

Readings in African customary water law

Anthologie du droit coutumier de l'eau en Afrique

ISBN 92-4-45053-5

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en Afrique

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Development Law Service
Legal Office

Service droit et développement
Bureau juridique

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M-54
ISBN 92-5-003813-5

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FOREWORD

Although statutory water legislation is in force in most countries in Africa, the tenure, use and disposition of water resources in much of rural and peri-urban Africa is under the sway of traditional systems. The resilience of customary legal systems in general is increasingly attracting the attention of Governments and international aid agencies, as dissatisfaction with the functioning of modern legal systems mounts, and it is belatedly realized that traditional systems are deeply rooted and often quite functional, particularly in the area of conflict resolution. It is increasingly apparent that custom in general, and water-related customary practices in particular, are a factor to be reckoned with by water resources policymakers, planners and decisionmakers if development projects and programmes are to rest on a sound legal and institutional base and are to yield, as a result, sustainable results.

This publication is intended as a contribution to the knowledge of traditional systems of tenure and disposition of water resources in Africa. It does not result from original field research, but from a search of references contained in the legal-anthropological literature. These are brought together here so as to make them readily accessible to policymakers, planners, project managers, social science researchers, administrators and, in general, water professionals.

Some of the literature extracted and presented here is dated, and may not reflect today's state of custom, for this is constantly evolving. However, the state of customary practices as is reflected in this publication constitutes, in our opinion, a valuable point of departure for further research and study. There is no pretense here to encyclopedic exhaustiveness of the available literature on this, relatively un-explored subject of inquiry. We shall be grateful if omissions are reported to us.

This publication has been prepared under contract with this Service by legal anthropologist Dr. Marco Ramazzotti of Rome, Italy, on the basis of research he has conducted in the course of 1993-94. The layout and final editing have been the responsibility of Mr. S. Burchi, Senior Legal Officer with this Service.

Lawrence C. Christy
Chief, Development Law Service

PREFACE

Bien que la plupart des États africains se soient dotés de l'appareil législatif et réglementaire nécessaire à la gestion de l'eau, les aspects fondamentaux de l'utilisation des ressources hydriques sont encore régis, notamment dans les zones rurales et péri-urbaines de l'Afrique, selon la coutume.

La résistance des règles traditionnelles et la relative non-pertinence des normes juridiques contemporaines ont appelé l'attention croissante des gouvernements et des agences internationales d'assistance. Ainsi n'est-ce qu'avec retard qu'il a été reconnu que, non seulement la coutume reste profondément enracinée mais qu'en outre, elle satisfait souvent aux besoins, notamment en ce qui est du règlement des différends. Il est de plus en plus évident que les responsables des politiques et de la planification des ressources en eau doivent intégrer la coutume en général et les pratiques hydriques spécifiques dans le processus de prise de décision afin que les projets de développement et les programmes reposent sur les bases juridiques et institutionnelles idoines et qu'ils débouchent ainsi sur des résultats durables.

Cette publication se veut une contribution à la connaissance des systèmes traditionnels de l'utilisation des ressources hydriques en Afrique. Ne résultant pas d'enquêtes menées sur le terrain, elle est le fruit de la quête des références présentes dans les documents juridico-anthropologiques. Ces références ont été ici rassemblées afin d'en rendre l'accès facile pour les responsables politiques, les planificateurs, les gestionnaires de projets, les chercheurs en sciences sociales, les administrateurs et, en général, à tous les professionnels de l'eau.

Certains des documents résumés ou présentés ci-après étant particulièrement anciens, ils pourraient ne plus refléter de l'actualité d'une coutume particulière, la coutume étant par essence en évolution permanente. Néanmoins, les pratiques ci-après rapportées, constituent, à notre avis, un appréciable point de départ pour d'ultérieures recherches. N'ayant pas la prétention d'avoir relevé toute la littérature disponible sur ce thème d'enquête, littérature au demeurant peu explorée, nous souhaitons vivement que les omissions nous soient signalées.

La présente étude a été préparée pour le Service droit et développement du Bureau juridique de la FAO par Monsieur Marco Ramazzotti, expert en anthropologie juridique, sur la base des recherches menées en 1993 et 1994. Structuration et édition de l'ouvrage ont été effectuées sous la responsabilité de Monsieur Stefano Burchi, Fonctionnaire principal, attaché à ce service.

Lawrence C. Christy
Chef, Service droit et développement

TABLE OF CONTENTS
TABLE DES MATIERES

	<i>Page No.</i> <i>Page n°</i>
INTRODUCTION	(v)
INTRODUCTION	(vi)
TABLE BY ETHNIC GROUP: EXPLANATORY NOTES	1
TABLEAUX PAR GROUPE ETHNIQUE: NOTES EXPLICATIVES	4
ALGERIA	7
ANGOLA	15
BENIN	21
BOTSWANA	27
BURKINA FASO	45
CAMEROON	51
CHAD	61
CONGO	67
EGYPT	73
ETHIOPIA (including ERITREA)	79
GAMBIA	101
GHANA	107
GUINEA BISSAU	125
IVORY COAST	129
KENYA	137
LIBYA	151
MADAGASCAR	157
MALAWI	169
MALI	177
MAURITANIA	213
MOROCCO	221
NAMIBIA	241
NIGER	251
NIGERIA	269
RWANDA	289
SENEGAL	295
SIERRA LEONE	309
SOMALIA	315
SOUTH AFRICA	327
SUDAN	339
TANZANIA	353
TOGO	383
TUNISIA	387
UGANDA	393
ZAIRE	405
ZAMBIA	417
ZIMBABWE	431
ANNEX I	437
ANNEX II	443

INTRODUCTION

This publication consists of a collection of ethnographic, i.e., legal-anthropological, literature on traditional systems of tenure, use and disposition of water resources in Africa. It has been prepared in response to a dearth of easily accessible, specific literature on this subject, the information featuring here having been extracted from a vast body of literature, where water has apparently been regarded as a continuum with the land, with water laws falling within the domain of land laws.

"Water cultures" have existed and still exist in Africa. Custom, as recorded in the surveys presented here, has surely evolved, and even though this book is unable to trace such evolution, knowing and understanding the practices recorded, for the most part, by colonial surveyors will help establish a link between the past and the present, and will encourage, it is hoped, a large spectrum of water professionals, African Governments and international aid agencies to pay greater attention than hitherto to this, largely unexplored source of solutions to water resources development and management problems and conflicts.

The literature on water-related customs and traditions is arranged here by country and, within each country, by ethnic group. Where these span more than one country, cross-references have been made to the country where the particular group is present in greater numbers. Texts which could not be traced to any ethnic group in particular have been grouped and presented at the end of each country. For the convenience of the reader, the information found in the literature presented here has been summarized in table form, one or more for each country. The literature relevant to each country is thus preceded by a table where basic data on the water-related environmental, cultural, socio-political, economic and more specifically traditional legal/institutional features of each ethnic group is encapsulated, so as to offer at a glance the essentials of each group's practices in relation to the use, development and protection of water resources. A consolidated bibliography arranged in alphabetical order by country, within each country by ethnic group, and within each ethnic group by author, is appended at the end of the book.

The literature research for this publication was conducted in Cambridge, London, Paris, Bruxelles-Tervuren and Rome, in the course of 1993 and 1994. The aim has been to cover most of Africa, more than one ethnic group by country, all typical environmental situations (desert, semi-desert, wooded savannah, forest, large rivers, sea, mountains), and all colonizations with their respective legal legacies. The author has located and quoted, among others, the early colonial literature on the African traditional legal systems, recording customary practices dating back to pre-colonial and colonial times. Caution is recommended when using some of the earlier literature owing to the ethnocentric, Eurocentric bias of the first colonial surveyors of African legal customs and laws.

The author has benefitted from the advice of leading scholars like Kerr, Sheddick, Shapers, Bohmann, Gluckman (English speaking); and Le Roy, de Rochemade, Verdier (French-speaking); and the Italian Mizzau. Also, the author owes much to Claude Meillassoux's school of economic anthropology and is greatly indebted to the research on African traditional laws and their transition to the modern codified African legal systems conducted by Elienne Le Roy, director of the Laboratoire d'Anthropologie Juridique of La Sorbonne. Francesco Castro, professor of Islamic Law in Rome guided the author through Islam in Africa and in the Mediterranean.

Time and resources for the research were limited, and the author is well aware that the available literature is sparse and uneven in terms of geographic coverage, depth and quality. He believes nevertheless that this publication is a useful step which will encourage further research and contributions by scholars and development planners.

INTRODUCTION

La présente publication est un recueil de documents ethnographiques, et notamment d'anthropologie juridique, traitants de l'utilisation des ressources hydriques en Afrique. Elle a été préparée pour remédier à la pénurie de bibliographie spécifique à ce thème et en faciliter l'accès; les informations qu'elle contient ont été extraites d'un vaste ensemble de documents dans lequel l'eau n'est prise que dans ses aspects connexes à la terre, la législation y afférente relevant du droit foncier.

Des "cultures de l'eau" ont existé et existent encore en Afrique. Sans doute, comme le relate cette étude, la coutume évolue-t-elle et cette publication ne saurait le retracer avec précision; néanmoins, la connaissance et l'appréhension des pratiques généralement relevées par les experts coloniaux aidera à établir un lien entre le passé et le présent et encouragera, on l'espère, les professionnels de l'eau, les gouvernements africains et les agences internationales d'assistance à porter une attention plus soutenue à cet ensemble de solutions, encore largement inexploré, pour le développement et la gestion des ressources en eau, et le règlement des différends.

La littérature sur les coutumes et les traditions relatives à l'eau est donnée par Etats et par groupes ethniques qui en relèvent. Si ces derniers s'étendent sur plus d'un pays, les renvois ont été faits au pays où le groupe particulier est le plus présent. Les textes qui ne pouvaient être ramenés à aucun groupe en particulier ont été regroupés et présentés à la fin de chaque pays. Pour faciliter la lecture, les informations contenues dans les documents bibliographiques retenus ont été résumées sous forme de tableaux, un ou plusieurs pour chaque pays. La littérature relative à chaque pays est donc précédée par un tableau où sont incorporées les données environnementales, culturelles, socio-politiques, économiques et, plus spécifiquement, juridico-institutionnelles traditionnelles pour chaque groupe ethnique; est ainsi donnée une vue d'ensemble sur les traits essentiels des pratiques propres à chaque groupe en matière d'utilisation, développement et protection des ressources hydriques. Une récapitulation bibliographique alphabétique par pays, par groupe ethnique, et par auteur est annexée à la fin de l'ouvrage.

Les recherches nécessaires à l'élaboration de cette publication ont été menées en 1993 et 1994, tant à Cambridge qu'à Londres, Paris, Bruxelles-Tervuren et Rome. L'objectif était de couvrir la plus grande partie de l'Afrique, plus d'un groupe ethnique par Etat, tous types géographiques (désertique, semi-désertique, de savanes boisées, forestier, fluvial, côtier, montagneux) et chacune des entreprises coloniales avec leurs héritages juridiques respectifs. L'auteur a retrouvé et cité, en particulier, la littérature de la première période coloniale sur les systèmes juridiques traditionnels africains, rapportant les pratiques coutumières datant de la période pré-coloniale et coloniale. A cet égard, l'accès aux textes les plus anciens, influencés par la vision ethnocentrique européenne des premiers experts coloniaux, requiert les précautions d'usage.

L'auteur a bénéficié des avis des principaux experts tels Kerr, Sheddick, Shaper, Bohannan, Gluckman (pour la langue anglaise), de Le Roy, Rochegude et Verdier (pour la langue française) et de l'italien Mizzau. Il s'est largement appuyé sur les travaux de l'école d'anthropologie économique de Claude Meillassoux, ainsi que sur les recherches sur les lois traditionnelles africaines et leur transition vers les systèmes juridiques africains codifiés qui ont été conduites par Étienne Le Roy, directeur du Laboratoire d'anthropologie juridique de La Sorbonne. Francesco Castro, professeur de droit islamique à Rome a guidé les recherches sur l'Islam africain et relatives à la zone méditerranéenne.

Le temps et les ressources destinés à cette recherche étaient limités et l'auteur reste conscient que la littérature disponible est très éparse et trop irrégulière en termes de couverture géographique, d'approfondissement et de qualité. Il estime cependant que cette publication constitue un utile premier échelon qui encouragera les chercheurs et les décideurs à d'ultérieures études et contributions.

TABLES BY ETHNIC GROUP: EXPLANATORY NOTES

- (1) **Social structure and habitat:** this column indicates whether
 - the prevailing social structure is based on family (either nuclear or extended), lineage, clan or tribe;
 - the society is matrilinear or patrilinear;
 - associations (voluntary) or groupings by profession or age exist;
 - the habitat is concentrated (village) or scattered.
- (2) **Political structure:** indicates whether power is prevalently structured by bands, chiefdoms or kingdoms or whether power is diffused; if authority is related to rain making power.
- (3) **Environment:** features of the environment are indicated as follows: arid; semi- arid; savannah; forest; river; lake; mountain; humid environment; sea; village.
- (4) **Predominant modes of production**, indicated as agriculture, hunting\gathering, fishing, trade or crafts.
- (5) **Economy:** autosubsistence or market.
- (6) **Agriculture:** either rainfed or irrigated (by flooding, by canal or by hand).
- (7) **Water resources:** classified as permanent, seasonal, abundant or limited.
- (8) **Fishing:** when fishing is practised, it is indicated whether it is done so annually or seasonally; whether on an individual or collective basis; and where it is practised, either in the sea, or in inland, fresh waters.
- (9) **Irrigation:** where irrigation is practised it is indicated
 - who controls the system, whether individuals, families, clans, the village, the maire de l'eau or the chef de la terre (or others);
 - whether rights of selling or buying irrigation infrastructure exist;
 - whether rights over water apply (are in operation) always or only when water is scarce.
- (10) **Water rights/conflicts:** this sections indicates:
 - (a) Whether conflicts concerning water in general are important or negligible.

(b) Concerning fishing whether

- control over fishing is exercised by the community, a sovereign or by private appropriation;
- rights on fishing grounds are held by the community, families, a sovereign, private individuals or a maître de l'eau;
- regulations exist on collective fishing, private fishing, building of dams/stockades, on selling/curing fish;
- a specific organization dealing with fishing exists.

(c) Concerning transport on water, whether there are:

transport rights over areas; rules on boats; rules on passengers; rules on transported goods; a maître de l'eau, chef de la terre or a specific organization dealing with water transport

(11) Colonization: United Kingdom, France, Portugal, Spain, Germany, Italy, South Africa.

(12) Legal system, either African, traditional, of Islamic influence or of Islamic derivation.

(13) Land tenure, indicating whether land is allocated by the head of family, head of village, chef de la terre or sovereign.

(14) Drinking and household use of water: this section provides information on water as a basic factor of reproduction \survival, indicating whether

- control of water for drinking and household uses is exercised by: the family, community, sovereign, maître de l'eau or other, or through private appropriation;
- water is free of charge, a fee is to be paid, or users have a duty to maintain the water-point;
- the selling of water is possible or not possible;
- the selling of the water point is possible or not possible
- there is a specific organization dealing with water.

(15) Other uses not involving construction of works: this section provides information on water for other uses (as a factor of production) when the resource is easily accessible, without the need for the construction of works. It is specified whether, in this case,

- control is exercised by the family, community, sovereign, maître de l'eau or others, or through private appropriation;
- water is free of charge or a fee is paid;
- a specific organization dealing with water exists.

- (16) **Other uses involving construction of works:** this section provides information on water as a factor of production which is not easily accessible (the benefits of which are therefore deferred) since construction of works is required (such as in the case of wells and dams). In this case it is indicated whether
- control is exercised by the family, community, sovereign, maître de l'eau or through private appropriation;
 - water is free of charge or not free of charge for the local community; a fee is paid; water is free or not free of charge for foreigners; water is free or not free of charge for local cattle, and for foreign cattle;
 - an authorization is needed for digging a well or a basin on communal land; the individual has obligations to the community of well digging and maintenance and the duty to provide water; an authorization is needed for watering; precedence rules exist as well as restrictions on use imposed by whomever has the authority to do so at times of drought; and protection of rights of way to water sources;
 - a specific organization exists dealing with water and/or waterworks.
- (17) **Protection of water quality:** this column indicates whether there are rules concerning cleaning of water sources, washing clothes away from the source, bathing, entering the water source, protection of waterworks.
- (18) **Conflict resolution:** this section indicates whether conflicts are resolved at the level of the family, village, lineage, chefferie, maître de l'eau or by a specific water tribunal or other court.

TABLEAUX PAR GROUPE ETHNIQUE: NOTES EXPLICATIVES

- (1) **Structure sociale et habitat:** indique si
- la structure sociale dominante est basée sur la famille (qu'elle soit nucléaire ou au sens large), la lignée, le clan ou la tribu;
 - la société est matrilinéaire ou patrilineaire;
 - il existe des associations (volontaires) ou des groupes par profession ou par âge;
 - l'habitat est concentré (villages) ou dispersé.
- (2) **Structure politique:** indique si le pouvoir est structuré de façon prédominante en bandes, chefferies, ou royaumes ou si le pouvoir est diffus; si l'autorité est liée au pouvoir de faire pleuvoir.
- (3) **Environnement:** aride; semi-aride; savane; forêt; fleuve; lac; montagne; zone humide; mer; village.
- (4) **Modes de production prédominants:** agriculture, chasse/cueillette, pêche, commerce ou artisanat.
- (5) **Economie:** autosubsistance ou de marché.
- (6) **Agriculture:** soit alimentée par la pluie, soit par l'irrigation (par inondation, canalisation ou manuelle).
- (7) **Ressources en eau:** classifiées comme permanentes, saisonnnières, abondantes ou limitées.
- (8) **Pêche:** quand la pêche est pratiquée, il est indiqué si cela est fait annuellement ou si il s'agit de pêche saisonnière; si elle est individuelle ou collective; et si elle est maritime ou continentale, d'eau douce.
- (9) **Irrigation:** si l'irrigation est pratiquée, il est indiqué
- qui contrôle le système, s'il s'agit d'individus, de familles, de clans, de village, de maître de l'eau ou de chef de la terre (ou autres);
 - s'il existe des droits de vente ou d'achat des infrastructures pour l'irrigation;
 - si les droits sur l'eau s'appliquent (sont opérants) toujours ou seulement quand l'eau est peu abondante.
- (10) **Droits sur l'eau/conflits:** indique
- (a) si les conflits relatifs à l'eau en général sont importants ou négligeables;

(b) relativement à la pêche, si

- le contrôle sur la pêche est exercé par la communauté, un souverain ou par l'appropriation privée;
- les droits sur les pêcheries appartiennent à la communauté, aux familles, à un souverain, aux individus privés ou à un maître de l'eau;
- il existe des règlements sur la pêche collective, la pêche privée, la construction de digues/palissades, la vente/salaison de poisson;
- il existe une organisation spécifique relative à la pêche;

(c) relativement au transport par voie d'eau, s'il y a des droits de transports sur des aires; des règles concernant les bateaux, des règles concernant les passagers; des règles concernant les biens transportés; un maître de l'eau; un chef de la terre ou une organisation spécifique relative au transport par voie d'eau.

(11) Colonisation: Royaume Uni, France, Portugal, Espagne, Allemagne, Italie, Afrique du Sud.

(12) Système juridique: africain, traditionnel, d'influence islamique ou de dérivation islamique.

(13) Régime foncier: si la terre est attribuée par chef de famille, chef de village, chef de la terre ou souverain.

(14) Eau potable et à usage domestique: informations sur l'eau vue comme facteur fondamental de reproduction/survie, en indiquant si

- le contrôle sur l'eau potable et à usage domestique est exercé par la famille, la communauté, le souverain, le maître de l'eau ou autre, ou à travers l'appropriation privée;
- l'eau est gratuite, une redevance doit être payée ou si les utilisateurs ont le devoir d'entretenir le point d'eau;
- la vente de l'eau est possible ou n'est pas possible;
- la vente du point d'eau est possible ou n'est pas possible;
- il y a une organisation spécifique relative à l'eau.

(15) Autres usages qui ne comportent pas la construction d'ouvrages: informations sur l'eau pour d'autres usages (comme facteur de production) quand la ressource est facilement accessible, sans la nécessité de construire des ouvrages; il est spécifié si, dans ce cas,

- le contrôle est exercé par la famille, la communauté, le souverain, le maître de l'eau ou autres, ou à travers l'appropriation privée;
- l'eau est gratuite ou une redevance doit être payée;
- il existe une organisation spécifique relative à l'eau.

- (16) **Autres usages qui comportent la construction d'ouvrages:** informations relatives à l'eau comme facteur de production qui n'est pas facilement accessible (et dont les avantages sont donc différés) car la construction d'ouvrages est requise (comme dans les cas de puits et de digues): dans ce cas il est indiqué si
- le contrôle est exercé par la famille, la communauté, le souverain, le maître de l'eau ou à travers l'appropriation privée;
 - l'eau est gratuite ou moins pour la communauté locale; une redevance doit être payée; l'eau est gratuite, ou moins pour les étrangers; l'eau est gratuite, ou non, pour le bétail local, et pour le bétail étranger;
 - une autorisation est nécessaire au creusement d'un puits ou d'un bassin sur terrain communal, l'individu a l'obligation, vis-à-vis de la communauté, de creuser le puits et de le maintenir en état, et l'obligation de fournir de l'eau; une autorisation est nécessaire à l'arrosage; en cas de sécheresse, il existe des règles de préséance et un individu est habilité à imposer des restrictions à l'utilisation; garantie du droit d'accès aux sources;
 - il existe une organisation spécifique relative à l'eau et/ou aux ouvrages hydrauliques.
- (17) **Protection de la qualité de l'eau:** indique s'il existe des règles relatives à la propriété des sources d'eau, au fait de laver les vêtements loin de la source, aux baignades, au fait d'entrer dans la source, à la protection des ouvrages hydrauliques.
- (18) **Résolution des conflits:** indique si les conflits sont résolus au niveau de la famille, du village, de la lignée, de la chefferie, du maître de l'eau ou par un tribunal des eaux ou par un autre juge.

ALGERIA

Author: M. Marcoux GAST
 Title: Naissance et vie d'une communauté saharienne: Mertoutek (Algérie)
 in: Travaux du Lapmo
 Year: 1988
 Year of survey: 1978

Text

p. 251. - Dans un pays entièrement contrôlé par les nomades Touaregs ... une population de sédentaires cultivateurs a été admise au XIXe siècle pour mettre en culture les berges irrigables des oueds pourvus d'une nappe phréatique exploitable selon trois techniques possibles à usage agricole: le puits pourvu d'un système à balancier ... le système par traction animale ... les galeries souterraines drainantes. (...) Les deux premières techniques font travailler un homme seul ou avec un animal ... Si la nappe phréatique n'est pas très proche du niveau du sol (moins de 5 m), les surfaces arrosées demeurent très limitées. Un homme seul avec sa famille peut à peine survivre du produit de ses cultures. En revanche, le drain une fois creusé et en état de bon fonctionnement, est d'un rendement nettement supérieur, il est aussi plus gratifiant au niveau des efforts physiques. Mais il nécessite obligatoirement une organisation coopérative.

C'est après quelques dizaines d'années d'expérience que la plupart des petites communautés de l'Ahaggar ont privilégié, à quelques exceptions près, le système du drain. (...) Les nomades, qui offraient aux cultivateurs de souscrire au départ des contrats au cinquième, étaient responsables de la création du drain en bon état de fonctionnement et de sa reconstruction après chaque crue. Cela signifie qu'au départ de la mise en œuvre d'un drain le créateur devait nourrir le ou les cultivateurs jusqu'à la prochaine récolte. En cas de destruction du drain et des récoltes, il devait leur fournir pareillement une avance alimentaire pour eux et leurs familles; moyennant quoi, le propriétaire du drain se réservait les 4/5 de la récolte ... et acquérait le droit du premier occupant sur l'eau et la terre. Ce schéma était celui que les nomades suzerains appliquaient le plus souvent dans les grands centres de culture tels Abalassa, Im Amquel, Tazrouk. Mais à Mertoutek, il n'est trouvé que les suzerains des terres cultivées, qui étaient des Isseggamaren, émigrèrent massivement au Tamesna (nord Niger) en 1940 ... Ils abandonnèrent à Mertoutek esclaves et quinteniers à leur sort, sans satisfaire pendant vingt ans la part de leurs contrats agricoles ... les cultivateurs de Mertoutek durent se prendre totalement en charge en assumant librement leur vie économique et le creusement et le recréusement des drains.

A la faveur de cette relative liberté, les Kel-Mertoutek ont discrètement occupé le terrain laissé par leurs suzerains ... aujourd'hui les familles de Mertoutek ont trois sortes de revenus: celui des jardins (parfois dérisoire), celui des troupeaux (encore aléatoire), celui des postes de travail salarié, soit permanents, soit saisonniers ...

p. 252. - Depuis l'éviction des Taitok après 1917, les Kel Rela ont régné en maîtres incontestés sur le territoire qui leur a été imparti délimitant ... "l'Annexe du Hoggar". Les tribus serves jouissaient de territoires délimités avec précision ... Néanmoins, leurs territoires pouvaient héberger temporairement ou en permanence leurs suzerains et leurs troupeaux ainsi que ceux des nomades de passage (quels qu'ils soient) ou d'autres "tawnit" serves selon leurs besoins et la qualité des pâturages. Cet accueil s'est toujours pratiqué après accord préalable (et parfois sur intervention de l'aménoukal) ou tacite, et les cas litigieux sont rares ...". Cependant, la présence prolongée dans telle vallée crée quelques droits plus précis qui peuvent être revendiqués à plusieurs générations d'intervalle ... Ces quelques droits concernent l'exploitation du bois disponible, du gibier ... et les terres cultivables. Les droits sur les points d'eau et les puits ne semblent pas avoir existé en Ahaggar comme dans le Nord Niger et l'Adrar des Ifhogas ... Il suffisait un accord verbal entre l'amghar de la tawnit et le demandeur, accord souvent cautionné par l'aménoukal, pour qu'une terre soit mise en culture. Mais deux règles importantes définissaient l'usage de ces terres.

1. Nul ne pouvait vendre une terre quelle qu'elle soit, pas même l'aménoukal,
2. Toute terre exploitée devait verser une redevance d'un carré de céréales par jardin à l'aménoukal, soit environ un centième de la récolte, si l'on prend comme chiffre moyen celui de 100 carrés (*qasum*) par jardin.

Cependant, alors que la première a été totalement respectée, cette deuxième règle a été constamment assouplie ou assortie de privilèges avec l'accord de l'aménoukal.

- Les jardins arrosés par un puits à balancier (*aroudid* = *a yudid*) ou un puits à traction animale (*tanouf* = *tanuf*) qui nécessitent tous deux de gros efforts humains et qui n'arrosent jamais que de petites surfaces, furent exonérés de cet impôt.
- Les auxerains Kel Rela ou Ihaggarenés ... ne payaient pas cent pas cet impôt.
- Certains *tanouf* pauvres, comme les Adjouh-n-tahlé, avaient obtenu aussi l'exonération de cette redevance.

De plus, les religieux "olbo", "chorfu" puis aussi les Mrabtines (beaucoup plus tard) ont obtenu le privilège de ne pas payer cette redevance ...

Il est évident que l'aménoukal n'a consenti tous ces privilèges que parce qu'il pouvait les permettre ... En 1950-1951, sur l'insistance du talé Foulani de Tiffert, près d'Abalessa (c'est du moins ce qu'affirment la plupart des agriculteurs), l'aménoukal fait savoir dans tout le pays que quiconque (étranger, esclave Hartani) mettra en culture une terre vierge en y creusant un drain ou un puits, sera considéré comme "propriétaire" (usufruitier) de cette terre à la condition de payer la redevance coutumière, compte tenu des exceptions précédentes ... Il libérait ainsi l'accès à la terre agricole pour toutes les catégories sociales, outrepassant le droit de préemption ou l'opposition éventuelle des clans sur les terres faisant (p. 253) de leur espace géographique traditionnel ... Il n'y eut, à notre connaissance, jamais d'incident à ce sujet nulle part.

Avec cette réforme l'aménoukal proposa l'application plus rigoureuse d'une règle (...):
- tout "propriétaire" qui n'avait pas payé ses avances alimentaires (en céréales) à son métayer depuis plus d'un an perdait ses droits aux 4/5 de la récolte pour ne recevoir que le 1/5 de cette récolte;

En effet le contrat des *AAommes* ou quintaniers comportait cinq éléments ... Le "propriétaire" devait mettre à disposition du cultivateur:

1. une terre en état d'être cultivée ...
 2. un drain en état de fournir de l'eau au jardin;
 3. une houe;
 4. la semence de l'année;
 5. une avance alimentaire ... de mil (... 150 kg).
- (...)

Outre ces mesures en faveur des agriculteurs on encouragea des formules nouvelles de contrat notamment celle dite "à moitié" (*ayil* = *avil*, connu en arabe). Le propriétaire et le cultivateur partageaient à l'égalité la récolte et les frais de mise en oeuvre de la terre et du drain.

Mais quels étaient les autres droits des propriétaires sur ces terres cultivées et leurs modalités d'exercices en dehors de celles des contrats? Nous reprendrons ci-dessus une partie des remarques de J. Nemo.

1. "... le droit de possession sur une terre se forme lorsque pour la première fois un individu quelconque y amène l'eau; le droit ainsi formé s'étend sur toute la zone arrosable ..." ...
2. "... nul ne peut creuser une foggara nouvelle si elle fait baisser le niveau de la foggara existante" ...
3. quand un drain et un terrain sont abandonnées, "il n'y a pas prescription". Un nouvel occupant ne peut entreprendre des travaux qu'avec l'autorisation expresse de l'ancien occupant ou de ses descendants, héritiers hommes ou femmes des biens individuels de leurs parents (*tekasit*) dans le cas de cession des droits (cession à l'aimable), le premier perd ses droits sur le terrain et l'eau.
4. toute cession de droits d'exploitation d'un drain et d'une terre attenante n'est en principe jamais onéreuse. Cependant elle s'accompagne toujours de cadeaux ou de dons qui représentent non pas un prix d'achat mais un dédommagement ou un remboursement des dépenses engagées par le premier pour la création et l'entretien du drain. Jamais cette cession, qui ne fait pas l'objet d'actes écrits et se passe toujours oralement devant témoins, n'est considérée comme un achat (A. Bourgeot a été ambigu sur ce point en laissant croire à une véritable propriété privée et à un commerce des terres ...).
5. "Le droit de possession peut encore se transmettre par voie d'héritage ou de don, selon la coutume touarègue pour les Kel Ahaggar et leurs lois propres pour les étrangers, sous réserve d'une nouvelle autorisation pour les héritiers étrangers non maraboutiques" ...

Les héritages, en Ahaggar, sont réglés suivant deux modes de transmission:

- par voie matrilineaire en ce qui concerne les biens collectifs et le droit au commandement ...
- par transmission directe et suivant la loi coranique (une part aux garçons, une demi-part aux filles) en ce qui concerne tous les biens individuels des hommes et des femmes. C'est la "*tekasit*". C'est suivant ce deuxième mode que se transmettent ordinairement les droits concernant les terres de cultures, les arbres fruitiers et les palmiers. Cependant il existe en pays touareg des biens qu'on peut rapprocher de ceux appelés "*habous*" en arabe et qui sont dits "*akh iddaren*" (le lait vivant). Ce sont des biens inaliénables, propriété collective du lignage ou de ses membres. Néanmoins, chez les "Arabes", ce sont les descendants en patrilignée qui héritent de l'usufruit des *habous*, alors que chez les Touaregs ce sont les descendants en matrilinee qui héritent de l'usufruit de l'*akh iddaren* ...

De l'avis unanime en Ahaggar il n'existe pas d'*akh iddaren* (comme au Niger et au Mali). Toutefois nous connaissons plusieurs exemples de ce type qui ont pour origine un litige entre les héritiers (en *tekasit*) concernant des droits sur des terres ou des palmiers. Ne pouvant mettre les héritiers d'accord sur un partage, l'*arnénoukal* a décrété *habous* les biens en question coupant court à toute discussion ...

... le recours à l'héritage en matrilinee rend inaliénables des biens qui deviennent collectifs, que ce mode est une véritable soupape de sécurité évitant l'émiettement d'un patrimoine, sa dévolution à des étrangers, et qui coupe court aux tensions internes ...

p. 254. - Nous constatons un rapport de causalité entre l'espace géographique, la capacité d'arrosage et le peuplement avec sa structure parentale, dans les sept hameaux de Martoutek ...

A savoir, que ce sont presque toujours les drains qui semblent avoir été l'axe prioritaire de l'organisation socio-économique agricole, que certains sont à peu près permanents et d'autres récurrent, que la terre prend le nom du drain ou vice-versa (terre de culture et terre d'habitat) et que chaque lieu d'habitat est à l'origine ou demeure encore l'espace géographique d'un lignage nettement défini, comme nous le verrons ci-dessous ...

Les habitants de Mertoutek nous ont défini 12 drains qui correspondent à 12 espaces irrigables le long des berges de l'oued ...

Avoir un "tour d'eau" c'est disposer du temps suffisant pour remplir le grand bassin de stockage de l'eau ou "majen" à partir duquel le jardinier va, par un système de rigoles, arroser par gravité son jardin ... dans le cas d'un drain puissant le nombre de coopérateurs peut aller jusqu'à 12 ou 15 car le tour d'eau de chacun peut s'effectuer en 24 h ou moins de 24 h. Dans le cas d'un drain faible, il faudra plus de 24 h pour pouvoir obtenir l'eau suffisante à l'arrosage d'un jardin. Il ne pourra y avoir de nombreux coopérateurs étant donné qu'il convient d'arroser au printemps et l'été tous les 8 à 10 jours impérativement. Nous sommes loin des systèmes hydrauliques du Nefzawa ou du Touat avec répartition de l'eau par peigne ou mesurage du temps d'arrosage à la clepsydre. Ici, les conditions d'exhaure et les capacités en eau sont si médiocres que les cultivateurs évaluent grossièrement la capacité de débit d'un drain en "tours d'eau", c'est-à-dire en nombre de jardins de taille moyenne, susceptibles d'être servis. (p. 255) Pour les 52 jardins signalés à Mertoutek selon cet arrosage traditionnel, l'on obtient la surface de 7,488 m², c'est à dire 7 ha 50! ...

Dans l'état actuel des traditions agricoles du pays et du respect toujours accordé au premier occupant créateur d'un drain, personne ne peut cultiver les terres normalement irriguées par ces drains en activité ou pas, sauf avec l'autorisation ou la participation des héritiers des créateurs des drains et des jardins. Sauf encore si les héritiers déclarent publiquement abandonner leurs droits, ou si l'Etat, par des mesures autoritaires, décide une mise en culture coopérative de ces terres avec d'autres techniques d'exhaure. Dans ce dernier cas, les héritiers essaieront de faire prévaloir leurs droits coutumiers en demandant à être partie prenante dans la nouvelle mise en valeur ...

Les Kaï Mertoutek ont élu un awghar qui fut d'abord le plus ancien et le plus compétent des agriculteurs. Cet awghar était entouré de l'assemblée de tous les chefs de famille comme dans un djemaa kabyle pour discuter de toutes les questions touchant à la communauté et régler les éventuels différends, secondé en cas de besoin par le religieux local, qu'était le "talab" ...

p. 256. - ... malgré l'origine tout à fait hétérogène des fondateurs et fondatrices ... cette société s'est construite sur le modèle arabo-berbère des sociétés sahariennes de l'Ahaggar, du Tidikelt et du Touat ...

Après 1978, date de notre enquête, les salaires gagnés sur les chantiers ont permis l'achat de quelques motopompes. Mais ce moyen technique nouveau ne respecte plus les droits collectifs et pose, comme partout, de sérieux problèmes de répartition des droits d'exploitation des eaux.

Les Kaï Mertoutek n'ont pas accepté la proposition des services agricoles nationaux de créer une coopérative agricole dotée d'une grosse motopompe ... La terre est restée un bien collectif inaliénable, exploitée en coopération entre les résidents.

Author: Henri Lhote
Title: Les Touareg du Hoggar
Publisher: Armand Colin, Paris
Year: 1884

Text

p. 42. - Organisation sociale. - Les Imouhar.

Les "Imouhar", sing.amahar, forment la classe aristocratique.

p. 43 - ... détiennent les droits politiques et la propriété foncière, sont les véritables maîtres du pays.

p. 52 - Les "Ikian". - Les Ikian ... sont les serfs, autrefois les esclaves des Touaregs ...

Les Ikian sont employés à la garde des troupeaux, aux travaux ménagers du campement, à forer et à entretenir les puits ...

p. 125 - Règles concernant le passage et le nomadisme des troupeaux. - Les terrains de parcours des tribus sont fixés par l'"aménokal" à qui appartient la terre, et c'est du droit de pâturage qu'il octroie que provient partiellement la "tousse" (impôt).

Chaque tribu a la pleine disposition de son terrain, la pleine jouissance, à l'exclusion de toute autre. Les tribus étrangères ne peuvent venir s'installer chez elle qu'avec l'autorisation de l'"amrar" (chef) de la tribu; mais le droit de passage est acquis pour tous, y compris celui de abreuver les troupeaux.

Ces règles peuvent être modifiées dans la période de longue sécheresse ou bien celles succédant à des pluies abondantes. Lorsque le pâturage vient à manquer par suite de sécheresse, une entente s'établit entre les différents chefs de tribus; l'un d'eux peut autoriser la tribu voisine à venir nomadiser sur son territoire à condition, bien entendu, de ne pas y commettre de dégâts, de ne pas mutiler les arbres et de ne pas se livrer à la chasse. Lorsqu'une région a été abondamment favorisée par les pluies, l'amrar décrète le terrain interdit, "ganant": Personne ne peut alors y venir, même pas les gens de la tribu à laquelle il appartient. Cette mesure a pour but de protéger les jeunes pousses de la dent des animaux, de laisser venir les plantes à graines. Quelques semaines plus tard, l'interdiction est levée, le terrain devient libre, toute le monde, sans distinction, peut venir en profiter, en se conformant toutefois à la juridiction concernant la protection des arbres et l'interdiction de chasser ...

p. 133 - La pêche. - Les mares à poisson sont rares dans l'Ahaggar et il a été dit plus haut pour quelles raisons les Touaregs dédaignaient la chair de ces animaux. Toutefois, certains tribus Iekkemaren, en particulier celles qui fréquentent la région d'Amguid, les apprécient. Ils péchent en basses eaux. Ils fabriquent une longue fascine avec des branchages et des tiges de graminées, entrent à plusieurs dans l'eau et poussent la fascine devant eux de façon à chasser les poissons vers la rive; après avoir traversé toute la mare, il arrive aux poissons de se trouver acculés; les hommes en profitent alors pour les jeter sur le sol d'un mouvement brusque et se hâtent de les ramasser. Après de crues d'oueds, il y a souvent des poissons abandonnés sur la sable; on les ramasse tout simplement et on les fait sécher. J'en ai vu un panier dans un campement de Kel Ouhet campé près (p. 134) d'Amguid.

Certains Dag Rali m'ont dit qu'ils savaient pêcher ...

Le rôle de la pêche est donc tout à fait insignifiant chez les Touaregs sahariens ...

p. 135 - L'agriculture. - Les Touaregs de l'Ahaggar, étant avant tout des pasteurs, n'ont jamais porté intérêt à l'agriculture ...

La création de la plupart des centres de culture de l'Ahaggar ne remonterait pas à plus d'un siècle. Elle se serait faite sous l'impulsion d'éléments arabes installés dans le pays. Seules les oasis de Silet et de Tibeghin seraient beaucoup plus anciennes et dateraient du temps des sultans Imanan. Ceux-ci auraient fait venir des marabouts du Touat, qui auraient fait connaître le système d'irrigation par foggara. C'est du moins la version racontée par les Touaregs. Or, le déchiffrement du Triomphe de Cornelius Balbus nous a appris qu' Abalassa existait déjà à l'époque et que ce nom ne signifie pas autre chose que "lieu cultivé". En outre, de nombreux centres de culture ... présentent des traces certaines d'habitat ancien ... qui s'échelonnent sur toute la longueur de la zone cultivée et reflètent des installations étirées à l'image de celles des cultivateurs actuels ...

La jouissance de la terre appartient à ceux qui l'ont cultivée les premiers ou, ce qui serait plus exact, à ceux qui ont contribué les premiers à la mettre en valeur, soit par eux-mêmes, soit par personnes interposées. La terre, par elle-même, appartient à l'aménokal, mais celui-ci la cède à bail; en contrepartie, il perçoit chaque année un impôt, "menk", sur la récolte ... (p. 136) La terre peut donc avoir pour propriétaire, soit des "imouhar" (nobles), soit des "imrad" [vassals], voire des "énaden" [artisans], mais jamais d'"iklan" [serfs] qui, eux, sont la propriété des précédents.

Ce ne sont pas les propriétaires qui cultivent, mais des iklan détachés à ce travail par leurs maîtres, des "iboralliten" [mulâtres issus de parents mixtes, touareg et noir] ou des "harratin" ... , Noirs affranchis venus du Touat ou du Tsidikelt avec un contrat de fermage. Seuls, parmi les imrad, les Ikkan-en- ...

ANGOLA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Barotsi	family, extended	chieftains	semi-arid	pastoralism	auto-subsistence	no data	limited	no data	no data
Nkhumbi - Huma (Mynabes-Humbi)	lineage, matrilinear	-kingdoms -rain making power	savannah	pastoralism, agriculture	auto-subsistence	rainfed	seasonal	seasonal, inland, fresh waters	no data
Ovimbundu	-lineage -village concentrated -professional -matrilinear	kingdoms	savannah	agriculture and trade	-auto-subsistence -market	irrigation	seasonal	no data	controlled by villages
Ovambo (Ambo)	-family extended -professional -lineage -matrilinear -village scattered	kingdoms	-river -savannah	pastoralism, agriculture and fishing	auto-subsistence	rainfed	seasonal and limited	-inland/fresh waters -seasonal	no data

Ethnic Group	Conflict/ fishing rights/ inheritance (10)	Colonisation (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Herero ¹	conflict, important	United Kingdom Portugal Germany	African traditional	control by community	control by community -water free of charge -water selling not possible -selling of water point not possible	control by community -free of charge	-control by community -free of charge for local community and for foreigners -free of charge for local and foreign cattle -duty in providing water -authorization needed for watering -predominance rules	no data	chieffes
Ndembu - Hambo (Nyungu-Hambo)	conflict, negligible	Portugal	African traditional	control by sovereign -granting of land by sovereign	control by family -free of charge -payment for maintenance -specific organisation dealing with water	control by family and by sovereign	-control by sovereign -duty to community digging, maintenance -specific organisation dealing with water and waterworks	no data	chieffes
Ovambo	conflict, negligible	Portugal	African traditional	control by community and by village chief -granting of land by head of village	no data	no data	control by community	no data	-chieffes -village
Ovambo (Ambo)	-conflict negligible -rights on fishing grounds by community	Portugal Germany	African traditional	control by sovereign	control by family -water free of charge -payment for maintenance -specific organisation dealing with water	control by the family and by the sovereign	-control by sovereign -duty to community digging, maintenance -specific organisation dealing with water and waterworks	no data	chieffes

Also for Botswana and Namibia.

Ethnic group: OVAMBO
Author: C.H.L. Hahn
Title: The Ovambo
in: C.H.L. Hahn, H. Vedder, L. Fourie, The Native Tribes of South West Africa
Publisher: F. Cass & Co., London
Year: 1928

Text

p. 1 - Ovamboland is a flat, sandy country intersected by a network of broad, shallow watercourses known as "oshanas" ...

... During good rainy seasons the oshanas become flooded from the north, submerging at times as much as three-fifths of the country. In the dry season, on the other hand, the large grass-covered stretches formed by them offer good grazing for stock. In them also are dug the waterholes and storage reservoirs for rain water. On the raised ground between the oshanas the inhabitants make their fields and build their kraals ...

p. 18 - System of Tribal Government. - All the Ovambo Chiefs exercise autocratic rule over their subjects. The Chief's rule is supreme. The land, people and all other property nominally belong to him. Councillors and headmen are appointed by him over allotted areas and are responsible to him for their respective districts. Petty cases or offenses are tried and settled by them. Serious crimes and disturbances with which they are unable to cope are referred to the Chief. Inter-tribal questions and affairs of State are attended to by the Chief personally. The counsel and advice of the older and trusted councillors are sought by him in all matters of serious importance and generally determine the line of policy to be followed. The Chief as a rule also adjudicates on cases of theft, murder, raids or like offenses when headman or councillors are unable to deal with them satisfactorily ...

p. 20 - Inter-tribal feuds generally have their origin in disputes over territory, water-rights, interference with visiting subjects, cattle raids and so forth ...

p. 24 - The daily work of a man in the average kraal is not as varied and strenuous as that of a woman. He supervises and carries out all duties in connection with his stock, sees to the milking of the cows, keeps his home in repairs, cleans out waterholes, manufactures all household and agricultural implements ...

Author: G. Clarence-Smith, R. Moomoom
Title: Underdevelopment and Class Formation in Ovamboland, 1844-1917
in: R. Palmer, N. Parens, editors, The Roots of Rural Poverty in Central and Southern Africa
Publisher: University of California Press
Year: 1977

Text

p. 98 - ... The powers that were vested specifically in the king's person were intimately linked to ecological conditions. In ideological terms this was expressed in the belief that the king's greatest power was the magical one of making the rains fall, and it is significant that almost all reported cases of dethroning were justified by the inability of the monarch to perform this

vital function. In practical terms it was the king who organized *corvée* labour to dig the large reservoirs (*chimpacas*) to store the floodwater, and it was he who had to take the difficult decision of when to start planting, judging whether the rainy season had started in earnest. It was the king who strictly preserved the fruit trees and checked excessive deforestation. In an area where climatic conditions were so precarious, these activities were essential for the survival of the whole community and legitimated a certain degree of centralization. Another source of royal power was control of land, all of which was ultimately the "property" of the king, although strict rights of usufruct and the extended permanence of settlements limited this in practice. Land was still in some sense an open resource ...

p. 110 - ... For the dethroning of the king of Humbe in 1891, see J. P. do Nascimento, *Da Huila às Terras do Humbe* (Huila, 1891), Prologue; not all kings were credited with the same power to make the rain fall ...

Ethnic group: OVIMBUNDU

Author: Adrian C. Edwards

Title: The Ovimbundu under two sovereignties

Publisher: ESA - IAI, OUP, London

Year: 1982

Year of survey: 1885-1886

Text

p. 47 - ... The position of the traditional headman nowadays lacks clearly defined powers, or symbolic value. A village is frequently known by its founder's name. The headman is the only person who can speak of "my village" as opposed to "our village". The firing of the long grass in the dry season which marks the beginning of the great communal hunts is theoretically begun by the village headman, though this is not always adhered to in practice. The headman does not take any active part in leading the hunt, nor are the people who go on a communal hunt necessarily confined to the inhabitants of one village. He has "to show land" to new-comers to the village. This reflects a moral responsibility to his people rather than control of land tenure, since there is always spare land away from the villages which anybody can cultivate. He also has the responsibility of hearing minor disputes. He receives from the (p. 48) villagers a certain, not very marked, respect, which may be increased by such factors as kinship ties between him and them, and his personal qualities.

Nor is the village itself clearly defined as a social unit. It does not possess any corporate rights over fishing and hunting sites, or control access to firewood gathering ...

p. 63 - ... The idea of the village as a corporate group with a jural and political personality rather than a residential unit has not survived the break-up of agnatic solidarity, the disappearance (p. 64) of the men's house, and the headman's loss of status ...

p. 65 - I am told that rice could be grown in the stream valleys ...

Umbundu country is well supplied with water in streams and rivers, and the Ovimbundu have built irrigation channels wherever possible ...

p. 66 - September is a good month for fishing ...

There is no shortage of land, and hence questions of land rights seldom come up in social relations. A village headman has no rights over land outside his village, and even within a

village there are strips of bush from which a new garden can be cut. Land is very occasionally sold ...

p. 67 - Fishing and hunting are practised, but despite the ingenious fish-traps, nets, poisons and weirs used for the first, and the popular enthusiasm for, and ritual associations of the second, neither dominates the actual food supply and ecological background in the way that maize does.

Mário Milheiros - Os Maiasas - Memário Administrativo. Luanda, 1955, n. 83—108, 1956

Group 7. Social patterns. No. 45.

Villages are built along RIVERS. These are divided into three sections: one where WATER is fetched for drinking and cooking; another where people wash themselves; and the last where cassava is soaked.

Sanctions. n.22

The woman who soaked her cassava where water is fetched for drinking or for bathing, against the village customs, is censured by everybody. It may also happen that her cassava is thrown away and she is insulted.

Group 23. Social patterns. n.291

Each Maiaca will treat every passing foreigner with respect, giving him all necessary information and food and WATER if he sees him hungry or thirsty.
Ch.12. Crimes against property. n.114

Every person who, by force or by threat against other people, occupies land or OTHER IMMOVABLE property, claiming authority or possession on it, or its use, will be addressed as "muiff" (thief) and "quillau" (crazy), insulted and thrashed by everybody and expelled from the village.

Carlos Alberto Medeiros - A colonização das terras altas da Huila Estudo de geografia humana - Centro de estudos geográficos. Lisboa, 1976

p. 111 - ... The ruler of Huila had the enviable faculty of "making RAIN" ... We know of one Huila ruler, Kamena, in the middle of the last century, who lost his throne because he was unable to get rain during a period of great drought ...

p. 426 - ... An other question which has been well clarified is the initial inexistence of any type of IRRIGATION whatsoever. When it first appeared, the technique was considered strange, and even provoked repulsion. "Autrefois il était ... interdit de creuser des canaux pour irriguer les champs." (from A. Lang, C. Tastevin, p. 202) ... The chief of the first Portuguese community which came from Brasil to settle in Moçamedes, Bernardino Castro, visited the Huila plateau and was struck by the fact that RIVER banks were not used for agricultural purposes. In his report he wrote: " ...I ascribed their disdain for rivers and creeks banks to the desire not to take away pastures for their cattle and sheep: cattle is their most cherished possession." ...

BENIN

Ethnic Group	Conflicts/ habling rights/ transmigration (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Alao - Fon - Mago (Carnie D'Alleda)	Habing control by community	France	African traditional	private appropriation granting of land by head of village	no data	no data	protection of rights of way to water sources	no data	no data
Fon D'Abomey - Goun de Porto Novo	no data	France	African traditional	no data	no data	no data	no data	no data	no data
Mago - Djedji	no data	no data	no data	no data	no data	no data	protection of rights of way to water sources	no data	no data

Ethnic group: AIZO - FON - NAGO (Cercle D'Allada)
Author: M. Fernand Audrie, Gouvernement General de l'AOF
Title: Coutumier du Dahomey
Publisher: Imprimerie du Gouvernement
Year: 1933

Text

p. 468 - La propriété collective ne se trouve que dans les droits d'usage que les habitants d'un village se reconnaissent dans un certain périmètre autour de ce village: pratique de la pêche, de la coupe des bois, de la récolte des régimes de palmier, etc. C'est le domaine éminent du chef de village.

Le droit de propriété, tel qu'il a été défini, est inviolable ...

p. 469 - La coutume ne considère que les servitudes discontinues et apparentes. La possession suffit à les établir. Tout indigène qui use de son droit de servitude ne peut y opérer aucun changement; ainsi sur un passage menant à un cours d'eau après avoir traversé une propriété, nul ne peut creuser des trous à usage de pièges.

Les servitudes s'éteignent d'elles-mêmes par le non-usage; sans limitation de temps.

Chaque village possède son domaine public, qui est un bois sacré.

Ethnic group: FON D'ABOMÉY - GOUN de Porto Novo
Author: Gouvernement General de l'AOF - Colonie du Dahomey
Title: Coutumier du Dahomey
Publisher: Imprimerie du Gouvernement, Porto Novo
Year: 1933

Text

pp. 93-223 - La propriété collective du village comprend des terrains indivis, censés appartenir personnellement au roi, entretenus par le village et sur lesquels tous ont droit de culture, pacage, affouage, ou de chasse ou de pêche; enfin des sources, des puits.

Ces biens sont inaliénables mais peuvent cependant être loués ou prêtés.

p. 224 - Il existe enfin une espèce de domaine public religieux: bois, rivières, lieux saints, terrains servant à l'inhumation (en cas de mort par maladie contagieuse), inaliénable et sacrés ...

p. 225 - Cependant il n'y a pas de véritable propriété du sol. Ce n'est qu'une possession doublée d'un usufruit.

p. 226 - Si le chef ou roi possède sur tous les terrains quels qu'ils soient, un droit éminent - délégué quelquefois (Pila-Pila, Padaba) au chef de village - il ne l'a que par l'intermédiaire du chef de la terre (Aïnon chez les Fons). Le roi ne pouvait rien faire sans lui. En effet la terre est chose sacrée et le chef de terre est le descendant du premier chef de famille installé sur le sol ...

p. 227 - Le roi avait le droit éminent sur toutes ces terres collectives, en laissant la jouissance aux villages ...

p. 228 - Le droit éminent du roi était sans limites ni restrictions chez les Fons d'Abomey; beaucoup plus atténué chez les Gouns de Porto-Novo où les chefs de famille se considéraient presque comme pairs du roi. Et c'est pourquoi ils ne toléraient pas que le roi cédât en location les terres sur lesquelles il avait un prétendu droit éminent, et dont ils avaient la jouissance.

p. 229 - En principe, les permis d'occuper étaient accordés par le chef de la terre.

Ethale group: NAGO - DJEDJ

Author: Gouvernement General de l'AOF. Colonie du Dahomey
Title: Coutumes du Dahomey. Coutumes Nago et Djedj.
Publisher: Imprimerie du Gouvernement.
Year: 1892

Text

p. 500 - Habitation. - ... Il existe des servitudes de passage en cas d'enclave; de même pour les servitudes d'écoulement des eaux, qu'un Djedj n'aurait jamais l'idée d'envisager comme une atteinte à ses droits.

Domaine public. - On n'a, dans la région, que des connaissances très vagues et, par suite, aucune conception personnelle précise à cet égard; on sait que l'administration, pour des raisons d'intérêt général, se ménage le droit de disposer de certains terrains au bord de la mer, des fleuves, des marigots, et l'on ne proteste nullement contre un état de chose qui paraît parfaitement naturel.

Bien collectif. - Il existe des biens collectifs de village, prairies, bois taillis, palmiers-raphia des marigots ...

p. 523 - Servitudes ou services fonciers. - La coutume se rapproche de notre Code Civil, surtout quant à l'écoulement des eaux ...

BOTSWANA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Lamara ⁵	family extended	chiefdoms	semi-arid	pastoralism	auto-subsistence	no data	limited	no data	no data
Purusa - Zakwama	-tribe -village -concentrated -age	-kingdoms -village -making -power	savannah	-pastoralism -agriculture	auto-subsistence	rainfed	limited	no data	no data

Ethnic Group	Conflicts/ ethnic rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Banyoro *	conflicts, important	United Kingdom -Portugal -Germany	African traditional	control by community	control by community -water free of charge -water selling not possible -selling of water point not possible	control by community -free of charge	-control by community -free of charge for local community and for foreigners -free of charge for local and foreign cattle -duty in providing water -authorization needed for watering -precedence rules	no data	chieftie
Paranza * Sakawana	conflicts, important	United Kingdom	African traditional	-control by sovereign -granting of land by head of village	-control by sovereign -water free of charge -duty to maintain -water selling not possible -selling of water point not possible	-control by community and by sovereign -free of charge -specific organization dealing with water	-control by community, sovereign and family -free of charge for foreigners -free of charge for local and foreign cattle -authorization for wells/basin -community digging/maintenance -duty in providing water -authorization for watering -precedence rules -protection of rights of way to water sources -specific organization dealing with water and waterworks	-cleaning of water source -washing clothes away from source -bathing away from source -prohibition of entering water source -rules protecting waterworks	-village -chieftie

Also for Namibia and Angola
Also for South Africa.

Ethnic group: HERERO
Author: Edwin N. Wilmsen
Title: Those Who Have Each Other: San Relations to Land,
in: E. N. Wilmsen ed. We are here. Politics of Aboriginal land tenure
Publisher: University of California Press
Year: 1988

Text

p. 64 - The relevant features of Herero land tenure will be summarised briefly. The principal unit is the "onganda", a settlement unit constituted by a set of patrilineal affiliates with their wives and children; matrilineal kinsmen and affines may be included, and may even be more numerous, but never organizationally dominant (Gibson 1959). Onganda have associated sections of land for grazing in which are located "ozohambo" (sing., ohambo), cattle posts conjoined to water sources of varying permanence.

Almagor (1980:50) vividly documents that a Herero's rights in land are traced exclusively through kin networks. Rights to pasture derive from the concept of locality; a person attached to a specific locality cannot utilize another except by activating his structural links to individuals in the other locality (Almagor 1978; Lutting 1933:96-97). A person's identification with natal household and locality is lifelong, but links to kindred households and localities may be invoked to change residence. Ownership - again, in the sense used here - of land and chattels is vested in the kindred group (Vedder 1938; Lutting 1933:96-97) ...

Possessive particles are applied to persons and things, and, once established, rights to land, water sources, and chattels remain in the group. The wells at CaoCao, for example, are the contemporary stales of natural springs that have been progressively deepened by Ovaherero since the mid-1930s; each well has passed in ownership among a set of patrilineally related men. Furthermore, the division of grazing land among CaoCao cattle owners - Herero, Zhu and Tswana - is such that each set of households has its own section. Similar settlement-tenure rules have been described for the Bakgalagadi (Campbell and Child 1971; Hitchcock and Campbell 1980) ...

p. 65 - The important thing to note is the structural commonality of land tenure among San, Ovaherero and Batswana ... the tenure systems of the different competing peoples were intelligible to each other, and their ecological requirements were to some extent complementary rather than conflicting ...

p. 66 - The literature of conflict for Ovaherero is vast ...

Ethnic group: TSWANA
Author: L. Schapera
Title: A Handbook of Tswana Law and Custom
Publisher: Oxford University Press
Year: 1938

Text

p. 195 - Land Tenure. - When what is now Bechuanaland Protectorate came under British control in 1885, each tribe lived in a territory of its own. The boundaries between them, however, were not clearly defined, and disputes over water and grazing were frequent along the

borders, where the cattleposts of one overlapped those of another ... Inside the Reserves the old Tswana system of land tenure prevails, and no attempt has been made by the Administration to alter it ... here the tribal system of land tenure may be seen functioning in as pure a form as can be found anywhere in South Africa at the present time. The control of a European administration has of course inevitably limited the full and free exploitation of their land by the Natives ...

p. 196 - Control over the land and its resources is vested in the Chief, who exercises it through the headmen of villages and wards ... none of the land is his property.

p. 207 - While in effect arable land is thus treated as private property, the Chief nevertheless retains ultimate control over it ... It is held that no man should have prescriptive rights over land which he shows no intention of using ... The Chief may on occasion deprive people even of land they are actually using. This happens, e.g., when a man is compulsorily moved from one village to another, or if the land he is cultivating is required for some tribal purpose, e.g. boring for water. The man thus dispossessed is always given new land elsewhere; but, even although he is thus compensated, it is obvious that he has no security of tenure. This more than anything else has militated against improvement of the land, such as fencing and attempts at irrigation ...

Grazing and Water Rights. - Every man in the tribe is entitled to free grazing and water for his cattle. The cattleposts (*meraka*) are generally situated a considerable distance from the village settlements, often a day's journey or more by foot. They are simply grazing stations selected for their accessibility to water and for the quality of their pasture. The cattle graze in the open veld by day, and at night are brought back into a specially erected kraal (*tsaka*), or enclosure made of thorn-bushes. The kraals are not kept permanently at one spot, but shifted about according to water and grazing conditions. During the dry season they are generally located near to river beds or boreholes, every man having his own special site to which he always goes. In the rainy season they are moved farther inland (p. 208) to fresh pastures, where an old kraal is renovated or a new one built in the immediate vicinity.

Pasture land was originally allotted by Chief to the wards of the tribe. Each ward thus had its own cattleposts together in the same district, spoken of as its *naga* (veld) or *lefatshe* (country), and supervised by its headman ... All members of the ward had the right to keep their cattle in this region, and grazing and water rights within it belonged only to them. The Chief had his own special pasture lands, but could also move his cattle to any part of the tribal territory for grazing ...

If, e.g., a man is dissatisfied with the land where his cattle are grazing, he may ask a friend in some other part for permission to depasture them there. Or he may approach the Chief, if he has no friend in the area where he wishes to go. The application in either case must be referred to the headman and other members of the ward to which the area belongs. If there is room, they may allow him to make his cattlepost with them and to water his cattle there; but they also have the right to refuse, and to eject him if he trespasses. If the application is refused, he must remain where he is or seek room somewhere else ...

There is also generally a good deal of pasture land not specifically allocated to any ward. Any man choosing to do so may graze his cattle in these neutral areas without permission. Sometimes, however, a man will make himself a cattlepost in a hitherto unoccupied part of the country. This will then become known as his veld, and people who may subsequently wish to erect their cattleposts near his must first obtain his permission. Among the Kgatla, when shortage of water was leading to pressure upon the grazing round such water supplies as were available, Isang [1926-7] (p. 209) declared that all who would dig wells away from the localities used by most of the people would be given sole grazing and water rights in the vicinity of the well for a period of ten years. In consequence a number of wells were successfully sunk in the remote north-western parts of the tribal Reserve ...

The right to water cattle at certain drifts or pools in the rivers is confined to the people whose cattleposts are abtually located there. Outsiders passing by or driving their cattle through the district also have the right to water their cattle there as they go along, and need not necessarily seek permission from the local people. But if a man wishes to water his cattle there for any length of time, he must obtain such permission. Should he not do so, the owners have the right to eject him. In the late winter and spring, as the pools run dry, disputes often arise through herdboys trying to water their cattle without permission at some adjoining drift or pool still holding water. Such disputes were more frequent in former times,, when, if is said, fights between the herdboys were almost a daily occurrence at this time. Nowadays, since most people water their cattle in pits or wells dug in the bed of a river or some other suitable spot, disputes have become less common.

A man has the right, subject to the permission of the Chief, to sink a well anywhere in his own district in order to water his cattle, and may sink as many wells as he wishes. But he is expected also to consider the rights of others. He should not, e.g., sink a well near the arable lands of some outside village which may happen to be in the district, lest his cattle destroy their crops. If an outsider admitted into the district wishes to sink a well there, he must first seek permission from the headman, who, together with him, will survey the land and show him a suitable spot. If the headman refuses to grant him permission, he may apply to the Chief, who if he sees no good reason for the refusal may order the headman to withdraw it. But, if a man enters a district where he (p. 210) has not been permitted to graze his cattle and sinks a well there without asking permission, he can be forced to leave it, even if he has already struck water. The well then becomes the property of the headman.

All wells were formerly regarded as common property, where anybody grazing his cattle in that area could water them. But it has gradually become the law that only the people digging the well are entitle to water their cattle there. Anybody else wishing to use the well must obtain the owner's permission, failing which, if he trespasses, he can be ejected or punished. The owner can refuse water for another man's cattle, but is bound to give the man himself water for his personal needs. So, too, people making dams for themselves, or deepening pans, have private rights over the water, which cannot be used without their permission. Should a man, after digging and using a well, leave the place, no one else may use it afterwards without his permission. He can come back to it at any time to take it up again and, if he finds some one else using it, can order him to leave. Should the trespasser fail to obey, he can be punished.

Among the Kgatla, the boreholes sunk in various parts of the Tribal Reserve through the initiative of Isang in 1926-7 are common tribal property. Each borehole is looked after by a small committee of local cattle-owners, who are responsible for its upkeep, purchasing the necessary petrol, oil and paraffin, and paying the man running the engine. Everybody watering his cattle there must pay every season 6d. per head for cattle, and 3d. per head for sheep or goats, to meet the cost of upkeep. The boreholes more recently sunk (in 1934) were financed by small groups of men, "companies", as they are called, who alone are entitled to water there.

Wells are also sunk for domestic use in the river beds close to the village. Many wards have their own special part of the river in which they dig such wells. Outsiders wishing to make wells there must obtain their permission, failing which the Chief must be asked for permission to dig somewhere else. Such wells are sometimes owned in common by all the members of the ward, who contribute towards the cost and assist in sinking them; sometimes they are owned collectively by a number of families; and sometimes a well is owned by a single family. The owners of a well have sole control over it. They may allow friends to take water (p. 211) from it for domestic purposes, or to water cattle there; but no one else may use it without their permission. Water is not usually sold, except among the Ngwato, where it is exchanged for bran or corn. During the dry season, when there is no standing water in the rivers, the people rely mainly upon these wells, which are always kept locked up by the owners at this time to prevent them from being used without permission.

Author: I. Schapera
Title: Native Land Tenure in the Bechuanaland Protectorate
Publisher: The Lovedale Press
Year: 1949

Text

p. 65 - Choice of Site. - Whatever their origin, all new villages in the tribal territory must settle at sites selected or approved of by the Chief ... In selecting the site for a village, attention is paid chiefly to the water supply and the proximity of good arable land.

p. 175 - Fencing and other improvements. - There is also nothing in tribal law to prevent people from improving their land by building small dams near by, in order to provide water for domestic purpose and for their cattle during the ploughing season. A fair number, in fact, have done so, and some have also fenced in their dams with barbed wire to keep out stray cattle. I have not heard of any people making use of the dams for irrigating their fields, however although if sufficient water is stored in them there is no reason why it should not be attempted ...

p. 229 - The Control of Grazing Land. - As will be shown more fully in the next chapter, a man may also be permitted to sink a well or build a dam in the district where he keeps his cattle. The spot will then be regarded as his special preserve, and he is entitled to legal protection if others encroach upon him. Owing to the improved techniques now available for the provision of water supplies, and, in the north-east, to the development of dairy industries, a few progressive men have made far more elaborate cattleposts than are usually found. They have sunk expensive wells or even boreholes, equipped occasionally with windmills and storage reservoirs and fenced in with barbed wire; they have also put up fairly substantial buildings, and begun to cultivate spineless cactus as winter feed. As these developments indicate, tribal law does not forbid improvements, nor is there any apparent fear of arbitrary confiscation or removal.

Movements of Cattleposts. - We find then that, although there are no individual holdings of grazing land itself, each man generally has a special site for his cattlepost, and others must refrain from placing theirs too close to him. However, cattle seldom stay all the year round at one place. They are moved about according to water and grazing conditions. During the dry season they are kept at the main cattleposts, which are situated near the wells, dams, and boreholes. People who cannot afford to provide themselves with such private sources of water, or to pay for sharing them, have their cattleposts instead near the rivers or other watering places that are open to all. At this time of the year, then, the cattle are concentrated round the more permanent water supplies. During the rainy season, on the other hand, they are spread more widely over the district, and drink from pans and other surface waters. As a rule they roam about freely, but, if there is any danger from wild beasts, their herds may build temporary posts in which to keep them at night.

Except in the Malots and Tlokwa Reserves, where there are no recognized administrative divisions of grazing land, the seasonal movements just described are normally confined to the district where a man has his cattlepost. As a rule he may not take his animals outside it to graze in any other district, unless he obtains permission from the overseer concerned. In the Kgatla Reserve, many men have acquired grazing rights in two separate areas, using one in the summer and the other in the winter. In the larger Reserves this is seldom necessary, since most of the districts are big enough to provide grazing and water all the year round. It is only in times of drought, when there is a marked shortage of water and the matter becomes absolutely necessary, that cattle from different districts are allowed to mix and graze together in the vicinity of such permanent waters as are available.

p. 239 - The Development of Water Supplies. - Rainmaking and other Social Usages. The great value attached to water by the Tswana is reflected in many of their practices. In pre-Administration times, disputes about the ownership of waterholes near the boundaries were a common cause of inter-tribal warfare ...

Even to-day there is much quarrelling over rights to water in the grazing areas of some tribes.

In the old days, moreover, the agricultural season was in every tribe inaugurated by special rainmaking ceremonies, which in times of drought were followed by other and more elaborate rites intended to summon and melt the recalcitrant rain-bearing clouds. The conduct of these ceremonies was one of the Chief's main duties to his tribe. If he himself had not mastered the necessary magical techniques, he imported professional rainmakers from well-watered parts of South Africa, and they always worked at his request and under his direct (p. 240) supervision. A Chief's reputation and popularity were often determined by the nature of the harvests reaped during his time ...

Since the introduction of Christianity, rainmaking as a regular feature of the agricultural calendar has been abandoned apparently everywhere. Its place has sometimes been taken by "days of prayer for rain" instituted by the Mission Churches. But even within the last ten years professional rainmakers have still been employed in times of drought by the Chief of some tribes, e.g. the Kgatla and the Tlokwa.

p. 243 - Water Rights in the Village. - Open waters.

In tribal law, the open waters of a river or pan close to which a village is settled can be used freely by anybody for drawing domestic supplies, washing clothes, bathing or watering stock. Certain spots in the rivers are usually favoured for bathing, but they are apparently not specially reserved for that purpose. For the other purposes, people normally use the accessible shallows nearest to which they live; but this is simply for convenience, and does not carry any exclusive rights. Among the Ngwaketse, Bathoen I forbade the washing of clothes at the spots from which drinking water was habitually fetched. The only comparable restriction of which I know is in the Ngwato Reserve, where Kgama prohibited the watering of cattle in the (p. 244) Metsemaasweu River at Serowe, and at the small spring upon which some villages in the Tswapong district depend for their supply.

Dams constructed and kept in repair by the collective effort of the inhabitants are also open to all for the purposes just mentioned, except that people do not bathe in them. Among the Ngwaketse, however, the Chiefs passed a series of laws relating specially to the use of the "tribal dam" built many years ago at Kanye. Bathoen I prohibited the washing of clothes in the dam, and Seapapitso prohibited its use for watering stock from the cattleposts or for soaking the wheels of a wagon. Bathoen II repeated the prohibition against allowing cattle from the posts to drink at the dam, but said that animals kept at home could be watered there, provided that oxen were always accompanied by someone to prevent them from sticking in the mud. Anybody disobeying these regulations was fined. I do not know of similar attempts in other tribes to control the use of dams, although measures of some kind seem necessary when one realizes that stagnant water into which cattle wade to drink, and in which clothes are washed, is still being drawn for domestic purposes.

Wells and Boreholes. - In the smaller villages, pits also are usually made by communal effort, and are therefore used freely by all. In some of the towns and large villages on the other hand, many a ward and sub-ward sinks its own pit or well, and nowadays an individual family occasionally does so too. People wishing to dig a well for themselves must as a rule seek permission from the Chief or village headman, but are seldom if ever refused, since the practice is encouraged. To prevent crowding, a ward sometimes claims preferential rights over the part of the river nearest to it, and insists on being consulted before an outsider may sink a well there.

A well is reserved for the use of the group or family by whom it was put down. During the winter, as surface waters run dry, people rely mainly upon their pits or wells, especially for the watering of such cattle as are in the village. The better types of well are kept locked to prevent their use by unauthorized persons. The other cannot be similarly protected, and the owners have to resort to violence or to the courts if they find anybody stealing their supply. The Kgatla, and probably other tribes also, even have a special form of magic by which a well can be "doctored" so that prospective thieves are bitten by snakes! The owners, however, sometimes allow others to share the use of the well, either through friendship, or, as occasionally among the Ngwato, in exchange for a payment of corn or bran.

Nowadays most of the towns and large villages also have good wells or boreholes, which were paid for either by the tribe generally or by the Administration. These supplies are accordingly regarded as communal property. However, the maintenance of the pumping plant, etc., involves recurrent expense, apart from the cost of occasional repairs and overhaul. To deal with the situation, various expedients were adopted in different tribes. The Ngwaketse for some time imposed a special annual levy of 6d. a head upon the taxpayers in Kanye. The Kgatla, again, claimed a seasonal fee of 1s. from every woman using the boreholes in Mochudi. On payment, she was given a receipt, which she had to produce whenever she came to fetch water. The arrangement was not very satisfactory, however, because the amounts realized varied from year to year according to the condition of open water supplies. Since tribal treasuries were created in 1938, these special water rates have apparently been withdrawn, and maintenance of the village wells and boreholes is now a charge against tribal revenue generally.¹

Water Rights in the Veld. - Natural Open Waters.

Water supplies in grazing and arable regions are similar in kind to those of the towns and village. In some ways, however, they are differently controlled. Natural open waters, like rivers and pans, can never be reserved for private use. The Ngwaketse even have a law, passed by Seepapitso, that prohibits the deepening of a pan, or its conversion into a dam; it is held that men making such improvements would be entitled to claim exclusive rights, whereas "a pan is a natural water place that any one can use." The Kgatla, similarly, in the 1931 rejected a suggestion put forward by Isang that individuals should make small dams for themselves in the Ngotwane River, to meet the watering difficulties due to foot-and-mouth cordon restrictions. The people said that the river was communal property, and that it would be wrong to create private rights over its use.

However, there are some restrictions even over the use such open water. All the people keeping their cattle in the same grazing district have free access at all times to the pans or stretches of river falling within its limits. An outsider travelling or driving cattle through the district is also entitled to use the water while on his way. But he cannot keep his cattle there for some time without permission from the overseer or the occupants of the place. Should he trespass, he will if possible be driven away, failing which a complaint will be lodged against

Mr. B. V. Lawrenson (D.C., Ngwaketse Reserve) adds the following note about the boreholes in Kanye: "Everybody has access to the water and can get as much water within reason as is wanted. When water is short, efforts are made to limit consumption. The borehole supplies are used for domestic purposes only, and not for watering cattle."

him. In the late winter and spring, as the rivers run dry, fights often take place when herdboys try to water cattle without permission at more reliable drifts or pools in a neighbouring district. As we have seen, it is usually only in times of severe drought that district monopolies are generally relaxed; in less critical years, permission to use the waters of another area must still be sought and obtained.

Private Wells and Dams. Demands upon surface waters, and squabbles about their use, were much more frequent in former times. To-day many people water their cattle instead at pits or wells that they have made for themselves. Anybody may sink one or more wells in the district where his cattleposts are placed. But he must first obtain permission from the overseer or, as among the Ngwaketse, directly from the Chief. The professed object of this condition is to prevent over-grazing in any locality; the overseer must be satisfied that the site of the proposed well is a reasonable distance from the wells already there. To this end he should consult the other occupants, who are entitled to legal protection if the well is made too close to theirs.

Provided that there is no such objection to the site, permission seems to be given readily enough. Should the overseer for some reason refuse, the man can appeal to the Chief, who will decide the matter on its merits. In general, Chiefs have willingly allowed and even encouraged people to sink wells, so that the country might be developed and pressure upon other water supplies be diminished. However, should a man make a well without permission, he may be forced to abandon it, even if he has already struck water. Sometimes the well is then closed in again, but usually it is appropriated by the Chief, who may allow the overseer to use it as his own.

As we have seen, wells cost more than some people can afford; consequently, they are not very many. They are sometimes put down by individuals, and sometimes by small groups of men who share the labour and expense. The people who sink a well are entitled to the sole use of its water and to protection against trespass, but they often allow others to water cattle there too. In some tribes (e.g. Ngwaketse and Tswana), they occasionally demand and receive payment from men wishing to share regularly in the use of the well. Among the Ngwato, on the other hand, Kgama ordered that water must never be sold; it should either be given freely or not at all. In all the tribes, however, it is the general rule that travellers passing a well are entitled to free water for themselves and their cattle. The Ngwaketse formerly charged such people a fee of 1s. for using the water, but the practice, said to have been adopted from European farmers, was abolished by Bathoen I.

Dams made by private enterprise fall into the same category as wells. They may not be built without the permission of the Chief or overseer, and they should also be placed some distance apart, in order both to prevent over-grazing and to ensure that each receives its due proportion of flood water. A dam can be used only by its owner and those to whom he gives permission, and, as is done also with wells, he may fence it to keep out stray cattle.

Public Boreholes. - In the Kgatla Reserve, some of the boreholes put down by the Administration in and since 1934 were paid for either by individuals (like the Chief and Isang) or by small groups of men, locally known as "syndicates", who are also responsible for maintaining them. As with wells and private dams, the owners are entitled to the sole use of the water, but to this right was attached the special condition that they might no longer share the boreholes that are common tribal property. We have previously noted that some of the men are proposing to make fields near their bores, apparently with the consent of the Chief; I do not know if any have yet done so. It may be added that all the members of a "syndicate" seldom belong to the same ward. No special significance need be attached to this, since we have already seen that whatever ward segregation there may originally have been has now broken down in almost every grazing district.

The other boreholes in the Kgatla Reserve were provided by the Administration, except for the five sunk at the tribal expense during Jeang's regency. All the boreholes in the other in the other Reserves were also provided by the Administration. Consequently they cannot be monopolized like those discussed in the previous paragraph. The result, as already mentioned, was that the land round the earlier boreholes tended rapidly to become overgrazed, owing to the large numbers of cattle using the water.

p. 249 - The Ownership of Water Supplies. - It appears, from what has been said above, that the Tswana formerly regarded all surface waters as common property, which any member of the tribe could use freely. The only qualification was that the water supplies in a grazing district were reserved for the people keeping cattle there. But a man, by digging a pit, could acquire exclusive rights to water as the reward of his industry, provided that he remained within his own district and obtained permission to dig from the overseer or the Chief.

Since the Europeans introduced better methods of tapping and conserving water, new communal supplies have been provided in the form of wells, boreholes, and dams. Dams are also used freely, except in one instance among the Ngwaketse, where special regulations were made by the Chief. On the other hand, a new development resulted from the necessity of maintaining the pumping plants with which boreholes and some wells are equipped. People wishing to use those in the grazing districts must pay a special fee, and the number of cattle allowed to water at each is limited according to the quality of the surrounding pastures. These "tribal" supplies are therefore not "common property" in the same way as are rivers, pans, and some dams. Their use is more rigidly controlled, and the payment demanded for it discriminates against the poor people.

Private water supplies nowadays consist mainly of wells, and occasionally of dams ...

We have seen that in some tribes the owner of a well is allowed to sell its water to other people. This appears to be a new development arising from contact with Europeans, and among the Ngwato the practice was explicitly forbidden by Kgama. The Ngwaketse, who permit it, will on the other hand not allow the man to sell the well itself. I failed to enquire into the reasons for this prohibition. (p. 250) The Ngwato also have it, but I do not know if it exists in other tribes. The general rule is that if a man abandons his well it becomes the property of the tribe, and is controlled by the local overseer, or directly by the Chief, who may allow others to use it. Should the original owner ever return, however, the well must be restored to him, and those who were using it while he was away cannot continue unless he specially permits them.

There remains the question of security of tenure. It may be said at once that the owner of a well normally has no reason to fear that he will be dispossessed. Provided that he obtained permission to sink it, he can use it as long as he likes, and when he dies it is inherited by his children. Chief Bathoen II says on this point: "Before men can put down wells, they must obtain the consent of the local overseer, who cannot afterwards turn any of them away". The number of good wells nowadays seen equipped with reservoirs and windmills or other pumping apparatus indicates sufficiently that tribal law recognizes the validity of private rights. The same remarks apply also to dams. The fact that in the Kgatla Reserve there are even privately-owned boreholes strengthens the usual Native contention that there is adequate security of tenure ...

Apparently, however, circumstances do exist under which a man can be deprived of his well. According to Chief Bathoen II, a well can be confiscated by the Chief (a) if the man puts it down without permission, (b) in settlement of a dispute, and (c) in order to take it over for the public good; nor has it hitherto been usual to give compensation in any of these instances. The first type of expropriation has already been discussed, and I have no examples of the third. The second, however, is illustrated by the following case, which was dealt with by the District Commissioner at Mochudi in 1936.

Antipas Sello married the widow of Masebane Pilane, on whose grazing land he sank a well, towards the cost of which she contributed two head of cattle. Antipas and his stepson Modise subsequently quarrelled about the ownership of the well. When the matter came to the Chief's court, Isang ruled that the well should ultimately go to Antipas's own son by the woman, and that Antipas should help to dig another well for Modise. This was not done, and the dispute continued. The case was tried again, this time by Chief Molefi. He decided that since Antipas and Modise were continually quarrelling about the well, they should each dig one of their own, and the original well would then be taken by himself. The judgment had not been carried out, when Molefi was suspended from the Chieftainship. His successor, in view of the two (p. 251) conflicting decisions, referred the matter to the District Commissioner's court. The judgment given here was that the well belong to Antipas, but that he must help Modise to dig another, and pay two head of cattle towards the cost.

The relevant feature of this case is Molefi's decision, which, although not carried out, shows that the Chief felt entitled to appropriate the well for himself, despite the fact that there was no question of its having been dug without authority.

The only other aspect of private ownership to which reference need be made is the question of partnership. We have seen that several men may combine to dig a well, whose waters they use in common. Should they subsequently quarrel about the well, as sometimes happens, the matter is decided according to the nature of the contract between them.

p. 252 - Appendix A: Some Lawsuits Relating to Water Rights.

Location of Well: Rights of Established Neighbours.

1. Plaintiff had received permission to graze his cattle and sink a well within the district of which defendant was the overseer. Subsequently defendant allowed someone else (a member of his own ward) to sink a well very close to plaintiff's. Plaintiff protested that the new well would draw off some of his water, and that there was no room left for his cattle to graze in as they went to and from his well. Defendant maintained that the new well was not at all close to plaintiff's, and accused him of wishing to appropriate the surrounding land. The court found defendant to blame for not having consulted plaintiff beforehand about the location of the new well, and ordered him to place the other man somewhere else away from plaintiff. (Samoele v. Boiditawe Chief's Tribunal, Serowe, K.52/38).

Well Sunk Without Permission: Confiscation by Overseer.

2. Plaintiff complained that his well at Serogwe had been seized by defendant, who said that the land belonged to him (i.e. was under his supervision). Defendant admitted taking the well, but said that both he and his predecessor had forbidden plaintiff to sink one at the place. Plaintiff agreed that he had sunk the well without permission. Held: that he had no right to sink the well, and that he must consequently forfeit it. (Tselayakgoe v. Malope, Chief's Court, Kanye, 55/1915).

Illegal Charge for Use of Water.

3. Plaintiff and defendant were both found guilty of having claimed and received payment from wayfarers for the use of the water in their well, although Kgama had explicitly declared this to be illegal. They were fined an ox each, and ordered to refund the money they had received. (Modibedi v. Tahokologo, Chiefs Tribunal, Serowe, K. 148/38).

Ownership of Well: Breach of Partnership Agreement.

4. Plaintiff and defendant had dug and used a well together. When it gave in, defendant decided to dig another. Plaintiff agreed to help him, and they contributed jointly towards the cost of materials and labour. Plaintiff then refused to help in the timbering of well, and, when defendant in return would not let him use the water, he took the matter to court. Held: that defendant was justified in his action, but that he should refund the money (£47 10s.) contributed by plaintiff towards the cost of the well. (Ramadue v. Makgotso, Chief's Tribunal, Mochudi, 4/1935).

p. 253 - Appendix B: Agreement Between Members of "Borehole Syndicate". (Kgalla Reserve).

The following "rules and regulations" (for a copy of which I am indebted to the District Commissioner at Mochudi) illustrate the kind of agreement drawn up between members of the "syndicates" formed to obtain boreholes for private use in the Kgalla Reserve.

1. The following members of the syndicate shall represent the syndicate in all matters connected with the Monlogo borehole, pumping plant, etc.: Chief Mmusi, Bogatsu Matlapeng, Elias Madubedi, Richard Molefe, Ntsho, Rapalai.

2. Bogatsu Matlapeng will act as Treasurer for the syndicate and account for all receipts and disbursements.

3. The cost of the pumping plant will be equally divided between all members of the syndicate.

4. The cost of maintenance including repairs, renewals, fuel, pumper's wages, etc. will be met by all members of the syndicate in proportion to the number of the cattle each member waters. Funds for this purpose will be collected by means of a water rate payable on each animal watered. This rate will be fixed by the representatives.

5. In the event of any member refusing or neglecting to pay his share of the expenses, proceedings in the Chief's Tribunal will be instituted against such member by the Treasurer for the recovery of the amount in which such member is in default, and such member will render himself liable to expulsion from the syndicate.

6. New members will be eligible to join the syndicate subject to the approval of the majority of the members. The conditions under which such new members may join will be decided by the representatives of the syndicate.

7. Any difficulties or disputes arising shall be referred to the representatives of the syndicate whose decision shall be final.

8. Syndicate representatives including the Treasurer shall hold office for a period of one year when representatives may be elected. If, at the expiration of the representatives' term of office no member of the syndicate desires to have elections held for new representatives, the representatives in office shall continue in office for a further period of one year. Retiring representatives shall be eligible for re-election.

p. 254 - Appendix C: Sale and Hire of Wells.

Since drafting the statement given above about the rights of owners to dispose of their wells, I have received the following additional information from District Commissioners who kindly inquired further into question for me.

Ngwato. - Wells are never sold, but can be and are lent to people; "sediba ke lefatshe", "a well is (like) the land", i.e. it cannot be used as negotiable property.

Wells which are abandoned return to the Chief, and he can give them to the others.

There is no traffic in wells and it is a crime to charge travellers for water. This has changed since there was large trekking of cattle for trade purposes. (G. E. Nettelton).

Ngwaketse. - One instance is known of a well having been sold. Lekwee Modubonoka (Leru ward), who was moving to Ghanzi, sold his well for two head of cattle to Wamakala Moutlhodi (Tswapong ward). Both men had their cattleposts in the same area; consequently no difficulties arose, and no permission was needed.

Numerous cases exist of people hiring out the use of the water in their wells or dams; the price depends on the number of beasts watered and the period, but usually consists of a sheep or an ox.

Some years ago a man sold his dams to a local European trader without the Chief's permission; the dam was confiscated, and the money returned to the trader. People can however sell their dams to fellow-tribesmen. (S. V. Lawrenson).

Mgatlha. - Two cases of the selling of wells are known: (1) Kwaifane Mokgale sold a well to one Ditantau for six head of cattle (well at lower Monametsana); (2) Patiri Moseki sold a well at Manwane to Nwaile Tahwenetshwene for four head of cattle.

Only one case is known of the hiring of wells: Isang hired a well to Pilaula Mokgale for £1 10s. per annum.

The selling of water from wells and boreholes is very common. There are many different rates. There is no tribal law regulating the selling or hiring of wells or boreholes. (W. H. Cairns).

Author:	L. Schapera
Title:	Tribal Legislation Among the Tswana of the Bechuanaland Protectorate
Publisher:	Long Humphries & Co. Ltd.
Year:	1948

Text

Appendix I - A Register of Tribal Legislation by Tswana Chiefs.

KWENA Tribe

BATHOEN I - (1889-1910)

p. 72 - 1892: Abandoned the rainmaking ceremonies.

p. 73 - Prohibited the making of wells or dams without the permission of the Chief.
(Traditional?)

- Declared that travellers passing by a well should receive free water for their cattle, and be given preference even over the local people.

p. 74 - 1904

- Prohibited the washing of clothes in the tribal dam or in pools from which drinking water was obtained.

p. 78 - SEEPAPITSO (1910-16)

1912: Prohibited the watering in the tribal dam (at Kanye) of livestock from the cattleposts; offenders will be fined a bullock. Also prohibited the driving of wagons into the dams in order that the wheels should be soaked; such wagons will be detained by the chief and used for tribal work.

Prohibited the deepening of pans, "which are natural watering-places open to use by all", and which therefore should not become the subject of private rights.

p. 80 - BATHOEN II (1928 -...)

1928: Laid down the following regulations for the use of the tribal dam at Kanye:

"Cattle from cattleposts are not allowed to drink in the dam, but oxen, horses, milch cows, and small stock, kept at home can do so.

The birds on the dam must not be killed or troubled by anybody.

When oxen go to drink in the dam, they must be accompanied (to prevent them from sticking in the mud).

Anyone found violating this law will be punished.

1928: Imposed a levy of £1 per taxpayer to pay for the cost of erecting a windmill pump on a borehole drilled for the tribe by the Administration.

1929: If cattle spoil the wire fence of the dam at Motlhatseng bull camp, their owner must pay according to the damage done.

p. 83 - 1938: Prescribed that people bringing livestock to drink at the tribal boreholes in grazing areas must pay an annual fee according to the number of their animals using the water.

NGWATO Tribe

p. 84 - KGAMA III (1872, 1875-1923)

1877 (?): Prohibited rainmaking, and substituted a national day of prayer for rain.

p. 85 - 1900 (?): Prohibited the sale of water from wells to travellers and their cattle.

Prohibited the watering of cattle at pools and springs that supplied water for domestic purpose.

p. 86 - TSHEKEDI (acting chief, 1926 -)

1940: Framed regulations for the use of the tribal boreholes in grazing areas.

TAWANA Tribe

p. 87 - DITHAPO (acting chief, 1890-91)

Prohibited rainmaking and similar ceremonies.

EGATLA Tribe

p. 90 - LENTSWE (1875-1930)

1892 (?): Instituted an annual day of prayer for rain, and an annual "harvest thanksgiving" (which is at the same time a commemoration of the day on which the tribe trekked from the Transvaal in 1869).

p. 92 - 1924 (?): Revived the rainmaking ceremonies.

1926: Imposed a special levy of £ 6.10s or a big ox per taxpayer to subsidize water-boring in the reserve.

1927: Introduced a system of "water rates" for people whose cattle were taken to drink at the boreholes, and for women getting water for domestic needs from the boreholes in Mochudi.

p. 94 - Appendix II. - Tribal "Codes" of Law.

As mentioned in the text, the chiefs of two tribes (Ngwaketse and Tswana) compiled written lists of laws for the information of their people. These lists are reproduced below, in as literal a translation as is consistent with lucidity.

NGWAKETSE Tribe

II List compiled by SEEPAPITSO, 12 January, 1913

p. 97 - ... 28. Travellers should be given water (for their cattle) in preference even to the cattle of the local people.

p. 98 - ... 49. Wells and dams must not be made without the knowledge (and permission) of the chief.

... 54. No one may wash clothes in the pools that supply drinking water, or in the tribal dam.

Author:	I. Schapera
Title:	The Tswana
Publisher:	ESA-IAL London
Year:	1953

Text

p. 21 - Natural waters and grazing are used in common, but any man sinking a well or building a dam has exclusive rights over the water it contains ...

p. 22 - Formerly the cultivating season was everywhere inaugurated by rain-making ceremonies, which in times of drought were followed by more elaborate special usages. These ceremonies were all organized by the chief ...

The normal rain-making ceremonies have now been abandoned, but in many tribes there is an annual Church "day of prayer for rain", originally introduced by the missionaries. Some also continue to employ professional rainmakers in times of drought ...

p. 27 - Many people have other forms of recurrent cash expenditure. In the Protectorate, for instance, cattle-owners pay special fees for watering their stock at tribal boreholes ...

p. 28 - Large-scale activities are generally organized through the age-regiments. Once formed, a regiment may be called upon at any time for public service. The men's (p. 29) regiments formerly constituted the tribal army and fought its wars ...

With the abolition of inter-tribal warfare, their military functions have largely disappeared ... Their other duties still remain. In addition, they have been used for such new tasks as making roads and dams ... In the Protectorate regimental labour was until very recently compulsory, failure to participate when summoned being a penal offence in tribal law.

p. 53 - Every family-group, ward, village, and section, in the tribe has a recognised headman, whose position is hereditary. Within his group he has very wide authority. He is responsible for the maintenance of law and order, and adjudicates over disputes between any of his people or involving them as defendants.

BURKINA FASO

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Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Mixed	kinship	kingdoms	semi-arid	pastoralism and agriculture	auto-subsistence	rainfed	no data	individual-collective depend fresh waters	no data

Ethnic Group	Conflicts fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving conservation of forests (15)	Other uses involving conservation of forests (16)	Protection of water quality (17)	Conflict resolution (18)
Mossi	- rights on fishing grounds by matre du sol - regulations on collective fishing	- France	African traditional	- owned by chef de la terre - granting of land by chef de la terre	control by matre du sol	control by matre du sol	control by matre du sol	no data	matre du sol

Ethnic group: MOSSI
Author: R. Pigeard
Title: Le Droit Privé des Mossi. Tradition et Evolution.
Publisher: Recherches Voltaïques, 11, Paris
Year: 1969, vol. 2

Text

p. 407 - Les droits sur les eaux, le poisson et le gibier. - C'est dans ce domaine que l'individualisation des droits est le moins avancé en pays mossi ...

La principale autorité de contrôle reste, en pays mossi, le maître de la terre (et de la brousse), le tengoba. C'est surtout lui qu'il convient de ne pas mécontenter ...

Les droits du tengoba et du nahn [chef] se concrétisaient à l'occasion des chasses et des pêches collectives; ces deux autorités avaient en général droit séparément à une part des prises.

Sous réserve des égards du au tengoba ... la chasse et la pêche sont librement pratiquées en pays mossi pendant les périodes d'ouverture ...

L'exploitant d'une terre, qu'il soit titulaire du droit de culture permanent ou simple emprunteur, ne peut s'opposer, sous réserve du droit qu'il possède de protéger ses emblavements, à l'exercice de la chasse ou de la pêche par quiconque (en particulier, le prêteur conserve ces droits sur la terre prêtée). Il existe cependant des usages locaux en ce qui concerne les battues et les pêches collectives. La location des droits de chasse et de pêche reste (p. 408) une pratique inconnue en pays mossi.

Les eaux, courantes ou dormantes, sont, d'une façon générale, placées sous l'administration religieuse du tengoba. Nous renvoyons à ce que nous avons indiqué à ce sujet dans le chapitre consacré au droit éminent sur la terre.

p. 394 - Le droit éminent sur la terre: le "tengoba" et le Droit. - L'article 9 du coutumier juridique du cercle de Ouahigouya (1950) définit ainsi qu'il suit le tengoba: "Les tengobas sont les chefs de la terre. Ils sont considérés comme les successeurs des premiers occupants de la terre. Ils sont à ce titre gardiens religieux des limites des divers champs du village". L'article 10 du même coutumier précise que les fonctions de la charge de tengoba sont de nature exclusivement religieuse ...

p. 408 - Les litiges fonciers dans le droit traditionnel. - La plupart des litiges se produisaient et se produisent encore au sujet des champs de brousse (pugu).

... les conflits de limites n'étaient pas rares, ...

La procédure normale comportait les phases suivantes dans les litiges entre membres de budu différents:

1. tentative de conciliation par le chef de village,
2. en cas d'échec, visite des deux parties au "kambere" qui les recevait et les entendait.

Le kambere ou chef de canton ne rendait son jugement que plus tard après avoir pris l'avis de ses familiales ou représentants (les nayirdedamba) et des vieillards compétents (le tengoba intéressé notamment).

Il n'était pas d'usage de se pouvoir devant l'autorité supérieure, c'est-à-dire le Moro Naba (chef de royaume) ...

L'affaire n'était portée devant le Moro Naba que lorsqu'il s'agissait d'un conflit de terre entre deux villages, ou budu puissants, et lorsque la conciliation tentée par le Kombere avait échoué, cas évidemment assez rare. Le Kombere en référait au kug'zida ("chef de province" selon la terminologie administrative française) qui informait le Moro Naba. Ce dernier faisait connaître sa volonté aux parties en audience publique.

Quelle qu'ait été la décision, une terre ne pouvait être retirée à quiconque avant que le cultivateur qui avait ensemencé eut récolté ...

p. 409 - Les litiges fonciers, de même que les graves litiges de "vol" de femme, pouvaient être résolus par le dépôt d'autels chargés de forces vengeresses, les "tasa". Ces autels ne peuvent être retirés que par la partie qui a sollicité leur jugement ...

p. 397 - Qu'il s'agisse de la brousse libre ou des terres cultivées, le tengsoba reste le maître des eaux, des animaux sauvages et des poissons. Il intervient à ce titre dans le creusement des puits et dans les travaux qui se rapportent à l'eau (sacrifices). Il organise les battues collectives et a droit à une part du gibier abattu. Son grand âge ne lui permet pas, en général, de se déplacer lui-même et il délègue ses droits. Il sacrifie également à l'occasion des pêches collectives et reçoit une partie des poissons ...

Partout où les terres ne sont pas placées sous l'autorité religieuse d'un tengsoba (cas de la région de Ouargaye notamment), cette autorité revient au doyen du lignage des plus proches occupants. C'est ce "kasma" qui autorise les nouvelles installations et effectue les sacrifices à la Terre; c'est lui aussi qui fait aviser le "kombere".

Malgré la faible utilité pratique de ses prérogatives, le tengsoba est un acteur important en matière de litiges fonciers, et cela pour deux raisons:

1. lorsque le sacrifice d'installation a été effectué, le (p. 398) tengsoba peut l'attester ...
2. en cas de litige entre deux "budu" quant à leur droit de culture sur une même parcelle, le tengsoba est fréquemment appelé car l'une de ses fonctions est de tenir à jour l'histoire des terres de son ressort; son témoignage emporte souvent la conviction des tribunaux; c'est pourquoi il est devenu classique d'assimiler le tengsoba à un "cadastre vivant".

Enfin, comme tout prêtre de la société noire, le tengsoba avait une compétence pénale. Il était seul apte à réparer les outrages faits à la Terre; la plupart de ces offenses pouvaient être réparées par des sacrifices. Le retrait de la terre de culture équivalait d'un bannissement, ne pouvait intervenir que "pour un motif très sérieux, un meurtre notamment" (affaire T.Z. contre Y.K., région de Nandiala, jugement en date du 2 juillet 1958 du tribunal du deuxième degré de Koudougou).

Sur le plan juridique, le tengsoba n'a plus qu'un rôle passif, mais ce rôle n'est pas négligeable. Ce n'est jamais une juge, mais, par sa double qualité de prêtre et d'expert, il joue un rôle important dans de nombreuses procédures d'arbitrage ...

CAMEROON

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Bamileke	villages, concentrated	-kingdoms -raja making power	mountain, humid	agriculture	auto-subsistence	rainfed	abundant	no data	no data
Boulou-Peboulou Group ¹	-family extended -clan -tribe	no data	forest	-agriculture -hunting/ gamekeeping -fishing	-auto-subsistence -market	rainfed	abundant	inland, fresh waters	no data
Masa	-family extended -lineage -patrilineal	no data	savannah	-pastoralism -agriculture -fishing	auto-subsistence	rainfed -irrigation -by flooding	no data	-collective -inland, fresh waters	no data

Ethnic Group	Conflict/ Fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bamileke	no data	United Kingdom France Germany	African traditional	-control by sovereign -granting of land by head of village	-control by community and by sovereign -water free of charge	-control by community and by sovereign -free of charge	-control by community and by sovereign -free of charge for local community	no data	-village -chiefde
Boulou-Pahouin Group ^a	-fishing control by community -rights on fishing grounds by family -regulations on building dams, stockades	France and Spain	African traditional	-control by community -granting of land by head of village	no data	no data	no data	no data	-village -Boumgo
Masaai	-rights on fishing grounds by maître de l'eau -regulations on collection and private fishing	United Kingdom, France and Germany	African traditional	-control by community -granting of land by chief de la terre	-control by maître de l'eau	-control by maître de l'eau	-control by maître de l'eau	no data	no data

Also in Spanish Outlets.

Ethnic group: BAMILEKE
Author: V. J.C. Kanga
Title: Le Droit Coutumier Bamiléké au Contact des Droits Européens
Publisher: Imprimerie du Gouvernement Yaoundé, Cameroun
Year: 1959

Text

p. 40 - Un paradoxe: la terre, qui est propriété collective, propriété du village, primitivement considérée comme inaliénable, se trouve en fait extraordinairement, nous dirons même exagérément, tronçonnée en multiples champs individuels de culture, séparés par des clôtures jalousement entretenues. Autant de précautions et de traits tirant plutôt vers la propriété privée que collective.

Nous ne nous étendons guère sur les querelles interminables qui opposent fréquemment, on pourrait dire journellement, les possesseurs de ces lopins de terre ...

p. 128 - Les biens collectifs. - Ils comprennent les biens meubles et immeubles non susceptibles d'appropriation et, de ce fait, font partie du domaine public qui appartient à la collectivité.

