance with principles of *mise en valeur*, with land taken from those who are not putting it to productive use. The SAED (the state enterprise responsible for irrigation development in the valley) set up PIVs without the necessary legislative instruments. Subsequent changes brought into being irrigation groups, which collectively received land allocated by the Rural Council. Each individual farmer, therefore, only has an "allocation" derived from this structure, whose legal status is ambiguous although it is registered with a list of group members. In the case of GIE Mboyo, all land allocations are subject to the agreement of GIE leaders.

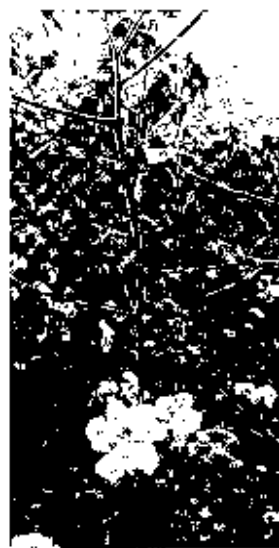
The tenure status of plot holders within an irrigation scheme is thus ambiguous from a legal point of view. Under local rules, allocation is a matter of a permanent, transmissible right of appropriation, provided the holder has maintained good relations within the group. Local standards do, however, determine which forms of transfer are considered legitimate. In some places, rentals are forbidden, whereas they exist in neighbouring settlements.

Senegal is currently reviewing its decentralisation policy with a view to establishing new *communes rurales* in 2002. These communes will have revised powers with increased authority in several areas, including land. The role of the GIEs in controlling access to irrigated land along the river valley is likely to face increased contest with the establishment of new structures of local government seeking to exercise their new powers. The position of derived rights of access to land will thus depend on the interplay of these various structures operating at local community and commune levels.





## Part two: ANALYSIS AND LESSONS





## CHAPTER I. DESCRIBING INSTITUTIONAL ARRANGEMENTS

### I. GETTING AWAY FROM SIMPLISTIC CATEGORIES

Each of the case studies identified at least five and sometimes more than ten different arrangements, with over thirty variations. Such diversity means that the classic categories (gift, loan, rental, share-cropping, etc.) are of limited use:<sup>34</sup>

- they convey only some of the arrangements encountered, leaving aside any that do not correspond to these forms and giving only a partial picture of actual practice;
- at best, they are archetypes that do not convey the actual content of the arrangement (how is the crop shared, on what basis, what are the detailed clauses?) – yet it is vital, in seeking to understand the role these arrangements play for the parties involved, to know the clauses and terms in detail;
- at worst, these terms are used in a careless way to describe arrangements which are substantially different in nature and thereby give a misleading picture of the content of the arrangements they are supposed to describe. This happens when the term “traditional loan” is used to describe both the allocation of a right to clear open bush and a loan of already cleared farmland (in the first case, the “laker” obtains the right to clear, carries out the act which transforms the bush into farmland and obtains rights of appropriation; in the other, the right of cultivation already exists and it is this right which is transferred on a temporary basis);<sup>35</sup>
- these standard terms cannot take account of the mixed and ambiguous forms of arrangement which evolve over time.

When attempting to describe tenure arrangements and their actual content, the conventional terms used, whether in French or English, can be misleading. Any study which takes an *a priori* typology of rights – gift, loan, rental, sale, etc. – as its basis is likely to be incapable of rendering the reality. This raises vital issues about how to identify and describe these arrangements.

It is essential to refer to local terms: this is what gives access to local thinking, making it possible to have a dialogue with rural people. The terms are often meaningful (e.g. *rempeccem* means “you work and we share”; *sissa siguity* means “new settlement”). This is not, however, sufficient:

- the terms are not necessarily devoid of ambiguity: they do not describe the precise content of the arrangements; the same term may be used for arrangements which look similar at first sight, but which are actually significantly different; in pledging, for example, the term “guarantee/*ahoba*” used in Côte d’Ivoire refers to different things in different areas (Koné, 2000): in Zahia, the borrower must reimburse the capital in order to get back his plot and the cultivation rights granted only pay the interest on the loan, whereas in Bodiba, the plot is pledged for a specific period (usually 2 years) and the crop produced over that period is intended to reimburse the entire loan, both interest and capital.
- unless a translation is given, to speak of “*rempeccem*” or “*sissa siguity*” makes any comparison or generalization impossible. One can only get away from locally specific classifications to the extent that more generic terms based on acceptable simplifications can be found to categorise arrangements.

*For example, Haalpulaar farmers in Senegal have imported the term rempeccem into irrigation schemes, to describe what happens when G.I.E takes one-third of the harvest in return for transferring cultivation rights over a plot whose holder has been suspended for not paying his dues. This has little in common with the traditional arrangement between two people in flood retreat farming systems where no inputs are used.*

<sup>34</sup> In addition, from a strictly legal viewpoint, one cannot speak of “rental” unless there is “ownership”. This raises a particular problem in terms of tenure policy, because local practice, actual arrangements on the ground, and customary rights to land are often not recognised under formal law (cf. part III and annex 1).

<sup>35</sup> Cf. the difference between *siguity* and *singuity* in western Burkina Faso (Paré, 2000).

In Ghana, there are three variations on share farming, known as *abusa*, covering completely different arrangements: a work contract on an existing plantation (*abusa* labourer), sharecropping involving the establishment and subsequent maintenance of the plantation (*abusa* tenant) and, finally, a contract jointly to set up a plantation with subsequent sharing of the plantation land (*abusa* land tenant) (Amanor, 2000).

## II. METHODS TO DEAL WITH COMPLEX AND DIVERSE ARRANGEMENTS

An arrangement to delegate tenure rights refers to an agreement between two parties, who have different but complementary assets, including land. From an economic point of view, this is a form of institutional arrangement, defined as a specific pattern of co-ordination between economic units (Davis and North, 1970). However, the economic logic of agrarian contracts is usually deeply embedded in a web of social relationships and networks. Similarly, while co-ordination between contracting parties relates to factors, such as land and labour of course, other more specific elements may also come into play.

For example, cultivation in the groundnut production area of Senegal has long been based on the institution of *sama manila* (*navétanat* in French): a seasonal migrant worker looks for someone to provide him with board and lodging and allocate an individual plot, in exchange for labour during the cultivation season. For the host, the limiting factor is labour, "the success of the contract mainly depends on the amount of labour he can obtain from the *samala*" (Robertson, 1987:222). For the worker (*navétane*), the aim is to negotiate a good quality plot, access to seeds and good food during the season, so the state of his host's granary is an important parameter. Negotiation primarily concerns the division of labour between his host's fields and his own plot (method of calculation: by day, half day, etc.; and distribution): the share-out varies substantially, although "there was, at that time, a very general trend towards three days work for the host instead of four, reflecting the growing scarcity of migrants" (*idem*: 223).

The main features of such arrangements are:<sup>36</sup>

- **the extent of the rights granted (nature, duration, renewal)**; they may simply be cultivation rights, or include a right to delegate to someone else; they may refer only to food crops, or to trees; there may be restrictions (e.g. ban on investment);
- **the contributions of each party to the production process**; who supplies the labour, inputs, etc.?
- **the division of responsibilities in the productive process**; who takes decisions?
- **forms of remuneration and how they are paid**; is there remuneration in kind, with crop sharing – or sharing of some types of crop, before or after payment for inputs; flat rate payment in cash or in kind at the beginning of the season; help provided or not during the season; remuneration through allocation of an individual plot, or further division of the plantation?
- **arrangement based on contract or convention**; it is important to distinguish two dimensions which may usually be found in any system of delegating tenure rights: (i) the arrangement is said to be "contractual", when there is negotiation of terms between the parties concerned or (ii) "conventional": "... a convention is an arrangement which springs from social interaction but which is seen by the parties in an objectified form ... objects and rules impose themselves on people in the present time almost as a foregone conclusion – the social conditions which gave rise to them having been forgotten" (Dupuy et al., 1989: 145). The "conventional" dimension of systems to delegate rights reflects the fact that some of the rules structuring these systems are considered by the parties as given, not subject to negotiation and may not have a "rational explanation" (Colin, 2001);
- **procedures for setting up the arrangement**; verbal or written, with or without witnesses, whether or not submitted to authorities for recognition;
- **how "conclusive" the contract is**; are all issues related to its performance predefined from the outset, or are some aspects left open for negotiation during the contract?
- **systems for checking that commitments are fulfilled and ensuring co-ordination between the parties**; clauses aimed at reducing the risk of opportunistic behaviour and methods of monitoring compliance with the rules (e.g. the owner visiting the plot regularly).

<sup>36</sup> For a more complete description, see the data production guidelines attached in annex.

Understanding the function performed by these arrangements in a given context also means describing:

- *the type of stakeholders involved (economic and social status, relationship between them, reciprocal social obligations)*; some arrangements may be made between indigenous groups and outsiders, or exclusively between indigenous parties; between farmers well-endowed with land and landless farmers; depending on the type of contract, a party might look either for a relative or for someone with whom he had no previous relationship;
- *the production factors available to each party and the "market" features of those factors, as well as the objectives pursued*;
- *the type of land or crop to which they relate*; some arrangements may be specific to a given cultivation system due to its particular features or requirements (fertility, equipment, know-how); e.g. the tomato *lema* in Benin, because of the investment in inputs and specialist know-how, or the loan of a plot to the owner of a motor pump for market gardening;<sup>37</sup> they may refer to the crop but not to the trees on the plot, or vice versa, as in southern Benin;
- *systems for managing any disagreements or conflicts*: whether or not arbitration bodies may be approached and which ones.

**Southern Benin: interplay between three types of resources (Edja, p.22)**

*"There are three categories of resource – land, palm trees and fallow – in relation to which various types of tenure are defined. A distinction is drawn between arable land and palm groves, the two being almost always dissociated in tenure arrangements. Each of them is delegated to different parties. On the basis of the separation between land, fallow and palm groves, four types of rights to use resources may be distinguished: cultivation rights, rights to take palm nuts, rights to produce palm wine and rights to take green wood (for fish farming, firewood, etc.). The right to produce palm wine is considered to be precious and set aside for the plot holder. On the other hand, the right to take nuts is shared between the land user and the owner. Enjoyment of the right to take wood is only possible when the farmer has purchased or rented the land. These various use rights may be combined at different levels depending on the status of the parties and the type of arrangement negotiated.*

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Any analysis of derived rights must pay particular attention to the mechanisms for enforcing the rules. Any agreement between parties raises the question of how to ensure that commitments are fulfilled. In the case of annual rental, things are relatively simple: once the fee has been paid, the risk for the 'tenant' is that he might not get access to the plot he has rented and, for the landowner, that the tenant might refuse to return the land on expiry of the contract, or might engage in environmentally destructive farming practices. The problem of enforcement is potentially more delicate in the case of contracts involving crop sharing and mutual assistance: such as risk of fraud when sharing out the harvest, etc. This problem can be eliminated or reduced by a whole series of devices: trust between the parties, clauses restricting opportunist behaviour, making the commitment in the presence of witnesses, effective regulatory mechanisms (arbitration, sanctions), etc..

Consequently, procedures for negotiating and validating contracts, as well as recourse to arbitration systems, are important aspects of arrangements that need to be analysed. The way parties get together (do they deal direct or through intermediaries? How does anyone know that such and such a person is interested in loaning or borrowing a plot?), discuss the terms of the agreement (choice of plot, clauses) and conclude the contract (in private or in public; with or without a ceremonial gift – drink or whatever; with or without witnesses: how many on each side? who?) can be revealing. Procedures for validating contracts (witnesses, resort to local government officials, drawing up a paper contract) may be specific to each type of arrangement.

Furthermore, any arrangement involves a relationship between the parties and is never independent of the broader social ties that bind them. This is obvious as regards "traditional" forms of allocating cultivation rights, where access to land and patronage are closely linked: it is by entering into a patron-client relationship with a local inhabitant that an outsider gains access to land. However, this also applies to more monetarized contracts, where commercial production is the essential dimension: entrepreneurs borrowing land for market gardening in Burkina Faso (Faure, 1995), tomato *lema* in Benin, etc. Any tenure contract can include "clauses unrelated to land" (Chauveau) of a more or less explicit nature, dealing with the various services that the parties owe to each other.

<sup>37</sup> Burgeat and Ocran, 1999.

In the case of the "navétanal" in Senegal: *"the long and close domestic association of the two parties surrounds the basic ambiguities of their relationship in complexity: they might be (and have been) described as landlord and tenant, patron and client, father and son, farmer and labourer, or collaborators in a joint enterprise"* (Robertson, 1987 : 222). Economic theory now takes account of relationships between stakeholders as an important factor stabilizing arrangements and reducing opportunistic behaviour.

Finally, with regard to both the economic and social dimensions of the contract, local theory and actual practice rarely coincide. When a researcher first tries to identify existing arrangements, what is described will correspond to the local norm: "We have such and such an arrangement here, this and that happens". It is unusual to find practice fitting this norm exactly, particularly when the "contractual" element is substantial. Moreover, where circumstances are changing rapidly, some practices may be common and indeed widespread despite being contrary to the local norm, which is still the explicit reference. This applies to some monetarized transactions, when they have little legitimacy, such as pledging but also, quite often, simple commercial letting.

Picking out the actual content of arrangements, identifying variants, understanding the reasons why parties undertake a particular arrangement and identifying factors of insecurity or conflict are all important, but if one wants to do more than merely make a list, it is necessary to enquire into practices, question a sample of people involved, analyse the content of the transaction in any particular case and see to what extent practice is in line with norms. It is then extremely useful to pick out any discrepancies and analyse their causes and consequences.

## CHAPTER II. THE RATIONALE AND EVOLUTION OF ARRANGEMENTS

The variety of arrangements observed in each study area (between 4 and 15, including variants) reflects particular issues related to the farming system involved, the social history of the region and specific features of the crop systems. For instance, there are no forms of share-cropping in the cotton zone of Burkina Faso, whereas this is an essential arrangement in the plantation zone in Ghana and the forest area of Côte d'Ivoire. Nevertheless, the arrangements can be grouped together in several major categories (Section 1). Each brings a larger or smaller number of parameters into play in a particular combination and is a response to a broad range of issues.

In a given context, each arrangement is designed to meet one or several requirements from the point of view of both "giver" and "taker". It is by looking at the functions fulfilled by the various arrangements, the significance of difference clauses in relation to those functions and the reasons why a particular stakeholder seeks out a particular arrangement that the rationale behind the choices made and the reasons for these specific clauses become evident (Section 2). Such analysis is a pre-condition for any more general discussion if unfounded assumptions are to be avoided.

This does not mean assuming that all arrangements are entirely to be explained in terms of their functions. In a given context, the range of institutional solutions is more or less extensive and meets requirements to varying degrees. It also evolves, but not always in parallel to changes in the context. Depending on economic and social position, the balance of power and pressure on land, neither party necessarily has access to the type of contract he prefers. Thus the gap between the contract desired and the one obtained may be substantial. Finally, the range of arrangements available in a given region at a given time is not immutable. Looking back over history, significant changes can be seen (cf. case studies in Part 1). What are the dynamics of the arrangements and the processes whereby they evolve and adapt? (Section 3).

### I. CATEGORISING ARRANGEMENTS AND THEIR CHARACTERISTICS

#### Open-ended Loans

A certain number of "traditional" arrangements have the same rationale: an "outsider" requests land and the right to settle in a given village. He enters into an alliance, for example by marriage, or as client of a family head, who becomes his patron and offers him, or negotiates for him, land to cultivate. In acknowledgement, the "tenant" gives a few bundles of maize or millet from the harvest each year. For the land or village chief and even for the family head, it means fulfilling the duty of hospitality while at the same time extending his patronage. This type of arrangement, which is more social than tenure-based in the strict sense, is found in most areas. It creates relations of patronage between host and recipient which may then become a relationship by marriage, marrying-in being a favoured way of consolidating one's position within the host lineage.

##### *The institution of guardianship*

*Guardianship is a characteristic feature of the "moral economy" of African peasant societies. Anyone benefiting from derived land rights, or even from customary "sale" of land, contracts a permanent duty of gratitude towards his "guardian", who becomes his "father" or "patron", even if the newcomer has resources and social capital far beyond anything available to the small farmer who "gives" the land. This gratitude takes the form of a fee, usually symbolic, handed over when use rights are granted, giving part of the annual crop to the guardian, or contributing towards the guardian's expenses when the latter has to cope with particular social events (death, funerals, etc.) or has financial problems. This "debt of gratitude" to the guardian, which passes from generation to generation, is usually acknowledged by migrants provided that guardians' demands remain within limits.*

The content of this "traditional" institution has, however, changed considerably, depending on national and local circumstances, as a result of the changing demand for labour, the growing monetarization of dues owed to the guardian and the influence of national policy on development of rural areas. For example substantial flows of settlers have opened up new areas (pioneer farming), in the forest zone of Côte d'Ivoire and the southern regions of Burkina Faso. Faced with administrative and political pressure supporting mass settlement of migrants after Independence in Côte d'Ivoire and, before that, in Burkina Faso, the original inhabitants of these areas attempted to retain a modicum of control over the land allocated to "outsiders", in seeking as far as possible, to maintain the institution of "guardianship", as in Côte d'Ivoire.

In the forest zone of Côte d'Ivoire, many different factors came together, in the context of extensive cultivation of coffee and cocoa plantations, to make guardianship a complex institution and a strategic issue after Independence. In its traditional guise, the guardianship system enabled migrant planters from other parts of Côte d'Ivoire to settle in the forested eastern and western parts of the country, even before Independence, receiving "gifts" (according to the local name) of land, which also involved social obligations and regular services on the part of migrants, although not on an explicitly contractual basis. Even before Independence, however, there was a growing tendency on the part of "guardians" to put these "moral" obligations on a contractual basis in the form of rent (in cash or kind).

The expansion of plantation agriculture required a huge labour force (from what was then Upper Volta, but also from Mali and Guinea) to be employed by both indigenous and migrant plantation owners. In order to attract and retain such labour, plantation owners used the land at their disposal (acquired, in the case of Baoulé and Agni migrant planters, from indigenous groups in the west) to "settle" labourers in their turn, in exchange for systematic provision of labour, according to different arrangements (paid or free, one day per week or on demand). At the end of a certain period, the guardian would allocate a plot to the migrant, but not usually from the family fields where the migrant had previously worked. This form of delegating rights, which is akin to a patron/dient relationship, is often described locally as a "gift" but it is clear that this gift has been made in exchange for earlier provision of labour and for assistance to the guardian. It only differs from customary "sale" in that the initial consideration is not in cash. However, in both cases, there is a clear transfer of the right to administer the land, at least insofar as the latter's right to pass on and transfer it is not subsequently challenged as long as the guardianship linkage is retained. Now that indigenous groups are challenging migrants' tenure rights in Côte d'Ivoire, the latter argue that the labour and "assistance" previously provided to the guardian are the equivalent of a sales transaction.

Finally, government pressure to "settle" outsiders, especially Baoulé, was very strong after Independence, and resulted in the widespread institutionalization of guardianship vis-à-vis "outsiders". The Government made explicit reference to this traditional institution to persuade local people to take in their "brothers" from elsewhere in Côte d'Ivoire or West Africa who were seeking land. Unable either openly to oppose the settlement of migrants, or to earn rent explicitly from it (the Government forbids all fees in respect of land belonging to the State, while decreeing, that "land belongs to the tiller"), the only way indigenous parties could retain a modicum of control over land was to allocate it under the pretence of traditional guardianship, on pain of completely losing acknowledgement of their rights and the advantages, however few, of their status as guardians. Government pressures tended to have a snowball effect on the process of alienation of land to "outsiders", because settling "their" outsiders on the periphery of village lands allowed local people to demonstrate their control over land to neighbouring villages who were also caught up in the spiral of land alienation.<sup>38</sup> A substantial foreign labour force (mainly from what was then Upper Volta) was needed to establish and maintain local land-owners' plantations, leading in turn to substantial areas of land being granted to them.

As new generations of both guardians and migrants came along and land pressure increased, the local rules governing guardianship have undergone considerable change. The growing feeling on the part of young members of the indigenous community that they are facing a land shortage for which they are not responsible, has combined with the fact that migrants are tired of being bombarded with requests from their guardians, while the cost in monetary terms of land transfers (still within the guardianship framework) has reached a very high level. As a result, guardianship has become a matter of permanent negotiation, whose outcome depends on the overall political context.

<sup>38</sup> Marking out land control by settling outsiders in this way has also been known between indigenous lineages and even within lineages.

Currently, the political context in Côte d'Ivoire, contrary to the situation in Burkina Faso, is very favourable to indigenous "guardians". The new legislation of 1998 precludes land-ownership by anyone who is not a national of Côte d'Ivoire. Here "customary sale" contracts combine a market transaction with the maintenance of social ties in the form of guardianship between contracting parties. As a result of the new law, rights acquired through conditional "gift" or market transaction are being transformed into derived rights in the form of rental.

Arrangements like this are often lumped together under the same generic terms "loan" or "gift". However, there are two quite distinct situations, depending on whether the arrangement in question refers to bush or forest that has not yet been cultivated, or to land lying fallow. When a land chief takes in new groups, settles them on a piece of bushland and authorizes them to clear it, making the appropriate sacrifices, this comes under the heading of settlement, not derived rights. The land chief (or equivalent), has territorial control over an area and the power to authorize clearance and hence the transformation of bush into farmland. He welcomes the new arrival into the community, authorizes him to set up a neighbourhood or new hamlet, and allocates an area within which he may establish a landholding through clearance. *Siguiily* is an example of this.

***Siguiily in the area of earlier agricultural settlement of Burkina Faso (Paré, pp.17-18)***

Literally, "siguiily" means "to sit", i.e. to settle, in Dioula. It relates to open bush. In its original form (*fôlô siguiily*, "old", or "first" siguiily), which persisted until the 1970s, it involves first generation migrants and goes through the land chief. A first generation migrant would approach a *diatigui* (guardian) who would take him to the village chief and land chief. The latter would make an area of bush from the village reserves available for him to clear. The settler would be entitled to cultivate, invest, gather and pass the holding on to his heirs. The only restrictions are a series of general prohibitions: not selling the land, not practising witchcraft, not taking a woman intended for another family, not having sex in the bush, not picking certain woody species and not working after sunset. The only cases of expulsion are related to the breach of social taboos rather than to tenure restrictions. When bush reserves dwindled in the 1970s and 80s, with the mass arrival of migrants as a result of droughts further north, the latter were settled on areas of bush under the control of lineage chiefs or heads of family. This is "sissa siguiily" (recent siguiily). The land chief would be informed, but the plot would be taken from the land reserves of a particular family who also acted as guardian. On top of restrictions noted above, there is also a ban on physical investment (planting trees, digging wells) and gathering rights are restricted. These rights may be passed on to heirs, but it seems that the right of the "giver" to take back the land in case of need is clearly expressed. Forms of *sissa siguiily* between uncles and nephews emerged in the 1990s when all available land had been taken up; in this case there are no restrictions.

In this way, some hamlets may be established in the territory of other villages and not have territory of their own. Their chief may, however, manage land in the surrounding area and have the right to accept new residents. There is usually an agreement between the customary authorities in charge of land, with the founder of the hamlet being granted certain prerogatives. The process of establishing new hamlets tends to involve sites of particular importance such as the boundaries of a territory on which neighbouring villages may have designs.

Other arrangements refer to cultivated or fallow land and come directly under the heading of derived use rights.

***Singuely (old-established farming area, Burkina Faso)***

Literally meaning "loan" in Dioula, *singuely* has similar clauses to *sissa siguiily*: the bans and restrictions are the same. The difference is that it refers not to bush, but to fallow land, in other words land where the "giver" has already established cultivation rights. In addition, this is a temporary arrangement: "It's like medicine", one of our interviewees said. "You take it when you get sick and stop taking it when the sickness has gone". *Singuely* establishes social obligations towards the guardian (assistance at weddings, funerals, baptisms, etc.). The formerly symbolic consideration has increasingly come to resemble a fee in kind, amounting to anything from a few baskets to several sacks of millet.

An outsider may only settle if authorized to do so. For "givers", accommodating such "outsiders" fulfils various functions:

- increasing the size of the residential group;

- extending patronage;
- securing territorial boundaries by settling migrants under their control;
- reaffirming rights over former fallow land (Jean 1975); in regions where fallow land which has reverted to forest falls within a collective estate, lending fallow which one cannot oneself bring back under cultivation is a way of retaining control over it, through the intermediary of the tenants.

In the case studies, the description of this type of arrangement was not always sufficiently detailed to develop a precise categorization. There is apparently a set of variations (from one area to another, but also over time, e.g. from *folo siguily* to *sissa siguily* as above) depending on whether:

- the arrangement refers to bush or fallow land (in the latter case, the rights of the "giver" have a firmer foundation);
- the areas are defined and demarcated, or the arrangement refers to the general direction in which the settler is free to extend his crops;
- there are restrictions on investment or gathering rights;
- there is an explicitly stated right to take the land back;
- transmission to the heirs is automatic or must be asked for, giving the holding lineage the opportunity to reaffirm its rights;
- the fee to be paid is fixed or at the taker's discretion. Generally speaking, it seems that such considerations were essentially symbolic to begin with (a bundle of millet or maize from the field), embodying the fact that cultivation rights come from the holding lineage. They may increase and come to resemble a fee in kind or, on the contrary, no longer be paid and disappear.

These distinctions are very important when such arrangements are challenged. The legitimacy of the original lineage's claims to take back a plot varies substantially depending on whether the right to take back land was explicit or not; whether the right was passed on several times without formality or the request had to be repeated – and the giver's rights reaffirmed. The gradual social integration of the outsider, in parallel with consolidation of his cultivation rights into rights of appropriation was for a long time a normal and accepted process, along with the lifting of certain restrictions and dilution of the "symbolic share". There is now a tendency for the original landholders to challenge the arrangements made in the face of growing pressure on land.

Attempts at recovery sometimes involve land where any form of charge and mark of dependency of the user vis-à-vis the party who originally "gave" it to him have long since disappeared. The question is then which legitimacy should prevail: prior occupation supposedly gives inextinguishable rights even though it has had no concrete expression for a long time, or peaceful occupancy, long unchallenged, with no trace of dependency vis-à-vis the 'landowner'?

*In Niger, the Rural Code made it possible for the first time to have "customary ownership" acknowledged. Even before the law was implemented, this caused many conflicts between farmers and the landowning aristocracy as to who could be acknowledged as the "land-owner". The debate focuses on fees payable, which have often lapsed and whose disappearance is supposed to testify to the extinction of the rights of the lineage which had allocated the land one or two generations earlier and, thereby, consolidation of the rights of appropriation of the current users (Lund, 1993).*

Vagueness about the exact clauses of the arrangement made at the time is used by the protagonists to defend their interests, putting forward the version which suits them. Such vagueness is the result of there being little need to spell out conditions for taking back the land when there was plenty around, or because they have since been forgotten. Where there is still not too much pressure on land and where there is no race for land as in the "pioneer farming" areas, this type of arrangement remains the main form of delegation of rights (e.g. in much of northern Ghana). Elsewhere, even when the overall arrangement is not challenged, its content may evolve. The "charge", originally symbolic and marking acknowledgement by the "taker" that the right of use came from the "giver", tends to become systematic and increase in scale, approaching a fee. The "loan" then gradually drifts towards rental, although the boundary between the two is not always clear.

The tenure status of different groups is, therefore, determined by the history of settlement, the way new groups arrived and the background to their arrival.



**Successive waves of settlement and tenure status in Dedomé**

*In Dedomé, southern Benin, two indigenous lineages are descended from the two people who founded the village and control political power. The first waves of migration which resulted in Dedomé's growth came from the Sahouè and Adja areas in the early 20th century. Patron/client relationships were established between these migrants and the indigenous community, revolving around land and labour. The Sahouè and Adja would have land (hitherto un-cleared and sufficiently far away from the fields and other land reserves of their hosts) allocated to them and, in return, provide "gifts" in the form of farm produce. The newcomers succeeded in less than half a century in becoming owners of the land they cultivated and, in addition, obliterating the signs of the original dependent relationship on their hosts.*

*The migrants who arrived in the 1950s had the same origins as the village founders and have family (or marital) ties with them. The indigenous community settled them in hamlets on the edge of the village territory. They loaned quite small areas of land to them (sometimes establishing two or three hamlets on twenty or so hectares, amounting to 0.7 or 0.8 hectares per family) and used them to protect the boundaries of their collective landholdings. Despite having been there for a relatively long time, these migrants have no control over land, although they do have permanent, transmissible rights over the land they cultivate. Tenure relations do not involve cash exchanges. Until the recent past, these migrants gave gifts and made gestures of acknowledgement to their hosts by way of gratitude for the loan of land made to them. These relationships are now changing, with owners tending to convert the arrangements into sharecropping. Recent migrants, who arrived in the 1980s, have to make do with rental or sharecropping (Edja, pp 15 & 25).*

## Fixed Term Loans

This type of arrangement, though common does not exist everywhere (southern Benin, for example). These were originally loans reflecting economic circumstances, designed to solve a one-off problem of access to land, mainly for growing food crops.

*In Djimini-Koffikro, in lower Côte d'Ivoire, the loan of a plot without specific conditions for the duration of a cultivation cycle is the result of a privileged personal relationship between owner and producer. These loans involve small plots (rarely more than 0.25 hectares) used solely for food production: growing pineapples provides substantial income from which owners are keen to profit. (Colin, 1990 : 66).*

However, open-ended loans may also be found, including for cash crops, in certain circumstances.

**Free, secure loans for market gardening (Faure, 1995)**

*Around Lake Bam, in northern Burkina Faso, land is loaned freely to contractors engaged in dry season irrigated market gardening. The open-ended contract is secured on the social relationship between landholders and borrowers who will not hesitate, when they feel secure, to invest in permanent infrastructure (canals, cement structures, etc.). Others avoid such investments for fear of being obliged to leave their plots. The loan is free, because the owners reap the after-effects of the inputs which substantially improve their cereal crops in the following rainy season.*

When pressure on land increases, short-term loans may become the rule. In the groundnut basin of Senegal (Guigou et al., 1998), in Yatenga (Marchal, 1983) and West Burkina Faso, as in South Benin (Edja, 2000), the shorter duration of loans seems to reflect a response on the part of local people to legislation or political slogans declaring that "land belongs to the tiller". To prevent holders of temporary rights from using continuous cultivation over several years as an argument to claim rights of ownership, the loaning party reduces the duration of the loan or regularly switches the plots loaned, sometimes at the expense of maintaining soil fertility. In Sérèr territory, Senegal "the widespread system of loaning land has broken down and with it the balance of crop rotation which was already threatened by demographic pressure" (Raison, 1986, p.17).

**Dondonly in western Burkina Faso (Paré)**

*Meaning "request" in Dioula, dondonly is a short-term loan which grants cultivation rights alone. No investment is permitted and the land cannot be passed on. In most cases, dondonly involves the new generation*

of migrants. It is found in mixed villages and migrant villages, where land is borrowed from the territory of a neighbouring village. In the area of earlier agricultural settlement, it lasts for two years in the case of cereals and three years for cotton/cereal rotation. This is often the arrangement suggested by a local landowner wanting to avoid granting rights of settlement (*siguily*) or an open-ended loan. The consideration in kind varies from a few bowls to a few sacks of grain, but there are substantial social obligations. In the pioneer farming area, duration is 3-5 years. There are also seasonal loans (*samian dondonly*), an ad-hoc response to a temporary land shortage.

**Short-term loans in the Sereer Siin area of Senegal** (Guigou et al., 1998: 190-191)

In the Sereer Siin area of the groundnut production region of Senegal, land is managed by farm households, lineage chiefs retaining the power to reallocate plots in the event of demographic imbalance, for instance when a migrant returns. The effect of land loans is to reduce disparities at farm level between available land and the farm labour force, but the extent of these loans varies from village to village and year to year. All categories of farmers, including compound heads, resort to borrowing. There is no rental or payment of other than symbolic fees whereas, in other Sereer areas such as Mhayar, rentals emerged in the 1930s. The duration of the loan, formerly 2-3 years (corresponding to a crop cycle), is now almost always one year, in order to prevent the beneficiary of the loan from using modern legislation as a pretext to refuse to return the plot. Ties between lenders and borrowers vary (kinship, arrangements between neighbours, friendship, belonging to the same religious brotherhood, etc.).

