The Quest for Land - The Quest for Power

The Multidimensional Character of Tenure Disputes in Niger

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Abstract

Struggles over land are often multidimensional. Not only do resource users struggle over access to land; various politico-legal institutions compete for the right to control the resource users' access to land.

This is particularly true in societies with polycentric power structures characterized by legal and institutional pluralism, and it is particularly articulate in times of reform of the tenure system. The announcement and adoption of the land tenure reform - the Rural Code - in Niger gives a good example of how one and the same dispute harbors social and political confrontations at several levels.

Introduction

A famous professor in Political Science, Dr. Henry Kissinger, once rhetorically asked his auditorium why conflicts between and within university faculties were always so intense, fierce and merciless. And he answered in his bass voice, that it was because the stakes were so small. Analogously, it could be asked why land tenure disputes in Africa often seem to be so subtle, complex and perpetual. Here, one answer could be that the stakes are so many.

In the present article two parallel arguments are pursued. It is argued that disputes over land tenure can be understood only if a wider socio-political context is considered and if several different levels of confrontation are integrated in the analysis. Especially when the normative structures are plural and the institutional structures ambivalent. Second, when socio-political negotiability is a central concept in the analysis of land tenure conflicts it is argued that analyses should focus upon "open moments" as particularly intense periods of rearrangement of the social order. The perspective adopted in this article is one of legal pluralism focussing on institutional competition over jurisdictions. The recent history of Niger displays a remarkable case of a polycentric legal system and an impending land tenure reform which questions rules, norms and tradition and challenges authority and legitimacy.

Analytical Distinctions

When analyzing different conflicting interests in land tenure, it is analytically fruitful to distinguish between the actual access to land and the political control over the resource. While access is given to certain actors and are based upon certain rights, the interpretation and grant of these rights - the control - is vested with certain politico-legal institutions.

First, there is the confrontation between resource users over access to the resource, f.ex. two farmers competing over a stretch of land. Second, there is a confrontation between political authorities over control and jurisdictions, i.e. which politico-legal institution is entitled to grant access rights and adjudicate in disputes. Third and finally, there is a confrontation between resource users and the politico-legal authorities over the extent of the latter's control. In these areas of confrontation, social, political and legal structures and processes interact and form what is to become law and legal process structure. The sketch below outlines the actors and the areas of confrontation

Figure 1. Sketch of analytical dimension of land tenure disputes

Actors	Confrontations over
Politico-legal institutions	control and jurisdictions
	extent of user autonomy and political control
Resource users	access to land

Neither the relations between the politico-legal institutions themselves nor the relations between the political élite and the citizens - the immediate resource users - are permanent. Social rules and structures are not enduring absolutes but rights at stake in a socio-political process of conflict and negotiation. The point is, that this process continuously deposits sediments of social rules which can then be invoked as jurisprudential arguments at a later stage. To this perspective of gradual structuration must be added a notion of "open moments". Sometimes, the social rules and structures receive a shock whereby the prerogatives and legitimacy of central politico-legal institutions are questioned and no longer taken for granted. In the wake of such a challenge the stakes for these institutional actors rise considerably because the change of practice offers a possibility of reassertion and maybe increase in power as well as its demise. For the local institutional actors land tenure reforms and political transformation are such open moments where their role is at stake and much effort is done to benefit from the open character of the moment. Moore (1978:50) operates with a concept of situational adjustment as processes whereby people exploit the indeterminacies in the situation or generate such indeterminacies or reinterpret or redefine rules or relationships. In my understanding, an open moment is, on the one hand, one where the latitude for such situational adjustment is great, and on the other, one where the capacity to exploit it is crucial for the actors.

In the following I shall first outline the plural norms and the ambiguous institutions operating in the field of land tenure in Niger. Second, I shall analyze the historical sequence of state attempts to regulate, reform and change these norms and institutions in an aim to rationalize and simplify the system.

Obviously, it mostly had the opposite effect of increasing ambiguity. Ambiguity seemed to peak in the late 1980's as the Rural Code was announced, and it was further amplified as the parallel development of political pluralism took place around 1990. By exploring two trouble-cases from Eastern Niger, the multi-dimensional character of tenure disputes is revealed and the importance of open moments demonstrated.

Nigerien Politico-legal Structure, Legislation and Legal Reforms

The setting

The overwhelming majority of the population (85%) in Zinder Department in Eastern Niger is rural and engaged in smallholder agriculture and livestock raising. While the northern limit for rain-fed agriculture naturally establishes some separation between agriculture in the south and nomadic cattle rearing on the ranges in the north, a number of "pockets" of pasture land exist in the agricultural zone, and cattle corridors between the pastures make agropastoralism and mobility possible and secure transport to Nigeria (Coninck 1992; IIED, 1990). Earlier, when land was in abundance, shifting cultivation on the extended household's communal fields was the common mode of production and fallow of a long duration followed some years of cultivation. With increasing population density fallow has almost disappeared and pastures and cattle corridors are encroached upon by farmers.

The normative repertoire of property

The confrontation between resource users in their competition over land is often fuelled by a perceived scarcity of the resource and a rich normative repertoire. This is well described by Comaroff & Roberts as a wide set of rules pertaining to different aspects of f.ex tenure arrangements. However, the rules seem often not to constitute a differentiated hierarchy and the norms are of varying specificity (Comaroff & Roberts, 1981:70-106). Consequently, different norms from the repertoire can be invoked to support competing arguments in a dispute. Such two norms are not necessarily logically incompatible but are invoked so as to impose rival constructions on agreed facts. The norms are, thus,

neither inherently contradictory nor compellingly complementary. They are, however, brought into conflict by virtue of the strategic and pragmatic contingencies that arise out of conflicts of interests.

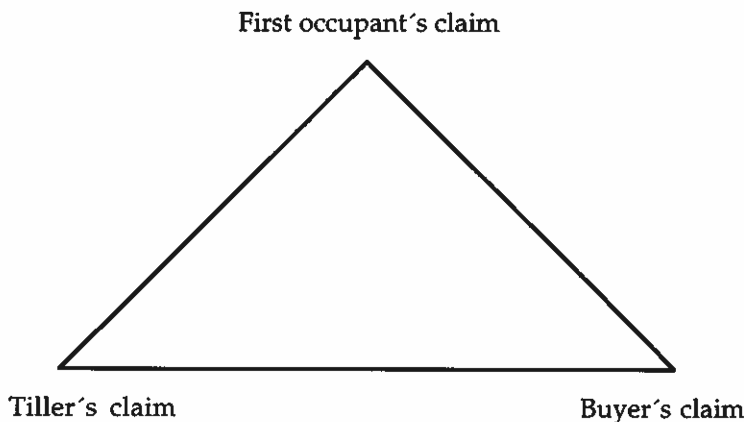
In Hausaphone Niger the notions of tenure are quite ambiguous and the tenurial claims make up a triangle. Raulin (1965:137) argues that in pre-colonial history the head of the household was accorded land through his lineage and clan and was granted the land from the Gods. The person (and his household) cultivating the land retained his right to do so until he ceased and no trace of cultivation remained. His rights thus entitled him to use it almost exclusively, but his rights were extinctive i.e. when he ceased to cultivate he would eventually loose his tenure (Raulin, 1965:134; Latour-Dejean, 1973:6). This interpretation of tenurial rights accords primacy to work as the feature defining rights.

