

STRUGGLES FOR LAND AND POLITICAL POWER ON THE POLITICIZATION OF LAND TENURE AND DISPUTES IN NIGER

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Introduction

In the present article two parallel arguments are pursued. First, it is argued that disputes over land tenure can be understood only if a wider socio-political context is considered and if several different levels of confrontation are included in the analysis. This is especially true when normative structures are plural and institutional structures ambiguous. Second, it is argued that, when socio-political negotiability is a central feature of land tenure conflicts, analysis should focus on 'open moments' as particularly intense periods of rearrangement of the social order. The recent history of Niger is a remarkable case of a polycentric legal system facing an impending land tenure reform in circumstances in which legal rules, social norms and tradition are questioned, and authority and legitimacy are challenged.

Analytical Distinctions

When analysing different conflicting interests in land tenure, it is fruitful to distinguish between actual access to land and political control over this resource. Some actors have access to land through recognized rights of access. But the allocation, interpretation and granting of these rights - that is, political control - is vested in certain politico-legal institutions. This situation gives rise to possibilities of three types of confrontation.

First, there can be confrontation between different resource users over access to the resource, as when two farmers make conflicting use-claims to a parcel of land.

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Second, there can be confrontation between different political authorities over jurisdiction to allocate access rights and adjudicate in disputes. Finally, there can be confrontation between resource users and the politico-legal authorities over the extent of the latter's control. In the course of these confrontations, social, political and legal structures and processes interact and constitute what we call law and legal process. Figure 1 summarizes the actors and the areas of potential confrontation

Figure 1. Analytical dimension of land tenure disputes

actors:	confrontation:
politico-legal institutions	jurisdiction
	user-autonomy versus political control
resource users	access to land

Neither the relations between the politico-legal institutions themselves nor the relations between these institutions and the immediate resource users are permanent. Social rules and structures are not enduring absolutes, but rather claims at stake in socio-political processes of conflict and negotiation. These processes produce social rules which can be invoked as arguments at later stages. To this perspective of gradual structuration must be added a notion of 'open moments'. These are occasions when the social rules and structures are suddenly challenged and the prerogatives and legitimacy of politico-legal institutions cease to be taken for granted. In such circumstances the stakes rise considerably for these institutions because such an 'open moment' offers a double-edged possibility of reassertion or erosion of power. Moore (1978: 50) uses the concept of 'situational adjustment' to refer to processes whereby people exploit the indeterminacies of the situation, and even generate indeterminacies, to reinterpret or redefine rules or relationships. An 'open moment' is a situation where the room for such situational adjustment is great and hence where the capacity to exploit it is crucial for the actors.

In what follows I first outline the plural norms and the overlapping institutions operative in the field of land tenure in Niger. Next I analyze the history of state attempts to regulate, reform and change these norms and institutions with the aim of rationalizing and simplifying the system. I argue that in fact these mostly had the opposite effect of increasing uncertainty. Uncertainty existed already in the late 1980s when a land tenure reform, the Rural Code (République du Niger 1992), was

announced, and it was increased by the development of political pluralism which took place around 1990. Finally, I give accounts of two cases of land tenure conflicts from Eastern Niger in which the multidimensional character of tenure disputes is revealed and the importance of 'open moments' in the changing structure of land tenure arrangements is demonstrated.

Nigerien Politico-Legal Structure, Land Tenure Legislation and Legal Reform

The setting

The overwhelming majority of the population (85%) in Zinder Department in Eastern Niger is rural and engaged in smallholder agriculture and the raising of livestock. While the northern limit of rain-fed agriculture establishes some natural separation between agriculture in the south and nomadic cattle-rearing in the north, a number of 'pockets' of pasture land exist in the agricultural zone, and cattle corridors between the pastures make agro-pastoralism and transport to Nigeria possible (Connick 1992; IIED 1990). Earlier, when land was in abundance, shifting cultivation and long fallows were common, but with increasing population density fallow has almost disappeared and pastures and cattle corridors are encroached upon by farmers.

The normative repertoire of land tenure

Most indigenous land tenure systems in Africa are characterized by a coexistence of multiple rights that are often held by different persons as a function of their status and position in society (Berry 1993; Bruce 1986, 1990, 1993). Moreover, there are often multiple ways of getting access to land and justifying claims to it.

Some of these are birth rights, first settlement, conquest, residence, cultivation, habitual grazing, visitation, manuring, tree planting, spiritual sanction, bureaucratic allocation, loan, rental and cash purchase. (Shipton 1994: 348)

These different sorts of claims do not necessarily contradict each other but can be seen as dynamic 'nested hierarchies of estates' which provide guidelines for negotiated resolution of differences in a large variety of circumstances. This richness of norms does however afford considerable room for competing arguments in a dispute. The normative repertoire does not constitute a differentiated hierarchy and the norms are of varying specificity. The norms are neither inherently contradictory

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nor compellingly complementary, but they are invoked to impose rival constructions on agreed facts and thus are brought into conflict by virtue of the strategic and pragmatic contingencies that arise out of conflicts of interest (Comaroff & Roberts 1981: 70-106; Fortmann 1995). Modern state legal systems are generally not designed to handle this kind of normative multiplicity and fluidity. They tend to favor regulation in terms of unequivocal rules, recognizing for each particular portion of land one claim as a 'property' right, absolute and exclusive. When state regulation of land tenure norms itself becomes the object of political struggle, multi-dimensional conflicts are likely to become rife.