## Access to Land for a Fixed Fee or Rental Payment

In exchange for a fixed payment negotiated beforehand, the taker has a plot on which he is responsible for production. The contract refers to the land alone, the fee being payable in kind (in which case it is often paid at harvest and one may then wonder what happens if the harvest is poor) or in cash (in which case it is usually paid at the beginning of the contract). The amount may be contract-based, to be freely negotiated by the parties or come closer to "convention", when a standard is set at village level.

**Rental in Djimini-Koffikro (southern Côte d'Ivoire)** (based on Colin, 1990:67)

In Djimini-Koffikro, informal rental, without a contract, covers a crop cycle. It involves food crops and, since the early 1980s, pineapples for export. Rent paid for one hectare is virtually the same for a cassava crop or for a crop of export pineapples. This may seem paradoxical in a context of land scarcity and heavy demand, as the land is occupied for 13-15 months in the first case and 18-24 months in the second. In fact, an owner's assets are tied up for approximately the same time, as fallow after pineapple harvesting may be shortened as a result of the fertilizer applied to the crop. Rent payments have risen substantially with the expansion of pineapple production, from FCFA 20,000/ha in 1982 to FCFA 50,000/ha in 1985.

The contract may cover a season (*samian lallé* in Burkina Faso; rental of an irrigated plot in Guédé Wuro on the Senegal river), or a cropping cycle (three years corresponding to the sequence cotton/cereal/cereal in Burkina Faso) or be of variable duration negotiated in advance (*zunda*). It rarely exceeds four or five years. It may be renewable, on the same plot or another.

**Lallé in western Burkina Faso (Paré)**

Literally meaning "to measure", *lallé* or rental came into being towards the end of the 1980s when all arable land had been taken up and there was strong competition for land. It is increasingly taking the place of loans (*dondonly*). The tenant has cultivation rights for a limited period. Physical investment and gathering are forbidden. However, exceptions are possible in the latter case depending on the relationship between the parties. It is mainly migrants who rent land in this way, but some local people with a little land available also do so. Duration is negotiable, varying from 2-4 years depending on the cash needs of the landowner and his relationship with the tenant. This allows cotton to be grown on the uplands.<sup>39</sup> Prices vary depending on the type of land, from FCFA 5-10,000/ha/year for sandy soils and FCFA 10-20,000/ha/year for low-lying damp

<sup>39</sup> The crop sown after cotton benefits from the after-effects of the fertilizers applied to cotton, so two years is the minimum period to take advantage of the effect of the first year inputs.

areas, or bas-fonds. Originally, rent was paid in advance for the whole duration of the contract, but lessors are now increasingly demanding that rent should be paid every year. Annual rental (*samian lallé*) involves cereal production on the uplands and bas-fonds. The fee is paid in cash and depends on the type of land, rainfall and production in the previous season. The contract is verbal and made before witnesses. There are a few cases of written formalization of *lallé* contracts.

When the contract covers several seasons or years, the fee may be paid on a year-by-year basis, or all-in-one as soon as the arrangement is agreed (e.g. *zunda* in Benin). In the latter case, the "giver" receives a larger sum at one time while the "taker" needs to have more funds available. It can also generate greater enforcement problems. Where there are trees on the land, the contract often relates to annual cultivation rights, or the right to exploit the trees (gathering *néré* and shea nuts in Sudanian areas), but rarely both at once. In Benin, where palms are involved, rights to the crops and rights to the trees are systematically dissociated. However, the person who grows the crops (and thus maintains the plantation) does have a right to harvest the palm nuts. Gathering rights or rights of access to other resources (wood, fruit, etc.) are generally set out in the arrangement. In south-east Nigeria, contracts relating to oil palms (*iwu-nkuwu*) include the right to harvest the palm nuts for one season, against payment in cash. As in Benin, the arrangement does not cover the rights to cultivate under the trees.

#### **Zunda in southern Benin (Edja)**

*Zunda* is a tenant farming contract that gives cultivation rights, for a set, negotiated period, to a tenant who pays the entire rental charge when the contract is made. The duration of contracts varies from 2-10 cultivation seasons (1-5 years). Originally, the term "zunda" referred to a contract covering one *zun*, i.e. a piece of fallow land. Nowadays, since fallow is increasingly rare, *zunda* no longer covers *zun* exclusively, but also, "ordinary land" (*ahi-kugban yaya*; 0-3 years fallow). "Wooded land" (*ayikugban kpodo atin kpo*; 3-4 years fallow) is, however, more sought after: it is more fertile and the wood remaining after clearance can be used as firewood or for "acadja" (a cage made of branches used for fish trapping in the lake). Rental charges depend on the fertility of the soil and the value of the wood upon it: between FCFA 9,000 and 15,000/ha/year (two seasons) for ordinary land, FCFA 21,000 to 30,000/ha/year for land that has lain fallow for 3-4 years. Because of the scarcity of land and the problem of fertility, each family head of a production unit, with the exception of a few people who control such large areas that they can do without rental, cultivates land at one time or another that he has rented from another farmer in the village. *Zunda* gives the tenant the right to cultivate and harvest resources such as nuts and wood. It excludes the right to produce palm wine. Generally speaking, the tenant may not hand on the rights conferred upon him by a rental contract. However, there are a few marginal cases of "secondary delegation": in Dekouenou, a few elderly people, often tomato producers, rent land and hand it over to sharecroppers; in Dedomé, a peri-urban area, a few farmers act as land brokers: they rent land and then sub-let it to other farmers at a higher rate.

The rental arrangement is therefore quite simple, even though access to other resources has to be specified and clauses unrelated to the land may exist. The fixed amount of the fee to be paid limits regular disputes. Unlike crop-sharing arrangements, the "taker" here must have the financial capacity to pay the rent and cover cultivation costs. Even if the amount is small, this can be a problem. In western Burkina Faso, the recent move from loans to rental (FCFA 5/10,000 per hectare) has resulted in the exclusion of poor households (Baud, 1999). For irrigated land, the cost of renting is much higher than rainfed uplands. For example, in the north-east of Nigeria, a five hectare upland farm can be got for 5,000 Naira, while this would command only 0.25ha of irrigated land.

#### **"Hiring" in Bodiba (west-central Côte d'Ivoire) (Zongo, 2000)**

Rental relates exclusively to land used for food production (with the exception of bananas and taro which are only produced on new plantation land). Many immigrants resort to this arrangement for food crops: in the case of men, especially for maize (the main staple for immigrants) and rice (in which case, bas-fonds are rented); in the case of women, for maize and especially okra, hot peppers and condiments in general. It is usually the immigrant who makes the first approach to a local landowner to ask for land but the reverse is now happening. "At the beginning of each farming season, the Gagou [local farmers] come to offer us land for food crops. We no longer need to go to them unless we particularly want a place". Contract duration most commonly covers one harvest. The transaction is not backed up by a document; witnesses may be used but this is not systematic. Prices charged vary from FCFA 7,500 to 15,000/ha. In certain areas, particularly

*Guepaho, one hectare may go for up to FCFA 25,000. The duration of hire may be several years, usually two or three, in which case the transaction is backed up with a written document. Multi-year rental is generally moving towards sale.*

From the tenant's point of view, rental gives access to land and autonomy with regard to choice of crops and management. Particular types of plots may be involved. Fallow seems to be particularly important, both in southern Benin and forest areas of Côte d'Ivoire. The *bas-fonds*, for long barely cultivated if at all, are also now frequently rented out.

#### **The emergence of a rental market for fallow land and *bas-fonds* in west-central Côte d'Ivoire**

*"Despite pressure on land, it may still be loaned to outsiders, although much less frequently than before in view of the need felt by local people to preserve their landholdings. Allocating land in exchange for a limited traditional fee, which was still prevalent in the 1970s, has disappeared almost everywhere. Nowadays, the payment of a substantial sum of money, related to the size and type of the plot, is widespread, but this does not mean that the implicit social obligations have disappeared. As migrant farmers have planted cocoa on all the land previously acquired, a veritable rental market in fallow land for outsiders to grow food has come into being over the last fifteen years. The amount of rent payable is almost standard. All "outsiders" use this system, especially those from Burkina Faso, partly because their farms are smaller and they often produce food for sale" (Chauveau, 1997: 340-341).*

In all three research sites in Nigeria, rental of land has become increasingly frequent. In the irrigated areas of Sokoto State, north-west Nigeria, renting out some irrigated land (*haya* or *sufuri*) provides a valuable means by which to raise cash needed to purchase inputs and pay water fees on the remaining plots. In the peri-urban setting of Port Harcourt, south-east Nigeria, *kwukwu-ohia* arrangements offer a means for people to gain temporary rights to farm and harvest, for a single season, but no rights to trees are acquired by this means. In north-east Nigeria, *uari* rental contracts, covering both irrigated and rainfed uplands, are usually renegotiated each year.

For the "givers", money seems to be the basic motivation; above all due to family cash flow problems or to meet urgent expenditure but sometimes in order to purchase necessary inputs for other plots. Rental income provides an alternative source of cash in the absence of access to credit, as well as to other means, such as sale or pledging of land. In many cases, it is the "giver's" need for money that determines the duration of rental. In several places (southern Benin, west-central Côte d'Ivoire), rental for an annual fee is becoming widespread amongst local people as a way of earning regular income and as a strategy to achieve greater security of tenure. It provides an alternative to allocation of land for a symbolic fee and the gradual transfer of assets through sales; it reaffirms lineage rights over land and also limits the risk of ownership claims by the tenants. For the "givers", rental may also be a way of facilitating conversion, at low cost, of old plantations or fallows into new perennial crops such as palm fruit or rubber trees.

## **Crop Share Contracts**

A certain number of arrangements feature payment of a fee in proportion to crop yield. These come under the general heading of sharecropping, taken in the broadest sense<sup>40</sup>. Other share contracts are not related to the crop (see next section). Knowing the type and level of payment gives only a partial idea of the substance of the arrangement or the relationship between the parties. How production costs are shared and the division of labour in establishing and maintaining crops are essential parameters in analysing the broader cropshare arrangement.

### **Annual crops**

These are arrangements where the "taker" is responsible for production and the fee received by the "giver" is a share of the crop. As the level of payment depends on yield, the "giver" is often involved in managing production to varying degrees. Going beyond the classic definitions of "tenant farming" or "share-cropping", these contracts can be extremely diverse with regard to the size of the share, the respective contributions of the parties (inputs in particular) or sharing responsibility for decision-making on crop management.

<sup>40</sup> For a summary of economic theories about share-cropping, see Colin, 1995.

Depending on the factors in play, this type of arrangement may come close to:

- **a strict tenure relationship**, when the "owner" has nothing to do with production and simply receives a proportional return;
- **a simple employment contract**, when the "tenant", paid a percentage of product, is not involved in decision-making and merely carries out orders;
- **resource pooling** between unequally endowed parties, which may go as far as joint co-ordination of tasks.

Apart from the percentage division of the crop, the parties' remuneration is determined by two key issues: sharing production costs and control exercised over work put in by the tenant.

#### **Sharecropping and captivity: a historic link**

*From a historical point of view, sharecropping in West Africa derived in some cases from master/slave relationships. For instance, in the Senegal River Valley, coggu (tenant farming) had long been known. Rempeccem emerged after emancipation of the captives. Having no tenure rights, nor seed reserves, nor possibility of paying tenancy fees in advance, they could only get access to floodplain land under this arrangement which was, in any case, encouraged by the colonial administration and all the more acceptable to the former masters in that it was more profitable for them. As a result of pressure on land, rempeccem gradually came to be adopted by groups of all social status, including noble lineages, while coggu became rarer. Currently, almost half of all flood plain land tends to be cultivated under rempeccem (Minvielle, 1985).*

Share contracts have long been common in Ghana. In the 19th century, these contracts were used to cover gold mining, farming and trading and were also found in connection with fishing and timber production. "They played a not inconsiderable role in commercial groundnut production in the north, peppers on the Accra plains, rice around Volta Lake and shallots on the south-eastern coast; share arrangements also play an important role in livestock farming" (Robertson, 1987, p.63). These contracts were based on the principle of sharing costs and yield, either in two (*abunu*), or three (*abusa*) shares. They helped Ghana to establish itself in the 1920s as the leading world producer of cocoa, since the contracts allowed land to be made available to "stranger" farmers to be converted into plantations, without permanently alienating such land from the landowner's lineage (Amanor 2001, Hill 1963, Robertson 1987). Share contracts are still widespread, not only for perennial species, but also for a range of annual crops such as maize and yams. The *abusa* contract is used for maize, with the "taker" getting a two-thirds share to enable him to do the weeding and cover his initial food requirements with a view to further work expected on the plantation. Cassava and plantains are both shared half and half, since the landowner is supposed to supply the suckers as well as the planting equipment.

#### **Lema in southern Benin (Edja)**

*In southern Benin, food sharecropping or lema (deriving from le = to cultivate and ma = to share) is more recent than plantation sharecropping (kinnato). Used for maize/cassava in particular, it is found in areas where pressure on land has created a class of landless farmers, such as the Atlantic, Mono and Ouémé départements. The economic climate for food production is poor. Maize/cassava lema receives little investment and involves poor land. Lema land is let by elderly farmers who do not have sufficient labour power and need food to meet their obligations to feed the family. For them, being paid in food is more secure than being paid in money and having to buy food. The takers are usually young farmers who lack funds to rent land and also work as labourers. A third of the crop goes to the owner and two-thirds to the sharecropper, being divided up in the field at the time of harvest. The sharecropper is obliged to advise the owner of the date of harvest so that he may be present or send someone to represent him. The sharecropper is entitled to take palm nuts, if there are palm trees on the plot. He has no right to delegate his cultivation rights to anyone else, not even a member of his family.*

#### **Tomato lema (Edja)**

*The expansion of tomato production around Ouidah has led to the development of another type of lema: tomato sharecropping. This arrangement involves temporary migrants from the Adja plateau, with specialist knowledge, and indigenous landowners. It became popular in Ouidah in the late 1980s as a result of growing demand for tomatoes in towns and the inability of state enterprises, especially the bankrupt SON-AFEL (National Fruit and Vegetable Board), to supply urban consumers. Farmers wishing to draw on the experience of tomato producers on the Adja plateau to exploit Ouidah's position in relation to Cotonou need to recruit seasonal migrant sharecroppers. Tomato lema is unlike conventional sharecropping, as it involves*

a crop which requires substantial upfront payments and specialist knowledge. The two parties are more involved in the joint management and monitoring of the agreement established between them. Owners help to mobilize resources, although costs are borne by the sharecropper. The former are usually local people involved in distilling palm wine, who are able to afford upfront payments. They try to keep the same sharecroppers for several seasons, as the migrants have the specialist know-how needed for successful cropping. Some owners have 4-5 hectares for growing tomatoes and employ up to twenty sharecroppers. The sharecropper and his family provide all the necessary labour for the various operations: thinning, staking, weeding and watering the plants (especially at critical times). Management of the labour force is the responsibility of the sharecropper, who plans the various activities to be undertaken throughout the season.

Rules on crop sharing are as follows: income from the first crop goes entirely to the sharecropper so that he may pay production costs which, although often advanced by the owner, are his responsibility. For subsequent harvests (of which there are normally ten), one-third goes to the owner and two-thirds to the sharecropper. The sharecropper and his family live on the landowner's premises. Sharecroppers are responsible for managing their own households and often obtain credit from their host to cover initial living expenses, which are mainly food-related. They also borrow money to buy mineral fertilizer. In other words, the host does not simply provide land, but is the sharecropper's creditor. When the debts contracted are substantial or there are frequent transactions, the landowner will record them in a book. At the end of the season, he adds them up and obtains reimbursement before the sharecropper leaves the hamlet for his home village. It is quite common for sharecroppers to be able to clear their debts entirely after the first three harvests.

#### **Cassava abunu in Djimini-Koffikro (Colin, 1990 : 67)**

In forest areas of Côte d'Ivoire, abunu – half and half sharecropping – is a way of paying for labour employed in the coffee and cocoa plantations. The cassava abunu which has developed in Djimini-Koffikro since the 1980s is a form of access to land, in that the producer, who needs land, retains control over the entire production process, unlike coffee or cocoa abunu, which includes only maintenance and harvesting. Half and half sharing is restricted to cassava and does not include short cycle food crops previously planted by the producer on his own account. The share may involve either the plot of standing cassava or, more commonly, money made from sale. The latter formula has the advantage of evening out differing yields from the plot, but owners claim that it allows the sharecroppers to cheat by harvesting and selling some of the crop surreptitiously.

#### **How plots taken back by the Economic Interest Group (GIE) are farmed (Mbooyo, Senegal) (Ndiaye)**

Because of problems with non-reimbursement of loans, the GIE can suspend cultivation rights of those who have fallen into debt and pass them on to someone else. The plots taken over by the GIE are allocated to other farmers within the group for a year at a time (contracts are usually renewed from year to year). Apart from paying their contributions (for diesel and inputs), farmers must give one-third of the crop to the GIE. The amount may be renegotiated if the harvest is poor. This division of the harvest is based on the form of crop sharing known as "rempeccem" (literally "you cultivate and we'll share") found in the flood retreat waalo lands along the Senegal River.

## **Perennial crops**

Share contracts are of particular importance when it comes to tree crops, providing the institutional structure within which long-term investment of labour and capital can be made in establishing or maintaining a plantation. When perennial crops are involved, the contract may cover the trees alone, or trees and food crops as a whole. The latter comes close to an employment or caretaking contract, where maintaining the plantation is the vital issue, labour being "paid" by being able to grow food crops under the trees. Conditions tend to be quite different depending on whether the contract refers to setting up a new plantation or maintaining an existing plantation. In the former case, there will be a time lag of some years before the trees start bearing; as a result, the contract needs to last a certain length of time so that the tenant can get a return on his investment. Systems of remuneration via sharing the plantation are a way of dealing with these matters, as described below.

In the cocoa production region of eastern Ghana, share contracts have been extremely important since the late 19th century, because they offered sufficient safeguards for the establishment of vast cocoa plantations. These types of

arrangement now also cover oil palm and citrus plantations. Share contracts vary according to the respective contribution of each party and depending on whether sharing relates to the yield or the plantation being developed. In eastern Ghana, for example, there are oil palm plantations under contract to the Ghana Oil Palm Development Corporation within an *abusa* system, as well as *abunu* contracts relating to the oil palms between individual farmers and landowners. In the first case, the GOPDC grower gets two-thirds of the harvest, just like the recipient of an *abusa* plot, but he has to provide labour and inputs, as well as manage the plantation throughout the latter's economic life of around 25 years. In the second case, the "tenant" undertakes to establish the oil palm plantation, purchase all the necessary inputs and hire labour as required. Once the plantation reaches maturity after three to five years, the land is divided into two equal shares and the landowner can decide which half he or she prefers. After that, each party is responsible for maintaining their half of the plantation. Citrus plantations are also developed using the *abunu* principle, according to which the "tenant" provides the seeds and establishes and maintains the seedlings before the land is divided in half after five years. Since citrus trees have a much longer economic life than oil palms, of up to fifty years, this arrangement means that land can be alienated for a very long time from the owner's heirs, to whom the plot will revert when the trees no longer bear fruit.

**Busan in west-central Côte d'Ivoire (Chauveau, Zongo and Koné)**

*Busan (as abusa is known in Côte d'Ivoire) was one of the first forms of employment, along with piecework and labouring contracts (for between six months and a year), for migrants from Burkina Faso in the 1960s and especially the 1970s. At the time, busan operated mainly on old coffee plantations, as cocoa was still an expanding crop. Nowadays, it is widely used by incomers from Burkina Faso, especially young people whose parents do not have large plantations, and heads of family who have small plantations. Busan is essentially a contract to work on plantations which are in production. It does not directly involve any transfer of property rights over the trees or the land (except in one variant where a portion is shared on its establishment—see below). However, the emergence of a social tie between the busantier, as client and the plantation owner, as patron, can lead to an implicit contract to cede a plot. In addition, busan allows a migrant to share steadily in the life of the village and to forge links (especially through providing labour) with guardians who might cede further land in future. Working as a busantier can often be a transitional stage before gaining access to stronger rights over land, but this rarely concerns the plot involved in the busan arrangement. This was particularly true in the 1970s, when land was abundant.*

*The busantier is obliged to maintain the plantation, which involves cleaning up (before and after harvest), pruning dead branches, spraying, harvesting and transporting the crop to the owner in the village. Breaking open the cocoa pods, which is labour intensive, is a task for both employer and busantier who issue joint invitations to relatives and friends. If it is necessary to pay "day labourers", the party who pays them will deduct this expense from the proceeds of the sale before the share-out. The contract also comes with other clauses; particularly regarding the work to be done for the owner. This is mainly done in one of two ways: either the busantier works one day per week for his employer, usually Saturday, or his employer may ask him to carry out specific tasks (clearing land for food crops, preparing ridges for yams in the case of the Baoulé, etc.).*

*The busantier is not entitled to harvest for sale certain crops on the borrowed plot, especially avocado, palm seeds and fruit in general, but may take what he needs for his own consumption. Using the palm trees to make palm wine is also prohibited, unless the owner gives permission. In exchange, the busantier is entitled to a share of the crop agreed in advance. The term busan originally referred to a three-part share, one of which went to the busantier. However, in actual fact, it covers very varied types of sharing, depending mainly on the crop (coffee requires more labour than cocoa), the condition of the plot (quality of maintenance, age and productivity of the orchard), but also the balance of power between the contracting parties, such as problems with securing labour for the landowner. In Bodiba, on a plantation that is producing well, the busantier usually receives a third share of coffee and one quarter of cocoa. This share may, however, be increased to half on a not very productive coffee plantation (this is then called abunu). Sharing may also be done in different ways after harvest: in kind (the sacks are shared out and each party does their own marketing) or, more commonly these days, in money after sale, with the landowner usually taking care of marketing.*

*It is common for a busantier to have to work in the fields where his employer grows food crops. In addition, the busan contract may include a contribution from the employer to the domestic costs of the labour force, especially in the case of an isolated busantier where there is no community of migrants of the same origin*

as himself (e.g. the Gouro in Bodiba). The employer may allocate him a plot to grow food for himself or give him produce or prepared food. He may also pay for medicines. Apparently, these "ancillary" clauses are less common than twenty years ago, mainly because most busantiers have been integrated into the "Massi" district of the village or large Baoulé settlements.

The contract is for one year and may be tacitly renewed. Rarely, there may be written agreements between busantier and employer guaranteeing that the former will be hired again when he returns from a trip home. This assures the employer of the loyalty of the busantier if he is considered to be a good, reliable worker, and helps the latter to reject offers to stay in his home village, or join other migrant relatives, elsewhere.

Landowners involved in busan contracts are often elderly local farmers and, in exceptional cases, migrants from Burkina Faso who have holdings larger than they can manage. On the other hand, Baoulé migrants very often use busan on their cocoa plantations, which were greatly extended in the 1960s and 70s. Amongst local people, there are also absentee owners living in town. In these cases the landowner may either negotiate a contract directly with the busantier, or the relative he has placed in charge of the plantation may take one on. It may also happen that a plantation forming part of someone's estate is allocated to a busantier by the eldest son responsible for the inheritance procedures, until the funeral rites of the deceased owner have been completed, in which case the income usually goes towards paying for the ceremony.

#### **Kinnato in southern Benin (Edja)**

In southern Benin, the origins of sharecropping (kinnato) go back to the period following abolition of the transatlantic slave trade (1860-1870). At that time, it was used on plantations and its introduction enabled an employment relationship to be superimposed on a traditional master/captive relationship. The sharecropper maintained and operated the plantation on behalf of his patron and grew food crops under the trees for himself. He was paid in palm nuts. According to our informants in Dekouenou, he received between a quarter and a third of the harvest, meaning that the charges varied from two-thirds to three-quarters of the crop. The rate was not standard, and varied depending on the ties between master and captive. The diverse nature of relations between masters and captives explains the different historical developments and the appearance of new patterns of subsistence, especially after the abolition of slavery. Crisis in the palm oil sector led to the disappearance of kinnato, replaced by caretaking contracts whereby the tenant maintains the plantation and grows food crops there for himself. He may harvest the palm nuts, which are now by-products since the market price has collapsed. On the other hand, the landowner retains control of the sap (used to produce palm wine).

#### **An employment contract with crop sharing: Palm wine production in Benin (Edja)**

Kpama (kpa = to cut down, ma = to share) refers to cutting down mature palm trees and extracting palm wine for distillation. It developed during the post-colonial period in parallel with the development of the local market for alcoholic drinks. The plantation owner calls in a worker to cut down the trees and set things up for extraction (arranging the trees on a sloping surface to facilitate oozing, making an opening/outlet for the wine, extracting the wine, etc.). The contract covers the whole period of 60-75 days while the trees are exuding sap. The worker is entitled to one-third of the wine extracted. He is paid after the work is done or when the liquor is sold. He is often paid in cash equivalent to the volume of wine due to him. In fact, most of these workers do not have distillation facilities and cannot afford to rent them.

In north-western Nigeria, the Hausa institution known as noma mu raba has been used for many years to give poor farmers greater access to land. The harvest is divided into three shares, with the largest portion going to the party providing inputs other than labour (Mamman). In north-east Nigeria, two forms of sharecropping can be found. The first, known as reta, follows the common model in which inputs and harvests are shared between landlord and tenant. The second, mukko kel, involves two partners who jointly rent a plot of irrigated land and then share costs and the harvest. This is more a matter of co-operation between farmers than a tenure contract as such (Tijani).

Share contracts are often associated with poor farmers, who do not have their own farming equipment or the ability to pay rental in advance, but it may also be a response to other factors:

- risk management (shared between the parties, whereas a tenant renting land has to take all the risks);



- specialist know-how (e.g. tomato *lema* in southern Benin);
- access to food crops for someone owning land but with no labour force;
- combining the share-cropping activity with other employment contracts and indirect entitlement, being a "contract worker" or cultivating a plantation, etc.

The crop is usually divided in simple shares: halves or thirds.<sup>41</sup> This seems to reflect a concern for simplicity and transparency, so variations mainly relate to the sharing of production costs (seeds, inputs, possible employment of paid labour, etc.), which may be covered by one or the other party or shared in different ways.<sup>42</sup> In the event of dual cropping, the share may relate exclusively to the main crop (palm nuts in Benin or cassava *abunu* in Djimini-Koffikro)<sup>43</sup>, the secondary crop being kept by the person working the land. The share may also relate to one of the associated crops: for example, in the densely settled area of Ghana's Upper East Region, impoverished households can gain access to land for part of the farming season, by intercropping an early maturing millet crop on someone else's field (Dittoh).

Forms of sharing the crop and the associated costs vary depending on the economic context (changing price ratios) and the relative scarcity of land and labour, which gives this type of contract considerable flexibility. Tenant farming and all the various types of sharecropping contracts have been studied mainly in Asia. Such sharecropping contracts are usually interpreted as inequitable and of low productivity, as the sharecropper receives only part of the harvest, he is only partially remunerated for the effort he has made (providing labour and inputs, etc.). As a result, it was felt by many that sharecropping should be abolished in favour of rental. Advances in economic theory and empirical analysis suggest that this unfavourable interpretation should not be relied upon (Colin, 1995; cf. also note in annex). In view of the diversity of forms and context, case-by-case analysis is required. Moreover, the cases studied here show that sharefarming responds to the diverse needs and circumstances faced by many landowners and farm households.

## Contracts where Productive Assets are Shared

There are various sharing arrangements which cover not the harvest but the productive assets created or maintained by labour invested by the "tenant".

This applies to *dibi-ma-dibi* in Togo, the *abusa land tenant* in Ghana (Amanor) and in Côte d'Ivoire, to some particular forms of *abusa* or *busan*.<sup>44</sup> In this type of arrangement, the tenant invests to set up a plantation on land allocated by a holder of land rights. While the plantation is growing, he cultivates food crops enabling him to feed himself and maintain the plantation. The food offsets a substantial portion of the cost of setting up and maintaining the plantation in its first few years. When the development of the trees makes food cropping impossible, the plantation is divided into two parts, one (half, in the case of *dibi*, two-thirds in the case of the *abusa land tenant*) for the plot holder and the other for the tenant. Co-operation in terms of labour is thus limited to the phase of setting up and developing the plantation. After the plantation begins to produce, each cultivates his portion and is independent of the other. The *dibi-ma-dibi* form also exists in Côte d'Ivoire on plots which have not yet been cleared and planted, especially between local people and migrants in the west (Gnabua country: *trou katata*: "we plant and we share") and south-west (Bakwe country), where land is relatively abundant. It is also exists in the south-east (Agni country), but this time between local people, where the *abusa* contract between father and son serves to get around matrilineal transmission of land.

<sup>41</sup> Other rates do sometimes exist, as in the case of the evolution of open-ended loans in southern Benin.

<sup>42</sup> As in the forest area of Côte d'Ivoire (perennial crops) where the share-cropping contract (*abusa*) may include (a) the employer's participation in the costs of the labour force (food crop plot, food, preparation of food, medicine); and/or (b) the share-cropper's work on the employer's food crops. It seems that these "ancillary clauses", especially the former, are less common or less important than 20 years ago.

<sup>43</sup> When one is a food crop and the other a perennial crop, this comes close to a plantation maintenance contract.

<sup>44</sup> There are many variations and changes over time. See Hill, P 1956, *Gold Coast Cocoa Farmer and The Migrant cocoa farmers of southern Ghana* (1963) and Robertson, 1987: 53 - 79.

**Dibi-ma-dibi** (Gu-Konu, 1986 : 345-352)

Dibi-ma-dibi (literally: "I eat so that you can") is an arrangement which emerged in South western Togo as the plantation economy was developing. It combines the customary principles guaranteeing access to land for everyone with small-scale cash cropping. "Dibi operates according to a mechanism which may be summarized as follows: an immigrant will establish and maintain his plantation on a plot provided by the landowner. Until production reaches maturity, he keeps all income derived from the initial harvests. Subsequently, when the plantation is producing regularly, it is split between the two parties. Theoretically, this division refers exclusively to the cultivated plot, but the contract guarantees the farmer use of his plot throughout the lifetime of the trees which, in the case of cocoa, may be more than 75 years. This means that the farmer acquires, *de facto*, an almost permanent right to occupy and use the plot of land and may pass this right on to his heirs so long as the plantation survives (...). The initial contracts saw no need to affirm the principle of getting the land back after a set period. As a tenure practice and production relationship, dibi underpinned the prosperity of plantations throughout the colonial era". As a result of the collapse of the plantation economy, it is now no more than a residual practice.

The dramatic expansion of the plantation economy in Ghana and Côte d'Ivoire has, in the main, taken place through mechanisms of this type (*bousan* with sharing of land, "gift" against deferred payment in labour, as well as *bousan* sharing the crop). These mechanisms do, however, reach their limits when the relative scarcity of production factors changes (economic crisis, land scarcity, etc.). This type of mechanism is, however, still spreading in some parts of Côte d'Ivoire.

**Troukatalan in Côte d'Ivoire** (Koné, 2000)

This is a new means of access to land which is still rare in both Zahia and Bodiha, but more common in the former region, where the Gnabouu people (neighbours of the Bétés) practised it with Lobi migrants in the mid 1980s. In Dioula, the term means "plant (trou) to (ka) share (flan or talan)". Troukatlan involves a farmer who cannot afford to purchase a plot of land establishing a plantation on someone else's holding.

Specifically, he will clear a plot and establish a new plantation, by planting coffee or cocoa rootstock. When it comes into production, farmer and owner will divide the plantation between them into equal shares. The farmer can choose the food crops he grows on his half and which belong to him. The landowner may grow food on his plot but leaves weeding (and sometimes planting) to the sharecropper for one season, after which the field reverts to the owner.