Le principe du bien collectif ne réside pas dans le caractère meuble ou immeuble de l'objet, mais dans son aspect collectif. Les biens collectifs appartiennent aux habitants du village qui en sont propriétaires.

Le chef, représentant du village, gère ces biens au nom de la collectivité dont la chefferie exprime l'unité politique, économique et sociale. Il n'est pas propriétaire de ces biens, mais en est le dépositaire. Tous les villageois qui en remplissent les conditions peuvent avoir la jouissance d'un bien collectif.

Il faut noter que la vigilance du Conseil de neuf notables limite les éventuelles dilapidations des biens collectifs ou privés au profit de ses enfants par un chef peu soucieux de l'intérêt public.

Les grandes chefferies bamilékes, par de leurs organes de gouvernement, les Conseil de notables, veillant jalousement à la conservation des biens collectifs et privés du village ...

p. 129 - Les biens collectifs comprennent:

- Les terres du village en principe;
- ...

Sont également considérés comme biens collectifs :

- Les chefferies et sous-chefferies (résidence des chefs);
- Les pistes, "Nji";
- L'emplacement des marchés, "Doum-Nté";
- Les forêts, "Ntam", sources et chutes d'eau, "Ntchi Mbiou";
- Les rivières, les fleuves, "Ntchi, Nkeu";
- Les places publiques, "Teuh-Thé";
- Les cases consacrées aux divinités, "Ndieu-Sié";
- Les cases-conseils, "Ndieu-Koum" de la chefferie;
- Les lieux où pousse le chaume servant à recouvrir des cases;
- Les collines et montagnes, "Mbouh";
- Les terrains de guerre ou l'emplacement pour les exercices.

Les sous-chefferies possèdent leurs biens à contenu analogue, mais avec une ampleur moins étendue que ceux de la chefferie.

p. 130 - 1. Le droit foncier coutumier bamiléké.

La terre est donc collectif dans le droit coutumier bamiléké ...

Au nom de la collectivité, le chef attribue les terres en tenant compte des besoins familiaux du demandeur.

Il ne peut, sans raison coutumièrement valable et faute de soulever l'indignation et la réprobation populaires, manquer à l'impartialité dans l'attribution des terres à ceux qui remplissent les conditions requises:

1. Etre natif du village;
2. N'encourir aucun interdit coutumier (bannissement, expulsion, mauvaises mœurs notoires, criminelles, etc.);
3. Etre à même de mettre la terre en valeur;
4. Avoir un sol domicile de fait au village;
5. Un "étranger" ("Nguen"), un émigré ou un réfugié politique peut avoir un terrain si, après le délai d'épreuve et compte tenu de son passé, il est acquis à la cause du village et est en quelque sorte naturalisé ...

p. 131 - Les attributaires ont de détention, le bien collectif ne pouvant être l'objet d'appropriation privée.

Dans la pratique, cependant, ils se comportent en maîtres et à l'intérieur de leur domaine, ils jouissent, à peu de chose près, de tous les droits attachés à la propriété privée, tels ceux connus des droits européens:

- L'usus: droit d'usage;
- Le fructus: droit de percevoir les fruits;
- L'abusus: droit de disposer de la chose, de transformer,

Mais sur ce dernier point - l'abusus - l'attributaire ne peut disposer, céder une partie du terrain qu'à un membre de sa famille ...

Ici se recèle le caractère inaliénable de la terre ...

Author:	E. Katté Kwanyab
Title:	Les Institutions de Droit Public du Pays Bamiléké. (Cameroun)
Publisher:	Pichou et Durand-Auzias, Paris
Year:	1980

Text

p. 108 - The chief is the custodian of the land and he is ultimately responsible for the allocations of land. He is the supreme judge and only he has the power of life and death over his subjects ...

p. 111 - Association Primarily Religious in Character

(1) The "kamva" (lit., descendants of the ancestors). This is one the oldest societies and is believed to have existed at the time when the chieftom was founded.

It consists theoretically of eight titled men together with the chief ...

The kamva are the direct descendants in the paternal line of the nine founders and creators of the chieftom who ...

The kamva is the chief's advisory council ...

It constitutes the supreme tribal council ...

In times of drought, it is for kamva to call upon the kungan society to make sacrifices which will bring rain ...

(2) The "kungan". Members are placed under the direct authority of the chief and kamva. Kungan members are the descendants of those "wala" who have been in the chief's service for a considerable number of years; right of entrance is hereditary passing from father to chosen successor.

It is the duty of the kungan to perform rites which will protect crops and bring rain in time of drought ...

p. 129 - The *nto-beag*, the rain magician, has the power to control the rain ...

Author:	M. Mc Culloch, M. Littlewood, I. Dugast
Title:	The Peoples of the Central Cameroons M. Mc Culloch: Tikar; M. Littlewood: Bamun and Bamileké; I. Dugast: Banem, Bafia, Balom
Publisher:	IAI, London
Year:	1954

Text

p. 42 - (a) La distribution des bonnes terres.

Normalement la distribution devrait être faite par les maîtres de la terre, mais théoriquement, ce sont les chefs, qui se sont arrogé le "domaine éminent" sur les terres, qui les attribuent ...

... contrairement à ce qui se fait dans la plupart des tribus africaines où les terres cultivables sont distribuées chaque année par les "maîtres de la terre", les terres ont été attribuées en pays bamiléké, une fois pour toutes aux chefs de famille qui en ont la jouissance perpétuelle ...

Ethnic group: BOULOU-PAHOUI GROUP
Author: M. BERTANT
Title: Le Droit Coutumier des Boulous. Monographie d'une Tribu du Sud-Cameroun
Publisher: Domat-Montchrestien (Louvain), Paris
Year: 1935

Text

p. 112 - Les points d'eau qui sont des sources (anjeng, étam) sont à peu près tenus propres ...

p. 119 - Boissons. - Les Boulous ne boivent que de l'eau; l'eau des marigots, ou l'eau croupissante des mares, peu leur importe quand ils ont soif. Ils semblent peu se soucier des maladies que l'eau véhicule.

Dans les villages, la source est, en général, bien entretenue ...

p. 228 - La terre est divisée entre les familles étendues d'un même clan. Aucune règle précise n'a présidé cette répartition ...

Aujourd'hui, sur la terre d'un même village, les limites entre les terres des différentes familles sont imprécises.

L'ensemble des superficies exploitées par une même famille, temporairement ou non, ou en réserve, constitue une sorte de bien collectif exclusivement réservé aux membres de cette famille.

Ce bien collectif comprend, en particulier, le droit de cueillette, le droit de chasse et de pêche. Tout ce qui jaillit spontanément de la nature est à tous ...

p. 229 - Les biens collectifs. La grande forêt, les terres incultes, les grands cours d'eau sont la propriété collective de toutes les familles du clan ...

p. 230 - Droit de pêche. - ... la pêche dans les marigots est exclusivement réservée aux membres de la famille qui exploite la partie de terre arrosée.

La cour des marigots est divisée en autant de sections qu'il y a de femmes dans le village, qui viennent y pêcher. Le lieu de pêche d'une femme (étok) ne peut être exploité que par elle seule.

Les grands cours d'eau sont à tous. Mais les barrages, les parcs à poissons, les engins fixes de toutes sortes, appartiennent à ceux qui les ont créés.

Tout ce qui précède est l'application stricte du principe: seul le travail et l'industrie de l'individu créent son droit de propriété ...

Author: P. Alexandre, J. Binet
Title: Le Groupe Dit Pahouin (Fang, Boulou, Bot)
Publisher: PUF-IAL, Paris
Year: 1958

Text

p. 70 - Pouvoir Judiciaire. - ... une organisation comme le "gil" avait compétence essentiellement au criminel, le crime majeur, d'où dérivait tous les autres, étant celui du "ngbwel", sorcellerie ...

En dehors du "ngil", la justice était administrée en premier lieu par l'"éaa" ou "ntol mot" dans la famille-étendue ou le village. Il s'agissait là d'un pouvoir plutôt disciplinaire que judiciaire, aussi longtemps ou moins que les décisions du ntol n'intéressaient que ses "bobenyan". Lorsque l'affaire, "éto", sortait d'un cadre purement familial, on avait recours à un juge, "ntyi'i mejo" = trancheur de palabres, choisi dans le clan à un niveau de parenté plus rapproché de l'ancêtre; si plusieurs clans alliés étaient intéressés on prenait des arbitres ou assesseurs parmi les "mintol" non impliqués directement dans le litige ...

Les litiges entre membres d'une association étaient, et sont encore très souvent, réglés par un dignitaire de l'association ...

p. 73 - Droit Foncier. - D'après les documents anciens, le régime foncier était jadis des plus simples. Il ne semblait pas y avoir de droit sur le sol: "La terre est à qui la prend, elle n'a aucune valeur. On ne la vend pas, on ne la donne pas en garantie d'une dette, elle n'entre pas dans l'héritage". Ce n'est pas seulement la notion de propriété individuelle du sol qui fait défaut, mais aussi celle de propriété collective: "Il n'y a jamais de conflit entre les villages pour la propriété du sol ...".

p. 74 - Chez les Ewondo et les Eton, la situation est un peu différente: le clans, probablement mieux organisés, ont conservé une relative cohésion et on effectué leur conquête sans s'éparpiller. Aussi, trouve-t-on chez eux des limites entre les villages et des droits collectifs du sol ...

L'ancien principe coutumier du libre usage des biens naturelles se trouve donc limité, au moins dans certains cas particuliers ...

Ethnic group: MASSA

Author: Igor de Garine
Title: Les Massa du Cameroun. Vie Economique et sociale.
Publisher: PUF-IAL Paris
Year: 1964

Text

p. 51 - Si l'habitat et les activités de production semblent mettre en valeur des unités de faible dimension, le terroir massa, pas plus que le société, ne peuvent être envisagés comme un éparpillement d'enclos et de groupes domestiques isolés les uns des autres.

La communauté dans laquelle s'intègrent ces enclos et ces groupes domestiques est constituée par la "nagala". Ce groupe de fait est fondé à la fois sur la parenté consanguine patrilinéaire et sur la résidence en commun. Il peut, certes, être envisagé comme un groupe de

parenté, un groupe de voisins, un groupe sacrificiel ou une division politico-administrative, mais il doit être considéré comme une totalité originale qui tire son caractère de ne pouvoir être ramenée à l'un des éléments qui fondent son existence.

Le Droit Foncier. - Les Champs Familiaux.

A l'intérieur de la "nagata", chaque chef de famille utilise un champ qu'il reçu de son père ou de son frère aîné et qu'il transmettra à son premier fils.

Le "grand champ" ... matérialise, en quelque sorte, l'existence du groupe familial ...

... Sur le champ de cases poussent la récolte de sorgho rouge, base de l'alimentation et les plantes qui sont utilisées lors des sacrifices c'est à la fois un jardin un cimetière et un autel familial ... A la périphérie du grand champ sont prélevés les champs de femmes à raison d'un par mère de famille. Les Massa distinguent une troisième catégorie de champs: les champs de "brousse" éloignés de l'enclos familial. Tout cultivateur a la faculté de défricher un champ de brousse dans un rayon de quelques kilomètres à partir de sa ferme.

p. 53 - Les champs de cases et les champs de femmes qui ont été prélevés dessus constituent le noyau du patrimoine foncier collectif. Ils appartiennent aux "dja" et ne peuvent être aliénés. Les chefs de famille en disposent au titre de représentants vivants les plus âgés des lignées installées sur la "nagata". Par leur intermédiaire s'établissent les liens indispensables avec les ancêtres morts et avec la nagata au travers du chef de terre.

Le chef d'enclos possède un droit d'usufruit sur les champs ...

A l'extinction d'une des familles du lignage, son champ de cases retombe dans la propriété collective et revient, en général, à l'un des frères classificatoires (garabunna) du dernier chef de famille. Cette redistribution s'opère avec l'accord du chef de terre et des aînés du "dja" ...

... Le droit aux produits de la récolte des champs qu'on a mis en culture pour la saison est absolu, quelle que soit la catégorie à laquelle ils appartiennent ...

p. 54 - Chaque individu de sexe masculin dispose comme il l'entend de ses champs de brousse. Il peut les louer, les vendre ou les transmettre à ses fils. S'il n'est pas encore possible de parler de propriété individuelle à propos du champ de brousse, celui-ci correspond à une utilisation profane de la terre dont dispose à son gré le défricheur.

Les conflits entre communautés, qui tentent d'inclure des champs de brousse étrangers dans leur nagata ou entre individus qui se disputent un même lopin, se rencontrant fréquemment dans le canton surpeuplé de Wina ...

... dans les zones inondées de la plaine du Logone, il est rare que la totalité des terres cultivables soit utilisée. Tout individu peut donc augmenter quantitativement la surface des terres qu'il cultive ...

p. 55 - Les cours d'eau et les mares sont, en revanche, l'objet d'une appropriation précise qui coïncide, en général, avec la division du sol mais peut être plus large. De même que chaque nagata possède un chef de terre, chaque mare (googa) et chaque cours d'eau permanent (lumma) sont découpés en biefs, dont chacun dépend d'un chef de la pêche. Celui-ci est chargé des rapports entre le groupe social et le génie de l'eau (Mununta). Ses fonctions sont cumulables avec celles du chef de terre. De même que ce dernier donne le signal des opérations culturelles, le chef de pêche est seul à pouvoir donner l'autorisation de commencer à pêcher dans le secteur qu'il contrôle ...

CHAD

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Burma ^a	village concentrated	kingdoms	savannah	agriculture, fishing	auto-subsistence	no data	abundant	-annual -inland, fresh water	no data
Kasembu ^b	family, extended	no data	-semi-arid -savannah	pastoralism	auto-subsistence	no data	limited	no data	no data
Kotoko ^c	-family, extended -towns	chiefdoms	savannah	fishing	-auto-subsistence -market	no data	abundant	-annual -inland, fresh water	no data
Teda-Daza ^d	clan	diffused power	arid	pastoralism and agriculture	auto-subsistence	-rainfed -irrigation -by hand	limited	no data	-control by clan

^a Kingdom of Bagirmi.
^b Kanem, Bahr and Bagirmi regions.
^c Also for Cameroon.
^d Also for Cameroon.

Ethnic Group	Conflicts/ fishing rights/ transport	Colonisation	Legal system	Land tenure	Drinking and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Conflict resolution
Burmas	-fishing: control by community -rights on fishing grounds by community -regulations on collective and private fishing	Prance	-African traditional -Islamic influence	control by chef de la terre	-control by maître de l'eau	no data	no data	no data	no data
Kanembu	no data	Prance	-African traditional -Islamic influence	no data	no data	no data	no data	no data	no data
Kotoko	-fishing: control by community -rights on fishing grounds by community and by maître de l'eau -regulations on collective fishing -transport rights over areas	United Kingdom, France and Germany	-African traditional -Islamic influence	control by chef de la terre	no data	no data	no data	no data	no data
Teda- Daza	no data	France	-African traditional -Islamic influence	control by clan	control by clan	control by clan	private appropriation	no data	village

Ethnie groupe: BARMA
Author: Annie M. D. Lebeuf
Title: Les Populations du Tchad (Nord du 10.e Parallèle)
Publisher: ESA - IAL PUF, Paris
Year: 1968

Text

p. 66 - Différents Groupes.

p. 67 - Ils se divisent eux-mêmes en deux grands groupes: les "barma bage" (de bage, fleuve, en barma), les Barma du fleuve, pêcheurs, et les "barma kebar" (de kebar, terre grasse favorable aux cultures), Barma de la plaine, agriculteurs, auxquels ils ajoutaient autrefois une troisième catégorie d'individus, les "belge" ("bel", au sing.), les captifs ...

p. 71 - Pêche. Les eaux des fleuves sont strictement réparties entre les villages riverains et leurs ressortissants ne peuvent ainsi exercer leur droit de pêche que dans des limites précises. Les étrangers ne sont autorisés à pêcher dans les eaux d'un village qu'après avoir acquitté une certaine redevance au chef dont dépend la zone considérée ...

p. 74 - Religion. Depuis le XVIIe siècle, les Baguirmiens sont islamisés, mais ils ont conservé de nombreuses croyances se rapportant à une religion antérieure. Dans la plupart des villages, le Chef de Terre et le Chef de l'Eau président de nombreux rites de fécondité. Dans la région de Melfi, ils pratiquent ce que les Européens appellent le "culte de la margaye".

Ethnie groupe: KANEMBOU
Author: Jean-Paul Gilg
Title: Mobilité Pastorale au Tchad Occidental et Central
Publisher: Cahiers d'Etudes Africaines
Year: 1969, vol. III, No. 12, cahier 4e

Text

p. 497 - Le niveau technique des éleveurs permet, depuis longtemps, l'exploitation de ces possibilités hydrogéologiques. Les puits et puisards sont très nombreux au Kanem. Ils le sont moins au Baguirmi à cause, sans doute, de l'existence de mares permanentes, et dans la zone des Sanis, ici en raison des données de l'histoire. La libération des captifs chargés de creuser et réparer les puits a amené l'abandon d'un nombre important de ces puits ...

p. 504 - L'inorganisation des déplacements et de la dispersion en saison sèche est bien caractéristique essentielle du système de nomadisation des populations du Tchad central. Le dévouement coutumier des pâturages et des points d'eau définit avec assez de rigueur les zones de parcours par tribus et fractions de tribu. Mais, dans ce cadre, rien en fait de traditions ou d'institutions ne canalise, n'ordonne, n'organise les déplacements et la dispersion autour des points d'eau permanents. Et cela que ce soit au niveau du lignage, du clan ou de la tribu. Toute l'organisation se fait au niveau de l'unité de nomadisation, le "frik" (pl. "furgan") ou campement, même dans le nord lors des grands rassemblements ...

Ethnic group: KOTOKO
Author: Anne M. D. Lebeuf
Title: Les Populations du Tchad (Nord du 10.e Parallèle)
Publisher: ESA - IAI, PUF, Paris
Year: 1959

Text

p. 51 - Vie Economique. - ... Tout en conservant le monopole de la pêche et des transports fluviaux, ils étendent sans cesse le nombre des terres cultivées...

La pêche. - D'après Monod, les Kotoko sont les seuls pêcheurs du Cameroun à compter de vrais professionnels ...

Ils constituent également de nombreux types de barrages comportant les dispositifs les plus ingénieux ...

Les campagnes de pêche collective pendant lesquelles sont utilisées ces pirogues, ont lieu en saison sèche. Dans chaque ville importante, le Maître de l'Eau qui préside au culte des génies aquatiques, fixe la date de l'ouverture ...

p. 57 - Le Miaré (monarque héréditaire de caractère sacré) de Logone-Birni partageait ainsi, autrefois, le pouvoir avec le Chef de la terre, le Chef de l'Eau et le Chef de la Chasse ...

... pêche, chasse, agriculture ne pouvaient être pratiquées avant que les dignitaires présidant à ces activités dans la capitale n'aient ouvert eux-mêmes leur saison.

Chaque ville ou village était administré par un "mageveni", nommé par un conseil de notables, qui rendait la justice, faisait observer les limites de pêche et de chasse et percevait les redevances dues au souverain et à son entourage. Il était assisté par la "maha", le "madem" et la "mra galaka", ce dernier ayant un rôle militaire. Un représentant de la plus ancienne famille du lieu était Chef de Terre et, à ce titre, desservait le culte de l'animal protecteur de la ville et répartissait les terres cultivables ...

Propriété. - Les Kotoko se considéraient comme les seuls propriétaires fonciers de l'ensemble du pays. Le sol de chaque cité a un caractère sacré et appartient de façon suprême à un ou plusieurs animaux ...

p. 58 - Les eaux des fleuves font également l'objet d'une stricte répartition entre les villes. La circulation y est libre, mais leur traversée au débouché des principales pistes donne lieu à un droit de péage; de même, la pêche ne peut s'y pratiquer qu'avec l'autorisation des intéressés et elle est soumise au versement de certaines redevances ...

p. 59 - Religion. Ils observent une forme particulière du totémisme, rendent un culte au génie de l'eau, à certains arbres, à des pierres ...

Ethnic group: TEDA-DAZA
Author: A.M.D. Lebeuf
Title: Les Populations du Tchad (Nord du 10^e Parallèle)
Publisher: ESA - IAI, PUF, Paris
Year: 1969

Text

p. 14 - L'agriculture. - D'une façon générale, la culture est un travail méprisé réservé aux descendants des anciens captifs, "tiyeni" et "kamaya", qui, malgré l'évolution de leurs conditions de vie, demeurent soumis aux nomades propriétaires du sol. Ils entretiennent les palmeraies et cultivent, (p. 15) dans des jardins irrigués, des céréales (blé, orge, diverses variétés de mil, maïs), des légumes (tomates, oignons, oseille, etc.), un peu de tabac et de coton.

Ces jardins sont aménagés dans les fonds de vallées où ils sont directement alimentés par l'eau de la nappe souterraine qui sourd à faible profondeur; ailleurs, les paysans utilisent des puits à balancier, "yoba", semblables au chadouf égyptien ...

Les palmeraies sont situées soit dans les zones où l'eau affleure à la surface, soit dans les jardins où les arbres bénéficient de l'irrigation ...

p. 17 - Contrairement aux "duude" (individus isolés qui vivent sous la dépendance d'une famille ... forgerons et griots), les Aza, comme nous l'avons déjà vu, constituent un groupement particulier. Les hommes sont spécialisés dans la chasse, le forage et l'entretien des puits, le travail du bois et celui de la forge. Tout ce qui touche au travail des peaux leur est également réservé ...

p. 22 - Organisation Juridique. - Les Daza et les Teda observent théoriquement le droit musulman, mais ils se plient, en fait, à des coutumes bien antérieures à l'Islam ...

Propriété. - La propriété individuelle du sol se superpose à une propriété collective de clan qui revêt surtout un caractère religieux. Comme nous l'avons déjà vu, un clan est attaché à un centre territorial où les travaux agricoles sont dirigés par un de ses membres qui inaugure (p. 23) la période des semailles, puis celle des récoltes et, d'une façon générale, préside à toutes les cérémonies agraires. Il possède ses propres terrains de parcours où les étrangers ne peuvent mener leurs troupeaux qu'à la condition de respecter les engagements pris avec les propriétaires. Les sources sont également propriété de clan et le tour d'arrosage des jardins est strictement réglementé, les contrevenants sont sévèrement punis.

Chaque chef de famille restreinte possède néanmoins ses propres cultures et les puits sont objets de propriété individuelle; les propriétaires touchent une part de la récolte produite par les jardins qu'ils alimentent. Enfin, chaque homme et chaque femme possèdent ses propres palmiers et ses propres animaux ...

La propriété d'un arbre est ainsi indépendante de celle du terrain sur lequel il s'élève, de celle du puits qui assure sa croissance; son entretien est, le plus souvent, assuré par un tiers qui, lors de la récolte, superposera ses droits à ceux des propriétaires précédents, droits qui varient selon les régions.

CONGO

Ethnic Group	Social structure and habits (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Erzang Nord-occidentaux ²²	-house -clan -association, voluntary -matriliny -kinship	-diffused power	-forest -river, lake	-agriculture -hunting-gathering -fishing -trade	-auto-subsistence	-rainfed	-permanent -abundant	-annual -inland, fresh waters	-no data
Mbooh ²⁴	-house -village -concentrated	-chieftains -rain making power	-forest -river, lake	-agriculture -fishing	-auto-subsistence	-rainfed	-permanent -abundant	-annual	-no data
Taka	-house -clan -village -concentrated	-diffused power	-savannah -forest -river, lake	-agriculture -fishing -trade	-auto-subsistence -market	-rainfed	-abundant	-annual -inland, fresh waters	-no data

Ethnic Group	Conflict/ Making rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Kongo Nord-occidentaux	-private appropriation -rights on fishing grounds by family -regulations on building dams, stockades	France and Belgium	African traditional	-control by community -granting of land by head of village	control by community	control by community	control by community	rules against pollution, cleaning of water source	village
Mbochi	rights on fishing grounds, by community	France	African traditional	-control by community -granting of land by head of village	control by community	control by community	no data	no data	chiefdom
Taka	-transport on water, transport rights over areas -specific organisation dealing with water transport	France	African traditional	-control by community -granting of land by head of village	no data	no data	no data	no data	village

Ethnic group: KONGO NORD-OCCIDENTAUX (YOMBE, DONDO, LAADI, SUNDI AND KONGO)

Author: Marcel Soret

Title: Les Kongo Nord-Occidentaux

Publisher: PUF - LAL, Paris

Year: 1969

Text

p. 47 - Pêche. La pêche individuelle est entièrement libre, sous réserve de la remise de sa part au propriétaire de la rivière, part qui, dans la tribu Kongo, peut parfois atteindre la moitié du produit. La pêche en groupe se fait ordinairement dans les cours d'eau ou les mares de la propriété familiale. Elle est toutefois interdite dans certains endroits réputés demeure des "nkizi", des mauvais génies ou "Bakuyu", des âmes des morts.

Elle a lieu en toute saison, mais, de préférence en saison sèche ... seules certaines tribus ou certains clans plus spécialement pêcheurs auront des capitaines de pêche ...

La pêche collective au poison est des plus courantes ... en amont d'un barrage ...

Notons cependant encore l'interdiction absolue à tous les pêcheurs de polluer l'eau en y crachant ou en y urinant et la défense faite aux femmes enceintes de plus de six mois et à celles ayant leurs règles de participer, non seulement à la pêche, mais au travail qui la précède ...

p. 72 - C'est donc la "kanda", le petit clan, qui est, ou plutôt qui fut naguère à la base de l'organisation sociale chez les Kongo nord-occidentaux ...

p. 73 - Théoriquement, à l'origine, la kanda a une base territoriale, village ou groupe de villages sous l'autorité du patriarche. Mais la mobilité ... les palabres ... causes extérieures ... ont fait s'effriter les groupes ...

... on ne peut plus dire que les kanda s'identifient avec un groupement local: appartiennent maintenant à une d'elles, toutes les familles apparentées par les femmes, quelle que soit la distance qui les sépare les unes des autres et quel que soit leur nombre ...

p. 74 - Le chef de kanda est aussi le chef de la terre parce que celle-ci a été acquise par les ancêtres qui continuent à y dominer et dont il est le représentant, ce qui donne à la propriété son caractère sacré ...

Enfin la kanda était le "rouage fondamental dans l'administration de la justice". Le "mpfumu mpu" avait, sur elle, l'autorité la plus complète. Etant donné l'émiettement actuel des groupes, les chefs locaux, ordinairement le plus éminent des chefs de lignage du village, s'il y en a plusieurs ... l'exercent souvent, mais ne sont en fait que les dépositaires de ce droit de haute et basse justice, qui reste la propriété indiscutée du chef de clan devant lequel il y a toujours possibilité de faire appel ...

... Mais on a progressivement assisté à son émiettement du à la dispersion géographique des lignages donc à un émiettement des pouvoirs du chef de kanda ...

... Conséquences: la dispersion des pouvoirs du "mpfumu mpu lai" entre les mains des nkazi, des chefs de lignage.

Celui-ci ultime concentration du clan qui groupe des consanguins socialement reconnus, vivant ensemble sous l'autorité du plus ancien et constituant une unité économique, tend ainsi à devenir la cellule sociale, économique, juridique unique sous l'autorité du nkasi, du représentant de la femme la plus âgée de la génération la plus ancienne du groupe.

Le nkazi s'est progressivement arrogé de nombreuses prérogatives (p. 75) du mpfumu mpu ...

Le patriarche règle les palabres entre les membres de son lignage, et, éventuellement, défend les intérêts de celui-ci devant le tribunal du mpfumu mpu ... Il perçoit les dotes, gère les biens immobiliers, fraction de la propriété de la kamba et une partie des biens meubles. Il capitalisera l'avoir de la communauté, distribuera à chacun ce dont il a besoin pour vivre, répartira les terres à cultiver, etc., toutes fonctions qui appartenaient jadis au chef de clan ...

p. 80 - Le village. - ... ont très vite abouti à la création de villages formés de plusieurs lignages provenant de kanda différentes ... mais l'autorité supérieure du village passe entre les mains du chef du plus important lignage ou du chef de lignage faisant partie de la plus illustre kanda ...

p. 86 - Propriété. D'une façon générale, les biens meubles sont propriété individuelle, les immeubles, propriété individuelle ou collective, les biens fonciers, propriété collective ...

p. 87 - Les immeubles sont en principe communautaires, mais peuvent être susceptibles d'appropriation individuelle: chacun a un droit exclusif sur ce qui, dans les biens publics, n'existe que par son travail ... Autre immeuble susceptible d'appropriation: les ressources naturelles (produits de la brousse, etc.) ...

p. 94 - Par ailleurs des féticheurs peuvent, par leurs invocations et des rites spéciaux, faire venir la pluie, provoquer des orages qui détruiront un village ennemi ou ses cultures, etc. ...

Ethnic group: MBOCHI (Cuvette)
Author: Théophile Obenga
Title: La Cuvette Congolaise
Publisher: Presence Africaine, Paris
Year: 1978

Text:

p. 34 - L'emplacement socio-géographique occupé par les familles s'appelle poo, nboa, mboka, "village". Il est souvent situé à l'orée d'une forêt (ko) ou à proximité d'un cours d'eau (okyesi). Les domaines familiaux (epfandu, ehundu), les forêts (ko), les rivières (okyesi), les grands cours d'eau (ebaa, ndzale), les savanes (olongo) font partie intégrante du village ...

p. 35 - Un ensemble de villages regroupés sous l'autorité politique reconnue d'un Chef constitue la terre (Isenge), domaine géographique (sols à cultiver; rivières; étangs; forêts; chemins; etc.) d'une Chefferie (akani), espace géo-politique sur lequel s'exercent tous les pouvoirs d'un Chef investi, couronné (kani, mwene); pouvoirs agraires (répartition des terres à semer ... pouvoirs judiciaires (justice rendue en tenant compte des us et coutumes de la communauté), pouvoirs politiques ... pouvoirs administratifs (levée des troupes ...), pouvoir sacrés (influence d'ordre traditionnel sur les mentalités: action sur la pluie ...).

p. 77 - La Terre. La terre et les ressources naturelles (sols cultivables, étangs, mines, faune, etc.) sont collectivement possédées par les différents familles patriarcales (lignages paternel et

maternel) constituant la communauté villageoise: le kani (chef couronné ... ne possède pas la terre de façon privée. Le sol primitivement occupé par des ancêtres communs appartient collectivement à des membres de famille qui se reconnaissent originaires de mêmes ancêtres-fondateurs de la parenté. Chaque membre adulte e valide de la famille (au sens large) exploite les richesses forestières (essences, faune, végétaux comestibles), (p. 78) pêche dans les étangs, cultive librement une portion de terre relevant du "cadastre" hérité des ancêtres-morts, mais seulement à titre d'usufruit, les droits (collectifs et inaliénables) appartenant à la famille entière ... mais les communautés villageoises conservant tous leurs droits de propriété ...

Ethnic group: **TEKE**
Author: **Lars Sundstrom**
Title: **Ecology and Symbiosis - Niger Water Folk**
Publisher: **Uppsala**
Year: **1972**

Text

p. 10 - Turning to the Congo Basin the Teke living on Stanley Pool offer an interesting example of middleman traders with a water transport monopoly. They were the pivot of the trade moving by land from the Lower Congo and the Upper Congo as well as the Kasai river ...

EGYPT

Ethnic Group	Social structure and habitat	Political structure	Environment	Predominant modes of production	Economy	Agriculture	Water Resources	Fishing	Irrigation
Bedon (Egypelian Bedonins)	(1) family extended-tribe	(2) chiefdoms	(3) semi-arid	(4) pastoralism-agriculture	(5) no data	(6) rainfed	(7) limited	(8) no data	(9) no data

Ethnic Group	Conflicts/ striking rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Jedou (Egyptian bedouins)	no data	no data	Islamic	no data	Water, free of charge	no data	-control by family -private appropriation	no data	no data

Ethnic group: BEDOU (EGYPTIAN BEDOUINE)
Author: A. Kennett
Title: Bedouin Justice (Egyptian Bedouin)
Publisher: Cambridge University Press
Year: 1925

Text:

p. 93 - ... In the Western Desert there are great differences between land disputes brought into Court in the western half (between Dabas or Matruh and Sollum) and the eastern half towards Mariut. The western population is very much more tribal in every way; land is owned and recognised as tribal areas, and the wells and cisterns (which are not very (p. 94) numerous) are almost exclusively owned and protected by the tribes.

In the eastern part along the Coastal Zone the position is very different. To begin with, the close proximity to the Nile Valley has resulted in a mixture of people of all sorts of tribes. Odd families or individuals of different western tribes have settled in particular spots and cultivated the same ground year after year, just as the Fellah cultivates his acre or two, and this mixing of population has resulted in varying degrees in loss of tribalism.

Then too a thousand years ago the Romans appreciated the market value of desert land close to the Nile Valley and the Alexandrian port, and made deep wells, and cultivated vineyards, which the result that the whole of Mariut has numerous wells scattered all over the district, most of them being of Roman origin.

If one well could not be used for any reason, there was always another one not more than four or five miles away; and as no particular tribe or individual could claim to have made the well in the first instance, and as numerous other wells existed in the immediate vicinity, consequently no claims to ownership of wells were put forward.

In the west, however, nearly all the big cisterns, made to catch the heavy rain pouring from the hills, were constructed at considerable expense by a particular individual or his family, when only those who had paid their share of expenses involved had water rights.

In normal times these water rights would be universally recognised and respected; but many disputes arose as postwar conditions began to adjust themselves. Some families, owning rights in a particular well, retreated west over the Tripoli frontier with the Senussi army; and in their absence their co-owners, finding that they had more than enough water for their considerably reduced numbers, sold the remainder of the water rights to another tribes or family.

The newcomers remained peacefully in possession for (p. 95) nearly three years, when the original owners suddenly returned from the west.

The case quoted above became at this juncture a triple claim. The returned Senussi warriors claimed their original rights from the new family and damages from the rest of their own tribe for daring to sell their tribal birthright to outsiders. The purchasers claimed damages from the Senussi warriors for expulsion from their rights bought and paid for (receipt shown) and also claimed for wrongful sale against the rest of the tribe.

The latter protested that they could not tell when (if ever) the other would return from the west, and maintained that they could not afford to lose the opportunity of making a little money from their surplus water supply.

In a case like this the Bedouin Court would probably first enquire into the claims of the whole tribe to ownership of the well; and if its ownership were established to their satisfaction, they would ascertain either by document or oath how much had been paid by the outsiders for their water up to date. If the sum were accepted without question, and if no other issue were brought in to complicate the case, the family newly returned from the west would be awarded their original rights in the well, and would also be paid as a sort of compensation the money paid for their rights during their absence.

**ETHIOPIA
(INCLUDING ERTREA)**

(A) ERITREA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Adibanan Melga of Seraye region	-lineage -tribe -village, concentrated	kingdoms	mountain savannah	-pastoralism -agriculture	auto- subsistence	rainfed	no data	no data	no data
Bani Anzur	-village, concentrated -scattered	no data	no data	-pastoralism -agriculture	auto- subsistence	rainfed	no data	no data	no data
Bogus (Bat Tarebi) Bat Tagus (Halhali)	lineage	kingdoms	semi arid	-pastoralism -agriculture	auto- subsistence	rainfed	limited	no data	no data

OU BERTREA

Ethnic Group	Conflicts/ Bathing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Labouze Malsu (Berna region)	conflicts, important	-United Kingdom -Italy	-African traditional -Islamic influence	-control by community -granting of land by head of village and by sovereign	control by community	control by community	-control by community -free of charge for local community and for foreigners -free of charge, local and foreign cattle -fee paying, foreign cattle -authorization needed for watering -precedence rules -restrictions on use by authority in drought -protection of rights of way to water sources	no data	village
Sam Amer	no data	-United Kingdom -Italy	of Islamic derivation	control by community	control by community	control by community	private appropriation	no data	no data
Bogor (Bat Tavohé) Bat Teqwe (Belhal)	no data	-United Kingdom -Italy	no data	no data	control by community	-control by community -free of charge	appropriation	no data	no data

B) ETHIOPIA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Borana ¹⁹	-clan -pastoralist	rain making power	semi arid	pastoralism	sub-subsistence	rainfed	limited	no data	no data
Hamar (High Plateau)	homage	-chieftains -city state	semi arid	-pastoralism -agriculture	sub-subsistence	-rainfed -irrigation	limited	no data	-control by villages and by centre de Feen. -rights of selling, buying -irrigation infrastructure -water rights in operation, always

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal systems (12)	Land tenure (13)	Orbiting and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Borana	no data	-United Kingdom -Italy	-African traditional	control by community	-control by community and by matire de l'eau -water, free of charge -payment for maintenance -duty to maintain -specific organization dealing with water	-control by community and by matire de l'eau -free of charge -specific organization dealing with water	-control by community -free of charge for local community and for foreigners -free of charge, local and foreign cattle -authorization needed for digging well, basin on communal land -duty to community digging maintenance -duty in providing water -authorization needed for watering -precedence rules -restrictions on use by authority in drought -specific organization dealing with water	rules protecting waterworks	-matire de l'eau -water tribunal
Hirane (High Plainland)	no data	-Italy -Egypt	Islamic	-control by sovereign -private appropriation	private appropriation	private appropriation	-control by community and by matire de l'eau -private appropriation -duty to community digging, maintenance -precedence rules -protection of rights of way to water sources -specific organization dealing with water and with waterworks	no data	no data

Ethnic group: ADICHEME MELGA OF SERAE REGION (ERITREA)
Author: *Assemblea dei Notabili degli Adcheme Melga del Serae, in Addi Ugrì*
Title: *Consuetudini Giuridiche del Serae*
Year: 1948, vol. 1

Text (translated from the Italian by the author)

Customary laws of the Adcheme Melga people of Serae. Collected by the notables assembly, on the initiative of the Regional Commissary of Addi Ugra. Part 1. Roma, 1948.

p. 106. - A proverb says: "Mai ab aini gibol" (water doesn't gush out of the eyes) (namely, he who has possession of water should not be overly jealous of it, preventing others from using it).

Water cannot be denied to anyone.

A village without water may water its cattle at the running water of its nearby village, but with the obligation of taking cattle straight to the watering place, without letting it stop for grazing at the sides of the track leading to the water.

If the village lacks running water and wells are being used, the nearby village with no water at all may appeal to the "restegna" for authorization to dig a well. If it proceeds to digging without prior authorization, it should leave the well to the "restegna".

After that, the village should dig another well, after having obtained the "restegna's" authorization.

After having completed the excavation of the well, the village has priority in watering its cattle but the remaining water should go to the "restegna".

The individual who has the use of the well cannot authorize others to use the well dug by him (on somebody's else country). If water is found in his country he should have his cattle watered in his country and he should be prevented from using the well he was using previously. If he waters his cattle by force, when owners have forbidden it by saying, "You have water", he is to indemnify that country with 30 tallere and 30 "ferghu" and is to take his cattle away.

Ethnic Group: BENI AMER - ERITREA (BARCA COUNTRY)
Author: F. Ostini
Title: *Trattato di Diritto Consuetudinario dell'Eritrea*
Year: 1968

Text (translated from Italian by the author)

Chapter 9

The Beni Amer.

... the right of ownership is essentially vested in movable goods, following the Islamic legal system. Land ownership has not yet been established because there are but sporadic traces of agriculture among the Beni Amer. Land is owned by the entire population ...

Grass, trees, running WATER are also community-owned.
Wells belong to the individuals who dug them.

Ethnic Group: BOGOS (BET TARCHÉ) BET TAQUE (HALHAL) (ERITREA)
Author: F. Ottini
Title: Trattato di Diritto Consuetudinario dell'Eritrea
Year: 1958

Text (translated from Italian by the author)

Second Part, Chapter 6

The Bogos' legal system.

p. 141 - Among the Bogos, property in land ... is vested in individuals ...

The selling of land to people of foreign tribes is not allowed.

p. 142 - ... WATER belongs to no one, and everybody can have access to it when it surfaces. A different principle regulates the property and utilisation of WELLS. The owner has exclusive enjoyment over the land in his private property.

General Eritrea

Author: Carlo Conti Rossini
Title: Principi di Diritto Consuetudinario dell'Eritrea
Year: 1916

Text (text translated from Italian by the author)

p. 11 - ... with regard to customary laws of Italian Ethiopia, it is possible to distinguish three major population groups: Abyssinian people, people with an aristocratic constitution, people with a democratic constitution.

(Abyssinian customary law). p. 162. Waters.

Scarcity of WATER sources and of lasting rain water catchments brings great restrictions in its use. They are normally reserved to the village in the territory of which they are located; however, men and cattle in transit may use them. If water is running out, special norms and shift may be enforced by the village assembly; for example, in practice the rule that cattle is to be watered every other day is fairly common. The village without water has a right to have access to its neighbouring villages' water. The village with water may in turn impose special rules for the watering of other communities' cattle, among which priority for its own cattle and a fee, the amount of which is defined by the village assembly.

Eritrea General

Felice Ostini - Trattato di diritto consuetudinario dell'Eritrea - Asmara, 1964.

Chapter 1

p. 3 - Eritrea is far from having an homogeneous population complex. In studying customary law, it is necessary to distinguish:

- the Tigray speaking people of the Hamasien, Akele Guzai, Seraye regions, on the Plateau, a quasi-homogeneous ethnic complex ...

- the Western lowland people, divided into different ethnic groups and those speaking Bilena, ..., Tigray languages or Beja dialects, with strong Arabic influence,

- the Baria and Cunama peoples, living in the most Western regions of Eritrea, with their own languages and ethnic characteristics,

- people living in the Samhar region, Tigray speaking with strong Arabic influence,

- Afar or Danakil people, Afar speaking, with strong Arabic influence,

- Saho people, Saho speaking, living North of Asmara and in the Akele Guzai region.

Chapter 2

Constituent elements of the Tigray speaking Eritrean society: the Enda and the Ghebbar.

- ... the land ownership system and the family organization are strongly connected

- ... basic land tenure is the Resti, i.e., lands which belong to the Enda in joint tenancy.

- Enda is the body in which families (Ghebbar) are organised, having one common ancestor and living in the same village or in neighbouring villages.

- ... The rights of the Ghebbar are the same for all, within the Enda.

Chapter 10

Real rights. The land ownership system in the Eritrean Plateau.

p. 89 - ... On the whole Eritrean Plateau, primitive and absolute ownership in land (of the families' Enda) is identified with Resti ... Resti means "occupied land" ...

p. 90 - The legal meaning of Resti is effective and incontestable right of ownership. The Resti's territory is made up of cultivated land, grazing land, woods, WATERS, building areas.

- ... the need to put lands in commonage ... is achieved by putting lands in Desaa ... and (land) for cultivation is apportioned and divided between the various Ghebbara ...

In order to be a Ghebbar, it is necessary to join the village and to build a home (on a permanent basis).

Chapter 11

Real rights. The land ownership system in the Eritrean Plateau. (Continuation and end).

The Medri Uorchii.

p. 94 - Another type of property is the Medri Uorchi, i.e. land acquired with money.

Building areas and the Ona.

p. 99 - ... rights of AQUEDUCT and DRIP are not unknown ...

Second Part.

Chapter 6

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Wells belong to the individuals who dug them.

Author:	Ambaye Zekarias
Title:	Land Tenure in Eritrea (Ethiopia)
Year:	1988

Text

I split the traditional systems of land tenure into two main parts; private and public property.

1. Private property ... embraces: (a) absolute private property; (b) charter lands; (c) church lands (monasteries and convents).
2. Public property; (a) collective ownership.

The subjects of collective ownership are divided into two sectors: private and public sectors.

- (1) Private sector; fields, housing; animals are owned privately by each member.
- (2) Public sector; pasturelands, reserved lands, public places (rivers; springs; meeting, sports, game areas) are held collectively.

Woods and Forests ... is no longer the property of the collective. It is simply stated to show the former structure of the old tribal society. Presently, it is partly private and state property.

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- ... basic land tenure is the Resti, i.e., lands which belong to the Enda in joint tenancy.
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- Building areas and the Ona.
- p. 99 - ... rights of AQUEDUCT and DRIP are not unknown ...

Ethnic group:	BORANA (ETHIOPIA)
Author:	Gudrun Dahl and Gemechu Megerma
Title:	The Sources of Life: Boran Concepts of Wells and Water
In:	From Water to World-Making. African Models and Arid Lands
Edited:	by Gisle Palsson, The Scandinavian Institute of African Studies,
	Uppsala
Year:	1990

Text

- p. 22 - ... In this article we will try to show how Boran well organization forms a framework for the expression of basic cultural (p. 23) principles of solidarity and respect, how ideas about fertility and descent are linked with the paradigms offered by wells, and how wells are closely attached to the basic concepts of Boran identity. It may seem trivial to say that "water is life" since as physical beings we all need water. For the Boran, however, water is more than a physiological necessity: it is a central ontological concern ...

In his overview of Ethiopian Boranaland, Helland (1980) notes that water is found in three basic forms, each with a particular set of rights. First, during the rainy season there are occasional spots of surface water, or "Jola". Although nobody has exclusive rights to them, the people settled closest have a privileged access to them. Such rainpools, puddles, and temporary floods, as well as the seasonal streams which appear in the rainy season, provide the main source of water for Ethiopian Borana from March to May. Second, there are more predictable if temporary sources of water, that are contained by man-made or natural dams. These sources require some maintenance. Their enclosures must be maintained and silt dug out. Third, there are regular wells. The latter type is of critical importance to the central Borana particularly from January to March when the weather is hot and dry ... The wells are of two types and both types may be found within the same location, probably draining different aquifers (and are) either sunk deep through the rock ... or (are) shallower, wide shafts dug out in alluvials like sand or gravel" (1980:20). Wells of the latter type, Helland notes, are still being excavated, whereas the former are no longer newly dug but sometimes may be recovered. Construction and recovery are, however, both feats which demand large numbers of cattle ...

p. 24 - Helland mentions (1980:22) that the everyday (well) routine is supervised by an officer. Access to water is scheduled on the basis of a three-day cycle. On the first day, it is the well-holder, "konficha", who takes on the work of supervision. For the two remaining days, officers are appointed according to the consensus of an open council comprised of people who use the well. Typically such officers come from groups having rights to the second and third days respectively ...

Many of the wells in Ethiopian Boranaland are very deep and watering from them is a major organizational task. Long chains of men stand at different levels and pass hand-to-hand water buckets made of giraffe-skin ...

At Waso in the Isiolo District of Kenya, in contrast, most wells are relatively shallow needing at most four or five men in a chain ...

In principle ... any family can use the rivers, dig a temporary well in a canyon, or dig a permanent well at one of the well-complexes. It is very seldom that watering or well maintenance requires more labour than a family or camp can provide. When people dig for water, it is either found by fairly shallow excavation or not available at all.

Law and custom. The Boran jural system recognizes a distinction between "Law" ("seera") and "Custom" ("addaa"). The former consists of a set of recognized rules, ideally formulated and revised by the representatives of certain senior generation set at collective ritual once every eight years. "Law" is considered to be fixed and holy. To a large extent it concerns issues relating to various culturally-central concepts and values singled out as symbols of (p. 25) Boranness. "Custom", upheld by local elders when dealing with their clan and community matters, is a more flexible set of agreed-upon practices. Within the realm of wells, there is room both for the enactment of "Law", and for customary practices.

The Boran view of cosmology, ecology and ontology is one of a flow of life emanating from God. For them, the benignancy of divinity is expressed in rain and other conditions necessary for pastoralism ...

p. 26 - Both Libaan and Dadacha (informers) make an explicit link between the mythical ancestor and the wells ...

p. 28 - Wells and Clanship. The system of well-complexes is identified with clanship and the Boran people. Boran clans are named, patrilineally-recruited groups which are scattered all over Boranaland. In many cases they can also be found among other Oromo groups in Ethiopia and Kenya. Each of the well-complexes is seen as representing the Borana people as a whole and its multiplicity of clans. The ownership of wells is fundamentally linked to clanship.

Within the well-complexes specific wells are associated with particular clans, but no clan is barred from using the well-complex. Every Boran has "ownership".

The number of wells actually used in each well-complex varies, as each field contains many wells that are not in use, because they are not recovered. Whether or not they are in use, wells are owned ...

When people wish to open a lapsed well which has been unused even from the time of the Warday, they need to find out which clan is the owner. To do that, they have to consult special experts on Law of Mineral Waters. The guardians of this restricted knowledge are supposed to pass the knowledge to younger men, as they themselves grow older. A law regulates who should and should not be taught. According to Dadacha, "this is done to protect the knowledge from becoming public. Today wells become sources of bribery, but they did not have anything of that sort in the beginning ...

Any man can request water from any well belonging to his clanmates as he moves with his cattle over Boranaland. But agnation and wells are connected in more symbolic ways. We have already noted the association of mineral water with fertility. The fertility with which we are here concerned is masculine rather than feminine. It is the active life-giving (p. 29) principle, the potency of impregnation and creation rather than the nourishing fertility associated with women and the soil. The stream of life flows through rain, well water, milk, male, virility and its moral counterpart: the commitments to herd reproduction and care, closely associated with commitment to clan solidarity. As the clan shares title to wells, so do they share in the - reproductive capacity of stock. This aspect of solidarity and corporativeness is expressed when someone loses his stock; he has the right to turn to his clan-mates to get a breeding nucleus from which he can then recover his herd ...

Commitment to herd growth cannot be regarded as separate from commitment to the clan; the wasteful and careless man loses his moral right to assistance. Similarly, work in and with the wells is expressive of commitment to the herds and clan; undertaking such work is in essence "being a real man", and recreates the basic physical conditions of Boran existence ...

p. 90 - ... Dadacha explains: "When the Boran wells were originally distributed, people first had to make the rules of sharing. They were fairly shared according to clanship. After dividing access to every well according to clan, they also considered another factor: let us, for example, say there are five wells near one another. Experts know from which side the water is coming to a particular well. The flow of the underground source is considered. If the experts say that a new well could be dug without affecting the wells already there, then one may be allowed to make a new well. But if one clan just went ahead and dug a well without consulting the experts, the other clans owning wells in the region could stop the digging. Alternatively, they could claim it after it had been dug. But a times the water in the area may be so abundant that it is sufficient for all".

What, then, does "ownership" of a well mean? In contrast to the picture that we are given in various consultancy reports which emphasize the strict control applied by owners, Dadacha emphasizes the ideological aspect of well use, where the practice of sharing is a way of emphasizing and asserting values of cooperation and solidarity. In Boran discourse, such values primarily characterize the relation between affinals ...

The basic issue in deciding turns at watering is the appointment of the holder of the "konfi". This term applies not only to the wooden shovel used in digging, but also (and more importantly) to the rights of the person who-as representative of the owning clan-slaughters the first ox when the well is dug or reclaimed ...

The ox to be slaughtered should come from the most senior of the families belonging to the clan that holds the right to the well. The head of that family is the "konficha". The elected

"konficha" gives the sign for starting work by symbolically handing over a konffi-shovel. Then the actual job begins by clearing the bushes and shrubs which have grown over the well. Killing the ox and clearing the place are acts referred to as "putting in the konffi". The people who slaughter oxen to feed the workers after the konficha are said to provide "dewlap animals". Dadacha sees the dewlap animals as a way of checking over-stocking ...

p. 31 - "If the number of cattle increases so that the land cannot support them, our "Law" provides a way out. Excess cattle are used for making new rain-ponds or new rock-wells in the well-fields. Recovering an old rock-well can take up to 100 oxen. There are many wells of this kind in the well-complex area, and they all need livestock to be recovered. You engage in such activities to keep the number of animals in limit. That's why we say that the multiplying of cattle is not a serious problem. We can use the excess for the discovery of new sources of water and land. The number of cattle can never be greater than what the land can take".

Those who provide dewlap animals have rights to water which are, in principle, second only to those of the well holder ...

"The man whose ox is slaughtered next after the ox of the konficha is the one who will have the right over the use of the well after the konficha. The man who provides the third ox for slaughter is third in rights. Then come the fourth and the fifth. It stops on the fifth. Even the turns for watering cattle in one day do not exceed five. If the number is bigger, the exceeding ones should be distributed among the five. This is governed by the law of five" ...

p. 32 - Given the ecological conditions of Boranaland, the maximum number of days in a water schedule is three. For any one herd-owner who wants to water his animals, his turn to water returns every third day ...

"The "Law" is about collective ownership, mutual respect! You should respect collective ownership even when you know that the well is yours. If I who am a Goona use the water and you use it next and you are also a Goona, then a Sabbo might feel alienated. We place Sabbo between ourselves to make him not feel an outsider. In this way we show our regard for each other" ...

Dadacha explains: "... In case a well does not have water and those owning it run short of water, the case will be considered by the whole group regardless of who belongs where. A solution is found in sharing with others".

p. 33 - It may appear surprising that people of very different status are all given the same access to "second turn" watering-holy men and "gadaa-leaders on the one hand and healers, blacksmiths, and hunters on the other. Dadacha explains this in terms of the critical importance of the tasks carried out by people of the latter categories ...

When cattle come to the well, they first reach the well-yard, which is enclosed with a thornbush ...

When they pass the well-yard, the animals enter the cattle corridor, which is a sloping ramp dug into the soil. The end of the corridor towards (p. 34) the well is marked with a threshold, known as the "dargullaa". These places are considered within the domain of "Custom" rather than "Law". But once the threshold is crossed the ground becomes holy, and is defined under the "Law". Within this holy zone and to both sides of the threshold, according to Dadacha's description, there is a wide place where cattle rest after being watered. This central part of the well also contains the clay trough from which the cattle actually drink ...

A quarrel which takes place inside the threshold is regarded as a far more serious breach of norms than one which takes place outside. It cannot be dealt with by a local court of ordinary elders, but must be handed over to the tribal legal experts ...

There has always been some degree of mobility and hence a provision for newcomers and strangers of different kinds is necessary. Boran people passing through the country could water their animals at any well and be given first service even without having to wait. A Boran newcomer who settled in the area, however, would enter into the watering schedules according to his contribution of dewlap animals ...

To let the strangers wait longer than the three days of the watering cycle would be equal to leaving them to "the day of the hyenas and vultures", which is Laboo. When it comes to slaughtering "dewlap" animals the strangers must contribute:

This is because they live among us if they are not our kinsmen. Even if "Custom" calls the outsiders "siddi", people with whom you could fight. "Law" allows them in. "Law" is sympathetic to all, but also harsh to anyone who abuses its sympathy.

p. 35 - Strangers are given fourth place if they live with you in peace so that they do not experience loneliness and alienation.

So far we have been concerned with the ranking of various categories of humans in terms of access to water. The cultural and ritual ranking of animals is also reflected in the regulation of turns at the wells ... The basic animal categories used in the well regulations are "horses" and "cattle" or "hoofed" animals and "cloven" ...

Camels are regarded as outside the realm of normal Borana matters, and their rights are not given any legal recognition. Dadacha explains:

"Whether or not the camel can go on longer without water is not the issue. The point is that the owners of the water are not people of camels. They are those of cattle and horses. So, when a camel comes they can't find a place for it. Consequently the camel has to wait until every animal has had its turn. The camel not only comes after other animals but also after hyenas and vultures" ...

Water is either a resource that you "share in" as a member of a descent based collectivity, or one that you "share out" to signify respect ...

p. 37 - Each well-field, by representing all clans, is also a microcosm of the larger ethnic order. A final reflection should therefore be offered about the nature of the Borana as nation or ethnic group. The Borana "had" the pan-tribal institutions of the "gadaa-system", age organization and so-called priest-kings, who were ritual leaders ...

Baxter (1978) claims that the gadaa-system was an exclusively ritual apparatus, while Legasse tends to stress the political and juridical aspects, stating that the gadaa-officers had to solve conflicts between clans or households arising from the use of pastures as well as to settle claims to water resources ...

Ethnic Group: GALLA
Author: G. W. B. Huntingford
Title: The Galla of Ethiopia. The Kingdoms of Kafa and Janjero
Publisher: EISA-IAI, London
Year: 1955

Text

p. 27 - Land Tenure. In theory the tribe owns the land; but continued occupation of an area, accompanied by the hanging of honey-barrels in the forest, gives a certain degree of right over such land and forest, but no man may enclose for himself more than he can cover with a spear-throw or stone's-throw. However, distinguished warriors and very rich men own large areas of land running into hundreds and even thousands of acres. Such men are called variously Abba Lafa, "father, i.e., possessor, of the soil," Abba Biya, "father of the land," Abba Burqa, "father of the spring of water," or Abba Medica, "father of the goat-skin bracelet" (which denotes ownership of 1,000 head of cattle). These can buy from the elders land rights over large areas ...

p. 54 - Political Organization. The Abba Boku and his Colleagues.
The Abba Boku, "father of the sceptre," or Hayu (the terms are synonymous) is the tribal ruler for the eight years during which his "gada"-set is in power ...

The Abba Boku and his two colleagues are chosen from the oldest or most distinguished families, which are known as "families of the Hayu". The principal function of the Abba Boku is to preside over the parliament or tribal assembly, to proclaim the laws, and to act when necessary as ritual expert in the gada-ceremonies ...

The specific duties of the Abba Boku included acting as a judge and law-maker in peace time, and commanding the warriors in war time ...

p. 55 - The Irressa is a sort of priest or ritual expert, whose function was to make public prayers, especially for rain ...

When they have retired, the Abba Boku and other dignitaries have right to drink first and to water their cattle before other people.

Ethnic group: HRAAR (High Plateau)
Author: W. A. Schack
Title: The Central Ethiopians. Amhara, Tigrina and Related People
Publisher: EISA - IAI, London
Year: 1974

Text

p. 118 - ... Irrigation agriculture in the lowlands permits the production of some vegetables, citrus and cat ...

p. 121 - All arable land Harari set aside for cultivation lies outside the walled city, extending a few kilometres from the foot of the walls and forming concentric agricultural belts circumscribing the town. In order of proximity to the city are situated first the "garden area" (ga harasi), where legumes and other secondary crops are grown; next the "grain area" (ga

fagay), which the staple sorghum is the principal crop; then an outermost agricultural belt, which is formed by acres of fallow land (gaffa), some portions of which are often subdivided into smaller plots for leasing to Galla farmers under a sharecrop system ...

As Harari practise irrigation agriculture, especially for cash-crop production, most of their fields in "ga harasi" land are contoured with small terraces (gadab or katara). Water is channelled from streams and springs into a deep reservoir (kuri), the communal ownership rights over which are shared by all farmers in the district who contribute towards its construction. Responsibility for distributing the water to individual fields rests with the mimalaq (literally "water official"), a non-hereditary officeholder chosen from among those sharing rights in the kuri; he need not be a landowner, however. Customarily, each (p. 122) Friday he receives an allowance of the kuri-water as compensation for his services; his share, "gum'ami" ("Friday water") can be transferred to another farmer for a stipulated fee, which the mimalaq arbitrarily establishes. Most irrigated fields (masnu) are used for growing cash crops, c'at, coffee, and citrus; grain crops, including the staple sorghum, are almost always grown on non-irrigated land (buxra) ...

p. 123 - Land Tenure. Land and immovable property both inside the town walls and in the "ga fagay" (grain area) are owned privately by each head of household. A title document of ownership (tamaasuk), issued by the "qadi", records the share of each of the immediate heritors, the eldest son receiving the largest portion of heritable land. Under the land-registration system imposed on the Harari during the Egyptian occupation new titles to land and other property were issued on an official certificate (hugga), possession of which was necessary in order to transfer property ...

p. 139 - Except for one quartet of the city where the Hanafite "madhahib", the legal system introduced during the short Egyptian occupation, is recognised, Harar is predominantly Shafi'ite. The shari'a, the canon law of Islam, and qadis are the legal and judicial instruments for regulating behaviour between Harari, dispute and settlement between non-Harari subject peoples are governed by their respective customary law ...

Ethnic groups: PEOPLES OF SOUTH-WEST ETHIOPIA AND ITS BORDER LAND

Author: Ernesto Cerulli
Title: Peoples of South-West Ethiopia and its Border land
In: Peoples of Ethiopian Borderland
Publisher: ESA - IAI, OUP, London
Year: 1958

Text

P. 18 - Koma: ... Each pool belongs to a family or a fisherman ...

p. 36 - Berta: The Sillok attach great importance to the rain-maker ...

Udhuk: ... rain-makers ...

Koma: ... rain-makers ...

Mao: ... rain-makers ...

p. 44 - Suri: rain-makers ...

p. 54 - The Konso ... practise intensive farming of stone-terraced fields ...

p. 53 - Konso: Heavy work is done by the "Harriya" association who keep up the terraces, dig wells ...

p. 79 - Didina: No one may bathe in standing water where cattle drink, because this is considered harmful to the health of the animals. Anyone who lets infected cattle drink at a watering-place where healthy cattle ...

General - Ethiopia

Luigi Ambrosoli- *Aspetti di diritto agrario nelle terre dell'A.O.I. Giuffrè*, Milano, 1941
Chapter 2, pag 42

Summary: 1. Waters: rivers and streams.- 2. Wells.- 3. Natural and artificial reservoirs.-
4. Solidarity customs between villages.

1. As regards WATER, the variety of customs is even greater than the one for lands. SOURCES are rare and is considerably difficult to create lasting rain harvests. Due to these factors, customs concerning the use of this precious element are particularly strict.

In discussing this issue we will distinguish between: running waters: rivers and streams, and underground waters: natural and artificial wells and reservoirs.

Rivers and streams as surfaces of water cannot be anyone's property. In fact, the people settled on their banks use and "abuse" them. Sometimes, these people are so jealous of their privileged position that they do not even allow the crossing of their territory by those pastoral populations who must reach rivers to water their cattle, in the dry season. Such situations have ended either in conflicts or, more frequently, in agreements whereby the riverine people have granted access to the river, by the shortest way, which is perpendicular to the same bank, in exchange for some form of compensation, however small. This condition is enforced by being repeated over a certain period, so as to create a kind of servitude, the content of which is defined by customs, in favour of pastoralists or of people living in areas lying behind or land-locked.

In the first place, the users' group has to take his cattle to that specific place on the river bank and not to others, following a certain route which is in most cases materially traced by the passing herds. It can be stated that each group or the whole groups have their own watering places to which they go in specific periods of the year. Among different groups, with a common watering right, the use of water is regulated by norms which conform to the usual precedence concept or to the one of pre-established shifts.

2. Wells are used for people and for watering cattle. Consequently, wells can be strictly owned by individuals as well as by communities. Property rights over a well can be originated either by digging it or taking it over. If several individuals take part in the digging, the well will belong to them in joint ownership.

3. In areas far from rivers and with scarce underground water, the necessary element to animal life is provided by rain, whether water gathers in natural depressions in the ground or in basins or man-made reservoirs. Both the former and the latter can be owned by the individual landlord of the place where they are located, or by a community. In the case of artificial reservoirs, people making use of them are obliged to take part in their maintenance. Such artificial reservoirs consist of an excavation, a few meters deep, with an elevated border, and are surrounded by trees or quickset hedges. Their width is variable. They normally stand where rain water can easily reach them. Around the central reservoir an earth-bound canal ((?)) is often found having the objective of letting water run towards the reservoir. It is a system which requires constant maintenance ... A keeper is placed to control the regular

maintenance work by users and has the power to fine infringers. Usually each village has its own exclusive sources.

4. In periods of water abundance man and cattle in transit are allowed to use such sources, but in periods of drought this is strictly forbidden and even local cattle can only be watered every other day. At the same time solidarity rules exist between neighbouring villages, and the devastating consequences of the village remaining without water even for a few days can be avoided through mutual aid: in such circumstances people are allowed to turn to the water of neighbouring villages.

Chapter 5, p. 65

Summary:

On servitudes; the same as objects of frequent conflicts; discussion on watering servitudes.

Agricultural land-holdings can be encumbered with servitudes ...

Some Authors also believe in the existence of WATERING servitudes, meaning that the owner of the land on which a well has been dug must allow owners of neighbouring holdings to draw water from it. In that case it seems more appropriate to identify the well or the source as the object of a right of commonage. In this case, it is either not possible to talk of servitude, or it is reduced to a simple right of way.

Author:	Dante A. Caponera
Title:	Report to the Imperial Government of Ethiopia on Water Control and Legislation, Report No. 550
Publisher:	FAO, Rome
Year:	1956

Text

p. 9 - Local Uses and Customs. In countries which neither possess adequate written water legislation, nor an efficient water administration, as is the case in Ethiopia, custom, and usage often determine the water rights. Any new legislative provisions for dealing with water ownership, distribution and use should take into consideration the existing water uses and customs of the country or region concerned. An analysis of the prevalent local practices and customs is necessary, therefore, if it is intended either to codify them through enactment of written legislation or to organize efficient water control. The great advantage of written codification over unwritten custom law is to give to the people or society to which it refers an assurance of the possession of rights ...

Water uses and customs are also a result of the geographical and physical characteristics of the country, even though they have their origin in various other factors such as religion, degree of social and economic evolution, and ethnographic origin.

p. 10 - Adequacy and availability of the water supplies in the various drainage basins have shaped the local uses and customs relating to their ownership, distribution and use. This is why the local uses and customs differ widely in the three distinctly different climatic and vegetative regions, the Dega, the Noina Dega and the Quolla Region, into which Ethiopia can be subdivided.

The Dega Region (cold region). This region with an altitude above 8,000 feet above sea level, with a temperature of 50-60°F and with the highest average rainfall, is characteristically a region of pasture land interspersed with medium-sized woods. Livestock breeding and cereal

cultivation (wheat, barley, teff) are the principal agricultural enterprises of the region. In this region of extensive cultivation, irrigation is practiced to a limited extent. Water is abundant during the rainy season, but some minor conflicts in regard to water rights occur during the dry season.

In this geographic region the right to use water belongs to the owner or tenant of the land, and cannot be alienated to non-riparian owners or tenants without the consent of the other neighbours and co-owners within the same hydraulic system. The water rights are attached to the land on which the water is located and are acquired through the construction or the participation in water works, inheritance, gift, sale, acquisition or donation of the land. Sometimes written titles of land ownership mention a particular right to use water, but these titles are seldom recorded by a local judge, governor, or other authority.

The water distribution is generally ensured through an agreement among the users; conflicts seldom arise and when they do, only during the dry season. The method of distributing water is usually made on a rotation basis so that the total amount of water supply is allocated to one user at a time.

The water administration is supervised by the users themselves, and sometimes during the dry season special "sehagnas" or guards are appointed to patrol the diversion points and the canals.

Sometimes a compensation in money or in water is given to the owner of the intermediary lands through which the water flows, but the water is seldom sold except in special cases where waterworks have been constructed to store water supplies.

The maintenance of waterworks is the responsibility of the various users, and damage can be claimed by people who have suffered losses because of failure to adhere to this customary rule.

In case of conflict the local judge, police official or governor is the responsible authority to try to settle them. Recourse is made to local tribunals when it is impossible to reach a friendly solution. An appeals to the Emperor is always allowed.

p. 11 - The Voina Dega Region (temperate region). This region is located at an altitude of between 6,000 - 8,000 feet above sea level, and has average temperatures of 60-70°F. Rainfall is less than in the Dega Region. It is the most populated area, and constitutes the largest part of the Ethiopian plateau. Irrigation is practiced in many places. Beans, flax, fruit and cotton, are among the major crops grown in the region.

Here the local uses and customs in relation to water ownership and distribution are similar to those existing in the Dega region. Because of greater scarcity of water supplies and larger requirements for irrigation, water conflicts occur more frequently here than in other parts of the country.

The same relationship as in the Dega region prevails with respect to land and water ownership. Since water does not respect legal or administrative subdivisions of land, conflicts often arise in connection with water distribution and maintenance of waterworks. These conflicts increase in number and intensity with increases in the demand for water.

The Quolla Region (hot region). The altitude of this region is less than 6,000 feet above sea level. It includes the lowlands of the Danskil desert, the Awash valley, the Somali plateau, the lower slopes of the Sidama and Boran and western Ethiopia. Desert and thorn shrub vegetation and savanna forest are found in this region.

Local customs in relation to water ownership, distribution and use are different from those found in the Dega and Voina Dega regions. These lowlands are inhabited for the greater part by people who follow the Islamic customs of the Sunni Shafi'i, Maliki and Hanafi sects. (1)

Very little extensive irrigation is practiced except along a few perennial water courses or from wells, and the major water utilization activities are related to the cultivation of small gardens, cattle, grazing, date palm growing, and domestic water supplies.

The ownership of water may be acquired independently from the ownership of land through inheritance, participation in construction of waterworks, gift, donation, sale or acquisition. Wells may be privately owned or may belong to a tribe or a group of individuals.

Sometimes written titles recording such ownership exist and are kept by the local chiefs and the interested parties.

When watering points have been constructed by a group or a tribe, the utilization of them remains within the attribution of the constructors.

p. 12 - The mode of distribution varies widely from district to district, according to the nature of the water supplies. The wells are constructed by specialists who either take ownership of them or are paid by the person who employed them. In Boran special kinds of deep wells can be found. These wells are dug in the shape of an inclined tunnel and water is withdrawn from them by a number of individuals who are stationed at intervals along the incline and pass zebra skins full of water from the bottom to the top.

A water reservoir can generally be found alongside the well for the watering of animals (camel, sheep, donkeys, etc.). The price of water depends on the daily demand as well as on the availability of the water supplies in the wells. In Ogaden it is calculated on the basis of a "drum" (approximately one-hundred liters), which is the amount of water a camel can drink ...

In the case of privately owned water the administration is carried out by the users, whereas in the case of collectively owned water either the local chiefs, or specially appointed individuals, are given the administrative responsibilities. The maintenance of waterworks and wells is incumbent upon the water users or the contractors as the case may be. The customary rules are strictly respected and disputes are settled by the users. Few, if any, important water conflicts are referred to the government officials.

The need for water is so great, and the value of it so relevant, that conflicts sometimes arise as a result of different tribes going in search of water. In these cases government officials make the final decision.

Water Judiciary Authorities. Whenever a conflict on water rights arises in Ethiopia, various ways of settling the dispute can be followed by the parties concerned.

Customary Law. In the arid and semi-arid zones of the country, particularly the Quolla region, disputes concerning the use of wells, conflicts on grazing rights of the nomadic or seminomadic tribes, water distribution or maintenance of waterworks, etc., are often settled by the local tribal or religious chiefs. The ancient customary law of the tribe or the religion to which the parties belong is applied in these cases. (2)

Sometimes when conflicts between different tribes endanger public order and security in a particular area, the conflicts are handled by Ethiopian officials not belonging to the groups or tribes concerned.

Other judiciary or administrative procedures. The conflicts arising in connection with water ownership, distribution and use can also be referred to local administrative officials. Appeals against adverse decision can be presented successively to the regional courts or regional governors, to the Minister of Agriculture, or to the High Court in Addis Ababa. When a case reaches the latter stage, however, the parties concerned are seldom content with the decision, and as a result, many cases are appealed to the Emperor. The Emperor may order either a revision of the case by the courts or, more generally, request the Minister of Agriculture to have his experts study the conflict and submit a technical report. The Imperial Majesty's decision will be based on this technical report.

Notes:

(1) - (2) For this customary law, see: D. Caponera, Water Laws in Moslem Countries, FAO, Rome.

Author: Nathan Martin
Title: The Ethiopian Empire Federation and Laws.
Publisher: Royal Netherlands Printing and Lithographing Co., Rotterdam
Year: 1955

Text

Chapter IV - Civil law is not codified in Ethiopia. A few Proclamations dealing with loans and interest exist before the Italian occupation. Whether a Court of Justice can apply these laws today is a matter for the courts to decide. Certain features of the "Law of Loans" are inapplicable in a modern society.

Apart from the "Law of Loans", "The Fetha Negust", a compilation of secular and religious laws exists. Very few copies of "The Fetha Negust" exist anywhere in the world. It was written in "Ge'ez" and the only language in which it was translated is the Italian language. The author understands the lately it has also been translated into Amharic ...

The Fetha Negust, which is accepted by the Ethiopian Church as one of its Holy Book, is a compilation of some laws and tracts of laws. This Book is divided into fifty-one Articles, twenty-two of which deal with Church Rules, and twenty-nine with civil and criminal laws ...

... the articles given below numerically deal with the following subjects:

... No. 37 Public use of roads and playgrounds; common grazing lands, torts riparian rights, common drainage and water ways;

...

The Fetha Negust was for some time considered the law of Ethiopia, but for a period of time now it had receded into the realm of Church Law and as a rule the Courts never refer to it.

In no case in the High Court is the Fetha Negust applied by itself. However, in cases where the customary law coincides with what is written in the Fetha Negust, the Fetha Negust may be referred to. This is especially true in matters of inheritance and succession. In cases where the Fetha Negust does not coincide with customary law, the customary law prevails. During past centuries many learned and other interpretations of what is written in the Fetha Negust have accumulated and it is therefore difficult for two courts to agree in some cases as to what is the exact law in accordance with the Fetha Negust ...

The Fetha Negus, however, is sometimes used by some division of the High Court, whenever such court is conversant with the Gees language, from time to time as a reference book regarding the source of customary law ...

THE GAMBLA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Indigenistised	-lineage -village, concentrated	diffused power	-semi-arid -savannah -forest	-agriculture -fishing	auto- subsistence	-rainfed -irrigation by flooding	permanent	-seasonal -inland, fresh waters	control by village
Volof "	-family extended -village, concentrated	diffused power	-arid (North) -semi-arid -forest (South) -river, lake -sea	-agriculture -fishing	auto- subsistence	-rainfed -irrigation by flooding	permanent -seasonal	-sea -inland, fresh waters	no data

Ethnic Group	Conflicts/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Unidentified	-conflicts, negotiable -fishing control by community -regulations on building dams, stockades	United Kingdom	Islamic influence	-control by community -granting of land by head of village	-control by community -water, free of charges	-control by community -free of charges	-control by community -free of charges for local community -authorization needed for digging well, basin on communal land	no data	village
Wolof	no data	-United Kingdom -France	Islamic influence	no data	no data	no data	no data	no data	-family -village

Ethnic group: WOLOF
Author: David P. Gamble
Title: The Wolof of Senegambia, with notes on the Lebu and the Serer.
Publisher: ESA - IAI, London
Year: 1957

Text

p. 34 - A system of agriculture based on natural flooding is practised in the Senegal valley. Here large stretches of land are inundated each year and covered with a fertilizing mud. These zones, known as "oualo", are planted with millet, maize, beans, and tobacco as the floods recede and ripen from February to June. The uplands, "dieri", which have a sandy soil, are cultivated during the rainy season, a quick ripening millet which ripens in November being planted.

This system of agriculture appears to be very ancient ...

p. 36 - Fishing. A number of fishing methods are in use. During the rainy season weirs are constructed and basket fish traps (kain) set in streams and narrow parts of swamps. In the dry season when the swamps are beginning to dry up and large pools are left, communal fish drives are held ...

The coastal Wolof use cast nets and seine nets. Fish are also caught with a barbed spear ...

p. 56 - In civil disputes, most of which are matrimonial cases - ... - efforts are first made to settle the case without recourse to formal courts ...

p. 72 - If a drought occurs, the men go to the mosque to pray (the salat-al-istisqa) but if this does not have the desired effect, the women perform a rain dance, dressed up in rags, or in men's clothes, and wearing ornaments made from rubbish. They then go out of the village in procession, the children gather branches of trees or shrubs, and on their return beat the grave of the founder of the village with their branches ...

General

Author: Miguel Solano
Title: Mission Report to the Gambia
Publisher: United Nations - Dept. of technical cooperation for development, New York
Year: 1966

Text

p. 45 - Customary Water Law and Institutions

a. Administration and water institutions

Under customary law in Gambia, no specific water-related institutions exist. Rather, water matters have always been considered part of the associated land use interests and are generally handled through the established village government.

Generally, local customary law (that which would include land and water use in the provinces) is administered first through a process of village meetings.

This same approach applies to the settlement of water disputes. Theoretically, the first user(s) of a section of river, for example, would be the priority user(s) in the event that water ever became so scarce that was inadequate for sharing generally.

In practice, it appears this difficulty has not arisen primarily because there has generally been enough water available to meet all basic needs for subsistence living, even though in certain times of the year one may have had to travel some distance to get water. The mayor difficulties have arisen with respect to digging new wells and obtaining technical and financial assistance for this task - a matter that is not strictly customary since Government is generally in charge here.

Through discussions with local authorities, it appears that water disputes are not familiar per se. There was little recollection of any instances where water was the central issue to be resolved. As indicated above, the key is rather who has the right to use of the land on which the water is situated. However, a couple of instances were recalled where direct water-land matters have required clarification. Villages upstream have been known to build small earthen dams on tributaries to retain water for local domestic and irrigation use, depriving downstream users. When reported to the village authorities, this activity is generally forbidden where the downstream user suffers a loss. Apparently, this occurrence has been rare so far. On other occasions, when there have been heavy floods, disputes have been known to occur over the fish and water left stranded after the waters recede. This is resolved, again, according to who had priority rights to use the land on which the fish and water settle. In other words, the village or individual who has the customary use right to the flooded land acquires the right to use the retained fish and water for whatever purposes they choose.

GHANA

Ethnic Group	Conflicts/ fishing rights/ transport	Colonization	Legal system	Land tenure	Drinking and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Conflict resolution
Adamawa	-conflicts, negligible -rights on fishing grounds by community, by family, by private individuals, by <i>maître de foire</i> , <i>maître</i> - fishermen -regulations on collective fishing, on private fishing -transport on water, transport rights over areas	United Kingdom	African traditional	-control by clan, extended family, segmentary family, individual -private appropriation -granting of land by head of family	-control by family -private appropriation -water, fees of charge	control by family and by community	-control by family -private appropriation -fee-paying -fee-paying for foreigners -fee-paying, local and foreign cattle -authorization needed for digging well, basin on communal land -authorization needed for watering -precedence rules	no data	chieftain
Akan-speaking Tribes	by House head	United Kingdom	African traditional	-control by sovereign, <i>chiefs</i> in <i>terra</i> -granting of land by head of family and by sovereign	no data	control by family	no data	no data	chieftain
Akan	-conflicts, negligible -fishing control by sovereign -rights on fishing grounds by family and by sovereign	United Kingdom	African traditional	-control by community -granting of land by head of family and by sovereign	-control by family -water, fees of charge	control by sovereign -free of charge	-control by sovereign -free of charge for local community -fee paying for commercial exploitation -protection of rights of way to water sources	no data	chieftain

Ethnic Group	Conflicts/ Fishing rights/ transport	Colonization	Legal system	Land tenure	Drinking and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Conflict resolution
(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
Bura	-conflicts, negligible -fishing, control by community and by private individuals -regulations on building dams, stockades	United Kingdom	African traditional	-control by sovereign and by family -granting of land by head of family and by sovereign	-control by family -water, free of charge -water selling not possible	-control by family and by sovereign -free of charge	-free of charge for local community and for foreigners	no data	no data
Gao-speaking Tribes	-conflicts, negligible -rights on fishing grounds by community, by family, by private individuals, by masters de fous -master fishermen -regulations on collective fishing and on private fishing -transport on water, transport rights over areas	United Kingdom	African traditional	-private appropriation -granting of land by head of family	-control by family -private appropriation -water, free of charge	control by family and by community	-control by family -private appropriation -fee paying for foreigners -fee-paying, local and foreign cattle -authorization needed for digging wells, basins on common land -authorization needed for watering -precedence rules -protection of rights of way to water sources	no data	chieftain
Northern Territories	-fishing control by sovereign -regulations on collective fishing and on private fishing	United Kingdom	African traditional	control by community	water, free of charge	control by community	-control by community -private appropriation -authorization needed for watering -protection of rights of way to water sources	no data	no data

Ethnic group: ADANGME

Author: H. J. H. Pogucki

Title: Gold Coast and Land Tenure, Report on Land Tenure in Adangme Customary Law

Publisher: Gold Coast Land Department, Accra

Year: 1953, vol. II

Text

Par. 22 - There is a religious concept of the Earth included in notions of land. This religious element is particularly clear in those areas in which pre-Adangme inhabitants, who were more directly linked with the land than the immigrant Adangme, have blended with the latter²⁴. A utilitarian concept of land however has gained a firm footing ...²⁵

Par. 25 - Allodial rights, where still exercised by the original owners, are rights of absolute ownership. So are absolute rights in land which derive from the original owners ...

Par. 26 - Allodial rights in land may be owned by kinship groups or by individuals ...

Par. 51 - Rights in land which are not allodial are either rights of a lesser nature or bear a special character ...

Par. 52 - Pursuing this method the following lesser and special rights may be distinguished:

(A) Lesser rights, which are:

- (a) rights to use land ...
- (b) common rights, among which may be distinguished the following: rights of way, fishing rights, hunting rights, grazing rights, water rights, rights to collect firewood and building sticks, rights to collect salt, rights to collect sand or gravel from a river-bed.

(B) Special rights, which are:

- (a) building rights, rights in trees, rights in creeks, streams and watercourses, securities for debt, ferry rights, rights in markets, and fishing rights ...

Par. 56 - Common rights in land are local customary rights "in alieno solo" which may be exercised by any stranger. They serve undefined and fluctuating classes of persons. It ought to be noted that the impact of the growth of the economic value of some of these rights in certain

²⁴ In the coastal areas, where sea fishing is a main occupation, the head of the group of the first settlers is usually helped ritually with the sea, or with a lagoon. As in other areas the Earth in its religious aspect, as distinct from the utilitarian concept of land, is a female force, with vague attributes of a deity, always subordinate to the undefined God (Maw), as whose wife she appears in ritual; "Maw the God, and Zigbe his wife..." are involved in some prayers ...

²⁵ But it is a mistake to apply criteria of English law, and of European law generally, to the definition of ownership in customary law as it appears to stand at present ...

areas has led to an evolution of certain common rights into distinct special rights which have become alienable²¹.

Those common rights which now exist can be divided into two groups: unqualified and qualified. Unqualified rights are those which can be exercised by strangers without seeking the owner's permission, and without offering any prestation²². Qualified common rights are those which can be exercised by any stranger upon nominal permission from the landowner and, in some cases, under the condition of a prestation.

Par. 57 - Rights of way are unqualified in all cases ...

Par. 58 - Fishing rights in the river Volta, except in the Ada estuary and in some lagoons²³, are unqualified. In those areas in which fishing is pursued not mainly for the purpose of trade, and where it does not form an important item of subsistence, as e.g. on the eastern part of the Accra plains and in the Krobo areas, fishing rights are unqualified, except that in some isolated places nominal permission of the landowner is required. Ponds are not treated as subject to common rights of fishing. There are no common rights of fishing in the riparian areas of the river Volta, where fish, shellfish and oysters are caught either in creeks or in watercourses, and form important items of subsistence and of trade and, therefore, have acquired a high value ...

Par. 60 - Grazing rights are unqualified, except in some areas next to the bank of the River Volta, where nominal permission of the landowner and, sometimes, also a prestation in kind are required. It must be noted that such rights do not include powers to erect a cattle-kraal. Land for a kraal must be obtained separately in the form of surface user.

Par. 61 - Rights to water are unqualified. There are however certain exceptions. All individually built wells are excluded. In the southern part of the area, where stock rearing is an important item of activities, watering rights are of importance. Such rights are qualified, but in some areas, where drinking water is scarce, water pools from which water for human consumption is drawn, are excluded²⁴ ...

Par. 63 - Collection of salt from lagoons is a qualified common right. A prestation is paid in proportion to the amount of the salt collected by the stranger²⁵ ...

²¹ Fishing rights in some areas; cf. Crowther, letter of 20/8/1905 to Secretary of Native Affairs. An interesting situation has been found in one case, where a distinction between methods of fishing has influenced the evolution of the rights; whereas fishing by rod and hook is regarded as an unqualified right, fishing by net has lost the incidence of common exercise and has become a distinct alienable right; the perfectly logical explanation offered by the local inhabitants that only a small amount of fish can be caught by the use of rod and hook and, that fishing by net produces results of a far greater value, is a clear example of the influence of notions of economic value upon the original legal concept.

²² The term "prestation" ... is used throughout to denote customary dues, fees, tributes etc., rendered as consideration for the exercise of rights to land. It does not include any payments, ... made to express political allegiance ...

²³ The prestation is collected every three years from all canoe-owners other than members of the Kodaghe clan; as regards certain lagoons a prestation is collected from strangers who desire to fish, upon the ritual yearly opening of the lagoon. Although the right to fish may be unqualified, permission must be obtained for the erection of a hut by the fisherman.

²⁴ There are however isolated instances where qualified common rights are in existence as regards such pools.

²⁵ The Sogbo lagoon by Ada is an excellent example of the exercise of salt-collecting rights. Allodial rights in the lagoon are vested in the Tekpeblawe clan. The latter grant general permission to all strangers to collect salt, beginning from days appointed by the owners, and upon payment of a prestation by each stranger; the prestation is levied from each of them individually.

Par. 69 - In certain parts of the riparian areas of the River Volta fishing rights in creeks have evolved into distinct rights which may be alienated. If such rights are sold, the transaction often does not include the land which forms the bed of the creek, but only water and fish²⁴. An interesting point may be noted, that is the practice of alienation of fishing rights upon a share-tenancy basis.

Par. 70 - Ferry rights, that is rights to maintain a vessel (in practice only canoes) for the purposes of cross-river transport upon payment of tolls by the passengers, are distinct. A ferry rights is always part of the rights of the allodial riparian owners, but may be separated ...

Par. 72 - Rights in creeks, streams and watercourses are distinct. Although they were in principle a part of allodial rights, in the course of time, and because of the constant increase of the value of fish, shellfish and oysters, these rights became in many instances separated absolutely²⁵ and are now alienable. Insofar as small rivers are concerned, the following principles apply. If the river is a sacred object, it may remain the property of the allodial owner, even if all riparian land has been alienated. In other cases there are three possibilities: if the river flows through the land of an allodial owner the relevant stretch is his property; if the banks belong to various allodial owner, then the river is treated as joint property; but in some of these cases the principle of ownership "ad medium filum aquae" has made its appearance ...

Ethnic group: **AKAN SPEAKING TRIBES (ASHANTI, FANTI, AKIM, KWAHU, BRONG, AKWAMU, ADWAPIM)**

Author: **Madeleine Manoukian**

Title: **Akan and Ga-Adangme Peoples**

Publisher: **E S A - I A I, London**

Year: **1950**

Text

AKAN PEOPLES

p. 24 - ... Public offices and land ownership are vested in the lineage ...

p. 26 - ... Although descent is matrilineal among the Akan, the lineage head is male, in whom is vested political and legal authority. There is, however, always a female head also, who has high moral authority.

The lineage head is chosen from all male lineage members by a meeting of the whole lineage ...

The lineage head is custodian of the ancestral stools ...

²⁴ This may happen also in the case of a gift; e.g., in Onudoku "an owner of a creek gave the water and fish with his daughter to her husband" according to a local informant.

²⁵ Cf. Adoah vs. Kate and ora., Ada Court, 28/7/44; this case is an excellent example of the process of separation of rights in a creek from allodial rights; the Court stated i.e., "the creek in dispute is not an ancestral creek but a creek founded by erosion of the Volta River, the portion whereon the creek was founded being plaintiff's farm. The plaintiff therefore becomes the "bona fide" owner of the creek indisputable". The distinction between a creek, and a tributary (small river) is appreciated; there are distinct words to denote them: (akru-creek, pahoni or pahoni-tributary (Krobo dialect), and wupa-creek, adobu-tributary (in some parts of Ada).

Ownership of lineage land is vested in him; he grants portions to lineage members for farming, building etc. He also owns palm-trees on lineage land ...

He is arbitrator in the numerous intra-lineage disputes ...

p. 28 - ... In general, inheritance and succession are determined by matrilineal descent, though there are exceptions to this rule in the case of certain offices.

Lineage property and rights, e.g. usufruct of so-called "family land", trees on such land, fishing rights in streams near the villages and in some of the bigger rivers. Ownership of these is vested in the lineage head and on his death passes to his successor, chosen from among all male lineage members by a meeting of the whole lineage ...

p. 36 - Division of State (Oman). This is the largest of the political units: The chief is the focal point in the relations between the separate lineages, villages and subdivisions and holds the whole together ...

p. 37 - Functions of the Chief in the traditional social system

... He was the custodian of customary law and the promulgator of new rules of public conduct ...

... His position can be summed up in the formula: to serve as the central point round which the community was held together as a unit in defending itself from destruction by enemies, in the maintenance of law and order and the rule of custom, in obedience to the ancestors and gods. This was a relatively passive function ...

p. 48 - The descendant of the aboriginal occupant of the land is acknowledged as the "asasewura" (literally "land-master") and has special privileges; he receives an extra share of the proceeds of land sales (and pays a correspondingly larger share of land expenses), for example: In other ways also his equality with the "ohene" (chief) in land rights is recognized ...

OWNERSHIP OF THE SOIL OR EARTH

A Stool, and ipso facto the community (oman) symbolized by the Stool, owns the soil of its political territory. The Chief, as occupier of the Stool, is the custodian of this land; he is the general guardian of the community's interests, the most important of which is the fair distribution and proper utilization of land. He had the Elders administer the land on behalf of the people ...

THE PEOPLE'S RIGHTS TO STOOL LAND

Fishing rights in streams near villages and in some of the bigger rivers also belong to lineages in the same way and can be treated exactly like the usufruct of farm land ...

Any member of the "oman" has the right to farm anywhere on Stool land, without asking permission from the Chief, except on cemeteries or deserted village sites, or if it is already occupied by someone else. Strangers not belonging to the "oman" can only use land by permission of the Chief and by paying some form of rent for it (the nature of this varies in different areas; it may be a lump sum in cash, a portion of the crops, etc.). In return for farming privileges the user assumes public responsibility expressed by money tribute, if the Stool is in debt or public work, such as road-making, and communal work, such as keeping the village clean.

These users of the land own only the usufruct; they can build on the land, plant trees, grow cocoa, sell its produce, but they cannot alienate it, either by sale or mortgage, on such

conditions that the purchaser or mortgagee has rights overriding those of the Stool, which owns the soil absolutely ...

The Elder or lineage head is custodian of the land and sees that every member has a portion for his farm. In general, a man farms land previously farmed by his maternal ancestors ...

The feeling that the land is a sacred trust committed to the living by the ancestors is very strong in the case of "family land" ...

p. 52 - ... Restrictions and taboos on menstruating women ... She may not cross certain sacred rivers ...

Ethnic group: ASHANTI

Author: Anthony N. Allott

Title: The Ashanti Law of Property

in: Zeitschrift für vergleichende Rechtswissenschaft

Publisher: F. Enke Verlag, Stuttgart

Year: 1968, vol. 68, No. 2

Text

p. 138 - "The farm belongs to me, the land belongs to the chief" (said by an individual farmer on stool land) ...

p. 139 - Mention has already been made of the Ashanti theory that the land really belongs to the ancestors. "Ancestors" in this context can mean either the ancestors of the whole "oman" or community, or the ancestors of a particular family (matrilineal lineage), according as one is talking about stool or family land. The stool of a particular ruler is conceived of as enshrining the soul or spirit of the people subject to it: so the "Golden Stool", or sacred stool of the Asantehene, enshrines the spirit of the Ashanti nation ...

The interrelations of these facts with Ashanti theories of control over land can readily be appreciated. The essence of the Ashanti system of land tenure is that land rights are ultimately vested in social and political communities, through members of such a community may acquire a derivative right to semi-exclusive use of portions of the community land. The land rights of the community as a whole are exercised on behalf of the community by the "stool" of the (p. 140) community's head; this is as much true of state or public land as it is of family land ... and the maintenance and use by the living of the land is thus viewed as a sacred trust on behalf of the true "owners", the ancestors ...

Family burial grounds were extra commercium, and could be neither sold nor even occupied. Also excluded from occupation were all sacred lands or shrines. Sacred rivers and lakes (e.g. the River Tano and Lake Bosomtwi) are either entirely closed to ordinary use or subjected to various special restrictive taboos ...

The Ashanti system for the control and enjoyment of interests in land was fundamental to the whole structure of government, so much (p. 141) so that, if one removed the land rights of the chiefs, the basis on which they held their office and exercised jurisdiction over their subjects would be destroyed. This network of land rights supporting the political structure extended both upwards and downwards ...

p. 150 - These are undifferential rights vested in the members of a particular community by virtue of their membership of that community, and would include such rights as those to hunt or gather firewood in the forest surrounding a village, to wash and draw water from a local water-source (e.g., a river) and to pass over a neighbour's land when going about one's lawful errands ...

p. 159 - As regards hunting and fishing, a land-holding stool's perquisites extended to a particular designated share in certain large game animals killed on its land; thus for Asumegya Rattray says that "a stranger killing an antelope on Asumegya land sends a hind leg (sere) to the Chief, a subject sends a foreleg (basa)" ...

Subjects enjoy the right to exploit the fishing and timber resources of the area, though they may not be entitled to make any exceptional or disproportionate use of such amenities - e.g. by commercial (p. 159) exploitation - without paying for the privilege; and in comparison with hunting we are told that a catch made by a fisherman, or a portion of it, does not automatically belong to the chief, provided the fisherman is a subject of the stool; though in certain bodies of water tolls of up to one third may be charged ...

p. 201 - Public rights in property and the legal system

Community control over the use and occupation of land

Many of the natural resources of the country are subjected to common or community rights: thus bodies of water, the resources of the forests, and ways leading from one village to another or from one place within the village to another, are open to all and enjoyed in common. A village with a market has a market-place set apart for the purpose: If land is required for a public purpose, it can be acquired by the appropriate authority (a headman in the village, a land-controlling stool in the case of a larger area); in such a case, either some of the unoccupied land within the village or stool area (as the case may be) will be devoted to this use, or privately occupied land can be taken after negotiation and the payment of adequate compensation ...

Ethnic group:	EWE
Author:	A. Huxley
Title:	Ewe Law of Property
Publisher:	SOAS, London
Year:	1978

Text

Chapter 5. THE NATURE OF LAND TITLES

1. The Ewe conception of land

In Ewe law, land or "anyigba" means the soil itself, as well as the sub-soil and anything under the soil, such as minerals. It does not include things on or attached to the soil, such as tree, houses or other permanent fixtures. There is thus a distinction between interests in the land itself or anyigba and interests in things on or attached to the land ...

In what he called a retrospective view of the Ashanti law of land tenure and alienation, Rattray wrote thus:

"The words 'land', 'earth', 'soil' could hardly in themselves conjure up anything else but something which was personified in the Earth goddess whom all men worshipped ..."

In Rattray's view, it was from this stage that there later developed a transition into the possession of tribal, then family and individual, "usufruct" of land ...

Generally the earth, the soil or land is not regarded as a fetish or a "god" among the Ewe. Though it is conceived of as a principle, it is not a fetish or "tro" and has no worshippers ...

Nevertheless, land in the abstract is conceived of as a potent principle of some spiritual force. It has decreed certain taboos and avoidances ...

In case of such false swearing or violation of the earth's taboo ... ,spiritual transgressions are also legal offences because it is believed that such misconduct angers the earth so that rain does not fall and crops do not prosper ...

Hence in the case of prolonged drought or bad harvests, sacrifices are made to the earth, the rain-makers being usually called in aid, to ensure a good harvest ...

p. 137 - Rivers and streams, though flowing over lands belonging to specific families, are subject to the common rights of the whole community. Any person may draw water from the river or stream without permission. Fishing in the waters of a river or a stream is absolutely free and open to every citizen. Originally sand could be dug free from the bed of a river or a stream for any purpose ...

Lakes, creeks and lagoons are in a special category. There are very few of these in Northern Eweland. Where they exist, title to them is exclusively vested in the families on whose lands they lie. Accordingly they are not open to fishing or collection of sand by non-members of the family. There is no prohibition against taking out water therefrom for personal use by non-members of the family; but "Isikuklu", which is a way of drawing out all the water in a pool or pond in order to isolate fish for catching, is prohibited in another family's land ...

8. The individual's paramount title to land.

(Rayner, C. J.): "The notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual". This has been criticised in its application to other communities. It should be pointed out, however, that it expresses a fundamental view of land law among the Northern Ewe-speaking people of Ghana. Among the Northern Ewe, the traditional view was that the paramount title to land could only be vested in the stool or the family and never in an individual person ...

Ethnic group:	GA SPEAKING TRIBES
Author:	Madeline Manoukian
Title:	Akan and Ga-Adangme Peoples
Publisher:	ESA - IAL, London
Year:	1960

Text

p. 66 - The Ga "towns" (in Gold Coast [Ghana] usage, places which have a stool) from west to east are: Accra, Otu, Labadi, Teshi, Nungwa and Temma. Each owns a strip of territory stretching northwards for distances varying between twenty and seventy miles. Each "town"

has associated with it a number of farming hamlets colonized by members of the "town". Accra also has a long string of fishing villages stretching ... along the sand to the west.

... each Ga "town" is an independent political unit ...

The Ga-speaking people are not a single group either by tradition or in organization. Each "town" consists of the descendants of one or more parties of immigrants and of the aborigines among whom these immigrants settled more or less peacefully wherever there was vacant territory.

The aborigines (*akulebi*) of the Ga countryside were the Kpesi people, who spoke the Kpesi dialect ...

When the Ga "town" were formed the *pesi* were still recognized as the owners of the land and as the only people able to propitiate the gods of the land: the *Wulomo* (priest) of the senior Kpesi god of each "town" is still today the senior priest and the "town" landlord or "Sitse" ...

p. 83 - Other Officials - ... "Woleiatse" (lit. father-of-fishermen) controls arrangements for sea-fishing and the discipline of the fishermen. Strangers must have his permission to fish in local waters and pay fees to him. He may forbid the use of any net if he thinks it bad for fishing. He is consulted in times of fish scarcity about the weather, the stars etc., and performs certain fishing ceremonies. In Tema he is chosen from one House only; in Labadi succession goes in turn through four Houses ...

Justice - In the early days all major cases were tried by the *Wulomei* (priest), but these today confine themselves almost entirely to "oath cases" in which their own god has been specifically invoked. Many cases are today settled by arbitration, the two parties simply agree to submit their dispute to a committee of impartial elders, who receive a few shillings' worth of rum for their time and trouble; any elder may arbitrate if both parties agree ...

p. 86 - ... The land itself, i.e. the soil, is distinguished from the *usus*, the use to which the soil may be put. In each "town" the land itself is considered to be owned by the lagoon god or gods of the autochthonous Kpesi, whose "*wulomo*" is "*sitse*" or landlord. As these gods also own the lagoons, both farming and fishing are forbidden on the day of the week sacred to each particular god. The situation in Accra, however, appears to be more complicated ...

Strangers wishing to farm must first get permission to occupy plots from the *wulomo* and other "town" officials, to whom a gift of rum must also be made ...

Strangers appear to be able to buy land outright in all the "towns" ...

In those "towns" where land is shared in common by all the "quarters", approval of all of these is necessary before any land can be sold; the proceeds are divided equally between them all ...

p. 87 - Land tenure in Accra. In Accra, the aboriginal lagoon god "*Sakumo*" seems to be considered owner only of the lagoon and lagoon villages. The religious aspect of ownership of the rest of Accra land is not clear. Apparently every "quarter" in Accra "may be said to own the land it occupies", and in addition to such land there are further tracts known as "hunters' land", originally occupied by small groups fond of hunting, which formerly was dangerous in what was then thick forest country. This continues to be the property of the Houses who originally hunted over it, and anyone wishing to farm or make a hamlet on such land must get permission from the head of the House which owns it; parcels of such land may also be sold outright by the owning House.

In certain "quarters" of Accra the "mantse" receives a share of the proceeds when land is sold nowadays, in recognition of the fact that he has heavy financial responsibilities; he usually gets one-third and the rest is divided among the various Houses.

The Fa Na fishing villages along the coast in front of the Sakumo lagoon may only be occupied when the lagoon is open to the sea; when the sand barrier is up, "the old man has closed his mouth and settled to sleep and no one may disturb him" and the occupants of the Fa Na villages must abandon them and return to Accra. In earlier days the houses were burnt, but today the payment of a fee to the Sakumo "wulomo" has been substituted for this.