The development of certain clan-heritage features combined with a number of different values and norms associated with Islam influenced the concept of land tenure and have counteracted the older maxims. Thus, even if land is abandoned, the person (and his descendants) who first cleared the land retains a preeminent right (Risâla:267). The initial rituals performed at the first clearance is adduced as a sign that the lineage holds special rights to the land. This hereditary right of the first occupant is not affected by actual land use. The land can be cultivated or lie fallow for many years; the first occupant and his descendants still retain a preeminent right (Latour-Dejean 1973:6). According to this interpretation the right to control, thus seems to be inalienable.

The central ambiguity in the tenure system is thus the coexistence of the inalienable rights of the first occupant and the extinctive but inexpropriable rights of the tillers of the soil. This is far from unique for Niger. Rose (1994:11-23) thus argues that when asking "How do things get to be owned ?", this fundamental ambiguity conditions the answer greatly. The opposition between a common law understanding of property based on first occupancy and the lockean notion of property as a result of labor can be found in a variety of different cultural contexts, where culturally specific languages of legitimacy express this distinction.

Commoditization of land, it is worth noting, is potentially in contradiction to the claims of the first occupant as well as the claims of the tiller of the land. Commercial transfers like mortgaging and selling are potentially contradictory to the notions of the use-right based inexpropriable right. On the other hand, commercial transactions also contradict the notion of property based on inalienable patrimony. This can be illustrated as a triangle of potentially contradictory claims to land where specific claims and tenure policies favor one or two principles over the other(s). What is conspicuously absent is the transhumant pastoralists' claims to pasture and cattle corridors. When land was abundant there seems to have been little need for them to have specified claims. And as land became scarcer, protection of pastures and cattle corridors rested on a notion of time-honored rights (parallel to the rights of the tiller) but are increasingly difficult to uphold because encroaching farmers may refer to the very same principle of putting the land to (good) use.

Figur 2. The tenurial tiangle



This triangular normative repertoire has been the object of multiple attempts of formal and informal state regulation favoring one or the other principle activating the contradictions. It has symbolized the waxing and waning strength of the commoners and the chiefs in general. But, in particular, it has

been an indication of the relationship between the technocratic political élite and the chieftaincy.

Ambiguous politico-legal structure

While the political leaders and regimes have changed in the course of time the deconcentrated prefectoral public administration linked to the traditional chiefs has been re-markably stable and constitutes the backbone of the Nigerien state. With colonization the chieftaincy was transformed by the French administration who changed their territorial jurisdictions, modified their numbers, changed the chiefs' prerogatives and integrated them into the state as administrative auxiliaries of the colonial officers, Commandants de Cercle. The chiefs have retained their administrative and judiciary role to the present.

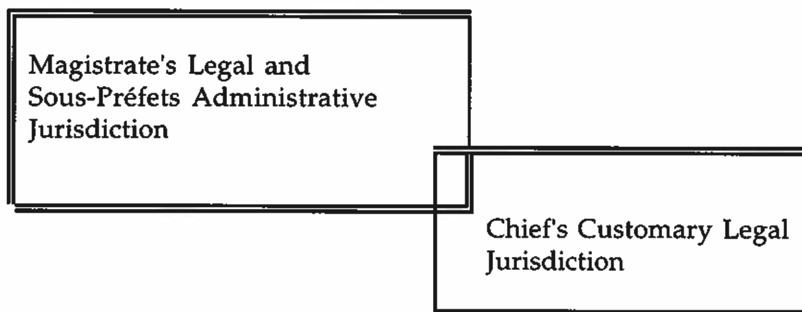
As integrated parts of the administration, the Chefs de Canton were given a central role. The colonial officer depended on the Chefs de Canton for maintaining law and order and for tax collection, and, generally, the Chefs de Canton became the link between the emerging modern state and the population. This social position offered the traditional leaders several sets of potential structural powers. The French colonial system operated with specific native laws - le Code de l'Indigénat - which applied to Africans only. The Commandant de Cercle was supposed to adjudicate between Africans according to local customs. For this, he depended almost entirely upon the partly-invented traditional leaders, and this left considerable scope for the imaginative and opportunistic invention of customs. It put the power of rule-making in the hands of the chiefs. Or, to put it in Rose's (1994:18) terms, they became de facto "authors of the text" defining acts of possession.

Although the Code de l'Indigénat no longer exists, it instituted a legal system characterized by complementarity as well as hierarchy in which the Chefs de Canton still hold a key position (Raynal, 1991:61). The division of society into citizens (Europeans) and non-citizens (Africans) meant that a number of domains - among them land tenure - were relegated to the realm of customary law. The Chefs de Canton have therefore since then dealt with tenure disputes. And customs as well as the Muslim Maliki law (Risâla), contradictory or not, are accepted

as their legal reference point handing them a large measure of discretionary power (Salifou, 1988:188-90).

The legal structure is at the same time hierarchical ranging from the Chef de Canton, over the Sous-Préfet (replacing the colonial Commandant de Cercle), to the Magistrate and the supreme Court. However, the formal limits of the legal powers of the Chef de Canton and the Sous-Préfet and the formal legal system have always remained somewhat obscure to the average farmer. Magistrates and the Sous-Préfets consider the legal system as fundamentally hierarchic while the Chefs de Canton cherish the notion of complementarity. The judicial structure is illustrated in the Figure 3. below. I have deliberately not situated different codes and rules within the jurisdictions in the figure; such a situation is continuously at stake and negotiated.

Figure 3. Hierarchy and complementarity -
A sketch of the judicial structure



Attempts to regulate land tenure - colonial period

First and foremost, the colonial administration asserted the state's ultimate right to land and any more specific rights to it were, in principle, granted by the state - replacing the divinities or at least inserting itself between them and the population.

The administration recognized farmers' use-rights and recognized local tenure customs as long as rights were considered use-rights only. The colonial criterion for keeping the use-right was that the land was "put to use" (mise en valeur). On the one hand,

this concept favored some of the local interpretations of custom, namely that he who works on the land holds the use-right for so long as he continues to work, only, it inserted a rather utilitarian notion of good use. On the other hand, the state depended heavily on the chieftaincy for the administration of the colony and did not seriously challenge the authority of the chiefs vis-à-vis the commoners. The state, therefore, also backed the notion of an inalienable right to control land allocation vested in the chiefs. One of the most frequent justifications for the tithe payment was, and still is, that it is the commoner's payment to the chief for being allowed to cultivate the land. The tenancy relationship which existed before the colonization between the first occupant and the person cultivating, thus had a generalized version of a tenancy contract superimposed upon it for vast tracts of land which were declared "terres de chefferie" during the colonial creation of a traditional chieftaincy.