As in many parts of Africa, customary land tenure rights overlap in Hausaphone Niger. Out of the multitude of indigenous forms of land tenure, those which conformed to European notions of legitimate claims were favored in the French recording of customs. Thus the opposition between a common law understanding of property based on first occupancy and the Lockean notion of property as a result of labor can be found in these recordings, alongside observations of the commoditization of land. Three bases for claims emerge.

(a) Raulin (1965: 137) argues that in the pre-colonial period the head of the household was allotted land through his lineage and clan. The man (and his household) cultivating the land retained the right to resume its use so long as any trace of cultivation remained. Use rights were largely exclusive, but were determinable in the sense that failure to cultivate would eventually lead to loss of tenure (Raulin 1965: 134; Latour Dejean 1973: 6). This interpretation accords primacy to work as the feature defining rights.

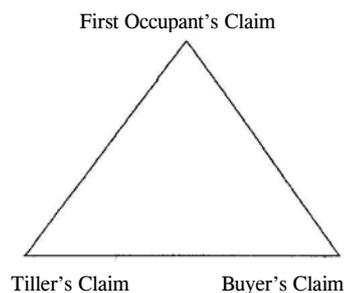
(b) In contrast to this was the principle of first occupation. The development of certain clan-inheritance features combined with certain values and norms associated with Islam to influence ideas about land tenure and, to some extent, to give rise to norms that conflicted with traditional ideas. The inheritable right of the first occupant was not affected by actual land use. Thus, even if land were abandoned, the person who first cleared the land (and his heirs) would retain a preeminent right (*Risâla*: 267). Land could lie fallow for many years and the first occupant and his descendants would still retain a right to control it (Latour Dejean 1973: 6). In fact, land tenure rights came to be regarded as inalienable. Pastoralists' claims to pasture and cattle corridors rested on a notion of time-honored rights, but these became increasingly difficult to uphold when encroaching farmers could refer to the principle of first occupation.

(c) Private holding of land based on cash purchase also developed during this century. Monetary arrangements have since the Second World War increasingly characterized the transfer of land in Hausaphone societies. In particular, tithe-paid

tenancy, mortgaging and sales have become common (Raynaut 1976: 284-87). Commoditization of land is potentially in contradiction to both the claim of the first occupant and the claim of the tiller of the land. Alienability is also, of course, in contradiction to the idea that land constitutes an inalienable patrimony.

These tensions are shown in Figure 2.

Figure 2. The Tenorial Triangle



This triangular normative repertoire has been the object of several attempts at formal and informal regulation by the state, each favoring one or the other principle at the expense of the others. Thus different claims which can be seen as coexisting and valid under different circumstances and hence not contradictory as such, become so when subjected to state regulation that favors exclusivity of rights.

Changes in state regulation have in general reflected the waxing and waning strength of the farmers and the chiefs and in particular these changes in the state's approach have been an indicator of the changing relationships between the technocratic political élite and the chieftaincy.

Ambiguous politico-legal structure

While the political leaders and regimes have changed in the course of time the public administration linked to the traditional chiefs has been remarkably stable, and this constitutes the backbone of the Nigerien state. The local administration is delegated, that is, the local administrators, the *Préfet* and *Sous-Préfet*, are representatives of the national government, and no local political assembly controls local development. With colonization the chieftaincy was transformed by the French administration, which rearranged the territorial jurisdiction and modified the numbers of chiefs,

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changed their prerogatives, and integrated them into the state apparatus as administrative auxiliaries of the colonial officers, *Commandants de Cercle*. The chiefs have retained their administrative and judicial role to the present.

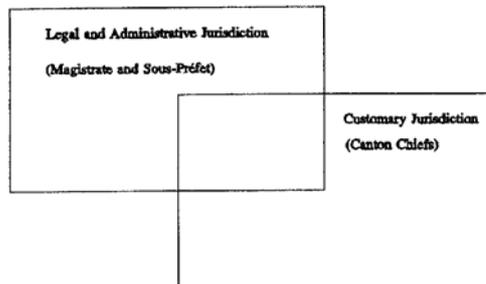
As integral parts of the administration, the *Chefs de Canton* were given a central role. The colonial officer depended on them for the maintenance of law and order and tax collection. Generally, the *Chefs de Canton* became the link between the emerging modern state and the population. This social position offered the traditional leaders several powers. The French colonial system operated with specific native laws, the *Code de l'Indigénat*, which applied to Africans only. The *Code de l'Indigénat* gave the *Commandant de Cercle* judicial power in indigenous matters. He was supposed to adjudicate according to local customs. For this, he depended almost entirely upon the partly-invented traditional leaders. This left considerable scope for the imaginative and opportunistic invention of customs, and in effect put the power of rule-making into the hands of the chiefs. They defined acts of possession and forms of property (see Rose 1994: 18; Shipton & Goheen 1992: 309).