Fishing rights. Any townsman is free to fish in the sea near his own "town", under the supervision of the "woleiatse" (father of the fishermen), without the payment of any fee, but strangers must pay fishing dues, which in Nungwa are divided equally among the eight Houses of the "town". Information regarding the distribution of fishing dues in other "towns" is not available.

Little information is available regarding lagoon-fishing rights; the "woleiatse" does not control these, but apparently he deals with any breach of lagoon etiquette by a fisherman ...

Author: R. J. H. Poguel
Title: Land Tenure in Ga Customary Law, Gold Coast Land Tenure
Publisher: Gold Coast Land Department, Accra
Year: 1965, vol. III

Ten

Par. 38 - ... Clans, extended families and segmentary families are personae iuris for purposes of customary land law. They have the character of bodies corporate with perpetual succession.

Land may be owned by clans, by extended families, by segmentary families, or by individuals. This does not mean that whilst a clan may own greater rights in land, an extended family, and a segmentary family may not have concurrently and severally lesser rights, whilst still remaining joint owners of the greater right. The same precept of a co-existence of concurrent rights applies to individuals. For instance a clan, or extended family may own allodial rights, an extended family or a segmentary family may have a perpetual, inheritable and alienable use, whilst all individual members may own building rights. But not every clan or extended family necessarily owns allodial rights. Indeed, such rights are nearly always owned only by pre-Ga groups, or such Ga groups which became ritually linked with the land.

There is, in some cases, an appearance of rights in land co-owned by two or more kinship groups ...

Par. 61 - The religious element in the concept of the Earth is included in notions of land as elsewhere in the Gold Coast. For instance ritually, lagoons as major manifestations (or messengers) of God are still regarded as nominal owners of the land ...

Par. 62 - The concept of ownership of land is well embedded, although originally not doubt only those persons, who held allodial rights in land were regarded as a land owners. Their relationship to land grew of of animistic ritual links with manifestations of God on the Earth, and not from a perception of rights "in rem". All other persons had only more or less limited rights in the permitted use of the land for purpose of cultivation, building, hunting, fishing and so forth. These rights served the holder "in personam" as against other persons, and not "in rem". They were the consequence of dyadic relationships, resulting from the status of a person

in society, and not of proprietary notions as regards immovables. These rights were, therefore, expressed by a code of behaviour, by "do's" and "don't's", rather than by proprietary rules of "mine", "yours" and "his". Virgin land seems to have been regarded as "res nullius" which could be broken by any subject of a political chief, or by any stranger accepted by the political chief. Once however, an individual or a group began to exercise rights over such land to the exclusion of other persons, notions of communal or public rights began to fade, and became substituted by a concept of private ownership by a kinship group or an individual, as opposed to the previous notions of communal or public rights. The introduction of European and particularly of English notions of rights in land and of dealings in land has further influenced customary concepts ...

Par. 63 - Classification of rights in land. A classification of rights based on their extent is possible. Allodial rights are the most extensive. All other rights are of a lesser or, of a special nature.

Par. 64 - Lesser rights are:

- (a) rights to use land ...
- (b) common rights, i.e., rights of way, fishing rights, hunting rights, grazing rights, water rights, rights to collect firewood and building sticks, rights to collect salt, rights to collect sand from the beach.

Par. 65 - The following rights are of a special nature: building rights, rights in trees, securities, ferry rights, and market rights ...

Par. 73 - Common rights. Common rights in land are local customary rights "in aliene solo" which may be exercised by any stranger. An individual owner or a co-owner of rights in land exercises rights "in re propria" and not common rights. They can be divided into two classes: ° First, unqualified common rights, which can be exercised without the owner's permission and with no obligation of a prestation and, secondly, qualified common rights which can be exercised only upon nominal permission obtained from the owner of the land with, in some cases, the condition of payment of a prestation attached.

Par. 74 - Rights of way are unqualified. A path once established cannot be closed and can be used by any person ...

Par. 75 - Fishing rights do not seem to be treated in a uniform manner. They seem to be unqualified in some cases and qualified in others. A prestation in some cases must be paid at the time of the ritual inauguration of a fishing season. Strangers who propose to engage in deep-sea fishing, from a beach in the area, are required to pay fees to the owner of the beach ...

Par. 78 - Rights to water and watering rights are unqualified, insofar as they are exercised by taking water from, or watering animals at lagoons and rivers, or other natural water courses. Water which is to be taken from wells is not the subject of those rights and is treated as a commodity which has to be purchased. Storage of water in the area is the explanation of this situation ...

Par. 80 - Collection of salt is qualified, insofar as it cannot be exercised before a general permission is granted, in the form of a ritual ceremony inaugurating the season. Rights to exploit saltpans, however, are individual ...

Par. 104 - If both banks of a river, stream or watercourse belong to the same person, the part of the river flowing through the land is regarded as owned by that person. Otherwise the precept of "ad medium flum aquae" has gained ground. If however allodial rights belong to one person

and lesser rights on the banks to other persons, the river or stream may remain the property of the allodial owner ...

Par. 105 - Rights in land can be alienated by sale, grant, lease, loan or pawning. The principle obtains of "nemo dat quod non habet". Sale of land is a dealing long established in Ga customary law ...

There is, therefore, for utilitarian purposes, no other than an academic distinction between a sale of allodial rights, and a similar dealing in a perpetual, inheritable and alienable use.

Par. 106 - Sale of self-acquired land by an individual, is unrestricted. A sale of land owned by a group must have the consent of the head and of the senior members of the group, who are the heads of segments. In cases of co-ownership of land by clans or families, the consent of all the respective elders must be obtained.

Par. 107 - There is no prohibition, in principle, in customary law of sale of land owned by a family or a clan, although such transactions, in practice, are effected only in certain circumstances ...

There must be a valid reason of sale, such as raising of funds in order to provide monies for important purposes ...

Ethnic group:	NORTHERN TERRITORIES
Author:	R. J. H. Pogucki
Title:	Gold Coast Land Tenure (Protectorate of the Northern Territories)
Publisher:	Gold Coast Land Department, Accra
Year:	1953, vol. I

Text

Par. 123 - Rights to water are of major importance in a territory which, like the Protectorate, subsists on agriculture and where water is scant and confined to main watercourses and wells during comparatively long periods of the year. It is, therefore, only natural that water rights are common: Anybody can take water from water holes in beds of dry rivers or streams, and from wells built by Local Authorities. Nevertheless a certain degree of recognition of more individualised rights in water does exist in the usual form namely, that the result of somebody's work belongs either to him individually, or to this group, dependent upon the social structure in a given area. Hence it is everywhere recognised that a well dug by a person belongs to this person, with the proviso that upon his death it will merge into group property. However, usually, permission is not refused to anybody to take water in a period of need (Sambrong, Navrongo).

Par. 124 - Fishing rights are usually of a common character although strangers, who are professional fishermen, have to obtain permission from the Tindana through the Chief. In all but two of the Local Authority areas the exercise of fishing rights, both by natives and non-natives, is dependent upon a fee paid to those Authorities; in the two exception (Tumu, Lawra) members of local kinship groups are exempted from a fee. Originally a due in kind had to be paid to the Tindana. There are cases (Damongo) of a lake regarded as the property of a kinship group which, represented by its head, owns the fish in the lake. Fishing rights, though of a common character are, however, usually limited, within a certain area identical with an area owned by a land owning kinship group, to the inhabitants of the area, whether members of the land-owning group or strangers, who have acquired farming rights.

Par. 125 - Hunting rights are of a common character ...

Par. 126 - Rights of way are in existence in the whole of the Protectorate ...

Par. 127 - Rights of grazing are important in an agricultural community. They are also of a common character, which means that cattle can be grazed anywhere, except on farms on which crops are actually growing. The exercise of grazing rights is not restricted to certain groups, nor to particular areas of land ...

Par. 128 - Rights to firewood and sticks are also important, the latter being a necessary component of building material ... rights to firewood and to sticks for purposes of building are of a common nature, ...

Par. 129 - Finally, when considering common or local customary rights, it may appear upon closer examination of many cases, that all the inhabitants of a locality are members of the same kinship group which owns allodial rights in the land, and that therefore they do not exercise any local customary right, but simply enjoy their allodial rights.

General

Author: N. A. Ollennu
Title: Principles of Customary Land Law in Ghana
Publisher: Sweet & Maxwell, London
Year: 1962

Text

p. 1 - The term land as understood in customary law has a wide application. It includes the land itself, i.e., the surface soil; it includes things on the soil which are enjoyed with it as being part of the land by nature, e.g., rivers, streams, lakes, lagoons, creeks, growing trees like palm trees and dawadawa trees, or as being artificially fixed to it like houses, buildings and structures whatsoever ...

Consequently a claim to ownership of buildings and structures on lands is a land suit, so is a claim to waters, streams, the foreshore, creeks, including the right to fish in such waters ...

p. 4 - The first basic principle of our customary land law is that there is no land in Ghana without an owner ... It may be vested in more than one person at one and the same time ... one person may have the absolute ownership of land vested in him, another person may have the right to immediate enjoyment of the beneficial interest in the same land vested in him, while yet another may have vested in him a right to use the land for a specific purpose, e.g., licence to build, to fell palm trees, to grow seasonal crops or to fish in a creek for a specific number of years ...

p. 48 - The absolute ownership of the community is asserted by the people in two principal ways:

- (1) by the election and appointment of the occupant of the stool or skin, the appointment of the head of the family and the acclamation of the elders and councillors to the occupant of the stool (skin) or to the head of the family, and
- (2) by actual physical enjoyment of the land without let or hindrance.

Let us consider this second method in a little more detail. By custom every subject of a stool or member of a family is entitled to enter upon the stool or family land at any time and to take and make use of, either for his domestic or commercial purposes, anything which is the natural product of the land, excepting (i) any products of the land resulting from human effort, skill or exertion, and (ii) the palm tree, the cola tree and such-like economic trees. That is an inherent fundamental right of a subject of a stool (skin) or member of a family. He can exercise it on any portion of the stool or family land, cultivated or uncultivated, but it does not extend over land which has lawfully been enclosed by another subject or member.

p. 47 - In exercise of that right a person can go on any portion of the stool or family land to hunt, collect snails therefrom, catch crabs, collect mushrooms, pick wild vegetables, wild or uncultivated fruits like black plums, shea nuts, wild flowers, fish in rivers, in lagoons or in the sea, (in places like Ada and Kata) to collect salt - but not salt formed in salt pits dug by individuals such as there used to be at Labadi and Tema. This right does not entitle him to such natural produce if another subject had already reduced it into his possession; thus he cannot take firewood cut down by another, collect salt gathered by another, or fish in a private creek on another person's land.

In the exercise of the same right the individual can collect water from any river, public well or pond; cattle owners are entitled to graze their herds of cattle on any portion of the land excepting enclosed areas, provided the cattle do not interfere with farms and cultivated plants.

GUINEA BISSAU

Ethnic group: FULA
Author: Artur Augusto da Silva
Title: Usos e costumes jurídicos dos Pulas da Guiné -
Publisher: Centro de Estudos da Guiné Portuguesa, Estudo No. 20,
Year: 1968.

Text

p. 100 - ... Grazing lands are always communal and belong to the populations subjects to a ruler ...

... Forests are considered "res nullius" and anybody can take possession of their wood and timber ...

p. 101 - ... pastures, cemeteries, running WATERS and LAGOONS, temples, mines, paths and roads are commonage and, as such, cannot be sold. Commonage is administered by the local rulers who delegate their powers to chiefs of villages, who cannot take decisions without the opinion of people of "seriousness and importance".

With regard to servitudes, we were only able to identify two types: rights of passage and rights of Water.

... With regard to right of WATER, no one can impede its (p. 102) exploitation, either by diverting it or by abusing one's right to cause harm to those who need it.

Ethnic group: MANDINGA-FELUPE
Author: Artur Augusto da Silva
Title: Direitos civil e penal dos Mandingas e dos Felupes da
Guiné Bissau
Publisher: DEDLA, Bissau,
Year: 1983

Text

p. 112 - (Mandingas) Communal property is exercised by the village on all objects which are of communal benefit:

- pastures,
- running Waters, Lagoons
- wells
- mines
- cemeteries.

Notice should be taken that in principle, family dug WELLS are of family ownership, but at the same time the use of WATER cannot be refused to anyone, up to the quantity reckoned reasonable for a person to quench his thirst. Among Moslems of all races, WATER ownership is communal, this being a dogma of Allah.

The entire territory dominated by the Mandingas and the others which payed tributes were considered property of the royal household ... Apart from these territories, paths, roads, RIVERS and LAGOONS were also considered property of the royal household.

p. 182 - (Pelupes). The following are owned by the village: pastures, cemeteries, running WATERS and Wells, forests.

General

Author: F. Rogado Quintino
Title: Práticas e utensillagem agrícolas na Guiné
Publisher: Junta de Investigações do Ultramar, Lisboa,
Year: 1971

Text

p. 20 - Each family disposes of building space and a precinct, plus agricultural land. Each family has the right to exploit the spontaneous forest which belongs to their group and has a right to fruition of the a.e. common public spaces, "logradouros comuns" (commonage?). In principle, all the land belongs to divine spirits (genies). The group, the clan, the family are usufructuaries. The right of usufruct lasts so long as the usufructuary makes clear his desire to hold the land ...

p. 21 - ... An activity which benefits an entire region is the construction of belt ouriques (weirs) at the head of salt-marshes and creeks, to reclaim land from the SEA for RICE production in INUNDATED areas ...

... Emigrants get married and take possession of land outside their original areas, creating individual properties ...

... In the heavily populated regions, the concept of ownership of the lands which were reclaimed from the sea (bolanhas) came to acquire a broader meaning. Clans, known by the "creolized" word "gerassom" (from the Portuguese "geração", generation), declared themselves legatess, heirs of their ancestors' bolanhas, from which came the expression "bens da gerassom", current in the "papel, manjaco and bramo" ethnic groups", inalienable lands, exploited by the gerassom chiefs with the support of all the (clan-)families ...

p. 28 - ... The largest rice production areas are those of the coastal region, in inundated as well as dry soils ...

p. 50 - ... The construction of a belt weir is always considered a significant undertaking ... All the village people directly interested will co-operate in the work ...

p. 51 - ... There are belt weirs whose construction required the collaboration of thousands of people!..

IVORY COAST

Ethnic Group	Social structure and habits (1)	Political structures (2)	Environment (3)	Production modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Krou ²⁰	-type -village concentrated	chieftoms	-forest -sav	-agriculture -hunting/gathering -fishing	-auto- subsistence -market	no data	no data	-annual -inland, fresh waters	no data
Benouno	no data	no data	marshy	-agriculture -fishing	auto- subsistence	mixed	no data	no data	no data

Ethnic Group	Control/ fishing rights/ transport (10)	Colonization (11)	Legal systems (12)	Land tenure (13)	Drinking and household uses of water (14)	Other uses and involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Krou	fishing, control by community	France	African traditional	-control by community -granting of land by head of village	control by community	control by community	-control by community -free of charge for local community	no data	no data
Senoufo	rights on fishing grounds by maître de la terre	France	African traditional	-control by chef de la terre -granting of land by chef de la terre	-control by maître de la terre -water selling not possible -selling of water points not possible	control by maître de la terre	-control by maître de la terre -free of charge for local community -authorization needed for digging well, basin on communal land	no data	maître de la terre

Ethnic group: AGNI
Author: R. Villamur, M. Delafosse. Gouvernement de l'AOF
Title: Les Coutumes Agni
Publisher: Challamel
Year: 1904

Text

p. 55 - Article 170. Les servitudes réelles sont prévues par la coutume dans le Sanwi, l'Indénié, l'Abrun et le Baoulé.

Article 171. L'individu, qui a une source dans son fonds, ne peut en modifier l'écoulement lorsque cette source fournit l'eau nécessaire à une communauté d'individus.

p. 56 - Article 172. Quand une rivière traverse une propriété privée, l'usage de ce cours d'eau et le passage sur ses rives restent publics.

Article 173 - Le pêche y est libre; néanmoins, si un individu y a établi des passes, barrages ou engins quelconques, le poisson pris par ces moyens appartient au pêcheur lèvement sur le produit de la pêche.

Author: F. J. Amon d'Aby
Title: Croyances Religieuses des Agni de la Côte D'Ivoire
Publisher: Ed. Larose, Paris
Year: 1900

Text

p. 169 - ... la terre, avec tout ce qu'elle renferme est l'œuvre et la propriété de Dieu. Celui-ci a délégué une fois pour toutes ses droits de propriétaire aux génies de la terre, par l'intermédiaire desquels il communique avec les hommes ...

p. 170 - Composition du domaine tribal. En plus des villages et hameaux actuels, le domaine d'une tribu comprend:

- (a) le "nvoussian" ou terres en jachère, laissées depuis longtemps sans culture;
- (b) les anciens villages, campements, lieux de sépulture et bois sacrés, abandonnés pour des raisons d'hygiène ou de commodité;
- (c) l'"éhsayà" ou réserve forestière à l'état vierge;
- (d) la flore, la faune et le sous-sol dans le périmètre du domaine ...

Ethnie group: BETS
Author: E. Danguas - Gouvernement Général de l'AOF
Title: Coutumier de la Côte d'Ivoire - Coutumes et Moeurs des Bétés
Publisher: Imprimerie du Gouvernement
Year: 1934

Text

p. 367 - Les coutumes ci-après décrites régissent les populations des cinq cantons bété de la Subdivision d'Iasia, soit les cantons des Balou (ou Balo), des Banguhé, des Laboué, des Youkoulé (Yokolo) et des Zabouo.

Elles s'appliquent également aux cantons bété de la Subdivision de Balou: cantons Zéhouo-Nord et Zéhouo-Sud, cantons Balou-Nord et Balou-Sud, ainsi qu'aux tribus bété de la Subdivision de Gagnoa, situées sur la rive droite de la Dava: tribus N'Dri, Lessom-Gottibou et Krihou ...

La Subdivision d'Iasia comprend un sixième canton: le canton de Niaboua, situé à l'ouest, sur la rive gauche du fleuve Sassandra, peuplé par la tribu des Niaboua, sensiblement différents des Bété ...

Si, par leurs origines et leur dialecte, les Niaboua d'Iasia se rattachent indiscutablement aux Guéré de la rive droite du Sassandra, leur évolution actuelle des rapproche de plus en plus des Bété ...

p. 420 - Les Cours d'Eau. Droits de pêche. Exception faite pour le fleuve Sassandra qu'ils appellent Ibo, et qui n'intéresse guère que les villages Niaboua du groupe Kipréguhé (villages Iréguhé, Bonahinou et Liahinou), les Bété ne connaissent que deux cours d'eau relativement importants: la Lobo et son principal affluent, la Goré, et qui ne les intéressent qu'à cause des droits de pêche qu'ils peuvent y exercer. Quant aux autres petits marigots, en nombre considérable (p. 421), ils n'offrent qu'un intérêt minime au point de vue de la pêche, à cause des faibles quantités de poisson que l'on y peut prendre.

En principe, le droit de pêche sur la Lobo et sur la Goré est accessible à tout le monde, sauf sur certains endroits particuliers que l'on peut classer en trois catégories.

1° Zones Kou-gni (eaux ensorcelées). Certaines parties du cours de la Lobo, d'une longueur variant de cent à trois mètres, passent pour être la repaire d'esprits malveillants (Kou) et la tradition prétend que ces zones ont été le théâtre d'accidents mortels survenus à des pêcheurs. La Kou-gni le plus fameux et aussi le plus redouté est celui qui est situé en aval du confluent de la Goré, et qui se termine un peu avant d'arriver au village de Mahogué (canton Zabouo); c'est un bief profond où les pagayeurs ne peuvent atteindre le fond avec leur bambou, phénomène rarement observé sur la Lobo.

En temps normal, personne n'ose pêcher dans le Kou-gni de crainte de réveiller la colère des esprits et de s'attirer leur vengeance.

Cependant, dans un des villages voisins, il existe une famille dont le chef connaît, par tradition, le moyen d'apaiser momentanément la colère de l'esprit du Kou-gni.

A de rares intervalles, tous les trois ou quatre ans, sur l'avis donné par un "zirignon" réputé, à moins que cet avis n'émane du chef lui-même (qui l'aura reçu soit en rêve, soit en état de transe), la pêche est ouverte dans le Kou-gni.

Au jour fixé, le chef de famille détenteur du "médicament secret" qui apaise les esprits, fait son sacrifice spécial et rituel, et prononce les paroles puissantes qui calmeront momentanément les divinités malfaisantes des eaux. Là-dessus, il entre dans l'eau et prend le premier poisson. Désormais, le charme est rompu, et toutes les personnes, accourues de plusieurs kilomètres à la ronde, se précipitent dans l'eau et commencent la pêche ...

Ethnic group: KROU
Author: Bernard Holes
Title: Traditions Krou
Publisher: F. Nathan. Paris
Year: 1980

Text

p. 37 - Le cadre villageois constituait en fait, l'unique support des manifestations sociales, et de l'extérieur, il apparaissait comme un micro-univers existentiel plutôt fermé ...

p. 40 - Par tempérament, et malgré l'appât des bénéfices que lui offre l'exploitation d'une plantation de café ou une entreprise commerciale, le Krou reste, en somme, fidèle à sa vocation de marin saisonnier ou occasionnel ...

p. 41 - ... les Krou ne pêchent pas en mer ...

p. 65 - ... les divins dispensateurs de l'eau, de la pluie ...

p. 77 - Il en est de même d'ailleurs lors des grandes pêches, dont l'ouverture de la saison est toujours marquée par des cérémonies plus ou moins compliquées qui ont pour but d'obtenir le consentement des génies de l'eau, propriétaires du poisson ...

p. 113 - 1° La propriété foncière chez les Kroumen était tout entière jadis entre les mains des chefs de tribus; ceux-ci déléguaient aux divers chefs de village une partie de ce droit de propriété, et les chefs de village devenaient ainsi propriétaires fonciers par délégation d'une parcelle de terre de la tribu.

Quant aux parcelles foncières mises en valeur par chaque individu, elles ne devenaient pas leur propriété: ils en avaient simplement l'usufruit. Aucune parcelle foncière d'une tribu ne pouvait être vendue à une autre: la terre était inaliénable.

Quant aux cours d'eau et au sous-sol, ils appartenaient à la tribu et ne pouvaient être aliénés ...

p. 148 - La terre, les montagnes, la forêt, les cours d'eau, la mer, la faune, y compris l'espèce humaine, la flore et les minéraux composent un ensemble harmonieux de cet univers matériel sensible dont il importe à toute créature vivante (proportionnellement à sa dose d'intelligence et à ses moyens) de préserver l'équilibre: agir contrairement constituerait une insulte au Créateur et conduit à des catastrophes, à moins que des sacrifices appropriés n'apaisent son courroux ...

Ethnic group: SENOULO
Author: B. Holas
Title: Les Senoulo
Publisher: ESA - IAI, London
Year: 1988

Text

p. 104 - Propriété collective. Elle représente la notion de base de la structure économique traditionnelle. Les membres de la communauté produisent, en labourant le sol en commun, les biens qui sont nécessaires à leur subsistance. Le produit est alors partagé entre les familles intéressées sous la surveillance du chef.

Le sol est le patrimoine sacré, légué à ses descendants par le premier occupant. Les parcelles sont actuellement attribuées aux chefs de famille par le "maître de la terre", aîné vivant de la famille fondatrice.

Sur ce sol mis à leur disposition, les habitants n'ont qu'un droit d'usage ...

p. 105 - Au niveau du village, les biens de propriété collective sont en particulier constitués par:

... 2° Les places et lieux publics du village, les puits, les abris de réunion, les bois sacrés et les chemins vicinaux.

3° Les terrains libres du voisinage tels que les forêts, les savanes, les cours d'eau auxquels se rattachent les droit de chasse, de pêche, de cueillette, de pacage, sont considérés comme relevant du domaine public ...

En principes, ces biens sont inaliénables; en pratique on rencontre aujourd'hui de nombreuses exceptions à cette règle, la détention évoluant vers une propriété comportant une disposition libre de la chose.

Le produit des entreprises communales est surtout destiné:

1° A parfaire l'impôt du village.

2° A servir à l'organisation des funérailles des personnes d'un certain rang social.

3° A la construction des bâtiments d'intérêt public (résidence de chef, école, marché couvert, etc.).

4° Aux "frais de représentation" tels que l'hébergement des étrangers.

5° A l'aide des socialement faibles, etc.

p. 106 - Extension des droit et des devoirs du "chef de la terre".

C'est le "sévélé" qui répond mieux à ce que nous appelons d'habitude "chef de la terre", personnage assimilé au prêtre-sacrificateur ...

p. 108 - ... il partage notamment les parcelles cultivables entre les chefs de famille. Ceux-ci, en revanche, lui devaient une partie de leurs récoltes et, de plus, des prestations sous forme de tant de jours de travail par an sur les champs. Mais le chef de la terre avait en outre droit à une part du produit de la chasse, de la pêche et de la cueillette, car ces acquisitions se faisaient sur les terrains mis sous sa haute gestion ...

Il endossait, il est vrai, de graves responsabilités vis-à-vis des vrais propriétaires des terres communales, les ancêtres du lignage. Ses obligations sacerdotales, étaient, et sont parfois toujours, innombrables ... si la pluie tarde à venir ... à lui de remédier à la situation ...

KENYA

Ethnic Group	Social structure and habits (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Kisumu	no data	no data	no data	-pastoralism -agriculture	no data	no data	no data	no data	no data
Jie and Turkana	-family extended -age -neighbourhood	-diffused power -rain making power	-semi arid -savannah -river, lake	-pastoralism -agriculture	auto- subsistence	rainfed	limited	no data	no data
Kamba	no data	no data	no data	no data	no data	no data	no data	no data	no data
Kikuyu	-clan -village scattered -age	diffused power	mountain, humid	agriculture	auto- subsistence	rainfed	no data	no data	no data
Luo	no data	no data	no data	no data	no data	no data	no data	no data	no data
Nandi Group "	-house -clan -village scattered -age	-diffused power -rain making power	-savannah -mountain, humid	-pastoralism -agriculture	auto- subsistence	-rainfed -irrigation, by canal	abundant	no data	control by village
Taita	-family extended -village concentrated	diffused power	mountain, humid	-pastoralism -agriculture -hunting/ gathering -trade	-auto- subsistence -market	-rainfed -irrigation, by flooding, by canal	abundant	no data	no data

Ethnic Group	Conflict/ Bullying/ Higher/ Transport (90)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Iseo	no data	United Kingdom	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge	-control by community -free of charge	private appropriation	-cleaning of water sources -prohibition of entering of water sources -roles protecting water works	no data
File and Turkana	no data	United Kingdom	African traditional	control by community	-water, free of charge -duty to maintain	-control by community -free of charge	-control by community -private appropriation -free of charge for local community, foreigners, local and foreign cattle -duty to community -digging, maintenance -authorization needed for watering -precedence rules -protection of rights of way to water sources	no data	no data
Kumbe	no data	United Kingdom	African traditional	no data	water, free of charge	free of charge	-private appropriation -authorization needed for digging well, basin on communal land	no data	no data
Elkanyo	no data	United Kingdom	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge	-control by community -free of charge	-control by community -free of charge for local community	no data	kinship
Jee	no data	United Kingdom	African traditional	control by community	-control by community -duty to maintain	-control by community	-control by community -duty to community -digging, maintenance	no data	no data

Ethnic Group	Conflicts/ fighting rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Lameli Group	-conflict, negligible	United Kingdom	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge	-control by community -free of charge	-control by community -free of charge for local community -free of charge, local cattle -city to community digging, maintenance -specific organization dealing with water and with waterworks	no data	-litigation -other
Vedda	no data	United Kingdom	African traditional	-control by community -granting of land by head of village	no data	no data	no data	no data	no data

Ethnic group: ITESO

Author: J. C. D. Lawrence
Title: The Iteso, O.U.P., 1957
In: Readings in African Law. Edited by E. Cotran and N. N. Rubín
Publisher: F. Cass & Co., London
Year: 1970

Text

p. 348 - Tenure of land which is used exclusively for grazing cattle and which is never cultivated is communal ...

p. 349 - Certain specific areas may be closed to grazing by order of the local council and any person found grazing cattle in the closed area may be fined.

Areas round dams are usually so closed by parish councils and demarcated with steel ...

Water rights. Natural water is free of access to any person whether or not it is situated on privately owned land.

No permission is required to dig wells or make small dams and no fee is payable.

Any such well or dam made on privately owned land remains the property of the owner if made by the owner or at the owner's expense.

NOTE: This is one view; exactly the opposite has been expressed, i.e. that wells become public even when made by an individual.

Certainly in Asurel, when E. Emuli made a dam of his own, slaughtering 108 head of cattle as payment for the labour and spending about 1,000s., the dam became public property and is used by all and sundry.

The local council may define places for the watering of stock and places for humans to draw water, and any person watering stock at the humans' watering place is guilty of an offence.

Quotation: Ocheru Sub-County 136/51: Court v. Y. Kinaga:

Kinaga allowed eleven head of cattle to foul a tank in the part set aside for human consumption. He was fined 15s ...

Ethnic groups: JIE AND TURKANA

Author: P. E. Gulliver

Title: The Family Herds - A Study of Two Pastoral Tribes in East Africa. The Jie and Turkana.

Publisher: Routledge & Kegan Paul Ltd., London

Year: 1965

Text

p. 6 - ... Certainly it seems quite clear that the two peoples never made war on each other, and sometimes they allied against their common enemies, the Karamajong and Dodoth. Relations were also continued because of trading facilities ...

p. 7 - Each tribe refers to the other as "paternal cousins", and they both claim to be "one people" ...

p. 24 - ... Water supplies are taken mainly from the water-courses. After the rains, ponds are formed, rock-pools are filled and local springs gush ...

p. 37 - ... water is considered a free good, a resource common to all tribesmen. Specific rights do, however, lie where water resource have been artificially developed. If there is a running spring, or an open, natural pool, anyone can water his stock there on the principle, "first come, first served". But such water is always scarce even in the wet season; soon after the last rains holes must be dug in the beds of water-courses. This involves considerable initial labour, especially in view of the absence of proper digging tools, and a certain amount of upkeep is required. In Jiiland, where water is more of a problem generally than in Turkana-land, holes go down as much as twenty-five to thirty feet, and both digging and upkeep is correspondingly greater. The people who dig such a water-hole are taken to the owners, with prime rights to the water. Sometimes the herdsmen of a single camp or homestead do all this work, but often two or three groups combine. Other people may use the waterhole only at the permission and convenience of these owners. In congested areas several herds may water at a single hole one day, and several others on alternate days.

The usual system is that a new arrival attempts to gain permission to use an existing hole. In extremity he may beg permission from any owner, for it is considered wrong to refuse unreasonably. Usually a newcomer approaches a friend or kinsman, and the presence of such a person may be a good reason for a man moving near to that water-point, since he thus feels assured of gaining watering facilities. Rather than become beholden to a stranger the (p. 38) newcomer will, if possible, make a new hole for his own use. If a man attempts to use a hole without prior permission (unless it is abandoned) it is likely to lead to a fight. It is a grave breach of manners, an unwarranted assumption, and, in the dry season, a threat to the welfare of the herds already dependent on that water-hole. Minor brawls do sometimes occur on this score.

I do not want to overemphasize these water-rights. They do exist, and men will explain them clearly; but it is seldom that a person finds great difficulty in obtaining water at a permanent point of any size. So long as people are willing to be considerate and to help in the upkeep, there is little difficulty. At bottom, both Jie and Turkana feel that, like pasturage, water is free to all. Every man has the right to water his animals and no one should deny him that right ...

p. 255 - ... Let us return for a moment to the principles of pastoralism, which are the same in both tribes. First, there are no individual or group rights in land or water (1) and therefore no restrictions as to where any animals are herded and moved ...

Note (1) Temporary rights in developed water resources lapse with disuse. In any case, holes dug in water-courses are destroyed each time there is a flow of water ...

Author: P. and P. H. Gulliver
Title: The Central Nilo-Hamites
Publisher: ESA - IAI, London
Year: 1953

Text

p. 73 - The Neighbourhood. The effective Turkana community is not, we have seen, the territorial section, or the clan. It is found in the neighbourhood (adakar - literally the verb "to graze" used here as a noun). In general, however, the word is used to mean the group of people who graze and browse their stock in the same area, i.e., on the same foothills or on a distinct section of the same river bank. According to the context, some three or four nearby homesteads only may be meant, or the word may have a wider meaning to include a whole river basin or all those people who would conveniently come together for a meat feast or dance. This latter is the more usual and illustrates the neighbourhood unit in its social context ...

For purposes of description only, neighbourhoods are classified into primary, secondary, and tertiary. This formalization is not used by the people themselves.

(a) A primary neighbourhood is usually found only in the plains and consists of from one to five homesteads usually no more than about 1,000 yds. apart, though occasionally two or three may be adjacent.

(b) The secondary neighbourhood consists of two or three primary neighbourhoods scattered over an area of up to five square miles.

(c) The tertiary neighbourhood is extremely nebulous but may be coterminous with a distinct geographical locality or may be relative to each secondary neighbourhood, i.e., the distance a man is likely to walk comfortably from his homestead in one day, approximately 20 miles radius ...

p. 74 - Co-operation within the secondary neighbourhood. These homesteads generally share one watering point although a primary neighbourhood may have a small water-hole of its own sufficient for drinking-water needs. The large water-hole may see many hundreds or even thousands of stock watering each day, and during the dry season, when water is scarce, a certain hole may be used by one family one day and by another the next, with different families watering at night. The fitting in of times for all local stock to be watered at everyone's convenience and also the maintenance of shared water-holes is strictly controlled. This is informally arranged by the heads of homesteads ...

p. 84 - ... Minor cases, where no compensation is payable but fighting is involved, are classified as follows:

- (a) abuse, slander, milder forms of witchcraft, ill-treatment of a relation or friend, rape of unmarried girls, denial of pasturage, water, etc ...

Ethnic group: KAMBA
Author: D. J. Penwill
Title: Kamba Customary Law - Notes taken in the Machakos District of Kenya Colony
Publisher: Mac Millan & Co. Ltd, London
Year: 1951

Text

p. 53 - Water Rights. There are no private rights in water in its natural state; it is to be used free by all. No one may fence off a pond or a stream in such a manner as to stop others from having access to it, or claim a spring as his private property because he has occupied the adjoining land. God - "Mulungu" - made the water for the benefit of all, and any such anti-social act as that describe above would be checked at once by the "utui" elders and, if necessary, by the Tribunals. But where human effort and labour is needed before the water is made available, a private right can be created - for example, in a water hole dug in a dry river bed which can be fenced off, or in a dam or irrigation furrow. The water in the large machine-made dams constructed in the Reserve in 1949 and 1960 by the Government is, therefore, interpreted by analogy as being peculiarly the property of Government, save in so far as the old landholders on the sites have been allowed to draw water from it. No man would be permitted to do work on natural water supply and then to claim it as own, or to draw off all the water from a spring for irrigation purposes ...

Ethnic group: KIKUYU
Author: J. Middleton
Title: The Central Tribes of The North-Eastern Bantu
Publisher: ESA - IAL London
Year: 1963

Text

p. 30 - ... Most of the authorities refer to wider territorial grouping, usually called "district". Such a district might be called "bururi", although the word usually refers to the three large territorial divisions of Kikuyuland (Kiambu, Fort Hall and Nyeri) or to the whole of Kikuyu territory ...

p. 31 - ... Although there seem to be no functional groupings wider than the district, there are certain focal points for inter-district combination. These include markets, which Routledge calls, "rallying points for several districts"; other may be public grazing grounds, salt-licks, etc. Rivers which form inter-district boundaries and which serve the livestock of both banks might also be classified under this heading ...

p. 48 - Kikuyu Land Tenure. To the Kikuyu land is not just the economic asset of a group but it enshrines their very existence. The common right of all Kikuyu in the ancestral land as children of Gikuyu and Muumbi makes them all into members of the "mbari" of Gikuyu in which they are all brothers to each other; they are not only children of Muumbi but also children of this ancestral land which is their father and mother. The Land is Kikuyu past since it is where the ancestors are and thus stands for the ancestors themselves; it is Kikuyu present because living people are these ancestors and it is Kikuyu future because in them the future (their grandchildren) is already there ...

It is thus that kinship not only exists between all Kikuyu but specifically between members belonging to the same "mbari" or between people who have bought and sold land to each other so that kinship terminology can be used between them ...

p. 49 - ... The Kikuyu are often quoted as providing an example of the outright sale of land under indigenous conditions ...

Leakwy has always maintained that, after adoption, these sales definitely did take place and were outright transfer of ownership. Present-day knowledge tends to confirm this view ...

Kenyatta states that the two types of claim to a piece of land, by clearing or by purchase from the Dorobo, are the same in principle; the Dorobo's rights based on first clearing were purchased ...

p. 51 - ... The council of elders has two main roles with regard to land. It is vested the control of public land ("communal" land as it is often called) and utilities, and it also acts when there is need for arbitration between "mbari" over land matters. The basic principle involved is stated by the K.L.C. Evidence: "Under the "githaka" system no land is common, but certain rights are common, and the right to depasture cattle on any land not cultivated or specially reserved in accordance with custom is one of these". The first of these common rights is that of grazing ...

p. 52 - ... Similarly, rights to timber and grass on the land of an mbari are common to all, as are rights to salt-licks and mineral springs, public meeting - and dancing-places, public roads and paths, water and sacred groves. Most of these are on mbari land, but rights to them may be exercised by any members of the community.

As in other matters the district elders have powers in land matters. They arbitrate in inter-mbari land disputes, as in other cases ...

Land Tenure among the Northern Tribes. The Maxwell Report states that the "githaka system" is not found in Embu and Meru ...

p. 53 - ... Certain other rights are common to the clan. Chief of these are grazing, hunting, use of timber, salt-licks, soda, ochre, etc.; these were controlled by the "njuri" members of the clan concerned ...

p. 55 - ... Public sacrifices are made for rain, at the planting time ...

There are no rain-making techniques other than sacrifices to the ancestors or "Ngai", and the avoidance of any acts which will prevent rain. The use of iron implements are in fact any unusual occurrence is thought to cause drought; the building of the railway was held responsible for several bad years ...

Ethnic group: LUO
Author: Gordon Wilson
Title: Luo Customary Law and Marriage Laws Customs
Publisher: Colony and Protectorate of Kenya
Year: 1961

Text

Par. 104 - Water, lakes, rivers, springs, which are natural to the country are regarded as communal property and anyone may have access to it. Water holes, Yawo, which have been dug by a lineage segment is the property of that segment and others who would use it must first obtain permission from the elders of the segment. The custom is that the elders may not refuse water from their Yawo if the person is willing to help remove the mud which forms at the bottom of the hole.

Par. 105 - Salt licks and markets are communal property ...

Ethnic group: NANDI GROUP
Author: G. R. Snell
Title: Nandi Customary Law
Publisher: Mac Millan & Co., London
Year: 1954

Text

p. 1 - ... The power behind the world was Asis - an indefinite noun whose definite counterpart was Asista - the Sun. Asis was the source of all life and hence of fertility ...

p. 2 - ... Asista, the Sun, was in effect the material expression of Asis - "the eyes of Asis" - which gives light to the world ...

p. 5 - ... When it was desired to appease the deity on some special occasion, such as the failure of the rains, a female sheep was wrapped in an elder's colobus-skin or calf-skin cloak and plunged into the river while the old men prayed: "Asis, why do you hold off the rains? Give us rain". The sheep was then returned to the flock ...

p. 10 - ... The general structure of the tribe classifies it as a segmented society, though the relative unimportance of kinship group and the corresponding importance of the territorial unit is a feature more usually associated with stratified community. Hence the kok wet was the most significant political and juridical unit of the tribe ... The governing body of each kokwet was its kokwet

council ... The kokwet elders were the local authority for allocating land for cultivation; they were the body to whom the ordinary member of the tribe would look for a decision in a dispute or problem which defied solution by direct agreement between the parties. In its judicial capacity, the council consisted of three or four elders (kiruogik) respected for their soundness of judgement assisted by any elder who cared to offer his opinion.

p. 48 - Water Rights. Water like land was in plentiful supply in Nandi. Disputes concerning watering points were therefore virtually unknown or were such as presented little difficulty in settlement. The watering places of a bororiet were freely available to its inhabitants, though

naturally, except when trekking cattle to and from the kaptich (traditional reserve of grazing land) a cattle-holder normally used the supply within his kokwet ...

p. 109 - ... By 1948 some measure of public control had become necessary and resolution was passed by the Local Native Council in the following form:

"No person subject to the jurisdiction of the Nandi Local Native Council shall fence any land in excess of two acres in extent except with the express permission of the Chief and kokwet elders of the area in which the land is situated.

(2) A Chief and the kokwet elders of any area shall not give any person permission to fence land, save in the following circumstances:

- (a) after they are satisfied that the fencing of the said land will not interfere with the grazing and cultivation rights of the other inhabitants of the area concerned, and that access to any watering place used by the other inhabitants of the area will not be prevented..."

Author:	G.W.B. Huntingford
Title:	The Southern Nilu-Hamites Nandi group
Publisher:	ESA - IAI, London
Year:	1953

Text

p. 1 - ... The power behind the world was Asis - an indefinite noun whose definite counterpart was Asista -the Sun. Asis was the source of all life and hence of fertility ...

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- (a) after they are satisfied that the fencing of the said land will not interfere with the grazing and cultivation rights of the other inhabitants of the area concerned, and that access to any watering place used by the other inhabitants of the area will not be prevented ..."

p. 32 - Land divisions. There are no villages. Homesteads are scattered over the countryside and grouped into units called Korot (pl. Korotinuek), "parish"; each korot has an independent council called Kokwet (pl. Kokuotinuek). The parishes are grouped into larger units called Pororotiek (sing. Pororiet) which are both political units - the land on which people live - and regiments - the fighting force drawn from the component parishes.

The Kokwet or Parish Council. This is the most important Nandi council, and the only native legal assembly. It is found in each Korot, and may be attended by all the men of the Korot, it has a leader known as "poirot ap kokwet", "the old man of the council", who is not elected, but acquires his position through personality, social standing, and ability, and because he is an elder and thus closer to the spirits of the dead than younger men ...

p. 33 - The Pororiet. This is also an independent unit, given reality by a council composed of the council leaders (poirot ap kokwet) of all the component parishes, together with the two senior warrior leaders, and presided over by two elders called Kiruckik, "councillors" ...

... it also handles inter-pororiet disputes. It is not a court of appeal from the Kokwet.

The pororiet is the real basis of residence, and a man can transfer his home from one part of the pororiet to another without getting permission to do so ...

Since the middle of the 19th century the Nandi have had a succession of hereditary ritual experts not only of the Masai "laibon" type, but of actual Masai origin, (orkoiyot) ...

p. 35 - ... He is a diviner and rain-maker ...

But he was not in any sense a chief, though he did act as a mystical focus for certain public and religious activities.

As a rain-maker the Orkoiyot is (or rather used to be) applied to when the efforts of local rain-makers to deal with persistent drought or excessive rainfall have failed, and in return he receives gifts of eleusine ...

p. 81 - The Nandi group. The Suk.

... Agricultural land among the Hill Suk is also tribal property, as are the irrigation furrows. Cultivated plots are allotted at the beginning of each season, and nobody can claim prior right to any plot because he worked it during the previous season. In the locations of Weiwei, Lomut, and Cheptulel, however, says Hyde Clarke, where the population is denser, individual cultivators have permanent rights over six to 12 irrigated plots. The upkeep of the irrigation works is a communal duty, controlled by the elders, who punish those who refuse to do their share or to obey decisions about rotation of water supply. On the death of an owner the plots are divided between his sons, and (on the same principles as among the Keso) when a

plot cannot be further subdivided, a man will buy out another owner, who will buy another plot for himself ...

The implements used are a short sword, a hoe ...

p. 91 - The Nandi group. The Endo and Marakwet.

... Both tribes keep cattle, sheep, and goats, and both are cultivators, the Marakwet in particular being experts in irrigation. They live in villages built high above the streams out of the way of mosquitoes; the cattle are housed in enclosures lower down the hill-sides.

The agricultural and irrigation systems have been described by Hennings. The original furrows is said to be that from the Aror river in Talai location at an altitude of about 7,000 ft. The water leaves the river by a dam made of rocks and tree-trunks down a channel which is itself a waterfall for about 500 ft. till the ground becomes more level; then it winds down the hill through a furrow to the valley below, some three miles from the starting point. In Endo the river Embobut provides five furrows which water all the cultivation within two miles on each side of the river. Work on the furrows is done by men, and watchmen are appointed to inspect the furrows; when a furrow breaks, all those who use its water must help to repair it, under penalty of a goat for refusal. The same applies to cleaning and re-aligning furrows. These furrows were seen by Thomson in 1884. In Marakwet the irrigated fields are usually six or seven acres in extent, and are fenced with piles of thorn; each man has one or more inherited plots in the enclosure. These plots are small and generally long and thin, sloping away from the nearest furrows. Work is done with digging-sticks and wooden "tooth-pick" hoes. Each common field is allowed water for a fixed number of days, so all the plot-holders help in the irrigation in order to get it done quickly ...

p. 92 - The Nandi group. The Barabaig.

p. 99 - ... The Barabaig are pastoral with a small amount of agriculture ...

Water rights occur in the few wells found in the border areas of Endesh and Balangida Lala. A well remains the property of the lineage of the man who originally dug it, and (in theory at least) permission must be sought by a stranger from the owners before he uses it ...

Ethnic group:	TEITA
Author:	A. H. J. Prins
Title:	The Coastal Tribes of the North-Eastern Bantu
Publisher:	ESA - IAI, London
Year:	1962

Text

p. 107 - ... They make a distinction between cultivation by irrigation and dry land cultivation... Rice is occasionally grown in the river beds ...

Cultivation by irrigation is carried out either in the upper valleys or on the slopes. Water may be conveyed by pipes of banana stems or by furrows, often to miles or more in length. The very small headwaters of the rivers often flow through the large gardens; then they are not called "moda", river, but shuko. The area of gardens irrigated perennially is not great 450 acres only. [1947]

p. 108 - ... For agriculture the hoe is the main implement ...

... watering and making of furrows, ditches and terraces are done by men ...

p. 129 - ... Rain ceremonies take place ...

LIBYA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Ukhaudumal	-family extended tribe	-diffused power	-arid -semi arid	-pastoralism -agriculture	no data	-rainfed -irrigation	no data	no data	no data

Ethnic Group	Control/Building digital transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving consumption of water (15)	Other uses involving consumption of water (16)	Protection of water quality (17)	Conflict resolution (18)
Unidentified	no data	-Italy -Turkey	Islamic influence	control by community	-control by community -water, free of charge	-control by community and native de -free of charge -private appropriation	-control by native de -free of charge -private appropriation -allocation of rights of way to water sources	no data	None

General

Author: Dante Caponera
Title: Report (No. 21) to the government of Libya on agriculture
Publisher: FAO
Year: Nov. 1952. No. 7530, pp. 188-200.

Author: Enrico de Agostini
Title: Le popolazioni della Libia In: AA VV, L'Italia in Africa, cap. IV
Publisher: Ministero Affari Esteri
Year: Roma, 1958

Text

Caponera: Water Legislation in Libya - Custom Law

Wells: The wells are usually privately owned and are a part of the land upon which they are located. They are subject to personal rights of way originating in testamentary agreements or regulations.

If the wells belong to a community they are subject to the peculiar customary laws of their locale. If a well exists on land owned by a single person, with the trees on the land being owned by another individual, each seven days this latter owner is entitled to a day's use of the well water. In many of these cases, the land owner is compensated for the use of this water with a share in the products from the trees.

Springs: The ownership of springs may fall under two different categories:

- (a) **Mulk property** - privately owned property belonging to one or more proprietors who may acquire this right through discovery, inheritance, sale or purchase. If the proprietors are numerous, the water is divided according to their water right entitlement.
- (b) **Shill property** - the springs do not belong to their users are not of any fixed number or of any definite group. They may be considered public property. Those groups of individuals who have entered into a territorial agreement with the public organizations which own the spring source have a generic right to use a certain amount of the water as fixed by the Local authorities.

Water Distribution: with regard to private springs belonging to two or three people is made by agreement between the parties concerned. Water distribution of public springs is made according to the customary regulations under the supervision of a water magistrate who may have assistance if there are numerous springs. These supervisors are called "rais", and their authority is indisputable.

In the case of Zalla for well irrigation, one-ninth of the revenue from the palm grove is paid to the one who extracts the water from the well, and one-third of the remainder is paid to the cultivator of the land. In irrigation by foggaras, three-quarters of revenue from the palm grove goes to the owner and one-quarter to the cultivator.

In the oasis of Gadamis the distribution system is on a time basis. Total duration of the rotation system is 15 days. The time is calculated by a container, pierced at the top with a hole, which holds 1.5 litres of water and which when immersed into the water takes 2 minutes, 45 seconds to become empty. This measuring device is called a "gadde". A water guard (gaddas) keeps next to him at the watering point palm fibres which represent the various water owners. Each time the container becomes filled, the guard ties a knot into one of the respective palm

fibres. When there are a certain number of knots on the fibre, corresponding to the amount of water to which the owner is entitled, he opens the water sluice and directs the water flow to the land of the next person. Every 24 hours, 523 - 524 knots are tied.

The unit of measure is called a *dermisa* and is equal to an amount of water corresponding to 250 knots which is distributed according to the season and the availability of the water. *Habbas* are sub-units of the *dermisa*. The entire well supplies 745 *dermisa* which corresponds to the total water rights utilized at the well.

The administration of the water is particularly well organized. There are 11 water magistrates. Three of these comprise the executive staff which drafts the distribution plans and inspects the entire system. Three corresponding secretaries supervise the local administration and keep notes on all transactions and transfers. The remaining five magistrates all have individual responsibilities. One of these, the *nakil*, acts as a public notary and keeps the register (*defider*) of the water right owners up to date. The other four *gheddes* are responsible for the efficient operation of the measuring system (*gadoue*). These water magistrates are remunerated from a common fund set up by the users according to their respective water rights, and each one is required to take over his tour of inspection in due time. The water users themselves watch the water distribution and, in case of doubt, check with the *gaddas* for control of the number of knots. In the Toscu Canal, a palm frond is thrown into the water to give notice to the next user that it is his turn.

In the cases of the Fezzan, local distribution is subject to Moslem law, and the ownership of waters belongs to whoever has brought the water to the surface. They are also often collectively owned. Their origins are forgotten and with them the rivalries which followed their discovery. In certain cases, their origin is attributed to the action of some holy personage who took the precaution to designate them as sacred foundations "*Habous*" for the benefit of the community. In other cases, where they are of more recent origin, they are the private property of their promoters. Water distribution is on a volume basis. The flow of each canal is measured by the diameter of the conduit leading to the distribution sluice. In most cases, the pipes (*jabya*) are counted, but in other cases the capacity of the basin is calculated by a water depth measuring stick (*derja*) which the water guardian places in the basin to measure the quantity of water to be drawn off for each of the persons entitled thereto. Occasionally a sort of scale or ladder with cross-bars is used as a rule for a fixed unit of measurement. Water distribution however, may also be on a time basis, and water turns are normally measured by the day, that is, the flow of the spring during one day together with the amount accumulated in the collecting tanks during the night. Water turns may also be rotated every half-day (*nus nahar*), every six hours or even every hour.

In summer the water rotation is halved in order to increase the frequency of irrigation. Water turns vary continually. Actually it is determined by the respective rights of the landowners which, in turn, depend upon the size of the area the owner has brought under active cultivation. When the owner does not personally till his fields, the sharecropping contract used for the gardens irrigated by the springs, is based on a quarter share. The *foggaras* (1) distribution has also been used in the past. Well water is employed by either using the balance system (*khetara*) or by using draft animals when the wells are deeper than 3 metres. The leather bucket lifting system (*dalu*) is also used. Special contracts are made between the owners of the gardens and the sharecropping irrigators (*jebbed*).

Until the French administration, harvests were divided into four parts: one part remunerated the sharecropper for his work, the second paid for the use of the *dalu*, the third and fourth paid for the seed and the donkey respectively. Since the *jebbed* usually contributed only his work, the owner kept three-quarters of the harvest. At present, the *jebbed* receives at least one third and sometimes one half of the harvest.

At brak, the two large springs there, belong to the community, and the person in charge of distribution allocates the cultivator's shares with more regard to the social position of the individual than to the land area cultivated by them.

(1) Foggara is an underground canal.

MADAGASCAR

Ethnic Group	Social structure and habits (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Unidentified	-family extended -clan -tribe -villages concentrated	-kingdoms -rain making power	no data	-pastoralism -agriculture -fishing	auto-subsistence	irrigation	-seasonal -limited	no data	-control by sovereign, family, village and clan -rights of selling, buying -irrigation infrastructure

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other issues not involving conservation of water (15)	Other issues involving conservation of water (16)	Protection of water quality (17)	Conflict resolution (18)
Unidentified	-conflicts, important -fishing, control by community, by sovereign -private appropriation -rights on fishing grounds by community and by sovereign -regulations on building dams, stockades	France	-African traditional -Islamic influence	-control by sovereign -granting of land by head of village	-control by community -water, free of charge -duty to maintain -specific organization dealing with water	-control by community and sovereign -private appropriation -free of charge	-control by community and sovereign -duty to community -digging, maintenance -authorization needed for watering -protection of rights of way to water sources -specific organization dealing with water and with waterworks	rules protecting waterworks	-village -lineage

General

Author: R. Balard
Title: La servitude "aques duondas" en droit malgache écrit et coutumier dans son application à l'hydraulique agricole
In: Etudes de droit africain et de droit malgache
Publisher: Editions Cujas, Paris
Year: 1965

Text

(p. 171 à 175) ... la grande Ile voit se poser le problème de l'hydraulique agricole comme indispensable pour assurer la nourriture de la majeure partie de sa population. Par un véritable "contrat social" qui a réalisé l'accord des rivaux avec leurs sujets et des sujets entre eux, digues et canaux ont été construits, et leur réalisation s'est accompagnée de dispositions juridiques au double point de vue du droit public et du droit privé, en ce que l'irrigation ...

Ceux-ci en effet - et notamment Andrianampoinimerina - ont compris que la culture du riz, aliment de base des Malgaches, était indissolublement liée à l'hydraulique agricole, dont le fondement juridique, la servitude d'écoulement, a été analysé et réglementé dans les discours (Kabary) royaux et les codes, tandis que s'élaborait à côté de ce droit écrit un droit coutumier des campagnes, reflet de la vie quotidienne des riziculteurs de différentes ethnies de la grande Ile ...

L'hydraulique agricole, dans l'ensemble de Madagascar et en particulier sur les Hauts-Plateaux, zone la plus peuplée de l'Ile, se présente comme une technique indispensable à la culture du riz : soit en effet que l'on cultive celui-ci en saison des pluies, quand s'ouvre la fleur de l'arbuste "ambiaty" - c'est le "vary aloha" -, il convient, dans le premier cas, d'assurer la régularité de l'adduction d'eau, et dans le second, d'amener celle-ci dans les rizières et de la maintenir en quantité suffisante. De plus, l'irrigation est absolument nécessaire aux riz de qualité ...

par exemple à Madagascar le défrichement d'un terrain fait l'objet d'une demande aux ancêtres (R. Balard "Ali-dango et tody simbon-trano chez les Betsimisaraka de Tamatave" in La grande Ile militaire de 19057), la création d'un canal d'irrigation est souvent précédée d'une invocation à la divinité, et l'eau des pluies ou des fleuves est appelé en dialecte bara "ranon-Nanahary", "eau de Dieu" pour signifier qu'elle appartient également à tous, qu'elle est res nullius ...

Il sera ainsi possible de régler au mieux les nombreuses contestations d'eaux ou "ady-rano" qui sont le lot quotidien de certains Présidents de auxquels de Droit local - pour reprendre leur ancienne appellation.

p. 179 - Considérons ensuite que par sa géographie l'Imerina est le pays type de riziculture, sans doute introduite par l'envahisseur malais, avec irrigation qui est "caractéristique de l'Asie du sud-est" ...

p. 181 - ... jusqu'en 1787 où Ramboasalama, non sans difficultés, remplace sur le trône son oncle le cruel Andrianjafy et devient roi sous le nom d'Andrianamponimerina.

Avec Andrianamponimerina s'ouvre une période exceptionnelle pour notre sujet, dans le domaine de l'hydraulique comme dans beaucoup d'autres, le grand souverain merina s'efforcera de mener à bien une oeuvre remarquable dont il a compris l'extrême importance ...

p. 182 - Mais le but politique et social, en même temps qu'économique, que se proposait Andrianampoinimerina, a été particulièrement mis en relief dans ses discours (sahary) à la population, actes importants puisque seule façon pour le roi de s'adresser à son peuple ...

Le premier objectif des digues était donc - pensée politique d'organisation - d'établir entre les cantons de l'Imerina des limites fixes et immuables qui mettent fin à l'anarchie dans laquelle l'Imerina s'était trop longtemps complu ... nous construisons des digues, Merina, pour pouvoir nourrir nos femmes et enfants ...

p. 183 à 217 - Mais il ne suffit pas de construire digues et canaux, encore faut-il régler la distribution de l'eau selon un principe qui est le fondement même de toute la législation de l'hydraulique agricole: celui du libre écoulement en vue d'une juste répartition selon les besoins, qui est pleinement mis en lumière par l'extrait suivant des discours d'Andrianampoinimerina:

...

Tel est programme que s'est fixé Andrianampoinimerina; le peuple, à l'appel de son souverain mis à l'oeuvre; par la "corvée" (fanompoana, de le racin tompo, maître), quatre grandes digues sont édifiées qui constituent l'ossature du réseau d'hydraulique agricole de l'Imerina. Elles existent encore de nos jours et ont gardé leur nom de "lava tohezana" ou "longues côtes", car elles protègent le pays contre les inondations comme les côtes gardent les rizières: ce sont les digues "Mamba", "Anosiarivo", "Andranomasina", "Vahilava" ...

Intérêt juridique: apparaît nettement formulé dans la pensée d'Andrianampoinimerina le principe du libre écoulement de l'eau, en vertu de l'idée que l'eau des précipitations comme celle de fleuves est "res nullius" et doit de ce fait être l'objet d'une juste répartition selon les impératifs de la riziculture. Cette notion prend sa pleine valeur si on l'oppose à celle de la propriété du sol pour laquelle les souverains merina se sont toujours attribués un domaine éminent "Ahy ny tany sy ny fanjakana" (la terre et le règne m'appartient).

De ce principe découle toute la législation de l'hydraulique qui sera étudiée plus loin.

Intérêt économique: toute cette législation a pour objet la riziculture qui, nous l'avons vu, assurait l'alimentation de base des Malgaches pour qui la disette ("mosary", mot déjà employé par Andrianamasinavalona cf. supra, était à cette époque un spectre redoutable en pays de circuit absolument fermé ...

Intérêt sociologique: Les préoccupations d'Andrianampoinimerina trahissent un souci particulier de la nourriture de son peuple, ainsi que de répartition des tâches qui lui fait exempter les malades des corvées (cf. supra, p. précédente) selon un principe d'égalité louable entre riches et pauvres: indices d'une société passablement évoluée.

Intérêt pratique: Outre que le système édifié par les souverains merina est appliqué, actuellement encore, dans ses grandes lignes, il est frappant de voir le fait historique de la construction de ces digues, une pensée politique de division de l'Imerina récemment unifié qui, par une délimitation précise, empêche les luttes intérieures ...

Chapitre II: Dispositions du droit écrit

Le problème se pose alors de savoir dans quelles conditions ces conceptions se sont transmises et fixées en des textes ...

Deux étapes marquent distinctement cette fixation écrite d'un Droit auparavant purement oral: celle des discours d'Andrianampoinimerina et celle de Codes de ses successeurs, qui seront étudiées dans les deux sections suivantes.

Le discours de Andrianampoinimerina

Que ces discours ont été gardés dans une forme parfaite par la tradition orale "Iovaniatrina" (héritage de l'oreille) pendant une période relativement courte- qui n'a certainement pas excédé une génération- avant d'être imprimés dans le premier Code malgache, celui de Ranavalona I, en 1828, soit dix-huit ans après la mort de leur auteur; leur conservation peut ...

Ceci posé, l'étude des discours d'Andrianampoinimerina fait apparaître quatre grande principes qui seront les fondements de la législation de l'hydraulique agricole: justice dans la répartition de l'eau, procédure des contestations d'eaux (Ady rano), corvées pour l'entretien des ouvrages (Fanompoana), entraide en tout ce qui concerne l'utilisation des eaux (Fifanampinana). Chaque de ces notion sera étudiée séparément avec textes à l'appui ...

Justice dans la répartition de l'eau

En effet, il est logique de penser que tout obstacle au libre écoulement de l'eau ou à sa juste répartition donne naissance à un procès ...

Procédure des contestations d'eau

En cas de contestation d'eau, si l'un met obstacle à l'écoulement de l'eau, pour qu'elle n'aille pas chez les autres et reste chez lui seul, il sera puni d'une amende de trois boeufs et trois piastres car il n'a pas partagé l'eau ...

Corvées pour l'entretien des ouvrages

L'entretien des digues fut compté au nombre des corvées ou "fanompoana" dont nous avons signalé la racine "lampo"; "maître" : Julien (op. cit., I, p. 191 sq.) consacre un chapitre à la corvée, dans lequel il insiste sur sa gratuité et son caractère d'hommage du au souverain; le "Tantaran Andriana" s'exprime ainsi ...

Entraide pour l'utilisation de l'eau

Cette notion d'entraide revêt un caractère d'extrême importance pour notre matière ; sur le plan matériel, elle seule permet la réunion d'une main-d'oeuvre nombreuse indispensable à l'ampleur des travaux, tandis que sur le plan psychologique elle est profondément ancrée, de nos jours, encore, dans la mentalité malgache- ...

Si d'autre part les sanctions dont Andrianampoinimerina frappe la négligence - la confiscation - peuvent paraître sévères, on peut trouver à cette rigueur un fondement logique en songeant d'une part à l'indispensable protection des ouvrages d'hydraulique dont la destruction était une catastrophe, d'autre part, au danger qu'offrent les fleuves emprisonnés entre deux murailles de digues ...

Les codes des successeurs d'Andrianampoinimerina

Les successeurs d'Andrianampoinimerina se sont en effet contentés de fixer par écrit, sous l'influence européenne, la législation préexistante; ...

L'année suivante, sous le règne de Rasoerina, le Code des 63 articles est annoncé à la population par une proclamation sur la place d'Andahalo: l'article comporte la seule disposition suivante "Le peuple toute entier est astreint aux travaux de répartition des digues" ...

Dans le second Code de Ranavalona II, dit des 305 articles et promulgué le 29 mars 1891 ...

Mais ce Code comporte un article 263 particulièrement intéressant que nous croyons devoir donner dans sa version bilingue : Les lois et coutumes anciennes, et jusqu'à ce jour observées, alors même qu'elles ne figureraient pas parmi le présent Code, restent en vigueur et doivent être appliquées à l'égal réunies dans le présent Code ...

Chapitre III - Dispositions du droit coutumier

En ce qui concerne notre matière, c'est encore aux "Institutions politiques et sociales" de Julien qu'il faut nous reporter. Le problème de la récollection de la coutume malgache s'est posé à lui pour la première fois dès son arrivée à Madagascar avec les services du Résident général Le myre de Vilers en 1886; voici il l'a résolu:

"Cette dernière et importante contribution est due à la sciences d'hommes tels que (souvent plusieurs noms), tous lettrés distingués, parlant une ou plusieurs langues européennes et connaissant admirablement la leur, ayant pour toutes les questions qui nous intéressaient une autorité indiscutable et possédant une culture agricole qui ne se retrouvera peut-être parmi les indigènes des générations nouvelles. Ces messieurs, auprès de qui nous avons contracté une grosse dette de reconnaissance, voulurent bien, pour tre agréables, se réunir pendant près de deux ans et discuter ensemble, avant d'en rédiger le texte, les articles, au nombre de près de 600, composant le Droit coutumier" ... (Julien, "Institutions politiques et sociales de Madagascar", II, p. 258) ...

Mitoyenneté et servitudes

Les servitudes d'écoulement et de passage sont ici étroitement liées: de même en effet que les grandes digues, "Tefiloa", servaient de limites aux cantons de l'Imerina, les digues plus petites, "valam-parihy", ou plus généralement toute clôture, "fefy", sont l'indice d'un droit de propriété et son à ce titre sous la rubrique "Ny marika masaya misy antony", ou "indices révélateurs d'un droit ayant la valeur d'un avertissement", selon la traduction même de Julien.

Ces petites digues, "valam-parihy", sont, en même temps qu'une preuve du droit de propriété qui nous montrent à Madagascar l'existence d'une propriété privée - souvent, il est vrai, à l'intérieur de la propriété collective de la grande famille ou de l'état - l'objet de servitudes tant pour l'irrigation que pour le passage ...

Les fonds inférieurs sont assujettis envers ceux qui sont plus élevés à recevoir les eaux qui en découlent sans pouvoir s'y opposer ni en détourner le cours naturel vers d'autres fond. Néanmoins, tout propriétaire peut, sur ses fonds, procéder aux travaux qu'il juge pour faciliter cet écoulement à condition que la régime n'en soit pas affecté pour ses voisins des fonds inférieurs".

Sources

Il s'agit essentiellement des sources situées sur une propriété privée, car les autres sources, soit qu'elles soient comprises dans un terrain non immatriculé et, de ce fait, appartenant à l'Etat français qui s'était substitué à la Couronne malgache après 1896, et avait instauré un cadastre sur le principe du système Torrens, soit qu'elles donnent naissance à un cours d'eau, font partie du domaine public aux termes d'un décret du 28 septembre 1928 (art. 4, al. 9): c'est la solution ...

- La source a été utilisée de temps immémorial; le bornage ou le clôturage ne metant pas fin à la jouissance de ceux qui venaient y puiser leur eau, et celle-ci constitue une servitude imprescriptible à l'égard du propriétaire du fonds;

- La source au contraire a été captée et aménagée par le propriétaire du fonds; il en a la jouissance, sauf s'il avait fait appel pour travaux à l'aide du "fihon'olona" ou "communauté de

village". Gamon voit l'origine de cette disposition dans "un des derniers vestiges de la propriété collective qui fut longtemps la seule existant en pays malgache" ...

Irrigation

Nul ne peut pratiquer une prise d'eau au travers d'une digue sans y avoir été préalablement autorisé par l'Administration. En conséquence, les fokon'olona d'une même circonscription rurale ou ceux des villes disposent tous de prises d'eau "laboaka", munies de vannes que l'on peut ouvrir ou fermer à volonté; on les soulève au moment du "fanetsana" ou repiquage, pour les refermer dès que les jeunes plants ont partout été mis en place.

Le rôle confié aux collectivités locales est ici notable; il faut y voir une conséquence de l'idée que l'irrigation commande la riziculture de tous les habitants d'un village; un dicton d'ailleurs s'exprime ainsi au sujet des digues:

"Raharahan'ny fefiloha", tout ce qui concerne les digues est l'affaire du peuple".

C'est ouvrir là cependant de trop larges possibilités aux particularismes locaux, encore vivaces à Madagascar, et l'on peut craindre des contestations d'eau entre "fokon'olona"; aussi l'article 569 prévoit-il qu'une collectivité peut faire des représentations à une autre et se plaindre à l'administration en matière de prise d'eau. L'article suivant rend chaque collectivité responsable de l'entretien de ses prises d'eau ...

• Les eaux pluviales appartiennent au propriétaire du sol ...

• La servitude d'aqueduc, d'après Gamon, n'existerait pas en Droit malgache, l'autorisation du ou des propriétaires intermédiaires étant toujours exigée; il y aurait là contradiction flagrante entre le droit romain ...

"Lorsque, pour irriguer une propriété, il est nécessaire d'élever un barrage, le propriétaire qui n'est riverain que d'un seul côté, a le droit d'appuyer un barrage sur le fonds du propriétaire de la rive opposée et cela sans indemnité".

• L'écoulement des eaux nuisibles, en cas de drainage par exemple, se différencie du libre et normal écoulement des eaux d'irrigation, aussi "toute opération de drainage faite par un particulier sur un fonds nécessite l'autorisation préalable du ou des propriétaires voisins, si le canal de détachement doit passer sur les fonds; une indemnité semble devoir leur être accordée" ...

Deuxième partie: La servitude d'écoulement en droit coutumier des provinces

Une étude complète de la servitude d'écoulement en droit malgache ne pouvait être limitée au droit imerinien, ...

Ensuite, de considérer que Madagascar ne se limite qu'aux hauts-plateaux, ...

Ces deux considérations devaient nous amener à l'étude de Droit coutumier des Provinces dites "côtières" de Madagascar pour le comparer ...

Chapitre Premier: Les Pays Méridionaux

... Nous entendons par pays ceux dans lesquels, à la suite d'une conquête plus ou moins poussée, l'hégémonie merina s'est fait sentir de façon sensible jusqu'à nos jours ...

A) Le pays sihanaka

... c'est donc un pays de riziculture intense et nous intéressant de ce fait au premier chef. Les habitants, nommés "Sihanaka" ou "Ansihanaka" (avec un localif ant-, comme Tananarive pour Antananarivo, son vrai nom malgache) ou "ceux des marais", formaient une tribu cohérente et forte qui tirait sa grande richesse de l'élevage et des rizières ...

Les conséquences de cet établissement merina en pays sihanaka, sur le plan qui nous concerne, seront donc une très forte influence du Droit merina, tant écrit que coutumier, sur la conception Sihanaka de la servitude d'écoulement; ...

Il résulte d'une enquête que nous avons effectuée en pays sihanaka qu'il est pratiquement impossible de trouver dans notre matière des dispositions originales d'inspiration proprement locale ...

Toute la réglementation des prises d'eau et jusqu'au nom de celle-ci, "taboaka", sont empruntées aux Merina.

La procédure des contestations d'eau est identique ...

La législation des sources est également identique en pays merina et sihanaka ...

Par contre les digues sont l'objet de soins attentifs dans le cadre d'une "corvée" non plus royale, mais simplement d'intérêt général, les Sihanaka n'ayant pas connu de royauté centralisée comme en Imerina, mais plutôt des principautés.

La question des eaux nuisibles est très importante dans ce pays de drainage; le lac est un déversoir naturel pour les eaux nuisibles, mais les canaux qui les y conduisent sont communs ou doivent payer une juste indemnité aux fonds qu'ils sont amenés à traverser et dont les propriétaires ne peuvent refuser le passage ...

B) Le pays betsileo

Jourtant l'Imerina au sud, le pays betsileo n'en est que la continuation surtout au point de vue physique: ...

Les Betsileo sont avec les Tsimihety les meilleurs hydrauliciens de l'île et dépassent dans cet ordre les Merina eux-mêmes. Un certain élevage est développé surtout dans l'ouest du Betsileo ...

Nous allons donc nous trouver en présence d'un droit de l'hydraulique extrêmement vivant, se ressentant de l'influence merina, mais bien moins que les conceptions sihanaka étudiées ci-dessus ...

Sur le plan des principes, il y a accord des droits merina et betsileo: l'eau des pluies et celles des fleuves sont considérées comme res nullius ...

En ce qui concerne les sources, même identité de principe qui laisse ...

Les étangs suivent une règle identique; trait notable du Betsileo: on peut toujours faire boire de jeunes veaux dans un étang, sollicitude envers des animaux exposés à la sécheresse pendant une certaine saison. Si un étang vient à être empoisonné, les fruits de la pisciculture appartiennent à l'auteur de l'empoisonnement ...

La servitude d'appui ne semble pas exister, l'accord du propriétaire du fonds intéressé étant toujours exigé, mais facile à obtenir dans le cadre de ces accords particuliers que nous

avons signalées comme typiquement betsileo. Pour l'écoulement des eaux nuisibles, il y a conformité entre les législations betsileo et merina, sans doute au crédit de l'influence de cette dernière ...

C) Le pays betsimeisarakas

On y vit surtout de pêche dans la zone lagunaire, de riziculture, dans les parties haute et intermédiaire, surtout par brulis ou "lavy", encore que des rizières soient aménagées chaque fois que possible. L'élevage y est réduit et la seule richesse en est les produits d'exportation naturels ou miniers (café, épices, fruits, graphite) ...

De ce fait, joint au peu d'importance relatif de la riziculture irriguée en ce pays de brulis, surtout avant la conquête française, l'influence merina sur la législation de l'hydraulique sera moindre encore que dans les pays sihanaka et betsileo récemment étudiés ...

L'abondance des pluies propre à ce climat fait que l'irrigation n'a pas ce caractère impératif qu'elle revêt dans les autres régions. Ensuite, l'influence du Droit merina, comme nous l'avons dit, s'y fait moins sentir malgré l'occupation du pays qui reste assez superficielle.

Sur le plan des principes, identité totale des conceptions merina et betsimeisarakas ...

Les sources font rarement l'objet d'appropriation privée, en raison sans doute de cette abondance de pluie; elles appartiennent plus souvent au "fokon'olona" surtout, comme nous l'avons vu en tournée, si elles desservent des villages établis sur une lagune saumâtre.

En ce qui concerne les canaux d'irrigation, appelés plus volontiers "loha-drano" ou "pirogue d'eau", car ils sont creusés dans le sol comme une pirogue dans un tronc d'arbre, ils peuvent toujours être aménagés, mais avec l'accord des propriétaires des fonds où ils ont appelés à passer.

Le principe du libre écoulement des eaux vers les fonds inférieurs également reconnu; ...

Les barrages "loha-drano" sont licites; ils sont rarement individuels, mais se conçoivent plutôt dans le cadre de la grande famille "fanakaviana", plus vivace chez les betsimeisarakas que le "fokon'olona": ce sont d'ailleurs les chefs de ces familles, "mpiloha", (d'une racine loha: tête) qui répartissent les travaux, et à leur échelon se règlent la plupart des contestations d'eau ...

Chapitre II: Le Pays Tsimihety

Tout d'abord, le pays tsimihety est une contrée de grande riziculture et le paysan tsimihety - c'est connu dans tout Madagascar - est, avec le merina et le betsileo, un hydraulicien de mérite qui ouvrirait ainsi à notre matière un large champ d'étude.

Ensuite, les Tsimihety constituent un groupe démographique en forte expansion; leur origine est assez obscure, mais ils tendent à déborder leur contrée pour s'établir et véritablement coloniser les pays voisins. Assez particularistes sur certains points de leurs coutumes, ils vivent néanmoins en bonne intelligence avec les tribus sur le sol desquelles ils immigrent; ils contractent avec elles des unions nombreuses (mariage, fraternité de sang, parenté à plaisanterie) qui les fixent sur place sans ...

La servitude d'écoulement d'après la coutume tsimihety d'Andapa

Sur le plan principes, la coutume tsimihety d'Andapa suit la grande idée malgache de l'origine supra-terrestre de l'eau des fleuves et de celle des précipitations; celle-ci est bien res nullius, donc res communis, et sa répartition - qui, en raison de son abondance, ne pose pas de problème particulier - ne connaît que les limites du travail de chacun. En pays tsimihety en

général, et en particulier à Andapa, où les terres étaient libres, on a un phénomène d'appropriation des fonds et des canaux qui ont été aussitôt creusés pour les irriguer ou les drainer. Selon la législation domaniale française et la loi d'annexion de 1896, la plaine d'Andapa étant inculte (terres lava volo, "aux longs cheveux") a été immatriculée au nom de l'Etat qui a pu ensuite la morceler entre ceux qui l'avaient mise en valeur, des titres que nous avons eus à examiner portaient mention de canaux d'irrigation.

Le principe d'une juste et égale répartition de l'eau ne fait aucun doute bien qu'il soit rarement mentionné : "samby manana ny azy", "que chacun ait sa part".

Author: H. Deschamps, S. Vianès
Titre: Les Malgaches du Sud-Est
Publisher: ORSTOM - LAL - P.U.F., Paris
Year: 1969

Text

p. 11 - Vie matérielle: La vie matérielle des peuples du Sud-Est est celle de tous les Malgaches de la côte Est, région humide et chaude, relativement encore riche en arbres. Le végétal y a un rôle de premier plan.

Parmi les techniques alimentaires de simple exploitation, la pêche a la plus grande importance: pêche dans les rizières et les petits cours d'eau par les femmes à l'aide de paniers, pêche dans les rivières par nasses, barrages, ou à la ligne par les hommes; pêche en mer en pirogue monoxyle sans balancier (de plus en plus rare). La chasse au sanglier est faite au piège ou à la meute; les oiseaux sont pris au piège; c'est une ressource très secondaire. La cueillette des baies ou tubercules sauvages sert d'appoint pendant la période de soudure.

Les cultures sèches principales sont le manioc, la patate, le taro, le bananier. Elles sont pratiquées...

Le riz est la culture principale des basses vallées alluviales, mais dans l'intérieur les petits cours d'eau sont aménagés en terrasses. On pratique le repiquage et le piétinage par les boeufs. Il s'agit là du vari hosi (riz piétiné) qui est le plus important et se récolte au commencement de la saison des pluies. Un autre riz (vatomandri), semé dans les marais, est récolté en saison fraîche. Le riz de culture sèche (vari tombaki) est fait sur les brulis et récolté en saison des pluies. La période de soudure, difficile, se situe en octobre et début novembre avant la récolte du vari hosi.

L'élevage des boeufs est pratiqué partout ...

Author: F. Arboussat
Titre: Le Fokon'Olona à Madagascar
Publisher: Editions Domat Montchrestien
Year: 1960

Text

p. 29 - Dans un pays où le cadastre n'existait pas, le fokon'olona était le gardien des propriétés, de leurs limites, des transactions qui s'effectuaient à leurs sujets ...

p. 30 - ... pour juger de l'entrée d'un nouveau membre au sein de la communauté ou du rejet d'un ancien membre, l'affaire devait être portée devant le vadin-tany local.

Par ailleurs, le fokon'olona faisait procéder aux réparations nécessaires aux bâtiments communs, à l'entretien des chemins communaux, des rues du village, au déblaiement des ruines, débris, débris apportés par les eaux.

Lorsque des personnes s'installaient sur le territoire du fokon-lany, le fokon'olona devait leur indiquer un lot disponible parmi les terres vacantes ...

note (74) : Le fokon'olona devait empêcher que les terres du fokon-lany, quelle que soit leur nature, qu'elles soient sanatany (terre partagée) soit pangadin dray aman dreny (terre défrichée par le coup des bûches des pères et mères), tanindrazana (terre des ancêtres), hetsy, ne soient vendues ni données à des personnes étrangères au fokon'olona.

Dans l'ancien droit, cette défense était absolue ...

p. 33 - Si, comme nous l'avons vu, les terres à riz étaient partagées en propriétés individuelles, juridiques plutôt en possessions individuelles, d'autres laissées collectivement à la disposition du fokon'olona, (en particulier les forêts) ...

p. 34 - C'étaient aussi les terrains de pacage, les étangs et les marais où chacun a le droit de pêche, les terrains incultes où la cueillette des fruits sauvages était permise.

MALAWI

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Chavira, Ngani, Tao, Tumbuka, Tonga, Ngwaka, Nyakyusa Kang'unda, Lomwa	no data	-chieftains -radio making power	-savannah -forest -river, lake	-agriculture -fishing	auto- subsistence	no data	no data	no data	no data

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal systems (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Tamara, Ngool, Ima, Tumbulu, Panga, Nganda, Tarkya, Sang'anga, <i>nomads</i>	no data	United Kingdom	-African traditional -Islamic influence	-control by community and by -sovereign -granting of land by head of family and village	-control by sovereign -water, free of charge	control by sovereign	-private appropriation -authorization needed for digging well, basin on communal land	no data	-village -chieftain

Ethnic group:	CHEWA, NGONI, YAO, TUMBUKA, TONGA, NGONDE, NYARYUSA, MANG'ANJA, LOMWE
Author:	J.O. Ihik
Title:	Restatement of African Law, Malawi. The law of Land, Succession, Movable Property, Agreements and Civil Wrongs
Publisher:	Sweet and Maxwell, London
Year:	1971

Text

Note: The following text for Chewa, Ngoni and Yao of the Kasungu ... applies to all listed ethnic groups.

Chapter two. - Definitions

(a) **DZIKO** means an area of the earth's surface (including the soil, subsoil, mountains, lakes, riverbed), and all things growing or found thereon, in the occupation of a homogeneous ethnic group under a paramount ruler.

(b) **MALO** means an aggregate of apportioned earth's surface (excluding the subsoil, rivers, ponds, etc., and also excluding game and ordinary vegetation thereon) in the exclusive occupation or use of:

- (i) a single individual; or
- (ii) the individual members of one family (simple or extended).

Categories of land

- (a) Land subject to common use ...
- (b) Land subject to the exclusive use of an individual ...
- (c) Reserve land ...

Interests in land (dziko)

The various interests which can subsist in land may be classified as:

- (a) Right of indefinite occupation and utilization ...
- (b) Temporary right of occupation or use ...
- (c) Common rights. These are rights to the use of land (apportioned or reserve which are vested in the villagers, severally, by virtue of their membership of the village community. These rights, though incapable of assignment, can be exercised by a non-member of the village community, provided that the consent (express, implied or tacit) of the village headman or Chief in charge of the area where the land is situated has been obtained. They are exercisable unless:
 - (i) they have been expressly prohibited by the village headman or Chief of the area acting in his administrative capacity; or
 - (ii) they are prohibited under the general law of the land; or
 - (iii) they are inconsistent with the actual lawful use of apportioned land.

Any unlawful damage caused by, or resulting from, the exercise of a common right by anyone is a cause of action against the culprit ...

Moreover, except for rights of common, such as the right to walk across unfenced land and grazing right, a person wishing to exercise a common right over apportioned land should first obtain the permission of the occupier thereof. This sort of permission is not to be unreasonably withheld; and where a dispute arises, the village headman is entitled to adjudicate between the disputants.

The chief examples of common rights are:

- (i) right of way ...
- (vii) right to take water from streams, ponds and village wells²² ...
- (d) Easements ...
- (e) Licence ...

Interest holders - ... The persons entitled to hold an interest in land include:

- (a) The chief or village headman.
- (b) A member of a village community by birth or assimilation.
- (c) A stranger (mlendo), provided that the necessary consent relevant to the interest in question has been obtained.

Land-controlling Authorities

The Chief (mfumu ya mudei)

The supreme land-controlling authority over all land situated in the village and the holders of interests therein is vested in, and exercisable by, the chief, with or without the consent or advice of his councillors (induna). The Chief may delegate this authority or power, with or without any special conditions, to the village headman having authority in the village where such land is situated.

Notwithstanding any such delegation of power, the Chief may, by the exercise of the land-controlling authority vested in him, but subject to the proviso below, do any of the following:

- (i) allocate, or withhold the allocation of, any part of unoccupied land to any person (whether a villager or not) who makes a request to him for land;
- (ii) order the forfeiture of any land previously allocated;
- (iii) authorize the use of a demarcated part of unoccupied land for any purpose beneficial to the community at large, other than for exclusive private occupation and use by individual members thereof;
- (iv) settle any land dispute;
- (v) impose any reasonable restrictions on the exercise or enjoyment of any right or interest in land if the best interests of the village community so demand;
- (vi) accept the surrender of any land previously allocated by him;
- (vii) appropriate any part of unoccupied land for his exclusive personal use.

No land previously allocated, or in actual use or occupation, is capable of re-allocation, unless such land has been either forfeited or surrendered to the Chief.

²² Wells sunk by an occupier of land are not necessarily the subject of common rights.

The village headman (mwini mudzi).

- (a) **Powers.** - The powers exercisable by a village headman over all land situated in his village of:
- (i) any special powers, e.g. of allocation, expressly conferred upon him by the Chief;
 - (ii) the power of day-to-day administration and supervision unless expressly excluded by the Chief ...

This entitles the village headman to:

- (a) investigate and report to the Chief any alleged serious breach of customary land law (including rules and regulations promulgated by order of the Chief);
- (b) settle any minor land disputes, provided that right of appeal shall lie to the Chief;
- (c) enforce any lawful order or direction by the Chief; and
- (d) make and enforce such subsidiary rules and regulations as will best ensure the observance of the customary land law, provided that a person aggrieved by the enforcement of such rules and regulations may appeal to the Chief.

The head of the extended family

- (a) **Powers.** - Anyone who is the head of an extended family may exercise the powers set out below over land occupied by the members of that family provided that such land has been acquired (directly or indirectly) from or through the head of the family. In exercising these powers, the family elders must be consulted but the head of the family is not bound by their advice.

These powers are:

- (i) to allocate unoccupied land to anyone (including himself/herself);
 - (ii) to give or withhold consent to anyone wishing to grant any right to be use or occupation of land to a stranger;
 - (iii) to settle internal land disputes;
 - (iv) to recover land from an unauthorized user or occupier thereof; and
 - (v) to make and enforce such rules and regulations regarding the use of such land as may be considered necessary.
- (b) **Limitations.** - No land can be validly allocated to a stranger, except with the prior permission of the Chief of the area where that land is situated; and no land previously allocated to a member of an extended family is capable of re-allocation by the head of that family except with the consent of that member, or unless that member is unable to make proper use of that land.

The senior maternal uncle (nkhoswe wamkulu includingmbumba) The senior maternal uncle possesses, as regards land occupied by anyone subject to his authority, powers similar to those possessed and exercised by the ancestral head of the extended family ...

A husband residing theoretically (mhamwini)

A husband is not entitled to exercise any power of land control over land obtained by him by virtue of his marriage unless such power has been expressly conferred upon him by the donor of such land ...

Author: Mary Tew
Title: Peoples of the Lake Nyasa Region
Publisher: ESA - IAI- OUP
Year: 1950

Text

In the region between Lake Nyasa and the east coast of Africa, between the Lukuledi river in the north and the Zambezi in the south, there is a congeries of peoples whose culture is very similar over the whole area. They are the Makonde group, the Yao and the Makua-Lomwe peoples. Of these only the Yao has been studied in detail. ... The Yao occupy a central position, from which they may be taken to represent in many ways the culture of the neighbouring people ...

The spirits of the dead Nyanja chiefs, ousted by the Yao invasion, were regarded as still powerful in the homeland of their people. For instance, Kangomba, whose shrine was on Mount Soche, used to be appealed to for rain ...

MALI

Ethnic Group	(1) Social structure and habitat	(2) Political structure	(3) Environment	(4) Predominant modes of production	(5) Economy	(6) Agriculture	(7) Water Resources	(8) Fishing	(9) Irrigation
Bambusa (Bambara)	-village expatriated -age	diffused power	-savannah -river	-agriculture -hunting/gathering	autosubsistence	-rainfed -irrigation, by flooding	-seasonal -limited	-individual -inland, fresh waters	-control by individual and by maître de l'eau
Boso	-family extended -clan	diffused power	river, lake	-agriculture -fishing	-autosubsistence -market	-rainfed -irrigation, by flooding	permanent	-annual -individual -collective -inland, fresh waters	no data
Dogon ²²	-family extended -village concentrated	diffused power	-savannah -mountain, dry -village	-agriculture -fishing	autosubsistence	-rainfed -irrigation, by flooding	-seasonal -limited	-individual -inland, fresh waters	-control by family and village -water rights in operation, always
Kado ²³	-family extended -village expatriated	diffused power	-savannah -mountain, dry -village	-agriculture -fishing	autosubsistence	-rainfed -irrigation, by flooding	-seasonal -limited	-individual -inland, fresh waters	-control by family and village -water rights in operation, always
Marka ²⁴	-village concentrated	diffused power	sand arid	-pastoralism -agriculture	autosubsistence	rainfed	-seasonal -limited	-seasonal -inland, fresh waters	no data
Mooré ²⁵	no data	diffused power	savannah	-pastoralism -agriculture	autosubsistence	rainfed	seasonal	no data	no data

²² Kado (Cercle de Bandiagara).

²³ Dogon (Cercle de Bandiagara).

²⁴ Bambara (Cercle de Niaya).

²⁵ Mooré (Cercle de Niaya).

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Bonghuay ²¹	family extended -villages	-diffused power -chiefdoms	-semi arid -river	-pastoralism -agriculture -fishing	autosubsistence	-rainfed -irrigation	-seasonal -limited	-annual -individual -collective -inland, fresh waters	no data
Boninké	villages, concentrated	chiefdoms	-savannah -villages	-agriculture -fishing -trade	autosubsistence	-rainfed -irrigation by flooding	-seasonal -limited	-seasonal -individual -collective -inland, fresh water	no data
Toucouleur (Cercle de Kayes)	villages, concentrated	diffused power	-savannah -river, lake	agriculture	autosubsistence	rainfed	-seasonal -limited	no data	no data

²¹ Borko, Borkawa (also for Niger and Nigeria).

Ethnic Group	Conflicts/ Ruling rights/ transport	Colonisation	Legal system	Land tenure	Drinking and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Conflict resolution
Bambara (Bamanankan)	-private appropriation -rights on fishing grounds by community, by maître de l'eau	France	-African traditional -Islamic influences	-control by community and chef de la terre -guarding of land by head of village, chef de la terre	-control by community, maître de l'eau -water, free of charge -water milling not possible -selling of water point not possible	-control by community, maître de l'eau -free of charge	-control by community, maître de l'eau -private appropriation -free of charge for local community, foreigners, local and foreign cattle -fee-paying, foreign cattle -authorization needed for digging well, basin on communal land -duty to provide water -authorization needed for watering -precedence rules -protection of rights of way to water sources	-cleaning of water sources -washing dishes away from source -bathing away -prohibition of entering water source -rules protecting waterworks	no data

Ethnic Group	Customs/ Fishing rights/ transport	Colonization	Legal system	Land tenure	Drinking and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Certified resolution
(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
Baka	-conflicts, negotiable -fishing, control by community, by extended family, by nature de l'eau -regulations on collective fishing, on private fishing, on building dams, on stockades, on selling fish, on curing -specific organisation dealing with fishing -transport rights over areas -rules on boats, on passengers, on transported goods -specific organisation dealing with water transport	France	-African traditional -Islamic influence	-control by community -granting of land by head of family	-control by nature de l'eau -water, free of charge	-control by nature de l'eau	-control by community -free of charge for local community and for foreigners -free of charge, local and foreign cattle	-cleaning of water source -prohibition of entering water source -rules protecting waterworks	-nature de l'eau

Ethnic Group	Conflicts/ Fishing rights/ transparency (16)	Colonization (11)	Legal system (13)	Land tenure (12)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (18)	Protection of water quality (17)	Conflict resolution (18)
Dagoba	-rights on fishing grounds by family -regulations on collective fishing on building dams, stockades	France	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge -water selling not possible -selling of water point not possible	-control by community -free of charge	-control by community -free of charge for local community and for foreigners -free of charge, local cattle -duty to provide water -authorization needed for watering -precedence rules	-claiming of water sources -rules protecting waterworks	no data
Kada	-rights on fishing grounds by family -regulations on collective fishing on building dams, stockades	United Kingdom	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge -water selling not possible -selling of water point not possible	-control by community -free of charge	-control by community -free of charge for local community, foreigners and local cattle -duty to provide water -authorization needed for watering -precedence rules	-claiming of water sources -rules protecting waterworks	no data
Marka	no data	France	African traditional -Islamic influence	control by community	no data	no data	no data	no data	no data
Maysa	no data	France	Islamic influence	no data	no data	no data	no data	no data	no data

Etando Group	Conflicts/ fishing rights/ transport (10)	Colonisation (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bonghay	-fishing, control by community -rights on fishing grounds by community, maître de l'eau -regulations on collective fishing, on private fishing, on building dams, on building stockades -transport rights over areas	-United Kingdom -France	-African traditional -of Islamic derivation	-control by family, chef de la terre -granting of land by head of family, chef de la terre	-control by community, maître de l'eau	control by community, maître de l'eau	no data	no data	no data
Sounkés	-fishing, control by community, by maître de l'eau -regulations on collective fishing, on private fishing	France	-African traditional -Islamic influences	control by chef de la terre -granting of land by chef de la terre	no data	no data	no data	no data	village
Poucoleur (Carrés de Kayes)	no data	France	-African traditional -Islamic influences	control by community	no data	no data	no data	no data	no data

Ethnic group: BAMBARA BAMANAN
Author: Alfred Aubert
Title: Coutume Bambara (cercle de Bougouni)
In: Coutumières Juridiques de l'AOF (Afrique Occidentale Française)
Publisher: Larose, Paris
Year: 1892

Text

p. 8 - 1. La coutume est l'héritage des ancêtres. Elle est immuable. Elle règle tous les rapports des individus entre eux et ceux des individus avec la collectivité. Les étrangers et les captifs de guerre lui sont soumis dès qu'ils se trouvent sur le territoire du canton ...

2. Sont réputés connaître la coutume: les hommes dès leur circoncision. Les femmes devenues, nubiles, mais seulement en ce qui a trait aux règles qui leur sont spéciales. Les étrangers qui ont séjourné longtemps dans les pays ...

p. 9 - 3. Le fama est le chef de la collectivité. Il veille à l'application de la coutume. Il rend la justice. Il assure la sécurité publique. Il commande l'armée et décide de la guerre. Il ordonne les travaux d'intérêt commun. Il administre les biens communs ...

p. 14 - 14. Le fama seul exerce le pouvoir judiciaire. Il rend la justice gratuitement, assisté de ses frères ou de notables de son choix en nombre indéterminé et qui ont voix consultative. Un homme de caste ou un esclave remplit l'office d'huissier.

15. Le tribunal se réunit quand le fama le juge opportun.

16. L'audience se tient dans le bilon du fama. Elle est publique ...

17. Toutes les contestations sont soumises aux préliminaires de conciliation devant le chef de village ou de quartier que les notables assistent avec voix consultative.

18. En tout état de cause, le fama a le droit de mettre l'accusé aux fers jusqu'à ce qu'il ait été jugé.

19. Le fama peut appeler devant son tribunal les affaires civiles ou pénales qui lui paraissent intéresser l'ordre public ...

p. 114 - De la Condition des biens. 348. Qu'ils soient mobiliers ou immobiliers, tous les biens susceptibles d'appropriation ont un maître.

Les rochers, les arbres, les terres en apparence incultes ont un propriétaire. En théorie du moins, il n'y a pas de biens sans maîtres ...

350. L'eau des rivières, des fleuves et des mares, les poissons qui y vivent, les oiseaux, les gibier, le (p. 115) miel sauvage, sont la propriété de ceux qui les rendent utilisables, même s'ils les trouvent sur la terre d'autrui.

351. Les biens peuvent être la propriété, soit du canton représenté par le fama, soit du village représenté par le dugu-tigui, soit du tien, bien familial représenté par la fa, soit des individus eux-mêmes.

352. La propriété consiste en un droit réel en vertu duquel une collectivité ou un individu peut user d'un bien, en jouir ou en disposer.

353. Les droits qui peuvent affecter les biens sont ainsi de trois sortes: 1° la propriété; 2° l'usufruit; 3° la servitude.

Chacun de ces droits porte un nom spécial en bambara, suivant son objet. Il n'y a pas de terme général. La nue-propriété d'une terre se dit "dugu-kolo-siguiya": c'est la tradition (sic. - traduction?) littérale de la nue propriété. L'usufruit d'une terre se dit "forô" ou "furu-siguiya", propriété du lougan. La servitude de passage se dit "tisma-furu-sira", le chemin du lougan de milieu (enclavé).

354. Sont susceptibles de droit réel: 1° les femmes; 2° les esclaves; 3° les animaux; 4° les terres; 5° les cours d'eau; 6° les habitations et leurs dépendances; 7° les objets mobiliers.

355. Sont susceptibles d'appropriation: 1° les esclaves; 2° les animaux; 3° les meubles et les objets mobiliers; 4° les habitations et leurs dépendances.

356. Sont seulement susceptibles d'usufruit: 1° les femmes; 2° les terres; 3° les cours d'eau.

357. Sont susceptibles de servitudes: 1° les terres; 2° les cours d'eau ...

p. 116 à 363. L'usufruit s'acquiert sur les terres par première occupation; c'est la *dugu-koto-tiguiya*¹⁶.

Le droit sur les terres ne sont jamais constitutifs de la propriété telle que nous l'entendons, puisque le droit bambara n'admet pas la vente, ni même le louage de la terre. Ce n'est jamais qu'un usufruit, qui peut être cédé temporairement.

p. 117 - Celui qui veut obtenir le droit de cultiver la terre d'autrui doit aller la lui demander, ou même le lui faire demander par un intermédiaire porteur de dix noix de kola et d'un coq noir.

364. Toutes les terres, ainsi que les végétaux et les minéraux qui s'y trouvent, ont un usufruitier ...

365. En cas de cessation d'un usufruit, seul le chef du village peut le transmettre à un nouveau bénéficiaire.

367. Les droits de pêche sur les cours d'eau permanents sont acquis et transmis comme les usufruits sur les terres ...

369. Les servitudes. Les servitudes peuvent être constituées au profit de personnes déterminées ou non, ou au profit d'un autre fonds.

Pratiquement, les indigènes ne connaissent que deux servitudes; celle de passage et celle d'écoulement des eaux ...

p. 118 à 371. L'usufruitier d'un terrain sur lequel sont construites des habitations a droit à l'écoulement des eaux pluviales et autres sur le terrain d'autrui ou sur la voie publique.

¹⁶ Le propriétaire de la terre n'est pas forcément le chef du village. Le premier occupant de la terre est toujours le véritable chef du village. Quand l'agglomération grandit, le pouvoir politique peut passer à d'autres familles, mais le pouvoir foncier reste toujours à la famille du premier occupant. A Bougoudi, par exemple, les propriétaires fonciers sont une famille de Kola.

373. l'usufruitier sur le fonds duquel coule une source ne peut en modifier le cours que sur son fonds, et à la condition qu'elle s'écoule comme antérieurement à la sortie de son fonds et sans modifier la qualité de l'eau.

Les indigènes respectent les sources dont ils croient l'origine un peu mystérieuse, et ne modifient pas leur cours, même pour l'irrigation de leurs lougans. Mais il est arrivé que des individus aient voulu gêner leurs voisins en détournant le cours d'une source et en la faisant traverser des terrains boueux, alors qu'elle coulait primitivement sur des cailloux ...

Des Mines. Les forgerons seuls avaient le droit d'exploiter les mines de fer, sauf à obtenir l'autorisation du propriétaire du fonds et à lui donner en redevance soit des houeas, soit des haches ...

Author: Viviana Paques
Title: Les Bambara
Publisher: IAI- PUF, Paris
Year: 1964

Text

p. 27 - Les jardins potagers sont aménagés autour des cases et sont travaillés suivant une méthode de culture intensive avec fumure de détritux domestiques et irrigations sans jachère ...

On y cultive le gros mil, le maïs, le tabac (mi-sout), etc. Ils sont entourés d'arbres nourriciers.

Les champs les plus fertiles sont au bord des marigots, où la terre est facilement irriguable. Ces petits champs sont généralement exploités par les femmes pour y cultiver le riz, le coton, les oignons, les arbres fruitiers.

Enfin les furuhan, sont de véritables champs de brousse où on pratique la grande culture extensive et cyclique avec défrichage par brulis ...

p. 28 - Dans le champs de brousse, on sème le maïs, puis le fonio et gros mil (sorgho), l'arachide et petit mil (pennisetum), etc ...

p. 29 - Le riz est cultivé sur 80.000 ha dont près de la moitié dans le Delta central (Mopti, Macina, Djenné) qui constitue le véritable grenier à riz du territoire. En dehors du Delta, les régions productrices sont: le bassin supérieur du Niger (Bamako), la zone lacustre et post-lacustre (du lac Débo à Anzongo), la zone préguinéenne (sud de Sikasso et Bougouini) ...

