

**BULLETIN OF THE DRYLANDS: PEOPLE, POLICIES, PROGRAMMES**

# HARAMATA

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**Land rights  
under  
negotiation**

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## Derived rights:<sup>1</sup> Gaining access to land in West Africa

### *What are 'derived rights'?*

'Derived rights' describe the bundle of arrangements through which people gain access to land from others, usually non-family, and for a limited duration. An alternative term might be 'secondary rights', which conveys much of the same substance, involving the negotiation of rights of access between the primary rights holder and a person wishing to use the resource. Such arrangements take a variety of forms, which can broadly be described in terms such as leasing, tenancy, share contracts, and loans. However, such English language terms mask a great diversity within these arrangements, which take very different forms and content depending on time, place, and actors. In many parts of Africa, more than half the farmland is being used under such arrangements.

Derived rights have so far received very little attention from government and legislators. Debate surrounding land tenure and administration has tended to focus on questions of ownership and title, since it has often been considered necessary to introduce formal property rights over land, recognised and confirmed by the state by means of a cadastre, register of holdings and certificates of occupancy or title. Such arrangements are thought to be essential in providing the security needed to encourage sound management of land, increased investment and access to formal sources of credit. In contrast, customary rights have been consigned to second class status by most legislative arrangements. They have, at best, been

<sup>1</sup> *Derived rights of access to land and natural resources in West Africa* has been undertaken by a team of 10 researchers from 7 West African countries – Benin, Burkina Faso, Cameroun, Côte d'Ivoire, Ghana, Nigeria, and Senegal – within a programme co-funded by the French and British governments, and jointly coordinated by GRET, France and IIED, UK.

tolerated for so long as the land and resources in question have not been required by the state for some other purpose. In some cases they have been ignored, and in other cases sharecropping and tenancy contracts are actually illegal. In practice, however, there is a large gulf between what the law says, and local practice.

### *Contesting claims to land*

The research studies covered very diverse settings, ranging from cocoa and plantation crops in southern Ghana and Cote d'Ivoire, to irrigated plots in northern Nigeria and Senegal, areas of massive immigration in south west Burkina Faso, and high density and peri-urban zones in southeast Nigeria and southern Benin. In each of these settings, research demonstrates clearly the two opposing principles by which claims to land are commonly established and asserted by different groups in West Africa. The **first** is based on the original settlement and clearance of land, as a result of which rights to control this land are established, under the control of land chiefs. The **second** principle is based on the belief that claims are created through investment of effort, such that over time land users acquire rights over the land which they work. Thus, slogans such as 'land to the tiller' and rights acquired through 'putting land to good use' (*la mise en valeur*) have established a rival set of values for asserting claims to land. While this second principle might seem to concord with the first, in practice it favours the land user or tenant, in place of the customary land rights holder, whose ancestors cleared the land in an earlier epoch.

Each of the two above principles has been espoused by differing factions, depending on the interests served, and outcomes sought. In general, customary leaders have asserted the importance of the former principle since it strengthens their claims to control rights over land. By contrast, governments have sought to argue for the second principle, since this allows them to refute the claims made by cus-

tomary rulers and act as arbiters of what constitutes 'good use' and who shall be granted rights over land.

### *Land becoming scarcer and more valuable*

In much of West Africa, people now perceive land to be becoming scarcer, in greater demand and hence more valuable. As a result, people want to establish firmer claims over land and protect themselves from rival claimants. Land is being sought by a wide range of stakeholders, including non-rural dwellers who seek land both to cultivate and as an asset of growing capital value. While formal land titles may not exist in many places, people are trading rights of access to different resources, such that land has become, in effect, a marketable commodity.

Asserting control over land is an important strategy not only because of land's intrinsic productive value, but also because such control can be translated into means of gaining access to other resources. Thus, for example, access to land can be traded in exchange for farm labour, credit, ploughing or herding services. Structural adjustment, declining access to formal credit, and loss of agricultural subsidies have meant that people are increasingly keen to claim control over land as a bargaining chip when negotiating access to other resources. Thus, for example, land mortgage or pledging is an important means to raise cash in some areas, such as peri-urban southern Benin (Edja, 2001).

### *Land issues embedded in social relations*

Evolving markets in land rights must be understood within broader social, economic, and political changes underway throughout the region. **First**, much of West African rural society is experiencing the fragmentation of large domestic groups into smaller, family units with principles of long term reciprocity being replaced by shorter term calculation of economic advantage (Amanor 2001). This means

that elders can no longer assume the free provision of labour services from their sons, since the latter have equally had to abandon their expectations of gaining land from their fathers, due to land shortages and sales of land outside the lineage (Paré 2001). Equally, relations between women and men have undergone significant change, with women increasingly demanding that they be rewarded for work done for their husband's estate. **Second**, West Africa has experienced major shifts in population, mainly from drier Sahelian areas to higher potential coastal regions. This migration has led to very great changes in patterns of land use and crop production, while generating particular political tensions. Land disputes in areas of substantial in-migration encapsulate the conflict of principles between first settlement and land to the tiller outlined above.

Derived rights arrangements usually involve a range of social conditions linking the parties to the contract. These include the expectation that 'tenants' owe a duty of respect and service to the land rights holder. Thus, in Côte d'Ivoire, for example, migrants must maintain good relations with the family which has lent, or rented them their plots (Koné, 2000). Failure to present offerings, provide labour when needed, and to attend social events like marriages and funerals, will provide grounds for the contract to be revoked.



*Whether harvested from rented or family land, grain still needs pounding.  
Burkina Faso*