Although the *Code de l'Indigénat* no longer exists, it instituted a legal system characterized by complementarity as well as hierarchy (Raynal 1991: 61). The division of society into citizens (Europeans) and non-citizens (Africans) meant that a number of domains, among them land tenure, were relegated to the realm of customary law. The *Chefs de Canton* therefore were, and have ever since been responsible for dealing with tenure disputes. Both customs and Islamic *Maliki* law (*Risâla*) are accepted as legal reference points. This gives the chiefs a large measure of discretionary power (Salifou 1981: 188-90).

The legal structure is at the same time hierarchical. At the bottom are the *Chefs de Canton*. Above them are the *Sous-Préfets* (replacing the colonial *Commandants de Cercle*), the Magistrates and finally the Supreme Court.¹ However, the formal limits of the legal powers of the *Chef de Canton* and the *Sous-Préfet* in the official legal system have always remained somewhat obscure to the average farmer. Magistrates and the *Sous-Préfets* consider the legal system as fundamentally hierarchic while the *Chefs de Canton* cherish the notion of complementarity. The judicial structure is illustrated in Figure 3. I have deliberately not situated different sorts of cases within the jurisdictions in the figure. The location of given sorts of issues is continuously at stake and negotiated. 'Land' matters seem to be permanently situated in the overlap.

¹ In principle only the Magistrates exercise judicial power, while chiefs and the *Sous-Préfets* have only conciliatory powers.

Figure 3. *Hierarchy and Complementarity - A Sketch of the Nigerien Judicial Structure*



Attempts to regulate land tenure - colonial period

The colonial administration asserted the state's ultimate jurisdiction over land. Specific rights to it were to be seen, in principle, as granted by the state. The administration recognized farmers' use-rights and local tenure customs as long as these were consistent with state law. The colonial criterion for maintaining a use-right was that the land was 'put to use' (*mise en valeur*). On the one hand, this concept favored one particular local interpretation of custom, namely that it incorporated the principle that he who worked the land held the use-right for so long as he continued to work it. However, the colonial interpretation of this criterion involved a rather utilitarian notion of 'good' use.² On the other hand, the state depended heavily on the chiefs for the administration of the colony and did not seriously challenge their authority vis-à-vis the farmers. The state therefore backed

² *Mise en valeur* is a quite opaque concept. Although it does not consider every possible use of land as giving rise to a legitimate property claim, it does not specify what amounts to 'good' use or who defines it. The concept is thus not very helpful in deciding whether a piece of land should be used for pasture or cultivation, or whether letting land lie fallow is 'putting it to good use'. It can be argued that the main message of the concept is that someone other than the occupant - the state or its representative - can declare that a use right has ceased to exist and expropriate or reallocate the land in question.

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the chief's right to control land allocation. One of the most frequent justifications for the imposition of tithe payments was, as it still is, that the tithe was the farmer's or other occupant's payment to the chief for being allowed to use the land. Consequently, alongside the tenancy relationship which existed before colonization between the first occupant and the person cultivating, a generalized version of a tenancy contract was created for vast tracts of land which were declared '*terres de chefferie*'. This gave the chiefs a status as first occupants even when they had not effectively occupied or cultivated the land. In effect, chiefs would treat even genuine first occupants as their tenants. In 1935 special legislation made forests and trees the property of the state (Elbow & Rochegude 1990). The Forest Code largely consists of restrictions and prohibitions on forest use, and forestry authorities even have the possibility of restricting the use of trees on the very few private lands in the country. Generally, this made people's rights to use trees very precarious.

Attempts to regulate land tenure - post-colonial period

A first point to be stressed regarding state legal regulation reaches beyond the field of land tenure. At independence Niger maintained colonial laws insofar as they did not conflict with the new constitution. Since there was nowhere any specification of precisely which laws were maintained and which were abrogated, general confusion characterized the legal system from the beginning. The practice of creating new laws without explicitly stating which laws were thereby repealed has continued to characterize the legislative process. As Abarchi puts it:

Par paresse, le législateur (Assemblée ou Administration) se refuse souvent à entreprendre la fastidieuse recherche des règles qu'il entend abroger lorsqu'il pose de nouvelles règles. Il se contente d'indiquer dans les dispositions finales que les nouveaux textes *abrogent toutes dispositions contraires*. (Abarchi 1994: 23, emphasis in original).

State regulation of tenure must therefore be seen in the context of a somewhat elaborate but not very coherent legal tradition.

During both the Diouri regime (1960-1974) and the Kountché regime (1974-1987) steps were taken to reduce the powers of the chiefs and landowners vis-à-vis the holders of use-rights (Ngaido 1993: 3). The payment of tithes was forbidden in 1960 and a profusion of ambiguous circulars and decrees, and other more or less authoritative 'interpretations' in the form of political speeches, were issued during the 1960s (Lund 1995; Ngaido 1996). For example, the law of July 19, 1961 (Loi No. 61-30) attempts to specify the relations between the landowner and the use-right

holder. It specifies that land shall be the irrevocable property of the one who 'puts it to use' for 10 consecutive years.³ Basically, the many laws and decrees had little fundamental impact on the powers of the traditional chiefs: the laws were simply not observed. The non-enforcement of law can be seen as a consequence of the state's and in particular the local administration's dependence on the chiefs. In spite of rhetoric and the intention to clip the wings of the traditional leaders, little was effectively done to undermine their position.