Ce qui caractérise la riziculture indigène, c'est l'absence (p. 30) d'aménagement hydraulique. C'est une riziculture de submersion, donc pleine d'insécurité ...

p. 34 - Les Bambara sont agriculteurs et sédentaires: ils vivent en symbiose avec les Somonos et Bozo qui sont exclusivement des pêcheurs et des navigateurs et d'autres peuples semi-nomades comme les Peuls qui sont pasteurs.

p. 35 - Pourtant les Bambara peuvent se constituer des troupeaux en échangeant leurs graines contre les animaux qu'ils obtiennent des pasteurs peuls, méoues ou touareg ...

Dans la région soudanaïenne, les animaux confiés aux Peuls effectuent de courtes transhumances ...

En zone guinéenne le troupeau du village est confié à un berger paul qui l'emène le matin et le ramène le soir ...

p. 60 - L'organisation sociale. L'organisation sociale traditionnelle bambara est entièrement liée à l'organisation religieuse; le plus elle commande toute l'organisation économique, de sorte que nous ne pouvons étudier celle-ci de façon indépendante ...

p. 63 - Organisation patriarcale de la "fon". Tous les chefs de la famille obéissent à un chef de village; c'est à celui-ci que revient l'organisation de la communauté territoriale et le soin de rendre la justice lorsqu'un différent surgit entre communautés de "faya" différentes. Le chef du village est généralement le maître de la terre: "dugu-colo-tigi" ...

p. 64 - En effet à l'origine le sol appartient aux génies et le chef successeur du fondateur du village est le seul qui puisse établir un contact avec le chef des génies et traiter avec lui. Il est l'administrateur terrestre du génie; il assure son culte, l'exploitation du sol et l'organisation de la communauté territoriale.

Le premier chef de la terre a été le premier occupant; les chefs successifs sont ses héritiers suivant l'ordre successoral. Pour fonder un nouveau village, un chef choisit l'emplacement du territoire non encore occupé, généralement à un nœud de routes, à proximité d'un point d'eau, près d'un baobab, d'un doubaï ou de tout autre arbre sacré. Il offre des sacrifices aux génies et reçoit en échange de ceux-ci l'autorisation de s'installer ...

p. 66 - ... l'organisation d'une communauté de travail ... se fonde essentiellement sur le système de relations des classes d'âge.

Depuis l'enfance, jusqu'à la circoncision pour les garçons, jusqu'à l'excision pour les filles, le jeune Bambara appartient à une société hiérarchisée qui le prépare à cette cérémonie et lui donne une éducation qui complète celle qu'il reçoit dans sa famille ...

Un bambara sera déterminé toute sa vie par son appartenance à une certaine classe d'âge, celle qui groupe tous les enfants ayant subi en même temps la circoncision ...

p. 67 - Le rôle de l'association en dehors de réjouissances saisonnières, des repas copieux, largement arrosés, est celui d'un organisme de secours mutuel et une véritable coopérative de travail du village. Elle est organisée administrée, articulée, en vue du labour agricole ...

p. 68 - Le même procédé est adopté pour le sarclage d'hiver qui demande un travail rapide, pour la construction des barrages, des canaux d'irrigation, des pistes, des routes camionnables, etc ...

• Le Fama. Nous voyons que le canton est un groupement formé sous l'autorité et l'influence d'une famille dominante. Son unité est faite par les lois politiques, sociales et religieuses qui le régissent. Le "fa" chef de la famille dominante, devient le Fama, c'est-à-dire le patriarche, chef de canton ...

"Pouvoir du Fama". Le pouvoir du Fama est fondé sur la coutume et la religion. Il est le représentant sur terre de tous les ancêtres, il est le centre de rayonnement qui dispense la vie à toute la société, il est le verbe de son peuple. Il décide des cultures, du commerce, noue les alliances, déclare les guerres, rend la justice, prélève l'impôt. Il est le gardien de la coutume et le législateur des lois nouvelles, l'organisateur du temps et de l'espace qu'il gouverne ...

Néanmoins, toutes ses décisions sont prises après consultation des notables et de l'assemblée des délégués de chaque village ...

Lorsqu'une loi est votée par toute l'assemblée, chacun prête serment, sur la tombe d'un ancêtre ou sur l'autel du komo, pour lui-même et ses descendants ...

p. 59 - Le Fama commandait tous les travaux d'intérêt commun: la construction et l'entretien des fortifications, le débroussaillage des pistes, l'entretien des sources, la fortification et l'entretien de la mosquée s'il y a lieu, la confection des pirogues banales, l'édification des estrades de repos.

Ces travaux s'exécutaient grâce à des prestations en nature: ils étaient répartis par le Fama entre les villages et par les chefs de villages entre les chefs de famille. Celui qui ne les exécutait pas en personne pouvait les faire exécuter par les gens de sa famille; celui qui se refusait, pouvait être contraint par la force ...

p. 61 - La Ton, communauté de travail. Nous avons vu que l'unité sociale chez les Bambara était la communauté, c'est aussi l'unité de travail et l'unité économique. L'individu indépendant ne se conçoit pas. La communauté possède tous les biens qui composent le patrimoine spirituel et matériel: la terre, les produits agricoles industrielle et commerciaux, les habitations ...

C'est la communauté qui règle l'exploitation du sol. Le "dugutigi" est le premier occupant, maître de la terre dont il distribue les lots aux différents chefs de famille. Lorsqu'un étranger, chef de famille veut entrer dans une communauté, il choisit un champ libre et le demande au chef de village. La demande s'accompagne de 10 noix de cola et d'un poulet. L'autorisation alors ne peut être refusée. Le chef de la terre sacrifie le poulet devant toute la communauté et l'informe de l'installation du nouveau venu. Quand l'étranger veut quitter la terre, on lui rend le poulet et les noix.

La terre attribuée à un chef de famille peut toujours lui être retirée sans justification par le "dugu-tigi" et son conseil. Ainsi le bénéficiaire de la terre ne peut ni la vendre, ni prendre aucune mesure qui intéresserait l'ensemble de la communauté; mais il peut la louer, l'engager, ou (p. 62) la céder, ce qui provoque de multiples contestations au moment de la redistribution des terres dans le cas de cultures cycliques ...

Organisation du travail. L'exploitation du sous-sol est soumise à d'autres règles qui nous sont encore mal connues. Les sous-sol comme le sol appartenait au maître de la terre. Le minerai de fer était uniquement extrait par le forgeron qui versait une redevance au maître de la terre, sous forme de hoes ou de haches. Pour l'exploitation des mines d'or, dès le début de la saison sèche des milliers d'indigènes se rendent en famille sur les places, dont l'emplacement déterminé par les prêtres change tous les ans ...

La corporation la plus puissante est incontestablement celle des forgerons. C'est parmi eux que se recrutent tous les prêtres, les interprètes du Fama, les puisatiers, les fossoyeurs, les bourreaux, les circonciseurs, etc. Ils sont les senanku de toutes les familles et chargés de tous les rites de purification ...

p. 68 - Les Bambara avaient une organisation judiciaire aussi précise et réglée que leur organisation religieuse, bien qu'il n'y eut aucun droit codifié tel quel le Coran ou les tables de loi juives. La justice était rendue suivant des règles que chaque communauté se transmettait de génération en génération. Ces règles ne sont pas d'origine divine, mais elles sont néanmoins sacrées, car la coutume est l'héritage des ancêtres. Le Fama et son conseil des notables pouvaient promulguer de nouvelles loi, mais avant de décider d'une nouvelle règle, on consulte le Komo et le Nyama. Puis sous l'assistance du prêtre, chacun jure sur l'autel d'obéir à la loi qui devient sacrée. D'ailleurs les règles coutumières ne peuvent être dégager de la morale et de la religion auxquelles elles sont liées. Elles ne sont pas uniformes; chaque canton a les siennes, souvent chaque village, et dans chacun d'eux, il y a des habitudes propres à certaines familles ou certaines castes ...

La coutume régit tous les rapports des individus entre eux et ceux des individus avec la collectivité.

Il existait deux sortes de tribunaux indigènes en pays bambara: un tribunal de conciliation, présidé par le chef de village qui réunissait un conseil des notables; un haut tribunal présidé par le Fama, à qui on soumettait les affaires qui n'avaient pu être réglées par le premier tribunal. Par ailleurs le Fama pouvait appeler devant son tribunal les affaires civiles ou pénales qui lui paraissaient intéresser l'ordre public ...

p. 73 - La propriété de la terre pose des problèmes encore plus complexes. Nous avons vu que la terre ne s'achète jamais. Les terres ont un propriétaire éminent qui est l'esprit de la brousse ou un ancêtre mythique, un possesseur qui est le premier occupant ayant conclu un pacte avec le maître du sol, enfin un détenteur qui a reçu la terre en usufruit du possesseur. Le détenteur est un chef de famille et le champ qu'il a reçu appartient à sa communauté qui l'exploite. Mais après de longues années de labour, la détenteur a tendance à se considérer comme le propriétaire de la terre et lorsqu'il se déplace pendant un cycle de rotation de cultures, il arrive que le possesseur de la terre attribue son ancien champ vacant à un nouvel arrivant, ce qui fait naître des contestations interminables entre ancien et nouvel exploitant. Nous avons vu par ailleurs comment certaines parcelles de terrains particulièrement bien placées au bord des fleuves ou près des cases, étaient minutieusement travaillées. Elles tendent à devenir une véritable propriété privée, que les familles se transmettent d'une génération à une autre. A côté des champs familiaux existent des champs réservés à certaines confréries telles que le "n'Domo" ou le "Gna" qu'exploitent les affiliés pour les besoins du culte. Enfin durant deux jours par semaine, chaque communautaire a le droit de cultiver son champ personnel qui échappe au contrôle de la famille. Ces champs prennent de plus en plus d'importance au fur et à mesure que se développe le sens de l'individualisme et avec celui de la propriété individuelle.

Nous voyons donc que les terres peuvent être réparties au bénéfice de groupements familiaux, religieux, interfamiliaux ou à celui des individus. Bien qu'aucune des parties prenantes ne se reconnaisse comme le propriétaire de la terre, elles en usent comme des maîtres et vont jusqu'à la transmettre à leurs héritiers ...

p. 95 - Autres Rites. Les rites de pluie communs à toute l'Afrique sont pratiqués au mois de mai par les sociétaires du Kworé ...

La pêche. A côté des populations spécialisées dans l'art de la pêche, telles que les Boro ou la caste des Somono, tous les Bambara pêchent dans les (p. 96) fleuves ou les marigots voisins de leurs habitations ...

Les Boro construisent des barrages faits de branches d'arbres coupées et enchevêtrées, qui affectent plusieurs formes suivant les régions et des pièges ...

La pêche dans les villages bambara se fait en commun sous la direction d'un chef de pêche, au moment où les eaux baissent. Des règles précises de droits de pêche et de redevances aux maîtres des eaux sont partout respectées ...

p. 98 - Forme d'agglomération. Le village bambara suit du ... règles de développement qui permettent à un étranger de reconnaître immédiatement la disposition des cases ...

p. 100 - Choix de l'emplacement. On choisit souvent la proximité d'un cours d'eau temporaire ou permanent où des puits peuvent être forés. On consulte ensuite un devin ou un marabout qui révèle l'existence d'un génie dont le lieu d'élection est le caillou sacré; si le génie est favorable, l'installation est autorisée et l'arbre sacré devient l'autel de la collectivité. On l'arrosera de sacrifices périodiques ...

p. 102 - Enfin, le puits est creusé soit au milieu de la cour, soit à proximité immédiate de la concession. L'eau est puisée directement à l'aide d'unealebasse fixée à une longue corde ...

Ethnic group: BOZO
Author: Jean Ortoll
Title: Coutume Bozo
in: Coutumiers Juridiques de l'AOF (Afrique Occidentale Française), Soudan.
Publisher: Larose, Paris
Year: 1935

Text

p. 169 - Droits et devoirs du chef de clan. Dans son village, le chef de clan est en même temps chef de village ...

Autrefois, le chef de clan, appelé "dowo tou" ou "djitigui" (maître de l'eau), représentait les gens de son clan auprès du Fama de Ségou, auquel relevaient les Bozo ...

En temps de guerre, il lui fournissait des lapots.
En matière de justice, il jugeait tous les litiges mettant aux prises deux familles de son clan.

Dans deux cas, par contre, le Fama de Ségou, était compétent:

- 1° - lorsque le conflit opposait deux familles de clans différents;
- 2° - lorsqu'il y avait mort d'homme.

p. 180 - Les Biens. On distingue deux catégories de biens:

- 1° - la terre et les cours d'eau sur lesquels ne peut pas s'exercer un droit de propriété;
- 2° - tous les autres biens susceptibles de propriété privée ou collective.

La terre et les cours d'eau. La terre et les cours d'eau ne sont pas susceptibles d'appropriation privée ou collective. Le droit d'en disposer appartient au premier occupant et à ses successeurs. La raison est difficile à donner, les Bozo l'ignorent eux-mêmes.

L'absence du droit de propriété s'explique facilement en ce qui concerne la terre: les cultivateurs riverains (Bambara ou autres) en sont considérés comme les premiers occupants, et les Bozo qui voudraient en utiliser une parcelle devront en demander l'autorisation au maître de la terre (dougou ligui) auquel elle relève.

L'explication est plus difficile en ce qui concerne les cours d'eaux; les Bozo sont les premiers occupants du Niger et ses affluents; en vertu de ce droit, ils en ont l'usufruit (pêche) et l'usage (navigation), mais non la propriété. Cela peut-être, parce que les cours d'eaux étant des divinités ne sont pas susceptible d'appropriation.

Ces cours d'eaux sont partagés en plusieurs fractions, relevant chacune d'un chef de clan déterminé et, sur lesquelles chaque clan a un droit exclusif.

Ce chef est le "dowo tou", ou "dji ligui". C'est à lui que les Bozo et les étrangers demandent l'autorisation de pêcher. Il fixe le jour d'ouverture de la pêche et reçoit, à titre de redevance, un tiers des produits du premier jour. Le droit de proclamer l'ouverture des grandes pêches, qui ont lieu généralement en mai-juin, appartient au chef des Somono.

Il peut seul communiquer avec les divinités des eaux et faire les sacrifices religieux ...

p. 190 - La pêche chez les Bozo et les Somono. La pêche, très importante sur le Niger et ses affluents, est exclusivement exercée par les Bozo et les Somono.

L'étude leur en est commune.

On vient de voir ce qu'est le groupe bozo. Nous dirons quelques mots des Somono qui ne constituent pas une race, mais une caste du groupe Bambara: celle des pêcheurs.

a) Ont-ils des caractères propres?

Leur coutume et leur langue sont celles des Bambara.

Au point de vue ethnique, nous y trouvons, mélangées, de nombreuses races ...

b) Comment a été formée cette caste?

Après avoir soumis les Bozo, les Bambara en firent leur pêcheurs et leurs lapoteurs. Ceux-ci étant en nombre insuffisant, ils l'augmentèrent par des captifs ou des volontaires qui formèrent la caste des Somono ...

Les Bozo sont donc, au point de vue coutumier, les premiers occupants du Niger et de ses affluents, tout (p. 191) au moins, en ce qui concerne le Niger, dans la limite que nous avons précisée.

Cette remarque est importante, puisque de ce droit du premier occupant découlent toutes sortes de prérogatives ...

Le droit de pêche. Ainsi que nous l'avons fait remarquer, ce n'est pas un droit de propriété, les cours d'eau, comme les marigots, la Terre et le Ciel, étant des divinités que l'on ne peut donc posséder. Ce droit comporte tous les attributs du droit de propriété, tel quel nous le concevons, à l'exception de la faculté d'aliéner à titre onéreux ou gratuit. Il appartient aux seuls Bozo, en vertu du droit du premier occupant. Leur ancêtre qui, le premier s'est installé sur le Niger, est entré en relations avec le "Dieu Fleuve" et toutes les autres divinités des eaux (Faro) qui l'ont autorisé à utiliser le cours d'eau pour la pêche ou la navigation.

L'ancêtre est ainsi devenu le "dji-Tigui" ou maître de l'Eau au même titre que, chez les Bambara cultivateurs, le "Dougou Tigui" ou maître de la Terre.

Le "Dji-Tigui" devient logiquement l'intermédiaire obligé entre les membres de sa famille, puis de son village, et les divinités. Cette fonction religieuse se transmet à ses successeurs coutumiers.

p. 192 - Nous avons dit que, plus tard, les Bozo reconnurent aux Somono les mêmes droits qu'eux, à l'exception des attributions religieuses qu'ils conservèrent.

L'extension et le fractionnement des familles amenèrent la formation de nombreux villages ayant chacun leur "Dji-Tigui". A leur tour, les Somono créèrent des agglomérations, et l'organisation que nous trouvons actuellement est la suivante:

- 1° Les cours d'eau sont divisés en autant de fractions qu'il y a de villages Bozo ou Somono.
- 2° Ces fractions sont généralement délimitées par des piquets en bois plantés assez de la rive et surmontés d'une touffe de paille. Elles se succèdent sans solution de continuité.
- 3° Dans sa fraction, chaque village a un droit exclusif de pêche.
- 4° La navigation est libre sur tout le parcours du fleuve mais, bien entendu, ne peut être exercée que par les Bozo ou les Somono.

5° Dans chaque village Somono, auprès du chef de village, aux attributions purement politiques, existe un "Dji-Tigui" qui est toujours un Boso.

6° Les Somono n'ont apporté nulle atteinte aux droits des Boso sur les marigots. C'est pourquoi nous étudierons le droit de pêche en distinguant les cours d'eau (Niger et affluents) et les marigots.

La pêche dans les cours d'eau. On examinera deux catégories de pêches: les grandes pêches et les pêches ordinaires.

a) Les grandes pêches. Les grandes pêches ont lieu, chaque année en mai-juin, aux basses eaux, et commencent à la date fixée par le chef des Somono.

Dès que cette date est connue, il importe de rendre le fleuve et les Faro favorables, afin que la pêche soit fructueuse et les accidents de personnes écartés ...

p. 293 - Cette cérémonie propitiatoire terminée, la pêche commence immédiatement ...

A côté du "Dien Fleuve" qui est unique, existant de nombreuses divinités, les Faro, spéciales à chaque village. Les sacrifices qui leur sont adressés sont les mêmes.

Les grandes pêches commençant généralement à la fin de l'hivernage, vers la mi-octobre. A cette époque, en effet, les eaux sont hautes et la pêche difficile, mais fructueuse; c'est pourquoi il importe de conjuguer les efforts et les moyens pour obtenir un résultat. Il n'y a pas de fermeture de la pêche, qui cesse d'elle-même lorsque le mauvais temps la rend dangereuse ou impossible.

Les produits de ces pêches sont partagés par villages et par familles, proportionnellement au nombre des pêcheurs fournis.

Les "Dji-Tigui" recevront, à titre de redevance, un tiers des produits pêchés le premier jour. En outre, chez les Somono, les "Dougou Tigui" et le chef des Somono ont droit sur les produits du même jour, à une part variable par village.

p. 184 - Les pêches ordinaires. Les pêches ordinaires sont le fait de familles ou d'individus isolés.

Dans le premier cas, nous avons vu comment était réparti le travail chez les Boso. Chez les Somono, la pêche familiale a lieu tous les jours, à l'exception des lundi et vendredi, réservés à la pêche personnelle des membres de la famille.

Les pêches ordinaires ont lieu toute l'année ...

Il arrive qu'un groupe de pêcheurs s'unissent pour effectuer certains travaux (aménagement d'une partie ou d'un bras de fleuve, par exemple) dans le but d'obtenir un meilleur rendement. Selon l'importance du travail, le Dji-Tigui compétent fixera un nombre de jours pendant lesquels ils auront seuls le droit de bénéficier de leur travail, après quoi le village entier en profitera.

La pêche dans les marigots. Les marigots relèvent entièrement d'un village déterminé ou sont fractionnés entre plusieurs villages de la même façon que les cours d'eau.

La pêche y est libre toute l'année.

Les Somono n'ont aucun droit sur les marigots. Les Boso y exercent la plénitude de leurs droits primitifs.

Les sacrifices s'y pratiquent comme pour le Fleuve.

A signaler que tous les marigots n'appartiennent pas aux Bazo: quelques-uns d'entre eux sont aux Bambara, qui y pêchent parfois avec des genres d'épuisettes, appelés "bolo dio". La pêche pratiquée par les Bambara est accidentelle et insignifiante ...

Author: Lars Sundstrom
Title: Ecology and Symbiosis. Niger Water Folk
Publisher: Uppsala
Year: 1972

Text

p. 57 - Ortali (...) reports that the family head could not sell any part of the family estates, e.g. canoes or nets, without first ascertaining the attitude of the family ...

p. 59 - Formerly the extended family was the dominant organisation of the Bazo group. The extended family is now dissolving, as customary authority is being undermined and instead the primary family is becoming more independent. So far the fisheries have remained a family estate and are still administered according to ancient custom. The fish catches, on the other hand, tend more and more to be claimed as private property ...

The clan chief was at the same time chief of his home village. He represented the clan at the court of the "Famas" of Ségou. This also meant he was responsible for the villages of the clan paying their yearly tax as well as for the levying, in wartime, of the Bazo "laptola" or canoe crews of the Ségou navy. Formerly he held the title "dowo tou" or "djitigui" (Lord of the water).

A Bazo fishing village may be inhabited by three classes of families: a) The family descended from the village founder. Its head is the "sacrificateur" "water priest" who has inherited the religious-technical patent of the local fisheries. b) Families who have settled at a later date in the village and since that time leases certain fishing waters from the water priest on the basis of a marriage or other traditional alliance. c) Families who hold no fishing waters but fish in river commons or as agents for the actual owner against a tithe ("mao dyi) ...

The old men form a counsel of elders, headed by the water priest. Married men are admitted into this counsel, they may take part in its meetings, and may even express their opinion. A second society is formed by young men and boys. A third society consists of married women and girls ...

According to [Makry] the men of each quarter of a Bazo village form a society ("ton" in Bambara, "aakho-duou" in Bazo). These societies have the responsibility for the ethical and social education of the young ...

p. 59 - Daget (...) emphasizes the economic role played by the societies. All societies are subject to the village water priest, who holds extensive rights over them. He is free to call out the young men and young women to carry out necessary public works. Thus if the community needs an extra income for an emergency he sends out the young men to fish regardless of labour or title to the fishing waters.

The village counsel had the power to impose fines and was also the political body speaking for the community as a whole ...

Daget, (...) taking the instance of Diafarabé, informs us that the chief of Dia, being the lord of the Marka territory, was also the lord of the Bazo of the area. This meant that he was the

judge in legal cases involving the fishing privileges of the Boko groups. The Marka chief also, theoretically at least, held authority over the "ton" societies of his territory. Only he held the title "Ton mas", which has since been adopted by the water priests.

The colonial administration, intent on breaking up traditional social structures, regrouped the Boko and Somono fishermen into new administrative units, which were centered on villages and cantons. These units were administered by village and canton chiefs. To the extent that these new offices were offered to members of the water priest families, the offer was always declined. The "Ton" still exist and retain a considerable influence in all matters relating to fishing ...

p. 61 - Ligers (...) reports the preferential treatment a maternal uncle gives his sister's son. This nephew frequently inherits the best fisheries in his uncle's estate which he shares with the uncle's sons. In the Tjenta family the uncle always leaves the direction of his barrage to the nephew. The sister's son is instructed in many secret things, because the Tjenta do not want their professional secrets to pass to other families. The nephew also inherits all water sacrifices known to his uncle ...

Traditional Usage Rights of the Central Niger. The Niger river system is divided into sectors, the exploitation of which is the privilege of certain groups, by virtue of traditional agreements (...). Each such water is related to a definite clan chief, and the clan has an exclusive right over it (...).

All parties concerned acknowledge that the right of the first settler or user of the river rests with the Boko (...). As the Boko grew in numbers, the extension and fractioning of the families brought about the formation of numerous villages, each having a "Dji Tigui" or water priest. In time the Somono established settlements and the result was that the watercourses became divided into as many fractions as there were Boko and Somono villages ...

At this point it is important to distinguish the legal title to the land, which includes watercourses, following from the political principles of sovereignty, on the one hand, and the usage following from practical technical considerations, on the other hand. This distinction, all too frequently neglected, is made by Daget (...) when discussing the Central Niger:

"Il ne faut pas en effet perdre de vue que le droit de conquête s'entend aussi bien aux eaux ... et prime le droit de premier occupant que l'on reconnaît aux Boko. Aucun des conquérants qui se sont succédés aux Soudan Malinke, Sonrai, Marocains, Bambara, Paula, Toucouleurs n'a jamais reconnu officiellement le droit de propriété aux Boko".

p. 62 - Daget adds, however, that for all practical purposes the Boko were allowed to retain their mastery of the waters by all political regimes.

In the Niger Bend, Rouch (...) reports some 10 fishing section between the lakes of the Central Delta and Gaya. These sections are in turn divided into village waters and Do waters. The 100 km stretch exploited by the Sarko of Ayrou, for instance, contains some 30 village zones and some 15 Do zones. The Do hold their waters by the right of first occupant, the village rights are primarily based on administrative considerations, e.g. the waters allotted to "chefs de canton" or "chefs de territoire". Besides fishing rights the villages have the right to exploit river bottoms drained in the low water period. The Sarko hold a usage right to parts of the river not otherwise reserved ...

The different aspects of title to the waters are revealed by the socio-religious organisation underlying its exploitation. Daget (...) gives the division of roles in a typical organisation:

p. 63 - a) The water spirit, who has fixed once and for all the taboos of the fishing in question.

b) The water priest, sacrificer and intermediary between fishermen and spirit. Only he knows what should be prevented to ensure fishing luck. He is actual chief of the fishing enterprise.

c) The owner (or the co-owners), who enjoys the fishing right, but may delegate it to whomever he pleases, against a share called "Maa Gyi" (in Bozo).

d) The fishermen, who carry out the fishing, supplying labour, canoe, and fishing implements such as nets.

Daget stresses that these categories are not exclusive; a water priest and his family may fulfil the roles listed under (b), (c) and (d) at the same time.

Ownership of the water may be considered in terms of religious sanction, customary law, or in terms of economics and technology. The accounts of Europeans observing the phenomena tend to stress one aspect or the other to the detriment of the total picture. To the participant Bozo such a division into component aspects is in all probability wholly foreign. The "Djitigui" can be taken as an illuminating example. He is a priest of the water religion, the leader of the main economic pursuit of the community, holder of the legal title to the water and by being the head of the founding family frequently the political and social head of the community. In the family Bozo society it is probably impossible to distinguish his actions as being in one field rather than another ...

The water priest holds the religio-technical monopoly of fishing. He and his family hold the actual fishing rights. So from the economic point of view they are the owners of the fisheries. This means they are entitled to farm out the fishing and to receive the "maa gyi" (master of water?) share. In a long-established fishing group the original settling family is likely to have parcelled out part shares in the fishing to later immigrants into the community. If so, these co-owners have the same economic rights as the original family.

The office of "Djitigui" is the link between the water spirit and the Bozo fishing group. The present legitimate successor to the office holds not only the fishing right but also the secrets necessary to serve as sacrificer and chief of fisheries in his waters (...).

The water priest being the "living ancestor" cannot lay down his office, nor can he be deposed by human agents. If a founding family becomes extinct only the water spirit can nominate a successor to the office. The water priest and his family may not leave their ancestral waters, and the priest has to be available at the time of fishing rituals (...). The water priest is the head of the "lon" societies and such holds social and political power besides the influence and prestige he derives from his religious office (...).

Title to the water is a special form of the right of the first occupant, but is less extensive than that right because of the aspect of "common" inherent in watercourses. Although the office of the "djitigui" is a necessary prerequisite for fishing rights, the alliance between the "djitigui" and the water spirit does not give the descendants of the former any special right to the fishing as compared with other owners.

p. 64 - Ownership of the waters is per se quite distinct from the office of the water priest. It has many parallels with common family property, is managed by the family head and cannot normally be sold or surrendered. The family head may, however, parcel out parts of the waters but only with the consent of the family and only if it is to the advantage of the family. Water rights may partly be relinquished if the water priest, master of the waters by first occupancy, wishes to tie later comers closer to his settlement ...

A water owner can formally surrender the rights to the waters on behalf of the family. If the family emigrates, their right ceases with their occupation, but the water priest has to return the waters if a later descendant comes back to claim them (...).

So far we have discussed the water privileges, as based on traditional Bozo beliefs, at the extended family level. The principle of community waters may be said to be applied to river villages in general (...). Daget refers to waters belonging to villages or person regardless of ethnic affiliations. That is, the waters may belong to Somono, Bambara, Fulani, Rimaibé, Marka or Bozo but the important point is that these owners do not necessarily have the attributes of being water priests (...). The ownership is in other words frequently "de facto" rather "de jure", at least from the point of view of traditional Bozo custom. It may of course rest on political sovereignty ...

Considering the origins of fishing rights, as related by the Bozo traditions, we may assume that (p. 65) the ancestor of the Bozo clan chief, too, formed an alliance with the local water spirit. Malry (...) writes that each fishing zone is subject to a clan chief ...

Ortoli (...) referring to the clan chief, speaks of the "dowu tou" or "djitigui", the latter name being of course the generic term for water priest and not specific for the clan head. He adds that it is to the clan chief that Bozo as well as strangers apply for fishing rights. Ortoli goes on to write, rather apropos, it seems, that the right to proclaim the opening of the big fisheries in May-June belongs to the chief of the Somono, who holds the exclusive right to communicate with water spirits and make the appropriate sacrifices ...

Daget (...) has explicitly pointed out that custom varies considerably in different localities, that no systematic study of custom has so far been undertaken and, finally, that custom is in a state of change now ...

p. 68 - The concept of Water Ownership. It is quite that the riverain lands belongs to the peasants (Bambara etc.) by the right of the first settler. This is specially obvious in Bozo-Bambara relations: when a Bozo needs some land he has to apply to the Bambara "dougou tigui" ("maitre de la terre"). Title to the water presents a more complicated picture: The "first occupant" status of the Bozo gives them the rights to usufruct, i.e. fishing, and usage or navigation, but lacks the third aspect found in the European concept of property, namely the right to sell or give away the property. Actually the ownership of land has the same qualification: land rights is the right to use, but does not imply appropriation as we see it. Ortoli ascribes this restriction to the religious concepts of Water, Earth and Heaven being divine and hence outside the sphere of human appropriation (...).

As we have seen, Daget (...) considers the question from a more formal legal aspect: The right of using the waters belongs to the masters of the country (e.g. the Bambara, Fulani or French). In practice the society delegates its right of usage to riverain communities, while respecting as far as possible the right established by precedent. Daget (...) relates this surrender of sovereign rights to the fact that the lords having agricultural or herding economies lacked inclination or opportunities to exploit the river. They could let the Bozo pursue their traditional calling as water folk as long as the Bozo fulfilled the necessary social obligations of transport and fish supply to the society. It was in the public interest that the Bozo economy was not upset as they held what amounted to a technical monopoly in matters pertaining to the river. Today it is noticeable that the Fulani own a considerable number of "marigots", the benefits of which they surrendered to their agricultural serfs, the Rimaibé ...

p. 67 - In my opinion water ownership, as with all African ownership of natural resources, is basically only the right to exploit, the owner being only a steward, responsible to past and future owners.

Daget's reference to Fulani occupation of river beds merits some comments. The Fulani being fairly recent occupants, it is reasonable to expect that their holdings are more easily noted than those of the Bambara etc. Their occupation of these lands is especially noteworthy as it illustrates the symbolic aspect of the riverain economies.

When the Kwonta family of Diafarabé concluded an alliance with the Fulani they obtained a monopoly of fishing. From the Fulani point of view this right was of no import, their interest were to keep grazing rights for themselves and the right to farm for their serfs with reference to the river lands (...). Boso water rights refer to certain areas regardless of the level of the river. Thus an area where the Boso may fish in the highwater period may be dry land in the low water season. But the right refers to nautical pursuits, the holder is totally indifferent to anybody exploiting his "waters" for grazing cows or agriculture, the water level permitting (...).

p. 68 - ... the Somono never had any "tribal" custom in fishing. Originally they followed Bambara custom, today they have adopted Koranic law (...). In view of the late immigrant status of the Somono and their lack of well established group customs it is not surprising to learn from Ortoli that each Somono village has beside a Somono head also a "djitigui", who is always a Boso.

Ortoli also notes that the Somono have not attempted to usurp the special Boso rights in "marigot" fishing ...

On the Central Niger, barrages are always built by Boso, never by Somono ...

The Boso have to show their magical accomplishments when confronted with upstart Rimabé ...

In Songhay, Rouch (...) reports a similar development: the Do, old masters of the waters, were deprived of their old economic monopoly by the Sorko but kept their religious monopoly. The Do may cast a spell on the river, thus stopping navigation and fishing. Only a Do can put a spell on man-eating crocodiles or save what has been lost in the water, even revive those who have drowned. These special powers are acknowledged by other riverain people, who pay tributs to the Do by gifts ...

p. 70 - *Maa dyi* or *Fishing Tithe*. The owner of the waters, or, to put it more correctly, the holder of fishing rights, may surrender these rights temporarily to another fisherman against a part, usually a third, of the fish caught. This portion is called "*maa dyi*" (...). The contract fixes when for instance a barrage may be exploited and the terms of the "*maa dyi*" payment ...

p. 72 - In Songhay the village ownership to the waters was traditionally expressed in tolls on navigation and a custom forbidding strangers to fish. Today these rules are largely nominal and seasonal fishermen such as Boso and Sarkawa only have to inform the village chief of their intentions to fish, giving him a courtesy gift of fish (...).

The itinerant Sorko pay respect to the traditional water rights by giving certain parts of the animals (hippo?) to village chiefs and to Do heads. In return they receive presents and aid such as manpower or, from the Do, magical charms against the perils of the deep (...).

General Rules for Fishing and Traffic. Navigation is free in the river and all its channels and thoroughfares, Ortoli (...) informs us, but adds that this right is tacitly reserved for Boso and Somono ...

It is forbidden to build a barrage which prevents the fish from reaching a barrage already built or one about to be built. It is also forbidden to build a barrage in the main river bed which prevents the normal fish migration or the restocking of fishing waters (...).

Title to the water involves other obligations, too, in the interest of the community. The owner has to control that local custom is observed. He has to guard his waters against illicit fishing to ensure that taboos are broken. If any disputes arise between the users of his waters, his is the primary responsibility to restore the peace to the best of his ability. As far as passengers are concerned the owner has to ensure communications across his waters, whether canoe routes, fords or maybe his own ferry service. But he also controls these passages, for instance when a Fulani herd is to wade over the river. The owner has the right to levy tolls of passage. Malzy in this context refers to the custom that travellers passing the village have to sacrifice miller or rice in the water (...).

Author: Shoichiro Takezawa
Title: Le Maître des Eaux et l'Islam: Changements Sociaux et Changements Religieux chez les Tié du Niger
Publisher: Institut de Recherches sur les Langues et Cultures d'Asie et d'Afrique, Tokyo
Year of survey: 1981/2, 1986.

Text

p. 139 - La notion Tié de droit de pêche est une notion assez compliquée. Pour essayer de la définir, nous pouvons présenter les cinq points essentiels qui la caractérisent comme suit:

1) Le droit de pêche est une possession lignagière. Si un pêcheur veut travailler dans une pêcherie appartenant à son lignage, il n'a aucune des obligations qui s'imposeraient au pêcheur d'un lignage différent.

2) Le droit de pêche peut être hérité par la lignée paternelle. Ainsi chaque lignage de "jii tu" (maître des eaux) garde-t-il jusqu'à aujourd'hui ce droit que le "nyénèn" (génie de l'eau) du lieu aurait accordé à son ancêtre en un temps mythique.

3) Le droit de pêche peut être divisé. Chaque zone de pêche confiée par un "nyénèn" comprend divers éléments: celle du Kwata, par exemple, se constitue de plusieurs sections du fleuve et d'un de ses affluents, des canaux et des mares de la plaine inondée. Chaque zone de pêche a été divisée, au cours du temps, en plusieurs cellules qui ont reçu chacune un nom propre.

4) Le droit de pêche peut être transféré. Ce droit peut être donné à une fille qui va se marier avec un homme appartenant à un lignage autre que le sien; à sa mort, ses enfants qui appartiennent au lignage de son mari hériteront de ce droit qu'elle reçoit: ainsi ce droit passerait à l'autre lignage. Ce droit peut être également cédé à un autre lignage en compensation de travaux offerts au "jii tu" ou en indemnisation d'un crime grave tel quel le meurtre.

Actuellement, le lignage de Kwata, par exemple, partage ou cède les droits de certaines cellules pêchables à d'autres lignages qui sont arrivés postérieurement. Ces lignages ci peuvent être appelés eux aussi "jii tu" de chaque cellule; mais n'ayant pas de lien direct avec le génie de l'eau, ils ne sont traités que comme des "jii tu" secondaires. Quand on parle simplement du "jii tu" au village de Diafarabé, on fait allusion généralement au vrai "jii tu", c'est à dire le chef du lignage de Kwata.

5) Le droit de pêche peut être prêté à un pêcheur appartenant à d'autres lignages. Dans ce cas, le "jii tu" de chaque pêcherie peut demander au pêcheur qui veut y travailler.

... le "majju", paiement de la pêche fixé généralement au tiers de poissons capturés ou son équivalent en espèces. Le jii tu peut même interdire certains engins de pêche qui s'utilisent dans chaque pêcherie. Si les pêcheurs ne lui obéissent pas, il peut les expulser de cette cellule.

Ainsi le droit de pêche est-il un droit exclusif de chaque pêcherie. Quand une dispute éclate entre deux pêcheurs qui travaillent dans une pêcherie, c'est donc le jii tu concerné qui l'arbitre. Et quand une dispute s'élève au sujet de droits de deux pêcheries avoisinantes, ce sont les deux jii tu qui discutent pour en chercher la solution.

Ce droit de pêche est néanmoins restreint au moment de la pêche collective, car celle-ci est une pêche ouverte à tout le monde. Mais même dans ce cas, le jii tu peut jouir de certaines prérogatives: c'est lui qui décide du jour de la pêche; c'est également lui qui impose l'interdit de la pêche dans la pêcherie concernée pendant les quelques mois qui la précèdent; enfin c'est lui qui donne le signal du commencement au jour de la pêche collective.

Le jii tu jouit ainsi d'un droit exclusif concernant chaque pêcherie qui lui est affectée. Mais quand il s'agit du jii tu principal de chaque village, qui est en liaison intime avec le nyenan du lieu, son autorité et ses prérogatives ne se bornent pas à ce droit de pêche. Il joue des rôles importants et indispensables au maintien de la vie sociale et religieuse de tous les villageois.

Author: Claude Fay
Title: Sacrifices, Prix du Sang, "Eau du Maître": Fondation des Territoires de Pêche dans le Delta Central du Niger (Mali)
In: Cahiers des Sciences Humaines - La Pêche
Publisher: ORSTOM, Paris
Year: 1989

Text

p. 171 - Rappelons les principes de contrôle des eaux qui semblent invariant chez tous les Boso, en nous souvenant que nous sommes désormais situés dans le cadre de l'existence de villages où ont été regroupés plusieurs lignages de pêcheurs (par la Dinah, par les colons). Le maître des eaux (dyi tuu) est le descendant le plus âgé en ligne agnatique du premier occupant ayant conclu un pacte avec les génies. A ce titre, il effectue les principaux sacrifices; il fixe la date des mises en défenda du fleuve et des marais (qu'il marque par le plantage d'un piquet, toron); il descend le premier dans l'eau à l'occasion des pêches collectives d'étiage auxquelles tous les pêcheurs des villages riverains peuvent, en droit, participer.

Les maîtres des eaux s'entendaient pour fixer des dates successives. Il percevait pour certaines pêches (dans le passé pour les pêches au barrage, essentiellement), le magna-j (1/3 de la production) de la part d'étrangers à son lignage ...

Pour le reste, il faut la part des rapports politiques entre lignages. Si, en principe, le lignage nanyé (premier arrivé) est celui du maître d'eau, d'autres lignages autochtones (qu'on peut donc dire également nanyé) ont pu être regroupés - ou se regrouper - dans le même village.

Parallèlement à celui du maître d'eau, d'autres lignages ont des eaux, des maîtrises de pêcheries déterminées et percevaient également le magna-j pour certaines pêches dans ces eaux. Pour Takasawa, ce sont des "dyi-tuu secondaires" en opposition au "dyi-tuu principal".

p. 172 - Enfin, certains lignages n'ont aucune maîtrise particulière sur des pêcheries, mais relèvent du conseil de village du dyi-tuu et, à ce titre, participent aux pêches libres (sans versement de magna-j) éventuellement à des places hiérarchiquement définies, ou aux autres pêches en versant le magna-j au maître de l'eau ou au propriétaire de la pêcherie concernée.

On a donc affaire, dans un village ou un groupement de pêcheurs donné, à une hiérarchie de droits entre les lignages, sous la direction du maître d'eau. Celui-ci, ou plutôt l'ensemble de ceux-ci (des maîtres d'eau) contrôlent également l'articulation entre pratiques de pêche, territoires et groupes de pêcheurs. En effet, pour certains types de pêche que nous n'avons pas la place d'énumérer ici (...), tous les pêcheurs riverains peuvent, éventuellement en respectant des préséances, pêcher où ils veulent: c'est le cas des grandes chasses au timoni dans le fleuve en décrue (tinéni: petite sardine locale, principale source d'huile) qui occasionnaient l'établissement de petits campements, tout le long du fleuve. On a dit que c'est également le cas des pêches collectives d'étiage. Inversement, certaines pecheries sont lignagères ou villageoises (principalement les barrages) et si l'on est étranger, il faut payer une compensation (mangaji). De toutes façon, sur chaque finage des règles élémentaires homogènes sont édictées par les maîtres d'eau: instauration de défends à certaines époques permettant au poisson de se concentrer tranquillement dans des fosses et d'être pêché collectivement ensuite, rejet des individus trop petits, interdiction de barrer les bras de fleuves et donc de compromettre la pêche de tous pour une appropriation individuelle, etc.

La bonne organisation de la pêche pour tous se fait donc du double point de vue des règles (homogènes) instaurées dans chaque finage et de l'effacement de la différence des finages à certains moments du cycle et pour certaines pêches.

La même affirmation (Le poisson non encore pris n'appartient à personne - F. Verdeaux), déjà relevée par Daget chez les Bozo (1956, p. 44) est reprise par tous nos informateurs: l'eau et les poissons n'appartiennent qu'aux génies.

Pour que le poisson dans l'eau soit considéré comme un moyen de travail, il ne suffit pas néanmoins qu'il soit la condition logique de la production ni qu'il (p. 173) soit en droit inaliénable (ce qui est la caractéristique de la terre, comme moyen de production, chez les agriculteurs). Il faut aussi qu'existe un procès artificiel de reconstruction de sa reproduction (de ses capacités productives). Ce procès existe à l'état mystique, du détournement de la baleine ainsi aux cultes des génies bozo. Mais qu'en est-il de son existence matérielle ou technologique-assurée chez les agriculteurs par les défrichements, clôtures, fumures, etc? Dans la pêche traditionnelle bozo, on l'a déjà repéré à deux niveaux principaux: le rejet des alevins et l'interdiction de barrer les fleuves (bras principal ou bras secondaire important). Notons que ce deuxième point relève déjà de deux nécessités: celles de préserver la reproduction et celle de ne pas porter atteinte à la production des pêcheurs successifs (d'amont ou d'aval selon l'espèce cible et le moment du cycle). De même, si la mise en défens, dans une certaine mesure, évite une trop grande prédation (principalement sur les bras importants), elle vise aussi à assurer des captures meilleures (individus plus gros et plus nombreux à rester dans les fosses du finage) et plus faciles (pêches des fosses à l'étiage) dans une période ultérieure. Néanmoins, le souci protectif existe dans l'esprit des Bozo qui, récriminant contre les dérivants somono, remarquent que "le poisson est un être vivant, si tu ne le laisses pas se reposer comme doit le faire tout être vivant, il ne vivra pas bien et il fuira ailleurs". Les biologistes parlent en effet de "stress de fuite".

Le souci de bons prélèvements sur son aire, associé au souci de ne pas empêcher les prélèvements successifs, associé à une conscience au moins minimale de la nécessité de la reproduction des stocks, tous trois fondés sur une connaissance précise des espèces, produit donc objectivement une organisation des conditions de leur reproduction, dans et malgré le prélèvement. En ce cas, on peut parler du poisson comme moyen de travail objectif. Mais il faut insister sur le fait que les trois soucis qui viennent d'être mentionnés (production, articulation des production des stocks, donc des moyens de production) sont organiquement liés dans l'esprit des pêcheurs ...

La constitution de la pêche artisanale comme système de production autoreproductif et non plus seulement comme économie de ponction (opposition plus large et plus pertinente que celle de l'agriculture à la chasse/collecte), comme production organisant la reproduction minimale de

ces conditions, dépend donc de la série d'articulations autour du fleuve, des groupes de pêcheurs et de pratiques hiérarchisées de la pêche, telles qu'on les a décrites. A la différence de la prédation ponctuelle évoquée (certainement idéalisée, ce qui importe peu) dans la période des trous, on a affaire à système de production qui crée, par des règles communes à une aire de pêche et partagées par les pêcheurs des différents groupements, les conditions de sa reproduction. Mais il faut alors considérer que le territoire qui fonde l'exploitation de pêche, en opposition au territoire de prédation (voir supra), est l'ensemble de l'espace de déplacement des poissons, géré en droit par l'ensemble des communautés. Pour que la pêche artisanale cesse d'être une économie de cueillette, il faut donc une aire de savoir commun; cette aire est à la fois mystique et technique: les interdits des génies, leur connaissance/transmission par les maîtres d'eau, la connaissance des poissons et l'organisation techniques de la pêche qui en résulte. Pour assurer l'homogénéité de cette aire de savoir, nous avons suggéré qu'il avait fallu des aires de pouvoir enregistrant et réinvestissant la cartographie mystique, permettant que l'articulation des instances mystiques fonde en pratique celle des aires de production.

Il a fallu qu'à des cultes ponctuels, marquant une possibilité de principe (dans la relation homme/nature) de la pêche en des lieux précis, mais qui ne dessinaient pas en eux-mêmes des territoires (d'où la nécessité de la force des (p. 174) "toru") se substituât un ordre proprement politique. Celui-ci articule, autour du pouvoir des génies, des dignités (maîtrises d'eau) homologues et homogènes, des droits parlés dans la langue des gens du pouvoir ("magna-j") et également homogènes. Il décide aussi des moments où l'on actualise l'autonomie de chaque aire de pêche spécifique par ces droits lignagers-villageois (et tout en rappelant par des sacrifices semblables, leur homologues). Il décide des moments où on l'efface pour réactualiser l'unicité de l'espace supérieur de pêche (espace du flux hydrologique et ichtyologique) dans les pêches collectives ou celles où l'on se déplace librement.

On sait que les Bazo au contraire des Bomono n'avaient pas été fonctionnellement intégrés dans des états, mais l'aire de savoir que dessinant leur culture et leur pratiques, et les aires de pouvoirs qu'elles marquent ne pouvant se penser qu'en référence à ces pouvoirs qui ne les ont pas intégrés.

Ethnic group:	DOGON (HAHO)
Author:	Bourguillou
Title:	Coutume Mado (Cercle de Bandagara)
in:	Coutumiers Juridiques de l'AOF (Afrique Occidentale Française)
Publisher:	Larose, Paris
Year:	1898

Text

p. 361 - Le domaine public existe chez les Habé, sauf exceptions très rares, il est toujours morcelé au profit des différentes familles formant le village ou l'agglomération. Un puits, une source, un hunker, constituent la plupart du temps le domaine public d'un quartier.

Parmi les biens qui font partie du domaine public, il faut encore comprendre: la case où les femmes vont séjourner pendant la durée de leur impureté périodique, les cours d'eau, les mares, et les arbres fruitiers situés dans le village même et existant depuis sa fondation.

Ces biens sont inaliénables.

Le chef religieux en a la surveillance ...

Author: Montserrat Palau Martí
Title: Les Dogon
Publisher: I.A.I. - P. U. F., Paris
Year: 1957

Text

(p. 23 à 24) ... (f) Cultures maraîchères. - Certains terrains sont affectés à ce genre de cultures parce qu'il serait difficile de les aménager en champs. C'est par exemple le cas des terrains inondés en saison des pluies, ou situés en des lieux accidentés se prêtant mal aux cultures étendues. Mais il se présente aussi le cas de champs fertiles et d'arrosage facile que l'on transforme en plusieurs jardins plus petits, la récolte du mil une fois terminée ...

... La pêche collective a lieu en saison sèche, au moment où l'eau des mares est très basse. Le chef de famille indivise à laquelle appartient la mare où l'on va pêcher fixe le jour; tous les habitants de l'agglomération y participent et ont droit à une part du poisson, la plus importante étant réservée pour les membres de la famille qui détient la mare. On se sert de plantes ichthyotoxiques telles que le "dalu" (*Euphorbia kamerunica*), l'"isu ba dalu" (*Caralluma decussata*), le "na nina" (*Aloe barkeri*) et le "polo ya" (*Sansevieria*).

La plus grande partie du poisson, séché et fumé, sera consommée pendant l'année.

Ces pêches collectives comportent un rituel particulier comprenant le sacrifice d'un "anaganno"²⁷ (silure, *Clarias senegalensis*) pris vivant ...

(p. 30 et 31) ... Au voisinage des sources, les agglomérations sont relativement importantes. Les légendes de fondation de villages où le chien d'un chasseur découvre accidentellement une source sont nombreuses. Dans la plaine, on est moins dépendant de l'eau, car on peut creuser des puits qui atteignent parfois 80 m. de profondeur.

Le domaine public du village est représenté par des greniers communs, le "logu na", les cases des femmes menstruées, les puits, les sources, les mares, les cours d'eau et les arbres fruitiers existant à l'intérieur de l'agglomération depuis sa fondation ...

(p. 35 à 37) - Le noyau de la société dogon réside dans la famille étendue, reflétée et concrétisée dans l'organisation territoriale elle-même. Le "ginna" (grande maison) désigne indistinctement le groupe de parents aussi bien que les champs et maison constituant son patrimoine ...

... Traditionnellement la propriété de la terre se transmettait à l'intérieur du groupement familial et était inaliénable ...

Parfois la famille se cotise pour aider un parent qui a besoin d'argent. Dans le cas où un homme arrive à vendre un champ, la vente est toujours révoquée et le "ginna" a la faculté de récupérer son bien moyennant le remboursement de la somme payée par l'acheteur, à la mort du vendeur. Les champs non rachetés deviennent, par la suite, propriété individuelle effective.

Dans cette nouvelle forme de propriété, il reste néanmoins un droit de transmission préférentielle à l'intérieur de la famille (individuelle) du nouveau propriétaire: un homme qui vend un champ que lui-même aurait acheté, possède, sa vie durant, le droit de réméré, exerçable à n'importe quel moment, en remboursant la somme reçue. Son héritier conserve ce droit pendant un temps limité, mais s'il ne l'exerce pas, la transaction devient définitive ...

²⁷ Mot composé de "ana" (homme) et "ganna" (marcher en s'enroulant). Le symbolisme du poisson joue un rôle très important dans la métaphysique dogon.

(p. 50) - ... Chez le Dagon le seul organe de commandement est représenté par le conseil des vieillards sous la haute autorité du hogan. Réunis sous le "toguna" les hommes âgés prennent les décisions intéressant les affaires publiques.

Le hogan est à la fois chef politique et chef religieux. Il y a hogan par région avec un hogan suprême pour tout le pays qui réside à Aqueux (près d'Abbaya), dans les falaises et est obligatoirement élu dans la tribu Aqueux ...

Le hogan rendait la justice en personne et assurait dans le pays par l'intermédiaire de ses délégués. L'une des principales attributions de ceux-ci était la police des marchés, c'est-à-dire de la surveillance des prix et de la bonne marche des transactions ...

Author: Lars Sundstrom
Title: Ecology and symbiosis Niger water folk
Year: 1972, Uppsala

Text

p. 45 - ... The concurrent claims on the Alestes shoals held by different localities in the Diafarabé area are adjusted to one another. The Alestes shoals occur at monthly intervals during the season in the Dia branch of the river. Three barrages are built at intervals: The first one is built below Diafarabé by the people of Kéra who have the right to catch the "Alestes du grand moins". The following month the people of Dia build their barrage to catch the Alestes shoal moving up the river in that month. Finally the shoal of the third month is caught by the people of Pikina, further upriver.

Generally speaking the public fisheries, whether directed against shoals or carried out in the low water season fishing pools, are directed by the "master of the water" who holds the formal title to the fishing water. He decides when the water is opened to public fishing. The opening dates of different fishing waters are arranged so as to permit all fishermen of a given area to take part in the different public fisheries. The opening day is announced well in advance by the "master of the water" to his fellow villagers as well as to the other villages or settlements which are traditionally invited to take part in the fishing. If a master neglects to make this announcement it is considered a serious breach of the custom and an antisocial behaviour in general ...

Before the opening of the public fishing in a section of fishing water, all fishing is prohibited for some period. Daget explains this regulation from the need to protect common interest. Otherwise individual fishermen might catch the best part of the available fish before the collective operations which might imperil the profit and presumably also a decline in public participation in the enterprise. This again is not merely a matter of social justice but also a question of promoting the most efficient utilisation of the available food sources.

It is reasonable to assume that the inclusion of "strangers" in the fishing operations of those groups who hold the formal fishing privileges has become progressively more important as the riverside populations have grown. On the one hand their participation permits a larger supply in the face of the growing demand. On the other hands the same participation means that immigrant strangers with no formal fishing rights are allowed a gratis supply of fish in exchange for their participation ...

p.46 - Fishing populations of the central Niger.- The majority of the riverains of the Niger are peasant, for whom the river is a source of irrigation for their low-lying fields and a means of transport for their produce. For these peasants, fishing is a very incidental occupation or rather pastime ...

Only a few riverain tribes can be considered fulltime fishermen, such as the Somono and Bozo of the Central Delta, the Sorko and Sorkawa of the Niger Bend, and the Ijaw of the Lower Delta ...

Méniaud referring to the Upper Niger and its tributaries, makes the same distinction and points out that the agricultural populations along the rivers, e.g. the Bambara, Malinke, Marka, Senufo, Mossi and Samo fish only at low water or in pools by rudimentary "non-industrial" means (...). Fishing in other West African rivers such as the Bakoy, Bafing, Senegal, Faleme and Volta is described by Méniaud as rather insignificant and incidental. He points out that it is only the fulltime fishermen, e.g. the Bozo and Somono who are able to construct the big fishing implements, barriers etc. required for fishing the main courses of the Niger and Bani as distinct from fishing lesser branches, dry-time pools. It also significant that professional fishermen do not use fish poison, which can only be used in very restricted bodies of water.

Until recently, well into the twentieth century, the waterways of the Niger system were the most important commercial transport route of the Upper Senegal-Niger area. The Bozo and the Somono especially hauled the bulk freight in their craft, generally dugouts.

p. 47 - Ortali, writing in the 'thirties, states that the Bozo and Somono maintained their old water transport monopoly to all practical purposes. This correspondent to the Bozo monopoly of all waterways "at least between Bamako and Mopti" ...

Further downriver, between Lake Débo and Ansongo the corresponding transport monopoly was held by the Sorko and Korongoy ...

p. 56 - ... It is of course unreasonable to assume that customary law fixing the fishing rights of different tribes on the river would prevent conflicts. The existence of inter-group conflicts in this field is too frequently neglected by anthropological field workers ...

Ethnic group:	MARKA (SARAKOLLE)(CERCLE DE NIORO)
Author:	F. de Contouly
Title:	Coutume Marka-Sarakollé
In:	Coutumiers Juridiques de l'AOF (Afrique Occidentale Française)
Publisher:	Larose, Paris
Year:	1888

Text

Note: Marka-Sarakollé live in the same area with Soninké. See book by Pollet and Winter; La société Soninké and corresponding file.

p. 231 - ... les terres occupées ou conquises furent divisées chez les Marka islamisés de la façon suivante:

- 1° - terres du souverain, chef supérieur, chef de clan, chef de tribu;
- 2° - terres de propriété privées proprement dites, propriété familiale privée;
- 3° - terres mortes.

Le principe coranique: "La terre morte est acquise au premier occupant par sa mise en valeur", finit par prévaloir ici, comme partout en pays musulman.

Les notions juridiques relatives à la propriété, sont demeurées sensiblement ce qu'elles étaient avant notre occupation, ... correspondent à l'exposé général qui précède.

La propriété foncière peut donc être collective ou privée.

1° Collective. - Bois, pâturages, terrains de parcours, quelquefois puits, ou points d'eau, mares.

Elle est formée en quelque sorte de biens communaux (p. 232) dont les propriétaires sont les habitants du village, autrement dit la collectivité. Mais tout arbre utilisable portant fruits, planté sur des terrains collectifs (dettier, baobab, karité), appartient à celui qui l'a planté. De même, tout puits creusé sur un terrain collectif appartient à celui qui l'a creusé.

Les terrains collectifs sont inaliénables.

2° Privée. - Propriété familiale, comme indiqué précédemment. Ce droit de propriété immobilière familiale confère aujourd'hui au propriétaire la faculté d'user du terrain et d'en disposer à son gré. Le propriétaire peut donc louer à bail sa parcelle immobilière familiale et même la vendre, mais avec l'autorisation du chef; à l'heure actuelle, elle peut même être aliénée au profit d'un étranger ...

Propriété mobilière. - En cas d'absence prolongée (10 ans, par exemple) d'un habitant du village sans parents ni héritiers, les biens qu'il laisse sont considérés comme vacants et sans maîtres, et la propriété en revient au chef village représentant de la collectivité ...

p. 233 - Des servitudes réelles ou services fonciers. - C'est ainsi que celui qui a un puits sur son terrain peut en user à sa volonté, mais si ce puits est indispensable à la collectivité, c'est-à-dire à l'ensemble des habitants du village, il ne peut empêcher ceux-ci d'en user également. D'autre part, dans un village, un voisin ne peut, sans le consentement de l'autre, établir un mur qui bouche la vue; il ne peut pas non plus, sans le consentement de son voisin, établir des gouttières dont les eaux s'écouleraient sur l'habitation voisine.

En ce qui concerne le droit de passage, il peut être accordé par le chef de village...

Ethnic group:	MAURE
Author:	Capitaine d'Adeler
Title:	Coutume Maure (Cercle de Nema)
In:	Coutumiers Juridiques de l'AOF (Afrique Occidentale Française)
Publisher:	Larose, Paris
Year:	1931

Text

p. 386 - ... Celui qui creuse un puits en est le propriétaire, mais il ne peut empêcher les hommes d'y boire. Pour laisser (p. 387) abreuver les troupeaux ou arroser les terrains de culture, il peut demander une indemnité et, si elle n'est pas payée, refuser l'eau.

Si le puits s'écroule et tant que ses traces subsistent, quiconque veut le recreuser doit demander l'autorisation du premier occupant ...

Ethnie group: **SONGHAY (SORKO, SORKEAWA)**

Author: **Jean Rouch**
 Title: **Les Songhay**
 Publisher: **LAI - PUF, Paris**
 Year: **1954**

Text

p. 3 - Nomenclature- Groupes divers et répartition territoriale.

A) Songhay proprement dits

Maîtres du sol - Kado bi, Gabili Arbi

p. 4 - Maîtres des eaux - Sorko (Fono, Faran), Do, Korongoy

Maîtres de la brousse - Gow,

Descendants des ZA et des SONNI - Sahntya

Descendants des ASKYA - Mamar harney

B) Assimilés: Zerma, Arma, Kourtey

p. 17 - Agriculture. - Le riz (mo) - Il est cultivé dans toute la vallée du fleuve, sous les formes de riz de paline ou de variétés flottantes. Les rizières sont de simples cuvettes aménagées par des digues (digués indigènes des fascines bouchant d'étroits goulots - rizières de Ayorou - ou digues de l'administration formant de vastes dépressions - cuvettes de Pingoun, Kollo, Koulou) ...

p. 19 - ... L'irrigation des jardins se fait par des canaux d'amenée, procédant par paliers successifs: l'eau est d'abord puisée du fleuve dans le premier canal, puis de celui-ci dans le second, et ainsi de suite jusqu'à la hauteur nécessaire.

Les travaux des champs par leur brièveté et leur précarité imposent aux hommes des travaux collectifs ...

p. 21 - Pêche. - La pêche, en dehors d'une pêche très occasionnelle des paysans des rives du Niger, est réservée aux Sorko et aux Korongoy. Les Sorko sont surtout des "pêcheurs" d'hippopotames, des crocodiles et de lamantins. Les Korongoy, qui sont une petite minorité comparable au groupe des Somono, sont des pêcheurs de poisson au filet.

C'est la répartition des troupeaux d'hippopotames, le long du Niger, qui a décidé des principaux établissements des Sorko. La chasse à l'hippopotame, interdite aujourd'hui par l'administration, était, en fait, un véritable élevage. Les pêcheurs connaissaient toutes les bêtes des troupeaux et n'en tuaient chaque année que le nombre nécessaire; la disparition de l'hippopotame est surtout le fait des chasseurs européens ...

p. 35 - La grande famille - ... Les grandes familles sont les prolongements des familles qui détenaient autrefois les différentes autorités (chefferie de l'eau, chefferie du Songhay) et que les vicissitudes de l'Histoire ont éparpillées, mais qui, je l'ai déjà dit, continuent à se considérer comme un même groupe ...

Cependant, cet émiettement de ce qui était autrefois un ensemble unique, a abouti à une ségrégation en sous-groupes pratiquement autonomes, groupés territorialement, chacun d'eux fonctionnant à l'image de l'ensemble préexistant ...

Le fonctionnement le plus connu de ces groupements est celui de la succession (de la chefferie, en particulier) ...

p. 43 - Droit et propriété.- Le droit coutumier songhay et zerma est très proche du droit musulman. Dans les régions très islamisées (Songhay de Tombouctou et Gao), il en est l'interprétation directe. Plus on va vers le Sud, et plus l'influence de l'Islam décroît. Néanmoins on peut considérer que dans tout le Songhay, c'est le droit musulman de coutume Malékite (le livre de base est la Risala d'E) Qairouani) qui reste la base du droit songhay.

Avant l'arrivée des Européens, c'était l'assemblée locale, présidée par le chef de village ou le Cadi, qui sanctionnait ...

p. 44 - Propriété de la terre - Le système le plus répandu est celui de la propriété collective de la terre par les familles réduites. Il semble qu'autrefois la terre était la propriété du chef de village (et a fortiori du chef de canton et du chef suprême), les sujets n'avaient sur elle qu'un droit d'usufruit. La récolte appartenait entièrement au cultivateur qui payait au chef un impôt prévu à l'avance et indépendant de l'importance de la récolte (voir à ce sujet les histoires des esclaves enrichis, maître des fermes des Askya, ...). Ces droits des chefs sur la terre passaient eux-mêmes après ceux des "maîtres du sol" descendants des premiers occupants qui avaient eu s'allier avec les génies de lieu.

Tous ces droits ont été conservés d'une façon ou d'une autre: les maîtres du sol, évincés, continuent à faire les sacrifices aux divinités alliées et une partie des récoltes leur est automatiquement distribuée ...

p. 45 - Ainsi la propriété de la terre comporte, d'une part, la propriété du terrain proprement dit, d'autre part, l'usage que l'on en fait. Si le terrain est en principe indivis (puisque inaliénable) son usage ne l'est pas ...

Propriété de l'eau - L'eau est divisée de la même façon que la terre. Les tronçons du fleuve appartiennent soit à des DO, descendants des premiers "maîtres de l'eau", (et alliés aux génies dont c'est la résidence), soit à des chefs de village (de canton, de territoire ...), soit enfin à des pêcheurs Sorko. Cette triple propriété est complexe, mais sa limite à deux dimensions (la course du fleuve) en simplifie l'analyse, et l'on peut y découvrir une articulation précise (qui échappait presque complètement dans le cas de la terre).

Le DO, descendants des premiers maîtres des eaux, bien que frustrés ultérieurement par les pêcheurs Sorko, ont conservé sur les eaux un pouvoir spirituel: ils peuvent, par exemple, "attacher le fleuve" y causant des accidents et y rendant toute pêche impossible. Ils sont seuls à pouvoir agir efficacement sous les eaux, par exemple, à en chasser les crocodiles mangeurs d'hommes. à y retrouver les objets perdus, à renflouer les pirogues qui ont fait naufrage. Ce pouvoir est reconnu par les autres usagers du fleuve qui réservent aux DO une part de la pêche ou des petits cadeaux. Les propriétés des DO sont limitées à certaines zones (intéressant souvent plusieurs villages) et aux affluents du Niger (par exemple ce sont les DO seuls qui pêchent dans le Gorouol).

Les villages (et leurs chefs) ont sur le fleuve une propriété beaucoup plus administrative. Le fleuve est divisé en tronçons appartenant à chaque village aussi bien pour la pêche que pour la culture: aux basses eaux les terres découvertes qui sont de très bonne qualité ont leurs cultivateurs qui en usent comme des terres ordinaires, aux hautes eaux, ces zones sont en

principe réservées aux pêcheurs occasionnels du village²⁶. Les parties du fleuve toujours en eau appartiennent également au village. Ces droits de propriété, se manifestaient jadis par la perception de droits de navigation, et l'interdiction de pêche aux étrangers. Aujourd'hui, ces droits sont tombés un peu en désuétude, et les pêcheurs itinérants du Macina ou de Nigeria, qui se fixent pour une campagne de pêche dans les eaux territoriales d'un village se contentent de prévenir le chef et de lui verser une part du poisson capturé.

Les Sorko, sont chasseurs d'hippopotames et occasionnellement de lamantins, de crocodiles et de gros poissons. Primitivement itinérants, ils évincèrent, en se fixant, les DO. Mais au lieu de limiter leur pouvoir à certaines zones, les Sorko l'étendirent aux biefs entiers du fleuve où les entraînait leur poursuite des hippopotames. A l'origine, ces biefs étaient très étendus: ainsi l'ancêtre des pêcheurs Faran Maka Bote, pêchait du "W" au lac Débo, en passant dans le Faguibine, et il habitait à Bamba. Aujourd'hui, les Sorko se sont sédentarisés, en se fixant dans les biefs à hippopotames. Pour eux, le fleuve est ainsi divisé en zones de chasse: par exemple les Sorko des 3 villages Ayorou, Firgoun, Koutougou, qui forment un même groupe soumis à l'autorité d'un chef pêcheur, pêchent depuis Karou jusqu'à Ménana, soit sur près de 100 kilomètres. Depuis la région lacustre jusqu'à Gaya, il existe ainsi une dizaine de grands biefs de pêche. Ces grands biefs sont eux-mêmes divisés en zones de propriété villageoise et en tronçons de propriété des DO. Par exemple, le bief de 100 km. des Sorko d'Ayorou Firgoun-Koutougou, est lui-même divisé en une trentaine de zones de village et en une quinzaine de tronçons de DO (plus les affluents).

Les Sorko respectent ces propriétés en donnant certaines parties déterminées des bœufs capturés aux chefs de villages et aux DO, ceux-ci en contrepartie les aidant matériellement (fourniture de main-d'œuvre et matériel) et spirituellement (charmes magiques empêchant les accidents au cours de la chasse)²⁷.

En somme, on peut considérer que les DO, descendants des premiers occupants du Niger, ont conservé les droits spirituels de l'eau, ils sont encore les "maîtres de l'eau", que les chefs de villages ont simplement introduit dans ce système un droit de propriété juridique locale, ils sont "propriétaires des eaux territoriales", et qu'enfin les pêcheurs Sorko tout en tenant compte de ces droits ont considéré que des biefs énormes leur étaient ouverts, et bien qu'aujourd'hui ils limitent leurs campagnes de chasse à des zones plus réduites, ils sont encore "les maîtres du fleuve".

Propriété de la brousse. - Il semble qu'il y ait de même une propriété de "la brousse", c'est-à-dire des terres non cultivées; cette propriété aurait trait aux pâturages des troupeaux, aux puits, à l'extraction du fer, à la coupe des arbres, et à la chasse ...

p. 47 - Succession. - Les biens collectifs restent automatiquement biens de famille ...

L'eau et la brousse ne sont pas sujettes à succession, seules les charges qui s'y rapportent le sont: par exemple à la mort du patron pêcheur, le fils aîné devient patron pêcheur ...

p. 60 - Elements de métaphysique. ... Le Zin (djinn) furent les premiers habitants de la terre qu'ils se partagèrent en devenant des génies maîtres du lieu. A la création des hommes, les Zin devinrent invisibles, mais continuèrent à résider dans certains endroits remarquables (arbre, montagne, rocher, rivière).

²⁶ Dans la région lacustre, les variations, d'une année à l'autre, de la zone d'inondation, sont très importantes par suite de la variation des crues.

²⁷ Les pêcheurs Sorkawa, issus du groupe Sorko et séparés de celui-ci depuis plusieurs siècles, admettent encore que le fleuve leur est ouvert en entier, mais ils tiennent compte également de ces propriétés locales au cours des migrations qui les conduisent du delta du Niger jusqu'à Mopti (cadeaux de poissons au chef, et aux DO, cadeaux de pirogues et d'engins de pêche à leurs parents les Sorko).

Les Holey (génies) furent créés semblables aux hommes mais avec le don de se rendre invisibles, de se déplacer presque instantanément d'un endroit à un autre et d'être immortels. Ils sont devenus les véritables moniteurs de la terre, des eaux et du premier ciel, au détriment des Zin qu'ils ont asservis ...

Cultes des Zin - Ce sont des cultes locaux des anciens maîtres du sol ou des eaux. Les génies du lieu ont passé des pactes d'alliance (souvent par mariage) avec les premiers arrivés, leur laissant l'usage de leur domaine en échange d'un culte. Les descendants ont continué le (p. 61) culte et même s'ils ont été spoliés de leurs droits (propriété effective du sol ou du fleuve) ils ont conservé leur pouvoir religieux; ils sont devenus prêtres du génie de lieu. Si ces prêtres héréditaires n'ont plus de descendants, ce sont les descendants de l'usurpateur qui deviennent agents du culte ...

Les cultes des Zin sont encore très répandus mais relativement discrets. Souvent des cultes ultérieurs (ancêtres ou Holey) s'y sont superposés, mais chaque village a, au moins, un lieu protecteur (montagne, arbre ou rocher de la rivière) ...

Culte des Holey. Danses de possession - C'est le culte le plus important et le plus répandu. Il a recouvert les cultes précédents et est parvenu à une sorte d'agrément avec l'Islam.

Les Holey sont les génies qui furent créés avant les hommes. Ils se répartirent dans le monde, ayant, comme les hommes, des races, des langues et des caractères différenciés. Sept familles se partagèrent ainsi (p. 62) le pays Songhay, luttant d'abord entre elles jusqu'à l'établissement d'une stricte hiérarchie puis luttant contre les Zin maîtres du sol et des eaux. Avec l'aide de certains hommes, en particulier de l'ancêtre des pêcheurs Sorko, Faran Maka Bote, les Holey triomphèrent: le Zin ou les ancêtres déifiés devinrent leurs représentants ou gérants locaux. En somme, les anciens dieux de lieux firent place à des dieux beaucoup plus généraux, aux anciens cultes de groupes émietlés succéda une véritable religion du pays Songhay. Ainsi apparurent les divinités magistrales de l'eau, du ciel, de la foudre, du vent et de la pluie, des villages et de la brousse, formant, au total, un panthéon complexe mais cohérent d'une centaine de divinités ...

Author: Lars Sandstrom
Title: Ecology and Symbiosis. Niger water folk
Publisher: Uppsala
Year: 1972

Text: See BOZO in Mali and SORKO, SONGHAY in Niger.

Ethnic group: SONINKÉ

Author: E. Pollet, G. Winter
Title: La Société Soninké (Dyaburu), Mali
Publisher: Editions de l'Université de Bruxelles
Year: 1971
Year of survey: 1968

Text

p. 325 - La maîtrise et l'usage des mares. La maîtrise d'une terre s'étend à la végétation-arbres, broussailles-qu'elle porte, comme aussi aux mares et marigots qu'elle comprend. Mais un tel principe n'a rien d'absolu et il peut y être dérogé conventionnellement ...

Les rapports entre le droit de détention et le droit d'usage des mares (c'est-à-dire de pêche) diffèrent de ceux qui existent entre les mêmes droits appliqués à la terre:

1) Au contraire de ce qui se passe en droit foncier commun, où le titulaire de "nom" d'une terre peut la cultiver, la maîtrise des mares n'a (p. 328) pas nécessairement sur le droit d'y prendre le poisson la même incidence:

le titre est tantôt purement nominal, tantôt il fonde pour le clan du djigumme (maître de l'eau) un privilège de pêche, qui lui-même est exclusif ou partagé selon le cas. Chacune des mares du Dyahunu ne relève de la maîtrise que d'un seul clan (celui qui détient la terre où la mare est comprise), mais le régime de la pêche est donc loin de présenter la même uniformité. De plus, le droit de pêcher dans une mare, lorsqu'il est alloué, ne fait pas, comme celui de cultiver un champ, l'objet d'un usufruit alloué à un seul individu (et à ses dépendants). Souvent (c'est le cas de la plupart des mares dont le maître ressortit à Tambakara ou à Yaginne), l'accès est ouvert "à tous". En ces cas, la première pêche de l'année, qui a lieu la fin de la saison sèche, doit toujours s'effectuer collectivement par tous les intéressés qui désirent y participer. Nul n'est autorisé à prendre du poisson dans la mare avant cette date. Cet arrangement a l'avantage d'assurer à toutes les familles la chance d'une part égale dans les prises de l'année, et de prévenir les conflits et les tensions que pourrait susciter un mode de répartition moins tranché que cette exploitation collective d'un droit collectif. Après la pêche commune, tous les usagers ont le droit de venir à leur gré pendant les temps qui suivent capturer le poisson restant. En autres lieux (certaines mares tenues par des ressortissants de Tambakara), le droit d'usage, selon le modèle du droit foncier commun, appartient au seul clan du djigumme. Ailleurs encore (à Dyongaga), toutes les mares, sauf une, furent partagées, en vertu de la distribution des terres, entre trois clans, chacun d'eux tenant le titre exclusif pour une partie (un tiers à peu près), mais partageant pour l'ensemble de la première un droit d'usage collectif ...

p. 327 - A la différence du domaine de la terre, où les croyances religieuses n'ont aucune part et où la pratique agricole ne comporte pas de rituel, il existe à l'endroit de l'eau reconnaissance d'un interdit et organisation d'un pouvoir capable de neutraliser les dangers liés à la pêche ...

Ce sont les maîtres de l'eau qui fixent la date de la grande pêche collective ...

p. 330 - Le pouvoir magique est spécifique; il n'a de vertu que les animaux dangereux. A la mare de Toya, "où il y a des djinn", les Ture ne peuvent rien : "ce n'est pas leur travail", et nul ne risque à pêcher là-bas.

Si les Ture ont sur le pêche un droit de regard, il faut préciser que leur pouvoir ne sort pas du domaine magique et qu'il ne leur confère pas de titre foncier ni d'avantages économiques. Il pêchent avec et comme les autres pêcheurs et ils ne reçoivent aucun tribut sur les prises de la collectivité. Inversement, il n'y a pas de droits auxquels leur position particulière les empêche par principe de prétendre. Tant sur la terre que sur les eaux ils peuvent avoir des droits fonciers, et les exercer comme n'importe quel "nyinyagumme".

Les marigots sont sujet à une réglementation particulière. Tout le temps, que l'eau continue à y couler, chacun est libre d'y pêcher; mais lorsqu'ils commencent à s'assécher, il se tient une pêche collective dans les endroits les plus profonds. C'est le chef de village, en accord avec les djigumme compétents, qui en fixe la date ...

Incidence sur la coutume des droits fonciers lalamiques, colonial et Malien. Les règles relatives aux droits de détention et d'usage que nous avons rapportées sont les principes fondamentaux en la matière, tels que les informateurs coutumiers les énoncent et tels qu'ils ont continué d'être appliqués la plupart du temps par la justice coloniale, pour rester valides encore aujourd'hui.

Les jugements rendus par le tribunal de droit coutumier de Yélimané et les rapports administratifs traitant des affaires foncières font cependant apparaître une réalité moins univoque ... que ne donnaient à penser les réponses simplificatrices des informateurs sur le terrain. (La simplification principale est due au fait que ces informateurs sont soit versés dans le droit coutumier (lada), soit sont des marabouts qui délibérément veulent ignorer celui-ci pour ne retenir que certains principes islamiques (fariya), et que les uns et les autres ne connaissent pas les règles de droit français dont l'introduction fut quelquefois imposée dans le courant du siècle.) En effet ... (p. 331) quand au droit Islamique ... son application était soumise à deux alternatives: savoir d'abord si l'on-appliquerait ou non le droit français, décider ensuite, dans la négative, si l'islam devait ou non l'emporter sur les principes coutumiers proprement dits. Sur ces points non plus, nulle autre règle ne déterminait le choix que le bon plaisir de l'administrateur-président du tribu.

Ethnic group: TOUCOULEUR (Cercle de Kayes)
Author: Lafont
Title: Coutume Toucouleur (Cercle de Kayes)
In: Coutumiers Juridiques de l'AOF (Afrique Occidentale Française)
Publisher: Larose, Paris
Year: 1939, Tome II
Year of survey: 1939

Text

p. 279 - ... Le domaine public est composé de biens qui, par leur nature ou leur destination, ne sont pas susceptibles de devenir propriété privée.

Ce sont d'abord l'air, les cours d'eau, les routes. On ne conçoit pas qu'un individu puisse s'assurer sur eux un droit exclusif.

Ce sont ensuite, de par leur destination, les puits publics, les rues du village, les mosquées, les digues, les ponts sur lesquels les routes, les étendues de brousses incultivables. Le droit du premier occupant ne peut naître, puisqu'il ne peut y avoir mise en valeur.

p. 280 - En dehors de ces autres, tous les biens du domaine public sont inaliénables et imprescriptibles. Leur entretien est assuré par la collectivité qui les utilise et à ses frais, c'est-à-dire par le village. Quand un bien du domaine public est utilisé par plusieurs villages, il est entretenu à frais communs, et aucun village ne peut prétendre à son usage exclusif. Les gens d'un village ne peuvent ni couper un pont, ni barrer une route, ni détourner un cours d'eau servant aux habitants d'un autre village ...

MAURITANIA

Ethnic Group	Social structure and habits (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Masse (Bale du Lévrier)	village concentrated	chieftains	arid	-pastoralism -fishing	auto-subsistence	no data	-seasonal -limited	-annual -none	no data
Masse ⁴⁰	-lineage -tribe -village scattered -patrilineal	diffused power	semi arid	-pastoralism -agriculture	auto-subsistence	-rainfed -irrigation, by flooding, by canal	-seasonal -limited	no data	no data
Toucouleur ⁴¹	-family extended -lineage -clan -village concentrated	diffused power	-semi arid -savannah -river	-pastoralism -agriculture -fishing	auto-subsistence	-rainfed -irrigation	limited	no data	no data

⁴⁰ Also for Mauretania, Mali, Algeria and Morocco.

⁴¹

Ethnic Group	Conflicts/ Fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Debiting and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Mauris (Bale de Lévrier)	no data	France	Islamic influence	no data	no data	no data	no data	no data	Cadi tribunal
Maurus ⁶²	conflicts, important	France	Islamic derivation	no data	-control by community -water, fees of charge -payment for maintenance -duty to maintain -selling of water point not possible	-control by community -fees of charge	-control by community -fees of charge for local community, foreigners and local cattle -authorization needed for watering -precedence rules	no data	litigation
Toucouleur ⁶³	no data	France	-African traditional -Islamic influence	-control by chef de la terre, -granting of land by chef de la terre, litigation representati ve	-control by litigants, maître de l'eau	-control by community, maître de l'eau	no data	no data	no data

⁶² Also for Mauritania, Mali, Algeria and Morocco.

⁶³ Also for Mali and Senegal.

Ethnic group: MAURE (Bais du Lévrier)
 Author: Lieutenant Lotte
 Title: Coutume Maure (Cercle de la Bais du Lévrier)
 In: Coutumiers Juridiques de l'Afrique Occidentale Française, Tome III
 Publisher: Larose, Paris
 Year: 1932

Text

p. 64 - D'autre part, la coutume concernant "les choses" n'est pas aussi originale, aussi "mauritanienne" que les lignes ci-dessus le laisseraient supposer: elle a en effet ses fondements dans le Khalil, en particulier dans le titre XXI, traitant des "Terres Mortes". Mais le (p. 65) Khalil, oeuvre d'ensemble, s'applique à un ensemble de pays où les conditions de vie sont extrêmement variées; les terres mortes n'y peuvent être traitées qu'accessoirement, alors qu'il y a tant de terre vives de par le monde.

Or, le désert, ou tout au moins la steppe sub-désertique, est la patrie du nomade, sa terre vive à lui. On comprend que les contestations qui en surgissent prennent à ses yeux une importance qu'elle n'auraient pas, si, en marge de ces terres dépouillées, des richesses moins incertaines (forêts, vignes, oliveraies, cultures) offraient l'occasion de moins chétifs litiges.

La coutume qui daigne traiter de tels litiges s'écartera donc suffisamment de la loi écrite pour mériter de faire l'objet d'un chapitre au cours duquel différences et ressemblances avec le Khalil seront signalées et expliquées, si ce n'est point là trop prétendre.

On passera successivement en revue les coutumes concernant: les puits, les Days et Guals, les terrains de parcours et les loughars, les animaux égarés.

Propriété des puits.

A) Généralités. Les puits appartiennent aux Marabouts; Guerriers et Zenaga marchant à la suite n'ont, d'après la tradition, "jamais creusé de puits et ne pouvant par conséquent en posséder"; ils n'ont que des droits d'usage.

Mais le puits est-il la propriété de telle fraction maraboutique ou de telle autre? C'est ici que la question se complique. L'existence de terrains de parcours bien définis, réservés à telle ou telle fraction, peut, dans certaines régions, aider à déterminer usagers et propriétaires des points d'eau. Mais précisément, dans le Cercle de la Bais du Lévrier, il n'y a pas de "terrains de parcours" ...

Ethnic group: MAURE
 Author: F. de Chasseoy
 Title: L'Exil, la Honte et le Livre
 Publisher: Editions Anthropos, Paris
 Year: 1977

Text

p. 54 - Il faut distinguer deux types de culture: celle irriguée des oasis et des terrains de dépression (goud ou gara) de type saharien et celle des rives du Fleuve. La culture irriguée est

semblable à celle pratiquée dans toutes les oasis du Sahara: palmeraies quand il y a une nappe d'eau de surface, le long des ouadi ou près d'une source rocheuse; au pied des palmiers blé, orge, benné, labac et aujourd'hui primeurs; irrigation par canaux, eau tirée des puits à balancier (asseilal), etc. La palmeraie mauritanienne est modeste ...

p. 55 - La culture dans le Sud est pratiquée selon les mêmes modalités et techniques que celles qui seront décrites plus loin à propos des Toucouleurs: culture d'hivernage sur les "collines" du Trarza et du Brakna, dès les premières pluies de juillet; culture de décrue dans le lit majeur du Fleuve à partir d'octobre ...

p. 73 - Surtout, terrains de parcours d'hivernage et de saison sèche et points d'eau sont propriété collective de chaque fraction ou tribu ...

Si elle utilise ses points d'eau en priorité, une tribu ne saurait normalement en interdire l'usage à d'autres. Elle peut organiser des tours d'abreuvoir. Cependant c'est presque toujours à propos de questions de pâturage et de puits qu'éclatent les conflits, parfois séculaires, que se font et se défont les alliances, inextricablement mêlées à des questions de sang et d'honneur ...

p. 74 - Les points d'eau et terrains de parcours sont donc propriété indivise et inaliénable de la fraction et de la tribu, la production essentielle est assurée en coopération étroite au sein du campement et de la famille étendue.

Pourtant le bétail, principal si non unique objet de production, de reproduction et de consommation, est propriété personnelle divisible et aliénable de chaque membre adulte du groupe, pratiquement de chacun des deux conjoints qui constituent autant de tentes parfaitement différenciées dans l'espace du campement.

En effet, la législation coranique est ici couramment pratiquée qui reconnaît la propriété privée et la capacité d'en disposer à son gré à tout individu pubère. Les lois de dévolution des biens par héritage sont aussi celles issues du Coran que J. Bouquet appelle un "agnatisme mitigé" ... ces sociétés nomades au caractère agantique ...

p. 112 - Au Trarza par exemple, les marabouts doivent un tiers de l'eau puisée dans leurs points d'eau aux campements et aux troupes guerriers ...

Ethnie group:	TOUCOULEUR
Author:	F. de Chassey
Title:	L'Étrier, la Houe et le Livre
Publisher:	Éditions Anthropos, Paris
Year	1977

Text

p. 169 - b) La pêche.

La pêche représente également une activité importante dans l'économie traditionnelle toucouleur et un apport de "richesse" sans doute aussi grand que celui de l'élevage. Par ailleurs, le poisson est élément important de la nourriture traditionnelle, un morceau de choix dans tout plat d'honneur, tout à l'opposé des goûts maures.

Mais contrairement à la culture et à l'élevage, la pêche est monopole d'une catégorie numériquement minoritaire de la société toucouleur: les subalbe (sing. thioubalo) dont il sera

question plus loin. Tout au moins ceux-ci se réservent-ils les saula vives du Fleuve, par opposition aux eaux mortes des marais et marigots abandonnés au tout venant, et ils gardent le secret des techniques traditionnelles réputées les plus efficaces où l'art du coup de main se mêle étroitement à la magie. Il s'agit essentiellement d'une pêche au filet, soit le petit filet (saakiti) manoeuvré par une seule pirogue, soit le très grand filet (gouhol) qui nécessite la coopération de tout un groupe ...

p. 172 - Chez les Maures, l'unité sociale qui définit le cadre quotidien des activités et des relations des individus c'est la tente-ménage (haima). Chez les Toucouleurs, cette unité sociale est beaucoup plus étendue: c'est la concession (galle) ...

p. 173 - En effet le doyen des maîtres de concession de cette branche de lignage en est le chef incontesté (dyom lenyol (p. 174) ou maodo). Il préside des réunions, discussions, réceptions de groupe et décide en dernier ressort de tout ce qui regarde la collectivité depuis la répartition des terres aux parentèles jusqu'à l'attribution des époux et des épouses de ses membres pubères ...

p. 182 - On sait que les terres de oualo irriguées chaque année par les crues du Fleuve sont évidemment les plus fertiles et les plus sûres puisqu'elles garantissent une honnête récolte annuelle. Sur les terres de diéri au contraire la qualité des terres, l'incertitude des pluies opportunes, ne permettent qu'un rendement moyen et ne laissent espérer que permettent qu'un rendement moyen et ne laissent espérer que des récoltes aléatoires. Mais tandis que les terres de diéri existent en quantité quasi illimitée, celles de oualo ont par contre une superficie très limitée.

Elle sont donc un bien aussi précieux que rare pour le paysan toucouleur.

Or si les terres de diéri appartiennent pratiquement à ceux, individus ou familles, qui les défrichent et les cultivent, celles du oualo sont toutes l'objet d'une appropriation collective au niveau le plus élevé de l'organisation familiale, soumises à l'indivision et à l'inaliénabilité.

Elles constituent le bien commun (diowré) du groupement lignager qui peut associer les descendants d'un ancêtre commun de la première jusqu'à la quatrième génération. Ces terres sont gérées par le doyen du lignage qui les distribue par parcelles (lowré) à tous les adultes males de la descendance. Cette attribution se fait en général lors d'un mariage ou d'un décès pour la durée de l'existence ...

Mais en aucun cas il ne peut les vendre; c'est le lignage "personne collective" et non lui qui est propriétaire. De même, seul le lignage peut-il en hériter collectivement: à la mort du maodo, la gestion passe entre les mains du chef de concession le plus âgé ...

p. 183 - En somme, dans le système de parenté toucouleur, c'est au niveau du lignage tout entier que se fait l'appropriation des moyens de production essentiels et au niveau du ménage que s'opère la production des moyens de subsistance. La galle, niveau intermédiaire entre ces deux extrêmes, demeure l'unité de consommation et le cadre de la vie quotidienne ...

p. 211 - D'abord les subtilités du droit coutumier ne s'exercent guère que sur les terres fertiles du oualo, signifiant ainsi leur valeur. Dans le diéri, la terre en quantité pratiquement illimitée appartient à qui la cultive, quand il la cultive. Ensuite la propriété traditionnelle de la terre n'est une propriété personnelle mais un bien indivis et inaliénable possédé et transmis par un lignage ou fragment de lignage, géré par son doyen ...

La deuxième distingue déjà de la propriété au sens occidental du terme: joo fruendi, ulandi et abutendi, la propriété toucouleur. Encore plus les deux modalités que prend (p. 212) celle qui et qui consistent au fond en un droit d'usage et en un droit de redevance. Formellement ces deux droits s'accompagnent en se limitant réciproquement.

Le droit d'usage ou droit d'ensemencer et de récolter sur un terrain est nommé de manière expressive droit du feu (dyom dyengul) ou droit de la hache (dyom lavré).

Comme ces noms l'indiquent, il est reconnu à celui qui le premier a défriché un terrain et à ses descendants. Le droit "maître de la terre", dyom leydi, est au contraire un droit de percevoir certaines redevances sur un terrain. Dans le cas le plus fréquent, ces deux droits se superposent sur le même précieux terrain sans appartenir au même lignage ou fragment de lignage. Dans ce cas, les détenteurs du droit de culture utilisent le terrain comme ils le jugent bon, mais ils payent au maître de la terre des redevances ...

De toutes façons, aucune terre possédée de l'une ou l'autre manière ne peut être vendue, mais peuvent en louer des parcelles soit le détenteur d'un droit de culture, soit le maître de la terre si à celle-ci n'est pas attaché un droit de culture étranger. Sans entrer dans les détails et l'énumération des termes techniques, on peut distinguer les cas des terres les moins souvent ou profondément inondées qui sont louées en échange simplement du dixième de la récolte annuelle et le cas des terres les plus précieuses qui ne sont louées que contre versement de la moitié de la récolte ou, s'il agit de plusieurs années, en échange une seule fois de bétail ou d'autre richesse ...

p. 214 - Au dessus de tous ces domaines et plus étendues qu'eux, il y a les terres hayti. Elles étaient le réservoir où puisaient les princes pour constituer les fiefs ci-dessus énumérés alimentés lui-même des terres encore vierges ou tombées en déshérence, ou retirées aux ennemis, criminels, traîtres, etc. Les redevances des très nombreux droits de culture établis sur elles étaient perçues par des spécialistes, les "diagaraf" d'origine "cedo", au nom des princes ou "almany" qui leur en laissaient une part ainsi qu'aux chefs de village ...

p. 215 - Tout en bas de l'échelle, les esclaves ou leurs descendants affranchis travaillent le plus la terre, n'en recevant que le strict minimum et ne jouissent par définition d'aucune liberté. Juste au-dessus d'eux, les gens castes sont maîtres de leur travail mais ils doivent en aliéner une bonne partie sous forme de produits spécialisés pour avoir le droit de semer et récolter la mi) nécessaire à leur subsistance ...

MOROCCO

Ethnic group: **BERBERE-TRIBUS ZAYANES**
Author: **R. Aspinon**
Title: **Contribution à l'Etude du Droit Coutumier Berbère Marocain**
Publisher: **Moyrier, 2^{me} ed., Casablanca**
Year: **1948**

Text

p. 180 - Des différentes sortes d'immeubles. - Les immeubles se divisent en propriétés:

- 1°) Privées, appartenant à un seul individu;
- 2°) Indivises, appartenant à plusieurs particuliers;
- 3°) Collectives, appartenant à tous les membres d'une fraction;
- 4°) Publiques, appartenant à tous les usages de la tribu.

Les emplacements de cimetières et de silos sont des biens collectifs.
Les rivières sont propriété publique.

Les forêts appartiennent tantôt à des particuliers, tantôt à toute une fraction ou une tribu.
Les ravins appartiennent aux riverains ...

p. 195 - L'Irrigation. Il existe deux sortes de sources:

- 1°) Celles appartenant à des particuliers: elles se trouvent dans des terrains "melk" ou privés;
- 2°) celles appartenant à la collectivité: ce sont pour la plupart les grandes sources à débit continu qui alimentent les "issafen" (cours d'eau).

La source située en terrain melk est la propriété absolue du détenteur du terrain qui a le droit de s'en servir comme il l'entend. Le trop plein est utilisé par les voisins sans qu'ils aient à payer de redevance.

Quant aux eaux collectives, elles sont réparties entre les intéressés, suivant les besoins de chacun.

Lorsque l'un des ayants droit vend sa propriété irrigable à un tiers, ce dernier a droit à la part d'eau qui revenait à son vendeur.

Le cas échéant, ce même droit peut être reconnu à un acquéreur étranger, à qui une vente immobilière a été consentie sans aucune opposition.

Le propriétaire dont le champ n'est pas traversé par le cours normal de l'eau peut exécuter à l'intérieur de sa propriété, tous travaux utiles à la recherche de l'eau souterraine, sans encourir de responsabilité vis-à-vis d'un tiers à qui un préjudice quelconque aurait été involontairement commis de ce fait. Il peut également tenter (p. 198) de créer un système d'irrigation pour amener l'eau du ruisseau à sa propriété. Mais si ces travaux intéressent les terrains d'autrui, le consentement de leur propriétaire est nécessaire. S'il passe outre, il peut être poursuivi en paiement de dommages-intérêts.

Quand on veut faire une canalisation collective, chaque tante donne un travailleur. C'est la "jema" qui décide de cette création et qui nomme alors un "kourhar" chargé de la surveillance des travaux.

Celui qui n'est pas venu travailler à son tour est condamné à égorger un mouton que les autres travailleurs mangent sur les lieux.

Il existe pour l'irrigation collective, une rigole principale ou "Larga laksout", dont dérivent les rigoles secondaires ou "tirouggouin timazzianin".

L'entretien de la canalisation principale est assuré par tout propriétaire de terrain irrigué, à l'exception de l'amrhar. Ce dernier répartit le travail entre les membres de la tribu, du douar ou de la fraction sur une même portion et décide des répartitions ou aménagement à faire à cette targa.

Ces travaux sont exécutés généralement au printemps, au retour de l'azarhar (plaine).

Un seul des ayants droit peut aménager le cours d'eau public, mais après avoir demandé l'approbation de la collectivité. S'il n'observe pas cette précaution, il peut être rendu pénalement responsable de tous préjudices causés.

L'herbe qui pousse au bord des canaux d'irrigation appartient à la communauté.

La Répartition des eaux se fait par journée ou fraction de journée et suivant la superficie du terrain.

Quel que soit le débit du cours d'eau, un terrain abandonné et nouvellement défriché pour être mis en valeur, a droit à sa part d'irrigation.

Un ayant droit peut être privé d'eau dans le seul cas où la faiblesse du débit de la source ne permet pas à l'eau d'atteindre son champ. Il ne saurait alors en rejeter la responsabilité sur les propriétaires situés plus en amont et de ce fait, plus favorisés.

Les propriétaires des fonds dominant peuvent dériver toute l'eau d'un ruisseau au des gens situés plus en aval. C'est ainsi que les Ait Hammou ou Saïd, qui se trouvent le plus en amont de l'assaïf Boumquour prennent toute l'eau de cet assaïf aux autres Ait Chart qui, situés en aval, n'ont rien à dire. Cette règle est la même pour les tirouggouin.

En principe, personne ne préside à la répartition de l'eau et les propriétaires s'entendent entre eux pour le tour d'irrigation.

La répartition se fait habituellement de la façon suivante: on divise les champs à irriguer en groupes, chaque groupe devant être irrigué dans les vingt-quatre heures. Puis on détermine par voie de tirage au sort celui des groupements qui commencera à irriguer. Pendant chaque "tanita", tous les gens du groupement irriguent en même temps, chacun prenant un peu d'eau par une rigole de déviation. Le débit de ces dernières est réglé à "vue d'oeil". Le moyen employé pour déterminer deux rigoles de déviation devant avoir la même part d'eau, consiste à jeter une herbe sur la targa mère. Si cette herbe s'arrête à la bifurcation, c'est que les deux branches de déviation sont d'égal débit.

Toutes les contestations concernant l'irrigation sont tranchées par l'amrhar assisté de la jemaa.

Un particulier lésé par l'infraction d'un tiers aux règles de l'irrigation, peut porter plainte devant la jemaa qui se rend alors sur les lieux avec l'amrhar pour constater le fait.

Les infractions les plus courantes sont:

1° Détournement d'eau:

p. 198 - 2° Utilisation de l'eau pendant une durée supérieure, à celle prescrite.

Dans les deux cas, le délinquant reconnu est condamné à héberger la jema'a en lui offrant une tamerhroust.

Les puits sont la propriété exclusive du propriétaire du terrain qui a le droit absolu d'empêcher les autres de se servir.

Par contre, tout le monde peut user, au risque même de les assécher, de l'eau d'une mère ou d'un étang se trouvant dans une propriété privée. On doit toutefois veiller à ce que les troupeaux que l'on vient y abreuver ne détériorent pas les cultures qui peuvent se trouver de part et d'autre du chemin d'accès ...

Ethnie group:	ZEMMOUR
See also:	Barbare
Author:	S. Marcy
Title:	Le Droit Coutumier Zemmour
Publisher:	Larose, Paris.
Year:	1949

Text

p. 157 - Les Zemmour reconnaissent la distinction des biens en meubles et immeubles.

Sont immeubles les fonds de terre (tamazirt) et tout ce qui y adhère naturellement (ainna dig-a illan): arbres, végétation, récoltes, sources. Lorsqu'un immeuble est aliéné, les récoltes sur pied ou les sources qu'il peut renfermer, sont présumées comprises dans l'alienation, sauf clause contraire, conformément au principe, familier aussi à notre droit français que la chose accessoire suit le sort de la chose principale ("accessorium sequitur principale") ...

p. 158 - Aucune servitude réelle ne peut s'établir par la convention privée. Les restrictions permanentes au droit de propriété sont de pure origine coutumière ...

Les meubles (Imal) comprennent tous les biens autres que les fonds de terre. Les récoltes coupées sont considérées comme meubles. Il en est de même de la créance du prix de vente d'un objet mobilier et de l'eau de source enfermée dans un vase ...

p. 159 - La distinction des biens fondamentale en droit zemmour, est celle des "biens vivants" (ainna iddern) et des "bien non-vivants" (ainna our-iddirn).

Les "bien vivants" sont ceux qui sont "capables de procréer" (ainna itlaroun): ce sont les femmes, tous les animaux domestiques, les grains, la terre cultivée ou "terre vivante" (tamazirt iddern), les arbres qui produisent des fruits consommés par l'homme. Tous les autres objets appropriables sont considérés comme dénués de vie ...

Nous retrouverons les conséquences de cette idée transposée sur le plan social dans la réglementation du droit de préemption ou chfa'a, qui est la clé du régime foncier en pays barbare.

p. 165 - En réalité le droit de propriété, chez les Zemmour, est soumis à certaines restrictions coutumières établies dans un intérêt privé ou général.

A - Ces restrictions peuvent viser l'usage de la chose lorsqu'elles résultent de servitudes réelles coutumières. Ainsi le propriétaire d'une source qui s'écoule sur un fonds voisin ne peut s'opposer à l'utilisation de l'eau par le propriétaire de ce fonds inférieur, dès lors que le débit de la source excède ses propres besoins d'irrigation ...

C. Mais la restriction la plus importante au droit de propriété se présente en matière de disposition à titre onéreux. L'"abusus" n'est absolu qu'en ce qui concerne les objets mobiliers; dès qu'il s'agit d'immeubles, la faculté de disposition du propriétaire se trouve restreinte par la possibilité qu'ont certains tiers d'exercer, à l'occasion de la vente, un droit de préemption ou *chfa'a*.

Ces derniers termes viennent du droit musulman, mais les caractères et la portée de l'institution sont propres à l'organisation sociale des Berbères où la *chfa'a* offre une étendue beaucoup plus vaste que dans le droit coranique ...

p. 167 - La propriété n'est point conçue par les Berbères comme un privilège individuel exclusif, mais bien comme une fonction sociale qui comporte d'impérieux devoirs en contre-partie de ses avantages ...