The repertoire of tenure rules remained contradictory during the colonial era - a specific piece of land could be the object of multiple conflicting, but all relatively legitimate claims.

Attempts to regulate land tenure - post-colonial period

A first point to stress regarding state legal regulation reaches beyond the field of land tenure. At independence Niger maintained colonial laws insofar as they did not contradict the new constitution. Hence, without specifying precisely which laws were maintained and which were abrogated, a general confusion characterized the legal system already from independence. The procedure of creating laws without explicitly stating which laws subsequently were abrogated, has continued to characterize much of the legislative process. As Abarchi puts it: "Par paresse, le législateur (Assemblée ou Administration) se refuse souvent à entreprendre la fastidieuse recherche des règles qu'il entend abroger lorsqu'il pose de nouvelles règles. Il se contente d'indiquer dans les dispositions finales que les nouveaux textes abrogent toutes dispositions contraires" (Abarchi, 1994:23). State regulation of tenure must therefore be seen in the light of a somewhat elaborate but not excessively coherent legal tradition.

After independence, the government required some popular legitimacy. In particular, it was important for the government

and the central administration - consisting of the educated, political, urban élite with ambitions of modernization - to reduce the political, social and economic power of the chiefs.

Both during the Diori regime (1960-74) and the Kountché regime (1974-1987) steps were taken to reduce the powers of the chieftaincy and landowners vis-à-vis the use-right holders (Ngaido, 1993:3). The payment of tithes was thus forbidden in 1960 and a number of other laws were passed in the same vein during the 1960's. Generally, the formal abolition of tithe provoked a large number of conflicts between use right holders and owners of the land where the latter defied the declaration and insisted that tithe was paid or some other symbolic payment was made in recognition of continued ownership. Basically, the laws and decrees had little fundamental impact on the powers of the traditional chiefs; the laws were simply not abided by. The non-enforcement of all laws and decrees can be seen as a consequence of the state's and in particular the local administration's dependence on the chiefs. In spite of rhetoric and intentions to clip the wings of the traditional leaders little was effectively done to erode their position.

Rather, a profusion of ambiguous circulares and decrees and other authorized interpretations in the form of political speeches came into being. The law of July 19th (Loi, No. 61-30) was an attempt to specify the relations between the landowner and the use-right holder. It specifies that the land shall be the irrevocable property of he who "puts it to use" for 10 consecutive years. A number of attempts to further clarify the relationship between use-right and ownership seem to have blurred the picture further.

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

The fundamental ambiguity in tenure matters was, however, compounded by a decision to give local administrative and

traditional institutions the mandate to mediate and resolve tenure conflicts. In an ordinance (Ordonnance, No. 75-7) from 1975 the Préfet, the Sous-Préfet, the Chef de Canton and the village chief were endowed with the power to conciliate parties in tenure conflicts (Ngaido, 1993:9). This opportunity to reassert privileges and prerogatives was not neglected by the chiefs. Generally, this led to conflicts between use-right holders on the one hand, and the nobility as descendants of first occupants, and the government resorted to issuing decrees and circulares intended once again to reduce the power of the chiefs. The most significant ones first limited, then in 1977, forbade the participation of the local administration and the traditional chiefs in land conflict resolution. Consequently, no organization had legal capacity in land tenure questions; no conflict had a predictable course; and none of the institutions operating in the rural areas had formal powers in land conflicts. By abolishing formal dispute resolution, however, the claims of the tillers vis-à-vis the claims of the first occupants sanctioned in 1974, were weakened.

In spite of this new decree, conflicts and their sources did not disappear. Instead, conflicts over land became a much more discreet phenomenon. Since no organization had formal legal rights to deal with tenure issues, the plaintiff would address himself to one of a range of institutions: in addition to the Sous-Préfet and the Chefs de Canton also to different technical services in the administration, islamic priests, the Gendarmerie etc. None of them could give a final, let alone written, decision in the matter. Nevertheless, within traditional and modern state institutions the Chef de Canton and the Sous-Préfet stood out as the most powerful. Not only were their formal attributes unrivalled, their discretionary powers were quite substantial due to the complexity and resulting ambiguity of the formal laws and prescriptions regulating their operations.

Recent political developments in Niger have affected the semi-autonomous field of tenure at two levels. The impending Rural Code emphasized the urgency for resource users to secure their access to land and in conjunction with the emergence of political pluralism it re-actualized what was and is at stake for politico-legal institutions in terms of competition over jurisdictions and in terms of the extent of control.

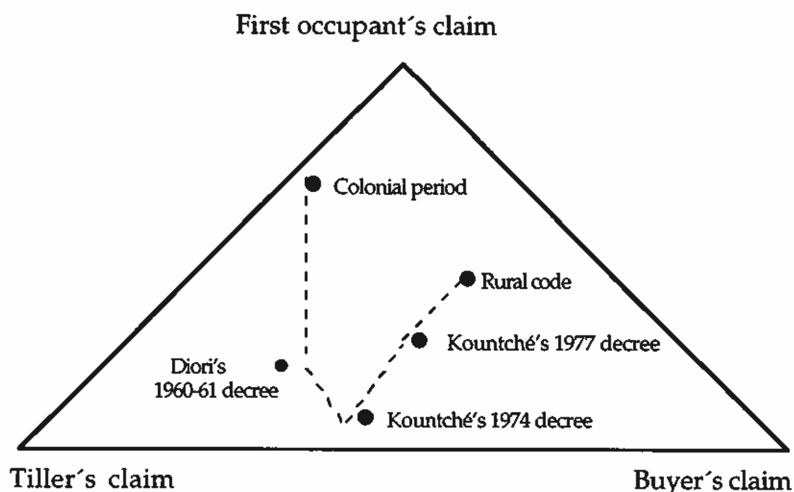
The Rural Code

From its inception in the late 1980's the project of establishing a tenure reform - a Rural Code - was an ambitious one. A range of observations had been made by the state concerning the stagnating rural development, the degradation of the physical environment and the deterioration of long-term productive capacities; and tenure insecurity was judged to be a central contributing factor. Hence, a clarification of the modes of tenure and transfer of natural resources - in particular land - was considered an important step towards reversing some of the unfavorable trends.

The ambition was to avoid changes in the actual distribution of land while clarifying the conditions under which land was held. It was decided that agricultural land could become the private property of an individual if customary rights could be asserted. Loose and quite flexible concepts like "time immemorial", "collective memory" and "customs of the area" were accorded decisive importance (Keita, 1989; 1990). The "autorité coutumière compétente" - i.e. the Chef de Canton - was recognized as the institution through which most people must pass to get private property rights formally established. Another decree from 1993 compounded this status as the central figure in case of disagreement over the "collective memory" or over what is customary.