Like his predecessor, Kountché sought popular legitimacy for his regime by proposing among other things to reduce the powers of the chiefs. Immediately after the 1974 takeover, President Kountché declared that all land, no matter how it had been acquired and no matter under which tenure rules it was held, should henceforth belong to the person cultivating it as private property (Rochegude 1987).

This was followed by a contradictory decision to empower local administrative and traditional institutions to mediate and resolve tenure conflicts. In an ordinance (Ordonnance No. 75-7) of 1975 the *Préfet*, the *Sous-Préfet*, the *Chef de Poste Administratif*, the *Chef de Canton*, the village chief and all other traditional chiefs were authorized to conciliate in tenure conflicts (Ngaido 1993: 9, 1996). This opportunity to reassert privileges and prerogatives was not neglected by the chiefs. Generally, it led to conflicts between tenants and use-right holders on the one hand, and the chiefs and first occupants and their descendants on the other. The government resorted to issuing decrees and circulars intended once again to reduce the power of the chiefs (Lund 1995; Ngaido 1996). In 1977 the local administration and the chiefs were forbidden to participate in land conflict resolution. As a result, none of the institutions operating in the rural areas had formal powers in land conflicts. But in the absence of any institution with legal jurisdiction, plaintiffs would address themselves to any of a range of institutions: to the *Sous-Préfet* and the *Chef de Canton*, but also to various extension services, to Islamic priests, to the *Gendarmerie*, etc. Disputes would go back and forth between these institutions. Substantively, the effect of abolishing formal legal jurisdiction was that the claims of the tillers vis-à-vis the claims of the first occupants, recognized in 1974, were weakened.

³ It is worth noting the oddity of this rule. While apparently according primacy to 'work' instead of 'ownership' as a criterion for continued access, it provides that the reward for 'work' is, eventually, 'ownership'. Once 'ownership' is secured, the obligation to 'work' is weakened, and primacy is accorded to 'ownership' as the criterion for access to and control over land.

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Since the mid-1980s political developments in Niger have affected the field of tenure at two levels. The announcement of tenure reform in the form of the Rural Code (République du Niger 1992) made it a matter of urgency for resource users to secure their access to land. And the emergence of political pluralism has increased competition over jurisdiction between politico-legal institutions in general.

The Rural Code

From its inception in the late 1980s the project of land tenure reform through a Rural Code (République du Niger 1992) was ambitious. Tenure insecurity was judged to be a central contributing factor in the stagnation of rural development, the degradation of the physical environment, and the deterioration of long-term productive capacities. Hence, a clarification of the modes of tenure and of transfer of natural resources, especially of land, was considered an important step toward reversing some unfavorable trends.

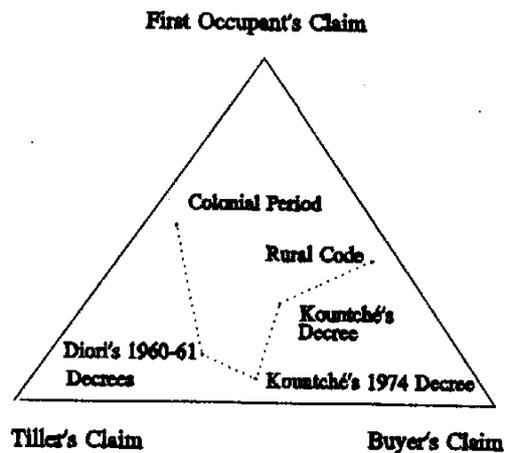
The intention was to avoid changes in the actual distribution of land while clarifying the conditions under which land was held. It was decided that agricultural land could become the private property of an individual if customary rights could be established. Thus the announcement of the Rural Code amounted to an invitation to claimants to seek recognition of customary rights immediately in order to secure irrevocable private property rights later. The *autorité coutumière compétente*, who was the *Chef de Canton*, was recognized as the institution through which most people must pass if the transformation of customary land rights into private property rights was to be formally recognized. Considering the chiefs' own customary land rights, based on first occupancy and control of the *terre de chefferie*, the Rural Code can be considered as embodying a policy of favoring first occupancy and reducing the legitimacy of claims to the recognition of private property rights based upon the actual use of land.

Figure 4 outlines the history of changes in land tenure policy in terms of the changing weight accorded to different tenorial principles. It is worth noting that none of these policies takes any account of property as a bundle of coexisting rights. On the contrary, they are one-dimensional in the sense that they favor the exclusivity of a single principle. To the degree that they have not succeeded in this, the policies have all been self-contradictory.

As the figure shows, colonial laws basically were ambivalent between first occupants' and tillers' rights. The Diori decrees favored the tillers' claims and

enabled conversion into private property. Kountché's 1974 decree compounded this by removing the requirement of 10 years of cultivation. The abolition of formal dispute resolution jurisdiction in 1977 weakened tillers' possibilities of having their claims recognized. Finally, the Rural Code as a procedural law favors the claims of the controllers of procedure, namely the traditional chiefs, and makes it possible for them to convert their claims into private property.