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It is important to recognise that the asset shared under such arrangements was the plantation as a whole, and not the land itself, as land was not seen at the time as a scarce resource. However, this has been a source of ambiguity and disputes between the different parties. As plantations have got older and are no longer productive, the original landowner may assert the underlying claim to the land. The ambiguity has been greater still, and the disagreements exacerbated when, as in Côte d'Ivoire, it is the State itself which has created the confusion between rights to trees and rights to land, as can be seen by the common slogan "land to the tiller" used until 1993.<sup>45</sup>

Apart from coffee and cocoa plantations, arrangements of this type also underpin the conversion of former cocoa plantations to grow citrus in Ghana (Amanor). On a much more restricted scale, such arrangements have emerged recently in western Burkina Faso, where Paré found two cases of *yiritourou dondonly* (loan for tree plantation) in the area of earlier agricultural settlement at Kouka.<sup>46</sup> Involving migrants who arrived in the early 1990s, the arrangements were concluded in 1994 and 1997. The migrant party sets up and maintains, on behalf of the local landowner, a plantation of useful trees (eucalyptus) and receives in exchange an almost equal area for his own activities. *Yiritourou dondonly* gives cultivation, investment and gathering rights on this part of the plot. These rights can apparently be passed on.

**A loan for planting trees in western Burkina Faso** (Paré)

S.M., senior manager with a company in Ouagadougou, was born in Kouka. In 1994, he asked S.Y., a migrant trader settled in Kouka, to find him a young migrant to look after a eucalyptus plantation. On being contacted,

<sup>45</sup> Strictly speaking, a contract with sharing of assets which rested on transfer of ownership of the land would not come under the heading of derived rights, but acquisition of ownership.

<sup>46</sup> Cf. also cases discovered by K. Triolet in the pioneer farming area of Mangudara (Triolet, 1999).

D.B., who had arrived in 1992 and whose patron was S.Y., accepted the idea of the contract which stipulated that, in exchange for working in the three hectare eucalyptus field, S.M. would make two hectares of land (clayey-sandy soil) available to D.B. over which he has all rights with the exception of disposal. Each of the parties was attended by a witness (*séré*), S.Y. in the case of D.B. and his older brother in the case of S.M. D.B., who is continuing to do his duty, is now using 0.5 hectares of the two he gained through the contract to grow eucalyptus.

## Contracts with Access to Land against Provision of Labour

Some types of arrangement provide access to land in exchange for labour spent in the fields or plantations of the grantor.

### *Access to cultivation rights and sharing of the migrant's labour: "navétanat"*

This is the underlying rationale of the *navétanat* found in the groundnut basin of Senegal (cf. Robertson) where the *navétane* (*samalaalu*) works for his host, who gives him board and lodging in exchange for a plot where he works on his own behalf for some of the time. This is a case of sharing labour (so many days – or half days – for the patron, so many for the migrant) rather than plots. Contracts are related to a cropping season, although they can be renewed.

Local farmers in this area have a choice between various forms of labour: work associations (young people from the village who hire out their collective services), workers paid by the day or month, and the *navétanes*. Various economic calculations have shown that the cost of negotiating with *navétane* was often higher than the cost of a monthly paid worker but, as a farmer interviewed by Robertson said "The reason we take *samalaalu* is because we don't have money to pay wages. Their food is what we have" (p.225).

### *Access to cultivation rights and synergy with the tenant's work*

Another arrangement follows the same logic of exchanging cultivation rights against labour, but in this case refers to different crops on the same plot, while a plantation is being set up. This arrangement, reported by Koné, has the same name as a contract involving sharing plantation land as described earlier.

#### *Troukatlan as resource "pooling" to establish a plantation (Koné, 2001)*

The second form of *troukatlan* involves landowners who want to establish a plantation but have no means to pay for all the labour required. They will make arrangements with various people (indigenous farmers, *busan* or *bugnon* sharecroppers, contractors, civil servants, etc.) who are looking for fallow land in order to grow food. In this case, rather than dividing the plantation into two, the different crops are shared: the perennial crop is established by the landowner and belongs to him, while the farmer grows food for himself. The latter clears the plot and establishes a field of cassava, yam and rice. On the same plot, the landowner plants cocoa or coffee. The tenant weeds the plot around both the perennial and food crops. The plot has to be weeded once in mid-season and again at the end of the food crop production cycle, leaving the plot planted with perennial crops.

The synergy derives from the fact that the landowner benefits from the labour invested in weeding the food crops, which simultaneously maintains the growing plantation. This sometimes leads to conflicts, as sharecroppers' wives may grow vegetables, which have a longer cycle, along with the cassava, rice, etc. After the last weeding which is supposed to signal the end of the contract, landowners' wives help themselves to the remaining vegetables, which does not please the sharecroppers' wives. A landowner may plant banana trees on the same plot for his own benefit, to provide shade for the young seedlings and help them to resist drought.

### *Access to cultivation rights in exchange for specialist services*

A final variation, found in western Burkina Faso, refers to specialist services: the ploughing contract or ploughing loan (*séné dondonly*). In exchange for ploughing services, the owner of a ploughteam obtains cultivation rights over an equivalent area from a local landowner who has land but no access to equipment.

#### *Ploughing contracts in western Burkina Faso (Paré)*

"We found this arrangement mainly in the area of earlier agricultural settlement, where the arrangement is usually initiated by the landowner. Average duration is 2-3 years. The official payment due is ploughing but,

*in practice, the tenant will show himself particularly attentive, working in the landlord's fields or providing other assistance, so as to increase the likelihood of the arrangement being extended. All types of land (uplands and bas-fonds) are involved but, in many cases, landowners put land with heavy soil, which is difficult to till, into this type of arrangement. When contracts are for three years, crops grown are cotton and maize, as opposed to mainly cereals (maize, sorghum and millet) for two year contracts. In the bas-fonds, the crops are cereals and sometimes rice.*

*S.B. now has a tractor and draught oxen. In 1998, his eldest son, S.I., in charge of the farms and wanting land to give as individual fields for the youngest family members, approached T.L., a younger generation local farmer. The latter, having inherited land from his late father which he particularly needed to have ploughed, granted S.I.'s request. The contract concluded between S.I. and T.L., without a witness, stipulated that, in exchange for the three hectares allocated to him for three years, S.I. would plough an equivalent area for T.L. every year.*

In this context, land is less scarce than cash to pay the various cultivation costs in advance of harvest (labour, hire of draught oxen, plantation maintenance), making this type of arrangement a common alternative.

### **Caretaking/maintenance**

Holders of land who do not live on the spot or control production themselves have problems with supervision or maintenance of their estates. The caretaking formula is found both amongst noble families living in towns in southern Benin and in other places where new stakeholders have acquired land but live in town. This is the dominant mode of access to land for former captives in the palm plantations of southern Benin (around Dèkouenou). Caretaking and maintenance contracts are similar to an employment contract, in the sense that the service required is the provision of labour. The arrangement has a tenure dimension (and thus a connection with derived rights) when the return offered to the caretaker consists of a right to cultivate all or part of the estate he looks after. *In other words, caretaking only comes under derived rights insofar as payment for the caretaker's work is not a salary, but a right to cultivate a portion of the estate for himself.*

#### **Caretaking in southern Benin (Edja, pp. 63-67)**

*In the palm groves close to Ouidah in southern Benin, land and plantations are owned by the noble lineages of Ouidah or Abomey. They themselves do not farm, but entrust their estates to farmers organized into village-type communities settled on their hosts' land. These farmers are the descendants of former captives, who have come to work for the lineages controlling the land. Caretaking is an arrangement between a landholding family and one or several groups of descendants of captives organized into lineage-type structures. Members of 2-3 lineages live in a single hamlet. In this system, landlords are not interested in the maize and cassava produced by farmers, but in what the plantation produces. Those occupying the land are required to look after the landholdings and the natural resources (palm trees, wood, etc.) upon them. In exchange, these land users and caretakers have extensive rights to use land for food crops.*

*Historically, captives started off as craftsmen before diversifying into farming as sharecroppers (kinnato), with the boom in palm production. When the crisis came, employers were no longer able to pay their sharecroppers, nor demand the same work from them. The palm groves came to be extensively exploited, mainly to produce palm wine. Sharecroppers' access to land and rights to grow food were not challenged. Rather, there was a kind of rearrangement of the sharecroppers' obligations, their former tenure rights being maintained. Koussou (fees paid in palm nuts or increasingly money) has replaced kin (mainly made up of palm clusters). Making hamlet residents responsible for looking after the land and natural resources was the new feature of these tenure relationships. In local ideology, land "belongs" both to the holder of property rights and the captive who takes care of it. The latter is a member of the host family, with whom he shares common values. He practices the same cult of vodun and takes part in organizing cultural events with the former master's family.*

*Maintaining the palm grove is one of the duties of household heads living in the hamlet. Each is responsible for part of the landowner's estate where he will prune the trees, gather nuts and also do the weeding. The land under cultivation includes palm seedlings that the farmer must maintain. He will take care not to damage the trees while cultivating the plot to ensure that they grow normally. When they come to maturity, the plot will be vacated and the farmer will cultivate another piece of land. Apart from these obligations in*

relation to the plantation, hamlet residents can choose what to grow on the land and may take palm nuts for their own use. They may delegate use rights in the form of rental or sharecropping to third parties if they so wish, so they do have some management rights. In addition, they have first refusal if their patron wishes to sell the land. In Kehungué hamlet, about 75% of the land now belongs to the inhabitants, whereas 95% of the land they cultivate in Lobagbomè comes under caretaking contracts.

#### **Management as a employment contract on the Mogtèdo irrigation scheme, Burkina Faso**

Within the Mogtèdo scheme in eastern Burkina Faso, as well as neighbouring private schemes, a number of "new stakeholders" have acquired landholdings that they put in the care of managers. The manager may be paid a fixed wage or a share of production. This is an employment relationship, rather than a derived rights arrangement, as the manager is cultivating on behalf of his boss, in accordance with the latter's instructions (Deram and Burgeat, 1999).

#### **Yiritourou dondonly (variant two) in western Burkina Faso**

S.N., a livestock technician in Banfora, has a four-hectare orchard in Kouèrè. In 1997, through the intermediary of one of his brothers, he contacted O.K., a migrant who had arrived in 1995, to suggest a yiritourou dondonly arrangement. O.K. accepted the offer and took his diatigui, also a migrant, as his witness. In exchange for looking after the orchard, O.K. has the right to use it to grow crops and he has been producing maize there since 1997. The rapid growth of the mango trees means that O.K. will not be able to continue to farm for long. In fact, he is expecting to end the arrangement in 2007. For him, accepting the contract is above all a way of getting accepted into S.N.'s family, which holds large areas of land, in the hope of arranging future access to land on relatively easy terms.

## Pledging

Pledging provides credit with the land held as security. A farmer needing money borrows a certain amount from a third party and grants him the right to use an area of farmland as security pending reimbursement. Delegation of the right of use is not therefore the primary vocation of the contract, which is more of a credit mechanism.

There are two main variants:

- Usually, the cultivation rights transferred serve as security and as a return on the capital loaned: the crops harvested by the landuser conferring the interest, while the capital must be repaid; the person who has pledged the land is often unable to repay and the pledge actually ends up as a permanent transfer of the landholding to the creditor.
- Sometimes, the crops harvested on the plot repay both interest and principal. Negotiation then relates to the number of years during which the creditor will gain cultivation rights. After the negotiated expiry date, the borrower gets his plot back. This form is in fact equivalent to a multi-year rental with an advance payment.

Pledging existed before the colonial era. According to Coquery-Vidrovitch (1982), it was the form taken by land sales when these were forbidden or considered illegitimate. It is not found everywhere, being absent in western Burkina Faso, for example. In the case of south-east Nigeria, such pledging arrangements are not uncommon, with landowners using their control over this resource as a means to raise cash, when needed. Known as *ala-ibé*, the arrangement for the tenant is often very insecure, since the time period during which they will retain rights to use the land is usually not specified. In some cases, long-standing tenants on such pledged land may try to buy the plot, rather than continue in a state of uncertainty. However, the rapid escalation of property prices has made this option increasingly difficult. The tenant is not entitled to build a house on the plot and has no rights over the trees upon it (Anikpo).

#### **"Guarantie" (pawning/pledging) in west-central Côte d'Ivoire**

This practice has become widespread over the last fifteen years in west-central areas, as a form of credit between local people and outsiders relating to plantations under production. The same term, "guarantie", is used to describe two different forms of pawning which may coexist (Zongo, 2000, Koné, 2007, Chauveau, 1997).

The most common form in west-central areas (cf. Bodiba in Oumé préfecture) is the one where usufruct enjoyed by the creditor reimburses both interest and principal. In fact, it is more like a multi-year rental contract

on farmland at a very advantageous price for the tenant. For the landowner, it means losing all rights over the plantation throughout the duration of the contract, with total but temporary transfer of all rights over natural resources on the plot, with the possible exclusion of palm trees. The creditor usually comes from Burkina Faso, while the debtor is a local farmer or Baoulé migrant. There are cases of pawning between people from Burkina Faso and a few exceptional cases of pawning between local farmers. The pawned plantations are usually between one and three hectares in size. The arrangement is usually for two years, but may be renewed if a tenant makes a further payment. The latter must maintain the plot. At the end of the agreed time, after an inspection by the parties, the plantation reverts to its owner and the latter does not have to reimburse the sum.

In the other variation, harvests from the pledged plot pay the interest but not the principal. The plot only reverts to its owner when he has reimbursed the latter. This (*aoba*) is the most common type in the east, in the Akan areas of Côte d'Ivoire and Ghana. Here, the pledging of plantations and failure to reimburse the loan contributed towards moves by indebted plantation operators to leave and settle in the west. This form of pledging is also found in the west-central area (Zahia) under the name of "garantie", "*aoba*" amongst Baoulé and Agni migrants, "*tonomala*" amongst Dioula migrants and "*touan*" amongst the Wobè.

In either case, the sum paid by the tenant is subject to all kinds of considerations: whether return of the plantation to its owner is dependent on reimbursement of the entire loan, what the productive status of the plantation may be, but perhaps above all on how urgent is the landowner's need for cash. In fact, plantations are usually pawned because of unfortunate events (deaths, illness, etc.) occurring at crucial times of the year, but also to cope with particular social obligations (marriage or funeral expenses, school fees, fines).

Pawning is always formalized on paper, in the presence of witnesses and frequently a village authority (usually the village chief) to validate the arrangement. This involves certain costs depending on the procedure involved (person drawing up the piece of paper, authority providing validation, etc.). Although pawning is now a common practice and subject to formalization, it is camouflaged as far as possible by the landowner, as it is considered to be a last, shameful resort. Nevertheless, it does not cause major conflicts between contracting parties, unless relatives of the landowner intervene, claiming entitlement to the plot. In both forms, pawning is very often the precursor to sale, either because the principal cannot be repaid, or because return of the plot on expiry of the contract is not sufficient to meet the landowner's need for cash (which explains the many cases of extension of the pawning period). However, due to the current uncertainty and insecurity felt by Burkinabè migrants in Côte d'Ivoire, they are less and less willing to get involved as creditors in such pawning arrangements.

#### **Awoba in southern Benin (Edja)**

Awoba is an institutional arrangement where land serves as surety for the loan of money. The French terms corresponding to "pawning", "pledging", "secured agreement" and "promising" are used in both the study villages to describe the awoba contract. Various local stakeholders, who may or may not be farmers, are involved in this arrangement which is often considered to be the tenure arrangement most exposed to the risk of conflict. The borrower commits a piece of land, thereby enabling him to borrow money often on several occasions from his creditor over the course of the contract. To get back his plot, he must reimburse the cumulative amount of the loans. The creditor who has taken on the land is entitled to cultivate and harvest the nuts, but the palm trees remain under the pledger's control. The crop harvested over subsequent seasons corresponds to interest on the sum loaned. The creditor can pass on the land to another under a rental or sharecropping agreement, his only risk being that his debtor might reimburse him and demand that the land be returned.

Those acquiring land in this way are those with financial resources, such as distillers of alcoholic drinks and sometimes city-dwellers. Pledgers are farmers who are short of cash, who hope to be able to reimburse and retrieve the plot. Most conflicts between those in charge of land and family rights-holders stem from land being pledged by a manager of the collective landholding. Where the pledger owns a substantial palm grove, he relies on the sale of palms or the distillation of alcohol to reimburse the sum and get his land back. When land is recovered it is usually in this way, i.e. following the sale of palm trees both from the pledged plot and other holdings.

*The landowner may ask for several loans one after another depending on the value of the plot. Should the overall amount of the loans given come close to the price at which the land could currently have been sold on the market, the pledging contract may be turned into sale of the land.*

In summary, an arrangement to delegate rights rests on complementary interests between two parties, unequally endowed with land, labour, capital and other factors. The diverse arrangements encountered fall into several broad categories, each of which has numerous variants. Derived rights cover a set of arrangements ranging from cash rent to employment contracts or credit with land as security. Each broad category is a response to different circumstances, in terms of the relative scarcity of these factors and, in particular, the relationship between land, labour, capital, know-how, etc. In relation to classic forms (rental and share-cropping), note must be taken of:

- the persistence in many regions of "customary" forms of settlement or open-ended loans;
- the issue of interpersonal relations between the parties involved and the persistence of "clauses unrelated to land" within many arrangements;
- the frequent overlay of different delegated rights over the same area: annual cropping rights, right to collect plantation produce or by-products, etc.);
- the importance of the cashflow constraint and access to credit as a determining factor in transferring land;
- the importance of share contracts for perennial crops, which acknowledge the investment in labour involved in setting up and maintaining a plantation.

In each area, the range of arrangements available varies, such that the detailed clauses and their meaning cannot be understood outside their socio-historic, agro-economic, political, and institutional context. The incidence of these contracts varies greatly from place to place and from group to group. For instance, it is not uncommon to find an individual or household taking part in several different derived rights arrangements, involving both granting land to some and borrowing land from others.

## II. ARRANGEMENTS IN CONSTANT MUTATION

Derived rights have proved to be extremely flexible and are constantly evolving. Some arrangements are diminishing or even disappearing, while others are becoming much more important. Over quite a short period of time detailed clauses may change rapidly. Some of these facets are illustrated below. The case studies confirm the flexible, dynamic nature of local landholding systems. But, how far is it possible to unravel the dynamics of these arrangements? It is quite clear that there is no overall model. The classic pattern, whereby the growing monetarization of land transactions results in a move from share-cropping to rental and then from rental to sale, has been broadly challenged. Trajectories are more varied. They are neither linear, nor uni-directional, and a change in context may upset the dynamics, as can be seen from the crisis in the coffee and cocoa economies. Nevertheless, it is possible to identify a certain number of mechanisms which help to give a better understanding of which elements influence arrangements.

### Interlocking Dynamics

The dynamics of these arrangements operate at several interlocking levels: as a result of a region's history, at farm level and at plot level.

#### As a result of a region's history

At this level, the type of arrangements encountered, their relationship with other forms of access to land and labour and their dynamics are strongly linked to the overall pattern of change in farming, social and economic context. One or other form of arrangement may appear or disappear at different periods of the region's history.

*"Navétanat" (share tenancy) and groundnut production in The Gambia (Robertson, 1987)*

*Four major periods can be identified in the history of groundnut production in The Gambia, corresponding to different ways of mobilizing labour power. While the groundnut industry was being set up (1830-1894), production was the responsibility of local farmers (the richest ones using slave labour) and an already substantial number of migrants who negotiated with local chiefs to settle in the area. During the phase of ex-*

pansion (1894-1924), migrant workers played a very large part and their settlement was encouraged by the colonial authorities, who replaced the customary fee payable to the chief by rent in cash. During the mid to late colonial period (1924-1965), production was affected by serious instability as a result of economic circumstances and attempts to control migration flows. "Navétanat" in its present form began to take hold and continued until the groundnut crisis, with the balance of power tipping in favour of the "navétanes". When groundnut production collapsed, the system of "navétanat" began to decline and is now being replaced by rental and work contracts.

#### **The regional dynamics of plantation agriculture in Côte d'Ivoire (Chauveau)**

In Côte d'Ivoire, the plantation economy has spread westwards over time from the eastern region. The various plantation areas in the country have a number of common features, including land and labour contracts found throughout the forest zone, which have evolved in a similar way depending on the phases in the plantation development cycle, starting with:

- major labour requirements, met by means of incentives and strategies, in the shape of land allocation to attract migrant labour from outside Côte d'Ivoire, leading to
- reduced availability of land, as rental developed on fallow land and bas-fonds; and sometimes,
- new arrangements to revive ageing plantations.

However, each of the major regions (east, west-central and south-west) retains its own characteristics, depending on:

- when plantation agriculture took hold in each region, with the spread of "abousan" from the former plantation regions in the east to the western regions, as the plantations in the former regions became older and less productive;
- the sequence of settlement by diverse ethnic groups in settlement of the western regions;
- the government policies applied at different times, with heavy political pressure in the 1960s and 70s on indigenous communities in the west to allocate land to migrants in the form of "gifts", which gradually became "customary sales" as of the 1980s.

All these regions have suffered in some way from the economic crisis that began at the end of the 1980s (when pledging/pawning began to develop), as well as the social and political crisis of the 1990s. This has led to attempts by local people to "retrieve" land allocated or sold to migrants, or to transform land bought by migrants into rental or tenant farming, which have now been legitimized by the new tenure law that forbids anyone who is not a national of Côte d'Ivoire from owning land and strengthens indigenous communities' rights.

#### **Urban growth drives arrangements in south-east Nigeria (Anikpo)**

The region of Port Harcourt, south-eastern Nigeria, has undergone immense changes over the last fifty years. During the colonial era, the town was established as a goods depot for railway traffic. In 1967, River State was created with Port Harcourt as its capital, thereby boosting the region's growth. The town also became the headquarters of oil companies and oil exploration in the Niger delta, where the concessions held by such companies cover a vast expanse. People migrated towards Port Harcourt in the hope of finding work and taking advantage of the new oil economy. As it takes time to find work and become established, migrants adopt various strategies for short term subsistence, for example negotiating access to a plot in order to supplement their other sources of income with food crops (Anikpo).

#### **The development of "abusa" in the Eastern Region of Ghana (Amanor and Diderutuah)**

The expansion of cocoa cropping in Ghana in the twentieth century was based on a production relationship known as "abusa" in the Twi language, to such an extent that it is estimated that three-quarters of the cocoa crop was produced under this type of arrangement. After becoming firmly established in the south-east of the country at the end of the 19th century, cocoa farming gradually began to shift towards the west as the old trees ceased to produce and the soils became exhausted. "We have seen a persistent tendency for farmers to move onto new land, instead of regenerating existing plantations... A century ago, abusa appeared to consist of a tenure right and credit agreement, whereas more recent expansion towards the western forest has meant that this system is now seen more as a form of paid employment" (Robertson, 1987). Nevertheless, contracts did vary substantially in terms of the rights and obligations of the different parties. Similarly, con-



tracts between landowners and "busantiers" tended to evolve over time, in view of the long-standing relationship between the two parties and their common interest in the cocoa plantation. Labour was supplied by both the family and "strangers", with the latter group being made up of people from other regions of Ghana and immigrants, especially from neighbouring Burkina Faso. The popularity of the various types of contract depended on the balance between landowner and worker. Whereas owners tried to profit from the efforts of the landless, workers ensured that their investment in labour and skill would help them gain access to land (Robertson, 1987: 61).

In the Eastern Region, the early plantations were established through sales of land by the royal family to "strangers". Indigenous chiefs subsequently established the *abusa* system for migrant workers. As the plantations grew older and the cocoa market went into crisis, the migrants left and citrus orchards and oil palm plantations took their place.

From the late 19th century, land sales started to become common in Akyem Abuakwa, when migrant cocoa producers from the regions of Akuapem and Krobo began to arrive. After 1912, the paramount chief of Akyem Abuakwa attempted to prevent sales of land to strangers in order to retain his monopoly or at least claim a share of such transactions. The "*abusa* tenant" system was set up as a form of land transaction whereby sub-chiefs could acquire their own cocoa plantations by providing access to virgin land and receiving, some years later, a developed plantation. This system meant they could circumvent the ban on sales and earn income from land which could otherwise have been allocated to other indigenous farmers. According to Hill (1963:16), the *abusa* system began in Akyem Abuakwa (the first new frontier zone for migrant cocoa farmers) as "a convenient means for the stool [chief] of granting land to strangers". The "*abusa* labourer" contract evolved subsequently as a means of attracting labour to work on already established plantations. In this way, landowners in Akyem were able to establish cocoa plantations using *abusa* tenants and then take on an "*abusa* caretaker" for their share of the plantation, without having paid anything to hire labour or set up the plantation. In the 1960s, the majority of sharecroppers were migrants but land scarcity, the expulsion of foreign migrants and the loss of productivity in ageing plantations combined to bring about a reshuffle. By the 1980s, migrants from the Eastern Region had, to a large extent, been replaced by indigenous sharecroppers, mainly young people who were not members of the family and were extremely land hungry. It is only over the last few years that relatives have begun to take an interest in sharecropping contracts as land has become scarcer and conflicts over the method of sharing family land have broken out. Citrus and oil palm plantations, which are very capital intensive, have taken over from cocoa. The *abunu* system is now used for citrus, cassava and plantain, while *abusa* is for oil palm and maize. Young indigenous farmers, looking for land to establish plantations outside the family group or, increasingly, within it, participate in these arrangements. This means that the *abusa* and *abunu* systems have evolved and no longer reflect the relationships which were characteristic of the classic colonial cocoa economy. Instead of migrant workers and indigenous landowners, the contracting parties are now young indigenous farmers desperately in need of land and older members of landholding families.

**Rapid changes in the 1980s and 90s in the area of earlier agricultural settlement of Burkina Faso (Paré)**  
In the area of earlier agricultural settlement of western Burkina Faso, customary forms of access to land persisted until the late 1970s, including the time of mass settlement by Mossi migrants fleeing drought further north. In the 1980s, as a result of the large numbers of non-indigenous people in the region and rapid disappearance of land reserves under the combined impact of migration and cotton production, settlement systems gave way to loans on harsher conditions and rental. Conflicts within indigenous families and increasingly tense relations between migrants and hosts have recently led to a spate of land withdrawals from migrants and the replacement of open-ended loans with rental arrangements, which are renewable but at rising prices.

## At farm level

A farm household's land requirements vary in accordance with the domestic demographic cycle. The classic scenario is of a young couple settling down without much land or labour; the number of mouths to feed and then the available labour force increases as the children come along; subsequently, an ageing household whose sons have left to set up their own households sees its needs and labour force shrink. The domestic cycle, which is of crucial importance for single household smallholdings, is only partially relevant to production units involving several households who are able thereby to "smooth over" such fluctuations, (Raynaut and Lavigne Delville, 1997; Toul-

min 1992). Nevertheless, because of the process of fragmentation of domestic units and the growing economic independence of younger members, the problem of controlling the family labour force and making adjustments between available labour and land remains. When migration and expansion of land are under way (amongst the Sérèr, Lericolais, ed., 1999; amongst the Mossi, Brousers, 1999), these adjustments may involve extensive areas in different localities and mobilize a range of households from a single lineage.

Depending on the farmland concerned, delegating use rights or negotiating access rights will reflect either particular circumstances (shortage of labour due to migration or illness; need for cash; or additional land requirements because of a new arrival in the family), or have a structural basis, in the case of families who have either substantial land reserves or are seriously short of land.

For migrants, this dynamic process is related to the path they have followed in the settlement area. The *arrival date* is very significant. In Burkina Faso, migrants who arrived during the 1990s have practically no access to anything but rental, whereas older-established families already have access to land on open-ended loan. In Dédomé (southern Benin), migrants who arrived at the beginning of the 20th century have been fully integrated in tenure terms and those who arrived during the 1950s have plots loaned without a fixed rent due, but recent migrants have only had access to land through rental. The location of farms or the degree of social integration may be a decisive factor: for instance, in Burkina Faso, most withdrawals of land occur in villages where migrants have settled amongst local people, while separate migrant hamlets are relatively safe. When the arrangement binds two people over time, closer interpersonal ties can lead to a significant change in contract clauses (e.g. removal of restrictions on planting trees) or security of tenure (e.g. as a result of marrying into the patron's family).<sup>47</sup>

#### **Mature contracts and the "agricultural ladder"**

Robertson shows, in respect of arrangements between migrants and indigenous farmers, that an individual may, over the course of his career, enter into different, "mature" contracts which gradually put him in a more secure position. So, "having begun by selling his labour for cash per task or by the hour (baragnini) or month (karidokula), the young man becomes a Stranger Farmer (navètane) by agreeing to sell his labour for payment in kind (food and shelter) and for restricted land usufruct. To progress, he must disengage himself sufficiently from his host's household to negotiate a precise allocation of his labour time, the determination of the 'host days' (jati lungu). Subsequently, his host will cease to supervise his work. A further development is the collaboration of host and stranger as ostensibly equal partners, especially when both have an interest in sharing mechanical equipment. Finally, the samalaa may commute the labour contribution to his host altogether for a cash payment (saffer dingoo (rental)). Although notionally still part of his host's household, his labour time is now freed for full deployment on his 'own' land" (pp.250-251). This maturing of contracts is reminiscent of the "agricultural ladder" theory (cf. Colin, 2001). However, it only seems to occur in relatively stable situations.

#### **Social and ethnic aspects of the plantation economy in Côte d'Ivoire (Chauveau)**

In the forest zone of Côte d'Ivoire, the evolution of agrarian contracts at farm level must be understood within the overall regional context. The ethnic origin of farmers is a discriminating factor, more for historical, political, demographic and sociological than cultural reasons. For instance, in the west-central area, typical patterns may be seen:

- amongst the indigenous community: as smallholders in the 1950s/60s, they became the guardians of Baoulé migrants in the 1960s, employed labour from Upper Volta (now Burkina Faso) from the 1960s onwards and especially in the 1970s (in the form of piecework contracts, seasonal labour and patron/client relations). They then went into a phase of withdrawing from agriculture in the 1970s (selling land to the Baoulé, exchanging land against labour with migrants from Upper Volta, non-farm activities by young people, sale of old plantations to migrants from Upper Volta). Subsequent strategies have addressed shortages of both land and labour as of the 1980s (rental of land for food cropping, bousan) and especially in the 1990s (pawning and renegotiating tenure rights granted to migrants);

- amongst Baoulé migrants: in the 1960s, they gained access to relatively large forest plots, with strong support from the government administration, which helped limit demands from local landowners. In the 1970s, they began a phase of rapid development of the plots obtained from their guardians in the form of "gifts",

<sup>47</sup> This is what Robertson calls "maturation" of the contract.

initially using seasonal Baoulé workers and then, increasingly, seasonal labourers and pieceworkers from Upper Volta, and acquired further plots by following the pioneer plantation front as it moved westwards into virgin forest. As of the 1980s, they had to cope with ageing plantations and increasing labour requirements to maintain and harvest the substantial areas under their control (resorting increasingly to bousan arrangements), the growing demands from indigenous guardians with regard to both land already given as "gifts" and new transfers, in the form of sales, and the need to rent land from local people for food crops (as their land reserves were entirely perennial crops); they in their turn entered a phase of diversifying into a range of other activities (purchasing produce, transport, credit), resort to credit and pledging of land to migrants from Burkina Faso, or even the partial or total sale of their plantations;

- amongst migrants from Burkina Faso (Zongo, 2000): they have been very regular visitors to the region as of the 1960s, following their experience as migrant labourers in other parts of Côte d'Ivoire where the expansion of plantation agriculture was more advanced. They could benefit from government policy which favoured foreign labour migration and settlement as farmers. Occasional returns to their home villages provided an occasion to identify other places where relatives and acquaintances lived and to compare the hospitality and advantages of the various regions. They could then find work with Baoulé migrant and indigenous growers, in a period which saw an intensive establishment of plantations. These initial activities (as unskilled labourers, pieceworkers, day labourers and bousantiers enabled them not only to accumulate a small amount of capital, but also to form privileged relations with future patrons, often by providing free labour or helping weed the local owners' coffee or cocoa seedlings. In this way, they gradually gained access to plots on which they were authorized to grow food for sale or to plant perennial crops, while often continuing to work as contract labourers or bousantiers. Starting as small-scale planters, farmers from Burkina Faso had the great advantage of controlling a cheap labour pool from their families or villages of origin. They were thus able to divide labour between their own farms and those of other farmers, as well as to take advantage of new opportunities for access to land provided by rental and purchase of fallow, taking pledged land and purchase of old plantations. Investment in plantations and commercial food cropping was accompanied by diversification into activities in fields previously dominated by Baoulé farmers: purchasing produce, marketing foodcrops, transport and credit. This new "ethnic sequence" in plantation agriculture in the Côte d'Ivoire clearly lies at the heart of recent socio-political upheavals in the country. The implementation of new tenure legislation, transforming rights of occupation acquired by Burkinabé farmers into rental of land calls into question the strategy and objectives pursued by the Burkinabé in the past. This does mean that the new arrangements cannot work, since the alternative would involve the withdrawal of Burkinabé farmers and would have damaging repercussions on access for other farmers to labour, credit and various other services, which the Burkinabé provide.