Considering the decisive powers are invested in the chiefs, it seems reasonable to consider the Rural Code as a policy favoring first occupancy and private ownership reducing the legitimacy of claims based upon actual use of the land. Figure 4, outlines tenure policies vis-à-vis different claims. It illustrates how colonial laws basically represented an ambiguity between first occupants' and tillers' rights; how Diori's decrees favored the tillers' claims and enabled conversion to private property; how Kountché's 1974 decree compounded this by removing the 10 year cultivation limit; how the abolition of formal dispute regulation in 1977 weakened tillers' possibilities of having property recognized; and, finally, how the Rural Code as a procedural law will favor the claims of the controllers of procedure, namely the traditional chiefs in the guise of first occupants, and how their claims will be converted to private property claims.

Figur 4. The tenurial triangle and the development of tenure policies



The announcement of the Rural Code constituted an invitation to have customary rights in land recognized now in order to secure irrevocable private property rights later. "Get customary rights in your land recognized before your neighbor does it" seems to have become the message of the Rural Code retained by the general population. Thus, while the powerful institutions basically remained the same, and the multitude of legal norms remained potentially vast, a notion of deadline was inculcated by the Rural Code.

Summing up, the ambiguities providing legitimacy for contrasting interpretations of rights of access to and control over land have been perpetuated throughout Niger's recent history. The repertoire of legal rules has, furthermore, repeatedly been infused with equally varied backing. And recently, the formal disbanding of legal capacities in tenure issues for state institutions - traditional as well as modern - had the unintended outcome that all these institutions intervened in legal processes, only, tacitly and without formal rules or hierarchies of authority. Thus, hierarchy, complementarity and competition between different illicit but effective jurisdictions thenceforth characterized the legal system. And the recent Rural Code can be seen as the latest attempt to induce clarity and predictability

in the tenure system. Sofar it only furthered ambiguity and unpredictability.

This phenomenon has been observed by both legal and sociological scholars. Rose (1994:200-08) thus argues againt what she terms the "scarcity story". It argues a thesis of incresingly clear property rules resulting from increasing scarcity of a particular resource. Rose argues that while there is a drive for unambiguous clarity under such circumstances, there is a counter movement of exceptions, fluidity, imprecision and uncertainty off-setting the clarity. And a pattern of back-and-forth movement between clarity and imprecision - crystal and mud - characterizes property legislation in general. Consequently, we should not expect Nigerien tenure legislation ever to reach one of the angles of the triangle but rather expect moves towards extreme clarity to be off-set by movements towards exceptions diluting the crystal clear principles. Bauman (1991) tells us a similar tale, only in broader sociological terms when he argues for the vanity of the dream of legislative reason and the quest for order as constituents of modernity. Bauman argues that social engeneering is always imperfect in the sense that classification always produce ambivalence with cases that do not fall unambiguously on one sige of the dividing line. "Ambivalence is a side-product of the labour of classification; and it calls for yet more classifying effort. ... The struggle against ambivalence is, therefore, both self-destructive and self-propelling. It goes on with unabating strength because it creates its own problems in the course of resolving them" (Bauman, 1991: 3). Together, Rose and Bauman seem to argue that perceived scarcity may accelerate a process of clarification by classification; a process which is self-propelling because it is also self-destructive but whose self-destructiveness - its ambivalence - is an acute problem excactly due to the scarcity of the resource - land.

With the anouncement of the Rural Code the ambivalence concerning access to land spilled over to the other resource at stake: jurisdictional powers of the politico-legal institutions. Competition in this field became increasingly complicated with the advent of political pluralism.

Political Pluralism and New Players

During the military regime from 1974 to 1991 only the military's party - Mouvement National pour la Société de Développement, MNSD - was authorized to conduct politics. The regime managed to quell political opposition until the death of president Kountché in 1987.

In 1993 multi-party elections were held for the first time in decades. The slogans of the new and successful opposition party, Convention Démocratique et Sociale, CDS, were much centered around bringing back justice to the people, fighting government officials' abuse of power and the power of the associated traditional chiefs etc. During the heat of the campaign, slogans and policy promises were often given an extra twist to become more catchy for the rural electorate: abolition of the traditional chieftaincy, of the forest guards and of taxation, and retrial of all unjust trials made by the MNSD-controlled administration and traditional chiefs were tempting promises to make. In particular, it was brought forth in the propaganda that land lost due to expropriation or rigged trials conducted by the traditional chiefs was to be handed back. Though not formally committed to these promises by any official program, when the CDS won the elections, one of the major issues at the local level was the emerging land tenure disputes. The promises made by the CDS were largely remembered by the rural population.

CDS won the majority in parliament in a coalition with two other parties and subsequently participated in government. In its nomination of Préfets, Sous-Préfets and other important civil servants in the administration, party members were preferred and a tacit quotation system between the coalition parties was established. In the department of Zinder and the Arrondissement of Mariga, where the case studies are from, the Préfet and the Sous-Préfet put into office were accordingly out of the CDS quota.

With ambivalence at the level of property rules as well as the level of institutional jurisdiction and legitimacy, the early 1990's can be characterized as an open moment where much was at stake and little could be taken for granted.

Immunization of the State and Competition over Jurisdiction - Two Cases

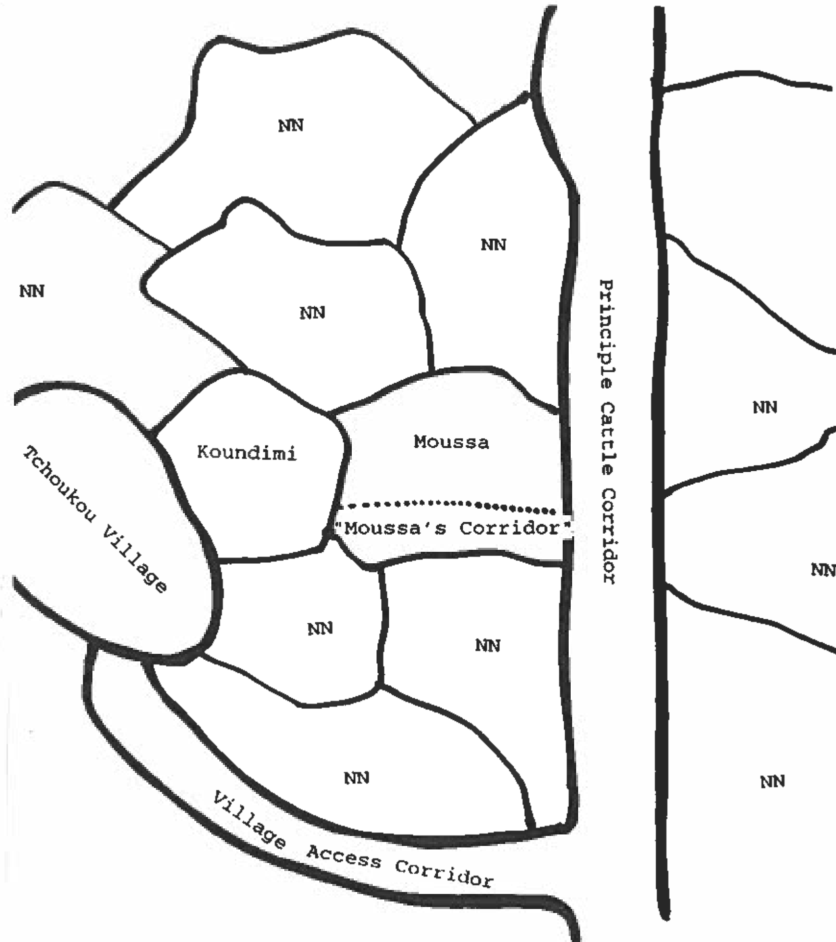
The following two cases exemplify confrontations at two different levels. The first case is an example of a dispute between individuals which developed into confrontations between an individual and the state in the guise of a governor of a politico-legal institution. The conflict was initially an "ordinary" tenure dispute but in the course of events turned into more than that. A dispute over a stretch of land between two neighbors was seized by a Chef de Canton as an opportunity for him to sort out a dilemma of his own. In doing so, the original dispute had a new dimension of confrontation added to it. In the second case simple tenure disputes caused broader mobilization and change in the local power structure and polity, Disputes over access were transformed into disputes over control and law and politics blended into each other. Several sequences of disputes ran together, and their combination and mutual influence made political instability rampant and challenged the position of the Chef de Canton.