Figure 4. The Tenorial Triangle and the Development of Tenure Policies



In summary, the repertoire of tenure rules has repeatedly been the object of political intervention and the potential ambiguities in the system have developed into contradictions. The recent Rural Code can be seen as the latest attempt to introduce clarity and predictability but it nevertheless results only in further ambiguity and unpredictability. This phenomenon has been observed by legal as well as sociological scholars. Rose (1994: 200-08) thus argues against what she terms the 'scarcity story', or the thesis that increasingly clear property rules result from increasing scarcity of a particular resource. Rose argues that, while there is pressure for unambiguous clarity under such circumstances, there is an off-setting counter movement for exceptions, fluidity, imprecision and uncertainty. A pattern of back-and-forth movement between clarity and imprecision generally characterizes the Nigerien property legislation. Consequently, we should not expect Nigerien tenure law ever to reach one of the angles in the tenorial triangle but rather expect moves towards clarity to be off-set by movements towards exceptions which reintroduce ambiguity.

With the announcement of the Rural Code the ambiguity concerning access to land

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spilled over into the other resource at stake. As we shall see in the next section, the jurisdictional powers of the politico-legal institutions and the competition between them became increasingly complicated in times of political pluralism.

Political pluralism and new players

During the military regime from 1974 to 1991 only the party of the military, the *Mouvement National pour la Société de Développement* (MNSD), was authorized to conduct politics. The regime managed to quell political opposition until the death of president Kountché in 1987. In 1993 multi-party elections were held for the first time in decades. The slogans of the new and successful opposition party, the *Convention Démocratique et Sociale* (CDS), centered around bringing back justice to the people, and putting an end to abuse of power by government officials and to the power of the chiefs. During the heat of the campaign, slogans and policy promises were often given an extra twist to become more appealing to the rural electorate: the abolition of traditional chieftaincy, of the forest guards, and of taxation were promised, as was the retrial of all cases unjustly decided by the MNSD-controlled administration or the chiefs. The election propaganda particularly emphasized the undertaking that land lost through expropriation or rigged trials conducted by the chiefs was to be handed back. Though it was not formally committed to these promises, when the CDS won the elections the promises made during the course of the election were remembered by the rural population. Land tenure disputes became a major issue at the local level.

The CDS and its coalition partners in the new government agreed on a tacit quota system between the coalition parties for filling the positions of *Préfets*, *Sous-Préfets* and other important civil servants in the administration. In the department of Zinder and the arrondissement of Mirriah, whence the case studies to be presented below are taken, the new *Préfet* and *Sous-Préfet* were appointed out of the CDS quota. With contradictions at the level of property rules as well as ambiguity concerning institutional jurisdiction and legitimacy, the early 1990s can be characterized as an 'open moment' where much was at stake and little could be taken for granted.

Two Cases: Competition over Jurisdiction Accompanying Dissociation by the State

The following two cases exemplify land tenure conflicts at two different levels. The first involved a dispute between individuals which developed into a confrontation between an individual and the state represented by a *Chef de Canton*.

The conflict was initially an 'ordinary' dispute over a stretch of land between two neighbors but was seized on by a *Chef de Canton* as an opportunity to escape from a dilemma of his own. In the second case, simple disputes over trees triggered a broader mobilization and a change in the local power structure. Disputes over access were transformed into disputes over control, and law and politics blended.

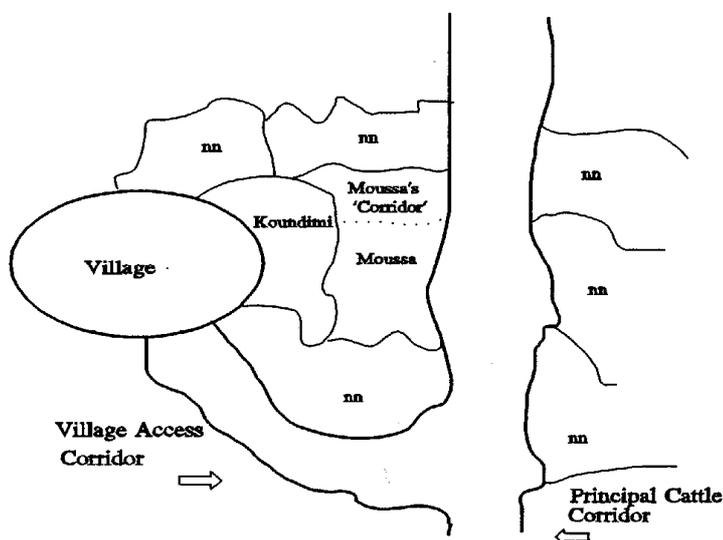
Case 1. Moussa is made a scapegoat for others' infringements

In 1984 the *Service de l'Agriculture* in Mirriah was about to conduct on-farm trials of a new variety of cowpea. For part of the project they selected the village of Tchoukou, on the border between the Canton of Gao and the Canton of Jigawa and asked the farmer Moussa to put a field of one hectare at their disposal for the trial. Not keen on the idea but unable to refuse, Moussa made available a field of a little over 1 ha. Since the trial required exactly 1 ha., a strip of land 15 meters wide and 300 meters long was not included. A wealthy neighbor of Moussa's, Elh. Koundimi, asked whether he could use the strip as a corridor for his cattle, facilitating their access to the principal corridor. Moussa was hesitant, but finally let Elh. Koundimi use the land for one year. After one year the on-farm trials had collapsed because of the 1984 drought. Moussa could now plant crops of his choice and he claimed back the strip of land. He encountered no problems from Elh. Koundimi, who reverted to using the older access corridor. Moussa cultivated the land for the next three years. (See Figure 5 for the spatial relationships.)