## At plot level

Finally, having looked at regional and farm levels, each plot also has its own history, comprising successive cropping and fallow periods, different crops grown over time and tenure patterns, such as successive holders and types of entitlement. Contracts at plot level may remain as originally negotiated, or be transformed into another contract, at the request of either one of the parties. For instance, in Burkina Faso, no new *siguily* settlement arrangements have been made for some decades, but existing contracts had not been challenged before the recent phase of trying to take back land from migrants. In Benin, it is sometimes the tenant who aims to transform rental into sale, by getting the original landowner further into debt. In the same way, in Burkina, it is often the tenant who suggests moving from *lallé* (rental) to sale (*sany-féré*) to make his rights more secure. In north-east Nigeria, borrowing of land has become much more difficult, as landholders no longer want to risk its potential loss to a long-standing tenant. Instead, much borrowing has shifted to rental.

*In the area of earlier agricultural settlement (Burkina Faso) Paré identified six different patterns for institutional change. For the first migrants, the most complete transition has evolved from *siguily/singuely* (settlement/open-ended loan) -> *dondonly* (short-term loan) -> *lallé* (rental) in the farming hamlets or even *sany-féré* (sale) in mixed villages. The move to *dondonly* (fixed term loan) and then *lallé* (rental) comes at the initiative of landowners, while the move from *lallé* to *sany-féré* (sale) often comes at the initiative of the migrant, seeking to secure his holding. There is sometimes a direct transition from *siguely* to *sany-féré* when a migrant, fearing that land will be taken back and having resources available, gets in first and directly offers to purchase the land that was lent to him before.*

Migrants who arrived after the second wave of migration have, nevertheless, sometimes been able to negotiate singularly (open-ended loans) on former fallow with the support of their guardians' network of relations. As monetarization has gained ground, there is often a direct move to *lallé* (rental) and sometimes *sany-féré* (sale). New or second-generation migrants have only had access to land under dondonly (fixed term loan) arrangements and find their contracts renegotiated as *lallé*. In a situation where rents are rising sharply, this type of contract provides no guarantee of stability, as the plot may be rented to a higher bidder. Thus, it is migrants themselves who suggest purchasing the land, thereby further feeding the spiral of rising land values (Paré, pp.49-51).

In the case of Ghana, share contracts have shifted from one activity to another, such as from gold mining and fishing to cocoa, oil palm and citrus plantations. The simple formula of dividing inputs and crop into two or three shares obviously provides a high degree of flexibility enabling adaptation to new opportunities as they arise. The *abunu* and *abusa* systems are dynamic and have been able to evolve to cope with changing relations between land, labour and capital. They also seem able to guarantee secure rights in land. Formerly, the dominant share arrangement was based on division into thirds... Today, the third-based *abusa* is being replaced by division into half shares (*abunu*) in which the landlord commands a half share as land has become scarcer. Some landlords justify this increased share by the fact that the arduous task of converting forest land into fallow no longer exists, since it was carried out by previous generations. A diverse range of crops are now share-cropped and the decision to divide along *abunu* or *abusa* lines takes into consideration the costs of seeds and inputs and the labour requirement of the crop. Scarcity of land and its location are also factors in determining the share. Thus, in the Eastern Region, the *abunu* system has become dominant in tree crops, while in the Western Region, *abusa* still dominates in cocoa production" (Amanor, 2001).

An old arrangement may remain quantitatively dominant long after it has ceased to be used for new contracts. Equally, a particular arrangement may be in a clear majority amongst new contracts concluded, but not necessarily involve a very large area because it is so recent. Everything depends on the dynamics of the land "market". We found systematic renegotiation of land contracts only in western Burkina Faso, as a consequence of particular factors in that area. Even in west-central Côte d'Ivoire, against a background of crisis in the plantation economy and tenure legislation calling into question the land rights of people who are not nationals of Côte d'Ivoire, the position of migrants does not seem to be all that unstable (Zongo, 2000).

## Factors of Change

Several factors may have a significant impact on derived rights, by changing the relative prices of inputs and productivity of the different cropping systems:

- *relative prices of inputs and outputs*: such as during a boom or slump, the emergence of new economic opportunities, or changes in the profitability of a crop;
- *production conditions*: land "saturation", declining soil fertility, ageing of plantations or bringing new areas (*bas-fonds*) under cultivation;
- *new crops or cropping techniques*: which alter the productivity of land and the labour or cash requirements, allowing new areas to be put into cultivation;
- *changes in government policy*: mention has already been made of the impact of slogans such as "land to the tiller"; along the Senegal river, the loss of State support to irrigated agriculture, abandonment of subsidized prices and the establishment of the *Caisse Nationale de Crédit Agricole du Sénégal* (the agricultural credit agency) have caused an enormous rise in production costs and brought to the fore the importance of debt repayments; in Nigeria, agricultural policy has shifted from massive, subsidized support in developing large-scale, mechanized commercial farming to the abolition of all financial support and heavy dependence on imported foodstuffs;
- *changes in the political context*: in Côte d'Ivoire, the system of cash rental of land was beginning to take root in the 1950s (Raulin, 1957) before government pressure to settle migrants replaced it with patron/client relations; conversely, the end of President Houphouët Boigny's policy of support for migrants and the political polarization in relation to identity has encouraged local communities to challenge the conventions that bound them to the migrants. A phase of political instability may further encourage this opportunistic behaviour;
- *migration or the emergence of new stakeholders*: in areas of low population density, migration does not necessarily have an impact on derived rights because migrants can often fit in with local mechanisms of social integration and access to land. Nevertheless, their status as "outsiders" usually restricts them to particular forms of access to

land. However, through their presence, they do contribute towards increased demand for land. The impact of migration is felt mainly in areas of massive in-migration, when the demographic, political and economic balance is upset, when pressure on land is accentuated and when a new generation challenges the arrangements (western Burkina Faso, west-central Côte d'Ivoire). Migrants or new stakeholders may also provoke changes by negotiating other arrangements (e.g. purchase by city-dwellers) or bringing in new ideas from elsewhere. In western Burkina Faso, for example, it is said that sales were introduced by migrants returning from Côte d'Ivoire (Triollet, 1999);

- *changes in value systems:* arrangements should not be interpreted in economic terms alone, but relate to concepts of equity, norms, and what is considered 'just'. The resistance in certain areas to turning land into a commodity, and the desire to maintain social harmony by sticking to earlier agreements between migrants and local people, play an important role in tenure dynamics at local level and partly explain the great local diversity. In western Burkina Faso, it is often when the village chief or the migrants' chief dies that the younger generation challenges past agreements that these "elders" had concluded.

*There have been important shifts in social expectations and domestic organisation in eastern Ghana, which have led to the development of monetised relations between family members. Formerly, it was expected that young men would work for nothing on the family's land, with the prospect of longer term returns in the form of help with marriage costs, and increased access to land and family wealth over time. However, this implicit contract between elders and youth has disintegrated in many areas, due to both sides feeling that their expectations regarding the other had not been properly fulfilled. As a result, youths have withdrawn their labour services from family activities, and prefer to work for cash on a neighbour's farm (Amanor).*

These different factors are often linked: agricultural policy has an impact on prices and technology, altering the relative cost of various production factors and shifting the focus of the various stakeholders between a range of different economic opportunities and associated institutional arrangements. The balance of power between stakeholders is thereby altered, as is their room for manoeuvre in negotiating contracts. When pressure on resources increases, or local people feel threatened by a flood of incomers, the openness and welcome which underpins the patron/client relationship and the accommodation of outsiders tend to give way to harsher conditions of access to resources and a tighter grip by the indigenous community on access to land.

## Processes of Change

How does this changing context bring about changes in arrangements to delegate rights? Such changes in arrangements may reflect:

### *A change in the choice of arrangements available*

This can manifest itself in the appearance of a new type of arrangement, in addition to or in place of another, or in the disappearance of an arrangement (disappearance of open-ended loans; disappearance of rental in west-central Côte d'Ivoire at Independence as a result of government policy, etc.).

Many examples of the appearance of new arrangements have been seen: emergence of rental in western Burkina Faso and in the plantation area of Côte d'Ivoire; the establishment of the tomato *lema* in Benin, etc. Very specific forms are sometimes found, such as *pukudra pakré* (re-opening an abandoned plantation) which although uncommon, reflects farmers' search for institutional arrangements with shared advantages given new circumstances.

### *The emergence of rental in Bodiba Côte d'Ivoire (Koné)*

*There is no corresponding expression for renting ("louer" in French) in the local languages: in Baoulé they say "boloué" (renting the forest), in Bété "louélouéba", in village French they speak of "louage". This form of access has replaced land loans. According to N.A., an elderly Baoulé farmer, "before, you did not rent out, you lent. You got a loan, you cultivated and you gave the owner some of your harvest to thank him. Before, you could grow any foodcrop (but not perennial crops), but now, when you ask for land to rent, you must specify the foodcrop you want to grow and you must not do anything else; otherwise, the owner will dig up anything for which you do not have authorization". Rental arrangements began to emerge on fallow land, as arable land became scarce and demographic pressure increased. N.A. observes that rental is a new phenomenon in Bodiba region: "here, it is only since 1990 that land has been rented for food cropping; elsewhere, it started in 1982".*

**Pukudre pakré (re-opening an abandoned plantation) in Bodiba (Zongo, 2000)**

Faced with the problem of investing the labour needed to bring an old plantation, which has not been maintained for several years, back into production, a new type of arrangement is appearing that recognizes that there will be no immediate return, and follows several phases. The case described here involves a coffee plantation of 2.5 hectares. "Over the first three years which requires considerable labour investment, the "tenant" is wholly responsible for the plantation, with no assistance from the owner, and keeps everything he produces (fruiting should begin again as of the second year). He is free to choose the regeneration technique (simple maintenance, pruning, or severely cutting back). After the third year, the tenant still operates the plantation but under a pledging arrangement (making a one-off payment). Two years later, the pledge becomes *busan* with progressive sharing of the crop (initially a half share for the tenant and then one-third). Once *busan* has been arranged the owner may end the transaction without giving reasons".

There are other combinations, in particular the possibility of eliminating the pledging phase. However, the above combination is the most widespread, mainly because of the role played by the pledge, which provides the opportunity to take advantage of the investment that the tenant has been making in the plantation (in terms of care and maintenance). If the latter is sure of keeping the plantation, he will put in substantial investment over the first few years which are the critical period for regeneration. Such an arrangement requires an ongoing relationship between the two parties. It is negotiated as a whole, with its three phases, although the date of moving from one phase to another may be renegotiated when the time comes. Only the second phase of the contract, which involves a money payment, will be the subject of a written agreement.

**A change in the clauses of an arrangement or methods of negotiation**

- alteration of the rules on sharing (such as from 1/2 – 1/2 to 1/3-2/3; changes in responsibility for input supply);
- increase in the payments demanded; standardization of "symbolic shares" or shift from payment in kind to cash;

In the case of eastern Ghana, the *asoda* payments needed to formally conclude a land agreement have escalated very greatly, both in nominal and real terms. Equally, the fees demanded from witnesses to these agreements have also become more significant, providing an insurmountable barrier for poorer farmers seeking land to farm on a sharecropping basis (Amanor).

**Innovation in charging practices in southern Benin (Edja, p. 81)**

In southern Benin, around Dedomé, the development of rental (*zunda*) is putting pressure on open-ended loans (although they are not being challenged). Lenders are less and less inclined to put up with excuses from borrowers who do not provide the expected gift of farm produce, claiming that the soil is poor and does not give a satisfactory yield. Since 1997, a new way of charging for land that was formerly lent has been tested by landowners. At the end of each season, the head of the landowning family sends a representative to check on the harvest reaped by the tenant. This person collects the payment due, which he sets in accordance with the level of output and which usually represents between one-eighth and one-fifth of the crop. Hitherto tenants were the only judges of the amount of the crop they gave to the landowners, but they now face a formula akin to sharecropping, with a fee in proportion to the harvest and a representative of the plot owner present at the harvest.

- increase or decrease in various forms of assistance provided to the land "giver" and other social obligations;
- tightening or loosening of restrictions on gathering fruits and wild produce, or investment in land improvements;
- systematic resort to witnesses; resort to written contracts.

**Application of an existing arrangement to new cropping systems...**

- rental extending to fallow or *bas-fonds*;
- shift of the principle of third shares (*abusá*) from the mine to coffee and cocoa plantations and then to palm and citrus plantations and food crops (cf. Amanor);
- *abunu* shifting from coffee and cocoa to cassava.

**... or to new stakeholders**

- on the Senegal river, *rempeccem* (share-cropping) was originally confined to former captives before spreading to all social groups;

- in western Burkina Faso, only city dwellers went in for purchase (*sany jéré*) to begin with. Migrants remained within the framework of local procedures governing access to land. In pioneer farming areas, it was migrants returning from Côte d'Ivoire who began to purchase land. Then, in the area of earlier agricultural settlement, well-off migrants began to suggest purchasing land from their patrons to protect themselves against the risk of land being withdrawn;
- civil servants have become interested in getting access to irrigated plots in the Lake Alau area of north-east Nigeria, and in the Bakalori and Wurno schemes in the north-west, through a variety of institutional arrangements.

#### **Developments in busan in Bodiba (Koné)**

*According to the village chief of Donsohouo (next to Bodiba), busan arrived in the region in the 1970s. It was only practised on the coffee plantations "because some people had large plantations, but the share-out was in kind (so many sacks of coffee) rather than money as it is now". The Burkinabé arrived before other migrants from outside Côte d'Ivoire in Bodiba region, but the Malians were the first to practise "busan". The crops involved were coffee and cocoa; nowadays, busan also covers foodcrops like rice. It used to be something only men did, but now women are involved as well. Only outsiders "did busan", but now the indigenous community has taken it up.*

#### **Tenure in Senegalese irrigation schemes: the new role of the GIE (Ndiaye)**

*The involvement of the GIE in plot transfers in Senegalese irrigation schemes is an institutional innovation, designed to resolve problems caused by the indebtedness of its members. The institutional innovation, whereby the GIE takes it upon itself to suspend use rights, the latter being locally but not legally acknowledged, is combined with a change in the parties involved (with the GIE rather than the holder delegating rights) and extension to irrigated plots of arrangements existing on other types of land (rompeccem sharecropping in Mboyo, rental in Guédé Wuro).*

Finally, at plot level, a contract may be renegotiated, leading to replacement of one arrangement with another. This may happen gradually and imperceptibly, as in the case of shifting from symbolic share to fee in kind, or be the subject of explicit renegotiation.

*In west-central Côte d'Ivoire, the "conditional loans" and "sales" which used to be made to migrants are being renegotiated, as derived right, under duress. For example, migrants may no longer be allowed to pass on their plantations to their children or may be required to pay an annual charge. The recent tenure law is driving this trend, as it does not recognize landownership by non-nationals and proposes replacing this with leases.*

*In Burkina Faso, the move from *singuelly* (open-ended loan) or *dondonly* (fixed term loan) to *lallé* (rental) is always at the landowner's initiative, the other party having little option but to accept or lose the plot to someone else. Conversely, it is often the tenants of borrowed or rented land who suggest buying, to secure their tenure. In southern Benin, the move from *zunda* (rental) or *pledging to sale* comes at the creditor's initiative, when the cumulative total of money paid is equivalent to the value of the land.*

#### **Strategies for turning a busan or sharecropping contract into a sale in Côte d'Ivoire (Koné)**

*At the start of the contract, migrants from Burkina Faso are dynamic and hardworking to "keep their employers happy. However, when tending the field, the busantier or labourer will deliberately neglect part of the area. As time goes on this becomes scrub and production drops year by year. The worker remains attentive towards his boss who, faced with falling production, thinks that the field is no longer profitable and becomes discouraged. The sharecropper or labourer waits for the employer to encounter financial difficulties and then suggests, in an apparently disinterested way, that he should sell the unprofitable plantation". When he is convinced, the sharecropper/labourer will suggest himself as purchaser. Once he has taken over the plantation on new terms, he will weed and tend all of it, "including the bits he had neglected. He puts his back into it and the plantation becomes unrecognizable, so well does it produce. The local landowner always falls into the trap, because he is lazy and does not want to work on his plantation. He prefers to be an employer which is considerably more honourable" (Quotes from S.Y., a young Bété from Zahia). We might add that those who fall into the trap are unlikely to have been supervising closely work being done on their plantations.*

Changing the clauses is all the easier since these are based on freely negotiated contracts, rather than based on fixed conventions. To make changes in conventional clauses requires either that new practices should come along and spontaneously become widespread, or that new rules are laid down by, for example, a village chief and these are put into effect (in Burkina Faso, the amount of rental is sometimes set at village level).

Any arrangement stands to some extent at the interface between the interests of the parties concerned and broader rules, which define what is considered legitimate. There can only be enforcement and arbitration if principles or standards are explicit and shared. Innovation in institutional terms comes about relatively easily when it remains consistent with shared principles, which are accepted by the different parties. This is why "drift" in arrangements, such as the importation into village irrigation schemes of arrangements existing in flood retreat agriculture, or the shift of *abusa* from the mines to the plantations and then food crops in Ghana, may be more readily accepted than genuine "novelties". The latter are often borrowings from neighbouring regions (such as the tree plantation contract in Burkina Faso) and external actors (immigrants, indigenous farmers who have migrated elsewhere, sons of the village settled in town) frequently play an important role.

*In the pioneer farming area of Zou, in central Benin, indigenous lineages were accustomed to accepting migrants and settling them in hamlets. When they needed cash, at a time when there was still plenty of land available, they began to sell land. It was their educated kin living in town who became concerned about this selling off of family assets, and suggested establishing a rental system and "lineage land registers" to locate and monitor the migrants who had settled (Edja, 1999).*

One of the limits to local institutional innovation is that, faced with new practices, there is limited capacity to propose, discuss and agree new rules and specify the essential conventional clauses.<sup>48</sup> As a result, monetary transactions and "sales" which are not recognized as legitimate from a local standpoint, take place in semi-clandestine markets with no rules, where opportunistic behaviour is common and which local arbitration systems find hard to handle.

The case studies confirm the great flexibility and capacity for adaptation of derived rights. Such flexibility is vital in environments characterized by uncertainty and rapidly changing social relationships. In most cases, there does seem to be sufficient local capacity for institutional innovation to tackle new issues and opportunities as they arise. It is as new rules emerge that blockages may sometimes appear. These also relate to the more general problem of local governance and systems of authority relating to tenure, a fundamental issue which goes beyond the question of derived rights.

What causes the changes in institutional arrangements found in different contexts? How do these transformations come about? Observations at the research sites show the tension between maintaining long-standing arrangements between two parties, providing each of them with a degree of security in terms of expectations, and the need to keep other options open. Landowners may wish to withdraw from an arrangement following a change in circumstances, such as a better offer from another farmer or a need for cash. This type of withdrawal may, however, prove to be very difficult to achieve, due to the relationship which has developed over time between the two parties. It has been known for fields to be taken back, as in Burkina Faso and Côte d'Ivoire, where some migrants have been forced to leave the land they were cultivating. Of course, such action engenders considerable hostility and resentment, as well as the risk of violence. To avoid this type of conflict, it is more common for land to be taken back on the death of one of the parties to the contract, this being a more natural point at which to break off an arrangement.

<sup>48</sup> On Mohéli, in the Comoros, plantations are being abandoned and employment contracts terminated (many labourers are migrants originating from Anjouan) as a result of the crisis in cash-cropping. Local people are reluctant to loan land, as the only available arrangement is a free loan for food crops and clearance techniques are sometimes environmentally destructive. One way out would seem to be the establishment of a rental arrangement, providing security for both parties, allowing cash cropping and including criteria in respect of clearance. However, such innovation will not necessarily come about spontaneously (Lavigne Delville, 1999).



## CHAPTER III. ARE DERIVED RIGHTS INSECURE?

*"A necessary but not sufficient condition for effective management and investment in natural resources, security of tenure is many-faceted and changeable. Within local land-use and social systems, it is the product of social interaction: security results from coherence between an individual's behaviour and the social norms of the group in which that individual moves. Conversely, where there is competition for resources and land-use is guided by modern tenure rules, individuals are also increasingly seeking security by means of formal title and written recording of transactions. These two types of mechanism are not exclusive, but constantly inter-relate and are used in a flexible, opportunist manner in stakeholders' practices and strategies" (Mathieu, 1995: 58).*

Because they are temporary and usually the subject of verbal contracts, derived rights are frequently considered as insecure. As a result, the State often seeks either to abolish them (by declaring that "anyone who cultivates a plot for three years becomes the owner of it") or to control them, by codifying the forms which are considered to be lawful and determining the level of charges. Reality is more complex. There is no mechanical link between derived rights and insecurity of tenure. A tenant may have security of tenure on plots where he has only derived rights. Conversely, an "owner" or holder of lineage land rights may be insecure if the "tenant" is able to claim permanent rights over borrowed land and obtain judgement in his favour. It is therefore necessary to clarify the term "insecurity" and analyse whether and to what extent derived rights are a source of insecurity, in what form, for whom and under what circumstances.

### I. CLARIFYING THE CONCEPT OF SECURITY OF TENURE

#### A Relative Notion

The concept of tenure security does not have a strict definition. It reflects the idea that producers will only invest labour and capital in land if they have a sufficient guarantee that they will be able to enjoy the fruits of their efforts: harvest in the short term, guaranteed use rights in the longer term and rights of transmission to the heirs. In a derived rights relationship, the security of one party may go hand-in-hand with that of the other (the one being assured of his long term ownership rights and the other of access to the plot for a given time). On the other hand, the clauses in some derived rights arrangements may strongly favour one party or encourage opportunistic practices by one party at the expense of the other.

*Bruce and Migot-Adholla (1994: 3) define tenure security as a situation where "the holder of a plot of land considers himself entitled to manage and use his plot, dispose of his crop, engage in transactions, including temporary or permanent transfers, without hindrance or interference from individuals or legal entities". But this explicitly regards tenure security as the equivalent of individual private ownership, which limits the analysis.*

The ability of a person to take advantage of access to land or a given resource, depends on the nature of the rights held:

- the *content* of the various rights held over that plot or resource (rights of use: access, offtake and management; or rights of control: exclusion and disposal)<sup>49</sup>;
- their *time frame* (all or part of an annual cycle of use; fixed term or open-ended; transmissible or not);
- their *origin* (inherited, acquired through clearance, borrowing, purchase, allocation by the head of family, allocation by the State, etc.).

Whatever the nature of these rights, their security rests on the ability to assert them effectively and the assurance that they will not be challenged or that it will not be too difficult or costly to have them acknowledged in the event of dispute. *The crux of tenure security is not therefore so much the nature of the rights held by the individual or*

<sup>49</sup> Cf. Le Roy, 1997; Ostrom, 1990 and Schlager and Ostrom, 1992 for a definition of these various types of rights.

group as *the fact that it should not be possible for such rights to be suddenly disputed or challenged* and therefore that they *should be acknowledged as legitimate and, in case of need, be defended by arbitration bodies* (whether customary, administrative or judicial). This means that legal ambiguity or the failure of arbitration bodies can also be sources of insecurity.

Security of tenure is therefore necessarily a relative notion: there are various levels of security of tenure, which are not degrees on a linear scale. The insecurity of any given type of arrangement is greatly dependent on the social relations between the parties involved. This means that security of tenure is as much a question of risk assessment by the individual as an objective fact.

*During the dry season, the Keur Seib Ndiaye bas-fonds, in the Thiès region of Senegal, was used for market gardening under various derived rights arrangements. A plan to build a dam provoked conflict, as the market gardeners were worried about access to land afterwards. In actual fact, those from the village or neighbouring villages were unconcerned. As they were related to those with land rights, they felt secure. It was market gardeners from Thiès renting land from farmers with whom they had no family ties or alliances who were worried about being expelled or facing big increases in rent (Enda-Graf, 1995).*

For all these reasons, rather than trying to establish the degree of tenure security, it is more useful to look at forms of insecurity and examine whether such and such an arrangement is a source of insecurity, in a given context, for whom and how.

## Precariousness and Insecurity

Strictly speaking, a short term contract (loan or rental for a year or season) is not insecure: insecurity is not a matter of the actual content of the contract but of the risk that its clauses will not be observed. It might be a *precarious contract*, as a result of its short duration, but it may be renewed from year to year. Even with short term contracts (whose clauses make them precarious), the user himself is not necessarily in a precarious tenure situation, if such contracts are renewed regularly or if, should they be broken, he can relatively easily renegotiate another one elsewhere. In other words, precariousness and insecurity are not the same thing. Such a contract is only a source of insecurity if it can be challenged in mid-stream, or cancelled when it is too late for the user to find an alternative.

As Lund has made clear, "it is all too easy for an outsider to misunderstand the nature of types of tenure systems, by attempting to measure their security in terms of "distance" from full private ownership. As Platteau points out, "if ownership has no social legitimacy, it is not ownership at all because it is missing the vital ingredient: recognition by other people" (1995, p. 46). In other words, it is not the fact of being "private" that makes landownership secure ... Of course, social contracts are liable to evolve and change and private forms of landholding may become more generally legitimate and thus more certain" (Lund, 2001, p. 18).

Economic uncertainty can also make tenure more precarious, when the user is obliged to accept less favourable arrangements because he cannot meet the conditions demanded for the others. Equally, tenure may become more precarious when, faced with a pressing need for money, the user is obliged to pledge (or even rent out) some of his land, thereby undermining his economic base. This is the case for certain plot holders in northwest Nigeria, who must let out part of their irrigated land to raise the cash required to cultivate the remaining part. Thus, in Rwanda, the sudden acceleration in differentiation in tenure status during the 1990s was the result of crisis in the family economy and increasing numbers of distress sales (André and Platteau, 1996).

The precariousness of an arrangement is thus a matter of its duration and especially the terms of renewal. There is insecurity when there is a risk that agreements will not be kept (withdrawing the plot without notice, unilaterally breaking the contract, etc.) or when insufficiently precise clauses make that a possibility. An open-ended loan where there is a right to take back the land is neither precarious nor insecure. It only becomes insecure if the land can be taken back without the recognised length of notice.

## Legal, Institutional and Contractual Insecurity

There are different kinds of tenure insecurity which do not have the same practical implications.

### Legal insecurity

In rural areas, rights held by rural communities do not enjoy the legal recognition which is reserved for registered land.<sup>50</sup> This means that local rights (whether rights of appropriation or derived rights) have no legal existence. Virtually all rural communities find themselves in this situation of *legal insecurity*. However, such insecurity only has practical consequences when competing claims, relying on the law or the State, come along, such as when claims of ownership are made by a "tenant", city dweller holding land title, expropriation by the State, etc. In several countries, the slogan "land to the tiller" has been a source of considerable insecurity: tenants have used it to claim rights of appropriation against the interests of customary rights holders. In response, the latter have reduced the duration of loans, making short term loans the norm and moving tenants onto different plots from one year to the next, thereby making the tenant's situation more precarious.

Many people think that the 1978 Nigerian Land-Use Act generated considerable insecurity with regard to land rights. The Act gave the government powers to expropriate land against payment of derisory compensation. Those in favour of the policy claim that the customary tenure system was hindering the expansion of farming, due to lack of tenure security, fragmentation of plots and inability to obtain credit for landholdings. Therefore, the 1978 Act nationalized all land rights, including mineral rights, ownership of the land being held by the governor of each State. The main impact of the decree was to deprive former owners of their wealth and land rights, while considerably reducing the costs and difficulties encountered by the public authorities in expropriating land (West, 2000). In south-eastern Nigeria, there is great insecurity over tenure in peri-urban areas, because the government is constantly taking land in order to hand it over under licence to the oil companies and as a result of the rapid rise in land prices, which encourages owners to terminate agreements made with their tenants, so as to transfer the land to a higher bidder. The Act created a high level of insecurity amongst holders of plots under derived rights arrangements (Francis, 1984:23). At the same time, all parties experienced considerable uncertainty as regards the intentions and possible changes of government policy, thus encouraging maintenance of customary arrangements (*ibid*).

#### *When legislation exacerbates clashes between stakeholders (Paré)*

*The basic pillar of the Agrarian Reform Act [1984 version] in Burkina Faso is the expropriation of the rights of customary landowners. Theoretically, the latter thereby ceased to exercise any power whatever in respect of land management. Many migrants seized the opportunity either to call for permanent use rights or to challenge existing contracts stipulating that occupied land must be abandoned if the holder of customary rights had need of it. This situation led to an increasing number of conflicts between indigenous and migrant communities. New requests for land by migrants began to come up against the hostility of the former who started taking back more and more land. The fear of losing their long-term land rights took precedence over maintaining good social relations with migrant settlers. Taking disputes to the local government official, who took his cue from the Act, exacerbated the situation by tending to support the migrants' claims. Rather than providing greater security for producers, the Act actually increased the number of conflicts in some places. The psychosis created by enforcement of the Act still remains and partly explains the precarious nature of most forms of tenure today.*

### Institutional insecurity

Another source of insecurity may be classed as *institutional*, which arises from the dysfunction of land-use management institutions and arbitration bodies. Recent analysis of the tenure issue has highlighted the role of arbitration bodies in generating insecurity and the increasing number of conflicts. The multiplicity of norms arising from the contradiction between local rules and legislation, along with the many different parties who can play a role in tenure decisions, lead to uncertainty about which rules should apply in a given context. Everyone will take disputes to the body he expects to be most favourable, and then appeal to another source of authority if decisions have gone

<sup>50</sup> The situation in Ghana is not so clear cut, due to recognition of customary chiefs and their powers regarding land.

against him. This situation encourages opportunistic behaviour, claims based on different grounds, and power struggles. Institutional insecurity is a structural characteristic of land tenure in rural Africa, which may be more or less marked from place to place. It has consequences for derived rights, favouring one or other party depending on the local balance of power. Institutional insecurity weighs more heavily on arrangements subject to varying interpretations (such as unlimited loans, etc.) than on those where problems with interpreting clauses or enforcement are limited (rentals, share-farming, etc.).

Land brokers have become important players in this context of uncertainty regarding access to land, as well as the grounds on which court decisions are based. These brokers help to guide people through the maze of institutions and procedures – customary and statutory structures, legal measures and informal pressure groups. In northern Burkina Faso, this activity provides some operators with a good source of income (Lund, 2000). Moorhead (1996) describes for the inner Niger Delta of Mali a similar set of issues and opportunities for those able to make money from people seeking government assistance to assert their tenure rights. He sees the apparent confusion of the process and structures as a concerted attempt to create “organized chaos” from which officials can then benefit as brokers.

*In many cases, difficulties in enforcing rights, the risk of opportunistic, illegitimate claims and the failings of systems of authority and arbitration play a major role in insecurity of tenure. The absence of a shared reference as to what constitutes a legitimate claim means that people can assert a wide variety of claims.*

### **Contractual insecurity, due to incomplete clauses**

A further possible source of insecurity, which may be classed as *contractual*, concerns the arrangements themselves and the vagueness of particular clauses or procedures for establishing the contract. For example, where open-ended cultivation rights are allocated, the right to take back the land or, at least, the way this could be done is not always explicit: under what circumstances could the right be exercised? So long as the relationship between the protagonists is good, there is no problem: a land “giver” who needs the return of his plot will advise the user, try to suggest another plot or perhaps help him to negotiate one from a neighbour. Conversely, when relations become tense, the lack of precision about giving adequate notice can lead to expulsion at the beginning of the growing season. In the past, there was little need to specify such clauses, but this is becoming crucial nowadays.