Case 1. Moussa must compensate for others' infringements and ends up as a symbol

In 1984, the Service de l'Agriculture in Mariga was about to conduct some on-farm trials of a new cowpea variety (niebé T80). As part of their project, they selected the village of Tchoukou on the border between the Canton de Gao and the Canton de Jigawa and requested that the farmer Moussa put a field of 1 ha. at their disposal for the trial. Not too keen on the idea but unable to refuse, Moussa made over a field of little over 1 ha. But since the trial was for 1 ha. and 1 ha. only, a strip of land 5 meters wide and 300 meters long was not included in the scientific endeavor. A wealthy neighbor of Moussa's, Elhadj Koundimi, asked whether he could use the strip of land as a corridor for his cattle, facilitating their access to the principal corridor. Moussa was hesitant, but finally let Elhadj Koundimi use the land for one year. After one year the on-farm trials had collapsed due to the 1984 drought. Moussa could now plant crops of his choice and he claimed back the strip of land and encountered no problems from Elhadj Koundimi - whose cattle used the older access

corridor again. Moussa thus cultivated the land for three years. See Figure 5.

Figur 5. Outline of Tschoukou, cattle corridors and Moussa's field



Meanwhile however, the older access cattle corridor leading to the principal corridor was gradually disappearing due to the extension of fields, and disputes over crop damage began to erupt putting the Chef de Canton de Gao in a dilemma.

At one point in 1988, the Assistant Sous-Préfet and the Chef de Service de l'Elevage were on a mission to the Canton de Jigawa, and the Chef de Canton de Gao seized the opportunity to have them settle his problem of the disappearing cattle corridors.

When the Chef de Canton presented the case, he argued that some farmers had violated the principal and adjacent access cattle corridors. The Chef had assembled a group of pastoralists who backed his statement, and the authorities demanded that the corridors be re-opened. Moussa protested vehemently, and the decision concerning "his corridor" was postponed to a later meeting in Mariga. Situated on the border between the Cantons de Gao and Jigawa, the village of Tchoukou fell under the jurisdiction of the Chef de Canton de Gao, but a considerable number of inhabitants were the subjects of the Chef de Canton de Jigawa. Moussa was among these, and he went to his proper Chef to have him accompany him to the meeting in Mariga to back his interests with his authority.

The meeting held in Mariga resulted in the Sous-Préfet being favorable towards Moussa's interests, but he insisted on visiting the disputed area himself. He did not show up on the agreed date, and Moussa went to Mariga - four times in all - to ask the Sous-Préfet not to forget his promise. Moussa was anxious to have the dispute settled before the cropping season since the pastoralists were threatening to let their animals onto his fields. Finally, in late June, the same mission as the previous one - composed of the Assistant Sous-Préfet and the Chef de Service de l'Elevage and not the Sous-Préfet - came to Tchoukou. After a closed session between the mission and the Chefs de Canton de Gao and Jigawa, it was again decided that Moussa should re-open the corridor in his fields, which he finally did under protest. This was noted down in the mission's report. Moussa pleaded for a rigorous defense of his interests by his own Chef de Canton, but he would not step into the breach for Moussa; he was old, and the land was not in his Canton. The corridor was maintained for two years.

Emboldened by the paralysis of the administration during the political upheaval and democratic transition in 1990, Moussa repossessed the corridor and planted. The principal corridor was also now planted and violated, but Elhadj Koundimi reported Moussa to the Gendarmerie and he was arrested for seven days - spent weeding the fields of the two gendarmes in Jigawa. After seven days he was released and continued to cultivate.

One of the pastoralists, Zakari, tried to force his way through the planted principal corridor but was caught by the farmers, beaten up and taken to the Gendarmerie. Here, he was hand-cuffed and received another good hiding by the gendarmes for provoking disorder. He was not released to be hospitalized until his father paid up 20.000 FCFA in compensation for crop damage.

In 1991, Moussa again cultivated his field, including the contested strip of land. Since the principal corridor was now annihilated, "his" access corridor was leading "nowhere". Nonetheless, Elhadj Koundimi reported him again, and he was jailed for seven days in Jigawa, once more spent weeding the gendarmes' fields. After his release, he was immediately held back for another three days to complete the weeding.

In 1992, the Chef de Canton de Jigawa died, and Moussa put his case before his son and successor. Being a car salesman in the national capital Niamey 1000 km away, the new Chef de Canton was not interested in performing his duties in remote Jigawa; and Moussa, getting no support, finally abandoned the strip of corridor leading nowhere. The principal cattle corridor was not re-opened, and the village cattle was since then permanently in the pastures 30 km to the north of Tchoukou. In 1993, the Assistant Sous-Préfet tried to have it reestablished but was threatened with a beating by the farmers, and retreated. As a pastoralist stated: "Since democratization, the authorities dare not make unpopular decisions".

The dispute illustrates several interesting things. First, the Chef de Canton de Gao managed to shift the burden of compromise between farmers and herders from his Canton onto Moussa whose position was rather exposed - Living within the geographical jurisdiction of the Chef de Canton de Gao but not enjoying his protection since he was a subject of the neighboring

Chef de Canton and paid his taxes to him. Second, while initially defending pastoral interests, the Chef de Canton de Gao was incapable or unwilling to support the pastoral claims to the corridors in the longer term. This did not benefit Moussa who, abandoned by his own Chef de Canton, was left to become a - somewhat peculiar - symbol of the authorities' rigorous and random protection of pastoralists' interests. The violent action against the pastoralist Zakari and the no-nonsense backing by the gendarmerie were tangible deterrents to other pastoralists, and, as time passed, the chances of reopening the cattle corridor dwindled.