However, the older village access cattle corridor leading to the principal corridor was gradually disappearing as a result of the encroachment of the abutting fields. Disputes over crop damage began to arise, putting the *Chef de Canton* of Gao in a difficult situation.

When in 1988 the Assistant *Sous-Préfet* and the *Chef de Service de l'Elevage* were on a mission to the Canton of Jigawa, the *Chef de Canton* of Gao seized the opportunity to have them settle his problem of the disappearing cattle corridors. In presenting his case, he argued that some farmers had encroached on the principal and access corridors. He assembled a group of pastoralists who backed the allegation, and the authorities demanded that the corridors be re-opened. Moussa protested vehemently at the suggestion that 'his' corridor should be reopened, and a decision on this was postponed to a later meeting in Mirriah. Situated on the border between the Cantons, the village was under the jurisdiction of the *Chef de Canton* of Gao, but a considerable number of inhabitants, including Moussa, were subjects of the *Chef de Canton* of Jigawa. Moussa went to his own chief and asked him to support him at the meeting in Mirriah.

Figure 5. Outline Map of Tchoukou Showing Cattle Corridors and Moussa's Field



The meeting in Mirriah resulted in the *Sous-Préfet* indicating that he was favorably disposed towards Moussa's interests, but he insisted that it would be necessary for him to visit the disputed area himself. He did not appear on the agreed date. Moussa went to Mirriah four times to ask the *Sous-Préfet* not to forget his promise. Moussa was anxious to have the dispute settled before the cropping season since the pastoralists were threatening to let their animals onto his fields. Finally, in late June the *Assistant Sous-Préfet* and the *Chef de Service de l'Élevage*, but not the *Sous-Préfet*, came to Tchoukou. After a closed session with the *Chefs de Canton* of Gao and Jigawa, it was again decided that Moussa should re-open the corridor through his fields, which he finally did under protest. This was noted in the mission's report. Moussa pleaded with his own *Chef de Canton* to defend his interests but the *Chef de Canton* would not step into the breach: he was old, and the land was not in his Canton. The corridor was maintained for two years.

Emboldened by the paralysis of the administration during the political upheaval and democratic transition in 1990, Moussa repossessed the corridor and planted it. The principal corridor was also violated and planted. But Elh. Koundimi reported only Moussa to the *Gendarmerie*. He was arrested for seven days, which he spent

weeding the fields of the two *gendarmes* in Jigawa. He was then released and continued to cultivate his land. One of the pastoralists, Zakari, tried to force his way through the planted principal corridor but was caught by the farmers, beaten up and taken to the *Gendarmerie*. Here he received another good hiding by the *gendarmes* for provoking disorder. He was released (to be hospitalized) only after his father had paid 20,000 FCFA in compensation for the crop damage.

In 1991 Moussa cultivated his field again, including the contested strip of land. Since the principal corridor no longer existed, 'his' access corridor now led nowhere. Nonetheless, Elh. Koundimi reported him again, and he was again jailed for seven days.

In 1992 the *Chef de Canton* of Jigawa died, and Moussa then put his case before his son and successor. Living in the national capital, Niamey, the new *Chef de Canton* was, however, not interested in performing his duties in remote Jigawa. Moussa, getting no support, finally abandoned the strip of land. The principal cattle corridor was not re-opened despite the fact that the *Assistant Sous-Préfet* tried to have it reestablished in 1993. He was threatened with beating by the farmers, and retreated. As a pastoralist stated: "Since democratization, the authorities dare not make unpopular decisions".

Several observations may be made about this dispute. First, the *Chef de Canton* of Gao managed to shift the burden of compromise between farmers and herders from his Canton onto Moussa, whose position was exposed since he lived within the jurisdiction of the *Chef de Canton* of Gao but was a subject of and paid taxes to the neighboring *Chef de Canton*. Second, while initially defending pastoral interests, the *Chef de Canton* of Gao was unable or unwilling to support the pastoral claims to the corridors in the longer term. This, however, did not benefit Moussa who, abandoned by his own *Chef de Canton*, was left to become a lone symbol of the authorities' rigorous protection of pastoralists' interests. The violent action against the pastoralist Zakari by the *gendarmerie* was a tangible deterrent to other pastoralists, and, as time passed, the chances of reopening the principal cattle corridor dwindled.

A problem for both the pastoralists and farmers like Moussa was the lack of higher-level political backing. Moussa lived beyond the protective reach of his own Chef and was easy prey for the energetic *Chef de Canton* of Gao. The pastoralists enjoyed the mixed blessing of being subjects of the same chief as most of the farmers. This chief had to straddle antagonistic interests and ultimately failed them, defending only a symbolic 'dead-end' corridor.