#### **Conflicts over bas-fonds in Bodiba (Koné)**

*An official questioned by Koné referred to disputes over bas-fonds in Bodiba. “When the Baoulé came here originally, they took the upland area which was suitable for coffee and cocoa. They didn’t want the bas-fonds. Now, they’ve gobbled up everything and have nothing left to grow food, so they’re coming down to the bas-fonds. The Gban object, saying “we gave you the upland, not the bas-fonds”. Clauses in the original arrangements were not very precise because such land was not an issue at the time. The growing importance of the bas-fonds means that it is necessary to spell out the exact content of the arrangement and whether or not the transfer of bas-fonds formed part of it.*

#### **Leaving clauses unclear (Koné)**

*When contracts are negotiated or concluded, it is quite common to omit (deliberately or unintentionally) one thing: what is not allowed when cultivating the land. In principle, the owner should provide the tenant with a list of taboos, but in reality not everyone does and may take advantage of this later to swindle the borrower, as evidenced by a Gban village chief: “If you are given land, you are not told about all the bans and totems, but if you are caught going after a woman in the bush, for instance, you have to pay something or, if you are an outsider and cannot pay, you will be driven away.”*

New arrangements, coming neither under conventions sanctioned by “custom” nor clear government rules, are the most exposed to this type of insecurity. This applies to land transfers in Burkina Faso: although common in some areas, these disguised sales remain illegitimate as far as custom is concerned and illegal as far as the law is concerned. Commercial transactions take place in a “grey market” which encourages manipulation:

■ The actual content of the transaction is not always explicit, maintaining uncertainty as to the rights transmitted: is this a “true” sale, with transfer of ownership and extinction of all the assignor’s rights, or a long-term assignment of rights of use? This vagueness may allow for various interpretations by the different parties, leaving considerable room for conflict.

**Cheating over PVPs (Fallet, 1999)**

*Around Bobo Dioulasso, in the 1960s, PVPs (minutes of discussion) were often used by urban dwellers to seek registration of land for which, in the eyes of the indigenous "givers", only the right of use had been ceded.*

- Land transfers may be made without the knowledge of other family rights holders, thereby increasing the risk of challenge when the sale is discovered and hence the risk for the purchaser; although often carried out by the head of family, these transfers are in some cases organized by younger family members (Baud, 1999). This issue is all the more sensitive in that land is usually controlled by family groupings, rather than possessed by individuals, who cannot cede the family land on a long term basis – let alone dispose of it – without consulting others in the family (cf. introduction, point 2). This raises the question of the terms on which an individual, even a head of family – can commit himself to a land sale.
- In the absence of transparency, the same plot may be rented or sold several times (Lund, 2000). In north-western Nigeria, two cases were found of the same irrigated plot being rented to two different farmers. In the first case, as the landowner had received a better offer, he had cancelled the previous agreement and forced the tenant to take back the money he had paid. In the second case, the tenant had noticed that the plot he had rented was being cleared by another party who had subsequently offered the owner more money. The local alkali court of justice decided that the first tenant should be able to have access to the plot, without compensating the second tenant for clearance, in view of the fact that the latter could not produce any witnesses to the agreement (Mamman).

*In the Banwa region (western Burkina Faso), confidentiality surrounding negotiations is sometimes used by owners to arrange several rentals simultaneously. According to the préfet of Kouka, "there are problems at present between migrants as a result of the behaviour of certain landowners. Some of them rent out parts of their land for a period. However, if meanwhile they find a higher bidder or get into financial difficulties, they will arrange further rental without pointing out to the new tenant that the plot is currently rented by another. The person working the land is not informed of the new contract either. Conflict then breaks out between the two tenants at the beginning of the rainy season. The plot owner will plead selfishness to justify the new contract. At that time of the year, he can no longer afford to repay the money. (Zongo, 1999)*

In many cases, these forms of insecurity do not necessarily cause problems so long as the protagonists act in good faith. Certain arrangements contain clauses which help to limit opportunistic behaviour, but this is not sufficient when the context (a multiplicity of norms and the failure of arbitration bodies; tenuous social relations between stakeholders) encourages such behaviour and advantage is taken of flaws and obscure points. The reason for drawing up written contracts is precisely to guard against such opportunistic practices.

**Playing on words and making use of land surveys in Côte d'Ivoire**

*Throughout the forest zone, the work of the pilot Rural Land Plan (Plan Foncier Rural), designed to identify all existing rights (whether customary or statutory), highlighted not only the ambiguity of rights held by non-local farmers over their plantations as a result of tenure transactions, but also the use made of such ambiguity by the various groups. In this area, where transactions are monetarized to a considerable extent, the rights of "outsiders" may cover not only transfer of occupation, administration and transmission, but even alienation, of land. These rights are coupled with the obligation of "gratitude" towards the "guardian", which must continue to be recognised by those inheriting or those taking over the land which was the subject of the original transfer. These transfers are described locally in various ways, sometimes as a "sale", sometimes as a "gift" or a "loan", depending on how the speaker wishes to interpret the transaction, whether it involves not just the trees but also the land itself, and on how far he wishes to maintain the guardianship arrangement. These different terms should not be taken as corresponding to similar terms from the European legal context. When used in the Rural Land-Use Plan surveys, these terms were deliberately exploited by different local interests, as a means to shift the local balance of power, and in the hopes of achieving a renegotiation of certain terms and contracts. The recent socio-political situation and the enactment of new legislation favourable to the claims of indigenous parties have contributed towards widespread calling into question of the validity of land transactions entered into with outsiders.*

## II. DELEGATING RIGHTS AND INSECURE TENURE: EMPIRICAL FINDINGS

### Types of Tenure Insecurity Found

The case studies reveal several cases of insecurity, but by no means all of them relate to systems of delegating rights: in some cases, it is people in intra-family relationships who lack security (members of the family settled in towns in southern Benin; young people establishing plantations on family land in Ghana). Sales and other transfers also explain numerous instances of insecurity, especially multiple sales. In many cases, except where there is rising social tension, such as areas with long-standing migrant settlement, systems of delegating rights do not cause particular insecurity.

- In the Senegal river valley, the legal status of a person to whom an irrigated plot is allocated is not very clear in the eyes of the law. However, by consensus, allocation is seen locally as a permanent, transmissible right of appropriation, subject to payment of water and maintenance charges. The only source of insecurity for the plot holder is the risk that in the event of a poor harvest and inability to re-pay debts, his right of use may be suspended by the GIE and given to someone else. Some of the farmers who have an irrigated plot are well placed in social and economic terms and keep the plot for years. Others apparently change frequently, probably due to weak links with GIE officials.
- In eastern Ghana, share contracts are very widespread, but are not particularly associated with insecurity. The shift from share of product, to share of the developed plantation land has removed some measure of uncertainty in the relation between landlord and tenant, since the landlord no longer needs to fear the tenant is surreptitiously harvesting part of the crop. Equally, land acquired by this means does not form part of the matrilineal estate and, hence, can be passed on or sold without the wider family asserting claims to it. Nevertheless, disputes over land are frequent, with different members of the family contesting the rights of elders to dispose of land. The use of *aseda* payments and their rising value provide a measure of security for both parties, since they confer formal recognition by lineage members and witnesses of the contract. While written contracts have become increasingly common, this does not itself reduce the insecurity since the right to draw up such contracts can be challenged. In the case of Ghana Oil Palm Development Corporation, contracts can be terminated if sharecroppers fail to conform to the terms, such as repayment of credit, and all sales of the harvest to the oil palm company.
- In the densely settled Upper East Region of northern Ghana, loans and short term leasing of land are common. Insecurity arises when the heirs of a landowner want to take back land lent out previously. Custom demands that the tenant be given time to make other arrangements, with portions of the land borrowed being given back over a period of several years. In the less densely settled areas of northern Ghana, the 'traditional' arrangement persists, whereby incoming strangers gain rights to cultivate land through becoming members of the land holding community, and maintaining relations with their host family and land chief.
- In Burkina Faso, in the area of earlier agricultural settlement, the lack of available land places young members of the indigenous community, whose family holding is sometimes no longer sufficient, in a difficult situation. Challenges to former arrangements for accommodating migrants have led to a process of withdrawing land and transformation of the arrangement into a short term loan or, increasingly, rental. The rapid increase in rental charges is putting the poorest households, for whom the price may represent a serious constraint, in a precarious situation (Baud, 1999). The dynamics of this process are different in mixed villages and migrant hamlets (it is more difficult for local people to recover their land in migrant hamlets) and depend on the economic status of the migrant: those who have a firm economic and social base do not feel insecure. Tenure arrangements are going through a phase of restructuring, which is tending towards increased uncertainty for the least well-established farmers from outside the area. Renegotiation is taking place against a background of tension, with the avowed aim of making migrants' position less secure. Those who can afford it are trying to purchase the land they are currently cultivating under derived rights arrangements.
- In west-central Côte d'Ivoire, insecurity relates mainly to "gifts" or "sales" to non-locals and especially non-Ivorian migrants, who are now faced with threats of straight-forward withdrawal of landholdings or renegotiation of the rights assigned. Sales of the same plot to many different buyers, as well as sales by someone who is not the legitimate holder, seem to be less common than twenty years ago. Rentals seem to be the least, and *abusu* contracts the most affected by opportunistic manoeuvres by either party. Disputes between owners and *bousantiers* are sometimes submitted to the *sous-préfet* for arbitration.

- In the Port Harcourt area of south-east Nigeria, the land market is very active. The main risk for a tenant is that the "landlord" will sell the plot he cultivates without telling him. Problems tend to arise on the death of the landowner, when his heirs want to take back the land. The degree of precariousness experienced by tenants depends on their status: the worst off are migrants who are looking for work in Port Harcourt and, in the meantime, want to borrow a plot to cultivate. The position is also difficult for the children of migrants in the neighbouring town of Obigbo, but who have to confront the greed of the children of their parents' benefactors who are now trying to take back the rented land.
- In the Sokoto region of northwest Nigeria, landlords may rent out their land to more than one tenant, hoping thereby to gain a higher rent. Equally, tenants may try to assert claims over land which they have been cultivating for some years, on the basis of rights acquired through occupation. Some landlords employ land agents, or brokers, who play an active role in monitoring how tenants behave, to ensure they conform to agreements.
- In the Lake Alau area in north-east Nigeria, tenants on upland farms are secure so long as they continue to pay the traditional tithe, or *butu*, which is given publicly to demonstrate the landlord's continuing rights. Insecurity is greater on the higher value plots of irrigated land, particularly when rented out to those from the neighbouring city of Maiduguri. In some cases, tenants may 'sell' their plot to others without the landlord's knowledge.
- In southern Benin, the various forms of delegation of rights are not really affected by insecurity. The main uncertainty relates to pledging, as the creditor does not know if and when the pledger might repay his debt and recover his plot. Another form of insecurity is experienced by family members settled in town, who prefer to rent their plot out to a third party rather than risk having one of their brothers take it over. In this case, delegating rights is a way of achieving greater security of their land.

It is not possible, therefore, to establish a definite link between derived rights and insecurity. In many areas, insecurity related to derived rights refers to legal and institutional insecurity affecting all tenure rights (although derived rights are generally more sensitive). Contrary to our initial suppositions, insecurity related to derived rights is apparently not as great as might have been thought, as a number of factors help to reduce risks significantly. These include short duration of the contract, arrangements leaving little room for opportunism, and mutual interest in contracts involving co-operation. Nevertheless, some arrangements, especially those which come close to being sales, do carry within them potential insecurity.

Wherever you go, however, it is first and foremost the social relations between parties to the contract which guarantee the security of the arrangement. At regional level, it is only in the area of earlier agricultural settlement of western Burkina Faso and some forest regions of Côte d'Ivoire that serious insecurity can be seen. Even then, this arises more from ongoing socio-economic restructuring and political change than derived rights in themselves. Moreover, it is very variable on a micro-regional scale: in some villages, the desire to preserve social peace and comply with former arrangements helps to reduce conflict. In addition, it is possible that the dynamics of land withdrawals in that area of Burkina Faso reflect no more than a temporary phase in which rights are restructured prior to renewed stability of the tenure position.

Another type of insecurity comes from tension between individual and collective interests within the family group. This can be seen where an individual who invests in family land is not certain to enjoy the fruits of his efforts (as in Ghana, Amanor), or when an individual can assign part of the landholding in secret to the detriment of the other rights holders. Equally, the head of family may prefer to rent out land to an "outsider" rather than assign it to younger members who would have hoped to cultivate it themselves. In Burkina Faso, as in Côte d'Ivoire, younger members of the indigenous community seek to exclude "outsiders" from gaining access to land in order to secure their own claims, leading to description of the rental market as "ethnically segmented".

## Factors Exacerbating Risks of Insecure Tenure

### The monetarization of tenure arrangements

In the face of increasing monetarization of the local economy, local people are trying to increase the revenue earned from those dependent on them: increasing charges and making them more systematic, rather than merely symbolic, stepping up miscellaneous demands or even moving outright to rental, so as to have regular income (Port Harcourt area; western Burkina Faso). This rush for money-making also encourages opportunistic practices, such

as over-turning an agreement when a third party makes a higher offer or renting the same land twice. In south-east Nigeria, peri-urban land prices are rising rapidly. Tenants are frequently faced with demands to quit on the death of the landlord, since his heirs wish to sell or rent out the land at a higher price.

**Market relations disrupt stable tenure relationships (Paré)**

*As land has acquired considerable market value, local landowners now calculate in terms of profitability. Why sell land which could bring in annual revenue? Why lend land which could provide a regular rental income? Why commit to the long term and tie oneself to a fixed price when rising demand for land is bringing escalating prices? How could one turn down the attractive offers which often come from the land borrowers themselves? This situation encourages landowners to take advantage of all opportunities offered by increasing demand for scarce land.*

## Generational changes in areas of mass in-migration

Where in-migration is substantial, generational changes can result in challenges to former arrangements: worried about their future because of the scarcity of land, the sons of local families reproach their fathers for selling off the lineage landholding and seek to renegotiate arrangements that the latter had concluded, either to exclude "outsiders" altogether, or to make them pay rent. They seek thereby to:

- put a clear time limit on the contract duration and thereby avoid any claims by the tenant to landownership;
- earn cash income, as an alternative to selling the land;
- reinforce rights of appropriation and control over these areas.

Conversely, sons of migrants are starting to reject the conditions connected with the patron-client relationship linking them with the land rights holder and call for ownership of the land to be vested in their hands, given that they have been cultivating it for a decade or more. Any vagueness about the clauses of the contract agreed between their fathers (particularly about the right to take back the land) is then used to justify conflicting claims on either side. The process is all the more brutal where, as in parts of western Burkina Faso and some forest areas of Côte d'Ivoire, the mass accommodation of migrants by local people was more or less imposed on them by their respective governments (Chauveau, 2000).

*The area of earlier agricultural settlement of western Burkina Faso provides an archetypal example (Paré, 2000; Baud, 1999). Against a background of growing tension, a process of land withdrawal is in progress, often with no notice given, aimed at forcing migrants to agree to rent plots which used to be freely lent to them. Rental is spreading rapidly, although the overall picture hides differences between villages. It is often the death of the village chief, who had settled the migrants or of the migrants' chief that triggers the breakdown. Conversely, where both are still alive and wish to maintain good relations, the situation remains stable.*

This scenario seems to be specific to areas opened up for farming after independence, where settlement was strongly encouraged by the State, where the slogan "land to the tiller" encourages tenure claims by migrants and where there is acute shortage of land. Elsewhere, mechanisms ensuring the social integration of outsiders through marriage into the local community continued to bring about peaceful assimilation of migrants.

## Changes in the political context

Changes in the balance of power between stakeholders, when migrants become numerically dominant or are seen as being economically dominant, encourage challenges. National policy may also play an important part. In Côte d'Ivoire, the crisis in the cocoa industry, as land reserves were exhausted and prices collapsed, coupled with rhetoric about national identity in pursuit of party political ends, encouraged local groups to challenge the status of in-migrants, whether nationals of Côte d'Ivoire or not (Chauveau, 2000). In Niger, announcements about the forthcoming Rural Code, which envisages recognition of customary "ownership" on request, triggered early efforts on the part of different groups to demonstrate that they were the "owners": land rights-holders have tried to step up or impose charges which, in some cases, they had not been collecting for ages, while users try to escape them (Lund, 1993; 1998).

*In the case of Nigeria, the Land Use Act of 1978 abolished customary dues between tenants and landlords, creating considerable uncertainty regarding the rights of each party. However, in practice in most places such*



*payments have continued, regardless of the law (Francis 1984). The Ghanaian Aliens Compliance Order of 1970 brought a massive shift in land and labour relations in the cocoa sector. This led to the expulsion of several hundred thousand Sahelian migrants who had provided much of the workforce for establishing plantations, both as labourers and as sharecroppers (Adomako-Sarfoh, 1973).*

Derived rights are not insecure in principle. Case-by-case analysis is essential to determine whether there are cases of precarious tenure, what they consist of and which stakeholders suffer from this. A good grasp of the context and the content of arrangements helps to identify the key aspects of tenure dynamics and the causes of insecurity against which different groups seek to protect themselves.

### III. MAKING ARRANGEMENTS MORE SECURE

Faced with these various types of insecurity, rural communities do not remain passive. Various ways of achieving greater security have been identified, on the part of both “givers” and “recipients” of land. These practices sometimes converge on a shared interest, thereby contributing towards stability in tenure relations, or they may clash, one party becoming more secure at the expense of the other. Security of tenure also depends on how stable is the economic or socio-political position of the parties. Even in areas that have received a large number of incomers, migrants who have been able to establish an economic foothold in the local area and develop relations with people in local government are not likely to be threatened with land withdrawal.

#### *Achieving security through social relations between parties*

In general, contracts delegating rights are not established at random. Parties prefer to make arrangements with people close to them, to whom they are linked by kinship, marriage or patronage, as this should protect against opportunist behaviour and makes arbitration easier. For “outsiders”, marrying into a local family is still an effective means of achieving both social and tenure security. This type of security is often embedded in networks of inequality and dependence, meaning that it has both advantages and costs. Dependent relations may also be inverted, a better-off outsider willingly lends money to his patron, encouraging the latter to become dependent in order to gain access to land in return.

*“Although arrangements are entered into through negotiation, it is the quality of the social relations between parties (assistance provided, etc.) that maintains them, determines how long they last and, finally, represents the main factor of stability or challenge” (Paré).*

In some cases, however, attempts are made to avoid land transactions being conducted between close kin; someone will negotiate access to land outside the family group or prefer to assign land to an outsider rather than a relative, to prevent kinship relations clouding a contractual deal.

*In southern Benin, when someone has land but does not live in the village or has to go away for a while, he will usually rent it out. In so doing, he is trying not only to earn money but also to ward off attempts by family elders to grab the plot and take advantage of his absence. In this arrangement, the landholder may handle his links with the tenant directly or give the task to a resident (Edja, p.39).*

*In several of the case study sites, landowners were particularly keen to avoid contracts with close kin, because of the likelihood of relatives taking advantage of their position, and asserting stronger claims over the land in question. In the case of eastern Ghana, landlords must balance this risk against the desire not to alienate family land for long periods to strangers. One solution has been to formalise contractual terms between kin, through the establishment of share contracts which are then subject to aseda payments and witnessed by the larger kin group.*

#### *Achieving security by means of restrictive clauses*

By restricting the rights granted to the “tenant”, the “owner” safeguards himself against appropriation claims. According to custom, it is the ability to trace the origin of rights back to first clearance, or purchase, which legitimizes rights of appropriation. For the owner retaining some rights (e.g. gathering, planting trees, digging wells, etc.), asking the tenant to give him a few bundles of grain every year as a symbol of dependence or renegotiating the

transmission of land to the tenant's heir, are ways of making it clear that he retains the underlying rights, however long the land may have been delegated to another. This is the well-established rationale for bans on planting trees or digging wells on land delegated to someone else. It is also the rationale for the "symbolic share" paid by the farmer as an annual acknowledgement of the origins of his right of use.

*These restrictive clauses are often misinterpreted. Not understanding the reason for these clauses, some researchers have interpreted an absence of investment by the "borrower" as proof of insecure tenure. Restrictions do sometimes reflect a wish to keep tenants in a precarious position but, in many cases, they represent first and foremost the strategy by the land-rights holder to retain control over the land.*

#### **Achieving security by increasing non-contractual payments**

Faced with the risk of an arrangement being challenged, "tenants" themselves may increase the material and financial services provided to the person who has granted them use rights.

#### **Achieving security through consolidation of status**

As insecurity of tenure is uncommon amongst powerful stakeholders, developing one's economic position in the local area and strong relations with local leaders and within government structures are ways of putting people in one's debt locally and having support available, if need be.

#### **Achieving security by proposing different types of contracts**

In Senegal, Burkina Faso and Niger, reducing the duration of loans is, at the outset, part of a strategy to provide security for rights-holders faced with the risk of their land being claimed by the farmers they have settled upon it. In western Burkina Faso, faced with threats to take plots back, migrants who can afford it will suggest purchasing the plots they farm. This also happens in south-eastern Nigeria, where tenants attempt to purchase the plots they farm. The case of younger farmers in eastern Ghana, who prefer to gain land from non-kin through share-cropping arrangements, is a similar strategy to avoid the risk that others may lay claim to the fruits of their hard work. In north-east Nigeria, owners of irrigated plots have been opting for short term tenancies to avoid land users claiming firmer rights.

#### **Achieving mutual security by partial conclusion of sales**

In forest areas of Côte d'Ivoire (Koné, Chauveau et Bassérie, 1999), sales are noted by means of an "agreement" which marks the beginning of the transaction, but they are rarely concluded. The partial nature of sales relates to the strategies of both parties to secure their position. The seller, not having received the totality of the sum due, seeks to retain the right to take back his plot (enabling him to demand regular additional payments from the purchaser). The buyer avoids paying the entire sum, for so long as he has not made use of the whole area purchased. When everything has been planted, if the balance has been paid, the sale is considered as finally concluded.

#### **Achieving secure arrangements by means of witnesses**

Resort to witnesses is almost universal in respect of contracts involving money. Each party calls one or two witnesses who guarantee the existence of the transaction and its content. In some cases, this happens in the presence of the village chief, as certifying authority. Allocation of plots at the general assembly, described by Ndiaye in the Senegal river valley, comes under the same principle, the assembled farmers acting as collective witnesses.

*In Eastern Ghana, share contracts are usually made before witnesses and sealed by the aseda or thank you payment made to the landowner. Witnesses are also rewarded for their services, receiving from one-fifth to one-third of the aseda payment... "These aseda payments mirror conventions surrounding gifts of land, i.e. presentation of a substantial sum of money before witnesses" (Amanor). In south-eastern Nigeria, parties to a contract often wish to have witnesses to their agreement, especially a customary chief, while not forgetting that people can move away or die and it is not therefore always possible to rely on them to guarantee fulfilment of a contract (Anikpo).*

#### **Choice of witnesses and strategies to achieve security in Dedomé (Edja, pp.88)**

*The choice of witnesses (two or four of them) is not made at random but in accordance with the degree of security required and the level of insecurity felt when embarking upon an arrangement. For the owner, risk concerns possible expropriation of his plot. In Dedomé, where the market in land sales is embryonic, the land-*

holder does not feel his rights greatly threatened. On the other hand, he does fear expropriation of land by a close relative who might claim a piece of land on the basis of kinship rules.

When written agreements are drawn up, the land rights-owner will take one or two members of his own family as witnesses, those who might otherwise challenge arrangements. This means that the recipient or tenant would prefer to see the vendor taking his eldest son or, failing this, an influential member of his family as witness. If this happens, the taker feels more secure; he will usually say "his son signed the papers too" to show a visitor passing through the village that the written deed he holds has been validated by the son (or some other person who could potentially challenge the deed). He will see obtaining the signature of these people as increasing the security of his deal. Conversely, the owner will have no particular wishes as regards the witness named by the other party, who will usually prefer someone with charisma and authority: head of family, lineage chief, village chief or simply a resident of the village.

### **Achieving security by resort to written documents**

People in rural areas are increasingly resorting to the written form for arrangements they make between themselves. Found in Burkina Faso (Tallet, 1999; Pare, 1999; Zongo, 1999), Niger (Lund, 1999), southern Benin (Edja), Côte d'Ivoire (Koné et al., 1999), Nigeria (Mamman) and Ghana (Amanor), this practice is much more common than people think. It reveals a need to keep track of the arrangement concluded, in circumstances where the memory of the "elders" no longer suffices and the monetarization of transactions is upsetting the rules of the game.

Recent work to identify popular practices in use of the written form (Lavigne Delville and Mathieu, eds., 1999) has already highlighted this little known aspect of tenure practices. Use of the written form is more common than is often thought. Farmers keep their "pieces of paper" carefully, whatever their origin and legal validity and even when they do not know what they are for: "We just keep them, we don't know what is right or wrong. If there is a problem, we can show all the papers hoping that they contain the right thing", according to a farmer in Côte d'Ivoire. This reveals "a strategy to keep track in writing, to pile up bits of paper to secure acquired rights" (Koné et al., 1999) against a background of legal and institutional insecurity. People often draw papers up themselves, more or less independently of official procedures and authorities.

Various types of papers have been identified:

- private contract type agreements between individuals;
- contracts between individuals, validated by customary or state authorities (including PVPs – minutes of discussion);
- reports on arbitration or court cases, whether issued by customary authorities, as in Niger where the latter are legally obliged to prepare reports systematically, the administration or the courts;
- statements of land allocation, issued by a Canton head in Niger, or a Rural Council in Senegal, or by the administration on settlement of migrants (AVVs) in Burkina Faso;
- official documents having no legal value (receipts for applications to register rights);
- miscellaneous documents, issued by the administration but not of an official nature: statements of ownership issued by the commune administration in Rwanda, various certificates issued by extension workers (e.g. in Côte d'Ivoire).

These practices sometimes go back a long way, as in the Comoros, where the long tradition of Islam, the spread of writing and ancient examples of land allocations by sultans encouraged the spread of the "hatwi" model, which is now taking on a life of its own separate from the religious authorities who first adopted it. In north-western Rwanda and Côte d'Ivoire, the oldest examples date from 1933 and 1950 respectively. In Burkina Faso, the PVP procedure was introduced by the colonial authorities. Such practices seem to have been becoming more common over the last few decades as a result of the increasing population and number of transactions, making it more difficult to rely on memory alone (Comoros and Rwanda); breaking with customary rules and the development of "sales"; events such as the redistribution of land from colonial estates and the subsequent exchanges of land in the Comoros; or the expulsions and purchases of land connected with the establishment of mission stations in Rwanda. The planter's certificates demanded by customs officials in the Côte d'Ivoire in the 1970s, together with pressure from certain officials to put things on paper, also played a part. In that country and Burkina Faso, the presence of numerous migrants was undoubtedly a predisposing factor: it was between indigenous and migrant parties initially, if not almost exclusively, that market transactions and the establishment of written agreements took place.

Research into systems for delegating rights has confirmed this aspect of obtaining security of tenure in new areas. It has also given a clearer view of their role in derived rights arrangements.

**The emergence of the written form in Bodiba (Koné; Zongo, 2000)**

*To begin with, all contracts in Bodiba were made verbally but, faced with growing insecurity (as past "contracts" were challenged or renegotiated), outsiders began to try to secure their position through "bits of paper" indicating that there really was a contract with so and so and also mentioning the nature of that contract. According to a local man, "in our ancestors' day, we didn't put anything on paper. Now we get a piece of paper as "acknowledgement of debt" which has to be signed in the presence of the village chief. A contract that is not witnessed by the village chief or put on paper is not valid". It is mainly sales, rental and pledging contracts that are put on paper to certify that money has been received, and the remaining balance to pay. The papers are drawn up in the presence of witnesses for each of the parties and before a competent authority (e.g. village chief). According to N.O. (a Tagouana migrant) in Bodiba, "when you buy a plantation and it starts to produce, you mark the boundaries, that is you put things on paper with the Ministry of Agriculture officials in Oumé. If you want a piece of paper, you inform your guardian and you go to Oumé together. You pay for his trip and meals, you give about FCFA 30,000 to the officials for the document. When they come to measure the fields, you welcome them, you give them food and buy them drinks. I think the piece of paper they give you gives "eternal" security, whether you live or die, it is for your family and your children" (Koné).*

*Migrants have several types of document to support transactions made or to prove their ownership status. Any piece of paper relating to land that is issued by someone from outside the village is kept carefully. This is why many immigrants still have documents from the surveys made in the early 1970s by French researchers Chauveau & Richard. There are two common types of document: those issued by the administration and those drawn up locally to sanction a sale or any other form of transaction (Zongo, 2000)*

**The use of paper in southern Benin (Edja)**

*In Dedomé (southern Benin), paper has been used since the mid 1970s. The first written agreements relate to pledging. Nowadays, quite a few transactions are the subject of a written deed, recorded on a carefully preserved bit of paper. All sales of land (for farming or building) are the subject of a written agreement. Of the fifty recorded cases of pledging, ten were put on paper. Paper is also commonly used in rentals. Of some twenty tenants surveyed, ten showed us a rental contract. The use of paper has now extended to palm grove contracts, of which we found two relating to the main 1999 rainy season. On the other hand, sharecropping and land loan arrangements are not recorded on paper. Written agreements are used for tenure arrangements accompanied by a cash transaction. The Rural Land-Use Plan helped to popularise further an existing practice: seeing an inventory being made of rights, farmers felt the need to safeguard their interests by using paper themselves. In Dekouenou, on the other hand, paper is not much used except for pledging (Edja, p.87).*

**Transfers, receipts and PVPs in western Burkina Faso (Paré)**

*In western Burkina Faso, "sales" are increasingly set down on paper under pressure from buyers. Of 19 recorded sales, eleven were the subject of a written document. This may be a receipt, in duplicate on ordinary paper, one for the seller and one for the buyer; a declaration, validated by the administration which will keep a copy; or a PVP. The PVP is an official deed which existed under colonial rule and was revived when tenure legislation was amended in 1996 (Decree dated 6th February 1997 enforcing Law 14/96/ADP on Agrarian and Tenure Reform in Burkina Faso). The other two forms are not officially recognized. Some PVPs date back to 1970, whereas receipts and declarations of sale only became popular around the end of the 1980s. While receipts are favoured by resident migrants, newcomers prefer the declaration of sale which is less likely to be challenged. In all cases, buyers and sellers are each accompanied by at least two witnesses. The identity of the contracting parties and witnesses, the area of the plot and sometimes what it is to be used for are written down (Paré, p. 42).*

*In the irrigated areas of north-west Nigeria, written contracts have become very frequent, and are usually based on the model provided by formal tenancy agreements between the irrigation project authority and tenant farmers. In Eastern Ghana, the written contracts established by the GOPDC also provide a model adapted by local people for arrangements amongst themselves.*

The documents, which are often rather vague, evidence the fact that an arrangement has been concluded, before such and such witnesses, but rarely indicate the precise content. They do not replace preliminary negotiations or conclusion of the arrangement before witnesses, but complement the security provided by the presence of witnesses. The protagonists often try to involve a local authority, usually the village chief, but sometimes the administration. Although it has no legal value and is imprecise as regards clauses, the "piece of paper" plays a significant role as oral traditions reach their limits.

Finally, in several of the case study sites, there is increasing use made of land brokers or agents to manage land and relations with tenants. Thus, for example, in the irrigated areas around Sokoto, Nigeria, urban land-owners rely on agents to seek new tenants, monitor their behaviour and ensure timely payment of dues. Such agents may also play an important role in brokering agreements in case of conflict. In Burkina Faso and Niger, the complexity of legal and institutional arrangements surrounding access to land and the resolution of disputes has opened up a profitable business opportunity for those who are literate and have contacts within official systems. Those needing to sort out a problem over land have to pay fees to such a broker who in return helps them navigate their way through the institutional process (Lund, 2000).

