

# Research Paper

THE NATIONAL LAND LAW OF ZAIRE AND INDIGENOUS  
LAND TENURE IN CENTRAL BANDUNDU, ZAIRE

by

James C. Riddell\*  
Jeswald W. Salacuse\*\*  
David Tabachnick\*\*\*



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**LAND  
TENURE  
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An Institute for Research and Education  
on Social Structure, Rural Institutions,  
Resource Use and Development

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## Preface

The three items drawn together here concerning land tenure in Zaire are the result of work by the Land Tenure Center with AID/Zaire in 1985. AID was interested in potential land tenure issues in its agricultural development projects, and in particular in its proposed Food and Market Development Project in Central Bandundu. It was agreed that the Center's contribution might proceed in three stages. First, LTC would prepare an annotated bibliography for key sources on land tenure in Zaire. This appears as the third item here, "Land Tenure and Reform in Zaire," by David Tabachnick, a research assistant at the Center. Second, LTC would provide a legal consultant who would after a consultancy in Zaire prepare a paper on the systems of statutory land law in Zaire. This appears as the first item here, "The National Land Law System of Zaire," by Jeswald Salacuse, Dean of the Fletcher School of Law and Diplomacy. These first two items examined the literature and law at the national level, but with particular attention to the implications for Central Bandundu. The third initiative agreed upon was a two-month land tenure reconnaissance in Central Bandundu. This appears here as the second item, "Land Tenure in Central Bandundu: A Reconnaissance for the Agricultural Production and Marketing Project," by James Riddell, Associate Professor of Anthropology, University of Wisconsin.

These initiatives both produced important findings and defined intriguing issues for further study. Longer term research in 1988 on a few of the larger ethnic groups in Central Bandundu is now being discussed with AID/Zaire. But information on the contemporary land tenure situation in Zaire is so scarce that it was decided to proceed now with the publication of these items, which make an important contribution to our understanding of the current situation.

John W. Bruce  
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# THE NATIONAL LAND LAW SYSTEM OF ZAIRE

by

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## I. Introduction

The purpose of this report is to describe the national land law system in Zaire and to suggest its possible implications for agricultural development. In a country as large and diverse as Zaire, land tenure conditions obviously differ greatly from locality to locality. Nonetheless, a national system of written land law does exist in the country, and the purpose of this study was to focus on that system as established by national legislation.

To prepare the study, I visited Zaire from April 21 to April 28, 1985, spending four days in Kinshasa and three days in Bandundu City, the capital of Bandundu Region. While in Zaire, I consulted with a Zairian counterpart lawyer, Maître Bokenge-Mpote, various government officials, and other knowledgeable persons. A list of the persons contacted in Zaire is attached as Appendix A. The purpose of the visit to Bandundu City, approximately 400 kilometers from Kinshasa and 10 hours by Landrover, was to gain some idea of how the written law is actually applied in the area of the proposed development project. At first, Bandundu officials were unwilling to provide information without authorization from the governor of the region. When Governor Sambia was briefed on the project, he gave full approval and we obtained complete cooperation from local officials.

In addition to legislation, much information has been obtained from secondary sources, a bibliography of which is attached as Appendix B. I have also drawn on my earlier residence in Zaire during 1968-71 and my own research on Zairian law.

## II. Historical Background to Land Law in Zaire

A complete understanding of current Zairian land law requires a brief examination of its evolution from colonial times. Much of the present law is either a legacy from or a reaction to the land law system established by the Belgians.

Prior to the establishment of the Congo Free State in 1885, which resulted from the Berlin Conference of the same year, land in Zaire was

governed by the customs and laws of the area's numerous ethnic groups. Individual ownership of land, in the European sense of the term, was unknown. Instead, land belonged to the lineage group through its ancestors. An important figure in most indigenous systems was the "land chief" (chef de terre), who had authority over the allocation of land in individual villages. Cultivators had usufructory rights in the land, which they farmed through shifting cultivation. Land appears to have been abundant, allowing villagers to leave plots fallow for up to twenty years.

A. The Congo Free State (1885-1906)

One of King Leopold II's primary objectives in establishing the Congo Free State was to exploit the area's natural resources. Accordingly, shortly after the creation of the Free State, he set down the rudiments of a land law system that would allow such exploitation to take place. He decreed that "vacant lands must be considered as belonging to the state" (Decree of July 1, 1885, Article 2). Thereafter, he enacted legislation providing that "lands occupied by the native population, under the authority of their chiefs, shall continue to be governed by local customs and usages" (Decree of September 17, 1886, Article 2). These two acts laid the foundation for the dual system of land law that continues to this day.