A general problem for both pastoralists and Moussa was the lack of higher-level political backing. Moussa lived beyond the protective reach of his own Chef and was easy prey for the energetic Chef de Canton de Gao. The pastoralists enjoyed the mixed blessing of being the subjects of the same Chef who had to straddle between antagonist interests and hence sold out on theirs only upholding a symbolic "double-dead-ended" corridor.

It is notable that the capacity to stretch or disregard rules was more developed for the Chef de Canton. He was able to exploit the indeterminacy of the situation switching effectively between positions of protection and elimination of the cattle corridors, defining "good use" of the cultivation of the main corridor and "adverse ownership" of Moussa's when he tried to reappropriate it. Moussa was less successful in a similar attempt to exploit the indeterminacy.

A seemingly trivial event was significant in certain a context - or rather - the context made certain minor events into critical contingent events which enabled or constrained action in a decisive way for the distribution of access to land.

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

During the campaign for the elections to the National Assembly in 1993, militants from the political party, CDS, promised a "new deal" without customs officers, forest guards or corrupt traditional chiefs. This emboldened a large group of farmers to fell an entire grove of doum palms. The trunks of these palms are highly valuable as construction material and are transported and sold even as far north as Agadez. The Forest guards asked

the Chef de Canton whether he had authorized the exploitation of the tree trunks, and when he denied it, he was informed that he must either identify the culprits or the entire Canton would be punished somehow. The Chef de Canton subsequently began conducting a house to house search starting in his own village. A few people were found with palm trunks in their back yard and were arrested, and the search continued to the next village. The rumors of the Chef de Canton's expedition preceded him, however, and people managed to hide most of the trunks before the chief reached the different villages. Finally, the Chef de Canton gave up. The Forest guards nevertheless insisted that the guilty be identified, and the Chef de Canton resorted to another procedure. On the following market day he publicly issued a Koranic curse on all who had cut down trees and did not report it immediately. A fair number of people came forth, and the foresters demanded fines to the tune of 8000 FCFA per trunk. The Chef de Canton managed to negotiate the fines down to 4000 FCFA per person and issued a one-week deferral of the payment.

During the following week things developed fast. Some of the discontented villagers went to Hassan Sanda - an energetic CDS militant resident in the area - to complain about the Chef de Canton's abuse of power, and he quickly contacted his party ally, Zakari Ousseini, in Mariga. Together, they saw this as an opportunity to transform the discontent into public demonstration against the Chef de Canton, and they began to collect Cartes de Famille among CDS adherents in the 24 villages in the Canton. On market day, Hassan Sanda and Zakari Ousseini turned up backed by more than 100 angry men who found courage in their numbers and the assertive, self-righteous conduct of Zakari Ousseini. The latter confronted the Chef de Canton, lecturing him on democracy and the imminent downfall of the chiefs, and he threatened him with the ongoing collection of Cartes de Famille in his Canton. Unable to mount sufficient authority to reverse the situation, the Chef de Canton angrily sent everybody away and stopped pursuing the case.

Later in 1993, when the CDS had won the presidential election and was part of the coalition government, the Zinder branch for one of the human rights associations, ANDDH (Association Nigérienne pour la Défense des Droits de l'Homme), prepared to open offices in various Cantons. One of them was the Canton de

Gao. Although the ANDDH and other associations were not formally affiliated to the CDS, the occupation of key positions in both organizations by the same people, sometimes made it hard for outsiders as well as insiders to distinguish between the two. And CDS was known to have conducted quasi-legal hearings and to have adjudicated between litigants in the absence of magistrates, Sous-Préfets or chiefs (Lund 1995a: 1991-2). Hassan Sanda was ANDDH's man in the Canton de Gao, and when he contacted the Chef de Canton to inform or request that the ANDDH establish bureaus for legal counselling in a number of villages, the Chef de Canton threatened him with a public flogging if he proceeded to establish parallel justice. Hassan Sanda did, nevertheless, proceed, and together with Zakari Ousseini a meeting was held in the first village to establish a Bureau d'ANDDH. At the meeting, two of the Chef de Canton's trusted men participated, and they reported back that Hassan Sanda was appointing Magistrates in the villages. This prompted the Chef de Canton to address the Sous-Préfet and have Hassan Sanda and Zakari Ousseini summoned.

On the day of the hearing, hundreds of CDS and MNSD militants showed up at the Sous-Préfecture to hear the proceeding and back their favorites. The Chef de Canton argued that Hassan and Zakari were mixing things up - they (the political parties) were supposed to do politics and not mess with justice - he, on the other hand, was the a-political authority in his Canton responsible for, among other things, justice. Against this, Hassan and Zakari argued that since the ANDDH was an officially recognized association, citizens throughout Niger could join it and create bureaus. Furthermore, since, unlike the political parties, the ANDDH was politically neutral, the association could take up cases of injustice on its own initiative. This had been praised by the new government i.e. the Chef de Canton's superiors. The government had employed a tacit quotation system in nominating higher level civil servants, and being from the CDS quota, the Sous-Préfet sided with the people from the ANDDH, arguing that this did not limit the Chef de Canton's authority. The Chef de Canton reluctantly accepted but took the view that if the Sous-Préfet had licensed Hassan Sanda to do as he pleased in the Canton.

After this, Hassan Sanda and Zakari Ousseini put even greater energy into collecting Cartes de Famille, and within a few weeks

an impressive 520 cards had been collected. Most of the village chiefs in the Canton were contacted to support the undertaking. Many of them were dissatisfied with the way the Chef de Canton had constantly taken the lion's share of food aid for the region and threatened the village chiefs who were in arrears with tax payments for their villages. In particular, the village chief from Kaoboul, Issaka Yahaya, saw this as an opportunity for redressing an old injustice which had befallen his lineage.

With the support of 17 of the 24 village chiefs in the Canton, Hassan Sanda and Zakari Ousseini wrote a 3 page long complaint about all the mischiefs of the Chef de Canton ranging from embezzlement of food aid and taxes, through to arbitrary rulings in disputes and impounding of harvests and cut wood, obstruction of the opening of the ANDDH bureau to his bad manners in general. The letter concluded with a plea for the replacement of the Chef de Canton and new elections among the village chiefs. In October 1993, the Sous-Préfet was given the letter addressed to the Parliament and the 520 Cartes de Famille.