Au premier plan des préoccupations économiques du groupe se présente en effet la nécessité de sauvegarder de toute emprise étrangère la base territoriale minima dont la culture doit désormais pour une bonne partie passer à la subsistance commune ...

... toute aliénation de sol cultivable consentie au profit d'étrangers est une perte pour le groupe, une saignée pratiquée dans ses moyens d'existence et qu'il faut à tout prix empêcher ...

p. 168 - C'est pourquoi toute vente d'immeuble à un étranger au groupe est une lésion pour ce dernier, en ce sens qu'elle fait passer sur lui la menace d'un "damnum emergens", d'un dommage éventuelle plus ou moins considérable. Le droit de préemption ou *chfa'a* qui appartient à tout membre mâle majeur de la fraction, a pour but d'y remédier en permettant le retrait de la terre des mains de l'acquéreur étranger contre remboursement du prix ...

Le droit de *chfa'a* apparaît, - semble-t-il, - à l'analyse, comme un résidu de l'ancienne propriété collective du groupe sur le sol cultivable, occupé d'abord en majeure partie par voie de conquête, puis alloué ensuite en exploitation familiales entre les chefs de tente afin d'en réaliser la meilleure utilisation économique possible. Le droit de propriété sur le sol en pays *braber* serait ainsi en réalité une sorte d'usufruit sans limitation de durée, ou mieux une sorte de "possession utile" concédée par le groupe à la "tente" pour assurer son existence autonome, la disposition du sol devant revenir au groupe en cas de disparition totale et définitive des bénéficiaires visés ...

p. 169 - A l'intérieur de la fraction, la terre doit être de préférence affectée à des exploitations familiales plus rémunératrices, sauf bien entendu certains cas d'espèce: forêts, pâtures, marécages, qui restent terres collectives, "*tamazirt djema'at*", affectées à l'usage de tous ...

Author: A. Sonnen
Title: Le Régime Juridique des Eaux au Maroc
Publisher: Librairie du Recueil Sirey, Paris
Year: 1933

Text

p. 22 - 12. Dans la plaine et la montagne de Marrakech, les terres non irrigables, ou "blad bour", sont sans valeur. Aussi les indigènes se partagent-ils jalousement l'eau qu'ils ont pu capter, et chaque individu, ou chaque famille, chaque fraction, chaque tribu, a indiscutablement des droits d'usage privatifs sur la part lui revient. Il semble que l'eau avant de devenir propriété individuelle dans de nombreux cas, ait été, à l'origine, propriété de la tribu. Chez les Chiadma, le droit d'eau retourne à la collectivité lorsque son titulaire défunt n'a pas laissé d'héritiers chefs de tente. Cette évolution est normale: en Afrique du Nord, toute propriété a commencé par être collective avant de devenir individuelle en passant par le stade de l'indivision. Le droit d'eau n'a pu échapper à cette loi. D'ailleurs, le droit collectif, le droit en indivision et le droit individuel peuvent fort bien coexister dans la même tribu. Mais nous allons voir que dans l'ensemble du Maroc le droit privatif individuel paraît l'emporter. Chaque séguia a son histoire, son fondateur, quelque fois légendaire, sa "quida" (la règle coutumière), ses archives, ses gardes des eaux. Chaque séguia est intimement liée à l'histoire, à l'organisation et à la condition du groupement humain qui l'utilise: tribu, fraction de tribu ou famille ...

p. 25 - Les droits d'usage sur les eaux, dans la région de Marrakech, s'énoncent par le terme de "ferdia", reproduit souvent même dans les règlements administratifs. La ferdia est une part d'eau, résultant d'un tour d'eau dans le temps. Il y a de quatorze à vingt ferdia dans une semaine, suivant les séguia. Pendant une ferdia, l'usager qui en est bénéficiaire a le droit d'utiliser la totalité du débit de la séguia. Passé cette unité de temps, l'eau va fertiliser le terrain du bénéficiaire de la ferdia suivante. Des gardes des eaux, mesurant souvent le temps avec un sablier, veillent à l'ouverture et à la fermeture des vannes, qui sont un petit barrage, large comme un livre ouvert, qu'on détruit ou reconstruit à la main en quelques secondes. Chacun d'ailleurs surveille àprement son voisin de ferdia, tant et si bien que dans certaines tribus il n'y a pas de garde des eaux. Il est très rare que les droits d'eau s'énoncent par une fraction continue de débit. En tous cas, le droit d'eau ne porte presque jamais sur un débit absolu. Cela tient à la variabilité des débits dont chacun doit avoir sa (p. 26) quote-part seulement. C'est ne que pour les très basses eaux qu'un débit fixe est garanti, afin de leur permettre de subsister, à une famille, à une fraction de tribu ou à une tribu. En ce cas, un "qadou", c'est-à-dire une conduite, est branché sur la séguia ou l'oned. En raison de sa, de sa section, de sa pente, de la nature de ses parois, cette conduite donne un débit pratiquement constant. On parlera par exemple d'un qadou de 10 litres par seconde.

L'eau est nettement l'objet d'un droit de propriété. Les ferdia se négocient indépendamment des terres. Sur la séguia Tagourant par exemple, séguia issue de l'Oued Rarsia, le prix de location d'une ferdia (pour un tour) est de 75 à 100 francs. Le prix d'achat d'une ferdia varie de 12 à 15.000 francs. Le débit de la séguia Tagourant n'est pourtant que de cinquante litres par seconde et il y a pour elle vingt ferdia dans la semaine.

"L'eau et la terre sont célibataires", disent les indigènes de la région de Marrakech. Quand l'eau est l'objet d'un droit de propriété, deux cas sont à considérer:

1° La propriété de l'eau est distincte de celle du fonds. Ce genre de propriété est dit "ferdia azria". Cette propriété fait l'objet d'un titre spécial; elle a alors un caractère mobilier, et chaque acheteur de la totalité ou d'une partie du débit se fait délivrer un titre spécial.

2° Le propriétaire du fonds se trouve être le même que celui de l'eau. Si ce propriétaire décide d'attacher l'eau à la terre, il fut mentionner ce rattachement sur le titre du fonds. S'il est cédé une partie de l'eau au profit d'un autre fonds, cette cession est consignée sur les deux titres: sur le premier comme servitude passive sur le second comme servitude active. L'eau a alors un caractère immobilier.

L'intérêt qu'il y a à savoir si l'eau a un caractère mobilier ou un caractère immobilier est le suivant. S'agissant (p. 27) d'un litige entre indigènes à l'occasion de droits d'eau légalement acquis, le cadi est compétent si l'eau a un caractère immobilier et est rattachée à un immeuble (non immatriculé); au contraire si l'eau a un caractère mobilier, le caïd serait compétent ...

... Il arrive très normalement que des titulaires de ferdia n'aient pas de terres à arroser, ou vient que des terres fertiles, sur lesquelles passe même une séquia, ne soient pas arrosées, parce que leur propriétaire a du, dans un moment de gêne, vendre ses ferdia, ou n'a pas su se ménager les avances nécessaires pour en acquérir; il y a même des intermédiaires qui, sans posséder du terres, ou n'en possédant que très peu, achètent un nombre imposant de ferdia pour les revendre en détail, avec bénéfice, surtout pendant les années de sécheresses. Les règlements d'eau, lorsqu'ils répartissent les eaux entre les usagers, entravent singulièrement cette pratique de la vente des eaux; non pas qu'ils la rendent impossible en droit (droit des tiers réservés), mais ces actes administratifs n'étant réformables que par une procédure semblable à celle qui a abouti à leur établissement, on conçoit que cette procédure gêne, en fait, singulièrement les velléités de transactions au sujet des eaux réglementées.

Les indigènes de la région du sud de Marrakech, et notamment ceux de la montagne, qui sont des Berbères, sont très jaloux de leurs droits traditionnels sur les eaux. Ces droits sont réglés par la coutume locale, qui est presque (p. 28) entièrement orale.⁴⁴ Cette coutume méconnaît ce principe du droit musulman qui veut le propriétaire du fonds d'amont laisse s'écouler, au profit des propriétaires d'aval, le superflu de l'eau passant sur son fonds ou en bordure de son fonds. Dans la région de Marrakech, même lorsque l'eau dépasse sur le fonds supérieur la hauteur de la cheville, le propriétaire de ce fonds peut garder le superflu de l'eau, pour le vendre par exemple. Ce point est constant. Suivant la coutume, les séquias indigènes s'alimentent à plein, successivement d'amont en aval. C'est ce qui explique que dans la région de Marrakech, les propriétaires indigènes de la plaine se sont toujours préoccupés de s'assurer, au besoin par la force, le contrôle des prises d'eau dans la montagne. Ils ne l'ont pas sans péril, parfois.

Le montagnard berbère "tuera son frère" s'il veut porter atteinte à ses libertés, à soi, à son eau. Par contre, il n'aura pas haine pour l'étranger si celui-ci respecte les mêmes libertés et les mêmes biens ...

44

44. Les auteurs mentionnent dans ce chapitre, à l'occasion de la description des séquias, les coutumes locales relatives à l'eau. Ces coutumes sont très variées et souvent en contradiction avec les principes du droit musulman. Les auteurs soulignent que ces coutumes sont souvent orales et que leur transmission se fait par la pratique. Ils mentionnent également que ces coutumes sont souvent en contradiction avec les principes du droit musulman, qui veut que le propriétaire du fonds d'amont laisse s'écouler l'eau au profit des propriétaires d'aval. Les auteurs soulignent que ces coutumes sont souvent orales et que leur transmission se fait par la pratique. Ils mentionnent également que ces coutumes sont souvent en contradiction avec les principes du droit musulman, qui veut que le propriétaire du fonds d'amont laisse s'écouler l'eau au profit des propriétaires d'aval.

p. 29 - 13. Dans le Sous, l'eau fait également en plus d'une tribu l'objet d'une appropriation privée coexistant avec la propriété collective dans d'autres tribus. L'eau est distribuée par tour, comme à Marrakech. Le temps, pendant lequel l'usager bénéficie du débit de la séquia qui l'intéresse, est mesuré par une sorte de clepsydre, constituée par un petit récipient en cuivre, ou même un coquillage, percé d'un trou à la base, que l'on pose sur l'eau d'un récipient. L'eau emplît progressivement le petit vase ou "tassa", l'unité de temps (vingt minutes à peu près) est le temps qui s'écoule depuis le moment où la tassa est (...) sur l'eau jusqu'au moment où elle tombe au fond de l'eau. Ce procédé d'évaluation du temps est d'ailleurs très général dans les oasis des confins saharien du Maroc, de l'Algérie et de la Tunisie ...

p. 30 - 14. La ville d'Oujda est alimentée depuis un temps immémorial en eau courante par une source, unique, mais au débit abondant et régulier, la source de Sidi Yahia d'Oujda. Des forages tubés ont récemment augmenté le débit de cette source. Comme à Marrakech, l'eau fait l'objet de droits privatifs indépendants du sol.

La masse des eaux de Sidi Yahia, en dehors du débit des forages récents, est divisée en quatre cent huit parts d'eau. Le bénéficiaire d'un tour d'eau a droit, tous les dix-sept jours, à la totalité du débit de la séquia qui le dessert, pendant un quart de journée ou de nuit (unité de temps variant d'ailleurs très arbitrairement de 1 h. 30 à 4 heures). Comme à Marrakech, les parts d'eau, on le voit, ne sont pas une quotité du débit. Les mêmes inconvénients qui se rencontrent à Marrakech du fait de l'appropriation des eaux se retrouvaient à Oujda: droit d'usage vendu au plus offrant et non pas à celui qui en avait le plus besoin pour ses terres.

Il y avait jusqu'en 1926, à Oujda, une véritable Bourse des eaux qui se tenait sur une des places de la ville, dite place des marchés ...

p. 32 - 15. Mais, dans tout Maroc, ce n'est pas qu'à Marrakech, dans le Sous ou Oulda l'on peut constater l'existence indubitable de droits privatifs sur les eaux.

Sporadiquement, dans plus d'une tribu, et presque toujours dans les tribus arabisées du plat pays, l'eau fait l'objet d'un négoce supposant un droit de propriété. C'est ainsi que les bourgeois de Fés s'étaient assuré la propriété des eaux de Fouad Fés arrosant leurs jardins ou rafraîchissant leurs demeures. Dans la sous-fraction des Ait Oulghoum (Tadla) où il n'y a plus de terres collectives, le part d'eau est héritée comme les autres biens, elle est aliénable et distincte du fonda; les propriétaires démunis d'eau s'associent, pour cultiver leurs terrains irrigables, avec les propriétaires qui disposent de beaucoup d'eau. Dans la même région, l'eau est propriété privée dans les fractions des Ait Abdellouli et Ait Mohand, et des Beni Ayatt. Chez les Zaïan (cercle de Khenifra) sont propriétés privées les sources se trouvant sur les terrains mefk et collectives les eaux des oueds et les eaux des sources aïses en terrains collectifs. Dans la région de Midelt, chez les Ait Izdeg, les eaux appartiennent en commun à plusieurs propriétaires, stade de l'indivision; dans la même région: chez les Ait Raho ou Ali (Ait Arfa) et chez les Irklaouen, l'eau est attachée au fonda, mais elle se vend avec lui; dans le reste de la tribu des Ait Arfa, l'eau peut se vendre séparément du fonda. Près de Sefrou, dans la tribu des Ait Seghrouchen de Sidi Ali, chaque chef de tente a droit à sa part d'eau qu'il peut aliéner. Le droit d'eau est formellement distinct du fonda. Dans la tribu des Beni M'Tir, au sud de la route n° 5 de Meknès à Fes, une fraction de cette tribu avant 1926, chaque année, une partie de ses droits d'eau sur l'Ain Soltane, à des fractions de la tribu di Saïs situées à l'aval. De même, des droits d'eau sur l'Ain Kaddem, dans la même région, étaient cédés régulièrement par des propriétaires qui n'avaient pas l'emploi de leur eau à des propriétaires de terrains dépourvus d'eau ...

p. 34 - 16. Il est vrai qu'en de nombreux points du Maroc, du pays berbère surtout, l'eau est restée un bien collectif. Mais c'est un bien possédé privativement par une collectivité, et non à l'usage de tous, ni un bien de l'Etat, du Maghzen, dans les régions soumises au Sultan.

Chez les Ait Bou Zid (Tadla) l'eau a un caractère absolument collectif. L'eau y partagée en parts égales entre tous les gens résidant dans la fraction, y compris les étrangers à condition qu'ils labourent. L'opération a lieu deux fois par an, en mars et en octobre. A ces époques, le "cheikh"⁴⁵ et les membres de la "djema"⁴⁶ rassemblent devant la mosquée tous les habitants et s'informent de ceux qui veulent et pourront effectivement, ensemercer du maïs (en mars) ou du blé et de l'orge (en octobre). Ceux-là seuls reçoivent une part d'eau (confronter infra la répartition par la djema des terres collectives aux abords des merdjas du Gharb n° 73). Les terrains sont cependant privés. Dans la même région du Tadla, bien que le terrain soient privés également, l'eau est collective chez les Ait Atta, les Ait Said ou Ali. Les eaux sont encore collectives chez les M'rabtines et Amyine (Annexe des Ait Sgougou, Meknés): les Ait Youssi (cercle de Sefrou), les Ighezran et Beni Zeggout, les Beni Quarain de l'Est (Taza) et les Ait Seddrat (Moyen-Dades).

Des règles peuvent se dégager de l'étude des droits de propriété collective sur les eaux:

p. 35 - 1° En terre collective, les eaux sont collectives (ou même publiques). Les eaux nées en terrain collectif restent collectives. Cette règle est absolue.

2° La part d'eau sur des eaux collectives, en principes, est attachée au fonds et inaliénable. La collectivité reprend la part lorsque le fonds n'est pas ou est mal cultivé. Mais les propositions précédentes peuvent souffrir des exceptions. Il peut se faire que la djema, l'amhar, le moqqadem, le cheikh se désintéressent de l'usage qui est fait du droit d'eau après son attribution temporaire. En ce cas, le droit d'eau peut être loué, vendu par son titulaire.

3° L'eau a très souvent un caractère collectif lorsqu'elle est très abondante par rapport aux terres topographiquement irrigables (thalweg étroit) et qu'elle doit être transportée par des seguias. En réalité, à notre sens, ce qui est collectif et appelle l'organisation commune, c'est le réseau des seguias en tant qu'appareil d'arrosage dont chacun ne peut user qu'à tour de rôle. Ce n'est donc pas la rareté de l'eau qui la soustrait à la propriété privée. La rareté de l'eau au contraire, nous l'avons dit, conduit, en droit indigène, à son appropriation privée ...

17. Une conclusion paraît être à dégager indiscutablement de ce qui précède. Ce serait la suivante: au Maroc, en ce qui concerne le régime juridique des eaux, les principes généraux et les règles spéciales du droit musulman sont souvent tenus en échec par les traditions indigènes. Les eaux au Maroc sont très fréquemment l'objet de droits de propriété privée. C'est un fait de la dernière évidence.⁴⁷ Quant aux droits collectifs, ils échappaient (p. 36) au contrôle de l'Etat, du Maghzen ...

p. 37 - ... La pratique de la vente de l'eau ne doit pas faire illusion. Par la vente, le louage, le "propriétaire" de l'eau tire de son titre des avantages juridiques inépuisables que ne réprouve pas la religion: mais c'est au moment de la consommation de l'eau que les commandements de solidarité religieuse reprennent leur autorité, en ne permettant pas à l'usager final de l'eau de tirer de celle-ci toute l'utilité matérielle qu'elle pourrait comporter. L'usager final de l'eau doit parfois faire abstraction de ses besoins, oublier le prix

⁴⁵ Le mot "maghzen", dans l'ancien Maroc, désignait le sultan et son entourage, par extension, le gouvernement central, et vaguement l'Etat, notion bien imprécise en pays d'Islam. Aujourd'hui le mot maghzen désigne plus spécialement le sultan et le grand Vieux dans leurs attributions souveraines et réglementaires, et la maison chérifienne.

⁴⁶ La "djema" est l'assemblée des notables du douar ou de la fraction: la Djema a un rôle extrêmement important dans les tribus berbères. La djema berbère règle tous les intérêts communs du groupement. Le cheikh (expression arabe) ou l'amhar (berbère) est l'agent d'exécution des décisions de la djema; il est nommé par elle pour un temps plus ou moins long (un an généralement).

⁴⁷ Ce fait s'est d'ailleurs bien manifesté au Maroc. Au moment de la conquête, en Algérie, il existait dans un très grand nombre de régions "... une multitude de faits de propriété privée, reconnus et consacrés par les statuts ou profits de tribus et de particuliers, sur un nombre infini de cours d'eau et de sources". (Rapport Didier sur le projet de loi qui devait devenir la loi du 16 juin 1851.)

payé pour remettre, dans certaines circonstances, (p. 38) une partie de l'élément précieux dont a besoin son voisin, dans la détresse de sa soif.

Même dans le rite malékite, le plus favorable à l'idée d'appropriation privée des eaux, le droit de chafa (de la soif) prime toutes autres considérations lorsque celui qui l'invoque est sur le point de mourir de soif. Le prophète a dit qu'il y aura une récompense pour quiconque aura abreuvé un être animé; au contraire, il y aura un châtiment terrible pour l'homme qui, ayant de l'eau en quantité excédant ses besoins, refuse cet excédent à celui qui mourait de soif, ainsi que ses troupes. Et cette bienveillance ainsi commandée par la religion est d'obligation étroite. Les indigènes marocains l'appliquent, même s'ils ne savent pas quelles règles précises de la religion du Prophète l'ont édictée ...

... cette notion de domanialité publique des eaux qui, dans ses effets, se rapproche le plus du but que voulaient atteindre les vieilles règles religieuses de l'Islam: soustraire à l'égoïsme de l'individu un bien rendu par les conditions naturelles excessivement précieux pour chacun et dont chacun doit pouvoir user ...

18. La preuve des droits privatifs sur les eaux détenus par des indigènes est établie soit par la coutume orale ou écrite, presque toujours orale chez les Berbères, soit par des documents écrits chez les tribus arabisées.

Chez ces dernières, la coutume, lorsqu'elle est orale, est conservée très souvent par les surveillants des eaux. A Oujda, par exemple, il y avait une véritable dynastie de (p. 39) répartiteurs des eaux. Le dernier de ces répartiteurs, le vénérable caïd Mohamed ben Abdallah, dit même que la charge avait été confiée à sa famille par Sidi Yahia lui-même. Ce digne indigène est d'ailleurs souvent consulté en sa qualité d'ancien garde d'eaux d'irrigation de l'oasis de Sidi Yahia d'Oujda lorsqu'il s'agit de contestations relatives à la propriété du sol des seguias ou des chemins permettant l'entretien de ces seguias, contestations que n'a pu éteindre la création de l'association syndicale. Signalons que le sol des seguias portant l'eau à plusieurs parcelles appartenant à des propriétaires différents était bien maghzen; le sol de celles aboutissant à une seule parcelle pouvait être considéré comme appartenant au propriétaire du fonda (règle coutumière d'Oujda).

Ailleurs, la djemaa, le caïd, le cadi, les anciens, se chargent de dire la coutume. Aux portes mêmes de Rabat, l'état extraordinairement minutieux et compliqué des droits sur les Aïoun bel Aredj et Chellah, sources situées au bas des ruines bien connues, a été établi d'après les déclarations verbales d'un vieillard, Si Mohammed Bichkaoui.

Chez les Berbères du Sud (Sous), en matière de répartition des eaux, le conseil composé des notables, appelés Infiass ou Ait Arbain, a le rôle important qu'il a toutes les fois qu'il s'agit de résoudre les problèmes de la vie courante par une organisation collective. Or, une des premières occasions d'organisation chez les Berbères du Sud a bien été l'organisation de l'irrigation. La conservation de la coutume relative aux eaux, ainsi que le règlement des litiges nés au sujet des eaux, constitue un des sujets fréquents des interminables discussions de la djemaa. Et lorsque (p. 40) l'amrhar ou moqqadem fait connaître la liste des infractions qui seront punies pendant son administration, ainsi que le taux des amendes qui frapperont les délinquants, sur cette liste figure en bonne place la longue énumération des infractions à la qaida concernant les eaux. M. Surdon a donné, dans son ouvrage intitulé "Esquisses de droit coutumier berbère marocain", quelques exemples de ces sanctions. Les petits "Infiass", sorte d'agents de police, de gardes-champêtres chargés de la discipline générale, font respecter la qaida sur les eaux comme les autres qaidas. Mais il semble que l'on pourra jamais donner un tableau complet et définitif des coutumes berbères concernant les eaux. Non seulement ces coutumes varient dans l'espace, c'est-à-dire d'un canton à l'autre, mais encore, à l'intérieur d'un même canton, elles varient lentement avec les événements qu'apporte la vie quotidienne du groupement ...

... Les documents écrit qui établissent les droits d'eau chez les tribus arabisées sont des "moulkiya". Les moulkiya sont des actes constatant que des témoins ont affirmé le fait matériel d'une possession régulière. Une possession d'une durée de dix ans, paisible, publique, permet à celui qui peut l'invoquer de repousser par voie d'exception, les actions en revendication dirigées contre lui. Les moulkiya sont établies (p. 41) par les "adouls", sortes de notaires rédigeant les actes et, en même temps, s'il le faut, témoins professionnels d'une probité particulière (un adoul valant six témoins ordinaires) sous le contrôle du cadi qui autorise la rédaction de la moulkiya et la valide ensuite. Les moulkiya interviennent le plus souvent pour les besoins d'une cause, d'où leur valeur toute relative au point de vue juridique. Peu de moulkiya constatent uniquement des droits d'eau; elles font le plus souvent mention de ces droits à propos d'une affirmation de propriété sur un terrain où se trouvent un cours d'eau, des sources, des aguiaas ...

p. 42 - ... Les documents dont nous venons de parler ont été produits par les "chorfas" d'Ouezzan, confrérie religieuse d'une culture bien supérieure à celle de l'indigène moyen.

Nous savons aussi que de nombreux marocains de la classe aristocratique ont, avec une sage prévoyance, au cours des siècles, accumulé des titres relatifs aux eaux dont ils usent; c'est qu'ont fait notamment "les bourgeois" de Fès. Mais, en règle générale, l'indigène s'est peu préoccupé de pouvoir un jour justifier ses prétentions sur telles ou telles eaux. Cela est vrai surtout pour les collectivités. Lorsqu'une collectivité est en possession d'une agui, d'une section d'oued, depuis une époque ancienne, et sans contestations, elle n'a jamais à faire établir des titres. Dans le passé, les litiges entre les tribus à propos des eaux se réglaient parfois à coups de fusil, mais il ne restait aucune trace des droits affirmés de cette manière forte.

Cet état de choses rend parfois très délicat, en tous cas toujours difficile, la tâche des commissions administratives chargées d'opérer des reconnaissances de droits d'eau, lorsqu'il s'agit d'attribuer ces droits à des indigènes, individuellement ou collectivement.

Le Maghzen, lorsqu'il le pouvait, intervenait parfois dans les litiges entre les tribus. Il restait alors des traces de son arbitrage, lequel faisait loi, avec plus ou moins d'autorité, pendant un temps plus ou moins long ...

p. 43 - 19. Avant d'en avoir terminé avec ces très brèves considérations sur le droit musulman et les coutumes indigènes au Maroc, indiquons une particularité qu'admettent tous les rites, toutes les écoles de droit islamique, particularité qui s'est traduite dans la réglementation actuelle des eaux (p. 44) La propriété des cours d'eau, des puits, de sources ou points d'eau, grève une certaine étendue de terrain limitrophe d'une servitude de prohibition: sur cette zone de terrain ou harim, il est interdit de se livrer à des travaux risquant de diminuer la quantité d'eau ou de rendre moins facile l'accès à l'eau ou de rendre moins facile l'accès ou son puisage. Le propriétaire du puits ou de la source, sur le harim desquels un nouveau puits a été creusé, a le droit de combler ce puits et d'obliger judiciairement l'auteur du dommage à réparer le préjudice causé. Théoriquement, le harim ne devrait être qu'une zone de servitude, une surface de prohibition. Mais, pratiquement, et cela a dû se produire peu à peu, les coutumes ont considérées souvent le harim comme étant, sans restriction, la propriété du propriétaire du puits, de la source ou point d'eau. Dans le rite malékite, la coutume locale fixe seule l'étendue des harim; le rite hanéfite lui, va jusqu'à fixer à trois cents à cinq cents coudées le rayon du harim autour d'une source, ce qui est considérable: 120 à 200 mètres ...

Author: A. Sonnier
Title: Code des Eaux au Maroc
Year: 1933

Text

p. 75 - ... la coutume marocaine l'ignore (p. 76) fréquemment [le droit musulman], c'est un fait, surtout dans le domaine dont nous nous occupons.

Ce qu'on peut retenir de la doctrine musulmane, c'est une bienveillance d'inspiration religieuse qui fait que lorsqu'il y a détresse de la soif pour un individu ou pour une collectivité, les coutumes marocaines se relâchent des droits stricts de la propriété.

Car ce qui caractérise, en effet, la condition juridique des eaux au Maroc, c'est que les eaux, venues au jour en ce pays, avant que la notion de domaine public y soit affermie, étaient l'objet d'une multitude de faits supposant des droits de propriété ou de possession privative soit individuels, soit au profit de collectivités restreintes.

Lorsqu'elle est l'objet de droits privatifs, l'eau peut se louer, se vendre indépendamment du sol. Le tour d'eau, dans la sud, s'appelle généralement *ferdia*,⁴⁹ parfois *nouba* ou *kharouba*. Au Maroc, lorsque l'eau peut faire l'objet de ventes privées, le prix du litre-seconde est très variable, avec des extrêmes comme 5.000 ou 100.000 francs.

En de nombreux points du Maroc, du pays berbère surtout, l'eau est restée un bien collectif. Mais c'est un bien possédé privativement par une collectivité, et non à l'usage de tous, ni un bien de l'Etat, du *Maghzen*.

En terres collectives, les eaux sont collectives (ou même publiques). Les eaux nées en terrain collectif demeurent collectives.

La part d'eau sur des eaux collectives, en principe, suit le sort du fonds, l'eau est distribuée en même temps que le terrain. La collectivité reprend la part d'eau lorsque le fond n'est pas ou est mal cultivé. Il peut se faire aussi que, après attribution temporaire de l'eau, la collectivité se déintéresse de l'usage fait de l'eau pendant (p. 77) la période d'attribution. En ce cas, le droit d'eau peut être loué, vendu par son titulaire.

La preuve des droits privatifs sur les eaux est établie soit par la coutume orale ou écrite, presque toujours orale chez les Berbères, soit par des documents écrits chez les tribus arabes ou arabisées, certains de ces actes sont parfaitement établis.

On ne peut généraliser en ce qui concerne les coutumes intéressant les eaux. Il ne faut pas avoir d'idées préconçues à ce sujet. Il n'y a pas de règle générale. Ce qui est vrai un canton n'est pas dans le canton voisin. Les questions soulevées par les coutumes à propos des eaux sont toujours des questions d'espèce, de contingence locale, et souvent, d'opportunité ...

⁴⁹ *Ferdia* arabe, dans la région de Marrakech, lorsque les droits d'eau sont indépendants du sol.

Author: Ahkam Al-Miab
Title: Régime des Eaux
Publisher: Archive Marocaine, Tome 18, Paris, 1909, Ernest Leroux Editeur
Year: 1974

Text

p. 274 - ... Née sur un sol brulé par le soleil et où l'eau fait souvent défaut, la législation musulmane ne pouvait passer sous silence la réglementation relative à l'usage ou à la propriété des eaux.

Cette matière est toute traditionnelle. Les principes qu'on y applique ont été établis par analogie avec les décisions que, d'après le hadith (tradition), le Prophète avait rendues en cette matière. C'est que, pour une population qui risquait souvent d'avoir soif, comme l'était la population de l'Arabie, l'eau avait une valeur inestimable, accrue d'ailleurs par le Coran, qui a fait de l'eau l'élément de purification par excellence, pour les besoins religieux (ablutions, lavage des morts, etc.).

Le droit musulman distingue d'abord les eaux courantes qui sont res nullius: fleuves, rivières, mer. Tout le monde y a également droit, et l'on ne peut s'en approprier une partie, d'une manière exclusive, qu'en l'isolant, par exemple, dans un récipient.

Une seconde catégorie comprend les eaux de toute nature qui se trouvent en totalité sur le fonds d'une propriétaire. Celles-là sont sa propriété privée, et il peut en refuser l'usage à tout le monde, quoique la loi lui fasse une obligation morale d'en donner à ceux qui risquent de mourir de soif ou de perdre leur récolte.

Enfin pour les eaux qui ne sont ni res nullius, ni propriété privée, la loi en règle l'usage en tenant compte de la peine et des besoins de chacun.

Ainsi, celui qui creuse ou fore un puits ailleurs que dans son fonds, se sert le premier, de l'eau dans la mesure de ses besoins. Après lui, viennent le voyageur, les habitants du pays, puis les troupeaux de chacune de ces trois catégories de bénéficiaires.

Quant aux eaux qui appartiennent en commun à plusieurs individus, à défaut de règlement amiable, le partage s'en fait à l'heure, ou à la jauge ou par tout autre procédé donnant également satisfaction à tous les intérêts en conflit.

p. 276 - Des Sources. Une source appartient aux habitants d'une localité, qui se servent de son eau pour irriguer et pour abreuver leurs troupeaux et leurs bestiaux. (C'est état de choses est admis chez eux) de génération, sans qu'il y ait parmi eux aucun qui prétende avoir des droits exclusifs à tout ou partie de cette source. Mais certains des habitants de la localité en question possèdent des terres et des jardins en aval de cette source, sans que les autres aient aucune terre ou autre chose de ce côté-là. Or, les propriétaires des terres situées en aval de la source veulent profiter de l'excédent de l'eau pour irriguer leurs jardins et leurs potagers, qui se trouvent dans le terrain nu. Mais ceux qui ne possèdent ni jardin ni terrain de ce côté-là veulent participer avec eux à l'excédent de l'eau, soit pour le vendre, soit pour la donner gratuitement à d'autres. Cet excédent doit-il profiter à tous les habitants de la localité ou seulement à ceux qui ont la propriété des terrains situés en aval de la source? Si vous admettez cette dernière solution, ceux-ci profiteront-ils de l'eau par portions égales, ou proportionnellement à l'étendue de leurs fonds supérieurs puis ceux qui la suivent, et ainsi de suite?

Expliquez-nous cela et répondez-nous à ce sujet point par point car c'est une affaire qui est subordonnée à votre manière de voir qui est assise (par Allah). Puisse Allah nous faire jouir de votre conservation et nous faire profiter de vos vertueuses bénédictions !

Qu'Allah (...) vous honore! Ceux des habitants de ladite localité qui possèdent des terres et des jardins ont plus de droits que tout autre à l'excédent de l'eau en question à raison de ce qu'ils en ont la possession. Quant aux autres, ils n'y ont aucun droit.

Ces propriétaires privilégiés irrigueront en commençant par les fonds supérieurs, puis les fonds immédiatement inférieurs et ainsi de suite, ainsi que cela a été rapporté d'après le Prophète, - qu'Allah réponde sur lui les bénédictions et lui accorde le salut! - au sujet de Mahzur et Marizib, deux cours d'eau de Médine, qui grossissent avec l'eau des torrents.

Al-Badji a dit en commentant ce hadith: "Cela s'entend du cas où les plantations ont été faites d'abord par ceux qui sont en amont, puis par ceux qui les suivent et ainsi de suite, ou bien lorsqu'ils ont planté à la même époque (mais Allah le sait mieux), ou bien lorsqu'on ignore l'ordre dans lequel ils ont planté.

Quant aux fonds supérieurs (al-a'la), on établit la (p. 278) préférence entre eux soit d'après la priorité (en date), soit d'après la proximité (du lieu). Ainsi - ajoute cet auteur - au cas où le propriétaire du fonds inférieur a planté le premier, il aura plus des droits (que les autres) à raison de sa priorité en date. En effet, c'est un droit qu'il a acquis et une jouissance qu'il a eue avant tous les autres". C'est aussi de cette façon que se règle votre question. Et c'est d'Allah qu'il faut implorer l'assistance.

Bayyidî Mishbah ibn Mouhammad ibn Abd Allah Al-Yalisoutî. T.V, p. 132 et 133.

Les habitants de HianSehroux (?) étaient copropriétaires par indivis d'une source, dont ils se partageaient l'eau entre eux, en cinq rigoles, d'égale importance. Mais les ayants droit de chacune de ces rigoles prenaient l'eau d'une manière irrégulière, qui lésait les intérêts du faible, de l'orphelin et de celui qui ne peut défendre ses droits. En examinant maintenant leur situation et les voies légales qu'ils doivent suivre, ils s'en informèrent, et, en ayant pris connaissance, ils requérèrent témoignage contre eux-mêmes, qu'ils se sont mis d'accord et qu'ils se sont engagés à ce que l'irrigation ait lieu, dans chacune des cinq rigoles, d'après un tour de rôle déterminé, l'eau étant prise, dans chacune rigole, par le propriétaire du fonds supérieur, puis celui qui vient immédiatement après et ainsi de suite. Lorsque le propriétaire du fonds supérieur aura pris son tour de rôle, pendant le nombre d'heures convenu (car ils ont partagé l'eau et en ont attribué à chacun une part proportionnelle aux sillons de sa terre) et une fois le nombre de ces heures d'irrigation écoulé, il laisse passer l'eau chez son voisin immédiatement inférieur, en commençant par les fonds supérieurs, chaque propriétaire retenant l'eau pendant le nombre d'heures qui lui est attribué. Cette convention est-elle (p. 279) valable et est-elle exécutoire à l'encontre des absents, parmi les mineurs sans tuteurs et les femmes, sans qu'il soit établi qu'il y a utilité et avantage pour celui qui s'y conforme?

Si l'eau provient d'une source dont ils sont copropriétaires, ils pourront se la partager, si tous sont d'accord à cet égard, mais après qu'on aura fait représenter les mineurs par une personne nommée par le qadi et qui partagera en leur nom. Il en est de même pour les femmes qui ont droit à une partie de cette eau; il faut également qu'elles consentent, si elles ne sont pas en tutelle. Si elles y sont, il est indispensable qu'il leur soit donné un représentant qui partagera en leur nom. Lorsque tout le monde sera d'accord sur le partage et qu'il n'y aura pas de préjudice, le partage sera exécutoire.

Même si l'eau descend de la montagne et provient de la pluie, sans que son origine soit l'objet d'un droit de propriété, la loi, en ce cas, est que le propriétaire (du fonds) supérieur irrigue, puis, lorsqu'il achève son irrigation, abandonne l'eau au propriétaire (immédiatement) inférieur, ainsi qu'il est établi par la "sounna" (tradition) à cet égard.

Le juriconsulte nommé ci-dessous fut consulté au sujet d'une terre ayant une source d'eau avec laquelle on l'irriguait. Puis vint un torrent qui dispersa l'eau de cette source, il y a de cela environ trente ans, et la terre demeura sans irrigation. Or l'eau de cette source dégradée passait sur la terre d'un homme, à qui les habitants de la métairie en question demandèrent la permission de creuser dans son terrain et dans sa propriété une autre rigole (p. 280) dans laquelle coulait l'eau d'une autre source, jusqu'à ce qu'elle arrive à leur rigole, pour leur permettre d'irriguer leur terre. Cet homme leur accorda l'autorisation, mais en requérant témoignage que, le jour il voudrait leur retirer l'autorisation, il en aurait le droit, et il en dressa un acte contre eux. La rigole fut creusée et les individus en question s'en servirent pour l'irrigation pendant un certain temps. Puis cet homme vendit l'eau dont il s'agit et remit à l'acheteur l'acte susdit. Il y a déjà quinze ans qu'ils irrigent leurs champs au moyen de cette rigole, avant et après la vente, jusqu'à ce jour. Or, à présent, l'acheteur de la terre, détenteur de l'acte susmentionné, veut leur retirer l'autorisation, en se prévalant dudit acte. Que décider?

Si l'irrigation de cette terre ne peut avoir lieu que de la façon qui leur a été permise, la propriété du fonds sur lequel passe l'eau, n'a pas le droit de s'y opposer. On tient compte, ici, de l'opinion qui admet le caractère obligatoire de l'usage, dans tous les cas, ainsi que cela a été jugé par (le khalife) Omar, qu'Allah soit satisfait de lui!

p. 281 - Des Rivières.

Les riverains de la rivière appelée Oued Maamouda furent en contestation avec des hommes de Fes, au sujet du curage de cet Oued, qu'ils voulaient entreprendre afin d'en augmenter le débit pour irriguer leurs palmiers et leurs vergers. Les hommes de Fes refusèrent. La question a été examinée par le juriconsulte ci-dessous, qui a répondu en ces termes:

Les propriétaires des maisons se rangent en six catégories, quant à l'utilité qu'ils retirent de la rivière en question. La première catégorie comprend ceux qui amènent une partie de l'eau de la rivière chez eux, pour nettoyer les latrines, ou pour alimenter une citerne de leur maison, ou pour un autre usage analogue. La deuxième catégorie est formée par les propriétaires des puits qui sont alimentés par les infiltrations. La troisième catégorie comprend les propriétaires des canaux et des latrines qui se versent dans la rivière. La quatrième catégorie est formée de riverains et de ceux qui demeurent tout près de cette rivière. La cinquième catégorie comprend ceux qui jettent dans leurs rues et leurs avenues les ordures et la terre, que les torrents et les eaux de pluie emportent jusqu'à les jeter dans la rivière en question. Enfin, la sixième catégorie comprend ceux qui se servent de l'eau de la rivière pour irriguer leurs plantations, abreuver leurs bestiaux ou pour d'autres usages analogues.

Je dis qu'aucune de ces catégories n'est tenue du curage de la rivière en question, pour en maintenir l'eau et en augmenter le débit. Chacun d'elles peut retirer de cette rivière l'utilité qui lui convient, dans l'état où la rivière se trouve.

Le juriconsulte ci-dessous fut consulté au sujet d'une longue rivière dont les eaux descendent des montagnes et qui en arrivant aux cultures, rencontre en amont un barrage, où l'eau vient tomber, pour arroser, au moyen d'une rigole, tout un champ déterminé. L'eau qui, s'infiltrant sous le barrage, coule dans le lit de la rivière, est arrêtée par un autre barrage, grâce auquel les riverains du second barrage peuvent irriguer, et ainsi de suite jusqu'à la fin de la rivière. Or, parmi les riverains du premier barrage, par exemple, il en est qui se disposent à prendre l'eau entre les deux barrages et veulent s'en servir pour irriguer une partie de leur

terre, créant ainsi une nouvelle oeuvre à l'encontre des riverains du barrage inférieur, alors que l'eau de celui-ci provient du barrage supérieur. En ont-ils légalement le droit? Ils argumentent de la façon suivante: "L'eau sort vis-à-vis de notre terre, donc elle nous appartient." Ont-ils ce droit?

Les propriétaires d'un barrage qui ont la possession de l'eau qui s'infiltre à travers, qui se sont établis et ont planté des arbres à côté, ne peuvent plus se voir intercepter cette eau par un riverain supérieur, car ils y ont un droit antérieur et en ont eu la possession. L'opinion la plus solide est que la possession de l'eau s'acquiert par la priorité en date. De même, les propriétaires du barrage (p. 283) inférieur auront plus de droit que tout autre à l'eau si le barrage supérieur est (plus) récent. Au contraire, le barrage supérieur aura plus de droit à l'eau, si les deux établissements ont eu lieu à la même époque, ou si le barrage supérieur est plus ancien.

Ibn'Alaq. T.VIII, p. 28 et 29.

p. 284 - Des Rigoles.

Une rigole est possédée en commun par des propriétaires de fonds supérieurs et de fonds inférieurs, chaque catégorie de propriétaires irrigant pendant deux jours, à tour de rôle. Lorsqu'ils n'ont plus besoin de l'eau, ils la laissent couler sur les fonds inférieurs, jusqu'à ce qu'elle vienne se jeter dans le grand fleuve. Les propriétaires des fonds inférieurs créèrent alors sur ce cours d'eau un moulin qui fonctionna pendant un certain temps, en dehors de la saison des irrigations. Les propriétaires supérieurs (p. 285) ayant voulu, par la suite, créer à leur tour un autre moulin, les propriétaires inférieurs les empêchèrent, alléguant le préjudice et invoquant leur priorité. Que décider?

Je ne considère pas cette rigole comme rentrant dans la catégorie des cours d'eau, sur lesquels le premier occupant a le droit de créer un ouvrage. Il n'appartenait à personne de créer en amont ou en aval un ouvrage pouvant être préjudiciable. Quant aux propriétaires des fonds supérieurs, ils ont le droit d'établir un moulin s'ils le desirent. Ils disposeront ensuite du jour qui leur est attribué, pour faire marcher leur moulin, irriguer et faire ce qu'il leur plaira. Les mêmes droits appartiennent aux propriétaires inférieurs. Mais ils ne pourront procéder au partage de l'eau en deux moitiés, si ce n'est d'un accord unanime.

Les Ibn D'har. T.VIII, p. 850

Les propriétaires d'une rigole ont l'habitude, lorsque la récolte a besoin d'être irriguée, d'y travailler tous, ceux dont la terre estensemencée et ceux dont le champ ne l'est pas. Aujourd'hui un propriétaire dont le champ n'est pasensemencé refuse de travailler avec les autres, sera-t-il obligé de les aider?

Si l'utilité de la rigole n'existe que pour ceux dont la terre estensemencée à l'époque des travaux, les frais en seront à leur charge exclusivement. Mais si son utilité profite à tous les propriétaires de la rigole, à quiconque s'en servira dans la suite pour irriguer la récolte à toute époque, les frais seront à la charge de tous, mais les propriétaires dont la terre estensemencée supporteront une part proportionnelle à leur jouissance actuelle et future, tandis que (p. 286) les autres ne les supporteront qu'au prorata de la jouissance future, car il ne résulte pas (pour eux) de ces travaux une utilité immédiate. La plus vraisemblable est que cette solution s'applique, que leur eau appartienne ou non. Telle est la solution qui s'impose en droit. Mais ils ont, après cela, la faculté de répartir la jouissance de la manière qu'il leur plaît. Au rest, Allah le sait mieux.

p. 237 - De quelle manière ceux qui ont un droit à une même rigole doivent-ils irriguer?

Selon les règles posées par le Prophète en matière d'eau, on irrigue d'abord les fonds supérieurs, puis ceux qui viennent immédiatement après, et ainsi de suite. Cette règle ne s'applique d'ailleurs qu'à l'eau qui n'est sujette à aucun droit de propriété de la part de personne, comme l'eau des torrents et les autres eaux analogues. Ainsi, quand la pluie tombe, le propriétaire du fonds (p. 238) supérieur peut l'amener par des rigoles sur son terrain pour les besoins de l'irrigation. Quand il aura pris le nécessaire, le propriétaire du fonds inférieur amène l'eau sur son terrain dans les mêmes conditions. Le droit à l'eau appartient d'abord au propriétaire du fonds supérieur, puis à celui qui vient immédiatement après lui, de la même manière.

Mais les habitants d'un village qui aménagent un canal amenant l'eau de la rivière, ne sont pas soumis à ces règles: leurs droits sur cette eau sont égaux, et ils irriguent conformément à l'usage suivi par eux. En pareil cas, le propriétaire du fonds inférieur peut irriguer avant le fonds supérieur ou inversement, dans la mesure des besoins de chacun.

Author: A. El Honsali, L. Zeryoubi (Ministère de l'Équipement et de la Promotion Nationale)
Title: Législation des Eaux au Maroc
In: The Arab Centre for the Study of Arid Zones and Dry Lands. The First Arab Symposium on Water Resources, 18/23 November 1978, vol. II, Water Legislation
Publisher: ACSAD, Damascus
Year: 1980

Text

Ainsi le Maroc s'est doté d'un code des eaux original dont l'essentiel est basé sur des textes juridiques mis en place de 1914 à nos jours. Mais cette législation réserve une place particulière aux sources religieuses ainsi qu'aux règles coutumières ...

Les sources religieuses. Il faut en effet insister sur le caractère ancestralement religieux de l'eau, car, l'eau n'est pas seulement un des éléments constitutifs de la vie, une substance vitale nécessaire à l'existence mais aussi un instrument de purification dont aucun musulman ne devrait manquer. "Au moyen de l'eau, nous avons donné la vie à toute chose", dit le Coran.

En règle générale, la religion considère que la jouissance de ce don du ciel qu'est l'eau doit être partagée entre tous les membres de la communauté et non accaparée par quelques privilégiés. C'est sur ces bases qu'ont été établies les premières règles juridiques relatives à l'eau en pays musulman ...

p. 89.2 - ... Les règles coutumières qui sont la seconde source juridique, s'opposent parfois à cette notion: dans les campagnes marocaines, l'eau est souvent un bien collectif, c'est-à-dire réservé à une collectivité déterminée, et non à tout le monde.

Mais il n'y a pas des règles générales en ce qui concerne les coutumes. Les questions soulevées par ces coutumes à propos des eaux sont toujours des questions d'espèces, de contingences locales et, souvent d'opportunité et la législation moderne réserve une place particulière aux coutumes (article 2 du dahir du 1^{er} juillet 1914 sur le domaine public; articles 2 et 7 du dahir du 1 août 1925 sur le régime d'eaux) ...

p. 93.6 - La non rationalisation du droit coutumier. La rationalisation de ce droit devrait aboutir notamment à la suppression de la règle des "usagers de l'amont" qui représente une injustice, car la distribution des tours d'eau devrait s'effectuer au prorata des superficies irrigables, et non par rapport à la situation des terres face au fleuve ...

Author: Rahhal Maarouf
Title: La Protection de la Ressource en Eau au Maroc
Publisher: Université de Bordeaux - Faculté de Droit, des Sciences Sociales et Politiques
Year: Juin 1983

Text

p. 83 - Dans d'autres coutumes, c'est le caractère communautaire de l'eau d'origine non privative qui domine. C'est le cas notamment chez les Aït Bouzid dans le Tadla où est partagée en parts égales entre toutes les personnes résident dans la fraction, y compris les étrangers, à condition qu'ils cultivent. Dans ce système la part d'eau est attachée au fonds et elle est inaliénable.

Il est à remarquer que ce système communautaire se rapproche du système du droit musulman. Toutefois une différence essentielle sépare les deux systèmes. Si le droit musulman considère l'eau non privative comme une chose d'utilité générale appartenant à la communauté musulmane, à la disposition de tous ceux qui peuvent en tirer profit et l'amener jusqu'à leur terrain, certaines coutumes la considèrent comme étant la propriété collective du groupement sur le territoire duquel elle prend naissance.

Paul Roché écrit à cet égard qu'il y a "substitution de la notion de territoire tribal à la notion de communauté musulmane." ...

p. 87 - Ces prescriptions prévoient des amendes pour ceux qui détériorent les barrages, les séguis et les bassins, pour ceux qui refusent de participer aux travaux d'entretien d'intérêt collectif et pour ceux qui détournent les eaux ... Elles prévoient uniquement des amendes, jamais de peines corporelles.

Les pénalités sont prononcées par la jema'a de la tribu (assemblée) ...

Pour ce qui est du contrôle de la répartition de l'eau, la jema'a nomme un garde des eaux (amazal, jarray, chaikh, el ma, fassal ...). C'est ce garde des eaux qui donne l'alerte et provoque l'assemblée des usagers pour les répartitions urgentes et les réfections du réseau de distribution. C'est lui qui est le témoin principal au tribunal des eaux. Il est chargé de surveiller le canal et de constater les infractions et les détournements d'eau, qui partout sont sévèrement punis. Pour avertir les usagers éloignés que le moment est venu de "rendre" l'eau au suivant, le garde des eaux allume un petit feu au sommet d'une colline ou jette une poignée de paille dans l'eau; lorsque la paille arrive au déversoir en service, l'usager qui finit son tour cède l'eau au suivant.

Le droit pénal coutumier fait souvent l'objet de recueil ou "kanoun". Il n'est pas sans intérêt de reproduire ici quelques extraits des kanouns concernant la protection de l'eau dans la région de Figuig. "Celui qui dérobera l'eau d'une séguia paiera une amende de dix diners". "Toute femme qui lavera du linge dans la séguia Tighzet paiera une amende de douze mouxouha". "Celui qui fournira des renseignements sur l'eau de la tribu à un (p. 88) habitant de la tribu voisine dans l'intention d'aider les gens de cette dernière tribu à en accaparer une partie paiera une amende de quatre cents duros et sera expulsé de la Tribu. "Cette coutume pénale a beaucoup évolué avec l'extension du pouvoir du makhzen (pouvoir de l'Etat.) Aux pénalités prononcées par la jema'a, se sont superposées ou substituées d'autres pénalités

prononcées par le Juge du malhzen qui ne peut désormais condamner les contrevenants à des peines de prison. Dans la pratique, le juge du malhzen est saisi de la connaissance des délits par le jamaa qui reste chargée de l'exercice de la police des eaux et qui continue à appliquer des amendes cumulativement avec les peines de prison prononcées par les juridictions de l'Etat.

NAMIBIA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Berg Damara ⁴⁸	-family extended -villages scattered	bands	-semi-arid -savannah	-pastoralism -agriculture	auto- subsistence	rainfed	limited	no data	no data
Herero-speaking Peoples of Kaoakoaland ⁴⁹	-family extended -age	diffused power	-arid -semi-arid	-pastoralism -agriculture	auto- subsistence	-rainfed -irrigation, by canal	limited	no data	no data
Namas	tribes concentrated	chieftains	semi-arid	pastoralism	auto- subsistence	no data	limited	no data	no data
San ⁵¹	family, nuclear	bands	semi-arid	-hunting/ gathering -fishing	auto- subsistence	no data	limited	inland, fresh waters	no data

⁴⁸ Herero-Damara, (also for Angola).

⁴⁹ Ollunda, Herero, Tjimba-Herero, Ndamara, Kambe-Kambe, Herero, Twa, Tjimba-Tjimba, Ovambo and others). Herero (also for Angola).

⁵¹

Ethnic Group	Conflicts/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bari Damara	no data	-United Kingdom -Germany	African traditional	-control by community -granting of land by head of family	water, free of charge	free of charge	no data	no data	no data
Bantu-speaking Peoples of Kacholand	no data	-United Kingdom -Portugal -Germany	African traditional	-control by community -granting of land by head of family	no data	no data	no data	no data	homage
Namas	no data	-United Kingdom -Germany -South Africa	African traditional	-control by community -granting of land by head of family	no data	no data	no data	no data	chaffaria
San	-conflicts, important fishing, control by community	-United Kingdom -Portugal -Germany -South Africa	African traditional	control by community	-control by lineage -water, free of charge -duty to maintain -water selling not possible -selling of water point not possible	-control by lineage -free of charge -duty to community	-control by lineage -free of charge for local community and for foreigners -duty to community digging, maintenance -duty to provide water	no data	family

Ethnic group: BERG DAMARA
Author: H. Vedder
Title: The Berg Damara
In: C.H.L. Hahn, H. Vedder, L. Fourie, The Native Tribes of South West Africa
Publisher: Frank Cass & Co. Ltd
Year: 1928

Text

p. 70 - Laws and Customs - 1. When I commenced, two decades ago, to enquire as to the laws of the Berg Damaras, my questions were not understood even by intelligent Berg Damaras who were well versed (p. 71) in the lore of their people. "An object, such as a Berg Damara has not anything like a law". Not even the tribal area is regarded as the property of the tribe. All that is claimed is freedom of hunting and of gathering of "veldkoe" with which to supply daily wants ...

In the same manner the water places of their territory were everybody's free property. Without asking anybody's permission the traveller could water his stock and graze his oxen. Within the territory, which he occupied as a free man, he, however, considered the game to be his property ...

There was no court before which he could bring his complaint with the result that might was right. This almost lawless state can only be explained by the fact that the Berg Damara had not enjoyed freedom for a sufficiently lengthy period to evolve a legal system and by the fact that he did not yet feel firmly enough established in his area to have evolved property rights, and moreover by the fact that at the most ten to thirty persons lived in one community, without ever having produced an actual chieftainship, let alone a union of all Berg Damaras under their own paramount chief.

2. The only rules which may be regarded as having the character of law are those regulating inheritance ...

p. 72 - 7. Nor do the Berg Damaras know such a thing as a session of a court. The elders, it is true, consult at the holy fire concerning everything which may contribute to the welfare of the village and discuss all measures which have to be taken to prevent disasters or to deal out punishment ...

Ethnic group: HERERO SPEAKING PEOPLES OF KAKOLAND
Author: H. Vedder
Title: The Herero
In: C. H. L. Hahn, H. Vedder, L. Fourie, The Native Tribes of South West Africa
Publisher: F. Cass & Co.
Year: 1928

Text

p. 193 - 15. In respect of land and ground communism holds full sway among the Herero. Land and ground are tribal property and not the property of a chief and still less that of an individual. Every one grazes his cattle where there is grass and waters his cattle where he can

find water. The separate chieftainship have indeed got their capitals where the holy fire burns in proximity to the ancestral graves, and have come to terms with regards to definite pasture-lands but there are no boundary marks to demark such districts, and there is no law whatsoever to prevent the nomad from grazing his cattle wherever it pleases him.

16. Disposal of land or ground for payment or as a gift is unknown to the Herero, for as the tribal territory is tribal property no chief may dispose of it; less still another individual.

p. 195 - 1. The powers of administering and maintaining justice are vested in the priest-chief, who has three to six specially eminent men to support him in the administration of justice ...

p. 196 - Cases where a hungry person has slaughtered and eaten an animal belonging to another are never included under cattle-theft. Such a deed is not punishable as it was regarded as "theft of food". The driving away of cattle in order to enrich oneself is, however, punishable.

Author:	J.S. Malan
Title:	The Herero Speaking Peoples of Namaland.
In:	Clombesia
Year:	21 June 1974, vol. B-2-4
Year of survey:	1968-70-75

Text

p. 119 - Social Organisation. The most significant feature of Herero social structure is the practice of double descent ...

Double descent comprises the reckoning of unilinear descent through the mother and through the father, thus producing uterine kin groups called "omaanda" (sing. "eanda") as well as agnatic groupings referred to as "otuzo" (sing. "oruzo") ...

However, on closer examination it soon becomes evident that the "eanda" and "oruzo" represent entirely different functional interests, since residence patterns, religious activities and exercise of authority in the family are organised according to patrilineal principles, while the major economic function of the control and inheritance of movable wealth is confined to uterine groupings (Malan, 1973) ...

p. 119 - It is quite common for the manipulation of authority among local groups to take place within the framework of the age-set organisation. This may be necessary in order to settle conflicts arising from the communal utilisation of pastures and water-holes by different residential groups not having the same "eanda" or "oruzo" ties ...

p. 123 - Apart from the few areas where simple furrow irrigation is practised, cultivation generally takes the form of shifting, mixed crop horticulture ...

Author: N.J. van Warmelo
Title: Notes on the Kaokoveld (South West Africa and its People),
Ethnological Publications No. 28
Publisher: Department of Native Affairs - The Government Printer,
Pretoria, Union of the South Africa.
Year: 1951

Text

p. 27 - 98. Owing to the scarcity of water and grazing the family units which live together are almost invariably very small and seasonally nomadic ...

p. 33 - 128. With few exceptions the Kaokoveld cattle folk do not bother to sink wells and therefore concentrate with all their stock near the open waters, thereby over-grazing certain areas. Fortunately water collects in many places during the rainy season so that then the cattle can be dispersed all over the country ...

p. 50 - 188. [Hottentots] Sons who marry are expected to continue to live with their fathers ...

When a son wishes to live somewhere else, he merely goes away and settles where he likes. He does not require the permission of the headman, or of anybody else. Nor may anyone object to his settling where he likes, provided he does not cause trouble and inconvenience by his proximity ...

190. The inheritance of irrigable lands goes from father to son, and all sons get equal shares ...

p. 51 - Mode of settlement.

195. The Hottentot population was forced to become settled when it took to relying on irrigation for a living. The fields require so much constant attention and the necessity of utilising the water supply all the year round is so great that they must remain near their lands all the time. But though they have been doing this for decades now, it has effected little change in their mode of settlement ...

p. 56 - 218. The ownership to land is a matter of common knowledge. There never are disputes about gardens. Most of the land is always used ...

Ethnic group: NAMA
Author: H. Vedder
Title: The Nama
In: C.H.L. Hahn, H. Vedder, L. Fourie, The Native Tribes of South
West Africa
Publisher: Frank Cass & Co.
Year: 1928

Text

p. 142 - Usage and Laws. The Chief with councillors and magistrate is the representative of the law ...

The councillors are elected at a mass meeting, and at the same time function as judges. Decisions by them are regarded as laws by the tribe and their sentences, passed under the presidency of the eldest among them, are executed ...

As the Nama possess a very fine sense of justice and injustice, legal disputes are not all uncommon ...

p. 144 - The land or their tribal territory can under no circumstances become the property of an individual, neither is it the property of the chief. He has not got the right to dispose of or to give away anything of the territory which, in all respects, is regarded as common tribal property, unless the money received be divided amongst the families of the tribe, after they have consented to such a sale. The boundaries of a tribal territory, however, are not fixed. All lands and grounds where members of a tribe have previously grazed (p. 145) their herds or lived, are regarded as territory of the tribe ...

They had rights of pastures, honey, hunting, springs and water, etc ...

Ethnic group: SAN (IKUNG, ZHU, BUSHMEN)
Author: Edwin N. Wilmsen
Title: Those Who Have Each Other: San Relations to Land
In: E. N. Wilmsen ed., We Are Here. Politics of Aboriginal Land Tenure.
Publisher: University of California Press
Year: 1989

Text

p. 42 - ... the relations of San-speaking peoples to land have been seen as entirely autochthonous in origin and development. The underlying motive forces forming these relations have been attributed principally to ecological imperatives centred on resource procurement necessities ...

San land tenure, however, far from being an ecological given, is part of that social universe negotiated by San persons in their day-to-day interrelations with each other ... negotiations to resolve interpersonal and intergroup conflicts are a constant aspect of San life. Land, and rights to its access and use, is a continually recurring factor in these negotiations ...

p. 47 - ... in all these studies [some combination of ecological and Marxian models] "phenomena such as kinship, religion etc., are analysed as 'functional necessities' in relation to the level of productive forces" ...

... What has been missing ... is close attention to the constraints that social relations themselves impose on the forces of production, or, more cogently, the dynamic connection - the dialectic - between social relations of production and the productive environment. Attention to these connections opens the way to analysing their integral coordination in specific societies.

Theoretical Considerations. The constitution of land tenure in San societies is the logical locus for this investigation because, in contrast to the ecological concept of territory, which focuses on productivity and means of production, it locates people in the social matrix of relations to land within which productive activity must take place. Hitchcock (1982:23) notes that virtually every anthropologist who has worked in the Kalahari has mentioned the existence of San territories ...

p. 48 - ... the structure of San land tenure as been over looked ... these authors view their subject group in isolation ... these peoples share structural elements of ownership and tenure common to a number of societies in southern Africa ...

p. 49 - Ownership in such societies cannot be absolute because property acquires its critical role in a specific nexus of relationships ... Ownership involves being bound within a set of reciprocal obligations among persons and things ... lands and rights in its use must be subject to a complex of claims arising from the social matrix.

For foragers, as for anybody else, persons create property. They create it in reference to each other, not in reference to space or the use of objects in space. Production takes place within a conception of property - within a conception of persons in relation to each other with respect to place. Within that conception, the social rules and processes of the relation of production are as fully articulated for foragers as for anybody else ...

p. 50 - I take the "attributes of social position" by which rights to property are obtained to be entailed simply by virtue of native membership in a group, that is, by ascription at birth or adoptive incorporation into a specific set of related persons ...

... by identifying the dialectic between person and property mediated in a social field, it restores kinship to that central logic of cultural relations from which it has been analytically divorced by ecological-Marxian model of "foragers" ...

... property is removed from the arena of pursuit of means to overcome necessity and is situated where it is, in fact, (p. 51) created: in the cultural definition of how these means are to be pursued. Forager relations to property (land, chattels, etc.) can then be seen as inhering not in a different natural order but in a cultural order that organizes persons and relations of productions differently ...

There is agreement among researchers on the ecological-geographic correlates of Zhu land division: space is partitioned such that each demarcated section of land contains enough food and water resources to sustain the user group in all but the most unproductive years. The basic unit is called *nloré* (pLnloré) ...

p. 52 - But it is not land itself that is inherited. What actually is inherited is a set of status positions binding an individual to a network of obligations owed between persons with respect to land

Thus, an individual Zhu's tenure rights in land are a dynamic function of a regional kinship net defined initially by ascription through birth into a social unit and later expanded through acquisition of membership in other units either by marriage or adoption. Ascription is bilateral, with rights at birth vested equally in the *nqore* of both parents ...

p. 58 - Within this incorporative structure of kinship, the corporate unity of Zhu landholding, devolves from one generation to the next. Property right transfers consequent on marriage are, accordingly, largely matters of reshuffling priorities among latent claims by member of a kin consort ...

For Zhu, bride service resolves the question of personal status and locates a marriage union with its offspring within the structure of relations between persons and places. The devolution of property begins with negotiations and prestations between principals to a future marriage, primarily future co-parents-in-law. Wessener shows this process in action through *hxaro* (*haro*) prestations, primarily of beadwork and other symbolically valued materials ...

p. 59 - Children born during this period in the woman's *nqore* will have that locality as their primary *nqore*. This confers lifelong mutual obligations between the woman's natal group and

those children and, indeed, on their descendants. It is the inheritance of land that is at issue in bride service and initial residence with wife's parents, not some few pieces of meat that a newly recruited hunter may provide ...

Half the social and material support for his household resides in his wife's social matrix, for he not only shares with them, they share with him ...

During the period of bride service, devolutionary rights in husband's ngore are kept open by visiting his primary kin who reside there, after that period, if household residence changes to husband's ngore, rights in wife's ngore are kept open by visiting her kin who remain there ...

p. 61 - Thus, kinship, space, and exchange describe an interlocking system of status relationship in which individuals are bound within a set of reciprocal obligations among persons and things. The internal boundaries within this system are zonal rather than incisional but are well known and are open to those with appropriate social ties. Ownership, in the sense in which I have been speaking, is vested in all members of a group who apply a reflexive set of reciprocal terms to each other and refer to themselves as "people who own (have) each other" ...

It is this group of people who form the stable set of descendant owners of a place ...

Author:	L. Fourie
Title:	The Bushmen of South West Africa
In:	C. H. L. Hahn, H. Vedder, L. Fourie, The Native Tribes of South West Africa
Publisher:	F. Cass, London,
Year:	1938

Text

p. 84 - There is no evidence of any tribal (p. 85) organisation among them ...

Each family group forms an independent unit by itself, possessing its own group area and authority over and specific rights within such area only. In relation to other groups it is collectively responsible for the actions of each of its members ...

The most common causes of inter-group quarrels are trespass, theft and adultery ...

Further as far as can be ascertained under no circumstances will the victors deprive the vanquished of their territory or occupy such territory lest harm or disaster should overtake them ...

Territorial boundaries are observed in a most scrupulous manner even by closely related groups who are living on the most friendly terms with each other ...

p. 86 - At the head of each group is a big man or chief ...

The family area with its food and water supply, as well as the fire, are all looked upon as belonging to him ...

In each group area the permanent encampment is situated in the vicinity of the main water supply ...

NIGER

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Igbo ²⁴	-clan -village concentrated	-diffused power -rain making power	-savannah -village	agriculture	auto- subsistence	rainfed	-seasonal -limited	-seasonal -individual -collective -inland, fresh waters	no data
And WoDaaBe ²⁵	family extended	diffused power	-semi-arid -savannah	pastoralism	auto- subsistence	no data	-seasonal -limited	no data	no data

²⁴ Also for Nigeria.

²⁵

Ethnic Group	Conflicts/ Selling rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Muslim	no data	-United Kingdom -France	-African traditional -Islamic influence	no data	no data	no data	no data	no data	ritage
and Wodaabe	conflicts, important	-United Kingdom -France	African traditional	owned by community	-water, free of charge -duty to maintain -water selling not possible -selling of water point not possible	free of charge	-free of charge for local community and for foreigners -free of charge, local and foreign cattle -duty to provide water -authorization needed for watering -precedence rules	no data	no data

Ethnic group: DENDI (CERCLE DE DOSSO)
Title: Coutume Dendi (Cercle de Dossou)
In: Coutumiers Juridiques de l'AOF, Tome II
Publisher: Larose, Paris
Year: 1939

Text

p. 329 - La propriété immobilière peut être personnelle en ce qui concerne la propriété bâtie, sauf les tatas de chefs, propriété temporaire des détenteurs de ce titre; corporative: les cuves des teinturiers; collective: les puits du village et ses pâturages ...

Les biefs de pêche réservés à chaque village riverain rapportent également une dime au chef. L'étranger ne peut pêcher sans autorisation ...

Ethnic group: HAUSA
Author: G. Nicolas
Title: Dynamique sociale et appréhension du monde au sein d'une société Hausa.
Publisher: Institut d'Ethnologie, Muséum National d'Histoire Naturelle, Paris
Year: 1975

Text

p. 102 - Parmi les lieux associés à un clan peuvent figurer, outre l'emplacement de l'arbres ou du bois sacré dont il vient d'être question, des points d'eau, des "autels", notamment les branches coupées aux arbres du clan et plantées dans l'enclos du "Magaji", ainsi que le grenier où est déposée la gerbe de semence et où les divinités agraires résident en saisons sèche, ou l'emplacement de la tombe d'un ancêtre du clan. En ce qui concerne les points d'eau, ils concernent surtout les clans de "Mistres de l'eau", dont chacun est lié à une mare déterminée, où il pêche et effectue ses sacrifices. Mais un clan peut être lié à un puits et le considérer comme un de ses membres. En ce cas, le puits est traité à l'égal d'un homme: on lui parle, on le nourrit, on lui présente les nombreux membres du clan ...

p. 113 - Nous venons de voir que la structure religieuse de la société "anne" reposait sur un ensemble de cultes parallèles et complémentaires dont chacun relevait de l'"Héritage" (gado) d'un certain nombre de groupements patrilineaires. Or chacun de ces cultes est lié à la maîtrise de certaines parties de l'environnement physique de la société locale: seuls les "Chasseurs" (mahalbe) peuvent tuer le gibier, les "Maîtres de l'eau" pêcher le poisson les "forgerons" (makera) extraire le minerai, le fondre et le forger, etc ... Le système religieux fonde ainsi une division sociale des tâches à base de monopoles héréditaires. La société anne apparaît comme constituée d'un ensemble de groupes spécialisés, de corps de métiers qui sont aussi des églises, ou tout au moins des chapelles, des ensembles sociaux et culturels. En effet, nous le savons, l'Héritage d'un dangi comprend non seulement certains droits, prescriptions, alliances ou dons exclusifs, mais encore une façon de vivre à part, comprenant des types de comportements, des protocoles, des danses, des objets culturels particuliers ...

p. 194 - Un troisième ordre héréditaire groupe les "dangana" des "Maîtres des eau" (Sarakanan rowa) dont nous avons vu qu'ils étaient beaucoup plus rares que les précédents, parce que liés

à la présence de points d'eau (lac, mare) et qu'ils se réclamaient d'une origine géographique relativement lointaine ...

Les "maîtres de l'eau" sont en relation héréditaire avec la déesse des eaux "Doguwa ruwa" (la longue de l'eau) à qui ils offrent périodiquement des sacrifices au bord des points d'eau où ils exercent leur activité principale: la pêche. Comme les "Chasseurs", ils disposent d'instruments particuliers appropriés à cette activité ...

p. 195 - Aujourd'hui beaucoup de "pêcheurs" (masunta) ont abandonné les pratiques traditionnelles, surtout dans le village très islamisé de Madarunfa, où le "chef de l'eau" est un "marabout". D'autres continuent à respecter la tradition de leurs pères ...

p. 196 - Un Hausa se définit avant tout comme "anne" ou "musulmi" (sin. de musulmai). D'où la classification officielle de la population locale en "animiste" et "musulmans".

p. 257 - Le premier fondement du village est son puits (rijiya). Ce n'est que lorsqu'on est parvenu à forer un puits dominant de l'eau en quantité nécessaire pour permettre aux futurs habitants du "gari" de vivre en un lieu nouveau que l'on peut songer à s'y installer ...

Le chef de l'agglomération sera toujours choisi dans la lignée du maître du puits initial. Mais la découverte de l'endroit propice est l'affaire d'un "Maître de l'eau".

Ce dernier personnage a, en effet, la réputation de pouvoir circuler dans les nappes d'eau souterraines où vivent les divinités de l'eau (yan ruwa), avec lesquelles il se trouve en relation d'alliance héréditaire. Forer un puits consiste avant tout à obtenir l'accord de ces puissances. D'autre part, nous allons le voir, un puits est un personnage vivant, qui doit être associé à la communauté qu'il va alimenter ...

p. 258 - Nous citerons ici le rituel du village de Dan Hajera ... ses habitants membres de deux danguna seulement, venant du village de Safo. Le puits appartient au clan des "Yancika", qui a désigné l'un des siens: Zure pour s'occuper du forage et des rituels ultérieurs. Zure est appelé "l'époux du puits" (mijin rijiya) (le puits est considéré comme un personnage féminin). Mais le choix du lieu du forage a été fait par un "Maître de l'eau" (Sarkin ruwa) ...

On voit qu'un puits est vraiment une réalité dotée d'une personnalité autonome, même lorsqu'il n'a pas été creusé ...

Après ce sacrifice, l'époux du puits entre en action. L'endroit désigné était occupé par une fourmilière. On creuse toujours un puits à l'endroit d'une fourmilière, dit-on à Dan Hajera. La fourmilière (gidan tururuwa) est, en effet, le lieu où vit le dieu serpent Masharuwa (Buveur d'eau) et dont les habitants innombrables (les fourmis) sortent des profondeurs de la terre.

p. 259 - Pour la suite, le puits devient le protecteur du village ...

p. 260 - On voit par ces faits que le puits, ainsi que ses divinités, sont étroitement associés à la vie de la communauté qu'ils abreuvent et protègent et dont ils garantissent la "santé". Le mot "lafiya", que nous traduisons ainsi, dépasse de beaucoup le sens étroit du terme français. La lafiya, c'est la plénitude de l'être qui se traduit par la paix, la prospérité, la bonne fortune, aussi bien que par l'absence de maladie. Sans leur bienveillance, le village ne peut s'installer ou disparaître. Sans rituel, l'établissement humain ne peut être réalisé ...

À Jiratawa ... le chef de village vient périodiquement offrir une victime aux divinités protectrices de son dangi à l'occasion des rituels propres à celui-ci: "Ouverture de la brousse" s'il est "Chasseur", rites d'eau s'il est "Maître de l'eau", rites des cultures s'il est "Maître de culture" ou rites de pluie ... par exemple le chef de canton actuel, fervent adepte de l'Islam, offre chaque année, pendant, au dieu de ses ancêtres ... : "Nous aussi nous avons hérité de

toi, nous te demandons de l'eau (de pluie)" (Ga mu gare ki za mu yi yanha. Ki roko mamu da ruwa. Kin gade mu. Mu ma min gade ki, Muroko miki da ruwa).

Ethnic group: MAOURI

Title: Coutume Maouri (Cercle de Domo, Subdivision de Dogondoutchi)
In: Coutumiers Juridiques de l'AOF, Tome II
Publisher: Larose, Paris
Year: 1919
Year of survey: 1919

Text

p. 350 - Note sur le domaine public. Chaque village a autour de lui une zone d'influence. Les terrains compris dans cette zone sont la propriété du village. Ils peuvent devenir propriété particulière par le travail de l'individu qui les aura défrichés. Mais dans aucun cas un étranger au village n'est admis à se tailler une propriété privée dans cette zone.

Une tribu ou un village voisin n'ont pas le droit d'y creuser un puits, ni d'y fonder un nouveau village. Ce droit est réservé au village auquel appartient le domaine. Ce domaine ne peut être aliéné ...

Title: Les Régimes fonciers pastoraux. Etude et propositions (République du Niger), Ministère de l'Agriculture et de l'Élevage. Programme spécial national PIDA-NIGER
Publisher: IRAM, Paris
Year: 1980

Text

p. 11 - Le système foncier en milieu pastoral. Description et fonctionnement.

La situation foncière se caractérise par la superposition de plusieurs types de droits: les droits traditionnels, le droit musulman et le droit moderne. Nous allons passer en revue la manière dont chacun d'entre eux se manifeste à la fois dans la pratique et le discours ...

Le pratique et les droits traditionnels.

Nous avons été frappés, tout au long de la mission, par la force et la netteté avec laquelle chaque groupe affirme ses droits sur son "pays" au sens de territoire d'attache. Ce "pays" (akal en tamajeq [Touareg], ngenndi en fulfulde [Peul]) comprend non seulement des points d'eau mais aussi des pâturages exploités grâce à ces points d'eau ...

Depuis des générations, c'est dans ce "pays" que le groupe passe la saison sèche, c'est-à-dire la majeure partie de l'année (octobre-juin). Il ne le quitte que pour la transhumance de saison des pluies. Et dernièrement il arrive que la plupart des membres ne le quittent même plus ...

Cette appropriation est en fait connue tant au sein du groupe que des groupes voisins. Ceux-ci peuvent cohabiter dans la même "pays" ou relever d'un "territoire" voisin limitrophe ou non ...

p. 12 - Par "territoire d'attache" nous entendons cette aire géographique où vit régulièrement pendant la majeure partie de l'année l'essentiel du groupe humain concerné et à laquelle il reste "attaché" lorsqu'il part en transhumance ou que, récemment, plusieurs de ses membres quittent pour l'exode. Si on s'en éloigne, ce n'est que provisoirement. Inutile de dire qu'avec le renforcement des tendances vers l'agriculture, l'ancrage au territoire se renforce encore plus ... ce sont précisément non seulement les points d'eau du territoire mais aussi les terres à pâturage environnantes qui sont déclarées comme faisant l'objet de droits d'appropriation, les limites externes étant déterminées par le rayon pratiqué par la partie des troupeaux utilisés quotidiennement (il s'agit des laitières qui rentrent au campement tous les soirs). Les troupeaux dits "secs" qui parfois s'éloignent à la recherche de pâturages plus abondants être utilisés pour tracer le rayon du territoire ...

"Nous mettons en valeur le territoire en y gardant le bétail, en protégeant les arbres, en luttant contre les feux et les fauves, en creusant des puits. Tout cela nous le faisons pour nous. Et de même que le champ est délimité, le territoire est lui aussi délimité par le rayon qui permet d'exploiter le point d'eau."

"La propriété est liée à la manière dont à une époque donnée les gens mettent la terre en valeur. Autrefois et encore aujourd'hui, l'élevage est une façon de mettre en valeur la terre. Et cela justifie l'appropriation".

11.2. Les caractéristiques des droits

- Cette appropriation n'est pas de types privé individuel. Elle est de nature collective ou communautaire. A ce titre elle est inaliénable: le chef du groupe ne peut céder ou vendre une partie quelconque du territoire sans l'assentiment du groupe.

- Seuls certains points d'eau (puisard, puits) font l'objet d'une propriété individuelle au même titre que les champs ou les jardins: Mais cette propriété privée reste limitée: par exemple, si la vente d'un puits (p. 13) à un membre de la communauté ne suscite aucune objection, il n'en va pas de même de la vente à une personne étrangère à la communauté. Dans ce cas, des mécanismes sociaux toujours vivants se mettent à fonctionner pour empêcher ou annuler l'acte de vente. C'est ainsi qu'au cours de la tournée, on nous a signalé plusieurs cas de vente qui avaient été empêchées, voire annulées.

- Cette appropriation collective ou individuelle n'est pas fermée aux tiers et n'entraîne pas un usage exclusif: on ne refuse ni l'eau ni les pâturages à celui qui n'est pas. Il s'agit là d'une ouverture qui confère un droit de réciprocité en cas de besoin. Cette ouverture aux tiers se comprend de par le caractère aléatoire des ressources. Ainsi s'explique que sur un puits et donc sur les pâturages avoisants, le groupe ne soit que prioritaire.

Précision que cette ouverture du territoire aux tiers s'explique traditionnellement de plusieurs manières:

- Le caravanier ou le transhumant est admis à abreuver et à faire pâturer, il doit ensuite continuer sa route.

- En cas de besoin, l'étranger peut être autorisé à séjourner dans la limite de la capacité du point d'eau et des pâturages environnants.

Dans ces deux premiers cas, le propriétaire (collectif ou individuel) est prioritaire pour l'abreuvement et doit donner son accord moyennant parfois mais pas toujours, une contrepartie.

- Les chevauchements entre territoires voisins sont généralement admis notamment sur les franges quand les animaux viennent y pâturer à partir de campements situés dans leur propres territoires d'attache.

- notons encore que les limites extérieures du territoire s'expriment dans le langage courant plus en termes d'auto-limitation que d'interdiction pour autrui de pénétrer: il est fréquent en effet d'entendre dire: "nous ne dépassons pas tel endroit" et non: "à partir de tel endroit nous ne voulons pas quelqu'un d'autre chez nous".

- Le degré d'appropriation réelle et de contrôle effectif de l'espace varie selon:

. le pouvoir politique et/ou économique du groupe ou de l'individu,

. la pérennité des ressources: il est d'autant plus fort que les ressources semblent permanentes et

(p. 14) sécurisées. Le puits est plus fermement approprié que le puisard qui est détruit chaque année par les pluies; les basfonds mieux arrosés et boisés importent plus que les dunes.

. le relief: les limites du territoire d'attache sont plus nettement définies dans les zones de montagnes que dans les zones de plaines ...

. la nature des points d'eau: un territoire ayant beaucoup de mares importantes, comme celui de Tahin Taboraq, est plus difficile à contrôler qu'un territoire à puits.

. le degré de mobilité: le système d'élevage très mobile des Wodaabe entraîne une emprise foncière plus faible que celle des systèmes touareg et arabe moins mobiles.

- Cette appropriation est fondée sur un faisceau de critères dont les plus importants semblent être l'ancienneté et la permanence d'une part, l'investissement-travail d'autre part. Lorsqu'ils n'en sont pas les premiers occupants, les autochtones d'un terroir ont dû le conquérir par les armes ou acheter le droit de s'installer ...

D'autres ont acquis leurs droits parce qu'ils ont creusé des puits, défriché des champs.

La lutte contre les feux et la coupe des arbres, la destruction des fauves sont aussi mentionnées.

L'appropriation est confortée par la reconnaissance par tiers, les voisins notamment.

Ajoutons que l'administration elle-même a depuis longtemps associé chaque groupe à un terroir d'attache: elle y envoie ses emissaires lorsqu'elle veut toucher le groupe. Dans bien des cas, elle sollicite l'avis du groupe par la voie du chef de tribu ou du chef de groupement concerné, avant d'accorder une autorisation de fonçage de puits sur le terroir d'attache.

- La division de l'espace pastoral en terroirs d'attache n'empêche pas une reconnaissance de la nécessité de la transhumance de saison des pluies.

p. 15 - La présence de troupeaux transhumants sur le terroir d'attache est acceptée si elle est de courte durée et ne compromet pas irrémédiablement les ressources exploitées en saisons sèches. Une pression passagère, même forte, suivie d'une possibilité de repousse est mieux acceptée qu'une pression passagère, même faible, de longue durée.

C'est surtout en fin de saison des pluies que les conflits peuvent opposer des autochtones d'un terroir et les transhumants qui s'attardent trop et consomment des pâturages vitaux pour la saison sèche.

- En fait, seules les terres salées ne font l'objet d'aucune appropriation et peuvent être déclarées communes à tous.

- Quant aux terrains de cueillette, tels le fonio sauvage (*panicum laetum*), ils apparaissent, dans la zone visitée, jouer un rôle alimentaire beaucoup moins important que dans d'autres régions sahéliennes situées cependant sensiblement à la même latitude et où ils font l'objet d'une appropriation communautaire toujours vivante.

113. Fonctionnement des droits traditionnels.

Les autorités traditionnelles reconnues par le groupe (le chef de tribu notamment, mais aussi les notables influents) reçoivent les demandes de fonçage de puits, de défrichement de champs. Elles sont aussi informées des ventes de puits ou de champs et des locations de fourches. Elles règlent les conflits. Elles veillent à la protection de l'environnement.

Autrefois, pour des raisons de sécurité, elles organisaient la transhumance.

Les litiges d'ordre foncier étaient et restent peu nombreux en ce qui concerne les points d'eau et les pâturages. Il sont moins nombreux que ceux occasionnés par les vols et les problèmes de dot ou d'héritage. Cependant ces dernières années, les conflits entre éleveurs et agriculteurs autour des champs se sont multipliés et ils sont généralement tranchés en faveur du propriétaire du champ, comme en zone agricole.

12. Le Droit Musulman.

Nous distinguons droit traditionnel et droit musulman, ou droit coutumier islamisé, parce que des personnes avec lesquelles nous sommes entretenus font cette distinction.

Il est cependant manifeste que les deux sont aujourd'hui difficiles à dissocier.

p. 16 - En effet, la "Shari'a" ne remet pas toujours en cause la coutume. Plus elle reconnaît et incorpore la coutume lorsqu'elle-même ne fait pas de proposition précise. De son côté, la coutume est fortement colorée par l'islam.

Le droit musulman renvoie au Coran et à la vie du Prophète Mohamed. Même s'il n'est connu de façon précise que par les lettrés en arabe, le souci de ne pas violer ses préceptes n'est pas moins intériorisé par tous.

Historiquement, le rôle du droit musulman semble avoir été de tempérer les rapports de force de nature guerrière, de limiter les conflits et maintenir la paix sociale.

Un principe du droit musulman est que "la terre appartient à celui qui la fait vivre", de manière directe ou indirecte. Les moyens de faire vivre la terre les plus couramment cités sont le champ, le puits et l'habitat, mais d'autres formes de mise en valeur dont l'élevage, sont aussi reconnues.

Il est aussi souvent fait référence à la réglementation d'Usman Dan Fodio distinguant:

- une zone agricole où l'éleveur paie des dégâts causés par ses animaux dans un champ de jour comme la nuit,
- une zone de transition où l'éleveur ne paie les dégâts commis que de nuit seulement,
- une zone d'élevage où l'éleveur ne paie aucun dédommagement.

Les litiges sont d'abord soumis aux tenants du pouvoir. Ceux-ci demandent au juriste (le Qadi) de légiférer et de faire connaître les textes justifiant sa sentence. Il incombe alors aux tenants du pouvoir de faire exécuter la sentence si elle n'est pas contestée, ou de renvoyer le litige devant un autre Qadi choisi avec l'accord des justiciables ...

La relative imprécision du droit musulman dans le domaine des ressources naturelles est à l'origine de correspondances déjà anciennes entre souverains sahéliens et juristes nord-africains, les premiers désireux de se conformer au droit musulman demandant des clarifications aux seconds.

L'une d'entre elles est celle entre Askya Mohamed et Ali Maghili (vers 1498). La question de l'empereur (p. 17) Songhay est de savoir si les pâturages du fleuve (bourgoutières), par nature peu étendus, dont ses ancêtres se sont emparés et qu'ils se sont partagés pour y faire paître leur animaux peuvent être interdits à d'autres. La réponse du juriste est la suivante: "Si la terre conquise revient à qui l'a conquise, nul, ni imam ni quelqu'un d'autre ne pouvant en interdire aux musulmans l'eau, le passage, la pâture". Les pâturages ne peuvent être interdits qui si la population étrangère est infidèle (et probablement si elle ne reconnaît pas l'autorité en place).

L'autre correspondance, datant d'après Djibo Hamani (1985: 315) de 1493-1494, vise le pays d'Agadez puisqu'elle se produit entre le sultan de l'Aïr, Mohamed Saïefan et celui que le même historien dénomme comme "le plus influent des savants musulmans de son époque en Afrique tropicale" Abderrahman Al Suyuti du Caire. Elle nous a été présentée par M. Khamed Ibrahim, érudit musulman d'Abelak.

Le pays d'Agadez est reconnu comme partagé entre diverses tribus toutes islamiques qui considèrent leurs terroirs comme à elles et où l'essentiel des ressources s'avèrent être de type naturel. La question est de savoir s'il est licite de vendre ou d'interdire des produits naturels qui n'ont pas fait l'objet d'un travail humain tels que les pâturages, les produits de cueillette, l'eau d'une mare ...

Dans sa réponse, Al Suyuti soutient que s'ils n'ont fait l'objet d'aucun travail (fauche, coupe, transport, puisage) ils ne peuvent être vendus ni interdits. Le Sultan lui-même ne peut attribuer que ce qui découle du travail humain. L'appropriation découle donc du travail.

Ces deux correspondances sont intéressantes à rapprocher:

- Elles datent de la même période (fin du XVème)
- Les questions sont posées par des souverains désireux de réorganiser leurs pays respectifs en conformité avec le droit musulman après une période jugée d'infidélité par Askya succédant à Sonni et d'insécurité dans l'Aïr (celle-ci ayant justifié la création du Sultanat en 1404-1405).
- Dans les deux cas, il s'agit de ressources naturelles et non de production agricole. L'appropriation des terres par le souverain ou les siens est également affirmée.

Dans les deux cas, l'appropriation exclusive des ressources naturelles qui n'ont fait l'objet d'aucun travail pose problème aux juristes. Ils voient, semble-t-il, la nécessité de gérer mais ils apparaissent en définitive moins outillés pour répondre que dans d'autres domaines du droit.

p. 18 - Si l'appropriation découle du travail, la question qui n'est pas totalement résolue dans le cas des ressources dites naturelles rest la suivante : qu'est-ce qui au juste est reconnu comme un travail?

Une telle préoccupation reste sans doute à l'ordre du jour aujourd'hui tant pour le droit moderne que pour le droit musulman. Cependant la pratique traditionnelle seule semble avoir résolu le problème en confirmant de manière très souple la reconnaissance d'une appropriation collective et donc d'un pouvoir réel de gestion avec une ouverture certaine aux tiers, laquelle entraîne à son tour des droits de réciprocité. Mais cette ouverture tend à se réduire proportionnellement au travail investi ...

p. 27 - 14. Remarques d'ensemble sur les systèmes fonciers.

1 - L'utilisation actuelle des terres en milieu pastoral résulte de la combinaison des trois systèmes fonciers qui viennent d'être passés en revue.

C'est dire qu'aucun des trois systèmes ne fonctionne à l'état pur, isolé des autres. Cela était vrai à l'époque précoloniale où le droit musulman venait modérer ou nuancer le droit traditionnel qu'il avait lui-même trouvé en place. Cela est encore plus vrai en ce XX^{ème} siècle caractérisé par l'apparition et le renforcement de l'Etat ...

Raisonnement en termes de combinaison de systèmes signifie qu'il existe des processus de transformation de l'un par l'autre, voire de contamination. La prééminence du système public instauré par l'Etat a sans aucun doute affaibli et modifié le fonctionnement des systèmes anciens ...

p. 28 - 2 - Les systèmes traditionnels nuancés par le droit musulman apparaissent en effet plus performants en matière de gestion des ressources naturelles que le système des points d'eau publics tout simplement parce qu'ils responsabilisent les usagers sur leur propre espace de production ...

Ainsi à Elkieman, Tomareg et Wodaabe ont depuis plusieurs décennies réussi à trouver un *modus vivendi* grâce à l'appropriation des fourches sur les 3 puits disponibles. De même, avec l'instauration récente de comités de gestion des stations de pompage (en vue du paiement du carburant et des lubrifiants), on peut se demander si une certaine régulation des droits d'usage avec un système implicite d'appropriation n'est pas en train de s'opérer, montrant ainsi les limites d'un système préexistant simplement le libre accès.

Une telle analyse signifie qu'à terme le maintien d'un système public libéralisant totalement l'espace n'est pas possible du fait qu'il aboutit à une véritable tragédie sur un triple plan: écologique, économique et social. Deux solutions se présentent alors: la privatisation au bénéfice d'individus puissants ou l'appropriation par des communautés. Dans le premier cas, nous aboutirions à un réel changement, dans le second nous assisterions en quelque sorte à une reprise des systèmes traditionnels.

p. 47 - 1 L'importance des points d'eau.

- Toutes les analyses concordent pour reconnaître que la maîtrise de l'espace pastoral et donc de sa gestion procèdent de la maîtrise des points d'eau. Celui qui a accès à l'eau est en mesure d'accéder aux pâturages environnants.

Responsabiliser un groupe sur un point d'eau déterminé revient à le responsabiliser sur le terroir qui l'entoure.

Author: Université Tufts, North Grafton, Massachusetts, USA. Niger Range and Livestock Project.
Title: NRL Water Points Survey. Final Report. January 1981, Points d'Eau dans les Départements de Tahoua, Maradi et Agadez. Projet Elevage Intégré - Service de l'Elevage.
Publisher: Ministère de développement rural, Tahoua.
Year: 1984.

Text

p. 4 - The water-point survey was intended ... to cover ... the region enclosed within lines drawn between Tahoua, In Gall, Agades and Tanout. This area included portions of four *arrondissements*, in four different départements: Tchén Tabaraden (p. 5) [Tahoua], Agades [Agades], Dakoro [Maradi], and Tanout [Zinder] ...

p. 12 - Ponds and springs are the two categories of purely natural water points in the NRL project zone ... This entails that such water appoints are necessarily public, since only their creation through a human agency makes the priviled use of water points possible ...

p. 13 - ... even massive modifications of natural water points have not altered their fundamentally public character in the NRL zone, since this is essentially and ethical issue.

p. 26 - Along and east of a line drawn between Dakoro and Tiggidan-Tessunt, traditional wells in the NRL zone are dug by Hawsa well-diggers, under contract to herders. The individual contracting for the well is its proprietor, and members of all five herding ethnic groups founds in the NRL zone own such wells; these include Twarog, Wadaabe and Farfara Fulani, Igdaalen, and Arabs. The well-diggers are sedentary Hawsa who habitually reside in the cultivated zone immediatley south of the project zone ...

The ethnic specialization of well-digging is enabled and sustained by social complamentarities which exist between sedentary farmers and pastoralists, but for the well-diggers themselves is one alternative among various other kinds of dry-season migrant labour. The work itself involves relatively little technical expertise of a highly specialized character ...

The fundamental relation between these farmers and pastoralists in the NRL zone is that which arises from the farmers production of cereals; much of this production is sold directly to herders in the zone. This commercial relationship and the personal relations built upon it provide the links through which well construction is contracted.

Well siting is determined by the future proprietor, usually on the advice of a religious practitioner. This latter individual can be a member of any ethnic group, and may be the chief well-digger himself. The well constitution contract is executed directly between the future proprietor and the team chief, and be initiated by either.

p. 27 - Normally, the future proprietor is responsible for determining the site of the well, obtaining an authorization for its construction, feeding the crew, and providing tools and materials, as well as providing the agreed fee ...

The authorization to dig a traditional well is obtained from the most directly relevant government or customary authority ...

p. 29 - The major variation in this pattern of well construction and maintenance occurs in the western end of the project zone. In this area, Hawsa well-diggers are not usually brought in; instead, wells are dug by members of domestic castes ...

Most traditional wells in the zone surveyed became the property of the present owners by their paying for their construction. The other two means of acquiring ownership are through purchase from an anterior proprietor or (p. 30) by inheritance from a father or older brother. Ownership acquired through purchase was more frequently encountered than ownership through inheritance ...

Most purchased wells encountered had been purchased by Wodaabe; Wodaabe generally pay more for goods and service throughout the NRL zone. This seems to reflect the fact that Wodaabe are more often strangers in a particular area, both literally and in critical cultural sense, as well as fact that individual Wodaabe are more likely to command greater wealth than members of other ethnic groups in the areas where traditional wells predominate ...

In the zone surveyed, traditional wells are recognized as the private property of an individual, and, since it is a private holding, the owner and his household always have priority in well use. However, access to a well is by no means closed to persons outside the proprietor's immediate circle. There is a general acknowledgement of a basic right to water at private wells in passing, generally extended after the habitual users of a well have completed their daily watering. This right is essentially temporary and usually (p. 31) extended only once. A much more important way in which the range of herders using traditional wells is enlarged is through friendship and extended kinship ...

... sharing water with stranger lineages and between ethnic groups is the norm rather than the exception, except in those areas where a dense concentration of traditional wells enables a sorting-out of users along ethnic lines. Through these possibilities, well ownership becomes a means of erecting a patron-client network centering on the proprietor.

Other possibilities of sharing water exist, but are rare. One encounters instances where the right to water an herd is sold at a fixed fee for a finite period; the most frequently encountered rate during the survey was 5000 fra/herd/season. Fulanis were the most frequent purchasers of water in this fashion, while Touaregs were the most frequent vendors, but this appears to be another case where the instance arises from herders moving into new areas, since members of all ethnic groups which herd in the NRL zone (except Igdaalen) were included among such water-rights purchasers encountered in the course of the survey. It is usually found when the purchasing party is new to an area and has not established the amity which makes such purely commercial transactions unnecessary ...

p. 32 - The economic value of well ownership in the context of the present pattern is a fuzzy issue. The only obvious economic advantage of well ownership is the assurance of an adequate water supply because of the priority ownership grants in well use. However, it is certain that the proprietor will not be the sole beneficiary, even though he usually bears its entire cost ...

At the more usual rates encountered, outright purchase of water rights costs little more than the amortized cost of a new well ...

What digging a well will do, however, is make the owner a focus of a network of patron-client relationships offered by those with whom he shares his water. This seems to be the genuine advantage of well ownership, particularly since herange management potential which might exist does not operate under the present system of water allocation. Wells are indeed management tools, but tools for the management of social relations rather than ecological resources ...

p. 36 - Puisards. Unlike permanent wells, puisards are generally dug by the owner himself and the members of his household. They are dug with unspecialized hand tools at the site selected at the moment of need ...

p. 37 - Puitsards are the most completely private category of water point in the zone surveyed; there was little indication of any institutionalized forms of water sharing such as that found generally at deep permanent wells ...

p. 39 - The particular importance of permanent traditional wells as means to establish and sustain patron-client relationships has been noted above; the highly private nature of puitsards would seem to promote an opposite dynamic. That is, to the extent that means of exploitation of resources condition social relationships, heavy reliance on puitsards would seem to promote more egalitarian and individuated economic activity and hence herd management. It is thus of great interest that region wherein puitsards are the primary dry-season water source is also the region (p. 40) where customary hierarchies and government administration are most intense and salient within the NRL zone. This indicates the extent to which subsistence system and social arrangements vary independently; this may also be a clue to the enthusiasm with which politically important individuals in the puitsard dominated area have sought the installation of permanent wells to which access could be controlled ...

p. 45 - One of the most unanticipated findings of the water-point survey was the low level of evident or articulated interethnic tension, especially between Twareg and Fulani, in regard to both water allocation and more general considerations of herd management ...

It appears to be generally true that ethnicity becomes a vehicle for economic and political competition only when development gets well under way ...

Ethnic group: PEUL WODAABE
Author: Angelo B. Mallid
Title: Bonheur et Souffrance chez les Peuls Nomades
Publisher: Conseil International de la Langue Française, Edicef, Paris
Year: 1984

Text

p. 52 - 22. Le Code Pastoral. Pour nous, les woDaaBe, la pratique de l'élevage est quelque chose de très grande, qui nous permet de constituer un peuple.
Sans le bétail, il n'y a pas de communauté. En plus, on ne peut pas pratiquer l'élevage et rester tout seul à l'écart du groupe. L'élevage est comme un chemin, qu'il nous faut parcourir ensemble.

Quand un autre éleveur passe par ton puits avec son troupeau, donne-lui à boire, à lui et à toutes ses bêtes: qu'il s'agisse d'un homme riche ou d'un indigent, donne toujours ton eau à celui qui en a besoin.

Si un autre éleveur vient camper avec sa famille et son troupeau à l'endroit où tu te trouves déjà, mets-lui à disposition ton propre puits pour tout le temps qu'il lui faudra pour construire son propre puits: ne lui refuses pas ta puisette, ni ton outre. Donne le lait de tes vaches à ses enfants, parce que ses vaches ne produiront pas beaucoup de lait les premiers jours.

Si tu trouves sur ton puits une bête égarée, abreuve-la comme s'il s'agissait de ta bête la plus chérie, occupe-toi d'elle avec toute ton attention jusqu'à ce que son propriétaire vienne la chercher.

Si des voyageurs passent par ton puits ou par ton campement, va à leur rencontre, donne-leur la bienvenue, donne-leur à boire et à manger, propose-leur de se reposer chez toi. Et, au moment du départ, remplis d'eau leurs gourdes ...

NIGER - NIGERIA

Ethnic group: SONGHAY

See also File Songhay, Mali

Ethnic group: SORKAWA

Author: Lars Sundström

Title: Ecology and symbiosis. Niger water folk

Year: 1972, Uppsala

Text

p. 107 - The Sorkawa. Rouch (...), surveying the fisherfolk settled between the "W" of the Niger and Bussa rapids, divides them into five different ethnic stocks:

- a) People of Songhay descent with assimilated groups.
- b) The Kebbawa and assimilated groups.
- c) The Bussawa and assimilated groups.
- d) The Yauri and assimilated groups.
- e) The Kamberawa and assimilated groups ...

p. 108 - Jacquemond (...) describes the Sorkawa, who number about 5000, as the fishing caste of the agricultural groups living on the Niger banks. Villages of Sorkawa origin are found along the Niger from the Nigerian frontier down to Bussa rapids as well as on the Gulbi n- Kebbi. Here the Sorkawa function as the fishermen of the Kebbawa, Bussawa, Yauri, Kamberawa and live under the political and territorial authority of these peoples ...

p. 11 - The Sorkawa are loosely integrated into the Kebbi political system. Harris (...) names the four officers of the Sorkawa fishing caste in their order of seniority:

- a) "Homa Sarki" (Fishing Emir or chief), the chief of fishermen appointed by the "Sarkin Kebbi", i.e. the emir of Argungu.
- b) "Homa Alkali" (Fishing Kadi) assistant to the Homa Sarki. He is appointed by the "Alkali" of Argungu.
- c) "Magajin Dankanawa", Head of the Sorkawa, the seine fisherman.
- d) "Dan Kwoi", Chief of the spear fishermen.