The law recognized two categories of land: (1) lands occupied by the "natives," and (2) lands owned by the state. Lands in the first category were to continue to be governed by the customary law of the various indigenous groups occupying them. Under Free State legislation, no contract or agreement made with "natives" for the occupation of land would be recognized or protected by the government. If Europeans were to obtain rights in land, they had to deal with the Free State authorities, rather than with the indigenous population.

The second major category of lands consisted of those owned by the State. As indicated above, the law considered all "vacant lands" to be the property of the State. Legislation of the period did not define the meaning of "vacant" land, nor did it set down guidelines for determining whether land was or was not "vacant." In practice, it seems that all land not under cultivation or subject to settlement was considered vacant. In view of the fact that traditional agriculture employed shifting forms of cultivation, it has been argued that much of the land which the Europeans considered "vacant" was in reality fallow land subject to eventual use by indigenous cultivators and that consequently it was not really vacant at all. Indeed, certain scholars claim that in pre-colonial times vacant land was virtually non-existent since almost all land was claimed by one group or another.

Lands belonging to the State were considered to be within its "domaine," a concept of European civil law pertaining to all of the property of the State. Under European civil law, the State's domaine consists of two parts: the public domaine and the private domaine. Lands within the public domaine are devoted to use by the public at large, and they include the seashore, navigable rivers, roads and streets, canals, parks, markets, schools, etc. A significant characteristic of public domain land is that it is "inalienable and imprescriptible." Thus, it may not be sold or otherwise conveyed, except by authority of a specific law.

All State land not specifically within the public domain was considered to be within its private domain. Generally speaking, under European law, the State is free to grant licenses and concessions in private domaine lands to individuals and private concerns. Through the use of the European legal concepts of "vacant land" and "domaine," the Congo Free State was able to establish legal rights over vast areas of the Congolese territory. Land within the domaine of the State was to be governed by the written legislation, rather than by indigenous customary law.

A third major element in establishing a national land law system was the introduction of land registration. Once land became a part of the State's domaine, it was no longer governed by customary law and might be the subject of grants and concessions to European enterprises. In order to give investors security of title, the Free State, in 1886, instituted a land registration system based on the Australian Torrens Act, a system which would also be introduced in several other colonies in French-speaking Africa. The Torrens system provided for the creation of a land registry in which individual units of land would be recorded and their precise boundaries and limits unambiguously defined. Transactions affecting a particular parcel of land had to be recorded on the appropriate page of the register to be valid. Rights in lands could only be established by means of registration. Unregistered rights had no legal effect. Under the Torrens system, rights in land are transferred not by deed, but by recording them in the permanent registry. The individual owner of the land holds a certificate of title issued by the land registry as proof of his ownership.

Such a system necessitates surveys and the precise delimitations of individual parcels of land. Its establishment in a given area is therefore costly and requires skilled administration.

The introduction of a Torrens registration system is probably easiest in "new countries" where pre-existing land titles held by numerous persons are not a consideration. In such "new countries," the ultimate source of land rights is usually the State, which begins the system by a process of grants or sales to individuals. This situation existed in the Congo Free State. The State, having established its ownership of vacant lands, then proceeded to make grants and concessions of those lands to individuals and companies. The lands so granted were first delimited and then registered. Subsequent transactions in such lands were to be recorded in the registry. Europeans occupying lands by virtue of agreements with indigenous chiefs were requested to submit proof of justified occupation so that their interests in land might also be registered. In practice, the registration system applied primarily in the towns and to rural lands held by Europeans. It did not apply to lands held by Africans.

The nature of the rights in the land which the Free State granted to individuals and enterprises varied. Some obtained a right of "ownership" (propriété), that is, absolute ownership of land in the European civil law sense. Others received a concession by which they obtained a "right of enjoyment" on the land for periods of from 30 to 99 years. Generally, the law considered the indigenous population as having only "rights of occupancy" in unregistered lands subject to customary law. The law never actually specified who "owned" such lands. The vast majority of lands in the country remained subject to customary law and were not brought within the registration system.

B. The Belgian Congo (1908-1960)

The abuses and financial difficulties of the Congo Free State ultimately led Belgium to annex the territory as a colony. That transformation did not sweep away the foundations of the land law system established by the Free State. Indeed, the Treaty of Cession of November 28, 1907, by which Belgium took over the Free State, provided that all of the property in the public and private domaine of the state passed to Belgium, except for those rights which had been granted to the benefit of private persons and companies by registration. Crawford Young has estimated that Leopold II made grants and concessions of lands of more than 27 million hectares in area, out of a total land area in the country of 234 million hectares. After the annexation, the colonial authorities renegotiated and reduced many of the concessions, but they also made new grants. As of 1944, Europeans controlled a total of approximately 12 million hectares of land in the Belgian Congo.<sup>1</sup>

The thrust of colonial legislation was to reform and develop the land law system inherited from the Free State; however, the making of grants and concessions of land by the authorities continued to be a basic element in the system. The colonial government enacted legislation to control that process, both with regard to its procedures and its substantive principles. For example, the law generally provided that the larger the area of land to be granted, the higher the authority required to approve the grant. Moreover, in granting a concession to a particular individual or enterprise, the administration was to take account of the amount of land already held by that person or enterprise.