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Case 2. Coup de Canton frustrated; but CDS rocks the boat

During the campaign for the elections to the National Assembly in 1993, militants from the political party CDS promised the population a 'new deal' without customs officers, forest guards or corrupt traditional chiefs. This promise emboldened a large group of farmers to fell an entire grove of doum palms. The trunks of these palms are highly valuable as construction material and are transported and sold even as far north as Agadez. The *Service de l'Environnement* asked the *Chef de Canton* whether he had authorized the exploitation of the tree trunks. When he denied it he was informed that he must identify the culprits, and otherwise the entire Canton would be punished. The *Chef de Canton* began conducting a house-to-house search. He started in his own village, where a few people were found with palm trunks in their back yards and were arrested. Before the search continued to other villages, rumors of the *Chef de Canton's* expedition preceded him, and people managed to hide most of the trunks before the chief reached them. Finally, he gave up. The *Service de l'Environnement* nevertheless still insisted that the guilty be identified, and the *Chef de Canton* resorted to another procedure. On the following market day he publicly issued a Coranic curse on all who had cut down trees and who did not report this fact immediately. A fair number of people came forward, and the foresters demanded fines to the extent of 8000 FCFA per trunk. The *Chef de Canton* managed to negotiate the fines down to 4000 FCFA and issued a one-week deferral of payment.

During the following week there were rapid developments. Some discontented villagers went to Hassan Sanda, an energetic CDS militant resident in the area, to complain about the *Chef de Canton's* abuse of power. Sanda saw this as an opportunity to transform the discontent into a public demonstration against the *Chef de Canton*. He began to collect *Cartes de Famille* among CDS adherents in the 24 villages in the Canton. A *Carte de Famille* is a family's citizenship card stating where the family is resident and to whom taxes are paid. The collection of the *Cartes de Famille* was a means of announcing a collective change of allegiance, the plan being that the families would register under another *Chef de Canton* and thereby undermine the power of their present chief. On market day Hassan Sanda, backed by more than 100 angry men who found courage in numbers and in the assertive, self-righteous conduct of their leader, confronted the *Chef de Canton*. He lectured him on democracy and the imminent downfall of the chiefs, and threatened him with the ongoing collection of *Cartes de Famille* in his Canton. Unable to gather sufficient authority to reverse the situation, the *Chef de Canton* angrily sent everybody away and stopped pursuing the case. The fines were not paid.

Later in 1993, when the CDS had won the presidential election and was part of the coalition government, the Zinder branch of one of the human rights associations, the *Association Nigérienne pour la Défense des Droits de l'Homme*, (ANDDH) prepared to open offices in various Cantons, including Gao. Although the ANDDH and other associations were not formally affiliated to the CDS, the fact that offices in both were often held by the same people sometimes made it hard to distinguish between the two. Hassan Sanda was the ANDDH man in the Canton of Gao. When he contacted the *Chef de Canton* to inform him that the ANDDH was going to establish bureaus for legal counselling in a number of villages, the *Chef de Canton* threatened him with a public flogging if he proceeded. Hassan Sanda nevertheless held a meeting in the first village to establish a Bureau d'ANDDH. Two of the *Chef de Canton*'s trusted men were present and they reported back that Hassan Sanda was appointing Magistrates in the villages. This prompted the *Chef de Canton* to approach the *Sous-Préfet* and have Hassan Sanda summoned to a hearing about his activities.

On the day of the hearing, hundreds of CDS and MNSD militants showed up at the *Sous-Préfecture* to hear the proceedings and back their favorites. The *Chef de Canton* argued that Hassan was confusing roles which should be kept separate. The political parties were supposed to do politics and not to interfere with justice. He, on the other hand, was the a-political authority in his Canton responsible for, among other things, justice. The CDS was known to have conducted quasi-legal hearings and to have adjudicated between litigants in the absence of state officials (Lund 1995: 191). Hassan replied that the ANDDH was an officially-recognized association, that citizens throughout Niger could join it, and that it was entitled to set up bureaus. Furthermore, since the ANDDH was politically neutral, it could, unlike the political parties, take up cases of injustice on its own initiative. It had even been praised for doing so by the new government, i.e. the *Chef de Canton*'s superiors. Having been appointed on the CDS quota, the *Sous-Préfet* sided with the people from the ANDDH and the *Chef de Canton* reluctantly accepted this result. Thereafter he took the view that the *Sous-Préfet* had licensed Hassan Sanda to do as he pleased in the Canton.

Hassan Sanda subsequently put even greater energy into collecting *Cartes de Famille*, and within a few weeks an impressive 520 had been collected.⁴ Most of the village chiefs in the Canton were contacted to support the undertaking. Many

⁴ A modest estimate would be that one card represents 10 persons, making a total of about 5,200 people of the Canton's total population of some 16,000.

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of them were dissatisfied with the way the *Chef de Canton* had constantly taken the lion's share of food aid for the region and had threatened village chiefs who were in arrears with tax payments for their villages. The village chief from Kaoboul, Issaka Yahaya, saw this as an opportunity to become *Chef de Canton* himself.

With the support of 17 of the 24 village chiefs in the Canton, Hassan Sanda wrote a three-page complaint listing the alleged misdeeds of the *Chef de Canton*. These ranged from embezzlement of food aid and taxes, arbitrary rulings in disputes, impounding of harvests and wood, and obstruction of the opening of the ANDDH bureau, to general bad manners. The letter concluded with a plea for the replacement of the *Chef de Canton* and new elections among the village chiefs. In October 1993 the letter, addressed to the Parliament, was presented to the *Sous-Préfet* together with the 520 *Cartes de Famille*.