On the occasion of two yearly ceremonies the Homa Sarki and the Homa Alkali have the right to take one fish from each fisherman. This tribute is then taken to the Sarkin Kebbi, who gives the two officers their part. This is the only tribute to which they have any formal right.

Rouch (...) observes that the Sorkawa chief seems to hold little formal authority over his people.

The Magajin Dankanawa's influence outside his own village seems small, except possibly when he functions as collector of taxes ...

The two-named officers of Harris' list arouse some interest. Lacking further information, one can only assume they are the officials responsible for Sorkawa and Sarko respectively. As the distinction rests on the technical aspects of fishing it would seem reasonable that other ethnic fishing groups are distinct by the use (or preponderant use) of fishing traps ...

p. 115 - Sorkawa Rights and Tributes. The river is divided into strictly limited sections and the ownership of these sections laid in the hands of riverain groups other than the Sorkawa. The emir of Yauri has rights over the waters which are extensions of the water properties of certain villages and families (...).

Traditionally the Sorkawa had to pay fishing duties to those riverain groups holding the water. Furthermore the Sorkawa fishermen have to deliver a fish tithe to the important chief. A percentage of the fish caught in the Yauri "canton" and a fee for the right to pass Yauri by canoe is said to be due to the emir (...). At Argungu certain tributes of fish are connected with the public ceremonies just described: a) the traditional tribute besides any further remarkable catch is taken to the sarkin Kebbi by the Homa Sarki, and b) fish tribute connected with "scattering the waters" is taken to Sarkin Kebbi who gives "homa sarki" and "homa alkali" a part of it. Beyond this the "homa sarki" and the "homa alkali" have no right to demand fish from the Kebbawa, but nevertheless they usually get a fish present if in need (...).

The evidence just presented indicates the peripheral role of the Sorkawa in matters pertaining to the traditional water religion ...

Ethnic group: SORKO
Author: Lars Sundstrom
Title: Ecology and symbiosis. Niger water folk
Year: 1972, Uppsala

Text

p. 89 - ... The Sarko are found in the Niger Bend below Lake Débo down to the Ansongo rapids (...). In this area fishing is "on the whole" reserved for the Sarko and Marongoy (...). The Sarko, as described by Rouch, are or were hippo hunters ...

Ethnic group: TQUAREQ
Author: J. Nicolaisen
Title: Ecology and Culture of the Pastoral Tuarog
Publisher: The National Museum of Copenhagen
Year: 1963

Text

p. 124 - Where water is scarce and must be drawn from narrow wells, as in Ayr during the summer season, the watering of flocks and herds gives rise to frequent quarrels between

pastoralists. For though the right to the use of wells is free to all there are many disputes and fights frequently ...

Author: J. Nicolaisen, E. Bernus
Title: Etudes sur les Touaregs, Etudes Nigériennes n° 7-9
Publisher: Institut de Recherches en Sciences Humaines, Niamey
Year: 1982

Text

p. 148 - Conflits au sujet des terrains mis en culture autour des points d'eau.

"Les conflits entre cultivateurs et éleveurs ont souvent pour origine la prise de possession par les premiers des terrains situés à l'entour des puits et puisards et en bordure des mares", dit M. Riou dans son rapport sur les relations entre sédentaires et nomades dans la circonscription de Tahoua. Et il poursuit en disant qu'il devrait être interdit de cultiver dans un rayon de 300 mètres autour des mares, et qu'il faudrait garantir leur accès.

Prenons un exemple d'un conflit de ce genre: dans le cercle de Téra, en 1956, les Tingeregedesh qui mènent leurs troupeaux vers les terres salées situées au bord du Niger sur la rive Gourma, en amont de Kandadji, se plaignent que les sédentaires étendent de plus en plus leurs champs, et leur interdisent l'accès du fleuve, ou les obligent à pénétrer dans la champs, en mettant à mal les cultures. Un procès-verbal de conciliation décide "les deux passages suivants seront réservés aux troupeaux sur une bande Est-Ouest d'une largeur d'un kilomètre ...".

C'est ainsi que dans chaque cas, puits, mare, bord de fleuve, une réglementation doit être établie.

Conflits entre Nomades autour des puits.

Enfin des conflits peuvent éclater au sujet de l'utilisation des nouveaux puits en ciment et des stations de pompage construites par l'Administration. Souvent sur ces emplacements existaient des puisards creusés par un groupe qui s'en réservait l'usage. Ces nouveaux équipements, très coûteux, sont désormais un service public. Mais cette notion de service public n'est pas facile à faire admettre à de petits groupes ethniques jaloux de leur prérogatives et de leur particularisme.

Il a donc fallu, suivant les cas, puits ou station de pompage, réserver à chaque groupe ethnique sa poulie ou son bac abreuvoir pour éviter des heurts ou même des bagarres entre bergers chargés de l'abreuvement des troupeaux ...

Ethnic group: TOUBOU-KANOURI
Author: Capitaine Couturier
Title: Coutumes Toubou et Kanouri (Cercle de Bilma)
In: Coutumiers Juridiques de l'AOF
Publisher: Larose, Paris
Year: 1892
Year of survey: 1892

Text

p. 204 - Toubou.

... Les Toubou Gounda du Cercle de Bilma disposent de plusieurs sortes de biens. Les biens collectifs ou de tribu, absolument inaliénables, peuvent être appelés terres du premier occupant ou prises sur l'ennemi.

p. 205 - Les puits appartiennent également aux Gounda, mais tout le monde peut y prendre de l'eau sans aucune redevance ...

Kanouri

... Les formes du droit de propriété sont dominées par la doctrine écrite dans le Quran: "La terre appartient à celui qui la vivifie. Quand quelqu'un aura vivifié de la terre morte, elle ne sera à aucun autre", a dit le Prophète ...

NIGERIA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Bassa (Bassa) ⁶⁴	-clan -village -concentrated	-diffused -power -rain -making -power	-river, lake	-agriculture -fishing -trade	no data	rainfed	no data	annual	no data
Ibo-speaking Peoples	-lineage -village, -concentrated -association, -voluntary -age	-diffused -power	-forest -village	-agriculture -fishing	-auto- subsistence -market	rainfed	abundant	annual	no data
Igbos (Kwato) ⁶⁵	-family extended -village -concentrated	-chieftains -rain -making -power	-savannah -forest -river, lake	-agriculture -fishing	-auto- subsistence -market	-rainfed -irrigation, -by flooding	abundant	annual	no data
Iwaka, Awari, Baga, Uwa, Urhobo, Isoma, Uda, Ekpori, Eke ⁶⁶	village concentrated	kingdoms	-forest -river	-agriculture -fishing	no data	no data	abundant	-annual -individual -collective -sea -inland, fresh waters	no data
Yoruba ⁶⁷	village, concentrated	chieftoms	-savannah -forest -river, lake -sea -village	-agriculture -fishing	-auto- subsistence -market	-rainfed -irrigation, -by flooding	abundant	-annual -inland, fresh waters	no data

⁶⁴ Including Bass Koro and Bass Kaduna (Nigeria, Northern).

⁶⁵ Niger-Benue confluence.

⁶⁶ Niger Delta.

⁶⁷ Also for Benin and Ghana.

Ethnic Group	Conflicts/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Baka (Bantu)	no data	United Kingdom	African traditional	-control by community -granting of land by head of village	no data	control by community	-control by community -free of charge for local community	no data	village
Ibo- speaking Peoples	-fishing, control by community -rights on fishing grounds by community -regulations on collective fishing, private fishing, on building dams, stockades	United Kingdom	African traditional	control by community	no data	no data	-control by community -free of charge for local community -fee-paying for foreigners -authorization needed for digging well, basin on communal land	no data	litigation
Igbo (Kwote)	-fishing, control by community -rights on fishing grounds by community, by sovereign	United Kingdom	African traditional	no data	no data	no data	no data	no data	chieftain
Isekiri, Awori, Ijebu, Ijaw, Urhobo, Isoko, Udu, Ikweri, Ikoko	-conflicts, important -fishing, control by community -rights on fishing grounds by community, maître de l'eau -regulations on private fishing	United Kingdom	African traditional	-control by community -granting of land by head of village, by sovereign	no data	no data	no data	no data	village

Ethnic Group	Conflicts/ Fishing rights/ transport	Colonisation	Legal system	Land tenure	Drinking and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Conflict resolution
Yoruba	-fishing, control by community -rights on fishing grounds by community, by private individuals -regulations on collective fishing, on private fishing	United Kingdom	African traditional	control by community	water, free of charge	-control by community -private appropriation -free of charge	-control by family -private appropriation -preservation of rights of way to water sources	no data	no data

Ethnic group: ANAMBERA AND IMO STATES
Author: S.N.C. Obi, ed.
Title: The Customary Law Manual
Publisher: Enugu
Year: 1977

Text

(pag. 5) 10 - Ownership of rivers, stream, etc. -

- a) Rivers, streams and lakes are owned by the community.

Local variations. - In Ishielu Division, Ogboli clan of Nsukka Division and Ogbaru Division they are owned by the owner or owners of the land on which they are situated.

- b) Ponds are owned by the community.

Local variations. - In Abakaliki Division, Itumbaso community in Bende Division, Ezikwo, Igbo-Eze, Ishielu, Isi-Uzo, Mbatoli/Okeduru, Mbaro and Njikoka Divisions, Ogboli clan of Nsukka Division, Ogbaru, Oguta and Orlu Divisions, they are owned by the owners of the land on which they are situated or by the people who built them.

- c) Swampy banks (uds) are owned by individuals or families who own the land on which they are situated.

Local variations. - In Aba, Arochuku, Awgu, Northern Ngwa, Onitsha, Oru and Ukwu Divisions, they are owned by the community.

- d) Dried-up water beds are owned by individuals or families.

Local variations. - In Aba, Arochuku, Awgu, Mbaize, Northern Ngwa, Onitsha, Oru, Owerri and Ukwu Divisions, they are owned by the community ...

(pag. 10) 16. Common rights over communal land. - Where a family or other group is in possession of a piece of land as the owner, each of its members has a right to graze his sheep, goats or cattle on such land; to collect firewood from it; to collect from it such building materials of small value as ropes, sticks and straws; to collect from it stones, sand or laterite which he requires for his own use in erecting non-commercial buildings locally; to cut and carry away timber (other than iroko timbers which he requires for his own use in erecting non-commercial buildings locally; to collect wild fruits from it; to collect palm nuts and other fruits of economic value from trees growing wild on it; to hunt game on it; and to fetch water from ponds or streams situated on it ...

402. Acquisition of movable property out of communal property. -

(1) It is open to individuals to detach or extract from communal land such items as they require for their domestic use. These include items like fire-wood, grass for roofing, clay for pot making, fish from streams and game. This freedom does not, however, extend to items of considerable value such as iroko or other large timber.

Local variations. -

a) In Afikpo town and Okposi both in Afikpo Division, the permission of the elders of the land-owning community is required before any item of property can be removed from communal land.

b) In Anzihwu Division, individuals have no right to remove or extract any items of property from communal land.

c) In Igbo-Eze Division, where the item intended to be severed from communal land is "Izi"-grass, permission of the landowning community is required.

403. Who has a right to acquire out of communal property. - Any indigenous member of the land-owning community (whether male or female) and any resident stranger has a right to acquire out of communal land, items of property of the type described above. Non-resident strangers have no such right.

Ethnic group:	BABA (BASSA)
Author:	H. D. Gunn, F.P. Cosant
Title:	Peoples of the Middle Niger Region - Northern Nigeria
Publisher:	ESA - IAI, London
Year:	1980

Text

... Fishing is fairly important, especially among the sub-riverain Baas of the Benue valley; if it was more important at the time of Rahlfs' visit, it may have been due to the precariousness of farming operations in the troubled mid-19th century; today, though Baas Momo take advantage of the backwaters and pools left in their District when the Benue floods subside, mainstream fishing in this general area is primarily the work of Bamangs, some Igbo and migrants from all directions, including Kabbawa from Sokoto and Bachama from Adamawa ...

... in those Districts that have direct access to the Benue (Koton Kaffi, Umaisha, Baas Momo, Loko and Doma) Baas are served as perhaps in none other, for the river-trade that might be expected to benefit Gungawa and Kambari is to some extent checked by the Buse rapids, while the Benue is a lively place still in the season ...

According to Clifford, land may not be sold, used to settle a debt, or pawned. The only ground for alienation appears to be systematic neglect of the land.

Land-holding includes the rights to sylvan products, timber and game ...

Outside farm-plots, rights in hunting, fishing and foraging are shared by all villagers (boundaries in the bush being fixed roughly halfway between villages), but the village headman should receive portions of any animal or fish taken. Note that certain water-sources (streams or pools) are reserved for the whole community ...

In Koton Kaffi, oil palms and fishing-pools are allocated by the village head ...

Author: Lucy Mair
Title: Checks and Balances: Benin
In: African Societies
Publisher: Cambridge University Press
Year: 1974

Text

p. 163 - Village Authorities. ... The youths, from about 15-30, were responsible for communal works - clearing weeds from paths and streams ...

p. 164 - ... The elders formed the village council. It was they who controlled access to village lands, collecting dues from outsiders who worked it with their permission ... and discussed the organisation of communal work ...

The oldest in actual years was called the "odionwere"; he was the priest of both the earth and the ancestors ...

p. 158 - ... There were associations of traders, each of which monopolised the trade of a particular route ...

p. 162 - Royal Rituals. The Oba ... (p. 163) as "king of the dry land" he was linked with Olokun, the "king of the water", the god of the sea that Edo (rightly as it happens) believe to be the source of all life ...

Ethnic group: IBO-SPEAKING PEOPLE

Author: D. Forde and G. L. Jones
Title: The Ibo and Ibibio-Speaking Peoples of South-Eastern Nigeria
Publisher: ESA-IAL, OUP
Year: 1960

Text

p. 14 - Livestock and Fishing. - ... Fishing is of little importance away from the Niger and in many areas it is forbidden, as fishes are believed to embody the souls of ancestors. Game is scarce ...

Author: L. T. Chubb
Title: Ibo Land Tenure
Publisher: Ibadan Un. Press, 2nd edition
Year: 1961

Text

p. 64 - Fishing Rights.

117. Excepting where fishing is tabu, rivers are free for fishing to anyone of the villages through whose lands they flow. Fishermen from other parts of the country must acquire rights since the nature of their craft makes some form of settlement on land necessary. Baboia, Kwalea

and Isua from the Okija area in Nnewi pay rent in kind or cash, nowadays usually the latter, for the right to fish the tributaries and creeks of the Niger and the valuable fishing pools between the Niger and the Anambra. Rent is normally paid annually and in Nnam there are Sobos settlements whose inhabitants have been there for more than twenty years.

118. Fishing pools, which vary from ponds to small lakes, are in community ownership. Where two or more community lands border a pool, disputes as to rights are frequent and usually arise when a group grants rights to strangers to which another group lays claim. The practice of Sobos of damming rivers with fish traps has in some cases led to diversion of their courses and the formation of new pools whose ownership, also, is hotly disputed. These fishing pools are very valuable assets: I was told of one where a group of Sobos paid £ 100 for the fishing rights for three years. In its way the situation in the Anam-Nnam area is similar to that at Ubulu, described in paragraphs 84 and 85, in that the owners are squabbling among themselves over their rights while the strangers, taking advantage of this situation, play off one against the other and are fishing in such an intensive manner that, as is happening at Andoni in the Opobo Division of Calabar Province, the fish are being gradually exterminated. If this is to be avoided, measures will have to be taken to ensure that only fish over a certain size shall be landed. The difficulties are indeed formidable but the end seems certain unless they are resolved.

119. Apart from the Angulu lake, which is not fished for reasons I unfortunately omitted to discover but which may either be due to (p. 55) tabu or to the fact that the local population are not watermen, the only large enclosed waters are the Oguta lake in Owerri and the Iyikwulu lake in Nnam on the Northern Provinces border. Except for the shallows around the borders of Oguta, lake fishing is free to anyone and is, in fact, indulged in by many New Kalabari and other strangers whose main interest is in the palm oil trade and its transport. Fishing along the shores of the lake is the right of the landowners. It is usual for each family to define its fishing area by stakes fixed in the water. It is not known whether the fishing rights go with the land when it is pledged but this is unlikely since the pledger probably has rights elsewhere along the lake.

120. The Iyikwulu lake, some two miles long with an average width of about half a mile, is situated in very sparsely populated country exceedingly difficult of access in the rains. There is a small Ireagu (Nnam) hamlet on its banks and a few other scattered Nnam settlements. The lake is wholly within Nnam territory but fishermen from the large Anam village of Nmiata, some ten miles to the south-east, by virtue of their superior numbers, are constantly trespassing on the lake. They smoke their catch on its banks and derive a considerable trade from it. Unless the rights of the Nnam hamlets can be safeguarded it is likely that Nmiata settlements will gradually be established on the banks of the lake. As soon as the staff position permits I recommend constant touring of the Anam-Nnam area where the rights of small communities are in danger of extinction and where exploitation by Onitsha capitalist may be expected to increase and calls for control ...

Author:	S. N. Chikwura Odi
Title:	The Ibo Law of Property
Publisher:	Butterworths
Year:	1963

Text

p. 60 - The individual's rights in community land.

p. 61 - Every adult male member of a land-holding group is entitled to harvest palm nuts and to tap wine palms standing on communal land - at any time and without consulting anyone,

provided there is no local regulation to the contrary. This freedom of action also applies to raffle palms, and to fishing (p. 62) rights in rivers, lakes and pools which are in communal ownership. The hunting of game, too, is open to all members who may hunt or trap at will, singly or in groups. All these rights are, as already indicated, subject to local regulations and taboos ...

p. 68 - Fishing Rights. Fishing lakes and pools are normally the joint property of large groups such as the village or the town. Every member of such a group has fishing rights in these lakes and pools as well as in the rivers flowing through the village. As in the case of economic trees, however, the group may, and often does, make regulations controlling the methods and periods of fishing within its area of influence. Here, again, the burden of proof lies on the party asserting special local regulations. Fishing rights can also be sold, leased or pledged to individual village members or to strangers. But in the absence of express permission a stranger has no right to fish in the waters within a group's sphere of influence ...

Ethnic group: IGBIRA (KWOTTO)
Author: P. Brown
Title: The Igbira
In: D. Forde, P. Brown, R.G. Armstrong, Peoples of the Niger-Benue Confluence
Publisher: EEA, IAL, London
Year: 1955

Text

p. 59 - Livestock, Fishing and Hunting. ... The riverain Koton Kaffi Igbira population depends on fish from pools and marshes left by the receding waters. In the Panda area, small rivers and pools as well as the Benue are fished with nets. The local inhabitants along the Benue, where the largest fish are found, own fishing rights and may rent sandbanks and islands to outsiders. The catch of large-scale fishermen is smoked and dried on the spot, and then sold in distant native markets. In the smaller rivers and pools, fishing battues are held; while men do most of the fishing, women and children take part in these ...

p. 62 - Land Tenure. - ... In the Panda area, land is said to be held on trust by the political chief for the community, and leased out to families by tribal custom. The village headman among the Igbira, Temple says, allocates the rights of use of oil-palms and (p. 63) fishing pools, and gets free labour in return for providing the workers with beer. He holds on trust the land in the neighbourhood of his village ...

p. 65 - Legal Procedure. MacBride presents most of the available information on legal procedure, referring, of course, to Koton Karifi only. In the village, the solidarity of the community was the first consideration in dispute cases, and reconciliation was the aim of dispute settlement ...

When disputes occurred between communities which recognized a common interest, the two sets of chiefs and council, or a third party (a senior chief in the area on friendly terms with both villages) attempted to reconcile the disputants by arbitration. (p. 66) When the village whose members had a dispute were not on friendly terms, raids were sometimes made. If such a case became inconvenient to both sides, the chief and councillors, of the communities, concerned ended the conflict by reconciliation. The "Ohimegi's" authority would be invoked by villagers to end serious community or inter-community disputes, to prevent hostilities or to revive the local leaders of the task of inflicting serious punishment. Judicial authority, according to MacBride, was a source of the "Ohimegi's" income, and a jealously guarded acknowledgement of his

otherwise nebulous suzerainty. He was concerned to prevent and check civil war, but malefactors brought to him were regarded as tribute ...

p. 71 - Village Culti. Culti of various kinds are found in Igbara villages, the priesthoods being for the most part handed down within a family. Rain-making is especially important; villagers sometimes pray at the grave of the village founder. The chief of Toto town invokes his ancestors for rain in times of drought. Most Katon Kaffi villages have rites for rain and fertility, but these are more important for the Bassa and Gburi than for the Igbara ...

p. 72 - Fishing and Hunting Rites. Communal, as well as individual hunting and fishing, were undertaken only after the appropriate rituals had been carried out. Purificatory magic was especially important in hunting ...

Ethnic group: IJEBU

Author: C. W. Howling

Title: Land Tenure in Ijebu Province, Western Region of Nigeria

Publisher: Government Printer

Year: 1956

Text

p. 5 - Waterside Areas.

13. Mention has already been made of what is known as the Waterside area bordering upon Ondo and the Colony. Along its southern fringers fishing and canoe transport supply the predominant contribution to local economy, as they do in both the Creek areas of Ondo (Ikale, Ijaw Apoi) and neighbouring Colony districts. Fowler's description of the latter was quoted at some length in the Ondo report: it applies equally here together with the corollary, exemplified by Ondo, that the bulk of disputes which come before the courts relate to fishing instead of farming rights. This is not true inland from the lagoon shores where the economy was recently described by the touring Assistant District Officer, in perhaps unwitting echo of Ward Price, as one wherein Sobos (Urhobos) exploit the palm bush, Ijebu and Ikale, but mainly Ikale, do the farming, and Ijebus the trading. My Ondo Report describes the unfortunate effects upon Okitipupa tenure flowing from a not wholly dissimilar situation; but although the Ijebu tends to be quite as insistent as his Ikale neighbour upon the quality of his own rights and freedom from external controls, in exercising them he has, one must suppose, retained far too shrewd a business sense to imperil his own grip upon those rights by a manner of vindicating them which has in Ikale scattered to the winds any effective control at all. Thus although he leaves much of the farming to Ikale and nearly all the palm-bush to Urhobo reapers he allows neither group any doubt of its standing or of the terms whereon its continued presence depends. Discussing Ikale, the suggestion was put forward that lack or repudiation of any central authority, whether vested in chief or kin-group-head, explained the disastrous free-for-all which Ikale tenure has become. Later paragraphs, which discuss the respective status of Chief Village or kin-group-head, will indicate that their several authorities are far from going unchallenged in Ijebu Ode, yet the Awujale has on occasions intervened in troubles over both Ikale and Urhobo to lay down some principles dictated by the general interest ...

p. 10 - Types of land.

22 ... they are: 1. State land (ile oha) ; 2. Stool or title land (orubo); 3. Common land; 4. Village land; 5. Quarter land; 6. Ebi (family) land; 7. Land held by the "ojumu" or branch of an ebi; 8. Bona fide personal property.

p. 13 - "Village" Land.

34. In some regions, typically exemplified by parts of Benin, the village forms the effective land holding unit. Within its boundaries, "Quarters" kin-groups, or even individuals may have rights which are accorded a varying degree of exclusiveness against other villagers; but there is no challenge to the concept that the entire community holds, as it were, the root title.

35. Village common goes by various names in Ijebu Province - *ile ilu* or *Oko Ilu* - land (or farmland) belonging to the community - "*ile ilu*", "*igbo ile*". The last term "*igbo ile*" seems confined to the Remo districts and is unknown to Ijebu Ode.

36. The already quoted District Commissioner found that "many, but not all family community groups" (a term whereby he seems to have meant what we commonly call a village) had reserved certain lands for "common use" as burial grounds, markets and meeting places; also vast forest areas for timber and other products and for hunting; similarly fishing places. These forest areas were also looked upon as a reserve from which grants of land could be made to slaves and other strangers adopted into the community ...

p. 25 - Waterways and Fishing Rights.

73. As in Ondo Province, it is not necessary to pursue the organisation of rights in waterways and fishing much beyond the Waterside where, so far as the creek and lagoon side villages are concerned. These rights, being of greater moment than claims over land, are most frequently disputed before the courts. Where riverine rights in other districts serve to illustrate this discussion, they will however be drawn upon.

74. Exclusive usufructuary rights in waterways, like those in land, are claimed by the village, the kin group ("*ebi*" or "*ojumu*"), and the individual. These are not restrictive of a general right of public passage which is free to all: no toll may be levied. But such freedom of passage, in turn, does not cover the terminal points of goods and passengers services. A canoe may ply from Lekki to Lagos without intermediate charge by the way; but an outsider who sought to make regular use of a village landing beach on the route would need sanction and be required to make some return for the privilege. Over local ferries, the village has a monopoly and would admit no competition, though outsiders may be established in the office of town ferryman. Judgement for fishing rights is awarded to X but excluding the beach and stream where they ply their canoes which belong to the I townspeople ... "the beach and the stream are used for the common passage of the public ... " "No person can be entitled to such property as water". Villages bordering the waterways own them and the beaches and are responsible for the conveyance of passengers, keeping the ways open, and clearing obstructions. The task of ferrying passengers is usually entrusted to the weak or poor who have no other means of support. For example, E waterways belong to E community. One man operates on them but does not claim ownership. So with I. "40 years ago a native of Epe in the Colony, O, and a Lagos man, S.G. were put there as ferrymen and collected the fares. After O^Z's death his son succeeded him. All these men are foreigners and in no way owners of the waters. So also at E.I. and E.O." The annual clearing of waterways and sacrifices to secure safety and productivity are a joint concern of the village; and account is kept of all monies collected or spent. A ferry running between villages on opposite sides of a waterway (p. 28) will be operated under mutual agreement. By virtue of this concept of a right of public passage the Awujale has several times intervened to curtail the activities of Urhobo or Ijaw strangers operating under agreement with the Ajalorun of Ijebu Ife and whose fishing weirs were blocking the Oni River. Eventually in 1939 this nuisance led to the passing of a Native Authority Fishing Weirs Order forbidding obstructions exceeding in width 2/3 of any waterway or being of such a nature as to prevent the free passage of logs, oil casks and canoes.

76. Such an order is of course entirely proper nor open to any challenge under local custom; but claims to rather wider jurisdiction have occasionally been voiced. "It is to be noted that the land is communal land and ownership is vested in the Awujale as well as of the swamp. X should not be disturbed in rights or user over the swamp granted him for the time being by the Awujale who alone can eject him ..." "in accordance with native law and custom only the Chief having jurisdiction has the power to lease or authorise lease of fishing rights in a river". This may be compared with a claim put forward at one point during the long series of actions from which quotations in the preceding paragraph were drawn when the Dagburewe of Idowa sought to intervene in an intra-village matter claiming on behalf of himself and the Awujale to own the water "as overlord and owner of the whole area" - a claim which the Judicial Council showed signs of supporting until the Resident stepped upon it. In so far as the Dagburewe was insisting that "the river is a public waterway and should be declared so" he was fully justified, as, even, he might have been in claiming a right to authorise lease of fishing grounds to outsiders. But this latter claim would derive from the principle discussed in par.54 above, namely the Chief's administrative responsibility "as overlord" not from any rights as "owner of the whole area" which he was not. Even in the open waters of the lagoon where alone one might expect to find fishing free to all comers and where, given such circumstances, public rights could be spoken of as "vested in the Awujale", this is not in fact what we do find. One Divisional Officer is indeed on record as saying that in his opinion nobody could claim rights on particular fishing grounds and that any village should be allowed to fish the offshore waters of another; but his is almost a lone voice in an opposing chorus which leaves little doubt that there is no such free fishing: the entire lagoon is parcelled out between the lagoon-side villages. Within their preserves rights are exercised by one or more guilds of fishermen- e.g., one for net and another for line and hook fishing- who in turn may operate as a group sharing out the catch or be organised under a master fisherman (Baba agba) rather on the line of Urhobo camps. In either event some due must doubtless be contributed to the Bale and elders for such purposes as festivals, propitiatory sacrifices, town funds, and so forth, as well as personal gifts of fish from time to time. Nor is any villager free to fish at will without joining a guild. The Village Authorities will also be the proper body to grant rights to strangers though they may entrust actual arrangements to a caretaker or caretaking body such as the "oshugbo" society which allots grounds, collects the charge imposed and settles disputes.

78. Along inshore grounds where shallow water and swamp-grass allow the construction of traps and stake-barriers, individuals have established exclusive rights which doubtless in the first place were recognized by the authorities but may now be leased, pledged or even sold. Whether the Village itself, as was found to occur with town common and palm-bush, (p. 27) ever pledges or sells its rights in open water is doubtful. There is one instance of what amounts to a pledge in circumstances identical with those described in par.68, namely money put up to finance village litigation and secured by a grant of exclusive rights until the community could re-imburse expenditure. In this case it was the Bale himself who put up funds, but the records do not disclose whether the grounds pledged to him were in offshore water or both. A pledge of inshore rights would be simple enough but of offshore waters obviously a good deal less so. A community primarily dependent on fishing would also need to be very hard pressed before denying itself access to a part of its main resources.

77. There is in fact evidence contesting even an individual right of sale though such restriction must be of purely local validity since sale is assuredly not everywhere banned. "Individuals have private ownership of water but may not sell it. By owner I mean the person who holds exclusive fishing rights. There are clearly marked boundaries between individual fishing grounds at least, so far as the creeks are concerned".

78. These last words may have more than apparent significance. In the confined water of rivers and streams there exists a system of rights exactly similar to those in farm land, "Village", "Quarter", "Ehi", "Ojumu" and individual all at one time or another putting in claims. One might have expected to find riparian rights determining the nature of those claims according as the fringing land be town common or land held by a lesser group. This was in fact

said to be the case but there is evidence that the two do not necessarily hang together. In one instance, for example, bordering farm land was adjudged to be collective "family" property while three fishing pools had been inherited separately by individual members: in a second, one party claimed the fishing, the other farmland which he had bought together with the fishing: in a third where the action was for title to a strip of farm land (though hunting and fishing feature fairly prominently in the proceedings) judgement for the farm was expressly stated to include "the water or river therein". If this were axiomatic there would have been no need to say so. Though no concrete evidence on this point can be cited, a divorce between the two - riparian and water rights - doubtless occurs chiefly in respect of fishing pools and shallow grounds where traps and barriers can be set since such areas are more obviously susceptible to individual exploitation by primitive methods than reaches of deep water. According as rights are held collectively by village, "Quarter", or kin group so uses will be directed. Thus, subject to any local rules, a villager will be free of village water and an "ebi" member of water claimed by his kin group. Lease will be similarly governed and pledge or sale, if allowed, follow the principles applicable to farm land.

Ethnic groups: ITSEKIRI, AWORI ILAGE, IJAW, URMORO, INEME, UZIA, EKPERI IFEKU

Author: L. Sundstrom
Title: Ecology and Symbiosis. Niger Water Folk
Publisher: Uppsala
Year: 1972

Author: R. E. Bradbury
Title: The Benin Kingdom and the Edo-speaking Peoples of the South-Western Nigeria, together with a section on The Itsekiri by P.C. Lloyd
Publisher: ESA-LAI, London
Year: 1967

Text

The Benin Kingdom.

p. 24 - The Edo play little part in the exploitation of the rivers, depending largely upon the Urhobo, Ijaw and Itsekiri for their fish. Formerly, however, certain villages were responsible for providing the Oba's court with fish, a service which was organized by "Ogwa", one of the minor title-holders in Benin City ...

p. 44 - Before 1897 the only non-Edo in a position to exploit the resources of the kingdom were those settled in villages and became absorbed into the village community. After that date there was an influx of members of neighbouring tribes seeking land for farming and residence and the right to fish and collect palm-produce. Various regulations have been drawn up for controlling the rights of non-Edo in land-use, forest and river resources, and house sites, and fixed annual charges are made for each type of activity ...

The Ijawan Chieftoms and Tribes.

p. 77 - Rights over fishing streams and pools are communal to the village or ward. Open and closed seasons are observed ...

The Northern Edo-Elaskan Tribes.

p. 106 - Land Tenure. The information concerning rights to land among the Elaskan is somewhat confused. While the heads of village communities are sometimes stated to be the nominal owners of village land, the farming land appears normally to be parcelled out between wards. Within the ward there are collective land-holding rights ...

Members of other wards within the same village may be allowed farm land with the consent of the village "elders" and without any payments. Strangers, however, must approach the village council through the "elders" of the ward in which they wish to farm and pay fees in yams and palm-wine, which are shared by ward and village elders ...

Fishing rights appear to follow the same principles as rights in land. Each area of water has its keeper, who controls the opening and closing of fishing seasons, probably on the behalf of his community ...

The Ineme.

p. 123 - Main Features of Economy. The Southern Ineme depend to a large extent upon fishing and trading in the Niger creeks ...

The Northern Ineme, living away from the rivers, depend for subsistence upon farming and palm-oil production ...

p. 125 - Land Tenure. The Ineme appear to have few undisputed claims to the ownership of either land or water. The fishing-ponds which the Southern Ineme use are disputed with the Uxia, Ekperi and Ifeku people, and most of the Northern Ineme share their farming and palm-produce rights with neighbouring North-West Edo communities. "Ineme-Ekpe has little land to which it can claim absolute ownership though it has farming rights over about 10 sq. miles ... Ineme-Ogbe has occupational rights over about 5 sq. miles of land but shares the land and palm products in common with the Akoko [Akuku?] people ... Egeni has about 10 sq. miles, most of which (p. 126) is shared in common with the neighbouring village of Oai ... Ineme-Osu has about 30 sq. miles, but Dagbala lays claim to ownership of most of this". This situation does not appear to have caused much friction, but in recent years the increasing importance of palm-produce has resulted in a desire to establish boundaries which were formerly vague ...

The Urhobo and Isoko of the Niger Delta.

p. 135 - Crafts. Canoe-building is a major industry at Dapidiama, a town of Osoro and Okpe origin on Onya land close to the Niger ...

The Ujebu and other Urhobo and Isoko peoples also make canoes for which there is a good market in the Delta and along the length of the Niger.

Itsekiri.

p. 170 - Disputes over fishing rights in the smaller creeks occasion considerably more litigation than rights to cultivation. Such rights are allocated by village heads and may be inherited by the grantee's male and female descendants. Many men migrate to the sea coast of the estuary for crayfishing, but they must pay heavy fees to village heads for the rights to set up their own lines of fishing posts.

Author: J. U. Egharevha
Title: The Benin Laws and Customs
Publisher: Service Press Ltd.
Year: 1948, Lagos

Text

p. 69 - 12. The Binis are not good fishermen, but the Itsekris and the Ijaws, further down the river are very keen, and the Oba of Benin gives them permission to fish in the rivers. In return they send him some of the bigger fishes in payment of the lease, and also a settled tribute in fish to the Minister of Fisheries, as appointed by the Oba ...

Author: E.A.I. Ogburne
Title: The Urhobo People and their Land Tenure

Text

p. 145 - ... Fourthly, in those clans, such as Ughievwen, Ewu, Okparahu and Uwherun which contain ponds, creeks and streams, and which are euphemistically referred to by other Urhobos as "Ewa-Ame", the land of the settlers extend as far as the people can fish and carry out other activities in the ponds and streams ...

NIGER PROVINCE

Author: C.W. Cole
Title: Nigeria. Report on Land Tenure, Niger Province.
Publisher: Kaduna
Year: 1958

Text

p. 18 - 48. I have not obtained full information as to the rights to fish in the various swamps and streams. This might be a point well worth investigating by officers on tour. Facts obtained by them when touring will be of more value than theories expressed to me during a brief visit (the various places referred to were too far distant for me to visit in the time available). From the information I obtained there would appear to be communal rights analogous to those pertaining to the sylvan produce from home "kurams". A practice, similar to the Argungu fishing festival where everybody collects to catch the fish on a fixed day, was described to me. The unit of community appears to be the village unit.

Author: C.O. Olawoye
Title: Title to Land in Nigeria
Publisher: University of Lagos
Year: 1974

Text

Legal Conception of Land. The legal conception of land under customary law has been a matter of controversy among writers ...

Thus, as conceived by law, land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds ...

Author: Jibril A. Andu
Title: A Report of the Role of Water Law in Rural Water Supply System with Particular Emphasis on Nigeria (Conference paper)

Text

p. 3 - Customary Water Laws. ... Like many other African customary laws, Nigerian customary water laws are neither written nor codified but every community has piece-meal rules and regulations which are legislative in effect with appropriate sanctions to regulate the management of water resources under the following heads:

Ownership. - Generally, water was and is still regarded as a communal property. No member of the community can claim the sole ownership of a source of water supply. This is to forestall an individual holding the whole community to ransom. Any attempt to do so is visited with dire consequences. This public ownership is jealously guarded even when the source of supply, a pond for example, is strictly within an individual's land. The public is generally granted the right of way and water drawing rights. The only exception to this rule is where an individual digs a well on his own land (p. 4) for personal use; in such a case, the community at large has no drawing rights as it is regarded as private property.

Water Drawing and Riparian Rights. Every member of the community except those suffering from contagious or chronic diseases has water drawing rights for both domestic and agricultural use ...

The diversion of a river by a community from its natural channel to prejudice the other riparian owners' rights could become a source of intercommunity wranglings. Hence it is regarded as a hostile act which might even lead to war ...

Protection from pollution. ... The community also provides a guard to keep an eye on the sources and those who flout community (anti-pollution) laws are brought before community leaders or heads to account for their misdeeds ...

General Maintenance. The community at large is responsible for clearing and dredging of water sources ...

Water is never sold, not even to strangers because the ownership is believed to be universal. Bridge tolls and levies are only collected when a river forms a boundary between two communities. Each community (p. 5) collects fees on its own side and the proceeds are handed over to the head of the community who accounts to the council of elders.

ONDO PROVINCE

Author: C. W. Bowling
Title: Report on Land Tenure in Ondo Province.
Publisher: House of Representatives Session Paper No. 5, Lagos
Year: 1952

Text

Owo and associated areas.

26. Though quite a large percentage of the population throughout Ondo is Moslem, Islamic law of real property has no application. This is generally true of the North also, where inheritance of land rights is concerned custom has been too tenacious.

27. Hunting and Fishing. ... There is little fishing except in the associated areas where, again as one would expect, stranger fishermen are required to give a share of their catch to the man who granted them rights. Who this may be was not discernible from the only recorded case. Not apparently the Chief since he gave evidence in support of a claim against the stranger fisherman; possibly the Chief's "game-keeper" ...

Ekiti division.

47. Hunting and fishing. ... Ado reserves to the Obe certain pools which are fished once yearly for ceremonial purposes: Ara allows no fishing at all because the "streams would run dry"; and in Ijero, water goes with riparian rights or is shared if it divides the land of two "ebi" (extended family, male descending). Other districts no doubt recognise varying customs in both spheres ...

Akure

60. Hunting and fishing. The "ebi" is not regarded as entitled to exclusive rights, nor may payment be exacted for hunting over its land. Probably Owo practice, or something akin, is followed.

Ondo.

104. Hunting and fishing. ... each area has something in the nature of a village game-keeper who may also, judging by the paragraph on timber-licences, be required to see that no unauthorised farming goes on. Fishing follows a similar pattern save that no mention was made of reference to any local fisherman ...

Idanre.

114. Hunting and fishing. Again Owo principles re-appear. An Idanre man may fish hunt or set his traps on any land at all though he will warn a farmer of traps set among or alongside standing crops. A stranger will follow the same procedure as if he were seeking leave to cultivate ...

Other areas - Bini confederation, Ijaw-Apoi and Arugbo, Ilaje.

140. Fishing rights. - Almost without exception, cases which come before the courts concern fishing rights. Excluding Ilaje for a moment, these are said to be divisible according as the waters are:

1. Lagoons and main canoe waterways.
2. Subsidiary channels.
3. Isolated pools in bush or fringing sodd.

141. Rights in main waterways are communal to the whole area. A stranger who has been allowed to settle in or relatively near a Headquarters would have to be reported to the Kalashuwe or other Chief before he might fish. Presumably he would be expected to pay some dues in cash or kind to both local host and chief. Report would probably not be made from an outlying settlement; but in such a case the stranger would be confined to village waterways and not be free of places like, for example, the Mahin lagoon.

142. Village rights exist over the many subsidiary creeks and river tributary leading off the principal communication channels. If the settlement consists of one kin-group, rights may be described in the records as "family" ownership. Where several settlements have been founded along a single stream its reaches will probably be separately claimed; but a people of fishermen will obviously avoid settling near what are regarded as another group's preserves. In such instances, and where the several settlements admit the superior authority of village Bale (village chief), it seems that he has, or claims to have some say over admission of strangers though he may exercise it only in concert with the "town chiefs". He may even refuse to admit the existence of exclusive group-right and entrust control over strangers to a local keeper. In one instance when previous order confirming common rights of all Igbobini people had failed to end dispute the court revoked those rights altogether: "As from today we declare the cree belongs to the Kalashuwe: anyone who uses it without his permission will be dealt with".

143. Separate pools are the individual property of whoever claims to have first found them and constitute heritable estate. They are held by both men and women.

144. Apart from lease of fishing rights to strangers - and presumably to locals also if an individual owner is not using his pool - no evidence was found of other alienation. A community primarily dependent on the produce of its waters is unlikely to sell, still less pledge them.

145. For Ilaje, says the Amapetu, the classifications given in paragraph 140 do not hold. Mahin lagoon apart, all Ilaje waters are claimed either by an "ebi" or its constituent units; now, as a rule, the latter. The size and ramifications of these units probably vary: though according to the Amapetu, sub-division is customarily arranged between the several nuclear families [...] left by the deceased ...

In practice, no doubt, what happens is again a matter of personalities. A closely coherent group will continue joint exploitation of their waters whereas one whose members are all loggerheads will demand sub-division. Occasionally some pool or reach will be reserved undivided for collective use by the whole "ebi" but this is rare.

146. Partition gives no right of absolute disposal: the only admitted form of alienation is by lease. [...] This is at complete discretion of the possessor who is under no obligation to consult other branches of the "ebi" nor give any share of the proceeds to the "Olori ebi". All the instances of report quoted in paragraph 142 come from the other districts, not Ilaje.

147. In Mahin lagoon practice is different. These waters belong to the Amapetu and Chiefs who allot the right to fish in stated areas. The Amapetu began by saying that such grants were confined to strangers who pay "ishakole" and the sons of chiefs who do not, varied this last by adding well-known citizens, and ended finally with the explanation that as all "Ilaje are so mixed up the descent of the cannot be disentangled from that of another". Grants are heritable and even a stranger's children remain in occupation so long as they pay "ishakole". Grants are also exclusive but the Amapetu has the right to call on a stranger to share his grounds with an Ilaje man. An Ilaje may lease his rights to a fellow Ilaje without restriction or control; if he leases to a stranger he must obtain the Amapetu's consent and, as with oil palms ... receives

only a rebate from the rent, not the whole amount. This obligation in fact appears the only point which differentiates an Ilaje's rights in Mahin lagoon from those he may have over "ehi" waters elsewhere.

148. No part of any waters is reserved as title property whether of Amapetu or other chiefs

...

Ethnic group: URHOB0

Author: R.A.I. Ogbobine

Title: The Urhobo People and their Land Tenure

Publisher: Review

Text

p. 144 - The most respected mode of land acquisition in Urhobo is the person who can show that his ancestors were the first to take possession of any vast tract of soil which was uninhabited and uncultivated. The absence of competition is a negative condition. It does not found a right. It is not the same as the duty assumed by someone who takes possession of a piece of land - the duty to use it with a view of giving value to a piece of natural property, to draw from it a profit for oneself and for others, for ones own cause and for the cause of civilization ...

p. 145 - Fourthly, in those clans, such as Ughievwen, Ewu, Okparabe and Uwheran which contain ponds, creeks and streams, and which are euphemistically referred to by other Urhobo as "Ewa-Ame", the land of the settlers extend as far as the people can fish and carry out other activities in the ponds and streams ...

... if an Urhobo family settles in an area of land, however small and limited in extent, the absolute ownership in and jurisdictional authority over all adjoining or contiguous lands subsequently occupied by members or founders of the original settlement or over which such members were able to maintain effective control and or carried out any open acts of ownership, for example, by hunting, farming, collecting palm fruits and fishing belonged to the founders of the settlements.

Also see, MALL, L.Sundstrom, 1979

Ethnic group: YORUBA

Author: H. L. Ward Price

Title: Land Tenure in the Yoruba Provinces

Publisher: Colony and Protectorate of Nigeria, Lagos

Year: 1899

Text

p. 8 - Fishing. 26. Private fishing rights in rivers seldom existed, but theoretically, chiefs and any other man regarded by the chiefs as important enough, might appropriate a large-sized pool during the dry season and retain the exclusive fishing rights therein. He had to be a native of the group through whose land the river flowed. He could only appropriate one deep place, and would be prevented by the head chief from taking more. These rights could be inherited and then became family property. Neither the head of the family, nor any member

thereof, could then give away the rights, or lend them temporarily without the general consent of the family, and on such terms as they thought desirable. The rights were inherited by the next succeeding head of family. Any member of the family might kill fish there, but strictly speaking, he had no right to consume the fish himself; he must take it to the family head who would give him the fish or divide it among the family as he thought best. No part of a river not recognised as being an "Ibu", or deep pool, could be appropriated; and anyone, whether stranger or native, had the right to fish anywhere in the river, apart from the pools which were family property, and he could keep the entire catch himself. A stranger, that is, a native of some other group, could not obtain exclusive fishing rights without the consent of the head chief and council members. Non-use of these exclusive fishing rights did not give the head chief the power to hand them over to someone else, or to open the pool to the public. If the members of the family did not themselves care for fishing, they would, as a matter of course, invariably allow others to fish in their water in return for a small part of the catch.

p. 9 - Rights over streams and paths. 27. The owner or occupier of land on the banks of a stream had no rights over the bed of the stream or its water, provided the water was running. Any pool dug out by the family to store water could not be used by anybody else without permission. The rivers could be used freely by anyone for transport purposes, as could public paths over land. What was or was not public path, if it could not be agreed upon locally, would be decided by the head chief ...

Author:	P.O. Lloyd
Title:	Yoruba Land Law
Publisher:	OUP, London for the Nigerian Institute of Social and Economic Research
Year:	1969

Text

p. 260 - All Egba are entitled to draw water from the streams nearest to their hamlets; no person may claim private rights in water for domestic use; private fishing rights are, however, recognized. On the land of some townships, notably it seems in the western parts of the kingdom, the chiefs rule that no annual crops be planted within fifty yards of a stream; this prohibition of cultivation is said to ensure that the stream does not run dry. The planting of tree crops is permitted.

84. Suberu, the Balogun of Abaka and ora v. Kaamu, the Balogun of Ika and ora.
Ake "A" Native Court 38/1950.

Abaka township was destroyed c. 1820 but the chiefs still claim the land around their "orile" as far as the Oyan river. In this case they claimed the right to operate a ferry across the river - or to receive from the defendants, who were actually operating such a ferry, an annual fee. The plaintiffs sought to prove their ownership of the river by citing a payment of tribute by the people of Imala for fishing rights; the court did not find this claim proved. It was proved however that the Ika people had been operating a canoe ferry for many years and had paid no tribute to the Abaka chiefs. Recently the Hausa settlement in Abeokuta had moved to Lafenwa, and the cattle route had moved in consequence so that the cattle crossed the Oyan river by the Ika peoples' ferry, bringing (p. 261) them much profit. The Abaka chiefs sought to share in this profit but the court dismissed their claims ...

**RWANDA
(INCLUDING BURUNDI)**

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Unidentified	no data	kingdoms	mountain, hilly	-pastoralism -agriculture	auto-subsistence	-irrigated -irrigation, by canal	abundant	-animal -individual -collective -inland, fresh waters	no data

Ethnic Group	Conflicts/ killing rights transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Unghemistiani	no data	-United Kingdom -Belgium	African traditional	no data	no data	no data	no data	no data	no data

Ethnic group:	BUHA
Author:	M. d'Hertefeldt, A. Trouwborst, J. Scherer
Title:	Les Anciens Royaumes de la Zone Interlacustre Méridionale (Rwanda, Burundi, Buha)
Publisher:	ESA - IAL London
Year:	1953

Text

... Au Rwanda central, manger du poisson était considéré comme répugnant. La pêche n'a jamais été très pratiquée sauf aux abords du lac Kivu et dans les lacs du Rwanda oriental et septentrional. Elle se faisait à l'aide de nasses coniques. Au nord, les Rera et les Kiga chassaient la bourse au harpon ...

L'exploitation de gisements (par exemple de fer, d'argile et de kaolin), l'utilisation des sentiers et des saux et, dans l'ensemble, la coupe de bois, d'herbes, de roseaux, de papyrus et de bambou ne faisaient pas l'objet de droit privatif ...

p. 123 - ... En saison sèche, les Rundi pratiquent une forme simple d'irrigation. A l'aide de pierres, de terre et de branches, ils construisent des barrages primitif et ils creusent de petits canaux pour conduire l'eau aux champs ...

p. 125 - ... Les Rundi de l'intérieur ne mangeaient pas de poisson. Les Rundi habitant au lac Tanganyika, par contre, sont très appliqués au métier de la pêche ...

p. 147 - La Justice. Dans l'organisation judiciaire du Burundi, l'arbitre (umushingantahe ...) occupe une position unique. Aucun jugement n'a lieu en l'absence de ce fonctionnaire ...

p. 148 - Le titre d'umushingantahe en soi ne suffit pas pour être considéré comme un véritable arbitre. Il faut, comme le disent les Rundi, montrer d'abord qu'on sait bien interroger, qu'on peut très bien se souvenir de ce qui a été dit et qu'on dit la vérité. Si l'on satisfait à ces exigences, on peut être accepté comme un véritable arbitre. Si un arbitre se montre incompetent, il peut garder son titre, mais on n'attache pas de valeur à ses jugements ...

Les umushingantahe ne prononcent pas de véritables arrêts et ils ne peuvent pas infliger d'amendes. Ils donnent plutôt des conseils. En récompense, on leur offre toujours de la bière.

Les affaires graves sont immédiatement transmises au sous-chef, au chef ou au roi. On transmet aussi les affaires pour lesquelles le jugement des arbitres n'a pas été accepté ...

p. 150 - Le faiseur de pluie ... Il avait le pouvoir de faire tomber la pluie ainsi que de l'écarter.

On pouvait devenir un faiseur de pluie de sa propre volonté et après une période d'instruction, ou bien après avoir été possédé de l'esprit de la famille, ou bien encore après avoir été proclamé tel par le peuple.

p. 185 - Agriculture ... l'on trouve des champs cultivés dans les vallées et sur les pentes souvent très raides des ruisseaux et des rivières. Là où, dans le haut pays, la situation s'y prête, l'on trouve sur certains terrains en fonds de vallée mise en culture, un système d'irrigation formé d'un réseau de petits filets d'eau. Ce qui fait que l'exploitation, par exemple, de plantes à gousses, peut s'y pratiquer même en saison sèche ...

p. 187 ... La pêche (au moyen de nasses, de lignes, de filets et de lances) n'a généralement d'importance que pour les habitants du voisinage des grandes rivières, telle que le Mbalagarasi.

Les canots dont ils se servent à cet effet sont des embarcations assez primitives, faites de troncs d'arbres et parfois d'écorce.

... nous ne parlons pas ici de la pêche telle qu'elle se pratique dans les villages de pêcheurs le long de la côte du Tanganyika ...

Le faiseur de pluie ... Les hommes aussi bien que les femmes s'y adonnent et souvent par succession héréditaire. Le métier doit s'apprendre en se mettant à l'école d'un faiseur de pluie renommé.

Il semble qu'auparavant il y avait dans la chefferie du Heru un faiseur de pluie, toujours une femme, qui jouissait d'une grande influence; on la considérait comme chef de tous les faiseurs de pluie. A sa mort, une de ses filles lui succédait. On dit que les faiseurs de pluie appartenant à cette famille jouissaient d'une certaine célébrité bien au-delà des frontières du Buha ...

Author: Georges Sandrucci
Title: Cours de Droit Coutumier -Ruanda, Batutsi, abutsu, Batwa (ibéas)
Publisher: ASTRIDA
Year: 1981, vol. II

Text

p. 80 - Passages d'eau. Les passeurs d'eau assument cette charge avec l'acquiescement du pouvoir politique local ou du pouvoir royal. Le plus souvent il s'agit de toute une famille, qui remplit ce métier de père en fils. La ou les pirogues étaient dans la majorité des cas la propriété du chef local ou de l'association familiale.

Les membres composant le groupe des "passeurs" se relaient à tour de rôle, faisant chacun un jour de travail. Le soir venu, on se partage la recette de la journée après que le chef-passeur a prélevé sa quote-part dont une partie ira au chef des bateliers de la région, en l'occurrence le chef politique local ...

SENEGAL

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Oulof du Cayor (Carrée de Thiès) Oulof Moussourou (Baol) Wolof Ruraux	-Nomadic -villages concentrated	kingdoms	-savannah -villages	agriculture	auto-subsistence	rainfed	-seasonal -limited	inland, fresh waters	no data
Foumbour (Carrée de Matam) Foumbour	-family extended -nomadic -clan -polycentric	diffused power	-semi-arid -savannah -river -villages	-pastoralism -agriculture -fishing	auto-subsistence	-rainfed -irrigation, by flooding	limited	no data	no data

Ethnic Group	Conflicts/ Ruling rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Detailed and household use of water (14)	Other rules not involving conservation of water (15)	Other rules involving conservation of water (16)	Protection of water quality (17)	Conflict resolution (18)
Ouhel du Cayar (Carrée de Thille) Ouhel Mouhennas (Boul) Wahel Bureau	conflict, important	France	-African traditional -Islamic influence	-control by community, chef de la terre -granting of land by head of village assembly	-control by community -water, free of charge -water selling not possible	-control by community, maître de l'eau -free of charge	-control by family -private appropriation -free of charge for local community, for foreigners and for local cattle -fee-paying, foreign cattle -authorization needed for watering -prescriptive rules -restrictions on use by authority in drought -protection of rights of way to water sources	no data	village
Toucouleur	no data	France	-African traditional -Islamic derivation	-control by kinship representatives -granting of land by kinship representatives	-control by kinship, maître de l'eau	-control by community, maître de l'eau	protection of rights of way to water sources	no data	no data

Ethnic group: OULOF DU CAYOR (carole de thibs)
OULOF MUSULMANE (Baol)
WOLOF RURAUX

Author: M. Campéstron
Title: Coutume Oulof du Cayor. (Carole de Thibs)
In: Coutumiers Juridiques de l'AOF - Tome 1, Sénégal
Publisher: Larose, Paris
Year: 1939
Year of survey: 1937

Text

p. 128 - Les choses qui peuvent constituer la propriété collective sont: les maisons, les cases, les terres et les champs, le bois, les plantations, les sources, les puits et les troupeaux.

En règle générale, les biens immobiliers, quand ils appartiennent à une collectivité, sont inaliénables, sauf à titre tout à fait exceptionnel, en cas de nécessité impérieuse (calamité, impôts, amendes) et avec l'accord de tous ...

Le chef distribue les terrains du chef de village, et il en assure la surveillance, l'entretien et la protection. Il est responsable de sa gestion vis-à-vis de la collectivité ...

Par contre, les droits d'affouage, de puisage, de pâturage, de chasse et de pêche sont reconnus et respectés des propriétaires, sous réserve bien entendu qu'il n'en résulte aucun dommage ou déprédations.

Les étrangers à la collectivité bénéficient de ces droits, mais ils doivent cependant obtenir l'autorisation préalable des propriétaires pour le pâturage et l'affouage.

p. 139 - Ces autorisations sont en principe accordées gratuitement ...

Servitudes. Il existe des servitudes réelles, servitudes de passage et de puisage. Elles sont perpétuelles et ne peuvent être rachetées ...

Author: J. C. Fayst
Title: Coutume Oulof Musulmane (Baol)
In: Coutumiers Juridiques de l'AOF - Tome 1, Sénégal
Publisher: Larose, Paris
Year: 1939

Text

p. 178 - Servitude. - Il existe une servitude réelle, la servitude de passage, soit au profit d'un fonds enclavé, soit pour permettre l'accès des gens et des animaux à un puits ou à un point d'eau permanent.

C'est une servitude perpétuelle.

Immeubles susceptibles de propriété privée. Les immeubles susceptibles de propriété privée sont: les plantations d'arbres fruitiers et autres, baobabs, rôniers, les maisons, les séanes (trous pour recevoir l'eau de pluie et de ruissellement) et enfin, actuellement, les terrains de culture ...

Author: E. Le Roy, M. Niang
Title: Le Régime Juridique des Terres Chez les Wolof Ruraux du Sénégal
In: Systèmes Fonciers Africains
Publisher: Laboratoire d'Anthropologie Juridique, Paris
Year: 1970
Year of survey: 1989

Text

p. 102 - reu	Wolof	Wolof
Terme	Langue	Ethnie

Espaces. - Activités et Droits Fonciers non Cultureux.

Sources ...

Localisation. République du Sénégal. Régions de Thiès et de Diourbel (anciens royaumes du Cayor, du Baol et du Djolof) - Département de Dagana, région du Fleuve (ancien royaume du Walo) ...

Linguistique ...

Signification. - Reu signifie "le royaume, le pays, la contrée, la région". ... En raison de l'organisation politique des Etats wolof, il s'agit de l'espace le plus étendu, celui qui intègre et sous-entend toutes les activités qui ne nécessitent pas une stricte localisation comme pour l'agriculture. En effet, l'exploitation des sols le Jeri pour des usages non cultureux impliquait le recours, pour des raisons variables qui seront étudiées dans le corps des fiches, à des techniques extensives qui ne se trouvaient spatialement limitées que par les frontières "dig" du royaume dont on relevait. En outre, la priorité donnée à la culture des terres obligeait à ne considérer ces activités que comme annexes et complémentaires et à ne proposer qu'un cadre juridique global pour tenir compte des particularismes locaux ou ethniques. En fin l'organisation interne des différents pouvoirs politiques explique la différenciation dans le temps et dans l'espace de la réglementation foncière. Notre propos est d'un rappeler ici principes généraux.

p. 103 - La compréhension de la diversité des droits fonciers ne peut se faire qu'en ayant à l'esprit la relation oppositive entre:

- d'une part le souverain ...
- d'autre part l'inventeur, utilisateur normal des ressources ...
- enfin, les responsables locaux des communautés rurales ...

Le choix du détenteur est essentiel puisqu'il détermine la nature des droits et des obligations sur des espaces spécialement affectés, par telle ou telle activité ...

Les espaces que nous décrivons se différencient en réalité selon un autre critère celui de la rareté relative du produit exploité.

C'est ainsi que c'est la valeur reconnue aux activités de puitsage, d'extraction des minéraux et la pêche qui les distingue d'autres qui ont une importance économique bien moindre ...

Detenteur \ Valeur	Grande importance	moindre importance
Souverain	salines	- droits de coupe - haute police sur les autres activités
Inventeur	- pêche - échouement des navires	- chasse - cueillette
Communauté	- puisage	- pâturage/parcage

p. 105 - deg u xorom Wolof Wolof
Terme Langue Ethnie

Localisation : République du Sénégal. Région de Thiès et de Diourbel
(ancien royaume du Cayor, du Baol et du Djolof) -Département de Dagana, région du fleuve
(ancien royaume du Walo).

Linguistique ...

Signification et Connotations.

Ce terme pourra donc être traduit par la saline. L'importance donnée par les Wolof aux salines de l'embouchure du Sénégal vient de ce que le sel était avec l'or une des deux grandes richesses minérales de l'Afrique soudanienne et donc un terme d'échange et d'imposition avantageux pour ceux qui en contrôlaient l'extraction et la circulation. C'est pourquoi les souverains ont pensé une stricte réglementation nous permettant d'évoquer des droits financiers détenus au titre des mines et carrières.

p. 106 - "Chaque saline a son fermier particulier ... "

Par la suite il semble que les salines aient été données en apanage soit à un héritier présumé soit à la lignée ...

... l'extraction des coquillages et en particulier des bancs d'huîtres (yokhoukay) destinés à faire de la chaux étaient soumis au paiement de coutumes.

On doit admettre avec P. Diagne ... que ces richesses " ont fait l'objet assez tôt d'un monopole de l'autorité central ...

Le "bur" détient ainsi la totalité des titres juridiques sur ces "mines" qu'il peut concéder comme il l'entend ...

... la situation des carrières et en particulier des gîtes d'argile ... les potières (en général les femmes des griots "gevel") possédaient des droits exclusifs sur les emplacements qu'elles avaient découverts ... Peut-être cette réservation était-elle liée à une alliance privilégiée de l'artisan avec l'esprit local.

p. 108 - sed Wolof Wolof
Terme Langue Ethnie

Sources ...

Localisation - République du Sénégal. Région de Thies et de Diourbel (anciennes royaumes du Cayor, du Baol et du Djolof) - Département de Dagana, région du fleuve (ancien royaume du Walo).

Linguistique ...

Signification et Connotations.

Dans un sens premier, *sad* désigne la part, la portion. Il est employé par les pêcheurs pour marquer la partie du fleuve ou du marigot qui fait l'objet d'une exploitation particulière et de droits spécifiques ...

p. 109 - Les zones de pêche (*sad*) seront d'autant plus importantes que le nombre de pêcheurs concernés par la prise est plus grand. Cependant, l'embouchure de la Taouey faisait l'objet d'une appropriation très restreinte parce que l'endroit était très poisonneux. Sur les marigots Leca note que leur longueur pouvait varier de 500 m à 1 km.

Les droits détenus par les pêcheurs ...

D'après Robin, l'organisation de l'état du Walo sous Barka Bo aboutit à confier l'administration de la pêche et les droits sur les eaux continentales à une autorité spéciale, la "jogomaj" qui percevait les taxes relatives à cette activité. Ainsi les pêcheurs ne disposaient-ils que d'un droit d'usage. Selon les lieux et époques et en particulier de la présence locale d'un "kangam" pouvant confisquer à son profit des droits fondés sur la découverte, les titres détenus s'analysent comme précaires ou définitifs, partiels ou exclusifs.

Ainsi en sera-t-il en particulier sur la zone du fleuve faisant frontière avec la Mauritanie et soumise à la pression incessante des razzias ...

p. 110 - Les uns, décrit par Mme Audiger pour la lée de Guier, s'analysent comme des droits possessifs communautaires, exclusifs et utilisés à certaines époques de l'année - en décrets - par des groupes itinérants. Dans le jamber en particulier, ces titres devaient être villageois bien que P. Diagne note la présence d'un jogomaj dans cette région ...

Les autres nous rapportés par Leca. La découverte d'un emplacement favorable à l'implantation d'un *sabot* (qui nécessite l'emploi de perches verticales, "sa" mesurant de 3 à 8 mètres plantées dans le lit du fleuve) fonde un titre à l'appropriation exclusive, héréditaire en ligne paternelle et en principe inaliénable. Cependant le *sad* pouvait être prêté. Tous ces titres peuvent cependant s'analyser comme des droits d'usage très protégés et non comme des droits de "propriété" étant donné qu'ils sont toujours relatifs à un autre droit d'administration de l'autorité politique centrale.

Notons que dans le reste du vieux pays wolof, les points d'eau ne sont pas assez étendus pour justifier une telle activité sauf dans les étangs des Ni ...
L'exploitation de ces derniers semblait être le fait exclusif des rares communautés villageoises qui les bordaient.

p. 114 -	terme	Wolof	Wolof
	terme	Langue	Ethnie

sources ...

Localisation - République du Sénégal. Région de Thies et de Diourbel (anciens royaumes du Cayor, du Baol et du Djolof) - Département de Dagana, région du fleuve (ancien royaume du Walo).

Linguistique ...

Signification et Connotations.

Tan signifie la puits, la citerne. C'est le lieu le plus normalement utilisé pour collecter l'eau nécessaire aux besoins domestiques et à l'abreuvement des animaux dans un pays qui connaît des points d'eau temporaire qu'en saison humide (les "nkan" de l'intérieur). Cependant dans les zones proches de l'océan Atlantique la nappe phréatique permet soit de creuser des fosses peu profondes (moins de 10 mètres) appelées *asam* soit d'avoir recours à des mares permanentes en particulier dans les Niayas (c'est-à-dire les forêts de palmiers du littoral). Ces mares sont les *dog*, terme général, utilisé soit pour des étangs d'eaux douce soit pour les marigots du delta du Sénégal.

Dans un pays situé entre 500 et 700 inches, soumis, par une saison des pluies très variable comme en témoignent les années 1966 à 1968, à des sécheresses catastrophiques, la réglementation de l'utilisation des points d'eau s'avère être une question importante par laquelle l'ensemble de la communauté se sentira concernée.

p. 115 - Les Wolof distinguent en général deux types de droits à propos des points d'eau:

- les droits de puisage à des fins personnelles ou domestiques.
- les droits d'abreuvement des animaux qui dans bien des cas seront comme des servitudes.

Les contestations relatives à leur utilisation naissent le plus souvent de l'impossibilité de faire une juste part à chaque activité si la puits est unique et que son débit est insuffisant.

A - Les droits de puisage. Selon Mollien, sans doute le premier voyageur à s'être penché sur les puits du Sahel occidental, "chaque puits appartient à celui qui, avec ses esclaves, s'est donné la peine de le creuser ... Les nègres qui n'en possèdent pas sont obligés pour puiser l'eau de payer un droit au propriétaire" ...

Ce principe est encore reconnu par les habitants du Baol comme témoigne la conversation suivante avec Mama M'Baye, chef de Golly ... :

"Q" - Qui a fait creuser le puits?

"R" - C'est moi qui l'ai fait creuser ... Ce puits m'appartient"

Mais en fait ce droit n'est pas personnel, il appartient au lignage du premier défricheur qui pour installer sa communauté devait trouver les ressources en eau nécessaires. C'est ainsi que Geismar écrit ... "Certains chefs de village se font payer par les nouveaux installés des redevances ... représentées parfois comme la contre partie du droit d'utilisation du puits construit par les fondateurs."

Donc, les droits de puisage ne relèvent pas de la fonction de chef de village mais du premier défricheur ou de ses descendants. La distinction est importante même s'il s'agit d'une seule personne. D'autre part l'affectation (?) du point d'eau est nécessairement collective. Enfin, dans certains cas, une redevance pour son utilisation pouvait être perçue; mais nous ignorons le montant d'autant plus que cette pratique semble avoir disparu avec la colonisation. Il faut à ce sujet faire remarquer que d'après les techniques décrites par Mollien ... le forage d'un puits était une activité délicate dans un sol sablonneux pouvant provoquer tous les accidents possibles (?) Les puisatiers - des Bambara, selon Couty - sont de techniciens très qualifiés qui coûtent chers. Posséder un puits de (p. 116) briques (ou en ciment actuellement) est un signe de prospérité pour le village. D'ailleurs il est le siège de nombreux esprits que doit visiter, selon Ames ... , la jeune mariée pour avoir le "mur" c'est-à-dire le bonheur dans son nouveau foyer. De même à Batel, chaque nouveau "dame" du Cayor devait venir s'y rafraîchir pour avoir un règne heureux.

On comprend ainsi que si son utilisation est libre pour la communauté familiale, on puisse demander aux nouveaux venus une contribution une dépense ancienne dont il profite actuellement. Mais cette redevance en nature ne sera perçue que pour un passage continu. Il est impensable de monnayer de l'eau au voyageur qui est un "envoyé de Dieu".

B - Les droits d'abreuvement.

Ils interviennent dans deux cas:

- Quand les points d'eau sont permanents (mares et marigots, rivières, etc.) il s'agit moins de réglementer la quantité ou l'horaire de l'abreuvement des troupeaux que le libre accès vers ces points.

Dans beaucoup de cas, il faut ainsi protéger les champs de la dent des troupeaux et les enclore de haies vives ou d'épineux. Ces droits s'analysent alors - pour les Wolof - comme des servitudes de passage, selon Campistron ...

- Quand il s'agit de points aménagés et en particulier de puits il faut soit affecter certains puits à l'abreuvement, ainsi à Méouane, soit réglementer les modes d'utilisation comme à Diakoul Diawdine. En général les bergers gardant les bêtes du village, s'entendent directement avec le "borom dak" mais il n'est pas rare que les habitants soient obligés en fin de saison sèche de demander aux bergers de quitter le village quand le puits s'assèche et que priorité doit être donnée aux humains. Les complications ne naissent que quand les différents deviendront ethniques. C'est en particulier les cas général dans les terres neuves du Fouta occidental tel que nous allons l'étudier dans l'évolution.

Evolution.

Les difficultés vont en effet naître de la colonisation des terres du Baol occidental, du Djolof et du Saloum par les Wolof au début du XXe siècle. Un mouvement de 200 000 à 300 000 personnes a en effet détruit complètement l'équilibre sur ces anciennes zones pastorales considérées souvent à tort comme non appropriées. Dans (p. 117) les zones d'implantation muride en particulier, l'établissement de "dara" aboutit souvent à spolier les nomades de leurs points d'eau ce qui entraîna de nombreux conflits parfois sanglants, ainsi le report Pelissier ... C'est pour remédier à cette situation que furent forés des puits profonds dans le cadre du FIDES comme dans le Fouta. Mais les conflits recommencèrent quand ils furent confisqués par les colons ... D'autre part une exigence légitime de tout responsable villageois est posséder localement les ressources en eau nécessaires aux besoins de la communauté ...

Ethnic Group:	SERER NONE and SERER DE LA PETITE-COTE (THIES)
Author:	M. Dulphy
Title:	Coutume des Sérères None. (Cercle de Thiès)
In:	Coutumiers Juridiques de l'AOF - Tome 1, Sénégal publisher: Larose, Paris
Year:	1839

Text

p. 230 - Servitudes. Les principales sont les servitudes de passage pour les animaux, d'écoulement des eaux (important dans les pays de rizières de la Petite-Côte), d'abreuvement ou d'épuisement de l'eau, de cueillette (pour certains arbres). Ces servitudes sont perpétuelles et la coutume n'en prévoit pas le rachat.

Domaine Public. Le domaine public comprend en général toute la brousse où, comme nous l'avons vu, chacun peut se tailler un domaine. Le coin de brousse appartient à qui le débroussaillie et le cultive.

Cependant, une autre conception plus étroite du domaine public existe.

A l'entour du village, la partie inculte lui appartient. Les villages voisins n'ont aucun droit sur ces terrains. C'est là que les femmes vont chercher le bois, l'eau, etc ...

Author:	M. Dalphy
Title:	Coutume Sérère de La Petite-Côte. (Cercle de Thiès)
In:	Coutumières Juridiques de l'AOF - Tome 1, Sénégal
Publisher:	Larose, Paris
Year:	1939
Year of survey:	1936

Text

p. 281 - Formes Usuelles de la Propriété. La propriété collective ... continue à être, au regard de la coutume sérère, la véritable forme de la propriété ...

Nous avons parlé de la propriété collectivité familiale ... Mais les Sérères connaissent également une autre forme de propriété collective ... la propriété collective villageoise ...

2° propriété collective villageoise, pouvant comprendre les dources, les puits, les méanes, les arbres, les peuplements végétaux naturels, les pâturages.

p. 282 - 1° Composition du Patrimoine Villageois: ...

...

les marigots et les cours d'eau;

les sources.

Il en est d'autres qui sont de création artificielle, tels le puits et les méanes, forés par les habitants du village, mais affectés volontairement à l'usage collectif.

2° Caractère des Biens Villageois:

(a) ils sont inaliénables, affectés à l'usage collectif; ils ne peuvent être détournés de leur destination ...

(b) ils sont indivis: ils ne peuvent être partagés entre les membres de la collectivité villageoise. Ils demeurent affectés en bloc à l'usage collectif ...

p. 283 - Le chef de la collectivité villageoise. ...

3° Attributions ...

(a) ... Le chef de la collectivité villageoise sérère était autrefois le représentant du Bour ... il rendait la justice en premier ressort ...

- (b) ... Le chef de la collectivité villageoise administre le patrimoine de cette collectivité. Il est contrôlé dans sa gestion par le Conseil des Notables du village ...

De même, lorsqu'un étranger désire venir se fixer dans le village, c'est au chef de village qu'il appartient de lui en donner l'autorisation et de lui indiquer les terres à défricher.

C'est également au chef de village que revient le droit d'accorder les autorisations d'utilisation temporaire du patrimoine villageois ...

p. 284 - Droits des membres de la collectivité villageoise.

Tous les membres de la collectivité villageoise ont un droit égal à la jouissance gratuite des biens collectifs du village ...

Les membres du village pouvant notamment ... puiser de l'eau aux puits villageois ...

Droits des étrangers au village. Les étrangers peuvent être admis à jouir temporairement des ces biens, mais sous la condition: (a) d'en demander l'autorisation au chef de village et de se conformer à ses ordres; (b) de payer, en certains cas, une redevance en nature au chef de village.

Les étrangers qui viennent se fixer définitivement dans le village deviennent membres de la collectivité et sont admis à la jouissance gratuite des biens villageois, comme les membres anciens ...

Ethnic group: TOUCOULEUR (Cercle de Matam)
Author: Abdou Salam Kane
Title: Coutume Civile et Pénale Toucouleur
In: Coutumiers Juridiques de l'AOF - Tome 1, Sénégal
Publisher: Larose, Paris
Year: 1939

Text

p. 80 - La propriété des terres inondées a seule une grande importance dans le Fouta, où elle constitue une source de richesse pour les propriétaires; celle des terrains non inondé, cultivés pendant l'hivernage seulement, a une moindre valeur dans ce pays ...

p. 82 - Le domaine public était constitué par le sol détenu par ceux qui portaient les titres du Diom Ardo-Diagaraf, Kamaluicou et parfois Thierno. Les chemins, les marigots, les mares, les cours des fleuves, les bois et prés étaient le domaine public des villages près desquels ils se trouvaient, et faisaient partie de la propriété collective des villages ou des groupements de villages sous un seul chef ...

p. 83 - Les servitudes réelles ou foncières ne sont pas bien connues; on ne les pratique guère, à la cause de la rusticité des propriétés, mais on peut leur assimiler les servitudes établies sur les lougans qui empêchent l'accès des points de l'eau, puits, mares, marigots ou endroits du fleuve où gens et bêtes vont prendre l'eau ou boire. Les propriétaires de ces lougans doivent toujours laisser un passage suffisant pour les gens et les bêtes qui ne peuvent être responsables des dommages, si le passage n'est pas pratiqué librement. En cas de contestation l'autorité locale statue ...

p. 108 - Petites infractions prévues par la loi et la coutume.

Certaines infractions entraînent pour leur auteurs de légères peines prévues dans la loi ou établies par les règlements administratifs des chefs ou de la collectivité seule des villages pour le bien de la communauté. Ces infractions peuvent se classer en deux catégories: celles prévues par la loi (charina) et celles qui sont instituées (p. 109) par la coutume ...

La seconde comprend, sous la nom de "tiouandé", toutes les ordonnances, émanant des chefs ou prises par la communauté, interdisant la récolte avant tel jour fixé, l'accès d'une mare désignée, une partie réservée du paturage, la vente du mil au-dessous d'un prix convenu, etc; toute infraction à ces règlements est punie d'une légère amende fixée d'un commun accord et d'avance ...

Procédure civile et Pénale.

Organisation Judiciaire. Avant l'organisation actuelle de la justice, toutes les affaires civiles et criminelles étaient jugées par les Cadis du lieu où elles se passaient. Au civil, avant de se présenter devant ce juge, les parties soumettaient leur différend aux parents, amis, chefs de village pour essayer la conciliation ...

p. 112 - ... mais un marabout quelconque, ayant fait un peu de droit musulman, pouvait être choisi comme arbitre. Les jugements rendus par lui n'étaient valables que s'ils étaient acceptés par les deux parties ...

General

Author:	L. Gellmar
Title:	Recueil des Coutumes Civiles des Races du Sénégal
Publisher:	Saint Louis, Imprimerie du Gouvernement
Year:	1833

Text

p. 179 - La pêche, de même, est libre. Mais dans le Fouta Toro, le droit de pêche dans les marigots circulant à travers une terre kolligal est soumise à redevance au profit du maître de terre.

p. 180 - La redevance s'élève, en règle générale, à un dixième du produit. La pêche dans ces marigots est très fructueuse du fait qu'il est possible de les barrer facilement, à la fin de l'hivernage. Sur les rives du fleuve, la pêche est réservée coutumièrement aux Diouhalo, dont il a été question plus haut et qui sont considérés par certains comme les autochtones du Fouta Toro ...

En ce qui concerne la propriété domaniale, l'indigène n'est pas sans ignorer des servitudes correspondant plus ou moins à celles de notre domaine public. C'est ainsi qu'un individu n'a pas le droit de barrer les voies d'accès à une mare d'abreuvement. Quant aux puits construits par une famille (sans intervention de l'Administration), les constructeurs ne sont pas tenus d'y laisser accéder les voisins. L'autorisation est généralement accordée, mais contre rémunération. En ce qui concerne les étrangers de passage, le caractère hospitalier des indigènes ne conçoit pas qu'on puisse leur en interdire l'usage.

p. 181 - Tout au contraire, ils ont droit de priorité pour l'abreuvement. Mais il n'est pas de même pour les troupeaux de transhumance. L'alimentation en eau est accordée généralement contre rémunération ...

La navigation sur les cours d'eau est libre. Mais elle n'est pratiquée souvent que par des castes spéciales (Toubalets sur le fleuve Sénégal) ...

Author: Doublier
Titre: Propriété Foncière en AOF. Régime en Droit Privé.
Publisher: Saint Louis
Year: 1952

Text

p. 14 - La Coutume Ancienne

... les coutumes changent de village à village.

D'autre part, les grandes coutumes sont non seulement pratiquées en des lieux très voisins, mais parfois concurremment au même endroit, une interpénétration ayant eu lieu entre les populations primitivement intéressées par chacune d'elles ...

Nous disons intentionnellement "tenure", afin d'éviter le mot "propriété", car cette dernière n'existait pas en Afrique, avant notre arrivée, au sujet des terres. On distinguait deux catégories de bien:

1. - la terre et le cours d'eau, sur lesquels ne "peut pas s'exercer un droit de propriété.

p. 15 - 2. - tous les autres biens, susceptibles de propriété "privée ou collective".

Toutes les coutumes anciennes s'accordent sur ce point.

p. 28 - A - Collectivité.

Certaines rédactions des coutumes divisent les biens en trois catégories:

- 1° La terre et les cours d'eau, qui ne sont pas susceptibles de propriété;

2° Les biens seulement susceptibles de propriété collective (maisons d'habitation, arbres, prairies naturelles, troupeaux, fruits, produits du sous-sol, or);

- 3° Tous les autres biens, susceptibles à la fois de propriété collective ou privée"

Tel semble bien être l'esprit général de toutes les coutumes puisque partout, on l'a vu, la terre est considérée comme ne pouvant pas être l'objet d'un véritable droit de propriété. Mais certaines rédactions, faites par des auteurs habitués au droit français et ne sachant pas baptiser l'ensemble des droits sur la terre autrement que "propriété" réduisent cette classification à deux catégories: les meubles et les immeubles, ces derniers englobant les troupeaux ...

p. 125 - I. - Fonction de la terre.

La terre est une création divine, comme le ciel, comme l'air, comme les mers. Elle est à Dieu, aux dieux et aux ancêtres morts, suivant les convictions. Elle est mise au service des hommes pour assurer leur subsistance et permettre la survie de l'Espèce. Elle abrite les morts.

p. 137 - (c) La terre ne peut être appropriée.

La terre est insusceptible d'appropriation. Les lois de la cosmogonie africaine n'admettent cette appropriation pour aucun des éléments (ciel, air et mer) qui ont servi à la création de l'univers et le soutiennent. La terre étant à Dieu, aux dieux ou aux ancêtres, aucun être humain ne peut s'en approprier, car ce serait commettre un acte réservé à la seule divinité et serait donc commettre le "crime" de sacrilège.

Comment, d'ailleurs, s'approprier ce qui est affecté à tous pour leur subsistance ? Comment accepter que l'abri des ancêtres devienne la chose d'un seul homme ?

(b) La terre est inaliénable

La terre est mise au service de la communauté. Or celle-ci comprend non seulement les personnes vivant sur le terroir, mais aussi celles qui y naissent et celles qui y sont enterrées. Aucun homme, aucune génération, ne peut disposer de ces biens ...

(c) Il y a des droits sur la terre.

... Les membres de la communauté encore vivants, ont sur la terre un droit d'usage.

Le premier défricheur, ou le conquérant, a conservé, de son pouvoir de distribuer la terre, des droits que justifient ses fonctions ...

p. 138 - Les sujets des droits fonciers.

Les terres de la collectivité n'ont d'ailleurs pas toutes le même statut. Il y a celles qui sont susceptibles d'être affectées à l'usage des particuliers pour la satisfaction de leurs besoins propres: ce sont les terres de culture et d'habitation; et celles qui sont laissées à la disposition de la communauté toute entière: les biens publics. Cette distinction est très nette chez les Toucouleurs du Fouta et chez les Nones de la Petite Côte. Le domaine public comprend les ruelles, les places et les environs immédiats du village, ainsi que les cours d'eau.

SIERRA LEONE

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Tsimane, Mursi and Suri	-family, extended -village -customized -secondary, voluntary -age	-chieftains -radio -making points	-forest -river, lake -sea	-agriculture -fishing	no data	rainfed	abundant	-sea -inland fresh waters	no data

Ethnic Group	Overhead/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Tswana, Mende and Loshia	-fishing control by council -by private individuals	United Kingdom	-African traditional -Islamic influence	-control by council -granting of land by head of family	water, free of charge	no data	-control by community -private appropriation -authorization needed for digging well, beds on communal land -protection of rights of way to water sources	no data	chief's court

See file Timne

Author: J.S. Penton
Title: Outline of Native Law in Sierra Leone
Publisher: Freetown
Year: 1948

Text

p. 18 - Water Rights. - If a stream is dammed for more than a day so that people living below the dam are deprived of water, the builder of the dam may be sued.

So, in the case of pollution. (Mining companies are protected in this matter by Ordinances)
...

p. 32 - Fishing and hunting rights belong to the chieftom. A native may hunt or fish anywhere in his chieftom. The chief is entitled to one tusk of an elephant killed; the tusk goes to the chief of the chieftom in which the elephant was wounded. The chief can claim skin, mask, and teeth of a leopard ...

A stranger wishing to fish or hunt should apply to the owner of the bush; if it is unoccupied he should apply to the sub-chief. (See also Ordinance: Wild Animals; for statutory restrictions).

There is a tendency for the owner of the land through which a stream flows to expect a present even from other members of his chieftom if they take fish from that part of the water
...

Author: Northcote W. Thomas,
Title: Anthropological Report on Sierra Leone. Part I: Law and Custom of the Timne and Other Tribes
Publisher: Harrison and Sons, London
Year: 1916

Text

p. 178 - Fishing. The streams and rivers of Sierra Leone are extraordinarily rich in fish, and when the waters are low women catch large quantities of small fish in nets that they push along the bottom.

Anyone may fish in a river ...

... a portion of the river may be dammed when the water is low and fish poison used the stupefy all that are enclosed within the walls ...

p. 179 - In the smaller stream fish traps and fences are prepared in the dry season; such traps are individual property, and a trap put down gives the owner a claim to the spot another year, even if the land is not his own ...

Ethnic Groups **TIMNE, MENDE and LOKKO**
Author: **M. McCulloch**
Title: **The Peoples of Sierra Leone Protectorate**
Publisher: **ESA, IAL London**

Text

I° - Mende and Lokko.

Fishing. Men make weirs and dams, but hand net fishing is women's work, and small girl help to make and mend the nets ...

On the other hand, streams and rivers are not regarded as part of the land nor are the wild animals which roam in the bush. There is no remuneration on using another person's land for hunting, fishing, or drawing water. It is customary, however, for anyone setting traps to consult the owner of the land on which he wishes to place them ...

II° - Temne, Limba, Susu and Yalunka.

Fishing. Most of the fishing is done by women, with nets pushed along the bed the stream. Sometimes concerted action on the part of the community is required; a portion of the river may be dammed when the water is low and poison used to stupefy the imprisoned fish. Nets from forty to a hundred yards long are used, the latter by the combined effort of people of several villages. In the smaller streams traps and fences are prepared in the dry season; such traps are individual property, and a trap put down gives the owner a claim to the spot another year, even if the land is not his own ...

SOMALIA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Pastoral Boran	hunger	diffused power	-arid -semi-arid -savannah	-pastoralism -agriculture	auto- marketization	rainfed	limited	see	no data

88 Durod (Der Issa, Ouedou, Mleerwa, Oliberu, Dribil, Elawra, Gbonalla, Northam)

Ethnic Group	Capital/holding rights/transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Capital resolution (18)
Pastoral Somali	conflict, important	-United Kingdom -France -Italy	-African traditional -Islamic influences	-control by tribes -granting of land by Nomads	-control by Nomads -water, free of charge -payment for maintenance -duty to maintain -water milking not possible -splitting of water point not possible -specific organization dealing with water	-control by Nomads -free of charge	-control by family, tribes -free of charge for local community, for foreigners and for local cattle -fee-paying: foreign cattle -authorization needed for digging well, basin on communal land -duty to community digging, maintenance -authorization needed for watering -precedence rules -restrictions on use by authority in drought -protection of rights of way to water sources -specific organization dealing with water	no data	Nomads

Ethnic group: PASTORAL SOMALI

Notes: Lineage is a territorial group - lineage segmentation is coordinate with tribal structure

Author: J.M. Lewis
Title: Peoples of the Horn of Africa - Somali, Afar and Saho
Publisher: ESA-IAI, OUP
Year: 1965

Text

p. 89 - Property rights in land are acquired by occupying land and sustaining the initial rights so conferred against rival claimants. Effective occupancy is the most important criterion of ownership. Each tribe has traditions of entering its territory and establishing property rights to land ...

p. 90 - In theory land is common tribal property, but it is owned particularly by tribal sections and their sub-divisions. "The land is of God the Creator" and accordingly is common to all tribesmen. Wells and pasture utilized by individual tribal sections are often shared within the tribe and sometimes, subject to agreement, between tribes. In its full extent, tribal territory represents common grazing and is open for hunting to all tribesmen. Indeed, among the Rahanwein the entire territory is at the disposal of the hunters of all constituent tribes ...

The centres of population are the home wells to which in "Haga" and "Dhair" (seasonal tribes retire from the far grazing, and from which in "Jilal", they move out to the new pasture after the "Gu" rains. In the dry season tribes are concentrated round the home wells which are often shared among friendly tribes. An analysis of Hunt's material shows that generally collateral secondary sections (major segments of the clan) are found side by side at the water-points, although sometimes these are utilized jointly by non-collateral sections. On the whole, it is possible to project major collateral lineages on to the ground as adjacent secondary sections. The home wells represent the centre of concentration and land-ownership of each tribe, and from season to season and year to year, the tribe moves regularly in an area described about these, which is its maximum extension corresponds to the total grazing area of the tribe. Seasonal movements follow the shape of the country. The nomadic flux is from the coast into the centre, where in the north tribes congregate in the rich pastures of the Haud, and in the south in those of the Doi. Each tribe has its own region of transhumance, defined as far as possible by the situation of the home wells, natural barriers where they exist, and by the movements of neighbouring tribes ...

p. 92 - As regards absolute static boundaries or rights over pasture and wells ... the equilibrium which exists between tribal sections is a dynamic one and the division of pastureland forms a corresponding dynamic system. Spheres of interest interpenetrate and give rise to disputes both within and outside the tribe; in the former case they are usually peacefully settled by payment of compensation, in the latter this is not so ...

The exiguous patches of durra planted by the nomads in natural depressions where rain-water collects are "owned" only in as much as sowing a crop confers the sole rights of harvesting it. Wells for stock and man are at the disposal of the section grazing the land in which they occur, but the right to use natural wells and water-points does not belong exclusively to any particular section any more than the use of pasture. The land, grazing, vegetation and water-points belong only to the tribe as a whole.

Transhumance and Cultivation. In the South transhumance and sedentary cultivation replace nomadism. Most cultivators have some stock or, if not, there are usually transhumant

pastoralists attached to them as clients. In general, each tribe and section has pastureland defined at some points by settled villages ...

p. 83 - In this movement [of transhumance] many tribes, for a few months during the dry season, are dependent upon permission to water their stock along the Shabelle in territory occupied by riverine cultivators like the Shidle ... Three typical Sab tribes - the Halai of Bar Makaba, the Tunni of Brava, and the Baj-Argan Saraman - ... all have a mixed agricultural-pastoral economy typical of these regions ...

p. 96 - The basis of individual ownership has shifted from membership of the lineage (*rer*) to membership of the mixed-village ...

Tribal Territory and Water-rights. Wells for supplying water for man (*el*) and for stock (*sur*) are distinguished from natural sources (*gall* in Hawiye, *saha* in Rahanwein), and from artificial basins (*war*) used for supplying water for cultivation. Property rights over *El* and *Sur* combine two concepts: ownership of the land in which the water is found, and maintenance of the means of utilizing it. Wells belong, in the first instance, to the land-owning group and, secondly and more directly, to those within the group concerned with their maintenance. There are considerable variations in the norms regulating the use of wells. Where several tribal sections share water-rights, the first-born lineage takes precedence over the others and enjoys special privileges in connection with the reciprocal use of their home wells. Among the Galjaal, for instance, other sections can only use the home wells belonging to the first-born lineage when they are not in use through the day or at night, whereas this favoured section enjoys precedence at the home wells of collateral sections at all times.

The basins in which water for cultivation collects are of two kinds. Natural depressions containing rain-water or water carried by ephemeral freshets (*gall* and *saha*) are available to all the members of the land-owning group in whose territory they occur, and are the sites of temporary cultivation in the wide pasturelands. Artificial water-traps (*war*) are found with sedentary cultivation and belong exclusively (p. 96) to the farmer whose fields they water. Those who dig and maintain *war* are called *jagor* by the Rahanwein and enjoy the fruits of their labours in free access to the water which they have made available. According to Cucinotta, *war* are frequently owned by individual tribal sections and their use is regulated by the headmen, as is the case with the drinking-wells and natural pools (*gall* and *saha*) of the pastoralists. Colucci describes the regulation of watering at *war* by a chief (*au wared*) aided by assistants (*sagale*) who are authorized to impose penalties for the contravention of their directions. They attend to the maintenance of the *war* and organize its preparation each year before the coming of the rains. The same *jagor* dig out the depression each year. Her *sagale* is a penalty imposed for minor misdemeanours, and is exacted by the *au wared* and *sagale* feasting at the offender's expense. In graver offences the culprit is required to slaughter a three-year old bull (*her jagor*) for the benefit of all those using the well. Men who do not belong to the well-owning group can acquire permission to use it by performing the hardest and most unpleasant tasks in its maintenance. When the well is being re dug, strangers who are willing to carry up the surplus earth to the surface may carry away water to their own group. Reciprocity among well-owners, without joint participation in construction and maintenance, is known as *surjid*, and water is obtained only after preliminary presents have been made ...

The elders sitting in council (*shihar*) with their elected head (*gob*) control the relations of their own group with other sections and regulate their own internal affairs ...

Fine due to the elders for infractions of customary procedure are often exacted in kind by feasting at the offender's expense. This is the way in which the Halai punish irregularities in the use of wells. There is apparently no police organization in the sense of a force constitutionally concerned with bringing offenders before the council or executing its judgments ...

Ethnic group: HAWIYYA, DIR, DAROD, DIGHIL, RAHAN-WIN, TUNNI

Author: Massimo Colucci

Title: Principi di diritto consuetudinario della Somalia italiana meridionale

Publisher: "La Voce", Firenze

Year: 1924, vol. 1

Text - (Translated and adapted from the Italian by the author)

p. 152 - Property. Things and their distinctions.

... The Halmi people say: "Chiefs rule the land; with regard to cattle, everybody is free to do as he pleases." ...

p. 153 - Immovable property.

Men do not acquire rights on land unless they belong to a group which itself has a right on it ...

Consequently, there are three distinct spheres of relations which create rights on land: relations between different groups, relations between an individual and the group to which he belongs, relations between individuals within the same group.

p. 154 - The relations of the first kind - between different groups - are produced by violent or pacific contact between one group and the other, such as: war occupation, the determination of groups' territorial borders, territorial transfer by treaty or by the joining together of social groups, unification of territories because a federation is being set up between social groups, reciprocity in the use of grazing land and watering places.

The relations of the second type, between the individual and the group of which he is a member, are established within a group having its own autonomy and coherence and are meant as a limitation of individuals' activities to the benefit of the conservation of the group. In this category can be found all those relations having regard to the use of communal land when it has an economic value: the regulation of grazing land and of waters, the allocation of agricultural land ...

The relations of the third kind - between individuals "uti singuli" - represent the carrying out of individual activities in the economic sphere, activities limited by the relations of the second kind, as above.

p. 240 - Rights of guarantee. Servitudes.

In riverine areas or near rivers, each land owner has the right to make use of water for his cultivations. As will be explained below, real consortia exist for canal construction and for the regulation of water use. The servitude of water passage is a consequence of that right. Each owner has the right to have water flow through other people's tenements up to his land if it is far from the river or located among other fields.

In this case canals have to follow the fields' border lines.

Grazing and Waters. Rights of grazing.

p. 241 - Note 1. - ... sometimes forest trees, in the bush or in communal forests, belong to individuals, who will carve their identification mark on the bark. This happens most of all along rivers, with trees used for boat construction. They can be sold and inherited.

... People are often heard to say that grass belongs to everybody, that grazing is communal to all Muslims and so on; (2) at the same time, it is easy to see that not only open contrasts and hostility but also a certain lack of affinity among people bring about limitations and sometimes exclusivity of grazing ...

Note 2. Maxims corresponding to Islamic precepts and to the concept of "mubah" thing, res nullius, which can be appropriated by the first occupier - a concept which Islamic law applies to spontaneous grass as well as to running water, to "dead land" (uncultivable, uncultivated or even sacred land, "translator's note") and to wild animals.

p. 246 - Water rights.

In the case of the water legal system, probably even more than in the case of the land system, we can see the difficulty of reducing the various customs to one or a few principles ...

Running waters-Rivers.

... The river, as a body of water, cannot be owned by anyone but, being part of the territory, it bears the consequences of the exclusivity concept which establishes itself in the territory to the advantage of a group which has unity and political autonomy. The concept of exclusivity refers to the river banks and consequently to the use of its waters ...

(p. 247) ... the need for water is what takes people to the rivers ... Where opposition by riverine people cannot be overcome, often agreements might be reached between groups with the object of the use of waters. In principle this is quite normal with pastoral people. The people taking their cattle to the river's watering place "helo", are those whose territory is on the river, and also those who live in isolated territories or far away from the river. The latter can do so because of the widely accepted and economically motivated right of accession to the river's bank by the straightest way ... a customary servitude ... It can be stated that every group or every complex of groups has its own watering place (on the river) to which it goes in specific periods of the year. What has been described above concerns waterings at rivers within the context of relations between different social groups, because the need for water produces specific situations between different, that is politically autonomous, people. The use of water within one (p. 248) group, or even different groups but enjoying common watering rights, is regulated by norms which enforce the ordinary concept of precedence of arrival or of prearranged shifts.

Considerations on the use of water for agriculture beyond the needs of the self-governing group, do not seem to appear in the minds of these people. A regulation of the use of running water doesn't exist outside the territorial group, the village or the confederation of villages ... On the contrary, a strict provision is enforced within the group.

In the riverine lands of the Webi Bebbeli and of Juba rivers, irrigation is provided by natural canals, "far", and by artificial ones, "kili" or "keili", as well as by those vast overflows, "deesek" and "billic" ...

Natural canals or "far" "are formed by the periodic floods when overflowing water opened up the way along the line of least resistance and of greatest incline" (Note 1. By E. Coronaro, unpublished research). Farmers take advantage of them, directly for the fields which border on the "far" and through the "kili" which branch off from the former and which are excavated to draw water in isolated fields. Maintenance and use of "far" and "kili" are especially important: rights and correlated obligations result from them for the communities in whose territories canals are located. The rule is (p. 249) that all those who benefit from them must contribute to the canals' maintenance. Consequently, it may happen that an entire village, or even two or more villages take part in the maintenance of the "far". The "kili" maintenance is the concern of the owners of the fields where they take the water, but not of those who draw water directly

from the "lar". The required works are carried out under the control of village headmen and of "sagal": fines are imposed on those who shirk the assigned duties.

The use of canals is regulated by the various customs in such a way that all owners may have water in their own fields during the time in which river inundations allow such an advantage. The "sagal" control the scrupulous observance of irrigation periods established by headmen ...

... in some regions, like those of Baïdo, Bur and Doy (there are) non-perennial water courses and streams; among these, the Iacia, the Matagui and the innumerable "bochol". The right of the group which rules on the territory manifests itself on these waters in a more or less absolute form; ... (1)

Note 1. The Helai consider the Iacia waters to be exclusive tribal property. Once they would either prohibit outsiders from using them or allow them to use the waters exacting a levy in durra or in cattle. Headmen and "sagal" controlled the Iacia banks and consumed such levies in banquets.

Wells. (p. 249)

Wells, "el", are used for men and for cattle watering, "sur": not for agricultural purposes. Wells may therefore be strictly individually as well as communally-owned, from minor to major groups. In general it may be said that the (p. 250) property right on the well is based on one of these titles, conquest or excavation ...

In a well area, new diggings are only allowed to those who belong to the group having right of property on the area. The well is exclusively owned by the individual who excavated it. If more than one person contributed to the excavation, they own it in joint ownership.

The use of wells is regulated in different ways, according to each group, as will be seen analysing the customs of certain tribes.

Galgal (p. 260)

With regard to ownership of wells, some wells belong only to one sub-tribe, some are communal to two or more sub-tribes or to all the Galgal ... There are also specific excavations by minor groups or individuals, which belong only to them.

With regard to the use of wells, a right of reciprocity exists between all the Galgal sub-tribes, but use of wells by non-owners is subject to the owners' right of precedence.

In the case of wells communally owned by several groups, when watering, the person who arrives first has right of precedence. By right of progeniture, and as a sign of special respect, when they go to the wells of other sub-tribes, the Barsane people are always allowed to water and are sometimes given precedence. On the contrary, in the case of wells owned by Barsanes, the other Galgal groups may water their cattle only at night time, or by day but only if the Barsanes are not present with their cattle for watering and even if they have arrived after the others.

Glom of Barsman

Each group has its own wells, which are again divided between the lower groups ... Moreover, customarily each group allows related groups to use them after they have watered. There are also wells which are owned individually because they were excavated by individuals.

Helai

This great tribe rules a very large territory and has wells in various places ... For example, the Manas area is jointly owned by the Helai of Bur-Hacaba and the Helai of Baideoa ... Because of the joint ownership, frequent conflicts arise between individuals or groups for the digging of new wells, while for the old ones, which were subjected to division, their property is normally pacifically accepted. In communal wells areas, an individual may dig a well which will remain his exclusive property if he obtains the agreement of the headman (the headman of his "rer" will ask those of the other communist "rer"). Those who belong to the same owner's "rer" may draw water from that well ...

Helai di Baideoa (owners of the Don area), Rer Avols and Burn

They have a number of wells in the Don area and they consider them as communal property of the two rers. An individual cannot dig a well on his own account and become owner of it. When it is felt useful to advance with a new digging, the entire rer will take part in it, subject to prayers and cattle sacrifices.
Madama.

Distinction is made between perennial spring wells, "el" and those with water during the rains only, "much-mid". The former are rer's communal property (from note 1: the well-owning may give permission to use his well to the other rers), the latter are owned by the person or persons who dug them.

p. 253. Doy wells

In the vast Doy region the tribes' movements hinge on ownership and use of wells ... For the process of concentration of the different tribes in distinct places, the original Dighil-Helai joint ownership in some wells areas changed into the exclusive rule of one or the other group, while in other areas it hasn't changed. As for today, the legal status is as follows as can be deduced on the basis of evidences.