The Sous-Préfet promised to investigate the affair, but refused to accept the 520 cards. He sent Hassan Sanda away with them, and Hassan kept them. The Sous-Préfet had Issaka Yahaya arrested instead, accusing him of being the mastermind behind all this trouble and of wanting to replace the Chef de Canton, the rivalry between the two being common knowledge in the area. Issaka Yahaya told the Sous-Préfet that his name was on the letter without his consent and that he knew nothing about the whole affair. The Sous-Préfet sent the Chef de la Gendarmerie to the Canton de Gao to investigate the allegations against the Chef de Canton, but he returned stating that no evidence could back the accusations of the letter, and - at least for a while - the uprising was neutralized. But the problem reoccurred during the tax payment in late 1993. Many people whose Carte de Famille was missing claimed to have paid Hassan Sanda when the Chef de Canton's courtiers came to collect. Others claimed to have understood the collection as a preparation to the distribution of food aid where the cards would be used for assessing each family's share. Whichever was correct, the result was that the Chef de Canton was unable to pay the taxes he was to supposed to. This repeated itself in 1994, and the Chef de Canton was seriously reprimanded by the Sous-

Préfet. This could undermine his position far more than the open political contestation of his position because the administration would be able to replace him with reference to tax technicalities and incompetence.

The case shows how a seemingly insignificant event of a tenure dispute over some trees in a palm grove, in the "right" circumstances or conjuncture could become a vehicle for open contestation of the chief's authority. While for Hassan Sanda and Zakari Ousseini it was a challenge to the chieftaincy itself - as the CDS propaganda made believe - the village chiefs had more limited surgery in mind. Issaka Yahaya, in particular saw his historical claim within reach. Circumstances made an alliance between these parties possible.

The case furthermore suggests that blind adherence to rules can be a politically lethal operation. By request of the Forest guards, the Chef de Canton rigorously pursued the people who had destroyed the palm grove, and the situation got completely out of hand. It is somewhat ironic that a person accused of numerous transgressions of rules and jurisdictions should stumble when he insisted on sticking to them.

By Way of Conclusion

I have here displayed two cases of complex and intense socio-political confrontation sparked off by conflicts over land and other natural resources. Whereas the complexity of the confrontation is due to the fact that several layers of conflict interact, the intensity is much due to the open character of the moment produced by the Rural Code and political pluralism. Let me first discuss the different confrontations appearing in the cases.

Both cases harbor in addition to the confrontation between resource users a confrontation between resource users or citizens and state institutions. And fragments of a pattern seems to emerge.

An immunization strategy by the authorities appears to be the first reaction against a challenge to the legitimacy of any of them or the state in general. The politico-legal institutions manoeuvre to seal themselves off from individual citizens'

contestation of authority. If, however, the challenge to authority was exercised by a somewhat organized group, it appeared less easy to neutralize, and a new set of challenges and opportunities arose. In such events, political tension could be calmed if the politico-legal institutions which were not directly challenged would dissociate themselves from the institution under attack. If the contestation of the politico-legal institutions' legitimacy and authority was not specific and pointed towards one of the institutions, however, but was, or could develop into, a general attack on the entire system, competition and rivalry between these institutions gave precedence to immunization again. Thus, when Hassan Sanda in the second case tried to bring down the Chef de Canton by means of civil disobedience, the Sous-Préfet realized the general political implications Hassan's undertaking could have if successful, and obstructed it.

If we then turn to the dimension of competition over jurisdictions between different institutions, we might see that in terms of state formation. Analytically, we are dealing with two distinct but interrelated processes: one, where existing social institutions increasingly define and enforce collectively binding decisions on the members of society, thus, assuming state character. The other process is the development of rule-ordered congruent or competitive and incongruent relationships between the social institutions.

The number of disputes treated in the ensemble of politico-legal institutions has risen considerably over recent years in the researched arrondissement in Zinder (Lund 1995b: 116-24). The process of political pluralism has first and foremost brought about open political competition; and the announcement of the Rural Code and various statements issued during the period of political transition from 1990 made land tenure a political issue. Contrary to the heyday of the MNSD-regime when the central state gave chiefs and local political institutions clearly-defined political ranks and roles in a large-scale state formation project and, thus, formalized state capacities in the traditional chiefs, the most recent trend is towards a more uncontrolled response to the socio-political development. The impetus for conferring the responsibility of defining and enforcing collectively binding decisions on the members of society originated from several quarters.

First, the political competition between the different institutions involved in dispute processing resulted in strategies aiming to extend jurisdictions, i.e. to conduct legal procedures and decide and rule in cases of tenure disputes. Second, the individual litigants made use of the considerable number of institutions and taken cases from one institution to another. Thus, state control or arbitration were requested by the citizens, not merely inflicted upon them. Abandoned by the state, rural citizens reacted by invoking the state capacities in existing institutions.

The same political processes of competition fuelled a process of institutional incongruence and rivalry. While the formal hierarchy between the various institutions denoted a certain order, it did not prevent lower instances from effectively overruling decisions from higher instances, and higher instances from referring cases back (or away) to lower instances (Lund 1995b: 131-98). Neither did it prevent self-appointed politico-legal institutions as CDS from establishing competing parallel institutions. The politico-legal institutions' dual role as political actors and administrative/legal entities was turned in favor of the former. This reduced the prospects of development towards an increasingly coherent practice for dealing with tenure disputes and conferring an element of tenure security on the production system.

The extension of jurisdictions and the development of institutional incongruence and rivalry is closely related to the contingent open character of the moment. Basically, the announcement of the Rural Code reestablished tenure as an issue and put rights in land - however they were conceived - at stake causing the increase in tenure disputes. At the level of politico-legal institutions, however, the tenure reform and the introduction of political pluralism put their roles as socio-political and judicial arbiters at stake. The controlled confrontation between citizens and politico-legal institutions and the structured competition among the latter were shocked when old political authorities were seriously contested and the distribution of authority in tenure disputes seriously questioned. The open moment thus exacted swift adjustment to the situation from the politico-legal institutions in order for them to claim as much jurisdiction as possible. In the words of Bourdieu (1994:119-20) they were fighting over the "capital juridique ... qui est le

fondament de l'autorité spécifique du détenteur du pouvoir étatique et en particulier de son pouvoir, très mystérieux, de nommer."

The above cases and the recent development in Niger indicate that analytical awareness of and openness to confrontations at other levels than that over "simple access to land" is necessary for the understanding of how and why conflicts over land evolve. Awareness of dimensions of competition over jurisdictions and over user autonomy in a particular conflict over land implies that questions of land tenure are inscribed in a wider socio-political context.

This does not mean that the superimposed dimensions of confrontation are equally important at all times. There are certain moments where more is at stake than at other times. Berry (1993) argues the that negotiability of rules and relationships is one of the fundamental characteristics of African societies. The apparently fixed titles, prerogatives and rules are constantly negotiated and reinterpreted; there is always something at stake. The cases presented above seem to confirm her statement. I think, however, it could be successfully argued that negotiability is what characterizes any society; what distinguishes them is the <u>form of negotiation</u>. And it is in particular when the form of negotiation is negotiated, so to speak, that the stakes multiply. When new rules of the game are introduced in the form of a land tenure reform or a significant political change relatively banal disputes become enriched with much more complex dimensions which easily overshadow the original dispute.