### ***Increasing security through a combination of social relations and resort to the State***

Where the risks of insecurity are greatest, most stakeholders opt for a combination of strengthening social relations and trying to gain support from state structures. There are various possible formulae, access to which is unequal. In fact, such procedures are mainly adopted for land sales and mostly involve "new stakeholders": traders, civil servants or politicians investing in rural areas. However, the distinction between social and state procedures is not always clear cut. In the case of Ghana, customary chiefs and associated institutions have retained a major role regarding land allocation and resolution of disputes. Thus, for example, in 1999 the Asantehene ordered all land disputes being handled under the state system of courts to be withdrawn and brought to him for settlement (Kasanga and Kofey 2001).

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#### ***Seeking official validation of transactions in Benin (Edja)***

*In Benin, deeds of sale are systematically signed by the village chief and certified by a local government official (mayor or sous-préfet). The examples we found related to documents certified by the mayor, but the farmers pointed out that validation by the sous-préfecture is more highly prized by purchasers of land. The latter feel more secure if they have the seal of approval of the sous-préfet rather than the mayor. Their choice is, however, mainly determined by the cost of drawing up the piece of paper, which may be prohibitive for some buyers. The piece of paper signed by the local official simply certifies the information provided by the local parties. Not much checking is done. If the number of land transactions and areas purchased are sufficiently large to warrant a visit, the sous-préfecture may send one of its officials from the State property department to check the data relating to size and location. The possibility that a surveyor may come along also seems to encourage farmers to think that validation by the sous-préfecture carries more weight. The mayor's office does not have a functioning survey department.*

Otherwise, rural people try to get the administration to stamp their bits of paper. They may approach someone from the technical services, but usually prefer the government representative. A number of *préfets* and *sous-préfets* take it upon themselves to certify documents, even though this has no legal validity.

#### ***Stepping up tension to clarify contracts (Koné)***

*In Côte d'Ivoire, some Baoulé "declare war" on their guardians by breaching all social and other obligations towards them, so that the matter may be brought to the attention of the competent authorities, especially the courts or sous-préfecture. This leads to the establishment of a piece of paper which, in principle, marks the separation between the guardian and his client or "son". In actual fact, it simply clarifies the contract and the Baoulé, although he has no further official obligations, will continue to maintain social relations with his guardian because "you don't fall out with your father" (quote from an elderly Baoulé in Bodiba), or "the bird does not get angry with the branch; even it flies away, it will come back to perch on that branch" (quote from a Baoulé in Zahia).*

Such administrative recognition of agreements made between stakeholders helps to clarify the tenure position, provided that the administration has the means to check the details of the transaction and its local legitimacy.

As security of tenure is not achieved once and for all, the main thing for both parties is to be part of a process whereby rights are recognized and guaranteed. The degree of tenure security in any given situation is difficult to define objectively, as it is partly a question of perception. This means that it is often more useful to describe the features of insecurity rather than security. Precariousness, in the terms of the contract, must be distinguished from insecurity of tenure, which reflects the lack of guarantee that rights may be exercised, or high costs in getting them recognized.

There is no simple correlation between derived rights and insecurity. Situations vary greatly depending on arrangements and their content, the relationship between the parties concerned, the social and economic context and the effectiveness of arbitration systems. Some sources of insecurity lie in the failings of systems to regulate land use and are not therefore specific to derived rights. On the other hand, insecurity can arise if particular clauses are insufficiently clear. In addition, some derived rights arrangements are more liable to renegotiation when the social or economic context changes. The different parties actively pursue strategies to stabilize their position and rights. Even when informal, such strategies can play an effective role in stabilizing the tenure position.

When the context changes and local procedures are no longer appropriate<sup>51</sup>, rural people do not wait for the State to intervene. They innovate, "cobble together" solutions, broaden the range of validation procedures and introduce written forms, illustrating the fact that behind "the apparent confusion of rules and the apparently arbitrary nature of behaviour, [t]he attempts by stakeholders themselves to reach agreement about rules and procedures and find stable forms of co-ordination to reduce uncertainty and ensure a degree of predictability in their relationships" (Koné et al.). Far from seeking to distance themselves from the State at all costs, rural people try, on the contrary, to achieve security by combining a deepening of social relations with resort to state validation of their arrangements.

Taking account of the strategies adopted by stakeholders to achieve greater security and giving them the means to make them more effective is undoubtedly an option that the State would do well to pursue as discussed further below.

<sup>51</sup> As assumed by the recent variations on ownership rights theory. Cf. Platteau J-P, 1996, "The evolutionary theory of land rights as applied to sub-Saharan Africa: a critical assessment", in *Development and change* Vol. 27, No. 1: 29-86, and MAE 1998, pp. 25 and 77.

## CHAPTER IV. EFFICIENCY AND EQUITY: A FRESH LOOK

Efficiency and equity are two key objectives commonly found in land tenure policy and agricultural policy debates. The aim is usually to promote improved agricultural productivity through adoption of "modern" farming methods and equipment, increasing areas under cultivation and using increased inputs, at the same time as combating poverty and protecting women's rights to land.

These issues involve value judgements about distributional issues. Every society is diverse and comprises individuals unequally endowed with resources (whether it be access to land, credit, education, or personal networks). This applies particularly to derived rights relationships, which involve individuals unequally endowed in respect of production factors (land and labour in particular). The case studies in this research do not attempt to place value judgements on the examples presented here. As regards both efficiency and equity, all analysis takes place within a particular context and distribution of wealth. Nevertheless, it is possible to suggest a discussion framework, illustrated by elements drawn from the case studies.

*From an empirical economic point of view, the question of the comparative efficiency of the various agrarian contracts can only be dealt with by means of an econometric study, which entails considerable difficulty dealing with the heterogeneous nature of the parties; inability to treat the contract type as an independent variable and the result as a dependent variable, where there is a simultaneous choice of contract, crop and techniques; possible correlation between the characteristics of the parties and contract types, or even between contract types and soil quality, etc. On top of these difficulties, which are often acknowledged in economic literature dealing with agrarian contracts, there is a major problem with of collecting data (on areas, yields, labour and inputs invested, etc.) of acceptable quality – a problem which is all the more serious in that samples need to be large if econometric methods are to be used. (Colin, 2001).*

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We view the efficiency and equity of derived rights as follows<sup>52</sup>:

- A given contract will be considered as "efficient" if, within a given distribution of production factors between different parties, it allows the best possible allocation of those factors on the plot in comparison with other forms of use;
- At macro-level, the optimum is reached when the circulation of land rights leads to efficient use of the majority of the plots;
- Irrespective of the value judgements that might be made about the distribution of assets between people, it will be considered, that a contract is equitable insofar as it meets the expectations of the two parties and there is not too large a gap between the contract desired and the contract obtained.

### I. ARE DERIVED RIGHTS EFFICIENT?

Strictly speaking, the matter of efficiency can only be dealt with by using econometric methods. This raises several problems:

- Econometric research into agrarian contracts has mainly been carried out in Asia. Little or no work has been done in rural Africa;
- With few exceptions, research has only dealt with "commercial" arrangements and so does not cover more informal arrangements, such as loans;
- Studies do not always take sufficient care in producing high quality field data, focusing instead on mathematic processing and thereby running the risk of relying on poor data.

As a result, we have very few rigorous findings based on research, and which really take account of the different types of derived rights. Nevertheless, knowledge of economic theory makes it possible to frame the key questions.

<sup>52</sup> The discussion of equity includes extracts from Colin J-P, 2001, *Efficience et équité des droits fonciers délégués: éclairages économiques*, a document prepared as part of this research.

## Efficient Arrangements in Relation to Constraints

The classic approach to efficiency is based on the question of *incentives*: does tenant farming or share-cropping encourage the tenant to invest sufficiently in production? Share-cropping is usually condemned in economic terms: since the share-cropper benefits from only a fraction of the effort he puts in, he has less incentive to invest in labour or inputs, in contrast to tenancy, where the rent is fixed, and provides no disincentive to invest.

*In southern Benin, tomato lema (sharecropping) is an arrangement which encourages intensification: having specialist know-how, the migrant gets access to land for intensive cropping. He pays for inputs, but these are reimbursed by the first harvests which are not shared and the landowner may sometimes loan him the money for up-front payments (Edja).*

*In western Burkina Faso, short term contracts (dondonly/loan or lallé/rental) are based on the cropping cycle: 3-4 years for rotation with cotton and cereals. In addition, the rental fee is fixed, so there is no inefficiency related to the contract. In allowing farmers who do not have the appropriate equipment to get some of their land ploughed and enabling the owner of such equipment to cultivate a larger area, ploughing contracts also contribute towards more efficient patterns of resource allocation (Paré)*

*Around the Mogtêdo irrigation scheme, in eastern Burkina Faso, plots close to the water but which cannot be irrigated by gravity in the dry season are rented out to the owners of motor pumps who can use them for intensive market gardening (Burgeat and Deram, 1999).*

Developments in the economics of agrarian contracts over the last two decades have helped to enrich the analysis by taking into account the question of risk, market imperfections, unequal access to resources and the problem of transaction costs (negotiating contracts, monitoring the work, enforcing the rules). When these parameters are considered, conclusions have to be more heavily qualified:

- it is not possible to analyse land markets in isolation from other markets (credit, produce, labour, etc.); taking account of the links between these markets has given tenure theory new insights<sup>53</sup>;
- against a background of risk and imperfections in markets, agrarian contracts and share-cropping in particular may promote more efficient resource allocation; resource pooling may be a mutually advantageous strategy;
- where production costs are shared, the relative inefficiency of a share-cropping contract may relate only to labour and not to inputs;
- the fact that the contractual relationship is often long term but requires renewal helps to reduce the risk of opportunistic behaviour by one or other party;
- generally speaking, people do not engage in a contractual relationship unless they already trust each other, the risk of opportunistic behaviour is negligible and monitoring systems can be set up at little or no cost.

This does not mean that there is never any disincentive:

- the short-lived nature of contracts may prevent long-term investments;
- restrictive clauses designed to provide security for the "landowner" prevent investment in tree planting, well digging, soil conservation and other land improvements (although the development of a close social relationship sometimes results in a lifting of the ban);
- faced with a precarious arrangement, the "tenant" may choose to minimise his investment.

However, these disincentives must be analysed on a case-by-case basis, distinguishing what results from the contract and what is a consequence of the tenant's socio-economic position.

*Such analysis helps to rehabilitate these forms of agrarian contract and in particular share-cropping, the practice which was most decried in the past: the range of agrarian contracts is seen as a set of arrangements enabling efficient adjustment to differential endowments in factors (land, labour, capital, technical/economic capacity, integration within commercial networks, etc.) of the parties, in a context where certain markets are*

<sup>53</sup> Especially in relation to private ownership and privatization policies: since there are imperfections in other markets, privatization of land (intended to create a land market) may well not have the expected effects on productivity and may even have the reverse effect (Binswanger et al., 1993).



*imperfect or non-existent and there is a risk of opportunistic behaviour, as well as production-related risks. Econometric tests from the Asian context do not provide an unambiguous, definitive and irrefutable answer, but they do tend to show that, the differences between share-cropping, rental and indirect entitlement in terms of efficiency, are slight or non-existent given the constraints faced (Colin, 2001).*

## Delegated Rights and Efficiency

On a macro scale, efficiency depends on whether rights can be transferred in ways which ensure the optimal allocation of land resources between the parties. In the absence of economies of scale (generally considered to be the exception rather than the rule in farming), efficiency in factor allocation will not be related to the size of farms. The need to supervise labour provides an advantage to family farms in comparison with farms based on hiring wage labour, which has less incentive to put in maximum effort; in parallel, resorting to family labour avoids the costs involved in seeking and recruiting employees. This acknowledged superiority of the family farm, as shown by the inverse ratio between farm size and productivity, combines efficiency and equity. This inverse ratio should lead to a transfer of land from large to smaller family holdings.

The market's ability to enable efficient, equitable transfer of land is, however, subject to doubt as soon as credit and insurance markets are imperfect or non-existent:

- Small farmers are placed at a disadvantage in the land market because large scale farmers often have easier access to credit;
- In the absence of insurance systems, land sales by small farmers may be due to distress, rather than adjustments in endowments made with a view to increase efficiency;
- The privileged access of large-scale farmers to credit for inputs and equipment can more than counterbalance the advantage of family farms in relation to deployment of labour and lead to increased advantage for large farms in terms of productivity;
- The result is similar when, in the absence of insurance or access to credit, small farmers follow strategies which have low profitability but also low risk.

In other words, sales and purchases on the market are not necessarily the most appropriate way of bringing about an effective, equitable transfer of land from large to small farms. They are even less likely to be so if the land market is severely restricted by legal uncertainty or social norms, or landownership is seen as an insurance system, a source of prestige or as a way to ensure that assets are passed on to one's heirs.

Both this observation and the acknowledgement of the relative efficiency of forms of indirect entitlement, mean that mechanisms for delegating rights must be rehabilitated as a system able more easily than purchases and sales to bring about efficient, equitable transfer of the land resource while facilitating an optimum adjustment of farm size in relation to the availability of family labour:

- From the tenant's point of view, access to land through the delegation of use rights requires neither such substantial resort to credit as purchasing land, nor tying up capital in the form of land;
- The market for use rights is usually more active than that for purchase and sale, so supply and demand are more easily matched;
- Delegation of use rights makes short term adjustments much easier;
- In the case of landowners facing cash flow constraints, letting out their land provides a useful source of income whereas sale represents an irreversible disposal;
- Even where rights of appropriation may be challenged, temporary transfers may be seen as safe by the parties. In other words, it is easier to make derived rights contract secure than to do the same for rights of ownership and their transfer;
- Furthermore, agrarian contracts can also help get around imperfections in the credit, insurance, technical expertise, cultivation equipment hire and other markets (Colin, 2001).

*In western Burkina Faso, the market in derived rights is asymmetric, bringing together relatively well-endowed indigenous parties who control large areas of land on the one hand and migrants on the other who have little possibility of becoming "land-owners". It develops against a background of pressure on land and growing*

*social tensions. The market for land sales used to involve city-dwellers especially, but well-off migrants also now seek to purchase land to make their rights more secure.*

*In southern Benin, there is less differentiation between the parties engaged in derived rights arrangements. Given the large number of scattered plots, with diverse characteristics the market in derived rights is very dynamic. Most farmers both take in and let out plots under different arrangements. The sales market mainly involves city-dwellers, but also sitting tenants in Dekouenou, who have priority when landholding families want to sell.*

*In Rwanda, before 1994, the average size of farms was very small (1.21 ha on average, in 1984, but less than 0.5 ha in the most densely populated areas). Young people in particular have minimal holdings. Loans, inheritance and gifts have dwindled over time and a growing share of the land owned comes from outside the family. An active rental market played an important role in terms of equity and efficiency: small farms, which were considerably more labour intensive and more productive per unit of land, could thus increase the area under cultivation. Rented areas were proportionately larger amongst very small farms, so that rental played a fundamental role in evening out tenure inequalities and stabilizing families' economic balance. At the end of the 1980s, crisis in the peasant farming economy increased the number of distress sales to the urban elites, and tenure inequalities (André and Platteau, 1996).*

## II. DELEGATING USE RIGHTS AND EQUITY

Assessing whether systems of delegating tenure rights have a positive or negative contribution towards equitable access to land is not an easy task. Not only are there many different ways of delegating rights, but equity can be understood in various ways. Static and dynamic assessments must be distinguished, while the impact of derived rights arrangements must also be analysed in relation to the balance of power between parties which has a considerable influence on bargaining strengths and tactics.

### Assessing Equity and Delegation of Use Rights

With a given initial resource endowment for each party (land, labour, capital, technical know-how, social assets, etc.), equity can be assessed in terms of the balance of costs and benefits for each party within the framework of a negotiated agreement between the person who controls the land and the other who seeks access to it. This assessment can refer either to equity in implementing a given arrangement, or to the ability of parties to choose the most suitable amongst several possible arrangements (for example between a long-term loan, rental or crop sharing).

Equally, equity is assessed by taking into consideration the opportunity for different parties to improve their initial endowments, especially the most vulnerable groups, by systems for delegating rights. In this case, an assessment of equity must place more emphasis on how derived rights can contribute to improved opportunities, the alleviation of poverty and the avoidance of exclusion. This means focusing on "enlarging opportunities to choose just as much as improving material well-being". (UNDP, 1997).

Systems for delegating rights can then be assessed in terms of how they affect: risks of impoverishment and exclusion; and social equity between the main social groups involved in these procedures.

### The Distribution of Costs and Benefits

#### Fairly well-balanced arrangements and a range of options

Overall, the case studies show that most parties are generally satisfied with the terms on which agreements are reached and implemented between those exercising control over land and the beneficiaries of derived rights (Lake Alau and Sokoto Rima Basin in Nigeria, Northern Ghana, southern Benin, west-central Côte d'Ivoire). In some cases, contract clauses show a fine grasp of equity with, for example, share contracts for maize in the Eastern Region of

Ghana, in which the primary rights-holder takes the largest share as he has to pay for labour on perennial crops at the same time. Equally, coffee and cocoa share contracts in west-central Côte d'Ivoire take explicit account of the diverse contributions of the two parties.

In southern Benin, rental enables the differing fertility of plots to be better managed. The extension of half share contracts to land in the Eastern Region of Ghana and its appearance in west-central Côte d'Ivoire (*troukatlan*) enables owners to establish new plantations, while allowing tenants to get hold of land, without facing a credit barrier. This form of derived rights is well adapted to the nature of agricultural production in these regions and the investment required. However, crop sharing contracts (with no land sharing) are also becoming more widespread in Northern Ghana, allowing exchanges of land and labour between differentially endowed farming households.

In all these cases, the relatively recent expansion of rental and share-farming contracts seems to maintain a balance in costs and benefits for each of the parties despite their unequal endowment with land, capital and labour.

However, the degree of satisfaction felt by different parties may depend on the form of delegation (high in respect of half share contracts, low for other share contracts in the Eastern Region of Ghana and share contracts relating to palm trees in the Rivers State of Nigeria). Moreover, there are cases where derived rights are deemed inequitable overall by tenants (Rivers State in Southeast Nigeria, Eastern Region of Ghana, with the exception of half shares). The feeling of inequity may be exacerbated where the party delegating rights is a private or public agency which, also provides inputs and credit, as well as being involved in marketing output (e.g. GOPDC in the Eastern Region of Ghana, irrigation schemes in Sokoto, Nigeria).

#### **Opportunistic manoeuvres**

*The studies also revealed, some cases of opportunistic or fraudulent behaviour in contract implementation. Such manoeuvres are not exclusive to landowners. The latter may misappropriate some of the shared crop, attempt to take back their land after a quarrel, re-possess land which has not been put to productive use, rent a plot to another tenant, or rent out land which they do not legitimately own and so on. However, the manoeuvres pursued by "tenants" are equally complex: fraudulent sales, attempts to claim ownership on the basis of long-term occupancy and cultivation, misappropriating part of the shared crop, etc. In the Lake Alaou area of Nigeria, for example, loans are declining because of abuses by borrowers (sales by urban borrowers, claims of ownership, etc.).*

Given the diverse arrangements for delegating rights, their flexibility and the spread of new arrangements, it is relatively easy to obtain an agreement which satisfies the various parties involved. However, the monetarization of access to land, farming systems and livelihoods in general is tending to restrict access to the most beneficial arrangements for those who can afford to pay.

Pressure exerted by landowners to obtain financial assistance or credit from their tenants (as in southern Benin and Central-western Côte d'Ivoire) means that the most desirable forms of rights delegation (rental in Benin, "conditional gift" in Côte d'Ivoire) become implicit contracts that give landowners access to easy credit at the expense of the tenant. The increased *aseda* (provision of drink and money on conclusion of the *abusa* share-farming contract) in the Eastern Region of Ghana is part of the same process.

### **Tipping the balance through changes in arrangements**

In almost all the study areas, the current balance between parties is changing, in most cases tipping against ordinary tenants<sup>54</sup>.

- With one exception (Northern Ghana, where the phenomenon is nevertheless starting to appear), we are seeing the almost total disappearance of long-term customary loans, where the landowner acts as "social guardian" of the tenant, who makes voluntary gifts to his guardian. Generally speaking, derived rights now apply to ever shorter periods and guardianship is forcing the tenant to give regular gifts and help with financial problems:

<sup>54</sup> Apart from tenants belonging to groups of well-off city-dwellers.

- Renegotiation of rights when renewing arrangements leading to less beneficial terms for the tenant although in most cases there is a high rate of contract renewal and partnerships are very stable.
- The increasing demand for cash by landowners has meant widespread monetarization of access to land, thereby increasing the constraints on tenants and excluding those without capital.

Monetarization may relate to traditional forms of delegating rights, especially "loans", which increasingly involve regular "debt service" in cash or kind, or are drifting into rental or disguised crop share arrangements (Upper East Region, Ghana). The demand by landowners for cash advances from tenants is also reflected in the spread of more recent forms of derived rights. This applies quite commonly to rental in the cotton production area of Burkina Faso, west-central Côte d'Ivoire, southern Benin and the River State, Sokoto Rima Basin and Lake Alau area in Nigeria; and land share contracts in the Eastern Region of Ghana and west-central Côte d'Ivoire. The spread of rental arrangements, stressed in most of the case studies, seems to indicate a worsening of terms for tenants, as it usually replaces traditional forms of loan which were more beneficial to them.

## The Distributive Effects of Delegating Rights

### Broadly equitable effects on access to land

The practice of delegating rights greatly facilitates adjustments between land, labour and capital. They have provided low status groups and migrants with access to land, and have helped maintain the balance between the number of mouths to feed and the area under cultivation. Even where farming is subject to growing constraints (scarcity of land, declining fertility, demand for technical skills, monetarization of everyday needs, etc.), contract-based systems for delegating rights can still provide improved living conditions for a substantial number of tenants in comparison with their original situation. This can cover very extensive areas, as demonstrated by the importance of rights delegation and patterns of in-migration from disadvantaged regions.

Despite the significant numbers of new actors and commercial farmers now getting involved in derived rights arrangements, the spread of market-based forms of delegation is not as yet reflected in widespread exclusion of poor rural producers from access to land. In most of the areas studied, rights are still delegated between small and medium scale farmers and the arrangements continue to provide access to land for socially disadvantaged groups in regions with considerable social stratification, such as Ouidah in southern Benin and the Lake Alau and Sokoto Rima Basin regions in Nigeria.

From the case study material, it is impossible to discern a common picture of how power is distributed. While the growing monetarization of agrarian contracts can lead to speculative, rent-seeking strategies on the part of landowners, there are also situations where a landowner delegates rights over all or part of his land in response to serious constraints or distress. It is not unusual for tenants to have higher income and greater wealth creation opportunities than "landowners". When looking at agrarian contracts with regard to distributive equity, it is important to consider elements of social differentiation other than just the distinction between "landowners" and "tenants", especially access to labour and capital. Furthermore, we see a growing proportion of farmers who are both landowners and tenants or parties to share contracts (Lake Alau, southern Benin, west-central Côte d'Ivoire).

### Increasing "barriers to access": risks of exclusion and impoverishment

Nevertheless, the increasingly restrictive and commercial nature of farming can lead to the exclusion of tenants who cannot fulfil the new conditions. The new terms for delegating rights can also bring about deeper inequality in access to land amongst the various social groups. The increasing role played in systems of delegating rights by those with capital or influence can reduce access to land for traditional rural producers, both landowners and tenants. Putting systems of delegating rights on a market and contractual basis can also deepen inequality in access to land amongst groups of farmers, family groups and generations. Distress sales, pledging and even rental to generate cash are also processes bearing witness to the increasingly precarious situation of some rural people and of impoverishment in favour of other actors, such city-dwellers with available cash.

Access to the most sought-after forms of derived rights is only available to tenants with money. In the Upper East Region of Ghana, land loans are increasingly reserved for tenants who are able to give regular gifts. In the Lake Alau region, Sokoto Rima Basin and southern Benin, payment of rental at the time of the agreement and before harvest excludes the poorest who cannot afford this advance. In the Eastern Region of Ghana, crop share contracts are approved in advance through payment of a substantial consideration (*aseda*) in drink and cash by the tenant (even if he belongs to the owner's family). This payment restricts the access of the poor to such contracts, while giving security to tenants who can afford it. Contracts to lend plantations can be an alternative for those unable to pay *aseda*. Tenants can sometimes find ways of getting round these restrictions on access to the most desirable forms of derived rights. In the Lake Alau area, several partners will pool their funds to obtain rented land. In southern Benin, rental arrangements between relatives help to bend the rules on down-payments normally demanded.

Conversely, putting derived rights on a market basis can result in landowners becoming financially dependent on their tenants in order to deal with emergencies (Rivers State, southern Benin, Central-western Côte d'Ivoire), pay for wage labour (Northern and Eastern Regions of Ghana, Central-western Côte d'Ivoire), when they do not have sufficient capital to improve their land (southern Benin where declining fertility sustains the market in derived rights), or to comply with the conditions imposed by the projects or organizations on which they depend (Eastern Region of Ghana, Wurno in the Sokoto Rima Basin, irrigation schemes in the Senegal River Valley). The most disadvantaged social groups, may turn to pledging (Sokoto Rima Basin and River State in Nigeria, Central-western Côte d'Ivoire, southern Benin), or even to sale, particularly by younger generation landowners (cotton production area of Burkina Faso, west-central Côte d'Ivoire, southern Benin).

Moreover, systems for delegating rights can also open the door to penetration by new economic interests with attendant risks. The production by small farms under contract to large traders or firms, such as the GOPDC in the Eastern Region of Ghana is a prime example of this. Equally, small farmers may face risks of exclusion or marginalization, in the event of wealthy, influential city-dwellers becoming major land-holders.

## Indicators and risks of deepening socio-economic inequality

The growing involvement and influence of urban interests, especially those from economically and socially privileged groups, in derived rights arrangements is a recurrent feature of the case studies. Other indicators of deepening inequality are also perceptible. The dynamics of derived rights can have substantial effects on patterns of socio-economic differentiation that are common in rural areas of Africa: between groups according to their social status; between different farm households; between indigenous farmers and migrants from outside the village or region; and between earlier and more recent migrants.

### *Growing involvement of city-dwellers in derived rights arrangements*

More and more city-dwellers, whether or not they were born in the region, now have a stake in rural land. Apart from a few migrants from the city who are just taking up farming for subsistence purposes or pending a return to town, other city-dwellers involved in derived rights arrangements usually have income levels, social status and power that give them a clear advantage. These new actors are well placed to take part in pledging (Sokoto Rima Basin and Rivers State in Nigeria, southern Benin) and sales by small landowners (cotton production area of Burkina Faso, southern Benin), especially when land has become an important speculative asset (River State, Nigeria, Ouidah region in southern Benin where urban buyers simply "set aside" land, rather than let out to farmers needing land). Urban interests may also borrow or rent the land they farm under various systems (directly with contract labour, by delegating rights, caretaking contracts, sharecropping etc.).

### *Social differentiation between groups*

In societies whose members have differential status (based on earlier categories, such as noble, caste groups, captives), delegating rights allows socially disadvantaged groups to gain access to land. While such access lessens economic inequality, it does not eliminate differences in status. In Ouidah region in southern Benin, derived rights arrangements bring together a small number of landowners and many small farmers who are the descendants of captives. Maintaining the patron-client relationship provides the latter with access to land through "caretaking" contracts, and even gives them pre-emptive rights in the event of sale by the landowner. However, land speculation and the rapid rise in land values in this region threaten them with the growing risk of exclusion from land.

### ***Growing differentiation between farm households***

Most of the case studies stress the growing differentiation between small farmers, who just manage, whether as landowners or tenant farmers, to survive, and those operating medium-sized farms, as landowners as well as tenants, who have some safety margin in terms of availability of land, capital and labour. (southern Benin, where local farmers sell land to each other, Eastern Region of Ghana, Central-western Côte d'Ivoire, Lake Alau, Sokoto Rima Basin, Mboyo irrigation schemes).

### ***Complex processes and negotiations between indigenous and migrant farmers***

It is here that the processes for negotiating derived rights are most dynamic and have the most obvious impact. However, the effects vary greatly depending on the region or period in question. Growing financial pressures, increasing scarcity of land, declining fertility and monetarization of derived rights are responsible for a dual trend:

- Firstly, the new conditions and the social tension they engender are increasing and bringing to the surface serious tensions in the relations between indigenous landowners and migrant tenants, resulting in far-reaching changes in the terms of access to land for migrants, especially new migrants.<sup>55</sup>

*The only exception picked up in the case studies relates to the Northern Region of Ghana, where immigrants in sparsely populated areas still have open access in accordance with custom, but where their children cannot count on benefiting in their turn from the loans granted to their parents in exchange for gifts.*

- Secondly, the efforts by indigenous landowners to obtain supplementary income from migrants, as well as access to capital and labour, leads them to prefer negotiating derived rights contracts with the better-off amongst the migrants.<sup>56</sup>

This is tending to lead to significant differentiation between migrant farmers from the point of view of their access to land under derived rights arrangements. The criteria used – length of settlement, creditworthiness and access to key resources (such as capital, labour and technical know-how)<sup>57</sup> – overlap and combine so that there are various categories of migrants who may find their access to land made easier or more difficult.

## **Land to dependents or delegation to third parties**

Faced with the opportunity to earn money or meet pressing needs for cash through delegating use rights, the elders tend to make use of the family landholding in this way, thereby depriving other family rights-holders of access to land. As a result, younger members of the lineage have to sell their labour or try to get access to land from outside the family group, on less favourable terms than if they were cultivating a plot of land from their own lineage. In addition, a trend towards putting family relationships on a more contractual basis is developing, thereby worsening the terms on which dependents (especially women and young farmers) have access to family land.

### ***Contractual dealings within families: a stop-gap solution which is becoming more widespread***

Contracts are increasingly entering into arrangements between kin, the best example being found in the case study on the Eastern Region of Ghana. Following the decline of cocoa production and the exhaustion of land reserves, landowners preferred, to enter into crop and then land share contracts with tenant farmers from outside the family instead of younger members of kin. Under pressure from youth, the elders granted them similar share contracts as those negotiated with people from outside the local community. This arrangement between relatives was still preferable for young people whose future access to land was made very difficult by competition from migrants with greater capital resources. Contractual relations within the family have gradually become the norm, to such an extent that, when contracts are made between the palm marketing agency and young farmers on family land, the head of family takes a share of the latter's output.

<sup>55</sup> E.g. cotton production area in Burkina Faso, west-central Côte d'Ivoire, Upper East Region of Ghana, southern Benin, Eastern Region of Ghana during the cocoa plantation phase.

<sup>56</sup> Cotton production area of Burkina Faso, west-central Côte d'Ivoire, Upper East and Eastern Regions of Ghana, southern Benin, Sokoto Rima Basin.

<sup>57</sup> As in the case of share contracts referring to tomato production in southern Benin.

This arrangement - whereby kin relations are put on a formal, monetarized basis - is also found in less clear cut situations. In southern Benin, we see family loans transformed into rental and sharecropping, with one notable feature that demonstrates how the nature of these arrangements is imposed by the market context. In this case rental between relatives, far from being considered as a breakdown of reciprocal obligations, is seen as a service rendered, and particularly to prevent the "landowner" from pledging the plot to an outsider. In west-central Côte d'Ivoire, share contracts amongst kin are also beginning to appear (they are already common in the south-east of the country, where conditions are similar to those in Eastern Ghana) and tenure contracts negotiated between local families are no longer seen as a social anomaly.

As a result of the need to pay for labour, water fees and inputs in irrigated areas, domestic relations in the Sokoto Rima Basin in Nigeria are also taking an increasingly contractual form. One quarter of contractual arrangements are made with kin, allies, clients and neighbours, while renting out is clearly seen as a way of acquiring inputs and paying for labour. In this case and those quoted earlier, rental of land is partially replacing inheritance.

***The threat of exclusion resulting from the spread of increasingly, monetarized land relations affects young people and women above all***

Women and young people, already disadvantaged in access to land because of competition between family members, increasingly find themselves in competition with migrants and non-relatives who have the financial capacity to negotiate access to land.