The *Sous-Préfet* promised to investigate the affair, but refused to accept the 520 cards. Instead he had Issaka Yahaya arrested, accusing him of being the mastermind behind all this trouble and of wanting to replace the *Chef de Canton*, the rivalry between the two being common knowledge in the area. Issaka Yahaya told the *Sous-Préfet* that his name was on the letter without his consent and that he knew nothing about the whole affair. The *Sous-Préfet* sent the *Gendarmerie* to the Canton of Gao to investigate the allegations against the *Chef de Canton*. They returned with the answer that no evidence supported the accusations of the letter. At least for a while the uprising was neutralized. But the problem recurred during the collection of taxes in late 1993. When the *Chef de Canton's* officials came to collect, many of the people whose *Cartes de Famille* were missing claimed to have paid their dues to Hassan Sanda. Whether they had is uncertain, but in the event the *Chef de Canton* was unable to deliver the taxes allocated to him to collect. This situation was repeated in 1994, and the *Chef de Canton* was seriously reprimanded by the *Sous-Préfet*. This was far more likely to undermine his position than open political opposition, because the administration was liable to replace him on the ground of technical tax irregularities and incompetence. Hassan Sanda was protected by his party membership, and nothing was done about him.

The case shows how a seemingly insignificant tenure dispute over some trees in a palm grove can in the 'right' circumstances become a vehicle for an open attack on the chief's authority. While Hassan Sanda sought to challenge the institution of chieftaincy itself, the village chiefs obviously had more limited changes in mind. Issaka Yahaya in particular saw a chance to become *Chef de Canton* himself. The circumstances of the time made an alliance between these parties possible.

The case further suggests that blind adherence to rules can be politically lethal. At the request of the *Service de l'Environnement* and the forest guards, the *Chef de*

Canton vigorously pursued the people who had destroyed the palm grove. The situation got completely out of his control. It is somewhat ironic that a person who was accused of numerous transgressions should have stumbled as a result of observing the rules.

Conclusion

I have presented two cases of intense socio-political confrontation sparked off by conflicts over land and other natural resources. Both demonstrate how ambiguity of legal norms and jurisdiction leaves room for manoeuvre to politico-legal institutions. In the first case the *Chef de Canton* was able to exploit the indeterminacy of the situation by switching between policies of protection and elimination of the cattle corridors, defining cultivation of the main corridor as 'good use' and Moussa's attempt to reappropriate his own land as 'encroachment'. In the second case, a CDS-militant managed to establish himself as an authority and challenge the *Chef de Canton*. The attempt to overthrow the chief eventually failed, but CDS 'rocked the boat' seriously.

Uncertainty about the rules and about the authority of the various politico-legal institutions opened both cases wide to politicization. The disputes were absorbed into a broader political competition where the actions of the original litigants became incidents in the mobilization of power on a different scale. In the confrontation between citizens and politico-legal institutions fragments of a pattern seem to emerge. A strategy by the authorities to dissociate themselves from the parties to the conflict appears to be the first reaction to a challenge to the legitimacy of any of them or of the state in general. The politico-legal institutions manoeuvre to seal themselves off from the individual citizen's contestation of authority. If, however, the challenge to authority is presented by a relatively organized group, it can be less easily neutralized. In this case a new set of challenges and opportunities arises. Politico-legal institutions which are not directly challenged may try to dissociate themselves from the institution under attack. If the attack on legitimacy and authority is not specifically directed at one institution, however, but develops or appears likely to develop into a general attack on the entire system, competition and rivalry between these institutions gives way to self-defence though dissociation again. Thus, when Hassan Sanda in the second case tried to bring down the *Chef de Canton* by means of civil disobedience, the *Sous-Préfet* realized the general political implications of Hassan's undertaking, and put an end to it.

The intensity of politicization in the two cases was largely due to the open character of the situation following the announcement of tenure reform and the

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advent of political pluralism. The announcement of the Rural Code reestablished tenure as a local issue and put at stake rights in land, however they might be conceived, this resulting in turn in an increase in tenure disputes. At the institutional level the tenure reform and contemporaneous political change put at stake the roles of local authorities as socio-political and judicial arbiters. The politicization can be seen in terms of institutional competition over jurisdiction.

These cases and the recent developments in Niger suggest that legal authority and political competition can be important aspects of 'simple conflicts' over natural resources, although the importance of such 'external' dimensions of confrontation may vary over time. Berry argues that negotiability of rules and relationships is a fundamental characteristic of African societies (Berry 1993). Apparently fixed titles, prerogatives and rules are constantly negotiated and reinterpreted, and there is always a political element in even the simplest conflict. The cases presented here seem to confirm this. However, it could be argued that negotiability characterizes all societies. What we should investigate is the form of negotiation, that is, the varying ways in which rules and relationships are negotiated. It is noticeable in particular that, when the form of negotiation is itself negotiated, so to speak, the stakes multiply. When new rules of the game are introduced in the form of land tenure reform or a significant political change, relatively banal disputes are infused with much more complex dimensions, which easily overshadow what was originally at stake.

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