The Egherta and Malagui wells are communal to Dighil and Helai which have right of watering in turns, one day the former and the latter the other. The Bravai wells belong to Dighil and Helai but each group owns distinct wells: there is a joint ownership of the area and a distinct and exclusive ownership of wells. The wells of Dinsor ... belong exclusively to the Dabarre people ... The Mun wells, of which the Dabarre claim ownership, are also claimed by the other groups which throng the Doy, as the Chedde, who support themselves on the Helai.

Natural and artificial basins

In areas far from rivers and without wells, the necessary element to animal life is provided by rain, whether the water is collected in natural depressions or basins, like the "gall" of the Hawiyya or the "aaha" of the Rahan-win, or suitable reservoirs, "war", are built. Natural rainwater basins are used by the groups which own the area where they are situated ... The situation with "war" is different ... The "wars" ... were invented by agricultural people ... (p. 254) and belong to an individual or to a collectivity, who own the land on which they are excavated. Sometimes ... it is the land owner who starts digging, with the help of relatives or village people. On other occasions it is the entire rer or village which does the excavation ... War's legal users are those who contributed to the excavation, known as "jager" by the Rahan-win (or also "fatir" by the Giron). Other people as well are allowed to use them, such as members of the same village or group, or even outsiders, in certain cases free and in other cases by offering presents, or under the obligation of taking part in the maintenance excavation of the war, or under condition of reciprocity.

The "war" has a person in charge, the "au wared" and keepers, the "sagale", who keep watch and regulate the use of the war, fine offenders, take care of maintenance of the war, which is put back into use by the same jagora every year before the rains.

Note 2. The "war" of Hawen, a Giron village of the Baidoa area, rises on the land of a certain Mohamed Amin, who is its "au" and it was excavated by village members who use it as "jagor". For those who are not "jagor", there are two customs. A) outsiders who want water ask permission to the au, who calls the sagale and tells them that someone needs water. The au and the sagale reach an agreement on a food compensation to be requested from the petitioners and as soon as they have received it, they allow them free access, letting them use the water until there is any or until the rain comes. This is called "dous setto". B) If there is no water in a "war" but there is some in one nearby, people having right to draw water from the first go to those of the second war and ask for water, and they get it for a minimal compensation, normally a little coffee. This implies reciprocity treatment between the people of the two "war". This is called "sur gid". The fine for minor infringements consists in coffee and in a little durra, for major or repeated infringements the fine consists of a goat. The most serious infringement is disobedience by the jagor to the au, who has ordered the excavation so that the war should not silt up. The fine consists of an oxen which is eaten by the au, the sagale and the jagor. Minor fines go to the sagales.

General

Author: R. Cerulli
Title: Il Diritto Consuetudinario della Somalia Italiana Settentrionale (Sultanato dei migiurtini)
In: Bollettino della Società Africana d'Italia, Napoli
Year: 1919

Text - (Translated from the Italian by the Author)

p. 18 - Migerten law: jus non scriptum. - Migerten law is a customary law. Neither written laws exist, (p. 19) nor, as far as anyone remembers have rules now in force have been enacted by any legislative authority. In the Migerten ethnic group, people entrusted with the "custody" of customary law passing rules from one which means generation to the next, do not exist. It is true, however, that sometimes the oldest people of the group are consulted as those who may better know the legal tradition of their ancestors ... non-written law resulting from social and environmental necessities ... Migerten law is real and true law in that it possesses coercion. Hence it became further removed from religious rules (and from the magic of primitive people) because its coercion is actual and existing and is enacted by the organs of the State ... There are also rules which, although qualified with State coercion, are even more coercive in tradition ... Those are the rules which are said to bring dishonour, "eb", on those who infringe them.

V. Migerten law, similar laws and Islamic law.

... for a scientific systematization of the customary laws of Somalia, a clear distinction should be maintain between two groups: the Northern group (British Somaliland and the French Protectorate of Ghibuti) and the Southern group (Benadir).

p. 20 - Moreover, the quasi-independence of Somali customs from Islamic law is due to the fact that the latter was not able to absorb or to destroy them in any place of the Somali territory and especially so among the Migerten people where it can be stated that Islam has penetrated nominally ... It can be assumed that Migerten law and more in general Somali law have many points of contact with Galla law.

p. 47 - The Assembly, "acir" and its powers.

... as remnants of the ancient pagan cult, it is summoned in case of drought for special prayers to obtain rain. It is known that in many countries, even outside Eastern Africa, prayers for rain are a State function.

p. 89 - ... a curiosity is the norm which assigns the ownership of the seashore to the Sultan. In fact reality it happens to assign to the Sultan a specific use of the seashore: the flotnam and jettam of shipwrecks. For the rest, the seashore is common; anybody can cross it, pass with his boats and with his catch produce.

SOUTH AFRICA

Ethnic Group	Social structure and habits (1)	Political structure (2)	Environment (3)	Predominant mode of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Burata-Botbo *	-family, extended -house -patrilineal	-chieftoms -rain making power	other	-pastoralism -agriculture	auto- subsistence	rainfed	limited	no data	no data
Nidebale	no data	-chieftoms -rain making power	savannah	-pastoralism -agriculture	auto- subsistence	no data	limited	no data	no data

Ethnic Group	Conflict/ fishing rights/ transport (16)	Colonization (11)	Legal systems (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bambara-Soninke	no data	-United Kingdom -South Africa	African traditional	-control by sovereign -granting of land by sovereign	-control by sovereign -water, free of charge -water selling not possible	-control by sovereign -free of charge	control by sovereign	no data	chieftain
Ndembu	no data	-United Kingdom -South Africa	African traditional	-control by sovereign -granting of land by sovereign	-control by sovereign -water, free of charge	-control by sovereign -free of charge	-control by sovereign -free of charge for local community and local cattle -authorization needed for digging well, basin on communal land -protection of rights of way to water sources	-rules protecting waterworks -prohibition of entering water sources	chieftain

Ethnic group: BASUTO-SOTHO
Author: Vernon Sheddick
Title: Land Tenure in Basutoland
Publisher: HMSO, London
Year: 1964

Text

p. 2 - The meaning of land. The term "land" in its legal context is usually taken to indicate not only the land surface but also the minerals found in and below it, the flora and fauna that subsist upon it, the water supplies it carries and the atmospheric advantages it enjoys. It may be necessary to add to this list of the attributes of land by the inclusion of such features as may be erected upon it, such as buildings, fences, wells, fruit trees and plantations ...

p. 3 - But land becomes significant only in so far as it lends itself to human use ... Viewed in this way, land and land parcels become a complex of production units ... Schapera has demonstrated the utility of this fresh approach to the study of rights in land. He makes clear the need to consider, not land alone, but land with its resources. Land is considered as the source of primary products and the primary products are inseparable attributes of the land. It follows from this that the rights that members of a community have over land vary according to the purpose for which land is used, that is, according to its productive role. Schapera shows, in his study of Tswana land tenure, that some natural products may be collected freely by all members of the community, while others, such as trees, may be used subject to certain restrictions. Private rights are recognised in regard to residential land, arable land, pasture land and to water sources. But in every instance the possessor of land is entitled merely to the use of the products of the land and not to absolute ownership of the land itself.

The production unit, therefore, may take the form of a family garden, an area of grazing, a fresh-water spring or a bed of thatching grass. This unit may not necessarily be mutually exclusive, for the same land parcel may carry a multiplicity of production roles ... The important fact here is not so much the plurality of roles as the plurality of titles that may attach themselves to one given plot of land by virtue of its different productive roles ... (p. 4) So emerges the essential dichotomy of Basuto, as of all land tenure. On the one hand there are those rights and interests relating to the immovable land unit which will be referred to as the Rights of Administration; on the other, there are those rights and interests associated with the use and exploitation of these same lands rights and these are the Rights of Usufruct.

It is now accepted generally that land tenure should be studied in all its inter-relations with component institutions of the total social system in which has its existence.

p. 9 - The Chieftainship is responsible for the allocation of land for settlement, for providing families with land for agriculture, for making available areas of summer and winter grazing and for ensuring that their people have reasonable access to thatch, water, clays and other public commodities ...

p. 10 - Public rights. There exists a group of products to which all people may be said to have equal rights. They include such things as fuel, building timber, grasses, clay, wild plants and wild animals. These goods may be said to be held on public tenure. At one time they could be collected by anybody within their own administrative area ...

p. 11 - Private rights. Rights of a more exclusive nature are held by every married adult. They have a right to residential land, some fields to cultivate, some grazing for their stock and access to water. Normally, these rights may be claimed only through the person of a married

male adult, though as will be seen, unmarried men and divorced or widowed women may on occasion successfully put forward claims in their own right.

These rights are not entirely unencumbered. Should a family fail to make use of its fields over a number of years, should they desert their dwelling place, should they fail to pay their taxes unless exempt, then they forfeit their titles. The perpetuation of the title within the family is further conditional upon the observance of the necessary degree of loyalty to the Chieftainship ... Resources may on no account be sold or otherwise alienated.

p. 30.- The duties of chieftainship are now defined by proclamation and by various rules and orders arising therefrom. It is charged generally with the maintenance of order and good government and with the prevention of crime. To this end of Paramount Chief may issue orders or cause his subordinates to issue orders on a variety of subjects, some of which may be noted here in that they are relevant to land tenure:

Proclamation 61/38, item 8(1), paras

(a) preventing the pollution of the water in any stream, water-course or water hole, and preventing the obstruction of any stream or water course ...

p. 32 - Citizenship. - Membership of the Nation with full rights is subject to the approval of the Paramount Chief or of any of his major subordinates. It is dependent upon loyalty to the Paramount Chief. Individuals and small family groups wishing to settle in Basutoland usually make contact with a friend already settled in the country. They stay with him for a time and then approach the Area Chief through the normal channels for permission to build or occupy a house. If this permission is granted, then all the consequent advantages and duties of citizenship are ipso facto conferred on them. These rights, once granted, remain with the individual and his family for as long as they continue to be good citizens ...

The person admitted into citizenship has the right to erect a homestead for himself and his family. Along with this right are those consequent rights of having some fields to cultivate, grazing for his stock and access to such natural resources as water, firewood and building materials ...

p. 38 - The Basuto, if they can avoid it, rarely use rivers and streams as a source of drinking water. The water courses are reserved for personal ablutions and the washing of clothes. All drinking water is obtained from springs ...

p. 113 - If hunting as a means of procuring food has played little part in Basuto economy during the present century, it has, nevertheless, continued to be of some significance in another connection. It has remained an essential part of rain-making magic ...

It has been indicated already that there exists a group of products which may be termed "free" or "public" commodities, to which all people may be said to have equal rights. They include earths, clays and building materials; (p. 114) water; medicinal herbs and plants, wild vegetables and fruits and certain plaiting grasses ...

Free commodities. Another important free commodity is water. Each hamlet and parish has its own recognised water points and these are freely used by all inhabitants of that residential group. People of one group are not normally allowed to draw water from the water points of neighbouring groups. If however the springs of one particular group dry up, then the people of that group may go to springs of neighbouring groups and cannot be refused in their quest for water.

Water is drawn on the principle of first come first served. Once a woman has placed her pot at a spring no one, except herself, may remove it until it is full. This rule applies even when water is scarce. At such times, the flow may be so slow that the woman may leave her pot and go on with some other work. Other women coming after her will place their pots in a queue. Each pot moves up slowly as the leading pot gets filled.

p. 115 - In one large village, a man has been placed in charge of water. His duties are not inspect the springs at regular intervals. If he finds dirty, he may call up a working party of men to clean them out. At the same time he is responsible for ensuring that animals do not use the springs. Such an appointment is, however, in no way usual ...

Water points are usually regarded as being ultimately under the control of the local authorities. In those rare instances where a spring occurs within the arable area it is usually designated as belonging to the man owning the field immediately below it. Where possible, arrangements are made for the water to be shared by as many fields as conveniently possible ...

Author: V. G. J. Sheddick
Title: The Southern Sotho
Publisher: ESA-LAI, London
Year: 1958

Text

p. 22 - There is a group of products to which all people have equal rights of access. It includes earths, clays and building materials, water, medicinal herbs and plants, wild vegetables and fruits, and certain plaiting grasses ...

Ethnic group: NDEBELE

Author: A. C. Myburgh, M. W. Prinsloo
Title: Indigenous Public Law in KwaNdebele
Publisher: J.L. van Schaik, South Africa
Year: 1985

Text

p. 1 - The experts say that the land of the chiefdom (the realm) is not property in private law like a field, but controlled by the chief in public law. A field can be lent or given away but public land cannot. There can be litigation about a field but not about the land of the chiefdom ...

p. 3 - Every family of the chiefdom can expect to be allocated residential and agricultural land and can use the commonage for grazing. All members can expect the protection of the courts when their rights are violated or they are threatened.

Members owe the chief allegiance in various forms ...

The position of strangers sojourning within the realm differs from that of members of the chiefdom. They are not entitled to residential and agricultural land or to grazing on the commonage ... Otherwise strangers must obey the chief and the laws of the realm ...

p. 8 - The chief alone may order national ceremonies, such as rain-making ceremonies and the ceremony of the first-fruit (ukuluma), but he has to consult the private council first ...

p. 43 - The commonage ("eceni", in the open) is the land that has not been set aside for residential and agricultural purposes. It is controlled by the chief and in the wards by the headmen, the authority of the latter being a delegated one ...

p. 44 - Everybody may use water on the commonage. Before a well or borehole is sunk on the commonage permission must be obtained. The chief may forbid swimming or bathing in the water of a spring or other water source, or allowing cattle to drink from that source (see the case of Samuel Shabangu on page 4)⁸⁰, but there is no special rule forbidding pollution ...

p. 48 - The commonage is available for the use of the lawful (p. 49) residents of the Trust land within the chiefdom (...). Any holder of land within such area may with the prior permission of the chief quarry stone, gather sand, cut sods or grass, dig water-furrows or make bricks on the commonage for his own use, but not for sale or other disposal ...

Water of the commonage is for the use of the residents; they may draw water from or water their stock at certain watering places. No person may foul or defile any public watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or water-storage tank ...

General

Author:	G.W.F. Dolt and C.P. Joubert
Title:	The Union of South Africa. The Development of its Laws and Constitution
Publisher:	Stevens & Sons, London
Year:	1955

Text

p. 287 - Water Rights. Historical Development.

It was the general opinion of the old Roman-Dutch law writers that the rivers of Holland belonged to the Sovereign ...

p. 288 - The Dutch East India Company planted its colony at the Cape of Good Hope in 1652, and one of van Riebeeck's earliest proclamations forbade "aancomende opperhoofden en minder gequalificeerde personen" (Visiting Ministers and less qualified persons) from washing their persons or their clothing in the Table Valley streams which were used by the community as drinking water. This prohibition was repeated in 1659 and penalties were prescribed for any disobedience upon the part of the company's servants, but these and similar later proclamations were measures for safeguarding the health of the community rather than an exercise of the rights of sovereignty. There had as yet been no grants of land and there were no free burghers who could exercise rights of ownership against the Company, but, with the growth of the colony, individual ownership of land developed. In 1681 both the Company's servants and the free (p. 289) burghers were forbidden to divert water from the Table Valley streams for the irrigation of the land to the detriment of the Company's requirements, and it is

⁸⁰ ... Shabangu ... insulted the chief by stating that the chief had used medicine (magic) when he gave his son a kicking for not keeping the cattle away from the dam as ordered by the chief ...

plain from the terms of the proclamation that the Company claimed an absolute right to control the use of these streams in its own interests.

It was not until the second half of the eighteenth century that the use of water for irrigation became a vexed question, and in 1761, owing to disputes between the Company's miller and the owners of farms higher up the valley, the Council of Policy imposed a penalty for the unauthorised use of water and charged the Burgherraden (town councillors) with the duty of fixing turns of waterleading amongst the landowners during the hours from 5.0 a.m. to 7.0 p.m. on certain days in each week. The recommendations of the Burgherraden were approved by the Council in due course, and so the first legislative enactment in South Africa controlling the use of water for irrigation came into effect. In subsequent years permission was granted to other landowners, who had not been included in the original time-table, to take their turns and it is apparent from the proceeding that this permission was both sought and granted as a privilege and not as a legal right.

That the State, in the person of the Dutch East India Company, was actually "*dominus fluminis*" is apparent throughout the resolutions of the Council of Policy from 1770 onwards. Waterleading at specified times was prohibited upon pain of total deprivation of the privilege of leading water and, as "*dominus fluminis*", the Company exacted a preferential user both for its gardens and its mills. The Council of Policy applied the same principles to water disputes at Stellenbosch and entrusted to landdrost and heemraden the making of regulations governing the privilege of the use of water by the villagers in times of plenty, but protecting the mill-stream which supplied the Company's mill and the requirements of certain of the lower farms on the Eerste Rivier. The granting of rights to use the water of streams was entrusted by the Council of Policy to boards of landdrost and heemraden in the country districts, and records of the decisions of committees appointed for this purpose, and of their confirmation, exist. In granting the privilege to use the water (p. 290) neither the Council of Policy nor the boards of landdrost and heemraden appear to have adopted any settled policy, but to have made equitable distributions demanded by the exigencies of each case. It is clear that no conception of riparian ownership as a basis of water rights had as yet arisen, for State control was still the dominant principle.

During the Dutch régime very small areas of land had been granted by the State in freehold. Most of the grants were leaseholds (*leningsplase*) and an annual token payment was made in recognition of the Government's ownership rights. When the Cape of Good Hope became a British Colony a new policy of land tenure, having for its object the substitution of full ownership for the "*leningsplase*", was introduced.

Judicial appointments were confined to English and Scottish lawyers, to whom the conception of the State as "*dominus fluminis*" was probably incomprehensible, for, according to English law, the owner of land through which a natural stream runs is entitled to use the water for ordinary purposes, subject to a similar right of use by all other owners, provided his user does no injury to the owners either above or below him. The principle of State control fell away and, although the idea recurred, and an ordinance was passed giving the newly appointed magistrates the same powers in regard to disputes water rights as those previously exercised by landdrost and heemraden, and in it the rights of the Crown to regulate rivers, streams and watercourses were preserved intact, the grant of water rights as a mere privilege was supplanted by the principle of riparian ownership as the basis for the right to use the water. When the whole position of the rights of riparian proprietors came up for decision in 1856, the question of State control was not raised, and the court dealt with disputes water rights just as it would have dealt with any other matter in dispute between the owners of land.

The case of *Relief v. Louw*, heard in 1856, laid down the basis of the South African common law of water rights. The plaintiff claimed that all the summer flow of a small stream belonged to him because it rose on his land, and relied upon Voet as authority for the contention. Bell J. rejected the claim based upon the doctrine of "*exumpens in suo*" and, after

remarking that the law of Holland was very meagre on the subject, as water there was rather a nuisance (p. 291) than an advantage, turned to America law, because "in that country water seems to be of much greater value than in Europe states ... and cases on water rights are much more numerous and satisfactory in American courts than they are in English courts". The following passage from his judgment formed the foundation upon which the South African system of water rights was subsequently built up.

"I have come to the conclusion that the proprietors of lands throughout the course of a perennial running stream of water have each a common right in the use of that water, which use, at every stage of its exercise by any one of proprietors, is limited by a consideration of the rights of the other proprietors; and it seems to me that the uses to which the proprietor of land lying on the upper part of a stream may make of the water of a stream are, from the very nature of things, to be classed in the following order: first, the support of animal life; secondly, the increase of vegetable life, and thirdly, the promotion of mechanical appliances; and the enjoyment of any one of these uses would seem, also from the very nature of things, to depend consecutively upon how far it deprive the owners of the lower land of their enjoyment of the water for the same purposes. If the upper proprietor requires all the water for the support of life, for human beings and cattle upon his land, the lower proprietors must submit; if the water be more than sufficient for such animal demands, sufficient must be allowed to pass for the supply of animal demands of all proprietors lower down the stream before the upper proprietor can be allowed to use the water for the support of vegetable life, or to improve his lands by irrigation. Again the demands for the supply of animal life being answered, the proprietor of the upper ground is entitled to use the water for the purpose of vegetable life ... by irrigation or otherwise; so are the proprietors of the lower grounds in succession entitled to use the water for agricultural purposes. Agricultural uses being supplied throughout the course of the stream, the natural use of the water being thus exhausted, the proprietors are then entitled to apply the water to mechanical purposes. But I apprehend that no proprietor on any part of the stream is entitled to use the water for all these three purposes, even consecutively in the order in which I have mentioned them, for any one of them, recklessly and without regard to the wants of those below and above him."

The authorities upon which the judgment was based and the whole frame of the judgment were taken from Chapter IV of Angell's "Law of Watercourses" (first edition, Boston 1824, quotation from 5th ed. 1854) but this source was not acknowledged.

The appointment of Henry Cloete and Egidius Benedictus Watermeyer to the Supreme Court Bench in 1855 brought about a reaction from the English law principles and ideas under which justice had been administered by a succession of judges sent out from England (p. 292) for thirty years to occupy the Supreme Court Bench. During the twelve years they sat together they made it their special object to base their decision upon Roman-Dutch law authorities, and Bell J. seems to have played a less important role.

For some unknown reason the judgment in *Retief v. Louw* was not reported at the time, and for the next twenty years it was totally ignored. The doctrine founded upon Voet VIII.3.6 that a man might do whatsoever he pleased with water that rose on his own property received judicial recognition from Cloete and Watermeyer in *Silberbauer v. van Breda*. This principle was even further extended, and the courts laid down that an upper proprietor could use the water flowing through his land without any regard to the rights of owner below him. The Privy Council, however, reversed the decision in *Silberbauer v. van Breda* and without referring to Voet's *Pandecta*, upon which the judgment had been based, stated that they could not accept the proposition that lower owners had no right to water flowing naturally in a defined channel through the land of an upper proprietor.

During its passage from State control to riparian ownership the water law had got into a very confused state and the newly appointed Chief Justice, de Villiers, took the first opportunity which offered after his appointment to restore order. He treated the whole subject

as "res nova" and took himself the credit for laying down definite principles governing the right to use the water of public streams. His judgment in *Hough v. van der Merwe* refers to only one of the authorities relied upon by Bell J. in *Estief v. Louw* (supra), but the basis which he adopted was the same as that formulated by Bell upon the ideas and authorities set out in Chapter IV of Angell on Watercourses, and it was adopted without acknowledgment of Bell's judgment.

From the onwards the whole scheme of water rights was worked out by judicial decision within the framework of *Hough v. van der Merwe*. The passage in Voet was dismissed as referring to percolating water only, and the rules as to riparian rights laid down in *Hough v. van der Merwe* were applied to all water which had flowed down beyond the land of an upper proprietor in a defined channel for more than thirty years. The distinction between public and private streams (based, be it admitted, chiefly upon the characteristic of perennality) was fixed once and for all in *van Heerden v. Weise*, and the principle of common use by all riparian owners in respect of public streams was clearly enunciated. The six propositions stated so tersely by de Villiers in that judgment are the chief pillars of the Irrigation Act of 1912. These propositions are: (1) Streams are either public or private; (2) Public streams are all perennial rivers or streams which are capable of being applied to the common use of all the riparian proprietors; (3) A river may sometimes become dry in that heat of summer without forfeiting its character of a perennial, and therefore, public river; (4) Private streams are rivers and streams which are not perennial, and streamlets which, although perennial, are so weak as to be incapable of being applied to common use; (5) When once the public nature of the stream or river is established, the rights of each riparian proprietor, whether at its source or along its course, are limited by the natural rights of the public, so far as those rights are capable of being exercised, and by the common rights of the remaining riparian proprietors; (6) When once the private nature of a stream or river is established, the public has no right in respect of it, and the lower proprietors can claim no other right than such as long usage may have established in their favour against the upper proprietors, but if the private stream is the source of a public stream, he may not deal with it as he chooses.

As the years went on, the details of common use were worked out, e.g., the preference of agriculture over industry, the nature of reasonable sharing, and its basis, and the characteristics of riparianism, and the next step in the process of development was codification by the legislature.

The influence of Roman-Dutch law upon the formation of the South African Water Law has been slight, and the disappearance of the Dutch idea of the State ownership of public streams can fairly be attributed to English law conceptions of the rights of landowners. The South African law in its present shape owes its origin to Bell J.'s discovery of the American decisions as arranged and set out in Angell (p. 294) on Watercourses and his ingenuity in applying them to the conditions of the winter rainfall area of South Africa. The genius of the Villiers C. J. moulded the fragments of Roman, Roman-Dutch and English law with the larger mass of the American decisions to form a comprehensive system which fitted conditions in the more closely settled area of the Cape Colony.

The codification of the Water Law started in the Cape Colony with Act, No. 32 of 1906, which was passed in order to consolidate the law relating to irrigation and the utilisation of streams. Besides doing this, it created River Boards and Irrigation Boards, a system of local control which still functions today, and it created Water Courts. It likewise brought the non-perennial flood water rivers of the Cape Karroo within the category of public streams and thus broke the circle of perennality. The Cape Act was followed by Act No. 27 of 1908 in the Transvaal (as amended by the Irrigation Act Amendment Act (No. 7 of 1909)), in which similar principles were adopted, and the central control of all irrigation matters was vested in a Government Irrigation Department. Soon after Union, Act 8 of 1912, generally known as the Irrigation Act, and the Parliamentary Regulations which supplement it, were passed by the

Union Parliament. There have subsequently been several far-reaching amendments, the latest of which is an effort to restore, to a limited degree, the old principle of State control.

General

Author: N.J.J. Oliver
Title: Indigenous Land Law in South Africa
In: Southern Africa in Need of Law Reform - Proceedings of the Southern African Law Reform Conference, 11-14 August 1980, Sun City, Bophuthatswana
Editor: A.J.G.M. Sanders
Year: 1980

Text

p. 70 - Communal tenure. It is generally accepted that the Bantu-speaking tribes of Southern Africa did not practise a system of individual land tenure. The traditional system of communal tenure was characterized by the dominant role of the Chief or headman. Control of the land on which the tribe had settled vested in him, and he allotted stands to individual members for purposes of residence and cultivation ...

Not all land in a particular area was allotted, a commonage was set aside for the benefit and use of all tribesmen, irrespective of their being holders of allotted land. Schapera states that the Chief administered the (p. 71) commonage directly and used it to accommodate new members of the tribe or tribesmen who had abandoned their former holdings. The commonage was used primarily for public grazing, water and the gathering of wood.

Communal rights to land could be acquired by allotment, inheritance or gift. They were inalienable; no-one was empowered to sell them or negotiate which them ...

SUDAN

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Principal means of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Bagwara "	-tribe -association, voluntary	chieftdoms	-semi-arid -savannah	-pastoralism -agriculture	auto-subsistence	rainfed	limited	no data	no data
Bari "	-clan -village scattered -age -patrilineal	-diffused power -rain making power	-savannah -river, lakes	-pastoralism -agriculture -fishing	auto-subsistence	rainfed	limited	-seasonal -inland, fresh waters	no data
Langi "	-clan -village, concentrated -age	diffused power	-savannah -river	-pastoralism -agriculture	auto-subsistence	-irrigation, by canal	abundant	seasonal	control by village
Lalaba	clan	-chieftdoms -rain making power	savannah	agriculture	auto-subsistence	rainfed	no data	no data	no data
Moro "	clan	-diffused power -rain making power	-savannah -river	agriculture	auto-subsistence	rainfed	seasonal	no data	no data
Nuer	-lineage -clan -tribe -village concentrated	bands	-savannah -river	-pastoralism -agriculture -fishing	auto-subsistence	-rainfed -irrigation	limited	no data	no data

- 61 Northern Darfur, Northern Kordofan.
62 Mongalla Province, (also for Uganda).
63 Mongalla Province, (also for Uganda).

Ethnic Group	Conditions/ Fishing rights/ transport (10)	Colonisation (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bengans	conflict, important	United Kingdom	Islamic derivation	-control by sovereign -granting of land by sovereign	-control by family -private appropriation -fee-paying -water milling possible	-control by family -specific organisation dealing with water	-control by family -private appropriation -fee-paying -authorization needed for digging, well, basin or communal land	no data	-chieftie -tribal councils
Bari	-fishing, control by community -Rights on fishing grounds by community, by masters de Fouu	United Kingdom	African traditional	-control by community, chef de la terre -granting of land by chef de la terre	-control by community, masters de Fouu -water, free of charge	-control by community masters de Fouu -free of charge	-control by community, masters de Fouu -free of charge for local community	no data	village
Lango	fishing, control by community	United Kingdom	African traditional	-control by community -granting of land by head of village	control by community	control by community	no data	no data	village
Lalaba	no data	United Kingdom	African traditional	-control by clan, chief de la terre -granting of land by head of clan, chief de la terre	-control by head of clan -water, free of charge	-control by head of clan -free of charge	-control by head of clan -free of charge for local community, for foreigners and for local and foreign cattle	no data	chieftie

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonisation (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Moro	no data	United Kingdom	African traditional	-control by head of clan -granting of land by head of clan	-control by clan -water, free of charge	-control by clan -free of charge	-free of charge for local community, for foreigners and for foreign cattle -authorization needed for watering	no data	no data
Nuer	-conflict, important fishing, control by community -rights on fishing grounds by community	United Kingdom	African traditional	control by community	control by family	control by family	control by family	no data	other

Ethnic group: BAGGARA

Bermoniti, Sociological Notes on Rural Life in Northern Darfur (from a project document, unpublished)

p. 1 - The urban population of Northern Darfur constitutes only 13 % of the total while the sedentary rural population represent 73 % and nomads 14 % ...

The majority of transhumants and nomads are drawn from Arabic-speaking Islamic tribes of the Baggara people (which (p. 2) means cattle keepers) ...

During the migration some members of the clan will go to their cultivation plots along route, plant sorghum and millet at the beginning of the rains and return to harvest them in October or November ...

Tribal councils regulate relations between settled farmers and migrants when conflicts arise over land use and when passing livestock damage crops ...

p. 3 - Finding adequate land for cultivation and grazing was get another problem as disputes between indigenous groups arose chiefly because of land water encroachment ...

There are many factors contributing to the rise of disputes and violent conflicts between indigenous groups in Darfur, the most significant of wich is the settlement pattern and traditional land tenure rights ...

Many tribal groups whith different customs and economic activities neighbour each other, and land boundaries established under British rule now considered sacred ...

Major conflicts between Zaghawa and Rissagit, Zeyediah and Midob and Berti, Kebabith and Midob are handed down by generation as some tribes believed that all camels in the desert originally belong to them ...

p. 4 - Traditional territorial occupancy right are ancestral, handed down from forefathers, the supervision of which was once exclusively controlled by tribal chiefs (sheiks) whose faculty still is the distribution and division of land among farmers of his tribal group in his territory of jurisdiction ...

The role of the "sheik" falls under an uncodified customary law has in recent years been subject to change ...

p. 5 - It was observed that villages of 1.000 inhabitants and over are generally located near a relatively productive water point ...

Water consumption of families and animals vary according to the distance of watering points. If the water point is near by and free of charge, the frequency of watering animals is greater and family consumption higher, but in relatively small proportions ...

p. 6 - Most families surveyed have their own dug wells in the vicinity of their compounds, frequently dug on land that is not in their possession and are often required to ask for permission from their sheik or local district council ...

These well are dug on a self-help basis with community participation. Water is normally sold by the person who built the well.

It was however observed, that most privately owned wells are precarious investments as the majority of them need to be restored or rebuilt each year.

Hafrs, water yards and boreholes are all managed by the government and water is sold a nominal fee, but people nevertheless have no choice but to build their own wells as many boreholes are not running properly due to inefficiency of personnel and lack of spare parts ...

p. 11 - Within the traditional division of labour women are responsible for subsistence farming while men take care of livestock herding and cash cropping ...

In addition to their household chores (cooking, washing and child care) they carry water and collect firewood, often covering great distances by donkey or on foot in order to cater to their family needs.

Moreover, they sustain the majority of the physical labour such as digging shallow wells by hand, carrying heavy stones and sand, and building of huts ...

p. 12 - The effects of desertification and deforestation have altered the water balance in the province and women have to cover longer distances to fetch water for household needs. In the case of accessible wells, women still have to draw-up water buckets from considerable depths ...

For this reason the burden of women was greatly accentuated during the drought period ...

p. 15 - Nafeer. The institution of the "nafeer" has existed for centuries and consists of collective labour mobilised by the village to assist fellow farmers in the building of households, digging of wells and intervening to help out a family in difficulty (i.e. in the event of the death, illness or absence of family head) ...

"Nafeer" is practiced during cultivation, weeding, harvesting and when a decision is taken to build a well or hafr ...

p. 18 - In the case of digging wells, paid professionals sometimes need to be hired due to lack of community assistance ...

Ethnic group:	BARI
Author:	G.W.B. Huntingford
Title:	The Northern Nilo-Hamites
Publisher:	ESA - IAI, London
Year:	1953

Text

p. 14 - In the Northern Group, the outstanding cultural feature is the importance of rain-making, with the existence of rain-maker chief, and the use of rain-stones. Associated with this is the presence of earth-chiefs or "fathers of the land" - ritual experts whose function is to protect and ensure the fertility of the land ...

p. 28 - Land rights belong to the clan, and plots are assigned to cultivators by the "komonyalak" or earth-chief. Each clan has definite and recognised bounds to its land ... Land may be bought by a clan from another clan: the price, according to Beaton, is a bull, but he does not specify the amount of land which may thus be bought. Sale of land gives absolute possession to the buyer. Land may also be rented ... Grazing and water within the clan area

are available to all members of the clan; rivers are divided between all the clans on their banks, and the rights include those over island and fishing ...

p. 29 - Division of the Tribe. The Bari have a two-fold division: (1) into rain-makers and those who are not rain-makers; and (2) into free men and serfs. The first is a ritual, and numerically unequal, division ...

The second is a social division, and comprises the "lui" (sing. Loitat), "free men", and "dupi" (sing. "dupiet"), "serf". With the latter are associated certain submerged classes among whom are the professional hunters, "yari" (sing. Yaritat), or "ligo" (sing. Ligotot), who are probably to be considered as a ritual unit, even though a very small one; the "tomonok ti yukit", blacksmiths; and the "tomonok ti kare", fishermen ...

A number of "dupi" are ritual assistants to rain-makers and "komonyekak" (earth-chief), and an insult to them is considered an insult to their masters ...

p. 36 - ... Though now dispersed, in that several clans occur in any village, each clan group in a village forms a corporate entity. The clans are patrilineal and exogamous. Each clan has a Head who is responsible for sanctioning the division of the clan when a sub-clan is formed, and for the distribution of land among the members ...

p. 37 - The two principal ritual authorities, or "ritual experts", are the rain-maker, "matat lo pion" (pl. kimak ti pion), "water chief", and the earth-chief, monyekak (pl. komonyekak), "earth-father" ...

The secular authorities are the "kimak ti jur" (sing. mata lo jur), "village chief" and the clan heads, "kimak ti dunet". The notion of an administrative tribal chief is quite foreign to the Bari ...

p. 38 - ... The office of principal rain-maker is hereditary; the rain-maker has "dupi" as ritual assistants; and a medicine man, "bunit", is attached to him. He is not a divine king, like the rain-maker of the Dinka, for in the past he might be killed if he failed to produce rain ...

The office of "monyekak" is hereditary and descends from father to son, or sometimes to the sister's son (under what conditions is not stated). There is normally one "monyekak" in a village, and he is therefore associated as far as his land duties are concerned with all the clans living in the village. He is the descendant of the man who first cleared the bush for cultivation in any particular place, and he alone possesses the magico-religious knowledge needed to make its cultivation successful ... In its ritual duties he co-operates with the rain-maker ...

p. 39 - Legal Sanctions. The Bari chief, of whatever kind, was not an autocrat, and cases and disputes were dealt with by a council, "putet" (pl. puyesi), composed of the elders of each village, whose conclusions were confirmed by the chief ...

Author:	Edited by L. F. Nalder
Title:	A Tribal Survey of Mongalla Province
Publisher:	International Institute of African Languages and Cultures, OUP, London
Year:	1937

Text

p. 124 - The Rain Chief. ... He does not claim to make rain of himself; his ancestors were given their power, and their rain-stones, by God, and by the virtue of his ancestors he intercedes with God to send down the blessing of rain upon his people ...

There are many minor local rain-makers, but none can compare with the rain chiefs of Shindiru of the Bekat Limat clan and to a lesser extent their cousins at Belinian and Mogiri ...

p. 125 - The Earth Chief. The earth chief or "Monyekak" (also known as Monyekurok) is the functionary whose duty it is to allocate the clan land and ensure its fertility ... he would presumably be the arbiter in any disputes which arose, and it is to him that a stranger would apply for land to cultivate ...

p. 138 - Land Tenure ... All rights in the land are vested in the clan, the members of which are assigned their portion by the local Monyekaka. The clan lands have definite and well-known limits.

If a clan has to expand it may purchase more land from a neighbouring clan ...

Temporary cultivation rights may be acquired by payment of a (p. 139) sheep ...

Grazing and watering rights inside the clan land are free to all its members; but they must not poach on the land of a neighbouring clan. Thus a river along its length will be divided between the clans on its banks. Islands are included in clan lands and fishing also must be done in home waters ...

Ethnic group:	LANGO
Author:	Edited by L.F. Nalder
Title:	A Tribal Survey of Mongalla Province
Publisher:	International Institute of African Languages and Cultures, OUP, London
Year:	1937

Text

p. 114 - Their mountains abound with running streams, and they practise irrigation, drawing the water off the streams by long and cleverly contoured irrigation channels ...

Author:	A. Hott
Title:	The Nilotics of the Anglo-Egyptian Sudan and Uganda
Publisher:	RSA - IAI, London
Year:	1952

See: J.H. Driberg, The Lango - A Nilotic tribe of Uganda, and corresponding file: Lango, Uganda

Text

p. 93 - The Lango village is an economic unit, having its own fishing, grazing and water, all of which are held in common by the inhabitants ...

There is no administrative or judicial body apart from the informal gathering of the village holders, who have the task of settling, with the assistance of the "jago" or "rwot", any disputes ...

Ethnic group: LULUBA

Author: Edited by L. F. Nalder
Title: A Tribal Survey of Mongalla Province
Publisher: International Institute of African Languages and Cultures, OUP,
London
Year: 1937

Text

p. 188 - The chief is a rain chief and owns rain-stones; there is a Monyekak (p. 189) (osivori) of the presumably indigenous Okure clan who performs a fertility ceremony by sprinkling a little sesame oil on the ground; also a "monyere", father of the hill, who ceremonially reaps a few heads before harvesting is permitted and also takes the lead in firing the grass ...

p. 190 - Land tenure. The ownership of the land is vested in the clan; the clan has well-defined and well-known boundaries, generally natural features, but stones are used if these are missing. There are land-owning and non-land-owning clans. The arrangement and division of the land as between land-owning clans is in the hands of the "Osivori" (monyekak). Thus if a village moves to a new site it is his duty to divide the new area among the land-owning clans; but he cannot allot even new lands to a non land-owning clan, and once that primary division has been made the disposal of land to individuals inside the clan and the admission of strangers is entirely in the hands of the clan head without reference to the Monyekak, except in his own clan where these functions are performed by him ...

p. 181 - An immigrant stranger would apply to the clan head of some one he knows in the village, particularly of his "mananye" (mother's brother) ...

Clan ownership includes wood-cutting, fruit-gathering, grazing, watering, and hunting, but unless there is ill feeling a certain latitude is allowed, providing stock do no damage to crops and the clan head receives the right foreleg of any game killed on his land by outsiders ...

Ethnic group: MORU

Author: Edited by L.F. Nalder
Title: A Tribal Survey of Mongalla Province
Publisher: International Institute of African Languages and Cultures, OUP,
London
Year: 1937

Text

p. 155 - ... the Moru are sharply divided linguistically and probably racially into two distinct, mutually unintelligible, parts, which, with the Yei River as an approximate boundary ...

p. 160 - The Rain-maker (Bari). Unlike the Bari rain chief, the Moru rain-maker is more a magician, and a black magician, than a "priest" ...

The fertility of the soil also depends on the rain-maker, who receives gifts for his services ...

p. 176 - Land Tenure. There is not a private "ownership" of land: the land belongs to the clan, and one of its members may cultivate anywhere he wishes on the clan land providing he does not encroach on any one else. He might also occasionally be allowed to cultivate on his mother's clan's land. The head of the clan (bodribe) is the authority, and can forbid cultivation or occupation of specified areas, and a stranger can only cultivate with his permission. The clan boundaries are known to every one. The streams also belong to the clan, and permission would have to be obtained before strangers could water cattle or draw water. Similary trees, fruits, roots, and firewood could not be gathered or cut from another clan's land without permission, but there would be no question of payment. Cattle similary must only be grazed in the clan territory ...

Ethnic group: NUER

Author: E. E. Evans-Pritchard

Title: The Nuer

Publisher: Oxford at the Clarendon Press, London

Year: 1940

Text

p. 57 - ... Excess or insufficiency of water is the first problem, that faces Nuer ...

Owing to the vast rivers that traverse Nuerland and the through irrigation they give to the country through a network of channels there is seldom difficulty about finding surface water, though people may have to go far to obtain it. Only in parts of Lou, Gaswar, and Eastern Jikany, as far as is known, are they regularly forced to dig wells in the beds of streams at the height of the (p. 59) drought. Twenty years ago this was probably more customary among the Lou than to-day, for had not then the undisputed access to open water that most sections now enjoy. The wells, which have to be redug each year, are two to three feet in diameter and twenty to thirty feet in depth, and their excavation takes two or three days of hard labour ... wells are frequently cleaned out, steps being cut in the walls for this purpose ... Each household has its own well which is surrounded by shallow mud troughs where the cattle are watered three times daily ... Fights sometimes break out over these troughs ...

p. 63 - Different villages and sections tend to move about the same time and to visit the same pools each year, though time and place and, to some extent, degree of concentration vary according to climatic conditions. Usually, however, the main dry season camps are formed yearly at the same spots ...

p. 70 - ... Tribes and tribal sections jealously guard their fishing rights, and people who want to fish extensively in a pool must first obtain permission from its owners if they do not want to provoke fighting ...

The best months are November and December, when the rivers begin to fall and to drain streams and lagoons, which can be dammed at suitable points and the fish speared in their efforts to break downstream. Fishing from dams is conducted mainly at night, fires being lighted behind the fishers ...

p. 71 - As the dry season advances a great number of fish are imprisoned in lakes and lagoons from which there is no outlet, and as these dry up they are confined to a smaller and smaller expanse of water and are killed by individual fishers using barbed spears and long harpoons (...), and, at the end of the season, by battues in which gaffs and basket traps may also be employed ...

p. 90 - ... I will only ask the reader to bear in mind the following matters. (1) One cannot treat Nuer economic relations by themselves, for they always form part of direct social relationships of a general kind. Thus, division of labour is part of general relationships between persons of different sexes and of different ages, between spouses, between parents and children, between kinsmen of one order or another, and so forth. (2) There is some specialization, but it is occasional, and there are no occupations which can be called professions ... and people who want these things either ask for them in the name of kinship or give the maker of them some millet for his services, or make him a gift on some future occasion. The man who wants the object (p. 91) and the maker of it always belong to the same local community and conduct the affair between themselves, there being no exchange of objects or services through the medium of a third person, and there is always between them a general social relationship of one kind or another ... (3) There is a little inequality of wealth and no class privilege ... (4) In a narrow sense the simple family might be called the economic unit, but we have seen that it is not self-sufficient and the active participation of a wider group is often necessary, e.g. in building, fishing, and hunting ... Co-operation is found among neighbours who are also kinsmen ... (5) It must be recognized also that fishing, hunting, herding, and the other activities I have described are always, in a sense, collective actions ...

p. 92 - ... all the people of a village have common economic interest, forming a corporation which owns its particular gardens, water-supplies, fishing-pools, and grazing grounds; which herds its cattle in a compact camp in the drought; and operates jointly in defence, in herding, and in other activities; and in which, especially in the smaller villages, there is much co-operation in labour and sharing of food ... climatic conditions together with a pastoral mode of life necessitate relations beyond the limits of a village and give to wider political groups an economic purpose ...

p. 119 - Each tribe has a name which refers alike to its members and to their country (rol), e.g. *Leuk*, *Gaawar*, *Lou*, *Lak*, &c. (...). Each has its particular territory and owns and defends its own building sites, grazing, water-supplies, and fishing-pools ...

p. 162 - ... In a strict sense Nuer have no law. There are conventional compensations for damage, adultery, loss of limb, and so forth, but there is no authority with power to adjudicate on such matters or to enforce a verdict. In Nuerland legislative, judicial, and executive functions are not invested in any persons or councils. Between members of different tribes there is no question of redress; and even within a tribe, in my experience, wrongs are not brought forward in what we would call a legal form, though compensation for damage (*ruck*) is sometimes paid ...

p. 163 - Before discussing the chief characteristics of Nuer legal procedure I record that, according to verbal information, for I have never observed the procedure, one way of settling disputes is to use a leopard-skin chief as mediator ...

p. 164 - For a dispute to be settled in this way not only is it necessary that both parties should want the matter amicably settled, but it is also necessary that they should themselves reach agreement during the discussion. No one can compel either party to accept a decision, and, indeed, a decision cannot be reached unless there is unanimity, since the elders are of both parties to the disputes. They go on talking, therefore, till every one has had his say and a consensus has been reached.

The five important elements in a settlement of this kind by direct negotiation through a chief seem to be (1) the desire of the disputants to settle their dispute, (2) the sanctity of chief's person and his traditional role of mediator, (3) full and free discussion leading to a high measure of agreement between all present, (4) the feeling that a man can give way to the chief and elders without loss of dignity where he would not have given way to his opponent, and (5) recognition by the losing party of the justice of the other side's case.

I repeat that I have not seen this method employed and add that I am of the opinion that it is very rarely used and only when the parties are fairly close neighbours and belong to communities closely linked by many social ties ...

p. 165 - The only quarrels within a village or camp about ownership of cattle that I have witnessed have concerned obligations of kinship or affinity and have eventually been settled by one party giving way on account of his relationship to the other ...

p. 168 - ... We speak of "law" here in the sense which seems most appropriate when writing of the Nuer, a moral obligation to settle disputes by conventional methods, and not in the sense of legal procedure or of legal institutions ...

p. 169 - The first point to note about Nuer law is that it has not everywhere the same force within a tribe, but is relative to the position of persons in social structure, to the distance between them in the kinship, lineage, age-set, and, above all, in the political, systems ...

The club and the spear are the sanctions of rights. What chiefly makes people pay compensation is fear that the injured man and his kin may take to violence ...

p. 172 - A leopard-skin chief, "kuaar muon", has a sacred association with the earth (mun) which gives him certain ritual powers in relation to it, including the power to bless or curse ...

p. 173 - Besides the part they play in feuds, chiefs perform ritual to cleanse parties to incestuous congress, and they possess slight rain-making powers, though Nuer do not attach much importance to the art ...

p. 181 - The lack of governmental organs among the Nuer, the absence of legal institutions, of developed leadership, and, generally, of organized political life is remarkable. Their state is an acephalous kinship state and it is only by a study of the kinship system that it can be well understood how order is maintained and social relations over wide areas are established and kept up. The ordered anarchy in which they live accords well with their character, for it is impossible to live among Nuer and conceive of rulers ruling over them ...

Author:	Andrey Butt
Title:	The Nilotes of the Anglo-Egyptian Sudan and Uganda
Publisher:	ESA - IAI, London
Year:	1952

Text

p. 139 - Tribal Characteristics. Each tribe has a name, occupies a particular territory and owns and defends its own building sites, pastures and water supplies. Large rivers or wide stretches of uninhabited country, generally divide adjacent sections of contiguous tribes, and these sections tend to move in different directions in the drought ...

p. 155 - Rain-Making. The Nuer attach little importance to rain-making. Any member of the Gaawar clan can act as rain-maker, since the ancestor of the clan came down from heaven holding a sprig of the "nyot" tree and a small round stone. He has no special political status or any extra prestige.

In certain parts of Nuerland, land experts and prophets claim to be able to produce rain. In certain areas, the leopard-skin chief acts as rain-maker. The title "gwan pini" (owner of the water) is given to any ritual specialist who has powers in connection with rain and floods ...

Author: Lucy Mair
Title: An Acephalous Political System: The Nuer
In: African Societies
Publisher: Cambridge University Press
Year: 1974

Text

p. 125 - Segmentary Opposition. Each tribe had its own territory, usually marked off by watercourses. The tribal territory was divided into sections, which might again be subdivided. The larger tribes had primary, secondary and tertiary sections, and these had names and are shown on maps. Each section had its own dry-season camps ...

p. 130 - ... Causes for fighting that a Nuer enumerated for Evans-Pritchard may be quoted ... watering rights in the dry season ...

TANZANIA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Production modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Chaga	-clan -villages scattered -age	chieftoms	-savannah -mountain, humid	-pastoralism -agriculture	-auto- subsistence -market	-rainfed -irrigation, by canal	abundant	no data	-control by community -water rights in operation, always
Elgeya	-kinship -clan -predominant	chieftoms	river, lake	-pastoralism -agriculture -fishing	auto- subsistence	-rainfed -irrigation	abundant	-annual -collective -inland fresh waters	control by individual
Elgeyapko- Masai = (Thamaga- Lumbwa)	-family, extended -age	-diffused power -rain making power	arid	-pastoralism -agriculture	auto- subsistence	no data	limited	no data	no data
Masai (Agropalis- rablia) =	-clan -tribe -village, concentrated -age	diffused power	-semi-arid -savannah -river, lake	-pastoralism -agriculture -hunting/ gathering -fishing	auto- subsistence	-rainfed -irrigation, by canal	limited	-annual -inland, fresh waters	no data
Masai (Pastoralists) 67	-family extended -clan -tribe -village, concentrated -age	-diffused power -rain making power	-semi-arid -savannah	pastoralism	auto- subsistence	no data	seasonal -limited	no data	no data
Mara 68	-clan -village scattered -age -patrilineal	chieftoms	-savannah -mountain, humid	-pastoralism -agriculture	-auto- subsistence -market	-rainfed -irrigation	abundant	no data	no data

66 Also for Kenya.

67 Also for Kenya.

68 Also for Kenya.

..

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Bantu	-family, extended -clan -village, concentrated -age -pastoralist	diffused power	semi-arid	-pastoralism -agriculture	auto- subsistence	-irrigation, by canal	limited	no data	-control by village -water rights in operation under scarcity
Sukuma	village, concentrated	chieftoms	semi-arid	-pastoralism -agriculture	auto- subsistence	rainfed	limited	inland, fresh waters	no data
Swahili-speaking peoples of Zanzibar	village, concentrated	no data	-semi-arid -sea	-agriculture -fishing -trade	-auto- subsistence -market	rainfed	limited	-annual -sea	no data
Peoples of Greater Unyamwezi (Kumbi, Konongo, Mnyemba, Sukuma, Sumbwa)	village	kingdoms	semi-arid	-pastoralism -agriculture -fishing -trade	auto- subsistence	rainfed	limited	-annual -inland, fresh waters	no data

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Chaga	conflict, important	-United Kingdom -Germany	African traditional	-control by lineage -granting of land by ex-warden Chief	no data	no data	-control by community -authorization needed for digging well, basin on communal land -duty to community digging, maintenance -precedence rules -restrictions on use by authority in drought -protection of rights of way to water sources -specific organisation dealing with water and with waterworks	-cleaning of water source -rules protecting waterworks	no data
Haia	-fishing, control by community -rights on fishing grounds by community -regulations on collective fishing on milling fish -specific organisation dealing with fishing	-United Kingdom -Germany	African traditional	control by community, chef de la terre	-control by community -water, free of charge -payment for maintenance -duty to maintain	-control by community -free of charge	-control by community -private appropriation -free of charge for local community, for foreigners and for local cattle -duty to community digging, maintenance -duty to provide water -authorization needed for watering -precedence rules -protection of rights of way to water sources	-cleaning of water source -washing clothes away from source -hiding away -prohibition of scattering water source	no data
Ilparakro-Masai	no data	-United Kingdom -Germany	African traditional	no data	water, free of charge	free of charge	-free of charge for local community, for foreigners, local and foreign cattle -precedence rules	no data	no data
Masai (Ngindas/Murulleto)	no data	-United Kingdom -Germany	African traditional	control by community	no data	no data	no data	no data	no data

Ethnic Group	Conflicts/ Raiding rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Masai (Pastoralists)	no data	United Kingdom Germany	African traditional	control by community	control by community -water selling not possible -selling of water point not possible	control by community	control by community -free of charge for local community and local cattle -precedence rules	no data	no data
Hamas	no data	United Kingdom Germany	African traditional	control by age-set clan leaders, sovereign of chief-kinship	no data	no data	no data	no data	age-set clan leaders
Boujo	conflicts, important	United Kingdom	African traditional	control by community -granting of land by head of village	control by community -water, free of charge -duty to maintain -selling of water point not possible -specific organization dealing with water	control by community -free of charge -specific organization dealing with water	control by community -free of charge for local community -fee-paying -authorization needed for digging well, basin on communal land -duty to community digging, maintenance -precedence rules -restrictions on use by authority in drought -protection of rights of way to water sources -specific organization dealing with water and with waterworks	no data	-village -water tribunal

Ethnic Group	Conflicts/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Ordnance and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bukuru	no data	-United Kingdom -Germany	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge -payment for maintenance -duty to maintain	free of charge	-control by community -private appropriation -free of charge for local community and for foreigners -fee-paying, local and foreign cattle -duty to community digging, maintenance -duty to provide water -authorizations needed for watering -precedence rules -restrictions on use by authority in drought -protection of rights of way to water sources -specific organization dealing with water	-banding of water source -prohibition of entering water source	village
Swahili-speaking Peoples of Zanzibar	no data	-United Kingdom -Germany -Portugal	Islamic derivation	-control by community -granting of land by head of village	-control by family -private appropriation -water, free of charge	-control by community -free of charge	-control by family, community -free of charge for local community and for foreigners -authorization needed for digging well, basin on communal land	no data	village
Peoples of Greater Ungwanwezi (Kisumu, Kisumu, Kisumu, Mwanambao, Bukuru, Bukuru)	no data	-United Kingdom -Germany	African traditional	-control by sovereign -granting of land by head of village, by sovereign	water, free of charge	-control by community -free of charge	-control by community -free of charge for local community, for foreigners, local and foreign cattle -authorization needed for watering -precedence rules -restrictions on use by authority in drought	no data	village

Ethnic group: ARUSHA
Author: Lucy Mair
Title: Law in an Age-based Political System: The Arusha
In: African Societies
Publisher: Cambridge University Press
Year: 1974

Text

p. 137 - The Arusha live on the western slopes of Mount Meru, one of the two high mountains of Tanzania close to its frontier with Kenya. They are fortunate in their natural environment with its good volcanic soils, plentiful rainfall and streams that can be tapped for irrigation ...

Ethnic group: CHAGGA
Author: Sally Falk Moore
Title: Social Facts and Fabrications. "Customary Law" on Kilimanjaro, 1880-1980
Publisher: Cambridge U. P.
Year: 1988

Text

p. 23 - ... In addition to these temporal and climatic variations in cultivated produce within the banana belt, there was also a marked difference between the products of the forest and those of the plain. It was desirable to have access to both. In the precolonial period this desire must have encouraged considerable exchange between settlements up and down the slopes of the mountain, encouraging "vertical" political alliances.

Another ecological consideration underlying some of the alliances between settlements higher up and settlements lower down was the system of irrigation. Localised lineages controlled most of the canals ... Consequently for irrigation purposes the Chagga ... starting from the forest streams they have dug long narrow channels through which the water is made to flow into gardens and fields (...). Secure water rights imply political understandings among settlements through whose territory, or near whose land, the water passes. Water thus constituted a major reason for alliances between chiefdoms above and below, and was a motive for amicable relations with chiefdoms on either side.

p. 24 - Peaceful arrangements about water control must have had the secondary consequence of ensuring conditions favourable to local trade.

Agreement on water rights bears on the process of political consolidation. Over the nineteenth century and through the first half of the twentieth, what had originally been many independent and small Chagga chiefdoms were gradually merged through precolonial conquest and alliance (and later through colonial administrative fiat) into larger and larger chiefdoms. The geographical patterning of this political aggregation shows a strong tendency for the chiefdoms to be formed "vertically", that is, up and down the slopes of the mountain ...

Another evidence of interchiefdom complementarity was the placement of cattle in the custody of distant households. Cattle were important to the Chagga. Milk, blood, meat, and manure were of major significance in their domestic economy and their ritual life ...

p. 61 - ... Some irrigation canals were dug by *corvée* labour under chiefly orders ...

p. 86 - Rights in irrigation water. Irrigation on Kilimanjaro consisted of canals which tapped stream water and brought it to planted areas in an intricate system of narrow channels. Most canals were particularly associated with the lineage of the canal's founder after whom they were usually named. In some cases it was the chiefly lineage, but for most part it was not. The head of the community of users was always chosen from the founder's lineage. But lineage members were seldom the only users (...). Thus the community of users of one canal constitutes a local corporate group that was not exclusively a kinship group.

The canal community head had ritual functions as well as administrative and allocatory powers. Each year after the rainy season the canals were cleaned and repaired as a group effort on a day decided upon by the water-community head. The sanction for failure to labour or noncompliance with his orders was withdrawal of the right to use water (...). One who could not attend was obligated to send a substitute. The community head alone had the prerogative of making the necessary libations and saying the appropriate prayers annually just before water was allowed to enter the newly cleaned canal. His ritual capacities were also used if and when the water level became low ... Beer brewing of this sort was done for the chief in the instances in which the chief was "master" of the canal. In fact, part of the beer brewed for any ordinary canal head was supposed to be paid to the chief as canal tribute (...).

Canal users evidently argued a good deal about their use rights, which were sometimes intricate. In some canals the water flowed continuously. In others the water was collected in pool-like reservoirs at night, and was then allowed to flow during the day. In one pattern the men who lived (p. 86) on the right side of the channel at the lowest point reached by the canal got his water first, then the next one above him, and then the one above him until about the middle of the area served by the canal. Then the pattern was repeated on the left side from the bottom up. Then the upper half started and was watered in the same manner from bottom to top, right side first. When everyone had watered his gardens once, the sequence started again. Few canals had enough water for a third series. The length of the period of watering varied with the canal, the numbers of its users, and the like. The canal head often had additional privileges. In some small canals the head of the canal community could draw off water for himself whenever he pleased. In others he had a right to the water all day on every market day (every fourth day). As it was more than he needed for his own use, he could allocate some of it to others, who, in return, would pay him in produce at harvest time ...

p. 88 - The many property rights men had (and wives derivatively from them) were contingent on being in good standing in the lineage. Some *corvée* obligations, some tribute demands, and other debts were met by the lineage collectively. Collective obligations implied the internal allocations of contributions imposed on individuals. The decision which individuals would do the work or pay and which would not was no small matter. In this as in other ways the lineage was in a position to allocate payments and penalties, not just properties and privileges ...

The social foundations of the Chagga. Legal order in precolonial times.

In the precolonial period much of the negotiating, resource-allocating, rule-making, rule-administering, rule-enforcing and dispute-setting activity among the Chagga took place within the districts, the localized patrilineages, the irrigation associations, and the men's age sets of the district and some of it in the women's markets ...

p. 89 - In the irrigation canal associations, access to water could be refused to anyone who broke the rules, or defied an order of the canal group leader. Both potential inducements to compliance and direct sanctions were embedded in the resource control of the canal user's association itself. An age-set could punish a member who did not perform his or her share of collective *corvée* labour. All the principle social units of Chagga society had such autonomous means of coercing or inducing compliance from members ...

Precolonial organizational order had ritual dimensions, and organizational leaders were also ritual leaders who were defined as ritually indispensable to the ongoing affairs of the organization. Canal group heads performed annual rituals to bless the canals ...

p. 164 - The case reports

Irrigation channels could not be cut across road without chief's permission.

Mwika, Case 30, 1927. The defendant was fined six shillings for digging furrow across road without chief's permission.

Cultivation near stream used for drinking water prohibited. Mwika, Case 30, 1929. Eleven defendants cultivated near a stream used for drinking water contrary to government orders. Each was fined six shilling and ordered to abandon the plots. The case was heard in November. Defendants were allowed to postpone payment until January because of time of crops. The acting district officer (ADO) commented that punishment was very fair.

Author: Sally Falk Moore, Paul Puritt
Title: The Chagga and Mera of Tanzania
Publisher: ESA - IAI, London
Year: 1977

For useful reference, see Robert F. Gray, The Sonjo of Tanganyika and Sonjo in the present collection.

Ethnic groups: HAYA

Author: H. Cory, M.M. Hartnoll
Title: Customary Law of the Haya Tribe. Tanganyika Territory
publisher: IAI, London
Year: 1945

Text

p. 161 - Water Rights

1. Natural Water. i.e. Rivers, Springs, Lakes, Ponds.
2. Artificial Supplies. i.e. Wells, Water-holes, Furrows.

1. Natural Water.

698. Natural water is free to everyone and may be used by individuals for their own purposes provided that the community makes no objection.

699. There is usually a ban on the use of a stream for washing, bathing, cleaning of hides or backcloth, above where it is used for drinking purposes.

700. The owner of a plantation which contains temporary water may forbid its public use if it lies within his cultivated area, but not if it lies in an uncultivated part or in his forest.

2. Artificial Supplies

a. Wells.

701. The water from a well dug in the cultivated part of a plantation is the exclusive property of the owner.

b. Water-holes.

702. No permission is necessary from anyone to dig a water-hole in uncultivated land.

703. digging of water-hole does not confer exclusive use of the water on those who have done the work. If the water-hole needs deepening anyone may be called upon to help and a man who refuses is excluded (p. 162) in future from using it.

c. Furrows.

704. The water in a furrow made by an individual for his own use is his property; people who live on the route of the furrow may not tap the supply.

Water Supplies on Private Land.

705. The public cannot be deprived of the use of water on private land which they have been accustomed to use for a generation or more.

Example: Should an owner put under cultivation land which was hitherto uncultivated he cannot forbid the public use of water in this land.

706. An owner cannot forbid the use of water in his cultivated land which the public were permitted to use by a previous owner.

707. An owner who himself first allowed the public use of water in his cultivated area can revoke his permission for its use.

708. Priority of use of water is as follows:

1. Drinking Purposes.
 2. Watering of Cattle.
 3. Domestic Purposes other than drinking water.
- For the rules for the watering of cattle see para. 849.

Rights of way.

709. The following terms are used:

1. Main footpaths between villages in a Gombolola: Kihanda Ngani in Thangiro, Karagwe and Miasenyi; Kiongolero in Maruku, Kiamtwara, Bugabo, Kianjia and Kiriba.

2. District roads and some public pathways: Omuhanda.

3. Larger District Roads: Omuhanda Nyaihanda.

4. Footpaths, usually hedged, connecting plantations with the nearest public road: Malembo.

p. 163 - 5. Occasionally used paths through private land: Kihanda.

Note: The assessors stated that most roads were originally native tracks, and that many of them were broader in German times than they are now to prevent the danger of ambush; others have been more recently enlarged to carry motor traffic ...

Omuhanda.

711. These are paths which have long been in customary use for the fetching of water, to grazing grounds, as fisherman's paths to the Lake, or as subsidiary paths from village to village; they are all public rights of way.

712. Should such a path run through private property, the owner of the land may not close the path unless he makes another in its stead at his own expense ...

p. 180 - Watering of cattle.

849. Rules differ in different chiefdoms.

IHANGIRO, MARUKU, BUGABO, KIZIBA, KIAMTWARA and EAST KIANJA.

850. Rules for the watering of cattle apply only to running water.

851. Cattle may be watered anywhere.

Note: Owing to adequate rainfall there is plenty of running water and no necessity to dig water-holes.

852. No claim by users lies if a stream has been fouled by cattle.

KARAGWE and WEST KIANJA.

853. Cattle may not be watered in running water.

Note: Most of the herdsmen in these areas are Watussi, and the water law of the Watussi is followed.

854. Water must be tapped from an adjacent stream into a water-hole for the use of cattle.

855. If no running water is available separate water-holes must be allotted to men and cattle.

856. If one man or a group of men dig a water-hole for cattle they have the exclusive right to the use of it.

857. Natural water supplies are free to everyone whether the user belongs to the village or not.

p. 181 - MISSENYE.

858. All the above rules apply except para. 856. In Miskenye, if a man or a group of men dig a water-hole, the water is not their exclusive property but they have prior claim in it.

Herding of Cattle.

859. All Cattle owners in a village form themselves into a kyama (Chama), the leader of which is known as the Mukondo. (...).

860. The position of mukondo is hereditary so long as the family continues to own cattle.

861. All members of the kyama act as herdsmen in turn.

862. The herdaman for the day is responsible for the cattle in his charge.

863. If the owner whose turn it is to herd changes his with another member of the kyama, the responsibly lies with him who does the herding.

864. If an owner whose turn it is to herd delegates his duty to a herdsman outside the kyama, the owner himself is responsible for the safety of the cattle on that day.

The herdaman's responsibilities include the following:

865. The herdaman is responsible for any damage to property done by the cattle.

866. The herdaman is responsible for harm done to a beast at which he has thrown a stick, spear, etc.

867. The herdaman is responsible if a beast is missing on the return of the herd from grazing and its carcass cannot be produced.

868. The herdaman is responsible for harm to cattle caused by snake-bite, falling, eating poisonous plants etc. if he is grazing them on ground which it is customary to avoid on account of these possibilities ...

p. 185 - Rules for fishing in lake Victoria

The Guilds of the Lake Fishermen. (Makokoro ba Bajubi).

897. Fishermen in Lake Victoria form themselves into guilds (kyama) called ikokoro.

898. All lake fishermen within the Bukoba District follow the same rules.

899. All the waters of the Lake on the Uhaya coast are free, and no ikokoro claims particular rights over any part.

900. The members of an ikokoro form an economic unit and all the fishing is done by the various makokoro, no fisherman fishes on his own.

901. The number of members varies from about 8 - 12.

902. Each member owns a share.

The fishing outfit.

903. The fishing outfit, consisting of boat, net rope, and baskets is owned communally by all the members of the ikokoro.

904. The outfit costs about Shs.150/= and each member contributes towards the cost.

905. This contribution entitles the member to a share and on the size of it depends the size of his share.

Inheritance of shares.

906. A share is inherited according to the law of inheritance of the Bahaya.

907. Women may inherit a share.

908. If a man shareholder nominates, as the inheritor of his share, a man whom the other members of the ikokoro dislike they may, if they have knowledge of his choice, inform the testator that they refuse to accept the nominee; or if they do not know of the nomination until the testator (p. 188) is dead, they may refuse to accept the heir and buy him out by repaying him the original amount paid for the share.

Sale of shares.

909. A member who wishes to sell his share must first offer it to his fellow-members for the price originally paid for it.

910. The above rule holds even if a higher offer should have been made by an outsider.

Pledge of shares.

911. A shareholder may not pledge his share to any person outside the ikokoro.

Repairs to the outfit.

912. The expenses for small repairs are divided among the members in proportion to the size of their shares.

913. A large expenditure, such as the purchase of a new boat or net, is also divided among the members in proportion to the size of their shares.

914. Should a member be unable to put down the money for his share of the cost, his membership expires and he is bought out of his share of remaining common property of the ikokoro by the other members.

Fishing.

915. All members are expected to take their part in the fishing.

916. A member who does not do so and has no good reason for his absence cannot claim his part of the day's proceeds.

917. A member may, with the consent of the others, appoint a substitute to do his work and take his share of the proceeds.

918. If a member does not take part in the work for some good reason such as old age, illness, family business, locusts etc. he is entitled to claim his share while absent.

p. 187 - Note: If, for one of these reasons, a member is unable to take his share of the work he will still receive his part of the proceeds, and if it is necessary for someone to be taken on to help in his absence, a man will be employed by the other members who will all contribute to pay his wages, which in this case are usually in kind.

919. Sometimes two or more makokoro go out together in order to cover a larger area, in which case each ikokoro claims the fish caught in its own net.

Proceeds.

920. The head (nkuru) of the ikokoro alone is allowed to take the money received from the sale of fish.

921. The daily takings are written down and distributed every two or three months by the nkuru.
922. The members receive amount proportionate to the size and number of their shares.
923. A member who needs money before the time of distribution can be given it in advance.
924. The nkuru is responsible for the money and must refund it if he is short in his accounts.
925. The nkuru receives a small remuneration.

Expulsion from an Ikokoro.

926. A member may be expelled for one of the followings reasons:

Adultery with the wife of another member.
Assault of another member.
Theft of fish or fishing tackle.
Embezzlement of money.

927. An expelled member is reimbursed the amount originally paid for his share ...

For rules of the Court of the Fishermen (Nlegaka ya Bajubi) see para. 1252 et seq.

Author:	B.K. Taylor
Title:	The Western Lacustrine Bantu
Publisher:	ESA - IAL London
Year:	1962

Text

p. 138 - Co-operative activities involving people outside the family included house-building, herding and fishing. Cori and Hartnoll mention the existence of herding and fishing "guilds" (krama, ikokoro) ...

The chief of each chiefdom is said to have had primary control over all land and livestock. He was entitled to tribute in stock, beer and food, and to labour and military service ...

p. 139 - Clans and lineages, however, retained certain rights over land. The responsibility for decision on boundary questions within the plots of communally-owned clan land (rweya rwaruganda) was left to clan-heads and all uninhabited land remained under the supervision of clans whose authority was vested in an official called "muharambwa" (in some areas, "mwambansi", "muhambansi", "kusi"). The office of "muharambwa" was vested in the original clan in each village, and the post was held of hereditary right by the living descendant of the youngest son ("mainuka") of the clan-head ...

There were common rights over grazing, grass, stones, natural water supplies, fishing grounds, firewood and trees ...

Ethnic group: ILPARAKUYO-MASAI
Author: Peter Rigby
Title: Pastoralist Pastoralists. Nomadic Societies in Transition
Publisher: Zed Books Ltd., London
Year: 1988

Text

p. 48 - ...Ilparakuyo are a Masai-speaking pastoral people who are historically, linguistically and culturally very closely related to the pastoral Masai, particularly the southern section of the latter such as the Ilkisonko, while differing radically from them in their politico-economic circumstances as well as in many features of social organization ...

Ilparakuyo present a unique case in eastern Africa of a pastoral people who has existed since far earlier than the colonial period in relations of interdependence (one might even say "symbiosis", alternatively peaceful and hostile) with culturally distinct Bantu-speaking cultivators or semi-pastoralists ...

p. 53 - ... Ilparakuyo today live in a series of relatively small communities, or "concentrations" of large homestead groups (inkang'itie), scattered amongst the various Bantu-speaking (and other) cultivators and semi-pastoralists ...

p. 124 - ... the following statement concerning the specific social formation of the pastoral Masai:

Within the sub-tribal land, pasture and water are used communally. The local society has communal right to the use of these resources, but the sense of ownership even communally does not seem to be entertained. So when a stranger moves in with his cattle or to cultivate the land, the local people will complain of the danger of disease and depletion of pasture in the first case, and the appropriation of pasture in the second; but not against the appropriation of soil, land as such, or even the presence of the stranger on land on which he has no rights communally with others ...

... Masai do not conceive of (p. 125) rights over any particular area as being a condition of their reproduction: this is even more true of the Ilparakuyo, whose pastoral economy provides the basis for the present discussion ...

p. 136 - ... Ilparakuyo recognize that their chances of finding sufficient grazing, water, and a minimum of litigation with Bantu cultivators over cases such as herds raiding the latter's fields, are limited and, in fact, diminishing. It should also be recognized that current villagisation policy is aggravating this situation (...). Furthermore, Ilparakuyo have precisely the same view as pastoral Masai on the normal relationship of man to land, as adumbrated in my quotation from Parkipuny (1975:27) above: that is land, water, and grazing, with very few exceptions, are free to all men ...

p. 139 - ... the nature of pastoralist appropriation of land, implying grazing and water ... I have shown that exclusive rights to land, either communal or individual, are not entertained by pastoralists, leading to some contemporary problems of transformation. However, certain man-made "in-puts" designed to improve the conditions of the natural environment, those which may have been created by individuals or groups, may be subject to "rights of preference" which are passed on by inheritance, usually through members of a patrilineal clan (enkishomi, pl inkishomitie); these rights again, however, do not carry the implication of exclusivity, but of primary control. Among Ilparakuyo, such rights relate, for example, to dry season wells sunk in river beds, with their associated furrows and drinking troughs; these may be controlled by

particular "Inkang'itie" or groups of homesteads. Among pastoral Maasai, the complex of deep wells at Naberera and Ngasumet are controlled by particular clans. But despite these rights of pre-eminence by certain kin and descent groups, two observations must be made. Such rights are very rare and constitute the exceptions that prove the rule; even where they do exist, access by unrelated Ilparakuyo or Maasai cannot reasonably be denied. Fosbrooke expresses succinctly the position for south and central Tanzania Masailand, although his use of the word "ownership" needs modification ... :

"All the Naberera and other central Maasai wells are in clan ownership, as also are the springs around Longunoi, Kibaya etc. The senior member of the clan resident on the water is in control, and, in consultation with the other local clansmen, determines the order of watering".

But most critically, he adds:

"The main practical application of this knowledge is that in effect the users of the water form a council for the settlement of disputes, under the "chairmanship" of the "owner" ... A migrating Maasai may demand, and must be given, water at any well or spring when actually on the move, drinking in priority to any local cattle ...

Ethnic group:	MASAI (AGRICULTURAL)
Author:	G.W.B. Huntingford
Title:	The Southern Nilu-Hamites
Publisher:	ESA - IAL, London
Year:	1963

Text

p. 110 - The agricultural Maasai, the I.Lumpaa (Lumbwa) and II-Oikop of former days, are people of Maasai stock who, having lost their cattle through disease or defeat, were forced to take up agriculture in order to survive, and by so doing earned the lasting contempt of the pastoral Maasai ...

With the exception of the Taveta group, the agricultural Maasai in general resemble the pastoral Maasai in appearance, dress, and general culture, and though they cultivate the ground, still have the acquisition of cattle as their chief ambition ...

p. 111 - ... In the time of Thomson and Teleki, however, Njemps was an important station on the caravan route, and von Hohnel noted that they had a large extent of cultivated land. This was divided into blocks (he says of three to four miles square) which were intersected by irrigation channels bringing water from dams across the river Tigrish. This system was still working in Dundas's time ... Besides agriculture, the II-Tiamus fished and hunted ...

It is possible that the fishing group called II-Muro who live on the east shore of Lake Rudolf is to be classed as II-Oikop ...

The Baraguya in Southern Masailand are also to be classed as agricultural Maasai ...

Author: Peter Rigby
Title: Persistent Pastoralists- Nomadic Societies in Transition
Publisher: Zed Books Ltd., London
Year: 1985

Ethnic group: MASAI (PASTORALISTS)

Author: G.W.B. Huntingford
Title: The southern Nilo-Hamites
Publisher: EISA - IAI, London
Year: 1963

Text

p. 106 - Grazing and water rights.

Land is not owned by individuals, but by the sub-tribe (ol-oshó), and grazing rights are acquired by residence. Water rights are controlled by the clan. In the old days, when the Masai occupied new territory, each warrior, according to tradition, claimed a well, spring, or water-hole on behalf of his clan. Individual rights over water are thus ruled out by tradition, and the senior member of a clan living at the water decides, after consultation with other clansmen, the order in which people take their cattle to water. But a Masai when actually on the move with cattle may claim, and must be given, priority over local cattle at any well or spring. Where water is plentiful, however, as in a river, possession is communal ...

p. 121 - Land Divisions and Authorities.

The basic unit of a tribe, "ol-oshó", is the "spirit" or warrior company in its "manyata", for it represents a district from which a given number of fighting men is drawn; and within this district are also the kraals, "enk-an", of the elders ... Within the enk-an a rudimentary council seems to exist with one of the elders at its head; it may be no more than the heads of families sitting together and talking ... in the Masai system the local warrior company has its own authority, the "ol-aiguenani", who is responsible for the maintenance of both military discipline and "civil law" within his company, and his warriors appear to be independent of the elders' council. When the age-set has passed out of the warrior stage, the ol-aiguenani remains its authority ...

The most important figure in Masai organisation is the ol-aiguenani, whose duties in the past were to make the practical arrangements for war, to control the distribution of the loot, to settle disputes when appealed to, to lead his men in war, and to maintain liaison between his company and the laibon on the one hand, and between his company and other companies on the other. But he could resign if dispensed with his men, who in turn could dismiss him if not satisfied with his actions ... As among the Nandi, it is the personality of the ol-aiguenani and the force of public opinion that compel obedience to him ...

The "laibon". The laibon, a word anglicised from "ol-aiboni", pl. "il-oibonok", and derived from a-ibon, "to make 'medicine,'" is a ritual expert who practises divination and rainmaking, cures illness, provides charms, and foretells the future ...

p. 123 - ... In pre-European days the functions of a head laibon were ... to make rain ...

p. 123 - Legal Sanctions.

The Masai legal system seems to be less organized than that of the Nandi, and to depend even more on the force of public opinion than on the position and status of the council leader. It appears that only in cases of homicide is there anything like a regular procedure ...

The general principle that a man is entitled to compensation for a wrong suffered is recognised by all Masai; and this recognition is extended to "foreigners" like Dornbo, provided the people concerned are well known to each other ...

Ethnic group: MERU

Author: Sally Falk Moore, Paul Puritt
Title: The Chagga and Meru of Tanzania
Publisher: ESA - IAI, London
Year: 1977

Text

p. 12 - The primary function of Meru traditional "courts" was to restore social order by reconciling the disputants and not simply by punishing individuals. There seemed to be implicit recognition of the inevitability of the conflict in society ...

p. 13 - Rights to land and boundary disputes are dealt with by the clan or the age-set leaders (vashili) ...

Ethnic group: SONJO

Author: Robert F. Gray
Title: The Sonjo of Tanganyika. An anthropological study of an irrigation-based society.
Publisher: Greenwood Press, reprint of the edition published for the IAI by the O.U.P., London, 1963
Year: 1974
Year of survey: 1955

Text

p. 1 - ... The Sonjo inhabit one of those regions which are too arid for the cultivation of crops by rainfall alone. The land, however, is well endowed with streams and springs which are favourably located so that their waters can be used for irrigation ...

Now the practice of irrigation is unusual among the native societies of East Africa, and the Sonjo are perhaps the only group depending wholly upon it in their agriculture ...

Sonjo social structure is related in a significant way to the practice of irrigation ...

We shall focus on the ecological adaptation of the society, giving special attention to the irrigation system ...

p. 17 - ... Still another suggestion as to the origin of the Sonjo is given by Dundas (...), who relates them to the Chagga tribe inhabiting the slopes of Kilimanjaro ...

However, whether this particular tradition is correct or not, the Chagga also practice irrigation and it is not unlikely that the two tribes have at least inherited that culture complex from the same source. The Chagga irrigation system (...) differs from the Sonjo system in that there are over a thousand separate channels, each of which is said to be controlled by a single clan, whereas a Sonjo irrigation (p. 18) system is under the communal control of a village composed of several clans. The two tribes have different types of social organizations, perhaps as the result of these differences in irrigation methods.

Other tribes in East Africa which have been reported as practising irrigation are the Suk and Marakwet of Kenya. About the Suk we have little information except that irrigation is practised and is important in the tribal economy. The description of the system by Beech (...) only covers a few lines in its entirety. "The irrigation system [he writes] is most ingenious, and its original construction must have required a vast amount of toil and patience. Irrigation ditches are the property of the tribe, not of the individual. Every male must assist in making the ditches under penalty of beating". The Marakwet irrigation system has been described by Henning (...) with considerable detail as to the physical and engineering features. According to Marakwet tradition, the furrows were already in existence when their forefathers came down from the north and settled in the country "many generations ago" (...). This author, however, tells us little about the social organization of the tribe or how the use of irrigation water is regulated ...

p. 19 - The fact that at least four different tribes in the area now practise irrigation suggest either that the trait has diffused from one tribe to the other, or that they have all inherited the trait from an ancient irrigation culture in East Africa. This second hypothesis has some evidence in its support which we shall now review. Fosbrooke (...) has reported the existence of several massive earth dams in Masai District which were evidently built to create large ponds of surface water ...

He also mentions ingeniously constructed wells at several points in the district. These hydraulic works are much more elaborate than anything attempted by the Masai themselves in historic times, and indicate the presence of a proto-historical people with a high level of technical skill in water control ...

p. 20 - More pertinent for our problem are some ruins at Engaruka, where there is clear evidence of a prosperous population which practised agriculture under irrigation. This site, which has been described by Leakey (...), is located in the Rift Valley of northern Tanganyika about sixty miles from the nearest Sonjo village. The remains include stone walls and buildings and series of irrigation terraces which, as Leakey estimates, must have supported a population of between thirty and forty thousand. The water available for irrigation today is only sufficient for a small community of about 200 people, and it is quite likely that the prehistoric town was abandoned because of a decrease in the water supply, perhaps caused by tectonic movements which are not uncommon in this volcanic region. H. A. Fosbrooke who has inspected the Engaruka ruins states in a recent publication (...) that "there are points in Sonjo culture suggesting that they were picked up from Ebgaruka ...

p. 21 - A few other reports of remains interpreted as ancient hydraulic works have come from East Africa. Wilson (...) states that "throughout Abyssinia, Uganda, Kenya, Tanganyika and part of Northern Rhodesia there are remains of an ancient system of terracing and irrigation"

...

Huntingford has reported what he interprets as ancient "dikes" near Eldoret in Kenya. "They consist of U or V-shaped depressions running generally across the slopes of ridges ..."

Worsley and Rumberger (...) describe a series of terraces along the Lyandembela River in the Uhehe region of Southern Tanganyika ...

We have conclusive evidence in the ruins of Engaruka - and presumptive evidence elsewhere - that irrigation was practiced in East Africa at an early date, probably before the present Bantu inhabitants had arrived on the scene. This is about all that can be safely said until systematic surveys and excavations have been made at the sites ...

p. 22 - In summary, there is ample evidence that irrigation was widely known in Eastern Africa in ancient times. It is reasonable to conclude that the Sonjo (as well as other tribes now practising irrigation) have inherited this knowledge, either as the direct descendants of the ancient hydraulic society or as newcomers who have borrowed the art of irrigation from their predecessors. It will be difficult to decide between these two alternative hypotheses until archaeological excavation has revealed something about the culture of the early irrigating societies ...

p. 24 - ... Sonjo institutions were indirectly affected by the Masai in a number of ways. They were isolated by them from kindred tribes for a long period of time, and were forced to live in compact defensible settlements. They were required to create an efficient military organization and integrate it with a social structure that was oriented primarily for the operation of an economy based on an intricate irrigation system ...

p. 27 - ... the average annual rainfall for the eight years is 18.75 inches ...

In view of the existing climatic conditions, this rainfall is below the minimum requirements for the successful cultivation of rain crops.⁷⁰

p. 47 - The irrigation system. - ... At each of these villages the water supply is derived from a small stream coming down from the hills and considerably augmented in the vicinity of the villages with the water from springs. The combined water from these sources enters the cultivated area as a large channel, and is divided into branch furrows which ramify through the fields, bringing water to every plot. Except in years of unusual rainfall, the water is completely used up for irrigation during the dry months and is therefore regarded as a scarce commodity which is carefully conserved and divided among users according to definite rules.

As explained in the last chapter, two different kinds of fields are cultivated at these villages. The flat alluvial land in the valley floors, distinguished by the term "hura", is cultivated during the dry season entirely by irrigation. Crops are planted here every year on the same plots, as the soil does not seem to require fallow periods to maintain its fertility. This "hura" land is entirely taken up by individual owners, although every plot is not cultivated every year, and according to all informants it has been under cultivation for several generations in the past. The other kind of field, called "hula", is located on the sloping land which rises gently from the valley floors. These fields are tilled during the rainy season and normally require both rainfall and irrigation to provide adequate moisture for crops, though in wet years supplementary irrigation may not be required. The amount of "hula" land that can be brought under (p. 48) cultivation at any one time is limited by the amount of water available for irrigating it. Therefore, tenure of these fields involves rights to irrigation water, for without water the plots would be worthless ...

Cursory surveys at Hula and Jic (villages) revealed some important differences between their irrigation system and the system at ...

The villages of Hula, and ula all have village councils which appear to be constituted in much the same way as the Kheri council and to have similar control over irrigation water ...

⁷⁰ East Africa Royal Commission (1956: 262-3). In this report the minimum rainfall for growing rain crops in East Africa is set at from 20 to 30 inches, depending on other climatic conditions.

p. 50 - ... In contrast to the stream, which is treated as an essentially secular phenomenon, the springs are believed to have been created miraculously and are regarded as intensely sacred ...

p. 51 - ... But no matter how little the rainfall, the springs always supply enough water to ensure that some crop is harvested from the "hura" fields - at least enough to avert outright famine. The attitudes towards these two sources of moisture are quite different. Rainfall is regarded as part of the external natural environment, unpredictable and uncontrollable. Unlike most of the cultivating tribes in semi-arid regions of Africa, the Sonje do not attempt to manipulate rainfall by direct magic in order to allay their anxiety. There is no separate cult of rainmaking. Instead, the element of supernatural rainmaking is merged with the dominant religious cult of the tribe. Anxiety as to the danger of drought is made tolerable through faith in Khambageu, prayer, and general religious ritual. The orthodox belief assert that as long as good relations exist between Khambageu and the people God will ensure adequate rainfall ...

p. 52 - The attitude towards the springs is conservative and ritualistic. The springs do not fluctuate unpredictably and have never been known to fail ... owing to their supernatural origin they are thought of as specifically sacred objects, not just natural phenomena. Therefore the basic policy in regarded to springs is directed at maintaining the unchanging state of affairs that has prevailed in the past ...

p. 53 - Construction and maintenance of channels. - ... Every year when the rains have finished and flood waters subsided the elders of the village council set a time for repairing the damage to furrows done by the rains and call out all the able-bodied men of the village to do this work. (Only the smiths are exempted: they are not allowed to cultivate or have anything to do with the irrigation system) ...

Nowadays this work only takes about three days, but formerly it was a longer task. The difference lies in the implements which were used formerly and at present: traditionally the digging-stick was the only tool available for this work; now, however, many of the men possess iron hoes ... The adoption of hoes is to be quite recent - within the last six years (1949-1955) ...

Men who are due to receive irrigation water on a certain day examine and repair the channels to ensure that the full flow of water reaches their plots.

The smaller ditches forming the boundaries between plots are maintained jointly by the owners of the adjoining plots ...

p. 57 - ... One of the duties of the village council is to plan and direct the whole system of irrigation with a view to utilizing the water with maximum efficiency ...

p. 58 - Control and division of water. The ultimate control of irrigation water is in the hands of a council of seventeen village elders who hold their positions as members by hereditary right. These council members are called "wenamiji" (sing. "mwenamiji") ...

The rest of the people of the village are grouped into several categories as regards their rights to the use of water. Before analyzing these rights it must be explained that for purposes of irrigation the twenty-four-hour day is divided into four periods of roughly six hours each. Primary rights for water are assigned to an individual for a full six-hour period. When water is plentiful two or more men may be assigned irrigation periods concurrently for the same period. In fact, early in the dry season, when the furrows are full and little water is used, the irrigation system requires little management ...

The present discussion will presuppose conditions of water scarcity, for that is when the legal and economic principles governing the irrigation system come fully into operation ...

An irrigation cycle, during which all plots are supposed to be soaked once, lasts about fourteen days. In starting a cycle, the "wenamiji" assign themselves the first periods; this takes about four days. Next in order of priority comes a group of eighteen men called 'minor' "wenamiji" ("wenamiji barirage") who also hold hereditary rights. In terms of individual water rights these men are equal to the "wenamiji" proper, but they have no control over the irrigation system as a whole and have no special powers in village government. The qualifying term 'minor' must not be (p. 59) understood to imply that these men are necessarily younger than the "wenamiji", or that they have expectations of later succeeding to the position of "wenamiji" proper; they constitute an entirely separate group ...

After that the irrigation periods are assigned to a group of elders called "wakiamsa" (sig. "mokiamsa", numbering from twenty to twenty-five, who have no hereditary or permanent water rights, but obtain temporary rights, through paying tribute to the "wenamiji". The "wakiamsa" represent substantial families of the village who lack inherited positions of privilege in regard to water, but who are able to pay for these privileges with goats. Individuals of this group are assigned irrigation rights for only short periods of time - month by month - and the number of "wakiamsa" fluctuates from time to time. The maximum number is limited by the need to keep the length of the cycle down to about fourteen days. "Hura" crops normally require irrigation every fourteen days and sometimes oftener; therefore the sum of the assigned periods is not permitted to exceed the optimum length for the whole cycle.

The above three categories - "wenamiji", minor "wenamiji", and "wakiamsa" - account for less than half of the men in the village who require irrigation water. The rest, who will be referred to as "clients" in the context of irrigation, have no primary rights but must apply for secondary water rights to individuals with primary rights who have been assigned regular periods in the irrigation schedule. An individual of the privileged categories seldom requires all the water for the six hours to which he is (p. 60) entitled - even one with large land holdings - and frequently two hours is sufficient to soak his plots. The water that is left over may then be distributed to the men who are without any special rights. A man in this latter category is unusually required to pay a fee to his benefactor - a small quantity of honey if available, otherwise grain or even money.

A "mokiamsa" has not deal with the "wenamiji" as a corporate group in obtaining his water rights. If he is accepted and assigned a scheduled period for the use of irrigation water he agrees to provide a goat whenever the "wenamiji" ask for one, but no fixed tribute is set in advance. The goats are mostly used in ritual sacrifices and offering which are supposed to benefit the whole community. The privileges of a "mokiamsa" cannot be purchased by just anyone who is willing to pay the required tribute, because there are only a limited number of these positions available. Therefore, the men who have achieved the status of "mokiamsa" guard their privileges jealously against competitors. Thus they are inclined to give political support to the "wenamiji" upon whom they are dependent for their water rights. In times of extreme water shortage it may be necessary to eliminate some of the "wakiamsa" in order to shorten the irrigation cycle and thus ensure that at least most of the crops are adequately irrigated. Thus the "wakiamsa" have no absolute assurance of future security in their water rights. They never meet or act as a corporate group, and the membership may change from time to time and fluctuate in numbers.

A client must obtain his water from an individual of one of the three superior categories; from his viewpoint it makes little difference as to which category the individual belongs. Wherever possible he applies to a close patrilineal relative for his water, usually to a father or brother. Lacking a relative to supply him with water, a client must compete with other clients for the water of non-relatives which may be available. If his resources of honey, grains, or money are relatively restricted he may find difficulty in obtaining as much as his crops require. It will be obvious from this that a client is often in a precarious position with regard to irrigation water. When his attempts at negotiation fail and his crops are threatened with serious drought, he may be tempted to use water illegally by making a break in a water

channel near one of his plots and (p. 61) flooding the plot at night. This form of self-help is said to be fairly common, though it is difficult to estimate the number of successful thefts of this kind. If detected by the "wenamiji", a water thief is fined one goat, which is a relatively mild penalty compared to those for other forms of theft. Since water theft is usually actuated by dire necessity there is little moral stigma attached to the offence, as in the case of a man in Western society who steals bread for his starving family. My informant, Gidia, was detected and fined for stealing water during the period of his employment by me. This was the second time within a year that he had been so fined. He simply regarded this as unusually bad luck.

The "wenamiji" are the only group in the community exercising effective political authority, and thus they may be described as an oligarchy with respect to village government. Their political authority is derived in large measure from their control of irrigation water, for they have the power of depriving individuals of the water which is an absolute necessity for raising crops. This given them an effective sanction for enforcing obedience to tribal laws and to their own administrative orders ...

p. 79 - ... Cultivated plots are individually owned and can be leased to outsiders if not needed ... The land needs of different families vary from time to time, and the leasing system makes it possible to adjust to these needs ...

p. 130 - ... To a high degree the villages are economically self-sufficient and politically autonomous. The irrigation system and land holdings of every village are entirely separate from those of the other villages ...

p. 139 - ... The "wenamiji" hold meeting almost daily in the village plaza at which various aspects of the irrigation system are discussed and decisions made. The roster of individuals to be assigned irrigation periods is compiled at these meetings, and proposals for changes and adjustments in the schedule are made and decided upon ...

The "wenamiji" deal with all kinds of disputes and complaints about water at their meetings ...

Generally speaking, the transactions in which secondary water rights are dispensed to clients by individuals possessing primary rights are treated as private contracts to be settled between the parties concerned, but disputes arising out of these agreements may be mediated at the meetings. The council may listen to a case involving the abuse of water rights by a "mwwenamiji" himself and may come to a decision that is against his interests ...

Although the regulation of the irrigation system is the most engrossing topic of these meetings, the council may at any time constitute itself a general court of law, and in formal meetings it also functions as the sole executive authority for the village ...

p. 140 - ... Normally a unanimous vote is desired on all important questions ...

As an individual, a "mwwenamiji" has no special authority over his fellow villagers. Administrative and disciplinary acts must emanate from the council as a whole gathered at a formal meeting ...

The minor "wenamiji" may take part in general discussions and make proposal, but they have no vote on decision. The "wakiamu" are only allowed to listen, except when they are permitted to testify in matters concerning their own interests, such as the assignment of irrigation periods and the assessment of tribute ...

Senjo law. Purely public delicts fall in two categories. Anyone who is charged with fighting or acting in any disorderly manner so that he disturbs the peace of the village is subject to a fine of four (p. 141) goats. The other category is a large one and includes all abuses of water

rights. The most common of these offences is stealing water at night by illegally leading water from a nearby furrow and irrigating a plot. This delict, if detected, is punished with a fine of one goat, which is considered to be a nominal penalty and well worth the risk if one's crops are badly in need of water ...

It is curious that a crime which seems to strike at the heart of the system of authority based on the control of water should be frequently attempted and leniently punished when detected. An explanation is suggested by Max Gluckman in his study of conflict. "Conflict in one set of relationships [he writes], over a wider range of society or through a longer period of time, leads to the re-establishment of social cohesion" (...). Thus water theft can be thought of as an institutionalized form of conflict. The tacit acceptance by society that underprivileged cultivators may break the law to steal water with only a small risk renders the irrigation system more flexible and averts more serious conflicts if some of the men should lose their crops because of failure to obtain water legally. Other water offences are neglect of ditches for which an individual is responsible, improper use of sluices so that water goes to waste, failure to stop irrigating at the expiration of an assigned period, and any disobedience to an order issued by "wenamiji". The penalties for these misdemeanours are fines which vary according to the seriousness of the crime ...

p. 143 - Powers and privileges of "wenamiji". - ... These elders are believed to understand the irrigation system better than other people, and thus to be best qualified to control and regulate water. They were also regarded as the guardians of sacred tradition. Thus the welfare of the village and its very existence is thought to depend on them, not in the sense that there is a mystical bond between the "wenamiji" and the village, but because the irrigation system would collapse in chaos if it were not strictly regulated and if the proper relation between the village and supernatural powers were not maintained through proper ritual. The powers of the "wenamiji" receive further support from the existence of an accepted legal code. There is a reciprocal relation between the village rulers (p. 144) and the code: the law, although it allocates a preponderant share of political power and some special economic privileges to the "wenamiji", is nevertheless conceived of as sanctioned by sacred tradition and as expressing the will of the whole village, not just the will of the council. The "wenamiji", on the other hand, are the chief enforcers and administrators of the law. Thus the rulers uphold the law and the law uphold the rulers and confirms them in their authority ...

p. 151 - Social classes. The older adult men of a village can be divided into several groups according to the kind of rights to irrigation water that each possesses ...

The different categories or classes of water-users described there were the "wenamiji", the minor "wenamiji", the "waklams", and the clients. To this number we can now add the priest, who form a special class of men with respect to water rights. In addition, there are two other classes - the Watari or smiths and the military age-sets - who are without water rights as they do not take part in cultivation ...

p. 152 - A double origin is indicated for the water rights of priests: they acquire their positions as priests by lineal succession, and as such they are entitled to special consideration from the "wenamiji" who control and regulate the water ...

The priests are so few in number and so specialized in social function that they are not an important factor in the system of irrigation rights ...

p. 153 - In summary, individual wealth, measured by goat ownership, is overshadowed by the system of irrigation rights as an economic basis for social stratification. Water as a resource is susceptible of monopolistic control in a way that goat ownership is not. The classes defined by irrigation rights tend to coincide with those based on personal wealth, but the correlations is not perfect. Political power is derived predominantly from the irrigation system and only in small measure from the system of goat ownership ...

p. 154 - Thus the irrigation system serves as a basic determinant of class structure as well as the source of political power ...

p. 161 - Digging-sticks are also the traditional implements used in constructing and maintaining the irrigation furrows, and only in the last few years have some of the men started using hoes.

Therefore, since the Sonjo are more archaic in their cultivating tools than neighbouring tribes which do not practice irrigation, it is safe to conclude that their present social forms are not the result of a revolution in technical equipment. Wittfogel (...) offers a similar interpretation of hydraulic societies in general ...

Ethnic group: SUKUMA
Author: H. Cory
Title: Sukuma Law and Custom
Publisher: IAI - OUP, London
Year: 1963

Tax

p. 131 - 4. Water rights

A. Human consumption

448. Any source of water, such as a stream, spring, well, pond, &c., is free for everyone.

449. Any source of water situated in private ground, whether natural (p. 132) or dug or constructed by the holder, is free for everyone. No holder can monopolize the use of a water source in his holding.

450. If a number of men dig a water-hole in a river bed or on any piece of land, the water is free for everyone. If a man has dug a water-hole for a certain purpose, for instance, for making bricks or building a house, the water is still free for everyone.

451. If a village or a sub-area of a village decides under the leadership of the village headman and/or the "basumba betale" to construct a common water-hole, one man from each house must help with the digging. If a man does not participate in the common work he cannot be deprived of the use of the water, but he may be punished by the village organization. The villagers cannot claim exclusive rights to the use of such water⁷¹.

B. Cattle consumption

452. Any source of natural water customarily open for the watering of cattle, or any source declared to be open by the authority, is free for everyone⁷².

⁷¹ Although Sukumaland is not blessed with abundant water the distance between any "kaya" and the nearest drinking-water supply is never so great as to make the fetching of water a full time job at any time of the year.

⁷² Natural sources of water are those mentioned in 448. Sources of water to be declared open by the authority are mainly the recently constructed "lambo" (artificial ponds).

453. Water-holes may be used only by those who constructed them, whether it be the water-hole of an individual cattle-owner or a water-hole constructed by the inhabitants of a "kibanda" or "gunguli". To water cattle at another man's water-hole without permission is punishable. Often the transgressor is required, as a penalty, to enlarge and clean the source of water.

454. These privately constructed water-holes can only be used by strangers after having obtained permission from the authority. It is permissible to charge rent for the use of the water. The permission is given only for short periods, usually until the cattle-owner has finished the construction of his own water-hole, or has found free water for his cattle. The rent is high.

455. If a man opens up a source of water within the boundaries of his holding, no other man is allowed to send his cattle there for watering without permission of the holder.

456. A new-comer cannot close any source of water ("bakumbiji") on his land which he found already in public use on his arrival. This applies to water-holes which may have been constructed by the former occupant or by the community and the "basumba batale". The new holder cannot close (p. 133) a path leading to a water source and keep it only for the use of his own cattle. His own cattle must have a path to it and therefore no excuse is accepted for closing the path on the grounds of crop damage.

457. The right to dig water-holes is not restricted. Inhabitants of one chiefdom who run short of water for their cattle can dig water-holes in another chiefdom ...

Author:	D.W. Malcolm
Title:	Sukumaland. An African People and their Country. A study of land use in Tanganyika
Publisher:	IAI - OUP, London
Year:	1963

Text

p. 11 - ... the Sukuma are kind to their animals and go to immense trouble to ensure that their cattle obtain adequate pasture and water.