- Women's low level of participation in derived rights can be seen in the irrigation schemes in the Lake Alau area of Nigeria and Mboyo in Senegal. In west-central Côte d'Ivoire, it is mainly women in-migrants who engage in share contracts on food crops. Where women do negotiate access to land, they do so in competition with migrants and as a last resort (Northern Region of Ghana, where widows who have not remarried are obliged to resort to share contracts; southern Benin where women have to resort to rental).
- The involvement of younger family members in derived rights arrangements, which is more substantial and regular than that of women, is also clearly an option chosen under duress, as noted earlier. The current position of young farmers in the Eastern Region of Ghana, for instance, contrasts with that prevailing during the 1950s in the cocoa plantations, when the availability of land enabled young people to establish their own farms after spending some years working for their elders. The strategies adopted by the elders to retain control over land and their preference for making contracts with migrants, were the cause of much resentment directed against outsiders by young people in the 1960s and 70s. They also led to the latter's decision to get work firstly as labourers and tenant farmers outside the family and then as tenants within their own families. A similar process is happening now to young members of indigenous communities in west-central Côte d'Ivoire, one generation later than those in Ghana. Many young people have no access to land on their own account, while some negotiate share contracts or secretly sell land from the family holdings in order to emigrate. In southern Benin, younger family members are rising up in protest against the retention of land and delegation of rights to outsiders by their elders. The terms of family loans are getting tougher and young people are obliged to resort to monetarized rental and share contracts as well.

## Conclusion

The case studies show that, overall, costs and advantages for the various parties in systems of delegating rights have been relatively well-balanced and provided each party with complementary resources, in a fairly secure manner. However, this balance is being disrupted by the growing monetarization of land relations and a lower level of satisfaction is being expressed both by tenants, and also quite frequently by landowners. Profound economic upheavals are in progress.

The processes described here are the result of both the way rights are delegated and more general developments in the broader socio-economic and political context which are reflected in changes in institutional arrangements. Systems for delegating rights and their contractual nature make them particularly sensitive to the balance of power such that certain clauses change and evolve (amount of rent, various "gifts", increase in contracting costs — *aseda*, etc.) given shifts in social, economic and political circumstances.

While derived rights arrangements, especially in their most contractual and market-based forms, have helped play a part in maintaining a degree of equity in systems and the distribution of access rights to land, they are also involved in the new forms of competition for land in rural West Africa, exposed as it is to the influence of urban interests and international investors. However, most forms of delegating rights, including those developing at present, are less likely to result in exclusion than the development of a land market and the extension of sales. This is because they require fewer financial resources on the part of "tenants" than would land purchase (and little or no capital advance in the case of share contracts), while not forcing those letting out their land to dispose of their holding.

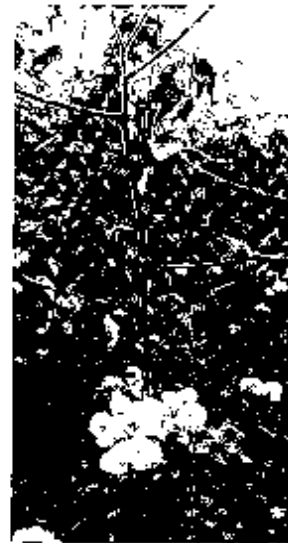
In Rwanda, it was the combination of a deepening crisis amongst smallholders, leading to many distress sales, with the growing involvement of urban stakeholders purchasing land that caused a sudden exacerbation of differentiation and the exclusion of many families from access to land. Moreover, derived rights can also be the source of latent or violent conflict that may be entangled with local or national political issues. We can then see that the politicising of the tenure issue is often accompanied by rhetoric about a return to "customary" or "indigenous" principles for delegating rights. Such cases exacerbate disputes between indigenous and migrant communities and between generations, and call into question the land held under derived rights arrangements by migrants, sometimes leading to their expulsion.

*The extreme diversity of agrarian relations in West Africa must exclude any all-encompassing judgement. Assessment of land relations can only deal with a well-defined arrangement, in a particular place. Assessing the equity of a contractual relationship and of arrangements based on crop-sharing needs to take into account, from the perspective of each party, not only the terms on which the crop is shared, but also the contribution of each party (including contributions such as interest-free loans, labour service, etc.). Introducing a dynamic element also quantifies the analysis since, as can be seen in many situations, the "landlord" and "tenant" categories are not stable. Equally, the evolution of the contracts over time may allow the status of the "taker" to evolve. At the same time, such contracts represent a valuable mechanism for flexible short-term management of the key production factors.*





## Part three: IMPLICATIONS FOR TENURE POLICY



The status of indirect entitlements and derived rights to land and natural resources is treated in an ambiguous fashion in tenure policy in much of West Africa: they are either ignored or regulated in an often counter-productive manner. What lessons can be drawn from this work in terms of implications for tenure policy? Can and should government interfere with these ever-changing arrangements and in what way?

Apart from the research findings presented here, our thinking draws on other recent experience with land tenure policies in Africa (MAE, 1998; Toulmin and Quan, 2000; Chauveau and Lavigne Delville, 1998) which have stressed the need to recognize local rights – in order to get away from the persistent legal dualism which lies at the heart of the tenure issue – and the vital importance of local regulatory systems. These issues are especially important in many West African countries where the recent establishment of elected local government structures reframes the question of how local land-use systems will be managed and the respective responsibilities of different types of stakeholder.

Working on the principle of minimising government intervention, and picking up the questions raised by Bruce and Migot-Adholla (1994) about land registration, we need to ask "is there a significant cost involved in allowing things to evolve spontaneously?"

**Current thinking about land tenure policy** (Lavigne Delville, 1999)

*Progress in tenure research, political developments in the various countries and lessons drawn from recent tenure policy are converging on a more pragmatic view of tenure issues, around a "paradigm of adaptation"<sup>58</sup>, based on the following broad elements:*

- *getting away from the dichotomy between formal law and local landholding systems and starting from acknowledgement of existing rights, irrespective of the State's wish to transform those rights;*
- *enabling small farmers to escape from the precarious legal situation in which they have found themselves since the colonial era;*
- *suggesting a range of ways of achieving greater security, providing different stakeholders with security in accordance with their needs, without making land registration the only form of "real rights".*

*Such an approach implies a great deal of legal, institutional and technical innovation. Apart from simplifying the registration procedure, various approaches can be suggested, stressing one aspect or another, specific rights or systems of regulation and arbitration.*

*These principles provide the outline of contemporary debate about tenure policy, leaving room for a range of choices and options depending on context and economic issues, social and political history, and policy choices. These options need to be translated into concrete choices in respect of land-use management arrangements, the composition and mandate of different forms of local authority, the degree of autonomy granted to local regulatory systems, the place of customary authorities and so on.*

*Policy choices hinge on the recognition given to local landholding systems and, in particular, local forms of tenure regulation:*

- *how much autonomy to give to local communities: the choice is between on the one hand, government recognition of local regulatory methods, accepting the validity of transactions, arbitration, etc. conducted in accordance with local rules, and on the other, registration of land rights designed to push them into the state system, at the same time transforming the power and authority of local landholding systems;*
- *applying the principle of subsidiarity to land-use management: the choice is between uniform codification which seeks to define all possible scenarios and subsidiarity, with the State defining how rules and arbitration are to be enforced at "local" level (villages, districts, etc.) by local and/or government bodies, which can then take account of the diversity of situations.*

*Although most governments aim in the long term to bring local rights into line with national legislation, one must assume that local rules and formal law are likely to co-exist for some time to come. As a result, within the timeframe of public policies, it is better to think in terms of linking together the different ways of regulating land-use. Only by making links between local and government systems can tenure policy transcend the current dichotomy and its unfortunate consequences. This is the challenge we address below.*

<sup>58</sup> Rather than a paradigm of substitution, whereby the State sought to replace existing rights.

## I. LEGITIMACY AND EFFICIENCY OF DERIVED RIGHTS

The case studies and broad range of literature demonstrate clearly the importance of mechanisms for delegating rights to land for the growth and evolution of many farm production systems:

- Systems for delegating use rights are institutional arrangements whereby people with unequal access to production factors seek to negotiate a deal from which both hope to benefit; they are quantitatively significant and sometimes even predominant; they have co-existed with and helped generate dramatic rises in cash crop production (groundnuts, coffee, cocoa, cotton, etc.);
- arrangements take many different forms depending on context, but fit into some broad categories which can be identified. Dissociation of rights to trees and to land and the social relations between the parties that accompany such arrangements are crucial aspects. Apart from land and labour, the arrangements can bring various other scarce factors into play: food, technical know-how, equipment, credit, etc. The range of arrangements and their detailed clauses, are closely linked to local circumstances;
- while "traditional" forms persist in a number of areas, derived rights are evolving, sometimes very rapidly, in regions where agrarian and social change is most dynamic: new institutional arrangements are emerging alongside or in place of earlier forms. These new arrangements develop in response to emerging local opportunities; often more monetarized, they remain strongly dependent on social ties;
- in many cases we see the appearance or extension of forms of rental in contracts covering one or several seasons. Such an arrangement clarifies the term of the contract, giving security to the owner who benefits from an agreed sum paid as rent; insofar as the rent remains reasonable and the terms of the contract match the demand of the farm production cycle, it may also satisfy the tenant;
- this means that there is local capacity for institutional innovation in response to changes in circumstances. In many cases, these innovations engender no difficulty. In others, when they emerge in a tense social situation, or when they include ambiguous clauses, they can be the source of insecurity and conflict;
- the range of delegated rights usually enables efficient adjustment between different parties given their unequal access to land, labour, capital, technical/economic capacity, integration within commercial networks, etc., in a context where markets are imperfect or non-existent and there is a risk of opportunistic behaviour (as well as production-related risk);
- their impact on equity is more variable and cannot be analysed out of context. Generally speaking, systems of delegating rights do not involve a scenario in which a "large landowner" grants use rights to economically disadvantaged groups. It often happens that the beneficiaries of use rights are in a better position than the small customary "owners" who have granted them such rights. It is mainly in capital-intensive cropping systems that delegated rights may favour large farms. The impact on equity depends as much on the prior distribution of resources and local balance of power than on the contracts themselves: the same type of contract may, in different contexts, have the opposite effect;
- the degree of insecurity of tenure involved in derived rights arrangements is also quite variable and strongly context-specific: Overall, derived rights do not appear to be particularly insecure. Arrangements are based on a bi-lateral relationship between people and the extent to which commitments are fulfilled depends on the quality of that relationship. Rather than the verbal or informal nature of the contract, it seems to be the socio-economic context and the dysfunction of tenure regulation mechanisms that generate insecure rights. Some conflicts also are related to matters which have become of crucial importance but to which arrangements concluded many years ago do not refer clearly (right to take back or pass on land; inclusion of *bas-fonds* in land allocations, etc.).

*The research findings confirm that: "The major phenomenon that these descriptions reveal is the diversification and increasing number of arrangements made between local stakeholders to give, justify or guarantee access to land resources in a situation where competition is strong. These arrangements are agreements which are undoubtedly contingent upon the parties' interests, but which are durable and can be made binding on third parties. Far from being merely individual agreements, they combine the use of collective, prescriptive rules as a justification with the implementation of collectively tolerated, if not recommended, stratagems to maximize their advantages" (Chauveau, 1997: 345-346).*

*"The delegation of tenure rights by means of agrarian contracts is now seen by economists as the best way, irrespective of the distribution of landownership and the possible rigidity of the commercial market, of en-*

*...suring distribution of land as a productive resource in a more efficient (compensating for market imperfections and the presence of risk) and more equitable (because of the inverse ratio between farm size and productivity which favours family farms) manner" (Colin, 2007).*

From a more theoretical point of view, it is quite clear that systems for delegating rights are not only becoming more monetarized but also are being seen more and more as bilateral contractual arrangements, requiring the use of witnesses and, increasingly, written contracts. Although the provisions underpinning the local contractual framework of derived rights arrangements do not come under official legislation, legal rules and the institutional judicial environment in general have a growing influence on the terms of negotiation and implementation of agreements. Finally, while it may be that the contractual dimension, in clarifying the clauses of derived rights arrangements, contributes towards equity in the conclusion and implementation of contracts, this in no way prevents dominant parties from exploiting the balance of power in their favour.

While establishing derived rights on a more contractual basis is part of an overall trend towards marketization of social and tenure relations, it also further bolsters that trend and contributes towards exclusion from access to land of people who cannot meet the new conditions. Moreover, this trend goes hand in hand with the arrival on the tenure scene of new players and issues which are likely to reinforce the bilateral contract dimension, further undermine broader reciprocal relations and clear the way for a more explicit exercise of power.

## II. THE AMBIGUOUS STATUS OF DERIVED RIGHTS IN TENURE POLICY

### The Counter-Productive Effects of Policies

Government policies have frequently sought in Africa and elsewhere, to forbid or regulate various forms of delegating rights to land, under the pretext that they are inefficient or inequitable. Such policies have often been based on a caricature of the family farm which does not take account of the necessary adjustment between area cultivated and labour availability, as well as negative views of share-cropping commonly assumed to be inefficient or highly exploitative.

*Hence, under Nigeria's Land Use Decree of 1978, all transfers of land are declared null and void unless they have the permission of the State Governor. The Decree also creates a certain ambiguity regarding the status of tenants, with it being widely perceived that payment of rent for rural land would no longer be compulsory.*

*In Ghana, the Committee set up to examine landlord/tenant relations argues strongly against the role of sharecropping arrangements and states that: Customary tenurial systems like "abusa" and "abunu" should be phased out and the same replaced by a more progressive system, capable of protecting the interests of tenant/settler farmers and landowners..... there should be a collaborative effort by the government with the traditional authorities and other stakeholders to review, harmonise and streamline customary practices, use and legislation to govern land holding, land acquisition, land use and land disposal (p.11). This needs to be done to avoid rampant acts of harassment meted out to settler farmers on payment of drink monies and periodic customary services, tenant farmers should be educated to pay the periodic customary services. But that should not be unreasonable. Similarly landowners should be educated not to make unreasonable demands on tenants (p. 13).*

The arguments used to justify government action to prohibit or tightly control derived rights arrangements have, however, been invalidated by recent studies. Moreover, when government policy measures seek to suppress such forms of contract without simultaneously solving the problems to which they are a response (imperfection of certain markets, uncertainty, limited access to credit, etc.), there is a great risk of generating counter-productive results in terms of both efficiency and equity.

The consequences may include blocking opportunities for farm size to adjust to the availability of other factors, insecurity for landowners leading to less land being available for rent and resort to less efficient alternatives, and

the emergence of an illegal market bringing substantial transaction costs and high risk for the contracting parties, etc. Otsuka et al. (1992) observe that the few studies which have reached the clear conclusion that share-cropping is inefficient were carried out in India and Bangladesh where the choice of contractual arrangements has been restricted by law. This improved understanding of the functions and dynamics of agrarian contracts casts doubt on whether it is realistic to try to regulate this type of contract. The vast majority of economists now recognize the functionality and efficiency of agrarian contracts, especially against a background of imperfect markets "... although rental markets cannot completely eliminate structural impediments and bring about a fully efficient allocation of land in an economy, they can go a long way in bringing the operational distribution of holdings closer to the optimum" (Deininger et Feder, 1998:26).

## The Legal Invisibility of Derived Rights in West Africa

In West Africa, the tenure issue is characterized by legal pluralism, in which local rules, which are themselves hybrid, co-exist with national legislation based on radically different principles. There is thus a huge gap between rights as they are experienced and acknowledged by the parties concerned and "real" rights which have legal status. Almost all rural people find themselves in a position of legal insecurity, given the failure of the state to recognise their rights.

Derived rights have a doubly ambiguous status in current tenure policy<sup>59</sup>:

■ First, local forms of derived rights arrangements are rarely mentioned explicitly:

They come under "customary" rights which are either considered non-existent, ignored, or the subject of ambiguous acknowledgement in legislation, with the aim of incorporating them as quickly as possible in "formal law". Rural people usually have legally accepted rights to occupy and use the land they farm but any right of appropriation independent of a right of use is much less clear, while the status of derived rights is still less so. There are very few statutes which even mention them; such neglect is all the more remarkable in that the conception of "customary" rights is explicitly based on the idea of small farmers cultivating their own land for subsistence purposes. For example, Article 57 of Decree No. 97/054 (Land Reform in Burkina Faso) stated that "... occupation and use of undeveloped rural land for the purposes of meeting the housing and food needs of the occupant and his family are not subject to possession of government-recognized title." Any delegation of customary rights to another is therefore, in principle, outside the law when not explicitly forbidden (cf. the ban on land charges in Nigeria brought in by the Land Use Act of 1978).

With the exception of an ancient decree dated 9th May 1906, instituting the written recording of conventions in writing between indigenous parties in French West African colonies, Rochegude (see annex) found no statutes that could cover the status of derived rights in law, which thus seem to be completely non-existent from a legal standpoint.

### *The 1906 Decree (Rochegude, Annex 1)*

*The Decree of 9th May 1906, setting up a system for recording in writing agreements between indigenous parties in France's West African colonies is still an important statute, even though it is practically never used because no-one knows about it. It allows transactions based on customary rules to be authenticated by the administration. Indirectly at least, it justifies some current practices in urban and particularly peri-urban areas. In Article 5, it stipulates that "a deed bearing the (printed) affirmation form has the same value as a private deed as recognized or legally considered as recognized under the Civil Code. In addition, it takes its legal date as the day the form is registered". Clearly, this offers a way of validating so-called derived rights, especially when combined with the compendium of Dahomey customs.*

■ Second, when rental or share-cropping contracts are explicitly mentioned in the statutes, it is exclusively in relation to a plot to which formal title is held. Since almost no rural land is titled in West Africa, derived rights and even local forms of rental and share-cropping have no legal existence.

Within development schemes, such as irrigation projects and settlement zones, the State has often introduced restrictions on the rights of plot holders, forbidding any transactions, even temporary ones. The State has been

<sup>59</sup> Cf. A. Rochegude, *Le positionnement des droits délégués dans les législations*, annexe 1.

unable to recognise that small farmers will always need to adjust their access to land according to the availability of labour and other factors, which are bound to vary during the lifecycle of a farm household.

### III. TAKING DERIVED RIGHTS INTO ACCOUNT IN TENURE POLICY

Current developments in economic, social and political theory show the impossibility of universal prescriptions, which point to the importance of studying the context before making any recommendation as regards government policy on derived rights. Moreover, new thinking highlights the risk of counter-productive effects and the need for caution in any measures which could block the evolution of institutional arrangements and introduce inflexibility into processes which should be allowed to adapt. In that case, should tenure policy be concerned with derived rights or does their legal invisibility, in the end, guarantee their autonomy?

*Not all tenure regulation is necessarily counter-productive. Deininger und Feder, for example, note that regulations to protect tenants, especially against the risk of eviction, have a potential disincentive effect, if one accepts that the obligation to renew contracts on an annual basis helps guarantee the fulfilment of contractual obligations. However, they stress that such regulations can also have an incentive effect by encouraging investments by the tenant and can strengthen their negotiating capacity vis-à-vis landowners.*

Apart from any counter-productive effects from an economic point of view, three other factors argue in favour of taking great care in policy action aimed at codifying systems for delegating land rights:

- Derived rights provide a means for tenure to respond to a rapidly changing context. Their diversity and flexibility help farmers to tackle changing circumstances. Consequently, attempting to put them in a straitjacket risks interfering with this dynamic process;
- Trying to give derived rights legal status without securing them by means of ownership titles would raise almost insoluble legal problems, but it is unrealistic to expect such titles to become widespread in the medium term;
- In this field even more than others, it is unlikely that the State would have the means to implement its policy; laying down rules without being able to check on their enforcement would add to existing tenure pluralism.

This is obviously not a sensible road to go down. On the other hand, a number of problems have been identified which are related:

- to the denial of these rights and their resulting legal and institutional insecurity;
- sometimes to the limits of local capacity for institutional innovation and regulation;
- to the wider constraints within which stakeholders must negotiate their contracts.

Where problems are encountered in relation to these three issues, the State has a responsibility to limit the perverse effects of the current situation and foster the security of derived rights.

*The dynamics of derived rights hinge on the interaction between stakeholder perceptions of their interests, recognized rules, bi-lateral negotiation and opportunistic behaviour. We take the view that tenure systems should be located within a broader structure, with the State suggesting tools and procedures enabling the key aspects of tenure dynamics to achieve stability, without imposing a straitjacket on the evolution of institutional arrangements, but giving easier access to procedures prescribed by law.*

## Acknowledging the Legitimacy and Dynamic Nature of Derived Rights

### Documenting their existence and legitimacy

Current views of derived rights encourage different, contradictory interpretations which contribute towards a level of unpredictability regarding decisions and arbitration of problems associated with this form of institu-

tional arrangement. It is therefore necessary first to:

- document officially the existence of derived rights, as a normal component of any tenure system which helps maintain a dynamic farm economy;
- acknowledge their key characteristics, such as the diverse functions they fulfil, their flexibility and dynamism, the response they provide to help deal with particular conditions and certain "market imperfections", etc.

Such acknowledgement needs to be explicit and help establish a set of principles for all those who must deal with tenure issues, so as to promote a more coherent approach on the part of the State. Currently, in the absence of clear guidelines, the attitude of the local administration towards systems for delegating rights depends more on officials' personal approach than on a clear statement of policy. There is a need to extend the commitment to recognise local rights that now informs tenure policy to institutional arrangements for delegating rights.

#### **An arbitrary approach to withdrawals of land in western Burkina Faso**

*Faced with the emergence of new land transactions and the conflicts they sometimes provoke, as well as instances of land being withdrawn from 'tenants', government officials in Burkina Faso are approached by the various parties seeking arbitration in their own favour. Having no guidance on how to handle these problems, they do so in accordance with their own discretion or the political weight of one or other party. In one département in the West, the préfet will defend the migrants and forbid any land withdrawals, going so far as to put the indigenous parties in prison (thereby aggravating tension and encouraging withdrawal of land in advance in neighbouring départements). In the neighbouring département, the préfet will do the opposite. Lacking clear guidelines from the State, representatives of the local administration, particularly those who play a role in arbitration over tenure, are in a very weak position and their inconsistent decisions make it even more difficult to know what is allowed.*

This also means abandoning slogans like "land to the tiller" which ignore existing rights of appropriation and use and confirming that land should be put to use according to rules which are both legal and legitimate, i.e. based on local reality. Conversely, this also implies getting rid of attempts to forbid land transfers within irrigation and other development schemes that encourage the growth of a hidden market in land. In general, measures other than prohibition are much more likely to succeed in regulating transactions.

## **What legal status for derived rights?**

The diversity of forms of arrangement and their great flexibility make it unreasonable to try to codify them, in any event at national level, nor to define their clauses or the amount of rent to be paid. The desire to give formal legal status to derived rights comes up against a major obstacle, given the absence of ownership titles. Indirect entitlement to a portion of land cannot be given legal status where the land itself is not subject to a formal legal title. Attributing legal status would also have to tackle the complex issue of describing arrangements in legal terms, which is barely feasible.

Nevertheless, if the State is to play the role of arbiter in conflicts related to derived rights, these rights must have some kind of legal basis.

*"In the eyes of a jurist, nothing is legal unless it is established or grounded in law. Derived rights can only have legal significance insofar as the law allows and provides for procedures to validate deeds that do not come under specifically determined rules and instruments". (A. Rochegude, pers. comm.)*

The way forward seems to be to specify in law the conditions under which arrangements freely made between people, according to rules and procedures they perceive as legitimate, are considered valid in the eyes of the State, provided that they are not detrimental to other local rights-holders.<sup>60</sup>

<sup>60</sup> It is just such an approach which underlies the recent reform to agricultural tenancy law in England. Landlords and tenants are now able to negotiate an agreement on whatever terms they choose, with 12 months' notice to quit being the main element which remains enshrined by law. Rents are reviewable in comparison with open market terms and compensation is due to tenants for improvements made during their term of occupation. This shift towards a more permissive legislative framework has led to a massive increase in land put on the tenancy market (Moody, 1998).



Linking together two regulatory systems: "intrinsic" validation by the local community of the content of a contract and "extrinsic" validation by the state of its existence.

Even a verbal contract has a certain number of clauses. These may be based on convention or chosen by the parties. The various forms of institutional arrangement present in a given region come under accepted rules and, sometimes, local validation procedures such as the use of witnesses. Observance of these rules and, the presence of witnesses to testify to the existence and content of the contract represent "intrinsic" validation of that contract. This is necessary if the contract is to be legitimate in the eyes of local actors and if local arbitration bodies are to be able to deal with it. This is a vital aspect of achieving greater security. In many places, matters relating to derived rights come under this type of safeguard and regulation. Nevertheless, if the local rules and procedures are not sufficient and there is need to resort to external arbitration, or if the arrangement brings together parties who do not share the same social rules, a locally legitimate contract may also need "extrinsic" validation by the State. It is only when intrinsic and extrinsic forms of validation come together that genuine security of tenure can be achieved, by ensuring that institutional arrangements are both legitimate and legal.

Since, it is unlikely that the actual content of a contract can be defined by law, legality should relate not to the content of a particular contract, but the fact that it has been concluded according to procedures recognized as legally valid. Ratification by the State does not, therefore, mean that each contract must be drawn up in the form of a legal document, but that the ability to make contracts according to local rules deemed to be legitimate, is recognized and that such contracts will be considered as being in existence, including in the eyes of the State, so long as they fulfil a certain number of conditions. The contract and its procedures thus become the point at which local and state regulatory systems meet, and help build a bridge between local practice and formal law.

*The vital element in legal recognition of derived rights is not the definition of the contract's detailed content but acknowledgement of the contractual nature of the arrangement made between the two parties and the procedures required for such an agreement regarding land to be acknowledged as valid by the State.*

If it is considered necessary to put agreements on paper, written certification of conventions (1906 Decree), the PVP (Minutes of Discussion) in Burkina Faso and even private contract procedures can serve as a basis for the legal ratification of derived rights. Of course, the procedures may need to be firmed up, but the principle remains that of validation by the government of an agreement freely made between two or more parties in accordance with shared rules and accepted procedures.

*This approach does not necessarily require written formalization of contracts: provided that local rules are sufficiently explicit and known to the local administration, the latter can give rulings on this basis, relying on witnesses to determine what had been agreed. Putting things on paper may, however, be useful in some cases, as discussed below.*

## Derived Rights and the Broader Economic Environment

Derived rights are, in general, an efficient response to a given distribution of rights, assets and the constraints of the economic environment. A policy designed to alter derived rights must first tackle that wider environment including the distribution of land and other assets if agrarian reform is to be justified. Analysis of the rationale underlying such arrangements helps to identify "scarce" factors and the constraints to which the arrangements are a response.

### Removing imperfections in input and commodity markets

The clauses within derived rights arrangements reflect the asymmetrical relationship in terms of production factors between parties to an arrangement. Any intervention that reduces barriers to access to certain inputs or equipment, or helps to open up the produce market, alters the economic context and is likely to have an impact on the detailed clauses and, above all, on the options and room for negotiation available to each party. In the same way, an expansion of opportunities for non-farm activity can alter the bargaining position of different groups.

## Improving access to decentralized credit

Improving access to credit is particularly crucial: resorting to *abusa*<sup>61</sup> or *navétanat* is a way of mobilizing labour when cash is limited. Pledging, sale and even rental are related to the need for money that cannot be obtained by other means but with adverse consequences in terms of restricted access to land for members of the family. The current forces driving derived rights arrangements and, more widely, the land market are clearly a response to the credit squeeze, at least for some stakeholders<sup>62</sup>. Improving the supply of credit through micro-credit systems to provide cash advances or investment loans not directly linked to farming activity and relying on guarantees other than land is likely to have a significant impact on tenure arrangements as well as processes of impoverishment related to land transactions<sup>63</sup>.

## Helping to Make Derived Rights more Secure

The approaches developed above tackle a substantial proportion of the problems encountered and in some regions, they are sufficient to ensure the peaceful regulation of derived rights arrangements. However where certain forms of derived rights are clearly very insecure, or where a substantial land market has developed, the State may need to help to clarify rules and procedures.

### Reducing legal insecurity and stabilizing arbitration procedures

Both legal and institutional factors are important causes of tenure insecurity. They arise from the multiplicity of tenure rules and the many different arbitration bodies, with few links or a clear hierarchical structure. Legal and institutional insecurity is not exclusive to derived rights, although they may be particularly sensitive to it. Thus, anything that helps to reduce these types of insecurity indirectly helps to reduce insecurity related to derived rights. This applies particularly to the measures proposed above.

Another issue relates to regulatory mechanisms and structures. Currently, the complexity of the tenure position arises from the existence of many authorities which, *de jure* or *de facto*, play a role in tenure regulation. This does not mean that there is utter confusion, but rather "ordered complexity". Locally, depending on the situation, actors can normally establish relatively stable ways of achieving security of tenure, bringing into play both the local powers that be and government agencies at local level as well as elected local council members. Making procedures, rights and obligations more transparent helps to reduce institutional insecurity. In particular, there is a need to clarify the prerogatives of the different parties involved in tenure regulation, as well as the stages and methods of conflict settlement (local arbitration in the first instance, circumstances in which appeal to higher level authorities is permissible, criteria on which the latter may rely in making judgement, etc.). The process of administrative decentralisation and election of local councils in rural areas provide an opportunity to clarify these procedures, on condition that the nature of their powers over land are made clear and that the responsibilities of the other bodies are altered accordingly (cf. Rohegude, 2000).

### Clarifying what will be accepted as legitimate arrangements and clauses

Derived rights arrangements are only legitimate where they correspond to accepted local practices, meaning that they are the subject of rules shared by all parties involved (parties to the contract, witnesses and arbitration bodies). In many cases, this is what happens and there is no inherent insecurity in derived rights. It would be very valuable if these different arrangements and their essential clauses were known to the administration since it may have to give judgement about them in case of dispute. Moreover, in some cases, when the people involved do not share a common culture or value system, there may not be shared knowledge of these arrangements. It may then be useful to make them explicit.

<sup>61</sup> « Divide into three ». *Abusa* or *busan* covers various forms of work contract with a tenure aspect, based on sharing the crop or the established plantation. These contracts have played a considerable role in plantation schemes in Ghana and Côte d'Ivoire.

<sup>62</sup> One may also suppose that it is the existence of credit for cotton production which – partly – explains the absence of sharecropping in cotton-growing areas.

<sup>63</sup> Indeed, this is a link between tenure and credit which has apparently not been much studied, whereas the correlation between land title and access to formal credit has been the subject of a great deal of research.

Specifying which authorities (customary, government officials, local councils) are able to clarify these clauses, or make an inventory of the various recognized arrangements, may be a way of making them clearer and turning them into a shared reference for all parties concerned. The procedure must be very decentralized and easy to update, dealing with key aspects of the arrangements and subject to flexible validation such as through local by-laws. Attempts at codification, even at local level, come up against various problems: risks of distorting the content of arrangements due to their very diverse nature, or making flexible, negotiable procedures more rigid; difficulty in determining the dimensions of arrangements identified in terms of time and space, etc.

#### **Local consultation to clarify rules?**

*One of the challenges in clarifying tenure is to establish what rules or principles are acknowledged as legitimate in a given area. In order to be legitimate and legal, such rules must fit into the local context as well as being recognized by the State. Negotiations could be encouraged between actors who share a concern for social peace. Forums for consultation and dialogue between local leaders and administrative authorities can also be arranged, such as the "land commissions" set up by certain préfets in Burkina Faso. Active participation by the administration in such forums is essential, not only to establish a framework for the negotiations, but also to validate agreements reached.*

Finally, in tense or conflict situations, or in the case of new arrangements which are not yet sufficiently legitimate locally, or whose clauses are unclear and likely to be disputed, it would be useful to encourage public debate about these clauses, to clarify the rules.