Endnotes

1. "<u>Labour</u> put[s] a distinction between them [i.e. the appropriated Fruits of the Earth] and common [Fruits of the Earth]. ... The labour that was mine ... hath <u>fixed</u> my <u>Property</u> in them." Locke (1994: Second treatice, §§ 28)

2. Raynaut (1976: 284-87) has shown that increasingly since the Second World War monetary arrangements characterize the transfer of land in Hausaphone societies. In particular, tithe-paid tenancy, loan-transactions where land is put up as collateral, and also sales have become common.

3. In principle, only the Magistrates and judges at the courts have adjudicating powers, while traditional chiefs and the Sous-Préfet have merely conciliatory powers.

4. Mise en valeur is a quite opaque concept. As an attempt to specify that not just any use of the land constitutes a legitimate property claim, it begs the question of what is good use and, subsequently, who is to define it. The concept is not very helpful in deciding whether a piece of land should be considered pasture or cultivated, or whether fallow is putting it to good use or is adverse possession, i.e. not putting it to good enough use. It can be argued that the main message of the concept is that somebody else than the occupant - the state or its representatives - can declare adverse ownership and expropriate or reallocate.

5. See e.g. article 76 in the Constitution du 8 novembre 1960 in Raynal (1993).

6. The most significant laws and decrees are: 1) the 25 May 1960 law (Loi No. 60-28), which fixed the clauses for developing and managing the state-funded irrigation projects; 2) the 25 May 1960 law (Loi No. 60-29), which forbade the payment of tithe; 3) the 26 and 27 May 1961 laws (Lois Nos. 61-5 and -6), which fixed the nothern limit for crops and considered the land north of that limit to be for pastoralism. This limit was meant to separate the different regions of Niger by vocation - crop production was not allowed beyond this limit; 4) the 19 July 1961 law (Loi No. 61-30), which fixed the procedures for confirming or expropriating customary tenure rights; 5) the 12 March 1962 law (Loi No. 62-7), which abolished the tithes levied the common lands controlled by traditional chiefs; and 6) the 29 May 1962 decree (Dècret No. 62-128/PRN/SEP), which determined the composition and working of the committees charged with assessing the number of plots controlled by traditional chiefs and farmers cultivating those plots. The composition of these committees included government agents, deputies and traditional chiefs. See also Ngaido 1993.

7. It is worth noting the oddity of this rule. While apparently according primacy to "work" instead of "first occupancy" as a criteria for continued access, the premium for "work" is, eventually, "property by prior occupancy" I.e. after 10 years of continued cultivation, the use-right is transformed into a

property right. Once this is secured the obligation to "work" is weakend, and primacy is now "again" accorded to "prior occupancy" as the criterion for access to and control over the land and land can be transferred to somebody else without loss of control.

8. The most pertinent measures introduced: 1) The 16 December 1977 Circulaire (No. 8/MI/SG) formally forbade local authorities, administrative as well as customary, from participating in any procedure for resolving litigations over plots; 2) The 24 April 1980 Circulaire (No. 12/MI/SG/CIRC) quoted the president's speech to the nation which specified that the local administrative and traditional authorities should not be involved in any case of conflict resolution; 3) The annual circulaire (No. 004/MJ/GS) forbade any resolution of land litigation from 1 April to 31 October in each year. In addition, in case of litigation, the plot was to remain under the control of the farmer who had cultivated it the previous year; and 4) The 1983 act required that everyone be registered in their village of residence. This meant that the farmers are registered in the villages where they have their lands. When the village in which they live and the village where they have their land are different, this poses a lot of problems, such as conflicts between cantons and between villages. See also Ngaido 1993.

9. Republique du Niger, Comité National du Code Rural: Principes d'Orientation du Code Rural (Ordonnance no. 93-015 du 2 Mars 1993). Article 9 reads "La propriéte coutumière résulte de: 1) l'acquisation de la propriéte foncière rurale par succession depuis des temps immémoriaux et confirmée par la mémoire collective; 2) l'attribution à titre définitif de la terre à une personne par l'autorité coutumière competente; 3) tout autre mode d'acquisation prévu par les coutumes des terroirs. (Underlined by me).

10. Data gathering relied heavily on participant informants, who provided most of the case information. The idea was to excavate the genealogy of the disputes by recording the accounts of the litigants. In this article 2 out of a total 98 researched cases are presented. In all cases I sought to contact both (or all) litigants in order to provide a more complete picture of the dispute proces. Out of 98 cases, 80 were investigated with the participation of (at least) both primary litigants. Special

attention was given to the ways in which some third parties were involved and approached and the reasons for doing so. These participating third parties were subsequently also interviewed with regard to the dispute. Thus, Chefs de Canton, their courtiers, village chiefs, Sous-Préfets, Magistrates, politiciants and party cadres, Islamic priests, the gendarmes and other knowledgeable informants were interviewed. Hence, the idea has been to "work outward" from the actual dispute. Parallel to the recording of the actual tenure dispute, other disputes were researched. Problems with the authorities over taxes, markets, public work etc. as well as problems with neighbors over various local matters were investigated in the same manner, i.e. interviews of counterlitigants and possible third parties. This method of following the trail of the dispute enabled me to analyze how and why dispute change arena and what the (temporary) outcome was in the different arenas. Work was concentrated on two Cantons. The interviews were conducted in an interactive fashion in order to permit the informant to focus on his (and to a lesser extent her) concerns vis-á-vis the dispute. This allowed room for the unexpected links with other events and disputes. I attempted to discuss with the informant from a position of wanting to understand the informants' positions and dispositions. Employing a "verstehendes" approach, I attempted to perceive the interests, possibilities and constraints from his perspective. Hence, it was important to obtain different accounts and interpretations of the same dispute from a variety of informants rather than to get "the right" account and interpretation (see van Velsen, 1967). It was, however, very striking that while interpretations differed - often markedly - litigants' factual accounts of the sequences og events generally matched very well. To avoid suggesting any specific action to the informants, a technique of "sophisticated naivety" was used; the issues of conflict, abuse of power, bribery, politicization etc. were under-played by me in order to reduce the informant's apprehension and facilitate talkativeness. Names and locations below the Département level are pseudonyms. Transcripts of written sources are verbatim.

11. Excerpt from report of 23 June 1988: "Il a été également délimité dans le champ de Monsieur [Moussa] de [Jigawa] un couloir large de 35 pas et d'une longeur de 300 mètres qui relie le principal couloir. / Avant nous séparer, l'Adjoint au Sous-Préfet a tenu à responsibiliser les Chefs de Canton à la surveillance de

ces couloirs. / Il a aussi déclaré que les paysans ne respectent plus la hiérarchie dans l'acquisation des nouveaux champs. Pour terminer, il a invité tout un chacun au respect strict de cette délimitation et d'ajouter que les contrevenants seront unis conformément aux textes. / [Signature de l'Adjoint au Sous-Préfet et Chef de Service de l'Elevage]".

12. A Carte de Famille is a family's citizen card stating where the family is resident, under whose authority it operates and to whom taxes are paid.

13. A modest estimate would be that 520 cards each represent 10 persons making a total of app. 5200 people of the Canton's total population of app. 16.000 people.

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