As is often the case in other peasant communities, their language is very rich in relation to rural matters. For example, each different type of rain at each different period of the year has a special name ...

p. 12 - Then came the German Administration and with it the practical cessation of tribal warfare. It became safe to settle farther from the centre of the village. The German authorities are said to have prohibited the system of land sales between individuals, which had been evolved in some places during the period of extreme congestion ...

p. 13 - This brings us to the present day ... people have recently reclaimed and resettled large areas of bushland where adequate water supplies exists ...

p. 32 - Water. During the rains water is free for all, but the village dry-season water supply, like the land, is usually controlled by the village headman who gives the word to have it cleaned or enlarged. Water may be obtained along a river-bed, in which case no organization is necessary, but in many villages on the higher land of the lighter soil groups water for domestic purposes is obtained either from a well tapping a shallow ground water-table, or from a spring. These are sometimes supplemented by pits, which are situated in impervious soil for the catchment of surface water. As with other types of work, one person from each household must

come to help clean out the village well or to build up a bank to form a catchment tank below a spring. Where cattle also water at the village spring or well the "nzumba ntale", or village labour leader, will fine a defaulter from work, and his cattle will not be allowed to drink there until the small fine is paid, and eaten or shared by the villagers. This practically amounts to the payment of, say, a sheep in lieu of labour. This village turn-out applies to any new work, including catchment tanks, but there is an ingenious system which can be seen in operation near Bubiki for increasing the capacity or cleaning a catchment pit. The first pit is dug as described above and it fills with water. During the next dry season each person who goes to draw water from it must dig or remove a specified quantity of earth from a new excavation nearby. The men do the digging and the women remove the spoil, so that by the end of the six months' dry season a new catchment pit is ready. Next year one pit is used and the other reserved. When the water is finished in the former, the same organization is used to clear out mud and silt and then to deepen it. Thus after the construction of the first pit there is no further interruption of normal daily routine beyond a little extra time spent digging while drawing water.

The new tanks, "hafirs", and dams which are being constructed in various parts of Sukumaland are attracting settlement especially if they are situated in a waterless area near to a dense population ...

p. 53 - To generalize it might be said that labour is the origin of ownership, and the expenditure of physical energy gives the right to revenue accruing as a direct result ...

p. 78 - Water Rights. The arrangements concerning domestic water supply have been mentioned, but as cattle drink more than men, their water supply must be more plentiful. The village well or tank in which all the members of the village dig is sometimes used for cattle; at present the most important sources of water supply for stock are in the sandy river-beds. Here during the dry season nearly everyone digs to uncover a water supply for his own stock, though there are a few professionals who are paid in cattle. Along the stream-beds in places where water is held up in the sand, pools can be seen in twos and threes surrounded by a large pile of sand. The reason why these ponds are in groups is the custom prevalent both in Sukumaland and Zinza for the cattle belonging to two or three homesteads to be herded and watered together. The herdsmen take turns of about six days, and then man or boy on duty will collect the cattle from several stockyards in the morning. When they come back after grazing and watering the animals will all return to their own stockyards. If a man has lent his cattle to someone else he takes no part in digging for their water, and in fact has nothing to do with them beyond visiting them occasionally; presumably the milk and ghee are sufficient recompense not only for the trouble of herding but also for the work of digging for water. The same arrangements apply to areas where a water-bearing stratum below sandy soils has been tapped and cattle are watered from springs ...

Author:	Jan-Olof Drangert
Title:	Who Cares about Water? Household water development in Sukumaland, Tanzania.
Publisher:	Linköping University
Year:	1983

Ethnic group: SWAHILI-SPEAKING PEOPLE OF ZANZIBAR

Author: A.H.J. Prins

Title: The Swahili-Speaking Peoples of Zanzibar and the East African Coast

Publisher: ESA - IAL, London

Year: 1981

Text

p. 62 - The other lands in the island are claimed to be largely communally owned, either by a kin group, a village, or, so it is said, a whole "tribe". Here it is necessary to distinguish between the following types of land: the bush land, "wanda", used for shifting cultivation; the "family building site" or "kiambo", the best type of soil available and on which also a few permanent crops are planted; the grave yards; and the "msitu", or village shrub land. Kiambo ownership is shared by all who are patrilineally descended from the man with the first right of occupancy, either historical or mythical ...

The Wanda country surrounding the settlements is not apportioned to the constituent viambo-owning groups in their severalty, but is rather village land, the rights in which are controlled by a guardian of the soil, known as "mvyale" or "mviale" (Hadimu) or (elsewhere) as "mzale" or "muizi" (Pemba), who acts on behalf of the community, or, possibly, since he communicates with local spirits, on behalf of the deceased members of the community. His (or her, for the office may held by a woman) power lies in his capacity to withhold his blessing without which no crop will grow and ripen. Therefore it is necessary to await his permission to start cultivating and to consult him in all matters regarding the field (makonde, honde (T.)). It seems that the office is directly comparable with the one of "elder of the shores" or "master of the sea" as found on the coasts of Malindi and to the north. His office is hereditary in the senior line of the longest established family ...

Ordinary "shambas" under trees are not usually owned in tenancy. A freehold owner leases his trees, not his land, the lessee paying rental per tree. The acreage of such land is usually not stated, the number of trees per "shamba" being solely of account. The conception of freehold - as against other individual rights of land in some other form - was initially unknown, and although the colonization of the coast and its consequent Islamisation introduced legal forms derived from Islamic law, there is no evidence that the present system of unlimited freehold possession is older than the late 18th century, and is, in fact, a corollary of the introduction of permanent tree crops, i.e., cloves, and coconuts for commercial use on a large scale. This revolution in land rights took place under a political system in which the coast (and especially Zanzibar and Pemba) became the centre of gravity in a commercial empire instead on the fringe of outlying colonies of an Arabian coastal principality ...

p. 100 - Law. This highly specialized subject is a vast and complex one, being really part of Islamic law as a whole and hence cannot be dealt with here. The majority of the people follow the Shafai school ("madhab"), although a very small group adheres to the tenets of Ibadhi law. In Zanzibar both schools are represented by a "kadhi", elsewhere all judges give their rules in accordance with the first-mentioned "madhab".

Affiliation in Zanzibar according to the 1948 census shows ... that 83% are Sunni ...

Author: J. Middleton
Title: Land Tenure in Zanzibar Colonial Office, Colonial Research
Studies No. 83
Publisher: H.M.S.O., London
Year: 1961

Text

p. 28 - Land tenure in the Hadimu settlements of south-western Zanzibar island. The distribution of rights in land within the settlement.

(5) The right to dig wells anywhere. But it is rare for a man to dig a well outside the area of townland set aside for his own village. In theory any person has the right to use any well, but it is unusual for anyone of a different village to do so ...

(10) The right to graze livestock anywhere, although against it is uncommon for a man to do so outside his own village area ...

(14) The right to exploit the sea. The sea from shore to reef is regarded as the property of a town; any proprietor member may exploit it freely, strangers paying rent ...

p. 33 - (12) The sea is not divided up among wards. Fishing is important in these settlements. If a man builds a fenced fish trap (uzo) it belongs to him and his brothers jointly (they usually exploit it jointly in any case) and it becomes known as their "kiwanja". Any other member of the settlement or any stranger may use the trap but must pay rent, here called "ubani", which is divided among the members of the ward and used by them for kinship dues. Due to its nature a "kiwanja" is used continually by its members, so that once established the area becomes virtually the property of the kin-group that has built and exploits it. But if they move elsewhere they relinquish rights in it; that is to say, it is not regarded as inalienable, as is "kiambo" or "kitongo" land, rights in which are kept even if the occupants move away ...

p. 33 - Land Tenure in the Tumbatu Settlements of Northern Zanzibar Island.

p. 34 - As a consequence of the shortage of building space and the extreme shortage of drinking water - much water is ferried across by dhow (sailing boat) daily - there seems always to have been continual emigration from the island to neighbouring parts of Zanzibar, to southern Pemba and also to the African mainland (there is a long-standing Tumbatu settlement near Tanga, for example), and immigration is strongly discouraged ...

There are a few wells in the area, each belonging to a village and jealously guarded ...

p. 36 - Land Tenure in the Marginal Shirazi Settlements of Zanzibar Island.

p. 40 - Fishing is important in the coastal villages of the region. Any proprietor may build a fenced fish trap (uzio); this is expensive, needing anything up to shs. 200/- to build. It is therefore usually owned by a group of kin, who use it themselves and also use it in partnership with non-owners who get slightly smaller shares of the catch. "Uzio" are not rented, but they may be bought outright. "Dema" (wicker-work trap) fishing, on the reef, is practised communally by the entire village: the catches may be large - up to shs. 1000/- in worth - and these drives seem to be limited to occasions when the village wishes to raise funds for a specific purpose, such as "maulidi" or building a mosque ...

p. 62 - Land tenure in the marginal settlements of Pemba island

... The sea is said to be "God's waqi", (waqi ya Mungu) and may be used by any member of the settlement, and the same applies to the frequent ponds in these areas. Fish traps ("madema" only; the elaborate "uzio" is not found here) may be set up by any member of the settlement so long as he respects the rights of others who have set up traps before him ...

p. 68 - ... There is freedom for anyone to fish or to set fish traps anywhere ("do you pay rent for the sea?") and palm fronds and fuel may be gathered anywhere ...

Ethnic group: PEOPLES OF GREATER UNYAMWEZI (KIMBU, KONONGO, NYAMWEZI, SUKUMA, SUMBWA)

Author: R.G. Abraham

Title: The Peoples of Greater Unyamwezi

Publisher: RSA - IAI, London

Year: 1967

Text

p. 11 - I use the term "greater Unyamwezi" in the course of this work to refer to the total region under discussion, i.e. that part of west-central Tanganyika which comprises the countries of the Kimbu, Konogo, Nyamwezi, Sukuma and Sumbwa ...

p. 33 - Unlike other crops, rice is often cultivated in small flat plots of lower-lying ground with low soil walls around them to retain rainwater. Sometimes irrigation based on dams is also found. Bananas, tomatoes and onions are often planted around natural depression which hold water ...

p. 61 - ... a chief was and to some extent still is held to be able to control those forces such as rainfall which determine the prosperity and well-being of his subjects ...

Land Tenure. In Unyamwezi proper and elsewhere, all land is said to belong to the chief. Subjects, nevertheless, possess rights in land and enjoy considerable security of tenure ...

Every household head has the right to hold land both for cultivation and for habitation ...

p. 82 - Neither chiefs nor subjects have the right to sell land in a chieftom ...

p. 83 - Water for human use is free to all, whether it is found naturally or in a specially prepared water-hole. Water for cattle is more restricted and can only be obtained from a man-made water-hole with the permission of the owners. This may be refused in time of scarcity ...

TOGO

Ethnic Group	Social structure and habitat	Political structure	Environment	Predominant modes of production	Economy	Agriculture	Water Resources	Fishing	Irrigation
Estonian ⁷³	clan	kingdoms	-savannah -mountain	-agriculture -fishing	auto- subsistence	no data	abundant	no data	no data

⁷³ Toom (North).

Ethnic Group	Conflicts/ fishing rights/ transport (16)	Colonization (11)	Legal systems (13)	Land issues (12)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (18)	Protection of water quality (17)	Conflict resolution (19)
Kotokoll	rights on fishing grounds by community	-France -Germany	African traditional	-control by chief de la terre -granting of land by chief de la terre, according	no data	-control by family and by community	protection of rights of way to water sources	no data	justice de la terre

Ethnic group: **KOTOKOLI**

Author: **Froelich, Alexandre Cornevin**

Title: **Les Populations du Nord-Togo**

Publisher: **ESA - IAL, London**

Year: **1963**

Text

p. 38 - ... Nous avons donc, en pays Kotokoli, un système d'organisation politique de type assez évolué, basé d'un royaume de type quasi féodal dont le suzerain, toujours choisi dans le clan noble est investi d'un pouvoir rituel qui intéresse l'ensemble du royaume; par contre son pouvoir temporel ne s'étend pas au-delà de son fief propre ...

L'Uro Eso, dans son fief suzerain, personnifie l'alliance du peuple avec les divinités et concède, notamment, le droit d'exploiter la terre. Son sacerdoce de "chef de la terre" est reconnu par toutes les chefferies vassales, les "ledire" ...

Chez les Kotokoli, la terre appartient à Dieu (Eso) suivant la brocart "Ade lada ka esotena" (la terre est la chose de Dieu), et il en est de même chez les Bassari. Le chef de la terre est en le gérant, chargé de la conserver, (p. 39) de la répartir et de régler les litiges. Il jouit de ce fait de certains privilèges ...

Le chef supérieur délègue son pouvoir aux chefs subalternes jusqu'à l'échelon village, mais reste l'arbitre suprême.

La terre n'est pas susceptible d'appropriation individuelle ni d'aliénation; le droit d'usage appartient à celui qui la met en valeur sous réserve de l'accord du "Lada ndo"; ce droit se perd par non-usage, après deux ou trois ans de jachère. Le droit de propriété ne s'applique qu'à la récolte ... Un étranger ne peut cultiver qu'après autorisation du chef et paiement d'un léger droit ...

Dans les montagnes, sous l'influence des coutumes Lama, les rivières sont propriétés familiales avec les arbres utiles qui poussent sur leur bords, et le droit d'usage entre membres de la famille en est réparti par la da-ndo. Dans la plaine, les rivières sont propriétés collectives des villages. Il existe partout des servitudes pour l'eau ...

... la chasse et la pêche sont libres sur les terres de la collectivité dont dépend le chasseur

...

TUNISIE

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Quero da Galvão	-Kwanga -tribe	diffused power	-semi-arid -villages	agriculture	-auto- subsistence -market	-irrigation, by canal	limited	no data	-control by individual, Kwanga -rights of selling, buying irrigation infrastructure -water rights in operation always

Elmto Group	Conflict/holding rights/transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Oasis de Gafsa	conflicts, important	France	Islamic derivation	private appropriation	no data	no data	-control by community -private appropriation -authorization needed for digging well, basin on communal land -duty to community digging, maintenance -duty to provide water -authorization needed for watering -precedence rules -protection of rights of way to water sources -specific organization dealing with water and with waterworks	no data	litigation

Ethnic group:	OASIS DE GAFSA
Author:	Mondher Kflani
Title:	L'Influence de l'Etat dans la Transformation du Système Hydraulique du Groupe d'Oasis de Gafsa (Tunisie)
Publisher:	Genève Afrique
Year:	1989, vol. XXIV, No. 2

Text

p. 9 - Le système hydraulique traditionnel: l'eau fonde la communauté.

... La mise en valeur de l'oasis a en effet ceci de particulier qu'elle exige un certain degré de concertation et de planification. L'entretien du système d'irrigation, les unités de mesure, la distribution de l'eau et les droits d'usage nécessitent une réflexion et une action communes de la part du groupe concerné.

Le système hydraulique est donc plus qu'une simple technique d'arrosage. Il apparaît comme un ensemble de cadres institutionnels et juridiques, de structures socio-politiques et de constructions symboliques. Partout, dans le plus petit espace oasien, les aménagements hydrauliques s'accompagnent de réglementations précises, de modes d'appropriation consacrés par la coutume et de valeurs socio-culturelles correspondantes: densité et richesse de ces formes construites qu'atteste la grande diversité des situations d'une oasis à l'autre.

Dans les groupes d'oasis qui nous intéressent et qui occupent environ 3300 hectares dispersés dans un rayon de trente kilomètres, nous pouvons distinguer sept systèmes de répartition de l'eau, ses propres règles de jouissance, ses propres techniques de mesure, ses propres normes de contrôle et de sanction, et ceci alors même qu'ils disposent tous des mêmes caractéristiques hydrogéologiques et du même potentiel hydraulique ...

p. 11 - Le village d'El Kaar comme ses voisins immédiats, comme l'ensemble des villages et centres urbains du sud tunisien, était organisé - il l'est encore en partie - sur le mode lignager à l'instar des tribus ou fractions de tribus nomades qui prédominaient dans la région ...

[Le système lignager ... y apparaît alors comme l'élément central, le principe qui organise et ordonne aussi bien le mode d'accès à l'eau que sa distribution.

La propriété de l'eau dans l'oasis d'El Kaar était distincte de celle de la terre, c'est-à-dire que l'eau s'achetait et se vendait indépendamment de la terre qui subissait de son côté le même traitement. De plus, cette propriété était toujours une propriété individuelle, elle n'était jamais collective. Le lignage n'apparaissait qu'au moment de la répartition de l'eau des sources qui alimentaient l'oasis entre ses différents propriétaires. Le principe d'attribution était le suivant: la quantité globale d'eau que recouvrait l'ensemble des parts individuelles possédées dans l'oasis se traduisait par un tour d'eau qui en répartissait la distribution dans le temps. Le tour d'eau, anciennement d'une durée de vingt-cinq jours, distribuait l'eau d'irrigation d'abord par lignage: tel lignage venait en premier et ainsi de suite jusqu'au dernier selon un ordre fixe; ensuite, à l'intérieur du temps d'eau lignager, chaque propriétaire membre du lignage recevait sa part ...

p. 12 - Chaque propriétaire pouvait, à partir de la position d'ordre qu'il occupait à l'intérieur d'un lignage, disposer librement de son eau. A un autre niveau, et toujours en vertu du principe de dissociation de la propriété de l'eau et de la terre, le système de distribution lignager permettait l'insertion de nouveaux venus en leur assignant une place dans un ordre préalable. Ainsi par exemple, telle personne ayant acheté une part d'eau dans un lignage faisait désormais partie de ce lignage, de moins en ce qui concernait la répartition de l'eau. Dans une telle figure,

ce n'était pas la propriété de la terre qui jouait le rôle d'intégrateur dans l'oasis mais la propriété de l'eau ...

Le mode de répartition de l'eau crée de liens de solidarité et aboutit à former et à renforcer une identité propre à chaque lignage ...

L'expression "l'eau fonde la communauté" prend ici tout son sens: l'ordre lignager opère un regroupement face à l'éclatement individuel. Il constitue le cadre dans lequel se reconnaît et évolue la communauté. C'est lui qui traite et filtre les conflits. C'est également lui qui organise l'entraide et les travaux menés en commun, enfin c'est lui qui règle les multiples transactions de vente, de location, de prêt et d'échange de l'eau. Plus fondamentalement l'ordre lignager se présente comme le symbole même de la communauté puisqu'il est à l'origine du partage des sources d'eau ...

p. 13 - Un riche vocabulaire d'eau traduit un savoir-faire très précis comme l'entretien des canaux et le curage des sources, et désigne les multiples gestes et techniques liés à l'irrigation.

Si l'eau associée à l'ordre lignager résume la communauté oasienne, elle en assume aussi les contradictions et les conflits. De tout temps les individus et les lignages se sont disputés, parfois jusqu'au sang, les parts d'eau, la prééminence dans le tour d'eau et le contrôle des nouvelles sources. Les actes notariés privés et les procès judiciaires attestent de la fréquence et de la virulence de ces disputes qui ont quelquefois nécessité l'intervention du pouvoir central dont se défie pourtant généralement la communauté oasienne.

L'analyse des archives dévoile un univers procédurier très développé chez les oasiens. Les transactions sur les terres et les parts d'eau, fréquentes dans l'oasis, étaient systématiquement consignées dans des documents en prévision des réclamations et des contestations qui ne manquaient jamais de se manifester entre les villageois. La lecture de ces pièces nous permet en effet de constater une profonde mobilité des fonds d'eau qui se traduisait par la constitution et la dissolution de petites "fortunes" ...

p. 14 - L'oasis traditionnelle et le pouvoir beylical. Le pouvoir beylical traditionnel,⁷⁴ trop faible et surtout intéressée par les rentrées fiscales prélevées bon an mal an sur la population des oasis, n'a jamais songé à contrôler ces communautés et encore moins à imposer une règle unique aux différents systèmes hydrauliques. Ses interventions, qui eurent lieu pour la plupart sur l'initiative des collectivités concernées, se sont limitées à fixer par un décret ou sur un acte notarié les modalités reconnues par la coutume ...

⁷⁴ ... C'est simplement le pouvoir ou de l'Etat beylical. Ce que nous voulons désigner par ce terme, c'est simplement le pouvoir central tel qu'il apparaît depuis le 18^e siècle, à la suite de l'occupation ottomane de la Tunisie et dont les velléités centralisatrices se sont accentuées vers la deuxième moitié du 18^e siècle.

UGANDA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Integration (9)
Buglun (Oden)	kinship	-diffused power -rain making power	-savannah -mountain, humid	-agriculture	-auto-subsistence	-no data	-abundant	-no data	-no data
Ganda, Boga (Bogunda-Bugunda)	-kinship -clan -village, concentrated -patrilineal	kingdoms	-savannah -village	-pastoralism -agriculture -fishing	-auto-subsistence -market	-no data	-abundant	-no data	-no data
Kiga	family, extended	diffused power	-river, lake -mountain, humid	-pastoralism -agriculture	-auto-subsistence	-no data	-abundant	-no data	-no data
Lango	village, concentrated	-diffused power -rain making power	-savannah -river, lake	-pastoralism -agriculture -fishing	-auto-subsistence -market	-no data	-abundant	-inland, fresh waters	-no data
Nyoro (Banyoro)	-kinship -clan -village, scattered -patrilineal	-chieftains -rain making power	savannah	-pastoralism -agriculture	-auto-subsistence	-no data	-abundant	-no data	-no data
Shab	-kinship -clan	diffused power	semi-arid	-pastoralism -agriculture	-auto-subsistence	-rainfed	-limited	-no data	-no data
Toro	kinship	-kingdoms -rain making power	-savannah -forest	-pastoralism -agriculture	-auto-subsistence	-rainfed	-abundant	-no data	-no data

Ethnic Group	Conflicts/ fishing rights/ transport	Colonization	Legal system	Land tenure	Defining and household use of water	Other uses not involving construction of works	Other uses involving construction of works	Protection of water quality	Conflict resolution
Bagha (Gha)	no data	United Kingdom	African traditional	-private appropriation -granting of land by head of family	-control by community -water, free of charge -payment for maintenance -duty to maintain	-control by community -free of charge	-authorization needed for watering -protection of rights of way to water sources	no data	kinship
Ganda, Baga (Baga, Baga- Baga)	fishing control by sovereign	United Kingdom	African traditional	-control by sovereign -granting of land by sovereign	-control by sovereign -water, free of charge -payment for maintenance -duty to maintain	-control by sovereign -free of charge	-private appropriation -fee-paying for foreigners, local and foreign cattle -duty to community digging, maintenance -authorization needed for watering -protection of rights of way to water sources	-cleaning of water source -washing clothes away from source -bathing away -prohibition of entering water source -rules protecting waterworks	chieftie
Baga	no data	United Kingdom -Germany -Belgium	African traditional	-control by community -granting of land by head of family	control by community	control by community	no data	no data	-family -kinship
Lango	-fishing, control by community -rights on fishing grounds by community	United Kingdom	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge	-control by community -free of charge	-control by community -free of charge for local community and for local cattle	cleaning of water source	village

Ethnic Group	Conflicts/ Disabling rights/ transport (10)	Colonisation (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Myasa (Banyoro)	no data	United Kingdom	African traditional	-control by sovereign -granting of land by sovereign	control by community	control by community	no data	no data	chiefs
Babai	no data	United Kingdom	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge	-control by community -free of charge	-private appropriation -protection of rights of way to water sources	no data	litigants
Toro	king and chiefs	United Kingdom	African traditional	-control by sovereign -granting of land by sovereign	control by sovereign	control by sovereign	no data	no data	-litigants -chiefs

Ethnic group: BUGISU
Author: C.M.A. Gayer
Title: Report on Land Tenure in Bugisu
Publisher: Uganda Protectorate, Entebbe
Year: 1957

Text

p. 116 - As I have already mentioned, the idea of individual land tenure has existed in Bugisu from the earliest days ...

It is thus logical that the early Bagisu, who were all forest dwellers, adopted an individualistic attitude to land, which had become native customary law before their spread to the less heavily timbered plains. Undoubtedly pressure of population would by now have involved some system of individual ownership, but the important fact is that the system is of ancient and not modern usage ...

I have already shown that individual land rights are of very ancient usage and that these individual rights were subject to clan and family controls, which today we should call safeguards ...

The community has the following rights:

...

iii - The watering of cattle at any running or open waters; recognised watering places have of course been established with tracks of access.

iv - The free use of water from springs, since water is the gift of God. But where wells have been dug in times of drought a charge may be made for labour but not for the water. (Irrigation rights are a new development ...)

Author: J. B. La Fontaine
Title: The Glen of Uganda
Publisher: RSA - IAI, London
Year: 1969

Text

p. 18 - The landowner may not prohibit grazing on land that is not under cultivation, prevent people from drawing water or watering their cattle at springs on his land, or close a foot-path. He may sue for damage to his crops or alter the alignment of a footpath, but he may not deny access to these resources which are held to belong to the community at large ...

Ethnic group:	GANDA, SOGA (BUGANDA-BUSOGA)
Author:	E.B. Haydon
Title:	Law and Justice in Buganda
Publisher:	Butterworths, London
Year:	1960

Text

p. 132 - The "Mailo" System. The background to the land clauses in the Uganda Agreement, 1900, is succinctly described by Thomas and Scott:

"During Mwanga's later years and the infancy of his successor the reins of power were largely in the hands of the chiefs, foremost among whom was that strong man of affairs, the Katikiro or prime minister, the late Sir Apolo Kanwa. To these chiefs fell the task of negotiating the Uganda Agreement, 1900, with Sir Harry Johnston. Land settlement was perhaps the most contentious of the subjects dealt with, and inevitably the claims of the chiefs then in office received paramount consideration" ...

p. 133 - "But the result of the settlement was that, whereas under the old regime the usufruct of land - in fact the sum of the food and services provided by its occupiers - was available to the ruling authority, the King, for the recompense of those who were doing the King's work in the government of the country, under the new dispensation these land holdings were recognised as the private possession of those chiefs, great or small, who happened to be in the van at the time of the Uganda Agreement. These quasi-freeholdings, now supported by documentary titles guaranteed by the British Government, are the Mailo lands of Buganda, and constitute, as between the British Government and the natives, a definite partition of the land of Buganda ...

p. 164 - *Kalinda-luzzi* of the *Colobus* Monkey Clan (*Ngaye*) is the guardian of the Kabaka's well in the *Lubiri* (Palace). Each village too has its keeper of wells. If a villager does not go to do maintenance work on a well, when summoned by the village chief, he is prevented from using the well and is also fined a goat or a calabash of beer. If an individual digs a well for drinking water, anybody may draw water there but if a person does so he must thereafter assist in the maintenance of the well.

If a dog is allowed by its owner to drink in a well set apart for human consumption, the dog's master commits an offence and the penalty is to dig a new well. Similarly cattle must be (p. 165) taken to separate water places other than wells used for human consumption.

There is no restriction on watering cattle at rivers or swamps. But those who dig dams for the watering of cattle (*byesero*) have a collective right to prevent others who do not assist in the digging from watering their cattle there. Likewise a private individual who digs a dam for watering his cattle can prevent others from watering their cattle at his dam.

There are the following rules which apply to wells set apart for human consumption:

- i) no-one may go to fetch water unless his hands and legs are free of soil;
- ii) no person may take his pipe there (for if he does so he is counted a wizard);
- iii) no-one may wash himself in the well;
- iv) no-one may wash clothes in the well;

v) nobody may put a sooty pot or kettle in the well;

vi) a woman is not allowed near a well during her menstruation ...

p. 180 - Fishing. - ... The village chief, the saaza chief and ultimately the Kabaka received a share if fish landed. In the last century the village chief was entitled to receive a share of all fish landed in his village. Then there was no fishing by net, only by hook and line or with baskets ...

Finally under customary law, may fish anywhere whether in lake or river. Nowadays there are restrictions of this customary right to fish under the sleeping sickness legislation ...

Author: R. S. L. Kiwanuka & C. Mathew
Title: Native Law of Buganda
Publisher: Uganda Printing and Publishing Co. Ltd.
Year: 1941

Text

p. 8 - ... Any person who becomes the owner of mailo, let him not think that he alone is the owner of the old roads on it which the people have used of old, and let him not think that he has become the owner of running waters which were drawn by people long ago, and of springs and ponds which people have drawn of old.

And if running waters should arrive upon his mailo, and if springs and ponds should come upon it, let him not think that he has become the exclusive owner of these waters, unless they shall dry up before they have reached his neighbour's land.

Thus a man who becomes the owner of mailo where there are roads which have been used by all the people long ago, or there are waters which have been taken by all the people long ago, he will not be allowed to close those roads or to prevent people from drawing from the water ...

If there is water flowing in a channel which people have not made, and it passes over the land of a mailo owner, his neighbour will, under no circumstances, be allowed on his land to stop these waters so that they do not flow to the land of the said mailo owner ...

p. 10 - The Lukiko may, by written order, forbid the watering of cattle at any particular pond or well, upon being satisfied that such pond or well is required for the use of people for drinking purposes ...

Author: Margaret Chave Fallers
Title: The Eastern Lacustrine Bantu (Ganda and Soga)
Publisher: EISA - IAI, London
Year: 1980

Text

p. 34 - Land Tenure in Buganda. - ... Without attempting to speculate on the historical origins of the system of land tenure, an attempt will be made to reconstruct the situation which existed when Buganda entered the historical period.

In all discussion of land tenure in Buganda, it must be remembered that there was no shortage of land. More land was available to those who would clear and use it. Control over land meant control over peasants and an income of tribute from one's peasants. In the words of a traditional saying, the chief rules the people, not the land ...

Most characteristically in Buganda when the Western World first hears of it, ultimate control of land was in the hands of the "Kabaka". He appointed chiefs (Bakungu) to administer territorial sections for him ...

Besides these Bakungu chiefs, it was customary for the Kabaka to reward individuals for loyal or outstanding service by giving them control over pieces of land. These pieces were passed on to the individual's heirs. For the peasants on these pieces of land, the person to whom the land was given was their chief ...

p. 36 - Another form of control of land was that of the clans and lineages ...

It seems likely that at one time the clans were stronger in their control over land ...

However, as the strength of the Kabaka grew, he asserted more forcefully his right directly to control and distribute land ...

It must be understood that these various forms of land control were not neatly defined ...

Basically, however, control over land meant control over the peasants and this control was exclusive; no peasant was responsible to more than one immediate superior at any given time ...

p. 36 - The land tenure system in Busoga differed from Buganda, not so much in principles as in scale. The scale was so much smaller that it was quite different when looked at from the point of view of an important chief, but quite similar when looked at from the point of view of the village headman or the peasant ...

p. 37 - Traditional land tenure patterns are rather better known for Busoga than for Buganda because political changes during the historical period have not directly concerned land rights, and contemporary practice is therefore closer to traditional ...

The headman ruled the land and the people on it, regardless of kinship ...

Ethnic group:	KARIMOJONG
Author:	Lucy Mair
Title:	Nomad Herdmen: The Karimojong
In:	African Societies
Publisher:	Cambridge University Press
Year:	1974

Text

p. 28 - ... The kinship system of the Karimojong, like those of the other Nilotic and Nilo-Hamitic herdsmen, is significant more in terms of rights to cattle than in any other respect. It illustrates the very important point that a lineage is not a co-operating but a rightholding group ...

p. 29 - ... Persons who are recognised as kin but do not have claims on a single inheritance, and affines who have not received a share or bridewealth, call one another merely "water kin"; they recognise an obligation of hospitality but not of giving cattle when called upon ...

p. 30 - People may also fence the waterholes they have dug at the permanent settlements. So vital is water to the Karimojong that nobody should deny another access to it, but there are always questions of priority, and in times of severe drought the herd that is watered first may get all there is. Outsiders are expected to ask permission to water stock in the settled area ...

p. 33 - Raiding is not a mere pastime. It can arise out of fighting for pasture on disputed ground, and this is a matter of environmental constraint, in that in years of severe drought herds must be driven further afield than their normal pastures. The side which has lost cattle in such a fight will try to get them back in a raid ...

Ethnic group:	HIGA
Author:	R.H. Taylor
Title:	The Western Lacustrine Bantu
Publisher:	RSA - IAI, London
Year:	1963

Text

p. 122 - The traditional system of ownership or control was primarily individualist or familial and paternal ...

The individual household-head owned most material things from clothes, ornaments, products of the soil and chase, tools, weapons, boats, livestock and their produce, houses and agricultural land. Others within a family had some degree of separate control ...

There were common rights in grazing and hunting areas, over firewood collection, natural trees, water supplies and salt-licks.

The lineage whose members lived in a particular area guaranteed the common security of individual "owners" by peaceful settlement of most disputes. It did not, however, assign or regulate the land which was acquired by its different component segments on the basis of individual claims staked out when the area in question was first settled ...

Ethnic group:	LANGO
Author:	J.H. Drifberg
Title:	The Lango. A Nilotic Tribe of Uganda
Publisher:	T. Fisher Unwin Ltd., London
Year:	1923

Text

p. 43 - ... the greatest population is to be found along the watercourses; but there are few places where it is not possible to obtain water by digging ...

p. 80 - Water is obtained from a river or well, and is fetched by the women and children at sunrise and towards sunset. The cattle are watered at a different pool from that which provides the drinking water ...

Care is taken to maintain a general state of cleanliness in a village, and a special place behind the village is set aside as a privy. Any neglect of these sanitary regulations is much resented, and has on occasions led to quarrels resulting in bloodshed ...

p. 123 - There is little of ancient code or prescribed custom governing the art and practice of fishing, but a distinction may be made between fishing by harpoon and by traps. Anyone is at liberty to summon people to a "hunt" on the area to be fished is called "echilech" ...

The first harpooner is the "won rech", owner of the fish, and the second (adopted) takes the tail end of the fish. Should a man harpoon a fish ineffectually and it falls off his weapon, he has no claim, but the next man to harpoon it is the "won rech".

p. 170 - Property and Inheritance. With the exception of the arum (hunting area), property in land is held communally by the village, the land being held to include the grazing and water rights. Even these communal rights are of the vaguest, owing doubtless to the long period of tribal migration and to the general habit of local migrations every three or four years. Being without a central and controlling authority, the tribe has little corporate consciousness ...

For all practical purposes, however, clan tenure may be disregarded, and the village is the actual unit of communal occupancy ...

p. 171 - Grazing rights and water rights, which include rights of drawing water for domestic purposes, of watering cattle and of fishing, are all (p. 172) communal to the village, and are in no way allocated to individuals. These rights are jealously guarded, and an infringement of the last two constitutes a serious offence ...

Ethnic group:	NYORO
Author:	B.K. Taylor
Title:	The Western Lacustrine Bantu
Publisher:	ESA - IAI, London
Year:	1962

Text

p. 33 - It appears that in the second half of the nineteenth century rights in land were vested in three categories of persons and validated in three ways. First, the whole land, and all in it, belonged to the Mukama or King. This right derived ultimately from conquest, and could only be extinguished by conquest or successful rebellion.

Secondly, there were feudal or fiefhold rights, i.e., the holding of estates on condition of homage and service to a superior lord. These were the right of territorial chiefs and subchiefs, who were responsible to the Mukama for the general well-being of their areas and received from their peasant cultivators tribute of various kinds, some of which they had to pass on to the Mukama.

Thirdly, there were clan rights in land, vested in clan heads, which related to the actual utilization of the soil itself ...

A household head could allocate land to his children within his family area, (p. 23) but if there was no available land the sons had to apply to the head of the clan to be given an unoccupied portion of clan lands.

Ownership was probably paternal, with women enjoying very limited rights. It is likely that there were common rights in grazing and hunting areas, over firewood collection, natural trees and water supplies ...

Ethnic group:	SEBEI
Author:	Walter Goldschmidt
Title:	Sebei Law
Publisher:	University of California Press
Year:	1987

Text

p. 143 - The resources and material goods of Sebeiland are divided according to Sebei law into two categories: those that are the product of nature, the provision of God, to which man has added nothing, and these are all in the public domain; and those in which some investment of labour or human skill has been made, and these are held as the private rights of individual adults. There are no major and significant variations of this basic dichotomy, though we will find some embellishments and minor discrepancies ...

... natural water holes are a public resource, but a dug step well is the private right of the man who dug it ...

[This basic rule of property] It derives ultimately from the basic assumption of a pastoral people that the grass, water, and salt are available to the people, or put another way, that livestock have free access to the resources necessary for their existence. From the pastoralists' point of view, then, stockownership is not dependent upon the ownership of other resources. I think this an important basic element in pastoral law ...

The public sector of the natural resources includes the following:

1. All bushland or open land on which animals can graze.
2. All free-flowing or standing water.
3. All mineral deposits, including salt, pottery clay, iron ore, cosmetic clay.
4. All natural growing plants ...
5. Wild animals.

So far as I can tell, these resources belong generically to the Sebei; that is, they are not limited to either the sangta or the pororyet, but may enjoyed by any Sebei person with whom there is a peaceable or friendly relationship. Thus I was told that one could not prevent a man from another pororyet from using salt or graze, that a fight could occur only over the cattle themselves - that is, if someone stole, damaged, or killed an animal ...

p. 150 - Thus there came to be a kind of clan quasi-territoriality in parts of Sebei, where the clan as corporate group having a concern with its own integrity exerted an influence over the sale of land. This system never overrode the freedom of access to open land which characterized Sebei pastoralism, though manifestly as open land tends to disappear the rule is of diminishing consequence. But the quasi-territoriality of the clan did not last, and furthermore it never had the character of rights - either subsidiary or overriding - to the land, for clan leaders neither

disposed of nor allocated lands once the territory was settled. Clan powers are best understood as the obligations associated with group affiliation, not as rights to property ...

p. 151 - If animals damage crops, the owner is liable for compensation. The only exception is that when a field borders on an established trail leading to water or salt, the person cultivating the land must fence it off from the trail ...

p. 247 - Let us briefly review some of the areas where we may reasonably expect differences that will have relevance to law, on the basis of our general knowledge of the problem, and taking the extreme contrasts as our first point of approach.

1. The most obvious differential between the two economies [cattle keeping and farming] lies in their relationships to land. Cattle-keeping people almost universally recognise the right of any stockowner to pasture, water, and salt; they make no restrictions other than a broad territoriality because anything else would quickly destroy the herds. One might make the proposition: if cattle-herding is to remain the paramount economic activity, then land and water will be freely accessible to all animals (and their owners). Conversely, a farming people (where land is permanently usable) must protect the farmer's right to continuous use; therefore private rights to land will be found.

2. Pastoral people must be free to move around to meet the requirements of water and pasturage; they cannot be tied to a locus. Farmers, on the other hand, must be tied to the land, which is their sustenance; they cannot freely move about, however much they might want to.

3. As a direct corollary, social units must develop around spatially defined areas in a farming society, while narrowly defined spatial units are dysfunctional for pastoralists.

4. Farmers must therefore develop institutions for the preservation of spatially defined communities, both those necessary to protect them against the predations of other peoples, and those required to maintain internal harmony.

5. The reward system of a cattle-keeping people is more closely tied to the individual fortunes of a person, is dependent upon the efficacy of his personal decision, and assigns greater importance to individuated action. It is also more given to wide changes of individual fortunes, as raids, diseases, famines, and good husbandry decimate or multiply a man's herds. By contrast, a farmer's rewards are steadier, if not surer; his circumstance is less closely tied to his personal decisions and achievements than to the circumstances of his birth. He is more dependent.

Ethnic group:	TORO
Author:	B.K. Taylor
Title:	The Western Lacustrine Bantu
Publisher:	ESA - IAI, London
Year:	1963

Text

p. 60 - The Mukama and his chiefs and lords maintained primary control of land, cattle, lakes, salt-lakes, medicinal springs, canoe services and certain commodities having exchange or prestige value like elephant tusks and lion skins ...

p. 63 - The rights of lineage or clan heads and chiefs over land and people were recognized subject to continued loyalty to the king ...

ZAIRE

Ethnic Group	(1) Social structure and habitat	(2) Political structure	(3) Environment	(4) Predominant modes of production	(5) Economy	(6) Agriculture	(7) Water Resources	(8) Fishing	(9) Irrigation
Ba-Kaba	-house -village concentrated -professional	kingdoms	-forest -village	-agriculture -fishing -trade	auto- subsistence	rainfed	abundant	-annual, fresh -inland, fresh waters	no data
Lunda ⁷⁵	-clan -village, concentrated	chiefdoms	-savannah -forest -river, lake -village	-agriculture -hunting/ gathering -fishing	auto- subsistence	rainfed	abundant	-annual -inland, fresh waters	no data
Mungo, (Bakola Tribe) ⁷⁶	family extended	no data	-river, lake -village	-agriculture -fishing	auto- subsistence	rainfed	abundant	annual	no data
Peuplées de l'Entre Congo - Ubangi (Ngbande)	-clan -village concentrated	diffused power	-forest -river, lake -village	-agriculture -fishing	auto- subsistence	rainfed	abundant	annual	no data

⁷⁵ Also for Angola.

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving appropriation of water (15)	Other uses involving appropriation of water (16)	Protection of water quality (17)	Conflict resolution (18)
Be-Kaba	-fishing, control by community -rights on fishing grounds by community -regulations on collective fishing, on private fishing, on building dams, stockades	Belgium	African traditional	-control by community -granting of land by head of village	-control by community -water, free of charge	-control by community -private pond -free of charge	-private appropriation	no data	no data
Lende	-conflicts, negligible -fishing, control by chef de plaine -rights on fishing grounds by community -regulations on collective fishing, on private fishing, on building dams, stockades -transport on water, transport rights over areas	-Paraguay -Belgium	African traditional	-control by chef de la terre, chef du clan -granting of land by chef de la terre	-control by community	control by community	-free of charge for local community and for foreigners -protection of rights of way to water sources	cleaning of water source	chieftain
Mango, (Bokoré teDoo)	-rights on fishing grounds by family, by private individuals -regulations on building dams, stockades	Belgium	African traditional	-control by extended family -granting of land by head of family	control by family	control by family	-control by family -private appropriation	no data	-family -village
Peuplades de l'antre Congo - Uluang (Ngibele)	-rights on fishing grounds by village community -regulations on building dams, stockades	Belgium	African traditional	-control by community -granting of land by head of village	no data	-control by community -free of charge	no data	no data	village

Ethnic group: BA-KUBA
Author: J. Vansina
Title: Les Tribus Ba-Kuba et les Forétières Apparentées
Publisher: ESA - IAL, London
Year: 1954

Text

p. 15 - ... La pêche dans les (p. 16) grandes rivières se fait par les riverains, pour qui la pêche devient une spécialité ...

Les riverains construisent des chenaux de deux ou trois mètres de large et d'une centaine de mètres de long, ou ils utilisent des chenaux naturels afin d'y placer des barrages dans la saison sèche ... La pêche en canot est toujours collective, et la pêche à barrage aussi; celle dernière se fait par les membres d'une même lignée ...

La spécialisation est la caractéristique la plus frappante de la civilisation Ba-Kuba. Ceci s'applique aussi à leur économie: ... pêcheurs, ... constructeurs de canot, ... fabricant de nattes, ... de sel, ... tous sont spécialistes, tous sont organisés en corporations ayant des représentants dans le grand conseil, et toutes ces occupations spécialisées sont réservées aux hommes. Le degré de spécialisation diffère d'industrie en industrie ...

p. 17 - ... il y a aussi une spécialisation régionale ... les Ba-Kele et les Ba-Ngongo sont principalement pêcheurs ... Cette spécialisation est accompagnée de phénomènes tels que la fabrication en série, l'évaluation économique du temps et du travail manuel (usage de services) et enfin d'une organisation commerciale développée ...

p. 18 - La propriété. La terre est la propriété de la collectivité représentée par le roi et par les chefs à plume. Elle ne peut être vendue, mais elle peut être cédée en usufruit contre paiement ...

p. 19 - Les terres de culture sont travaillées par les lignées locales ou même par des familles individuelles (Ba-Kele). Les lignées ou familles ont le droit d'usage de ces terres aussi longtemps qu'elles sont utilisées. Les droits sur les jachères ne sont, en général, pas reconnus.

Les eaux courantes sont propriété commune, les lacs appartiennent au premier occupant; les chenaux naturels appartiennent à la lignée qui a construit un barrage à poissons dans le chenal. Les canaux creusés de main d'homme sont la propriété de la lignée qui les a creusés.

Ces canaux peuvent être vendus par leurs propriétaires, chez les Ba-Kele, mais s'il s'agit de chenaux naturels, ils ne peuvent être cédés chez les Ba-Ngongo. On paie, par pêche, un léger tribut de poisson au chef. Quant à la pêche à deux pirogues (remorquant un filet), la moitié du poisson va à chaque équipage; le propriétaire de la pirogue reçoit un tiers de cette partie et le reste est divisé entre les trois payeurs de sa pirogue ...

BENA BAYASHI

Auteur: R. Wauthlan
Titre: Le Droit Coutumier des Bena Bayashi
In: Bulletin des Juridictions Indigènes et du Droit Coutumier Congolais.

Text

p. 50 - ...

- (b) La terre est considérée comme le patrimoine des ancêtres et la propriété collective du clan.
- (c) La propriété est collective en ce qui concerne le bien-fonds ...
- (g) Le bien fonds ne peut jamais être cédé, il pourra être donné en gage prêté par un clan à un autre clan, amis, jamais cédé à titre définitif. Le droit de cueillette, de chasse, de pêche, de culture est individuel. L'individu peut céder ses droits ...

PETIT KEONDA

Auteur: Pierre Muno
Titre: Le Groupement de Petit-Ekonda
Publisher: Académie Royale des Sciences Sociales, Bruxelles
Year: 1959

Text

p. 40 - Pour faire profiter tous les enfants de ces deux aliments (viande et poisson) nos ancêtres faisaient deux partages des terres, distinguant entre terre ferme et ruisseau. Les deux sont appelés terre, mais les indigènes comprennent la différence.

Quand quelqu'un a une terre, le ruisseau qui s'y trouve n'est pas à lui, excepté quand la section de ruisseau qu'on lui, excepté quand la section de ruisseau qu'on lui a attribuée, s'y trouve. Mais cela n'est pas le (p.42) cas ordinaire: parfois le propriétaire d'une terre où se trouve un ruisseau reçoit sa section de ruisseau près de son père, dans la partie de terre d'un autre. Un dicton des ancêtres dit: "mettez des pièges, mais ne placez pas d'hameçon". L'hameçon indique la pêche, les pièges appartiennent à la chasse. Ils nous apprennent ainsi: "Vous, propriétaire d'une terre, faites la chasse; mais le poisson de votre n'est pas à vous; et vous, propriétaire de ruisseau, ne prenez que du poisson, votre ruisseau se trouve sur terre d'autrui".

Voici comment les petits-fils d'Etalaka partagèrent Wala, un ruisseau qui ne traverse pas leurs terres ...

Ils le partagèrent comme suit: Depuis la partie du propriétaire du ruisseau (le père de lignée), la partie qui touche est celle de son premier-né (l'aîné). La seconde partie est celle de sa fille aînée. Et quand il y a plusieurs filles, toutes les parties qui suivent celle de la fille aînée sont à ces filles. Quand toutes les filles ont reçu leur partie qui touche à celle de la fille puînée est au second fils. Le troisième fils aura la partie suivante, et on continue ainsi jusqu'à ce que tous les enfants soient servis. Et quand il reste encore du ruisseau, c'est pour le chef de lignée, qui peut en donner à ses filles mariées ou prêter à ses amis.

Vous voyez que c'est un fils qui touche au père et un autre qui garde la dernière partie, avec les filles entre eux. Une femme ne peut être la première ou la dernière, c'est la loi: Quand votre père vous a donné une partie de ruisseau, vous pouvez l'appeler comme vous voulez. Ma section du ruisseau Wata s'appelle Liamba.

Chaque enfant ne reçoit qu'une seule section de ruisseau. Mais quand un fils meurt, sa section ne fait pas retour au père: elle est héritée par un fils restant; les filles n'en héritent pas. Et quand une fille meurt, sa section ne fait pas retour au père: les fils n'en héritent pas non plus: elle est héritée par une fille restante. Quand les fils et les filles sont mortes, leurs sections retour au père.

C'est ainsi: Vous voyez que les enfants forment deux groupes: les fils et les filles. Quand le groupe des fils est totalement éteint et que celui des filles reste chez le père, les sections de ruisseau, laissées par le groupe des fils ne vont pas au groupe des filles, mais font retour au père même. De même quand le groupe des filles est éteint et celui des fils reste chez le père, les sections de ruisseau font retour au père. Telle est la loi des ancêtres pour les ruisseaux.

Toutes les lois de nos ancêtres, tant les invariables que les variables, différencient la part de l'aîné et du cadet. C'est-à-dire le cadet recevait une moindre part, l'aîné une plus forte ...

Quand une femme se marie et que son mari n'a pas des ruisseaux que sa femme puisse écouper, celle-ci va chez elle demander à son père une section de ruisseau pour son mariage. Parfois le père de la femme n'agrée pas sa demande et lui refuse la partie de ruisseau souhaitée. Mais parfois le père de la femme consent et donne à cette fille section de ruisseau qui n'avait pas d'exploitant: (p. 46) la partie qu'elle avait reçue en partage reste toujours à sa famille, c'est une autre partie de ruisseau qu'elle reçoit en mariage. Pourquoi fait-on ainsi? Pourquoi la femme n'emporte-t-elle pas sa propre part en mariage? ...

Nous avons une grande loi (invariable) nommée Portionnage.

Nous avons un dicton chez nous: "Les mariées quittent les écoupeuses". Et quand il y a quelque part un grand vacarme nous disons: "Un vacarme comme si les mariées quittaient les écoupeuses". Les mariées ce sont les femmes qui ont quitté leur famille pour aller en mariage ...

Et quand les valeurs que le mari a versées en dot au père de sa femme ont permis l'acquisition d'une 'remplaçante' (le père ou le frère de la femme a doté une épouse avec ses valeurs), cette remplaçante est nommée 'écoupeuse'.

Aux eaux basses les écoupeuses écopent le poisson dans les sections de marais laissées par les mariées. Et à la fin des eaux basses les mariées quittent leur mari et rentrent chez elles pour quêter le poisson que leur écoupeuses ont écopé.

Quand les mariées viennent partager le poisson avec les écoupeuses nous parlons de 'portionnage'. C'est ainsi que nos ancêtres nous l'ont appris: cela existe depuis le commencement du monde.

Les écoupeuses apportent tout le poisson qu'elles ont écopé chez les mariées, et celles-ci partagent le poisson en trois lots: un lot pour l'aîné de la lignée, un pour la mariée et pour l'écoupeuse. Mais certaines rusées cachent une partie du poisson et n'apportent aux mariées que le reste, mais suffisant pour en faire trois lots. C'est pourquoi un grand vacarme accompagne ce partage.

p. 48 - Quand les mariées voient que les écoupeuses apportent peu de poisson, elles comprennent que les écoupeuses en ont caché une partie. Alors elles diminuent le lot des écoupeuses. Quand les écoupeuses constatent que le chef de lignée et les mariées reçoivent un plus grand lot, elles

s'emparent de poisson des marées et exigent un nouveau partage. Cela devient un vrai vacarme. Et c'est pourquoi nos pères répètent toujours ce dicton.

Comprenez-vous maintenant pourquoi une femme ne se voit pas refuser sa part de ruisseau chez elle? Et pourquoi elle n'emporte pas sa part en mariage? C'est pour ne pas manquer de poisson le jour du portionnage ...

Ethnic group: LUNDA

Author: Camille Brau

Title: Le Droit Coutumier Lunda

Publisher: Bulletin des Juridictions Indigènes et du Droit Coutumier
Congo-Les, Elisabethville, Congo Belge

Year: J.-A. 1949

Text

p. 193 - A) Voici les principaux droits coutumiers auxquels le chef du groupement familial peut prétendre:

1°) une partie du produit du travail de ses neveux ...

...

5°) une partie du produit de la pêche de ses neveux ou si le poisson est vendu une partie du produit de la vente ...

p. 206 - Règle concernant la propriété individuelle des produits de chasse, de pêche et de cueillette. Généralité. - Nous avons vu au début de ce chapitre que le possesseur d'un bien ayant pour origine la chasse, la pêche ou la cueillette doit non seulement payer le tribu familial à ses aînés mais encore le tribu coutumier au chef de clan c'est-à-dire le chef de terre ainsi qu'au chef de plaine. Le premier de ces tribus, celui payé au chef coutumier, s'appelle "milambo yia mwata wa nganda" (ou encore "wa lahifutahi") tandis que le second porte le nom de "milambo yia mwata wa mpata" ...

p. 208 - ... Le produit de la pêche est également soumis au tribu coutumier. En règle général, lorsque le pêcheur a capturé une certaine quantité de poissons de taille moyenne, par exemple, il doit payer au chef (p.207) de clan et au chef de plaine ...

p. 209 - B) De certaines règles coutumières en matière de pêche.

Le droit de pêche des indigènes connaît certaines restrictions. Ils ne peuvent pas, en effet, pêcher aux points où les gens du village vont puiser leur eau potable ou prendre leur bain. Cette interdiction s'étend sur une certaine distance de part et de l'autre de ces points d'eau. La coutume reconnaît certains droits au premier occupant, c'est-à-dire à celui qui, en un endroit donné d'une rivière, a, le premier, construit un barrage, "lukinda", a placé ses filets "wanda" ou ses nasses "mundji".

Le premier occupant jouit d'un droit exclusif de pêche à l'endroit où il a placé ses engins. Ce droit, du reste, ne s'arrête pas là car s'étend sur une certaine distance de chaque côté du point de pêche.

Plus l'engin de pêche employé est important et plus cette distance augmente. Ainsi, par exemple, l'indigène ayant construit un barrage jouit d'un droit exclusif sur une distance totale d'environ trois à quatre kilomètres. Mais, si par contre, le pêcheur a simplement placé des filets

ou des nasses, son droit ne peut s'exercer que sur une distance notablement réduite c'est-à-dire sur une distance total d'environ un kilomètre.

Le droit exclusif du pêcheur subsiste tant qu'il n'a pas enlevé définitivement ses engins de pêche ou abandonné le barrage.

L'infraction aux règles ci-dessus donne toujours lieu au paiement de dommages et intérêts importants.

Le pêcheur peut placer ses engins là où il le désire pour autant que l'endroit choisi ne soit pas coutumièrement interdit. De ce principe se dégage les deux règles ci-après:

Lorsque les engins de pêche sont placés en un endroit de la rivière habituelle emprunté par les pirogues, le possesseur de ces embarcations n'est nullement responsable des détériorations qui peuvent, éventuellement, être causées par ces pirogues.

Il en est tout autrement si l'endroit choisi par les pêcheurs n'est pas habituellement fréquenté par les embarcations. Dans ce cas le possesseur de pirogues est coutumièrement responsable des dégâts commis.

Pour terminer signalons que lorsqu'un indigène pêche dans une rivière formant la limite entre deux plaines, la tribu coutumière doit être payé au chef de la plaine où se tient le pêcheur ...

p. 213 - La propriété Foncière. A qui appartiennent les biens fonciers où vivent les Lunda?

Pour ceux-ci, il n'existe aucun doute à ce sujet; les biens fonciers appartiennent aux ancêtres ayant conquis les terres. Leur religion le prouve à suffisance ...

p. 214 - Les biens fonciers appartiennent donc aux ancêtres et par extension aux descendants de ces ancêtres c'est-à-dire aux membres du clan. D'autre part le Lunda, en général, qu'il soit chef ou simplement homme libre dira en parlant des terres de son clan: "Nganda yistu" c'est-à-dire "notre terre" mais jamais dira "les terres du chef".

D'autre part, il semble bien que ce droit de propriété soit plutôt un droit politique qu'un droit strictement économique. En effet, c'est l'occupation d'une région qui fait naître le droit de propriété tout comme l'abandon d'une terre dirige ce droit ...

p. 218 - Devoirs des chefs de plaines: ...

a) D'assurer l'occupation des terres du clan ...

...

c) De rendre la justice pour certaines infractions commises sur ses plaines ...

...

e) De veiller au respect des décisions prises par le chef de clan comme par exemple interdiction de pêche dans telle rivière, de chasser le gibier sur telle plaine etc. ...

p. 223 - Situation des chefs de plaines vis-à-vis du chef de clan c'est-à-dire du chef de terre:

L'organisation foncière lunda prévoit un chef de clan qui est le chef de terre et des chefs de plaines ...

C'est à titre de vassal que le chef de plaines paie au chef de clan c'est-à-dire au chef de terre les divers tribus ... Ces tribus sont les tribus politiques ou de soumission. Outre ces tribus, le chef de plaines doit également payer au chef de terre le "milambo" tribu qui, comme nous le savons, a une origine religieuse.

Malgré cette vassalité, le chef de plaines a droit à certains tribus coutumiers: nous savons que le "milambo" de chasse, de pêche et de cueillette doivent lui être payés par l'inventeur de tout bien émanant de ses plaines ...

p. 224 - ... Veut-il, en vue de protéger le gibier, interdire la chasse dans telle plaine, il doit en demander l'autorisation au chef de clan. Il en est de même s'il veut interdire la pêche dans telle rivière ou encore s'il veut empêcher, dans telle plaine, la cueillette de tel produit comme par exemple le caoutchouc.

En cas d'interdiction de chasse, de pêche ou de cueillette de produits prononcée par le chef de clan, cette interdiction frappe tous les indigènes du clan y compris les membres du groupement familial possesseur des plaines frappées d'interdiction ...

Droit des groupements familiaux des individus sur les biens fonciers du clan. - Tous les groupements familiaux établis sur les terres d'un clan ne sont pas possesseurs de plaines.

Le fait de pouvoir établir un village en un endroit déterminé confère, ipso facto, le droit aux membres du groupement familial de disposer de toutes les utilités et fécondités des terres du clan ...

p. 225 - Les membres des groupements familiaux jouissent d'un droit exclusif sur la rivière proche du village en ce sens que c'est à cette rivière qu'ils vont chercher l'eau nécessaire à leurs besoins: qu'ils vont faire rouir leur manioc etc.

Les droits de chasse, de pêche et de cueillette de chaque individu s'étend à toutes les terres du clan. Ils n'existent pas de priorité de droit ...

Autant que possible, le Lunda choisit une rivière pour marquer la délimitation des terres et ce pour deux raisons principales:

(a) Lorsque la rivière est assez large ou profonde, elle retient le gibier poursuivi par le chasseur. D'où diminution des palabres de chasse;

(b) La rivière sert de coupe feu ...

Les rivières, même si elles sont de peu d'importance, donnent une limite exacte des plaines. Dès lors il ne peut exister aucun doute quant à l'ayant droit du tribu coutumier qui doit être payé le chasseur tuez une bête dans telle plaine ...

p. 227 - ... le groupement familial possesseur de plaines n'a pas la jouissance exclusive des fruits du domaine dont il a la gestion. Ainsi le chef de plaines ne possède pas le pouvoir de réserver uniquement aux membres de son groupement (*) la chasse sur telle plaine, la pêche dans telle rivière ou la cueillette de tel produit sur le domaine dont il a la gestion ...

p. 228 - ... Les biens fonda c'est-à-dire les terres, eaux et forêts ont toujours été gravés de servitudes de passage ...

Le possesseur du fond servant ne pouvait pas interdire aux indigènes le passage sur son domaine ...

La coutume n'imposait pas de travaux que construction de passerelles ou de pirogues permettant le passage de rivières. Là où existaient de passeurs d'eau, l'usager payer un droit de passage appelé "mwombo" ...

NOTE: (*) Notons que le chef de plaines peut demander au chef de terre d'interdire sur le domaine dont il est le possesseur: la chasse, la pêche ou la cueillette au groupement familial qui a omis de payer les tribus coutumiers. L'omission de payer le tribu c'est-à-dire de présenter l'offrande destinée aux ancêtres constitue pour ces derniers une offense très grave pouvant attirer leur colère.

Ethnic group: MONGO-BOKOTE TRIBE
Author: Ernst W. Muller
Title: Le Droit de la Propriété chez les Mongo-Bokoté
Publisher: Académie Royale des Sciences Coloniales, Bruxelles
Year: 1958

Text

p. 20 - ... Huistaert ... déclare catégoriquement, ... que selon les conceptions indigènes, le propriétaire, c'est le patriarche⁷⁷ ...

p. 21 - ... La situation de patriarche est réservée au plus âgés membres masculine du groupe ...

... Dans la personne du patriarche, il faut ... faire la distinction entre la propriété individuelle, produit du travail personnelle, et la propriété patriarcale ...

... Tout Bokoté a les mêmes droit d'usage sur le sol de son propre groupe (paternel) et celui des groupes de sa mère et de ses grands-mères ...

p. 22 - ... Huistaert a relevé de nombreux cas d'aliénation... les indigènes reconnaissent explicitement au patriarche le droit d'aliénation ...

La terre est comprise dans la propriété du patriarche. Les grands cours d'eau sont exclus de la propriété chez les Bokoté ... Chacun y a le droit d'usage, de pêche et de chasse ...

Les petits cours d'eau et les eaux dormantes, au contraire, sont soumis au droit foncier comme la terre ferme. Nous y trouvons fréquemment un morcellement excessif des droit d'usage parmi les individus. A cause de leur haute valeur de pecheries, de tels lieux sont admis comme moyens de paiement. C'est pourquoi la propriété individuelle est plus fréquente en de tels endroits, à la suite de ces aliénations. Huistaert cite par exemple le cas d'un homme-médecin (nkanga) qui reçoit pour honoraires un emplacement de pêche.

Les eaux d'importance moyenne sont librement ouvertes à la pêche, pour autant que la propriété n'ait pas commencé à s'y manifester par l'édification de digues ou de barrages de pêche. Cette forme intensive de pêche est normale aux époques des basses eaux ...

p. 32 - ... Les droits de superficie sur les eaux sont, d'une manière sensible, plus nettement individualisés que ceux sur la terre ferme. De nombreux emplacements, le long des cours d'eau, sont lieux de pêche réservés: Ils sont traités comme un champ, dont dispos, par suite du travail "incorporé" au sol, le seul usager (superficiaire). Cette individualisation de droits s'exerce surtout sur les emplacements de pêche enclos par dispositifs ad hoc, et qui font l'objet, durant la saison sèche, d'une exploitation intense: Malheureusement, l'auteur qui est notre unique source pour toutes ces questions ne fait pas de différence terminologique entre le droit exclusif

77 La famille patriarcale.

et individuel de superficie et le droit du tréfonds. Cette lacune ne nous permet pas de préciser dans quelle mesure ces droits se détachent du droit de propriété du patriarche. Le fait qu'ils passent très souvent à d'autres groupes, soit comme contre-dot, permet de (p. 33) supposer qu'ils évoluent, tout au moins, dans le sens de la propriété individuelle. Hulstaert suppose que la richesse des fonds de pêche et la facilité de leur exploitation expliquent que ces emplacements soient si nettement individualisés.

Le produit des pêches entreprises avec de grands barrages ou des dispositifs analogues, et qui exigent la collaboration de plusieurs pêcheurs, est réparti entre eux. Les fonds qui se prêtent à de telles pêches sont libres de tout droit d'usage individuel ... L'individualisation des droits sur les pêcheries est plus prononcée chez les Elinga', riverains du Ruki et de la Lolaka, qui ne vivent que de la pêche et obtiennent les végétaux nécessaires à leur alimentation par troc avec les indigènes de l'intérieur. Là encore, les groupes au sein desquels la propriété foncière se transmet héréditairement sont plus petits que chez les Nkundò, habitants de la terre ferme ...

p. 70 - ... Les droits d'usage exclusif dévolus à des membres du groupe et portant sur les parties définies du territoire ont le caractère des droits de superficie. Ils sont héréditaires au sein de la famille, au sein restreint, et comportent la propriété des superficies, telles que les champs, et des édifices, tels que les trappes, les dispositifs destinés à la capture des poissons. Ce droit est de première importance pour toute la vie économique des Bokoté ...

Ethnic group: PEUPLADES DE L'ENTRE CONGO - URBANGI (NGBAKA)

Author: H. Burmens

Title: Les Peuplades de l'Entre Congo - Ubangi

Publisher: ESA - IAI, London

Year: 1958

Text

p. 38 - ... Dans la littérature il est souvent question de "riverains", de "gens des marais" ou de "gens d'eau". Comme nous l'avons déjà fait remarquer, on entend par ces noms collectifs la population qui s'est fixée principalement dans la région marécageuse située entre le bas Ubangi et le fleuve Congo ...

p. 37 - En vérité, la masse des Gens d'Eau serait constituée par un grand nombre de groupements dont les membres sont les descendants d'éléments hétéroclites: un mélange de l'ancienne population avec des groupes refoulés, des émigrés, des assujettis ou des absorbés, c'est-à-dire des gens d'origine disparate ...

p. 51 - ... la région du Congo-Ubangi ... On distingue au moins quatre grands groupes culturels: celui des NGBANDI, celui des NGBAKA, celui des BANDA (MBANDJAI) et celui des NGOMBE. Mortier voudrait en ajouter un cinquième, celui des NZOMBO ou NGBAKA-AMABO ...

Plusieurs de ces éléments (cités par Mortier) se retrouvent chez les GENS D'EAU ...

p. 78 - Droit de pêche. - Il serait d'une importance moins grande que le droit de chasse; en tout cas, il n'est que rarement signalé.

Quant aux Nghandi, nous savons seulement que "celui dont un parent a péri dans l'eau a la propriété de cet endroit et ceux qui y pêchent lui paient une redevance. Au rapide de Bay (Banzville), chaque rocher était la propriété exclusive d'une famille qui seule pouvait y placer ses nasses". En 1930 l'administration a ordonné que chaque famille y pêche à tour de rôle.

CRABBECK signale que chez les NGBAKA chaque femme est obligée de remettre annuellement six grands poissons au chef du village ou patriarche "win".

En ce qui concerne les GENS D'EAU, les premiers poissons capturés par un jeune homme sont donnés à ses parents les plus proches. Souvent on fait la même chose lors de la nouvelle saison. Une partie de la pêche est toujours donnée au chef du village ...

p. 90 - La propriété. - Nous ne disposons pas de données suffisantes pour nous former une idée claire et exacte de la propriété mobilière et immobilière chez chacune des peuplades; pour les NGBAKA toutefois, grâce à une étude assez détaillée de NONKEL, nous sommes suffisamment renseignés sur le droit foncier coutumier.

Le droit foncier chez les NGBAKA est basé sur le principe que le sol appartient à la communauté. Un individu est seulement "propriétaire des (p. 91) produits du sol", lorsqu'ils sont le résultat de son travail ou de son initiative ...

... un individu "est propriétaire de toute la partie immeuble par incorporation ..."

p. 92 - (Les limites entre les terres respectives de clans ne sont en général jamais des limites naturelles, formées par des ruisseaux. Ceux-ci se trouvent toujours dans, et non pas entre, les terres, l'eau étant la préoccupation première lors d'une occupation, surtout à cause du poisson qu'elle contient. En effet, l'alimentation des NGBAKA étant déficiente en protéines animales, ils apprécient fortement le poisson. Puis, en région de savane, l'eau signifie galerie forestière, donc produits de cueillette) ...

Si nous pouvons dire que la communauté est propriétaire des terres qu'occupent effectivement ses membres, y compris les jachères de rotation normale, le terme de propriété n'a toutefois pas exactement le même sens qu'en droit européen. Mieux sera de dire que la communauté a "un droit de monopole sur le sol, comme conséquence de la mise en valeur par un de ses membres; ...

p. 93 - ... Des notions semblables en rapport avec la régime foncier se rencontrent chez les GENS D'EAU ...

ZAMBIA

Ethnic Group	Social structure and habitat (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Bembe	no data	chieftains	savannah	-agriculture -fishing	auto- subsistence	rainfed	no data	no data	no data
Ha	-clan -village, concentrated -matrilinear	chieftains	-forest -river, lake -village	-pastoralism -agriculture -fishing	auto- subsistence	rainfed	abundant	no data	no data
Lozi "	-homage -tribe -village concentrated	kingdoms	-savannah -river, lake -village	-pastoralism -agriculture -fishing	auto- subsistence	irrigation by flooding	-seasonal -abundant	-annual -inland, fresh waters	no data
Plataneu-Tonga	-family extended -clan -village, concentrated -matrilinear	-diffused power -radio making power	-savannah -village	-pastoralism -agriculture -fishing	auto- subsistence	rainfed	-seasonal -limited	inland, fresh waters	no data

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Bembe	fishing control by sovereign	United Kingdom	African traditional	control by sovereign	no data	no data	no data	no data	chief/chiefs
Ue	-fishing, control by community -rights on fishing grounds by community	United Kingdom	African traditional	-control by community -granting of land by head of village	control by community	control by community	no data	no data	-village -chiefs
Lele	-fishing, control by community, by sovereign -private appropriation -rights on fishing grounds by community, by sovereign -regulations on collective fishing, on private fishing, on building dams, stockades	United Kingdom	African traditional	-control by community, by sovereign -granting of land by head of village, sovereign	no data	control by sovereign	control by community	no data	village

Ethnic Group	Conflict/ fishing rights/ transport (10)	Colonization (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Pulaas-Tompa	-private appropriation -regulations on collective fishing, on private fishing, building dams, stockades	United Kingdom	African traditional	-control by community -granting of land by head of village	-water, free of charge -duty to maintain	-control by community -free of charge	-private appropriation -duty to community -digging, maintenance -authorization needed for watering -penalties rules	no data	village

Ethnic group: HKMBA
Author: Narana Coïseoro
Title: The customary laws of succession in Central Africa
Publisher: Junta de Investigações do Ultramar, Lisboa
Year: 1965

Text

p. 185 - ... Generally speaking the Bemba are not fishermen although fish enters into their ritual life and it is supplied to the "mfumu" as tribute by his subjects. Equally as fish is not a regular item of their diet, fishing does not occupy much of their time as happens among the Unga of Bangwetu swamps. However, near the rivers some permanent Bemba fishing-villages are found and their inhabitants (abalonga) regard fish as their main economic means of subsistence.

As with the fertility of land, fishing is also ritually dependent on the supernatural powers attributed to the "Citumukulu" and other chiefs and village-headmen. But these spiritual powers must not be confused with any legal claim of the political and ritual leaders over the waters or fish caught by their "umwina". Traps, nets and canoes are individually owned and the holder is entitled to all the fish he catches. If an individual borrows a boat from another, the latter being its owner is entitled to a share of the fish caught during the loan.

Usually the permanent weirs are owned by the headman of that particular area and are inherited by the successor to the headmanship. The headman may allocate trap-holes in the weirs to individuals or they may be lent in return for some part of catch. In certain areas where fishing is valuable the village-headman must give his permission for the setting of nets. The best fishing area may be reserved by the "mfumu" for his own use. The fishing rights as well as rights over traps, nets and canoes are inheritable property and their owner can dispose of it "inter vivos" and "mortis causa" at his wish ...

GWEMBE TONGA

Author: Lucy Mair
Title: Cultivators: The Gwembe Tonga
In: African Societies
Publisher: Cambridge University Press
Year: 1974

Text

p. 39 - The people in question are called the Gwembe, or Valley, Tonga. They have much in common with their neighbours further from the river whom we know as the Plateau Tonga, but while they were in their original homes they had access to alluvial soils capable of permanent cultivation without having to be followed, the soils which were annually fertilized by the river flood. As a result they recognise property in land and rules for its transmission by inheritance or otherwise, whereas the Plateau Tonga, who expect to abandon an area where the soil is exhausted and never come back to it, have no such rules. Moreover, the distribution of alluvial soils was different in different parts of the river valley, and this affected the distribution of settlements ...

... Until fairly recently they planted only land near the river - "jelele" and "kutu", the banks themselves and the flood plains behind them, which would bear two crops a year, and "unda" a

little higher, which was only flooded when the river was exceptionally high, and so had to be cultivated during the rainy season. As population increased, there was not enough jale and kuli land for everyone's subsistence. The unda needed to be rested after three or four years if it was to keep its fertility, and here, when numbers grew, people ceased to maintain the rotation, so that it began to be worked out. (p. 40) This presented a problem for people who could not protect distant gardens from the depredations of the elephants and baboons; but as the numbers of these creatures were reduced by hunters with guns, men ventured further and began to make gardens in the bush, called "tamwa", from "kutama", to cut down trees. At the time of the move many of these gardens in the Upper River region, where tamwa cultivation started first, were already losing their fertility, but they were still the main source of subsistence for the Middle River people ...

All through the valley, but particularly in the Upper River, there was a constant danger of famine from all sorts of hazards. Of course the vagaries of the local rainfall were the most important, but there were also irregularities in the river (p. 41) flood, the consequence of variations in the rain higher up or in the tributary basins. Total rainfall could be up to average and yet its distribution disastrous. Ideally there have been a shower every four or five days; if instead four-fifth of the total fell on an early day, the grain could be scorched in the ground. Or too much rain might fall late in the growing season and make the plants rot in the ground; or it could fall when harvested millet heads were drying on the ground, so that they grew muddy.

The alluvial gardens depended on the time and height of the flood. An early flood could ruin standing crops. A low flood would not inundate the whole area that should have been planted. If a good flood went down too early the upper level gardens would be parched before the crops could ripen ...

p. 46 - In every neighbourhood there is a shrine where people go to pray for rain to the spirits of the first comers to the area. Its custodian, the "sikalongo", is supposedly a matrilineal descendant of the first pioneer, and has inherited the shades of his predecessors ...

In deciding the time for all these activities the sikalongo sought the advice of a prophet-diviner believed to speak with the voice of the "basangu" spirits who control the rain; such prophet were often women ...

p. 47 - When he (Scudder) was there he observed that in the conservative Upper River, where the sikalongo was still taken seriously, people planted in good time for the rains, whereas in the Middle River many left their planting too late and lost the benefit of a record flood ...

Ethnic group:	ILA
Author:	M.A. Jarman
Title:	The Ila-Tonga peoples of North-Western Rhodesia
Publisher:	ESA - IAI, London
Year:	1968

Text

p. 28 - ... Formerly, no individual had proprietary rights in land. If a man wished to clear or cultivate land he was obliged by custom and practice to obtain the permission of those villagers whose land adjoined the plot he wanted for himself ...

Fishing is an important occupation. The Ila construct weir for trapping fish, and dam some of the small streams which dry up during the dry season, the fish being scooped out when there is a little water left. They also use fish-traps shaped like conical baskets ...

p. 34 - Cattle, wives, slaves in former times, and personal property, but no land, may be inherited ...

p. 35 - The Ila have never had any centralized political organization or a paramount chief over all petty chiefs. The country was divided into about 80 communes (ciahi) each under its own independent chief ...

The territorial boundaries between "ciahi" were strictly demarcated and were treated with ritual respect. Moving or altering a neighbour's border marks sometimes led to an outbreak of warfare between the two communities. Trespass on another community's land was punished. In order to hunt or fish a stranger had first to seek permission and then to acknowledge the privilege granted him with a portion of the gains (impaizo) ...

p. 38 - The chief is the father of the community, maintaining its interests against neighbouring communities, settling the disputes of his people, helping to pay their debts. His duties and responsibilities include the allocation of new grazing grounds (he could not alter the distribution of the old), and the admission or rejection of strangers; in certain cases he could demand a tax. He settled the date for the ceremony of sending the cattle to the river, and for their return ...

The community has joint rights to the land it occupies and to all natural products of the land and the rivers flowing through it, trees, fruit, game, and fish. The rules governing rights to land were, however, never precisely formulated, there being no scarcity of land ...

p. 41 - The Ila believed in a supreme being, "Ieza", who was associated with the sky and with rain-giving ...

Ethnic group: LOZI

Author: Max Gluckman

Title: The Lozi of Barotseland in North-Western Rhodesia

In: E. Coleon, M. Gluckman, Editors,

Title: Seven Tribes of British Central Africa

Publisher: O.U.P., London, for The Rhodes-Livingstone Institute, Northern Rhodesia

Year: 1961

Text

p. 8 - ... The Lozi have therefore to build their villages on mounds in the Plain, which to some extent stand above the flood-waters ...

The number of people who can reside on a single site is limited in addition by the amount of garden-land and the fishing-sites which are attached to each mound ...

The waters of the main river and its tributaries, and of large pans in the Plain which probably are cut-off meanders of the rivers, can be fished by any member of the Barotse nation. But on the banks and shallow gulfs off the rivers and pans and in the shallow depressions which score the Plain and up which the flood finds its earliest course are valuable fishing-sites where fish can be isolated and trapped in reed-fences and earth-dams. Other dams are built between the higher parts of the Plain. All these sites are attached to particular villages ...

p. 10 - ... their resources consist of small areas of land or water which are dotted about the Plain and which have to be worked from the villages built on mounds similarly scattered. These resources are worked in perpetuity ...

Since the Lozi use their sites in perpetuity, rights of ownership in them are precisely defined in a complicated pattern ...

p. 61 - ... We have seen that the Lozi identify their kingship with their land and that each king at his installation is brought into contact with the supernatural powers of the land and after death enters into these. In addition the ways in which people settle and work the land are part of a system of social relations which again is dominated by the king. It is through this system of land-holding that the two basic sets of Lozi relationships - political and kingship - are mainly integrated, in the village and the position of the village headman.

All Lozi land and all its products belong to the nation through the king. Though one right of Lozi citizenship is a right to building and arable land and the use of public lands, it is by the king's bounty that his subjects live on and by the land. Commoners think of themselves as permanently indebted to the king for the land on which they live (p. 62) and its wild and domesticated products which sustain them ...

The king ... ultimately he has a right in every piece of Lozi land ... and he must allow every subject to fish in public waters ...

The king thus owns the land as trustee for his people.

The king's holdings of land as part of the kingship are very large, particularly in the Plain, but also in the provinces. Many villages, gardens, fishing-sites, pans, reed-beds, are specifically his ...

p. 63 - One important sign of this ownership is the canals which score the Plain and which have been dug at the order of successive kings. Each king should dig such a canal, to make easy the travels of his people, as his distinguishing mark ("sisupo") on the land itself ...

Lozi have security in their holdings within a well-established and defined system of law, administered by an organised judiciary and executive, who are alert to protect this security and its premises ...

Author:	Max Gluckman
Title:	The Ideas in Barotse Jurisprudence
Publisher:	Institute for African Studies, University of Zambia, Manchester University Press
Year:	1971

Text

p. 81 - ... Again, among the Tonga there are shallow pans of water which are stabbed for fish by battues of men in the dry season. Anyone in a defined locality about each pan may participate and take his full catch. Similar pans in the Barotse plain are held by the king and other royals, by councillors' titles, or by families through their appointed heads. Their holdings in these pans entail two rights only: (1) they may set traps at suitable points on the pan's margin; (2) they may appoint a day when anyone who wishes may come to stab in the pan, subject to paying a recognized proportion of his catch to the pan holder. After the first day there is no taxing, and if the holder stabs in the pan before this set day he loses his right to claim a part of the initial catch. Thus, as against the two rights of the holder described above,

every member of the tribe is entitled to fish with nata in the pan, to stab for fish on the appointed day subject to rendering a share to the holder, and thereafter to stab as he pleases. The pans are neither privately owned nor communally owned, but certain rights to fish them in various ways are held by different people ...

... every member of a certain social group can claim the right to be given a garden to work privately and to make certain use of public lands or waters. Once he takes over products from these, they are his ...

p. 83 - ... Thus besides the king's ritual guardianship of the whole land, his secular ownership is always manifest to the Barotse in his own villages and sites. One important sign of this ownership is the canals that score the plain, dug at the orders of successive kings. Each king should dig such a canal, to facilitate the travels of his people, as his distinguishing mark ("aisapo") on the land itself ...

Barotse have security in their holdings within a well-established and well-defined system of law, administered by an organized judiciary and executive who are alert to protect this security and its premises ...

p. 90 - ... Rights to use various parcels of land are rights to cultivate, to pasture stock, to fish, to hunt, or to collect wild products ...

p. 99 - ... A lender can reclaim his land at will but he must give reasonable notice of his intention to do so before the next productive season begins, to enable the borrower to seek for other resources. He is also barred from reclaiming his land until the borrower has exhausted the rewards of his improvements - whether this be the clearing of bushland for garden, the manuring of other gardens, or the building of a fish dam. The period of bar of action is determined by the judges' decision on how long it will be before the cleared garden should be allowed to revert to fallow, or how long the amount of manuring of the soil will increase yields (usually three years). The judges work here from their own experience as cultivators ...

p. 100 - There are many restrictions in the public interest on how an African may use his estate of production ...

I have recorded a case among the Tonga where a man who had dug a well in his garden had to replace a cow which fell into his while grazing on his maize stalks, since everyone may put his cattle to eat anyone's maize stover. Among the Barotse, tribal laws fine a man who fells fruit trees and, latterly, parent bush trees, and a man who neglects to dig the channels in his drained land and thus spoils the gardens of his neighbours may be fined and ultimately expropriated.

The working of the land and the appropriation of its products within this system of land tenure are highly individualistic. In the use of public land and waters, immediately a man kills game or fish, or collects fruits or wild vegetables or medicines, or gathers thatching grass, clay, iron ore, bark for rope, etc., these fruits belong to him, though he use them in certain customary ways which often entail sharing ...

p. 102 - In Lozi land, there are certain sites for fish traps that belong to individuals. No one else may trap there. A man must feed all his wives from his traps, equally. But while he is bound to give each wife a garden, and she may claim divorce if he does not, he would be foolish to give each wife a trap site in his fish dam. For fish are uncertain things, and if one wife had plenty of fish from her trap while the others had none, a witchcraft charge would soon flare out ...

Among the Barotse, game and fish in public waters and wild fruits belong to the tribe, through the king. That is, grazing land, stretches of water and rivers, trees, grasses, and

mineral deposits are not granted to any individual, but anyone can exploit them. The king holds the estate of administration; every subject has a right of production ...

p. 113 - ... Land is everywhere a basic means of production and hence highly valued. This is perhaps especially marked among a people like the Barotse, who (as cultivators, herdsmen, and fishers) live almost entirely off the land and its waters ...

p. 188 - ... in Barotseland no suit lies for damage caused accidentally by fire or water which, say the Barotse, "are other chiefs" - i.e., the damage they cause is considered to be an act of God. (Arson and deliberate drowning are punishable) ...

The absolute denial of responsibility where damage is caused by fire or water seems peculiar to the Barotse among the Northern Rhodesian tribes ...

Ethnic group: PLATEAU-TONGA

Author: W. Allan

Title: Land Holding and Land Usage and the Plateau Tonga of Mambaka District, O.U.P., 1948

In: Readings in African Law, Edited by E. Cotran and N.N. Rubin

Publisher: Frank Cass & Co. Ltd.

Year: 1970

Text

p. 343 - Grazing crop stover. Private rights in cultivated land lapse after harvest and cattle may graze freely on the crop stover in anyone's garden. No man may reserve the stover for his own cattle. This lapse of individual rights after harvest is clearly illustrated by a court case of which we obtained a record. The defendant in this case was a man who had dug a well in his garden. After harvest a cow belonging to a neighbour fell down the well and was injured. The defendant was held responsible for the injury and was ordered to replace the beast (Chief Siamundu, Case No. 17 of 1944-45) ...

p. 344 - FISHING RIGHTS

Insufficient enquiry was made into these ...

A fishing-weir was visited in the Magoye River near Magoye ...

It seems that the weir-holders own the right to make a weir in a certain undefined stretch of river, and can prevent others building near his weir upstream. Informants stressed the upstream ban ...

There are no boundaries between the stretches of different holders

Informants said they had never heard of a dispute over these rights.

The pool forming above the weir does not belong to the weir-maker. Any woman of the country (any local limitation?) can fish in the pool with a scoop-basket (*kuxela*) or with shrimp nets or handhold basket; men can stab or use hook-and-line or baskets there. Informants placed a point about five yards above the weir beyond which trespass would lead the holder to complain that his traps were being spoilt. He would not protest if small children fished there.

It is therefore clear that all the weir-holder owns is a right to make a weir at a certain point ...

p. 345 - ... this seems to give this man the right to inherit the rights to make the weir ...

... the men of the neighbourhood are summoned (by whom?) to fish pans on a certain day. There are no panholders who take a proportion of each man's catch as in Barotseland, but only men of a defined locality can attend (on the first day only?). Others are driven away. Each man keeps his own catch ...

Author: E. Colson
Title: The Plateau Tonga of Northern Rhodesia
In: E. Colson, M. Gluckman, editors
Title: Seven Tribes of British Central Africa
Publisher: O.U.P., London, for The Rhodes-Livingstone Institute, Northern Rhodesia
Year: 1961

Text

p. 118 - ... The village, then, exists as a real unit, but its role is a restricted one. It is a residence group, a "social" group. It is not an economic unit ...

p. 119 - In a sense a village does not even exist as a territorial unit, though it has a spatial distribution. It is not endowed with land property, though it has a certain association with the particular area upon which its huts are built ...

The headman cannot allot land, for he possesses none save that which he has cleared himself; he can merely point out to the new-comer land which has no previous claim upon it, unless he can spare a few acres of his fields ...

p. 120 - ... Pasture, the gathering of wild produce and firewood, the cutting of poles and thatching-grass, the digging of clay for pottery, and even the use of water-holes are open to all, though it is naturally assumed that a man will seek these as close to his dwellings as possible ...

The use of rivers and water-holes seems to vest in the neighbourhood and not in a particular village. When wells have been dug they belong to the men who dug them and who keep them in repair. Someone who joins a village does not gain from his residence any right to use the wells, though the owners will usually as matter of courtesy extend him an invitation to join in the use and upkeep of the wells ...

p. 129 - ... A clan owns no property; it controls no territory; it has no recognised leaders; it has no ritual centres or special ritual occasions ...

The ritual leaders of the rain cult, who were the most important men in pre-European days, were drawn from many clans ...

Author: M. A. Jaspán
Title: The Ila-Tonga peoples of north-western Rhodesia
Publisher: ESA - IAL London
Year: 1963

Text

p. 45 - ... Though in the past land for the Tonga was practically a free good, neither sold, rented nor inherited, the new conditions, of cash-crop production following on the alienation of much land by Europeans have resulted in an incipient but growing land shortage ...

p. 47 - ... Some Tonga fish on the Magoya Ngwesi and other rivers by means of weirs, traps, and spearing. Fishing on the Kafue is and always has been a monopoly of foreigners ...

p. 56 - ... Rights to land are still regarded as attaching only to the production of the planted crop, the land reverting to common pasturage after the harvest ...

Land sales are still not permitted, but land is beginning to enter into inheritance, especially since "the big farmers have invested in permanent improvements such as dams, wells, and orchards". Consequently this has add force to the request of some Tonga that they be allowed to make wills ...

p. 57 - ... The Tonga rain cult was the most outstanding ritual and cultural feature of this people. It has been said that only through the rain-shrine community was a rudimentary form of community organization made possible ...

These rain cults "organized small groups of villages for corporate activities and were able to impose sanctions on offences against their rules, but there was no hierarchy of shrines organizing the various separate cult districts into a country-wide system which could integrate the whole of the Tonga people". No was there any association between one shrine and another, or any integration of cults. Each shrine had its own rules.

The whole community was expected to participate in the rain rituals and the harvest ceremonies associated with them. Failure to do so was met with threats of ensuing general disaster ...

Colson believes that the Tonga attitude to the rain rituals "must reflect a deepseated tendency among the Tonga to equate rain rituals with political integration" ...

Author: Narana Colasoro
Title: The customary laws of succession in central Africa
Publisher: Junta de Investigações do Ultramar, Lisbon
Year: 1966

Text

p. 66 - LAND - EFFECTIVE OCCUPATION

... Before the setting up of Native Authorities in Tonga country, the land was individually acquired through effective occupation. There were no land controlling authorities under the indigenous system and the village leader was only asked to certify if the area intended for cultivation was already under the ownership of some one else ...

Land was abundant an fertile ...

p. 72 - FISHING RIGHTS

The Tonga are not good fishermen. Their main economic activity is agriculture coupled with cattle-husbandry. An individual may, however, make a weir in certain areas of the river and this entitles him to prevent others from building their weirs up-stream. The ban is certainly related to the movements of the fish and the first one to select an area may keep it for indefinite period of time. There is no fixed limit to the distance between the weirs and each case must be decided on its own merits ...

The operation of weirs is carried out by team. Normally an individual is assisted by his sons or close relatives and membership in the team entitles them to ask for a gift of fish caught every day. The members of the team also have a preferential right to inherit the weir and traps after the death of its owner.

The owner may transfer his rights to the weir permanently or temporarily with the consent of the other members. The owner can, if he chooses, abandon the site when those who worked with him will have a right of pre-emption to occupy it in order of seniority.

The women may at any time catch fish with baskets, even in another's weir without the permission of its owner, because this method of fishing is not regarded as trespassing ...

ZIMBABWE

Ethnic Group	Social structure and habits (1)	Political structure (2)	Environment (3)	Predominant modes of production (4)	Economy (5)	Agriculture (6)	Water Resources (7)	Fishing (8)	Irrigation (9)
Mohave	-village -concentrated -professional	-kingdom -rain making power	savannah	-pastoralism -agriculture -hunting\ gathering	auto-subsistence	rainfed	limited	no data	no data
Sioux (Mandans)	-lineage -tribe -village -scattered -association, voluntary	-diffused power -chieftains -rain making power	-savannah -village	-pastoralism -agriculture -hunting\ gathering -fishing -trade	auto-subsistence	rainfed	seasonal, limited	inland, fresh waters	no data

Ethnic Group	Customs/ fishing rights/ transport (10)	Constitution (11)	Legal system (12)	Land tenure (13)	Drinking and household use of water (14)	Other uses not involving construction of works (15)	Other uses involving construction of works (16)	Protection of water quality (17)	Conflict resolution (18)
Ndebele	no data	United Kingdom	African traditional	-control by sovereign -granting of land by head of house of village	no data	no data	no data	no data	no data
Shona (Mashona)	no data	United Kingdom	African traditional	-control by community, head of ward -granting of land by head of house of village, head of ward	-control by community -water, free of charge	-control by community -free of charge	no data	no data	-village -tribal ward

Ethnic group: NDEBELE

Author: A.J.B. Hughes and J. van Velsen

Title: The Ndebele

In: H. Kuper, A.J.B. Hughes, J. van Velsen The Shona and Ndebele of Southern Rhodesia

Publisher: ESA - IAI, London

Year: 1964

Text

p. 63 - Social Organisation and Political System. The Kingdom

... They speak of 1893, when the kingdom came to an end, as the time "when the country was destroyed" ...

p. 98 - Land tenure. The literature dealing with the traditional organisation of the Ndebele unfortunately gives very little information about the system of land tenure which existed before 1893, and the changes which have occurred since that date make it well-nigh impossible to reconstruct the detailed workings of the old system from the one existing today.

It seems that any system of rights over land that had operated under the rule of the Rozwi Mambo was swept away completely, and that the Ndebele king took to himself the right to allocate land as he saw fit. It is said that he would allocate large blocks to each regimental town, some for grazing and one large area for agriculture. This last was then divided up by the chiefs and headmen between the heads of the various families in the regiment ...

Rights could also be obtained by clearing virgin land, the initial process being to pollard trees around the area, which it was intended to clear ...

Ethnic group: SHONA

Author: J.F. Holliman

Title: Some Shona Tribes of Southern Rhodesia

In: E. Colson and M. Gluckman, Editors Seven Tribes of British Central Africa

Publisher: The Rhodes-Livingstone Institute, Northern Rhodesia, O.U.P., London, year 1961

Text

p. 357 - Surface water remains a problem, as rivers and streams crossing the country lose most (sometimes all) of their water towards the end of the dry season (May-October). There are relatively few springs and pans ... people have found it difficult in some parts (especially Saka Reserve) to find water for livestock or even domestic use ...

Author: J.F. Holleman
Title: Shona Customary Law
Publisher: Manchester U.P.
Year: 1953

Text

p. 3 - Local Organization. Tribal organization is based on three different local units, the biggest of which is the tribe (nyika=country), which is divided into several tribal wards (dunhu; pl. matunhu), while the population of each dunhu is grouped together in separate villages or kraals (musha; pl. misha) ...

p. 11 - ... the tribal ward has a well-defined territory ...

p. 12 - A study of Shona land tenure reveals that the ward functions primarily as a land unit. It is the autonomous ward community which, as a well-defined component part of the tribe, holds the communal right over a territory within its boundaries. It is as an accepted and eligible member of this community that a person may make use of the land for building and cultivating purposes. When this happens the communal right of the ward appears to be largely suspended from areas actually held and use by member villages, while it remains in force throughout the rest of the ward territory on which no such individualized rights are vested. These latter portions thus remain available for the reasonable requirements of all ward members and may be used collectively for grazing purposes, while the natural resources (firewood, wild fruits, honey, water, game, pot clay, etc.) may be used by them ...

p. 13 - Evidence that the right a village may have is never quite free from limitations due to the communal right, can be found in the duty of villages to allow non-members access to surface water within their area, or passage through their kraals or fields (provided, of course, that no damages is done to property), or to pick wild fruit and berries from trees or shrubs standing on or near their allotments ...

As representative of the ward community the ward headman is primarily responsible for upholding the communal right ...

He is further expected to take action in order to protect the interests of the community against unlawful use of the common territory by ward members or strangers. He is the obvious arbitrator in land disputes between villages ...

p. 14 - In time of drought, and formerly at the beginning of every new season, a similar ritual (mulwerere = a kind of thanksgiving celebration) was held to ask for plentiful rains ...

Author: H. Kuper
Title: The Shona
Im: H. Kuper, A.J.B. Hughes, J. van Velsen, The Shona and Ndebele of Southern Rhodesia
Publisher: ESA - IAI, London
Year: 1954

Text

p. 29 - If an individual stole from another tribe the rightful owner might wait on the borders of the thief's tribe and seize the first stock he could. If the tribes were not on friendly terms, there would be no redress, but if the tribes were friendly, the court of one chiefs was open to the subjects of the other, and the chiefs would enforce each other's judgments ...

ANNEX I

Ethnic groups by country

ALGERIA

TOUAREG

ANGOLA

MAIAGAS

NKHUMBI, HUMBE (NYANEKA-HUMBI)

OYAMBOYAMBO (also NAMIBIA)

OYIMBUNDU

BENIN

AIZO, FON, NAGO (CERCLE D'ALLADA)

NAGO, DJEDI

BOTSWANA

HERERO (also ANGOLA, NAMIBIA)

TSWANA, BATSWANA (also BOTSWANA, SOUTH AFRICA)

BURKINA FASO

MOSSI

CAMEROON

BAMILEKE

BOLLOU-PAHOUI GROUP

MASSA

CHAD

BARMA-Royame du Bagirmi

KOTOKO (also CAMEROON)

TEDA-DAZA

CONGO

KONGO NORD-OCCEIDENTAUX - YOMBE, DONDO, LAADI, SUNDI
and KONGO (also ZAIRE, and ANGOLA)

MBOCHI (Cuvette)

TEKE

EGYPT

BEDOU (EGYPTIAN BEDOUINS)

ETHIOPIA (INCLUDING ERITREA)

ADCHEME MELGA of SERAE region (ERITREA)

BENI AMER (ERITREA - Barca country)

BOOOS (Ben Tarché) - BET TAQUE (Haina) (ERITREA)

BORANA (GALLA) - (ETHIOPIA, also KENYA)

GALLA (ETHIOPIA also KENYA)

HARAR (ETHIOPIA - High Plateau)

PEOPLES OF SOUTH-WEST ETHIOPIA AND ITS BORDER LAND

GAMBIA

WOLOF (also BENEGAL)

GHANA

ADANGME

AKAN SPEAKING TRIBES (ASHANTI, FANTI, AKIM, KWAHU, BRONG, AKWAMU, AKWAPIM)

ASHANTI

EWE

GA SPEAKING TRIBES

DJIBOUTI

AFAR and ISSA

GUINEA BISSAU

FULA

MANDINGA - FELUPE

IVORY COAST

AGNI

BETE

KROU (also LIBERIA)

SENOUFO

KENYA

ITESO

JIE and TURKANA

KAMBA

KIKUYU

LUO

NANDI GROUP

TEITA

MALAWI

CHEWA, NGONI, YAO, TUMBUKA, TONGA, NGONDE, NYAKYUSA, MANG'ANJA, LOMWE

MALI

BAMBARA - BAMANAN

BOZO

DOGON (KADO) (CERCLE DE BANDIAGARA)

MARKA, SAKOLLE - (CERCLE DE NIORO)

MAURE - (CERCLE DE NEMA)

SONGHAY (SORKO, SORKAWA) (also NIGER, NIGERIA)

SONINKE

TOUCOULEUR - (CERCLE DE KAYES)

MAURITANIA

MAURE (Bele du Levrier)

TOUCOULEUR (also MALI, SENEGAL)

MOROCCO

BERBERE - TRIBUS ZAYANES

ZEMMOUR - NAMIBIA

BERG DAMARA, IHOM-DAMA (also ANGOLA)

HERERO SPEAKING PEOPLES OF KAKOLAND (HIMBA, HERERO, TJIMBA-HERERO, NDAMURANDA, ZEMBA-ZIMBA, HAKAONA, THWA, TJIMBA-TJIMBA, OVAMBO and others);

HOTTENTOT; (also ANGOLA)

NAMA

SAN (KUNG, ZHU, BUSHMEN) (also BOTSWANA, ANGOLA)

NIGER

DENDI (Cercle de Dosso)

HAUSA

MADURI

PEUL, WoDaaBe, PEUL Bororo (also NIGERIA, CHAD, CAMEROON)

SONGHAY - SORKAWA - SORKO; (also NIGERIA, MALI)

NIGER - TUAAREG TOUBOU-KANOURI

NIGERIA

ANAMBRA and IMO STATES

BASA (BASSA) including BASA KOMO and BASA KADUNA (Northern Nigeria)

IBO-Speaking Peoples

IGBIRA, KWOTTO (Niger-Benue confluence)

IJEBU

ITSEKIRI, AWORI, ILAGE, IJAW, URHOBO, INEME, UZIA, EKPERI, IFEKU (Nigeria delta)

Ondo Province

URHOBO

YORUBA (also BENIN, TOGO, GHANA)

RWANDA (including BURUNDI)

BUHA

SENEGAL

OULOF DU CAYOR, OULOF MUSULMANS (Badi), WOLOF RURAUX
SERER NONE and SERER DE LA PETITE-CÔTE (THIES)
SENEGAL - TOUCOULEUR (Cercle de Matam)

SIERRA LEONE

TIMNE, MENDE and LOKKO

SOMALIA

HAWIYYA, DIR, DAROD, DIGHIL, RAHAN-WIN, TUNNI (Southern SOMALIA)
PASTORAL SOMALI, Darod (Dir Isaq, Ogaden, Migerten, others, Dighil, Hawya)

SOUTH AFRICA

BASUTO - SOTHO
NDEBELE

SUDAN

BAGGARA (Northern Darfur, Northern Kordofan)
BARI - (Mongalla Province, also UGANDA)
LANGO (Mongalla Province, also UGANDA)
LULUBA
MORU (Mongalla Province) (also UGANDA)
NUER

TANZANIA

ARUSHA
CHAGGA
HAYA
ILPARAKUYO-MASAI (also KENYA)
MASAI (agricultural) (also KENYA)
MASAI (pastoralists)
MERU
SONJO
SUKUMA
SWAHILI-speaking people of ZANZIBAR
PEOPLES OF GREATER UNYAMWEZI (KIMBO, KONONGO, NYAMWEZI, SUKUMA, SUMBWA)

UGANDA

BUGISU, GISU
GANDA, SOGA (BUGANDA-BUSOGA)
KARIMOJONG
LANGO (also SUDAN)
NYORO, BUNYORO
SEBEI
TORO

ZAIRE

BA-KUBA
BENA BAYASHI
PETIT EKONDA
LUNDA (also ANGOLA)
MONGO, Bokoté tribe
PEUPLADES DE L'ENTRE CONGO - UBANGI (NGBAKA)

ZAMBIA

BEMBA
GWEMBE TONGA
LOZI
PLATEAU-TONGA

ZIMBABWE

NDEBELE
SHONA, MASHONA