*In western Burkina Faso, the process of withdrawing land from migrant farmers has become so widespread, it seems futile to attempt to halt it. When one préfet tried to forbid such withdrawals and imprisoned the indigenous parties responsible, he created great resentment and triggered a further wave of withdrawals in neighbouring départements, as local land owners sought to retrieve their plots before the government officials could forbid withdrawals. The terms on which withdrawals are acceptable need to be agreed, relying on local criteria, such as minimum notice of one year before withdrawal, or more in respect of long-standing settlements. Equally, encouraging moves towards rental with medium-term contracts, might be a way of regulating the trend without blocking it, as well as significantly reducing the tension it is causing.*

*In the same way, laying down a certain number of essential clauses, relating to aspects of the transaction which need to be clarified, should help to reduce some of the contractual insecurity involved particularly with sales (making the nature of the transaction clear, formalizing agreement with other family members, etc.).*

Such measures could be taken by the local government administration so long as it has both a mandate to do so and appropriate benchmarks. For arrangements which have a strong conventional element, such codification could constitute a sufficient reference for a judgement to be made about a verbal agreement between parties. However, the written form does help to consolidate transactions and minimize the risks of continual disputes.

### **Encouraging resort to simple written forms**

A substantial proportion of derived rights arrangements are a matter of verbal agreements, sometimes made before witnesses. Nevertheless, in Benin, Côte d'Ivoire and Nigeria, as well as Niger, Rwanda and the Comoros, rural people are increasingly putting their land transactions in the form of written agreements – as a way of keeping track of them and providing more security. Such written contracts may be either between themselves with witnesses or according to "semi-official" procedures involving the local administrative structures (government representatives such as *préfets* and representatives of local councils such as mayors, etc.). Analysis of these practices shows an increasingly systematic resort to witnesses and sometimes to village or administrative authorities whose signature can validate the contract. The content of these "bits of paper" is being refined over time, as people gain experience and the environment changes.<sup>64</sup>

Such local ways of using the written form are not very well known, as they do not refer to legal procedures, but offer a promising way forward to achieving greater security of tenure, by linking local rules and legal procedures

<sup>64</sup> Cf. Part II, Section III.3, and Lavigne Delville and Mathieu, eds. 1999.

together. Indeed, although their form may not match legal prescriptions, such written contracts fall into the category of "private agreements", freely made between parties. The legal existence of such contracts is usually asserted in civil law. Private agreements certainly have less legal force than a deed drawn up by lawyer, but they nevertheless constitute the "beginnings of written proof" recognized in law. If private agreements were given more formal recognition, and instructions were given to the various parties involved in tenure arbitration (courts, government officials, customary authorities, etc.) to take them into consideration, this would eliminate some of the insecurity and encourage the use of written contracts.

Encouraging resort to the written form seems to be a possible way forward, so long as it is based on existing procedures: a document never exists in isolation, being the tangible evidence of an agreement between people concerned, normally in front of witnesses and sometimes government officers; it represents only one among several forms for achieving greater security of tenure.

#### **Using the written form to encourage investment**

*In Sahelian Africa, loans of land normally include clauses prohibiting any lasting investment, as a way of safeguarding the lender's property rights. As signs of work done are a form of appropriation, planting trees or installing stone bunds could entitle the borrower to claim permanent rights over the plot. One means to get round this problem would be to formalize the contract between the lender and borrower, making it clear that the borrower renounces any claim over the land on expiry of the contract. This could help replace resort to annual loans or clauses forbidding all lasting investment and thereby clear the way for renegotiation such as sharing the costs and benefits of lasting investments<sup>65</sup>.*

Significantly, it is for sales or pledging that the written form is most often used. It is sometimes used for rental, but never for crop share contracts: only when money is involved do parties seem to feel the need to formalize their agreements. As regards derived rights, therefore, it is important not to make written agreements too rigid, by imposing for example a document which must be certified by some form of legal process, the cost of which would be a disincentive. Rather, there is a need for flexibility on legal forms<sup>66</sup>. The important thing is for certain essential clauses to be made clear so as to avoid later conflict, such as length of contract, any restrictions, conditions under which the agreement can be terminated and so on. The issue is even more crucial for sales, where more careful procedures are needed than for rentals where a simple private agreement should be adequate in most cases. In the former case, it is especially important to have obtained the agreement of different family members who might otherwise contest the validity of the sale.

Where there is an active market in derived rights, and where existing arrangements fall into a few simple categories, suggesting printed forms based on local arrangements, in both local languages and the official language (English or French) could make it easier to put things on paper without having to start from scratch, while guaranteeing that the essential clauses are quite clear. However, there must be room within such forms for a variety of other clauses to be negotiated between the parties.

*Making the use of French or English compulsory means that the majority of farmers are unable to check the content of the contract they are signing. If they cannot check what they have agreed to, there is a serious risk of manipulation. Where farmers can write in their own language or the regional vernacular (in Dioula, Mooré, etc.), it should be possible to authorize, or even encourage, use of such languages.<sup>67</sup>*

In some cases, resort to the local authorities (mayor, village official, etc.) and even registration and filing of contracts could be useful. Both to facilitate access to the written form and avoid the appearance of a hidden market outside the rules, it is important to be as pragmatic as possible as regards requirements, taking the chance that if having agreements on paper is seen to be useful, it will gradually become the norm. Making procedures too

<sup>65</sup> The problem of tenants facing a disincentive to invest in improvement of the land they rent is tackled in different ways in other parts of the world. In some places, maintenance of the land in good condition may be a condition of the tenancy continuing, with provision of compensation deemed to be fair at the end of the tenancy contract for any unexhausted improvements.

<sup>66</sup> Demand for more rigorous procedures is likely to emerge when a stronger need for legal security is felt. Providing a range of solutions allows people to choose what seems most appropriate to their own situation.

<sup>67</sup> In the Comoros, the Cadi draws up a deed for the parties in the local language and keeps a French translation in his records, after this has been re-translated by a third party in the presence of the parties before it is signed.

rigid, defining rules for arrangements which do not fit in with local practices and demanding that people register such agreements in the provincial capital or some other far away place are likely to result in failure of this approach.

## Measures to Put Cash Transactions on a Secure Footing

The sort of approach described above has begun to be tested in several countries in various forms. In Guinea, the natural resource management project, with support from the Land Tenure Center, has worked on formalizing land transactions. A procedure based on a set of standard contract forms to be ratified by district councils was suggested and tested in the late 1990s.

In 1999, the Ministry of Agriculture in Burkina Faso commissioned a study on the security of transactions in the country (Mathieu et al., 2000). Based on case studies in various regions, the research came up with practical proposals submitted for local feedback and discussed at national level during a "National workshop on the security of transactions", in July 2000. Following on from the study, a field project has been identified and is in its preliminary stages.

These experiments bear witness to the interest generated by this approach and offer insights into the best way to proceed. This essentially means promoting, encouraging and supporting three processes (Mathieu et al., 2000), and taking a long-term view of legal and institutional change:

- the gradual establishment of a socially legitimate system for assisting secure land transactions which are locally regulated;
- promoting local debate to clarify "benchmarks" of what are considered acceptable or unacceptable tenure practices and transactions;
- a growing formalization of cash transactions, at a pace driven by demand, social expectations and local conditions.

Experimental projects to test out local negotiations about tenure or the management of woodlands and other natural resources soon discover their limit: local people know that projects have a short lifetime and consider their own commitment to be short term. Even if agreements reflect genuine local consensus, their recognition by the administration and extension services depends on the goodwill of the administrative authorities: a change in the relevant government official is enough to render them null and void. Without legal and administrative recognition, local arrangements are dependent on the willingness of the parties to play by the rules they have agreed. But it may often be possible for some people to get around these rules by referring to national legislation. The administrative authorities, who are called upon to take a decision or arbitrate, have few points of reference to judge the cases presented to them, especially as the law has very little to say about the challenges facing rural people. They have therefore to rely on their own initiative, thereby increasing the unpredictability of decisions in the eyes of rural people.

In this complex area, where all parties (whether rural people, government officials or newly elected councils) are taking up new practices, they need to have clear indications that the contracts they make with each other will be respected. Governments need to provide a clear policy direction which is widely disseminated, and guidelines given to the local administrative authorities. Only then can activities in the field be sure of receiving formal validation, thereby helping to clarify the rules relating to land transactions and the responsibilities of different sources of local authority.

An approach designed to put derived rights arrangements on a more secure footing could then be tried out as suggested below:

- The trial would need to be carried out in an area where the existence and legitimacy of local systems for delegating cultivation rights are acknowledged by the State and where both the local administration and arbitration bodies are explicitly instructed to refer to local systems for delegating rights and to consider any written contract as the "basis of proof of a right" provided that it observes the minimum conditions to be laid down (witnesses, date, signatures, etc.).
- Within the area chosen for the trial, analysis of land transactions and any forms of insecurity encountered would be used to identify empirically the essential clauses which, in practice, need to be made explicit in order

to reduce the risks of future conflict. Public debate at a local level would be held to discuss these points, to clarify and reach agreement on the procedures, types of arrangements and clauses considered as legitimate and accepted by all parties. Where necessary, the State could stress the need to negotiate certain conditions considered essential from the point of view of efficiency or avoiding social strife (e.g. the rental period should correspond, as a minimum, to the crop cycle, such as three years for a cotton/cereal/cereal rotation; at least one season's notice must be given for withdrawal of a plot), or make recognition of a contract by the authorities dependent on such conditions being included.

- Depending on the results of this phase and given the legal and institutional framework at national level, the local administration could then be given the powers to issue bye-laws specifying the procedures and minimum clauses required for written contracts to be recognized within their area of jurisdiction.

A light mechanism would be needed to monitor the effects of the measures, adjust the approach where necessary and establish a simple methodology, based on what has been proved to work well in the field, for a possible extension of the approach to other areas. Exchange of experience at national and sub-regional level would provide a valuable means to spread the results of such a pragmatic, locally tailored approach, which ensures state legitimization of local practice.



## ANNEXES







## ANNEX 1. DERIVED RIGHTS AND NATIONAL LEGISLATION (BENIN, BURKINA FASO, CAMEROON AND SENEGAL)

Alain Rochegude

It is not a straightforward matter to situate so-called "derived rights" in relation to the legislative and statutory arrangements in force in the various countries in question, especially as derived rights are a kind of compromise, currently to a large extent outside the legal system, and lying between customary practices whose original meaning has often been distorted and modern rules that are not widely accepted. Generally speaking, customary rights have gradually come to be tolerated, but without ever being genuinely acknowledged and only with a view to incorporating them as quickly as possible into "modern" or written rights, either by putting them in the same category as ownership rights, or by purely and simply eliminating them.

### Benin

Benin still retains a large number of colonial statutes, although some of them were amended just after independence. As elsewhere, more and more problems are arising now with the revival of claims based on custom as a result of democratisation.

#### *The 1906 Decree*

*The Decree of 9th May 1906, setting up a system for recording in writing agreements between indigenous parties in France's West African colonies is still an important statute, even though it is practically never used because no-one knows about it. It allows transactions based on customary rules to be authenticated by the administration. Indirectly at least, it justifies some current practices in urban and particularly peri-urban areas. In Article 5, it stipulates that "a deed bearing the (printed) affirmation form has the same value as a private deed as recognized or legally considered as recognized under the Civil Code. In addition, it takes its legal date as the day the form is registered". Clearly, this offers a way of validating so-called derived rights, especially when combined with the compendium of Dahomey customs mentioned below.*

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The 1935 Decree (dated 15th November 1935, abrogating Decree dated 23rd October 1904 on landholding and instituting rules and regulations governing state-owned land in French West Africa) is still the main statute applicable to the identification and management of property administered by the State and local authorities. Article 1 is of vital importance to the present debate: "In French West Africa, vacant, ownerless land belongs to the State. The same goes for land which, not being the subject of regular ownership title or use in accordance with either the provisions of the Civil Code or Decrees dated 8th October 1925 and 26th July 1932, has not been used or occupied for more than 10 years. Land over which indigenous communities or the chiefs who represent them exercise collective rights of use may not be transferred or rented out except where approved by order from the Lieutenant Governor in Council. ..." This Decree clearly states the principle that customary rights only exist inasmuch as the land is not required for other activities requiring legal modernization of its status. This principle is still applied today, albeit with a degree of caution on the part of the administration.

Finally, it is worth recalling that in Dahomey (now Benin) a compendium of customs was compiled which was the subject of enactment by government circular (Circular No. 128AP of 19th March 1931 on customary in Dahomey or Dahomey customs) and which could therefore still serve as a reference today in certain circumstances.

### Burkina Faso

In Burkina Faso, legislative and statutory arrangements are based on the Agrarian Reform Law (RAF) of 1996 (Law No. 014/96/ADP of 23rd May 1996, on Agrarian and Tenure Reorganization in Burkina Faso; Decree No. 97-054/PRES/PM/MEF of 6th February 1997, on ways and means of enforcing the Law on Agrarian and Tenure Reorganization in Burkina Faso). According to the text, there is a national domain, made up of all land which has not

been titled as private property, in the legal sense of the term. The national domain thus includes so-called customary land, which has become the exclusive property of the State (Article 4 of the aforesaid law). This land must be allocated in particular ways depending on whether it is in an urban or rural area, but always provisionally and for the purpose of productive use, before it may, in some exceptional cases, be allocated to permanent ownership.

In rural areas, a *Certificate of Use* may be issued which allows ownership to be claimed after land has been put to productive use (*la mise en valeur*). The law also confirms the existence of rights deriving from the fragmentation of ownership right into its component parts, such as use, exclusion, transfer, and so on.

Conversely, as regards so-called customary rights, the approach is much more restrictive. The law in Burkina Faso provides (cf. Article 57 of the aforesaid decree) that "occupation and use of undeveloped rural land for the purpose of meeting the need for accommodation and sustenance of the occupant and his family are not subject to possession of an administrative certificate." The exercise of certain customary rights is therefore tolerated, although they may not be claimed as such. This is a possible opening for derived rights, but of course this is subject to the goodwill of the authorities. Another consists of the possibility offered to customary holders of obtaining a Certificate of Use covering their land and, after putting it to productive use, being free to dispose of it as they wish. Here, derived rights could perhaps, in some cases, provide a basis for obtaining a Certificate of Use. On the other hand, once the Certificate of Use has been legally established, this possibility disappears.

Finally, it can be seen that the legislation is a little more flexible and specific in respect of rights relating to forests, hunting and fishing, with these use rights being recognized provided that they do not compete with modern technical requirements.

One last question remains and that is the enforcement of the 1906 Decree referred to in connection with Benin. As this has apparently not been explicitly abrogated in Burkina Faso, it could still provide a legal framework for derived rights, at least in theory.

## Cameroon

Legislation in Cameroon after independence very quickly did away with any vestiges of colonial law, especially regarding any chance of validating customary rights. Thus, in the 1974 reform (Edict No. 75-10 6th July 1974 determining the property system), it was quite simply proposed to put an end to customary rights, as these were to be transformed into written rights within ten years of enactment of the law, otherwise they would have lost all legal value. Of course, in practice, this did not happen. The law was not enforced, at least in this regard, and after many years, customary rights, or rather their contemporary interpretations, came back in force.

The 1974 laws established a *national domain*, which was all-encompassing as it was supposed to include all land "that is not classified within the public or private estate of the State or other legal entities under public law", nor of course that which is privately owned and bearing a property title. Such land within the national estate "falls into two categories: firstly, residential areas, farmland, plantations, grazing and rangeland whose occupation is reflected in obvious human ascendancy over the land and probative productive use [in other words land which is the subject of customary rights]; and secondly, effectively unoccupied land" (Article 15, Edict 74-1). Customary holders of land in the first category may acquire written ownership rights through due process, whereas land in the second category automatically falls within the national domain. Assessing occupation and productive use of land in the first category is a matter for the administration and ad-hoc commissions.

Derived rights must fall within the first category if their holders are to have any hope of getting them validated by the administration. It should be stressed that such validation may be acquired *de facto* so long as the derived rights are in accordance with accepted traditional rules and the administration is not interested in the land. As soon as there is a challenge or a threat of expropriation in the public interest, tenure status would need to be modernized.

## Senegal

In Senegal, Law No. 64-46 of 17th June 1964 on the *national domain* was designed particularly to abolish customary rights, while confirming the rights of use and occupation of the "current" holders, i.e. those in place

when the matter is raised. As stipulated in Article 1 of the law in question, "The national domain is made up of all land not classified as in public ownership, not registered or whose ownership has not been transcribed at the Land Registry". In 1979, the Supreme Court even specified that rights acknowledged in tenure records (i.e. customary rights) necessarily fall within the national estate. To sum up, the situation is clear: customary rights have been abolished.

These rights usually relate to village lands or newly settled farming areas, or occasionally urban zones. Only the first two categories need concern us here. The pioneer areas should be excluded, as they are set aside for future projects and, in principle, no non-written right to them could be acknowledged.

In the case of village lands, this is land which is regularly used for rural housing, farming or herding, including fallow and rangeland. This land is henceforth placed under the responsibility of the rural district councils, the new decentralized bodies. They have powers to make allocations (i.e. acknowledge temporary rights of occupation and use) and withdraw them. Such rights should be recognized, in priority, in favour of those occupying the land at the time the law was passed. In practice, the process is still going on today, with councils usually making allocations on an annual basis. One may therefore suppose that there is some room for derived rights, but only on an informal basis (no legal expression can be given to them unless they are first formalized, which would take such rights out of the category with which we are concerned). Furthermore, rights are allocated on a strictly personal basis and cannot be transmitted in any way except through inheritance. This means that Senegal seems to take a particularly restrictive view, at least in legal terms, of the issue of validating rights that are not considered as such, at least in the eyes of the law.



## ANNEX 2.

### GUIDE TO FIELD WORK

*Designed for this research programme by Jean-Philippe Colin and Jean-Pierre Chauveau, this analytical methodology is strongly based on Colin's work on agrarian contracts (Colin 1998, 2000). It also draws on the work of other writers, such as Berry 1993, and Robertson, 1987.*

#### Basic assumptions

This guide assumes that you have already chosen the field sites. Please use this guide to help you develop appropriate lines of enquiry for questionnaires and interviews. It will need to be adapted to the particular context and conditions which you find in the case study sites. The guide is based on the example of 'sharecropping', as a means by which people can gain access to land. This is the most complex and formalized kind of arrangement that you are likely to encounter, in comparison with rental, or with allocation of land to women on marriage, for example. Thus, please adapt the questions as necessary for other kinds of contract which are likely to be far simpler than sharecropping.

The guide describes a process of fieldwork, from initial contacts and immersion in the site, through use of interviews and questionnaires to the final analysis and interpretation of the data. Nevertheless, in practice, these phases may not take place in such a neat sequence. For example, the immersion phase continues throughout the fieldwork, in terms of being present in the field site, and open to informal discussion. Similarly, in order to prepare an interim report as planned by the end of June, you will need to carry out an initial analysis and interpretation of your fieldwork data, although you may well not have completed the detailed interviews by this stage.

#### Immersion phase : Getting to know the field site

Objective: initial assessment of the situation regarding access to land: a general description of the institutional arrangements (including access to common property resources, such as woodlands, grazing land...); outline of rules by which access to resources are managed.

#### *Characteristics of the site and broader context which help explain choice of institutional arrangements*

Discussion of the characteristics and context will need to include:

- Agro-ecological factors: potential and constraints of the landscape and environment, risk and uncertainty related to climate, in particular, which may lead to various risk sharing arrangements, such as sharecropping.
- Markets and economic relations: how far do markets exist for labour, credit, inputs, outputs, how do these markets work? In cases where markets are poorly developed, does this help explain the form taken by institutional arrangements over access to land and other resources?
- Technical characteristics of the production system: how complex is the farming system, in terms of significance of inputs, predictability of output, profitability, etc.
- Socio-economic structures and rural society, which are the main economic actors, and how is power exercised at local level?
- The system of formal rules upon which, in practice, access to resources is based: what role is played by formal legislation, in comparison with local practice, regarding who gains access to resources, and on what terms? How are conflicts dealt with, and at what level – village, district, higher levels?

#### *Identification of stakeholders, or key actors*

Here effort is needed to identify the main social groups present, and their respective roles in relation to how people gain access to land and other resources. Such actor groups will include not only those generally acknowledged to be of importance (old/young; long established/new migrants) but also will need further precision in terms of the category into which they fall: e.g. founding lineage/chiefly lineage (people with power over land), descendants of servile/caste groups, settlers from close by, migrants and ethnic groups from other regions, women/men, urban dwellers, civil servants, former villagers moved to town, those returning to the village having been absent for some years, leaders of village associations, etc..

**Find out local rules and terms used to describe ways of gaining access to land**

Identify the forms of institutional arrangements currently in use: name of such arrangement in local language, their forms and conditions, extent to which conditions can be negotiated (which is really the essential core enquiry of this research). Information about conflicts over land: how important are they, who do they usually involve and how are they dealt with? This first survey of institutional arrangements is likely to give you the 'official version' of how access to land is managed. The detailed fieldwork is likely to produce a greater diversity of arrangements and numerous situations where the official wisdom is substantially adapted depending on the circumstances of the actors involved.

**Other sources of information**

- During this first phase, make use of other opportunities to listen, watch and talk to people in the field site, to complement and inform the data you will get from more detailed questionnaires and interviews. Note down what you hear in informal conversations, through gossip and direct observations from being in and around the field site.
- Interview local administrative personnel (such as project staff, extension agents) to build up a fuller picture of land tenure information, and gain their perceptions regarding the various institutional arrangements by which people gain access to land.
- Make adjustments to the questionnaire and interview guidance notes, taking into account the information you have derived from these various sources.

**Choice of informants**

The people you choose to interview are likely to vary as time goes on, depending on information which you gather as you proceed, the emergence of particular situations regarding access to land which seem interesting, and as people gain confidence in discussing these issues with you.

Interviewees/informants should be chosen from amongst:

- i. those with land who are lending it out to others
- ii. those who gain access to land belonging to others
- iii. those who are not at the moment involved in such arrangements, this group acting as a 'control' group of interest in comparison to those directly involved.

Choice of informant should also take account of social diversity, given the range of actor groups identified earlier, to make sure that you have covered a wide range of different kinds of groups. It is not necessary to take a strictly statistically valid sample here, but nevertheless you should keep in mind the need to interview people from a broad range of backgrounds.

**Description of the informant**

You will need to interview/conduct a questionnaire with each informant.

- social characteristics (sex, age, status, origin, etc) what position do they occupy within the social groups identified earlier?
- Characteristics of his/her farm, starting with a listing of plots (including fallow land where these continue to be under the informant's control). This inventory of plots (with a description of how they are put to use) should cover all of the following cases:
  - i. plots owned and used by the farmer
  - ii. plots owned but not used by the farmer
  - iii. plots not owned but used by the farmer
- Description of the farmer in terms of their household, life cycle, how the farm has been developing and changing, extent to which this helps explain the kinds of institutional arrangements into which the farmer has entered.
- Non-farm activities (trade, craftwork, transport, credit, and in the case of an absentee owner - profession and place of residence, etc.) Note special characteristics (chief, noble, leader of village association or cooperative, representative of a political party, religious leader, etc.).
- Resources/factors of production available to the farmer, both quantity and quality. Existence of constraints which help explain why the farmer is involved in institutions concerning access to land

- Outline of the farmer's life history (establishment of the farm, other activities of significance, involvement in migration...)

## Description of institutional arrangements

We assume you will have acquired a certain amount of information by this stage: a description of patterns and techniques of crop production, general understanding of difficulties associated with access to the means of production and the marketing of output, background information on the farm households being studied (size of holding, area cultivated, crops grown, soil types, work force available, capital required for farming, other off-farm activities, etc.). As far as possible, try to interview both parties to any given contract. If this seems impossible for practical reasons, try other means of getting information about the absentee land owner. Collect data both for each plot of land being studied for which such a contract exists, and for each of the households being studied.

### Description by field plot

The following guidelines were drawn up to investigate the operation of sharecropping contracts which are likely to be the most complex; thus you may need to adapt for less complex cases being investigated.

#### ■ Nature of the field (soil quality, relief, location, crop)

#### ■ Management of production factors

- Description of cropping calendar (land preparation, sowing, weeding...).
- Who does which of these different tasks?
- How are costs divided between land owner & person using the land? (seeds, fertilizer/manure, labour, ploughing, harvesting...).
- Who decides on choice of crop - variety, inputs used, organisation of labour?
- Who manages labour?
- How are the terms of the contract monitored?

#### ■ Management of output

- Does this concern a single crop, mixed cropping, and/or by-products, such as crop residues?
- What is the ratio by which the product is shared? Flat rate, or a given percentage?
- Basis on which the calculation of shares is made: division of the field, after harvest-before marketing, after sales, etc...
- What are the division of costs associated with selling the crop?
- Decision-making regarding sale of the crop: who decides when and how the crop should be sold? And how are sales monitored?

#### ■ Management of the contract

- Who are the partners and what is the nature of the relation between them? Does this contract build on an existing relationship (kinship, marriage, patron-client, neighbour, etc.), or has it developed as a result of this contractual relationship?
- How broad are the rights covered by this contract? Cultivation rights? Rights over the fruit of trees on the land? Are there certain restrictions placed on the person borrowing the land, such as forbidden to plant particular crops, to plant trees, to carry out soil conservation measures...).
- Length of the contract: is this spelled out precisely? is it renewable? can it be passed on by current land user to his/her sons/heirs? If the landowner dies, will the contract be respected by the landowners heirs? Under what conditions would the contract be revoked?
- Management of the social relations linking the two parties involved in the contract: are there clauses in the contract, either explicit or implicit which imply obligations between the two parties?
- Are there linked contracts or expectations associated with this contract, such as that the borrower will provide labour to the landowner? Is the borrower able to turn to the landowner for lodging, or loans in case of difficulty?
- How was the contract set up? Is it written or oral? Was it concluded in the presence of witnesses? Are all the terms and conditions clearly laid out, or are there many aspects which are left quite fluid? What security does either



side of the contract feel concerning their rights?

- How took the initiative to establish the contract? and why was this particular partner chosen?
- Was this contract and its terms what the land lender/borrower was seeking, or did they have to negotiate and compromise? What was involved in the negotiation process?

### ***Economic aspects of the contract on management of the plot***

- Area of land, inputs used (kind, amount).
- Value of factors used, whether through purchase on the market or estimated value where markets weak or non-existent for a particular input.
- Output: quantity, quality, value at sale

### ***Choice of contract***

Why did either the land owner, or borrower choose to get involved in this kind of institutional arrangement? What does the contract offer in terms of:

- Access to one or several inputs - land, labour, credit, equipment, management...
- Access to markets; a source of income/subsistence
- Means to spread risk; way of developing and extending a network of people dependent on the land owner, exercising patronage.
- How much room for manoeuvre did either party have during the negotiation of the contract? Could one side say effectively "take it or leave it"?

### ***How has the contract been carried out in practice?***

Have there been problems with the contract, and how have these been resolved? Have there been issues coming up which were not identified at the start and which had to be dealt with? How have relations between the two parties changed over the course of the contract?

### ***Combining contracts***

The sharecropper/land borrower may also be a landowner and let out land to others. Ask both parties about the other contracts in which they are involved, as land borrowers, or lenders. How large are the various fields being rented out, or borrowed, and in comparison with total holding size?

### ***Evaluation of contracts***

- What are seen to be the particular advantages and difficulties associated with the different forms of contract?
- What do the parties say about institutional arrangements which are not currently practised in this site (e.g. where, for example, sharecropping does not occur, what do parties say about this kind of arrangement and why it doesn't happen?).
- How does the contract affect the way that land is used and managed, according to the parties?
- What are the land user's views regarding changes underway in the kind of contracts/institutional arrangements through which people can gain access to land?
- What do the parties consider to be the effects of this kind of arrangement on questions of equity, and security of access to land?

## **Analysis and provisional interpretation of the information**

A description of progress in gathering information on the points outlined above in sections 1, 2 & 3 is particularly important for the interim report to be prepared for the end of June 1999. The provisional report due in November 1999 will need to report such findings in detail, and present a provisional analysis of issues outlined below.

a. Significance in qualitative and quantitative terms of the different kinds of institutional arrangement for the local production system and pattern of social relations

b. Analysis of contracts

- *Analysis of the behaviour of the different parties to the contract. Try to explain their behaviour and strategies on the basis of what they have told you, and/or what you consider to be an interpretation of their interests and strategy.*

- Analyse **the terms** of the arrangement. Can you explain why the terms are as they are? Is this (due to **local** agroeconomic, technical, social, political, economic factors?
- Analyse **the level of insecurity** faced by the different parties to these contracts. By **what means** do the different actors try to make their rights more secure? Can the borrower gain **firmer rights** over a period of time? **What reliance** is there on witnesses or administrative authorities to guarantee rights of each side under the contract? Are levels of security associated with these **differing contracts** undergoing change?
- Analyse how **disputes related** to these contracts are dealt with and by whom/**which structure**?
- Can you explain how and **why** such institutional arrangements for gaining access to **land are changing** over time, and what seem to be **important factors** in affecting the direction of such changes? Such changes might include:
  - **changes in the relative importance** in different ways of gaining access to resources, their relative importance in comparison with other means of gaining access to land (**inheritance, clearance, purchase, etc.**).
  - **appearance of new kinds of arrangement.**
  - **use of well-known arrangements** in new contexts: for example involving actors **not previously involved**, or for new crops (as where for example a system formerly used **uniquely for a cash crop** then becomes extended to cover a food crop).
  - **changes in the terms of the arrangement** (share of crop going to the different parties, or methods to guarantee security for the different parties, restrictions on **the borrower**, use of written documents to back-up arrangements...).
- **How do such changes in the form and terms of these arrangements affect** the different parties, and with what effect? For example, are land borrowers **becoming more secure**? Or are land owners in an **increasingly strong position** to dictate the terms on which people can borrow **their land**?

c. Identify and describe the main **stakeholder groups** involved in these various institutional arrangements, their relations and **how these are changing**

Can you say **anything about** how you might expect things to change over **the next few years**? Pay particular attention to, for example, the position faced by **the younger generation**, both as landowners who let out their land, and those who need to seek land to farm from others.

d. Implications of these arrangements and **stakeholder behaviour** in relation to the main issues and resources at stake in the local production system

For example, what impacts on security by which land is held, and access is assured? Questions of equity, of **efficiency** regarding land use and investment in making land more productive, nature of relations between different actors, degree of harmony and social cohesion.

e. Implications of how these arrangements are changing for the local production system.

f. Implications and analysis of these institutional arrangements for national policies concerning agricultural development, land tenure and administration, other areas of macro-policy

- What effects have there been from changes to legislation, public policy, or major economic changes (e.g. devaluation) on institutional arrangements for gaining access to land?

- What are the implications for public policy measures, and the national land tenure debate more specifically of these institutional arrangements? How might they be better understood and taken into account in broader policy debates?



## ANNEX 3. REFERENCES

A short summary of the results from this research is available as: *Securing secondary rights to land in West Africa*, Philippe Lavigne Delville, Camilla Toulmin, Jean-Philippe Colin and Jean-Pierre Chauveau, December 2001. IIED Drylands Programme Issue Paper no. 107. Also available in French (Dossier 107). Likewise, the French Ministry of Foreign Affairs, Paris, has published a French edition of this summary under the title "Reconnaître et sécuriser les procédures de délégation foncière en Afrique de l'Ouest."

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**Negotiating Access to Land in West Africa** provides valuable new insights into how people negotiate access to land and other resources in this large and diverse region. Current debates on land policy in Africa have focused mainly on questions of land ownership, and tilling. However, in many contexts, land is farmed by someone other than the land rights holder, through a series of institutional arrangements which allow access in exchange for cash, labour, credit, or some other scarce factor. In some parts of the West African region, such delegated rights of access to land cover more than half of the area under cultivation and thus are of considerable significance, most especially in zones receiving a large number of migrants. These flexible and dynamic arrangements allow for adaptation of the farming system to new opportunities and changing circumstances, whether economic, social, political or environmental.

This comparative research programme has been undertaken by a team of West African researchers from English and French-speaking countries. They analyse the diverse mechanisms by which people may gain access to land, and their relative importance in different settings. The research underlines the need for the State to recognise the existence of such procedures, in order to make them more secure by granting legal status to institutional arrangements which are considered by local people to be socially legitimate.

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