Grants and concessions of land were made through agreements that were freely negotiated between the colony and the applicant; however, the law required such agreements to include a "repurchase clause" and a "forfeiture clause." In practice, the colony rarely invoked the clause for forced repurchase. The forfeiture clause provided that the concession would be forfeited to the State if the concessionnaire did not fulfill his obligations as specified in the concession contract. In addition, to safeguard the rights of the indigenous population, a Decree of May 31, 1935 stipulated that any grant or concession of domaine lands had first to be subject an inquiry (enquête) according to lawful procedures. The purpose of this inquiry was to determine the "vacancy of the land" in question, as well as the nature and extent of the rights that the "natives" might have over those lands. The inquiry was also to delimit precisely the boundaries and area of the parcel of the land to be granted or conceded. This process was known as a "vacancy inquiry" (enquête de vacance), and it continues to be a part of Zaire's present land law.

To govern the transfer and holding of registered land, the Belgians introduced Book II of the Civil Code on property by a series of decrees between 1912 and 1920. Like its European counterparts, the Code defined the

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1. Crawford Young, Politics in the Congo (Princeton: Princeton University Press, 1965), p. 227.

various types of property, the attributes of ownership, and the way in which the property might be transferred. It should be stressed, of course, that the Code applied only to registered lands, not to the vast areas held under customary law by indigenous groups.

After the Second World War, as the colonial era drew to a close, land issues and pressures on the land became of increasing concern. A gesture was made to allow Africans to secure property rights organized by written legislation through a decree of February 23, 1953, stating that "any Congolese may enjoy all property rights organized by a written legislation." Unfortunately, the authorities never established the mechanisms to execute this decree. As a result very few Congolese became owners of registered property subject to written legislation. The inability of the Congolese to obtain property rights in land, despite this law, gave rise to bitter recriminations by various nationalist leaders, including Patrice Lumumba.

### C. The Evolution of Land Law After Independence

The land law system established during the colonial period remained in effect after independence in 1960. At that time, the newly independent state faced three fundamental land problems: (1) the question of the status of land granted or conceded prior to independence to foreign interests; (2) the status of the lands held by Africans under customary law; and (3) the status of the land registration system providing for the determination of individual rights in land under the written law, particularly the ability of nationals to obtain such ownership rights.

Although the status of the pre-independence grants and concessions was recognized as a problem at independence, several years passed before an attempt was made to resolve it. The government expressed its intent to do so in the 1964 Constitution which promised a "national law that will govern supremely the legal regime of the land grants and concessions made prior to June 30, 1960." Ultimately, that law took the form of the famous "Bakajika Law," enacted in 1966.

Since many of the pre-independence concessions covered vast areas and were not to terminate until the end of the century, the government considered that the country's primary economic resources remained under foreign control. Moreover, it argued that the Europeans were doing little to develop those resources for the benefit of the country. It was alleged that many Europeans had abandoned their property, leaving it in a state of legal limbo, inhibiting further development. Viewing the continuation of these grants and concessions as a deprivation of economic independence, the Congolese Government in 1966 issued the Bakajika Law by which it "retakes the full and free disposition of all land, forest and mining rights conceded or granted prior to June 30, 1960."

The purpose of the Bakajika Law was not to cancel the rights of the holders of the pre-independence grants and concessions, but rather to give the government an opportunity to review the status of those rights and either to (1) reaffirm them completely; (2) modify them; or (3) reassert completely government ownership of the property in question. As a result, the law provided that the holders of the grants and concessions were to apply to the government for new assignments or concessions. Such requests were to include

all of the necessary information to permit the authorities to evaluate conditions for using the land as well as the future objectives of the applicant. This process did take place to a certain extent; however, the Bakajika Law was never fully implemented. For example, Kalambay has found that if one compares the total area of the lands granted and conceded prior to December 31, 1959, with the area of the lands that were either confirmed or reviewed (as set forth in Zaire's Journal Officiel), one notes that the former far exceeds the latter.<sup>2</sup> It is claimed that the difficulties in applying the Bakajika Law were caused by the lack of trained government personnel and the loss of documents necessary to establish the existence of relevant grants and concessions. As a result, the government was not able to make a complete inventory of the land subject to grants or concession, to know their precise area, to determine their use, and to ascertain, on the basis of land registry records, whether such lands had been abandoned or whether they had reverted to state ownership.

The Bakajika Law itself allowed the holders of such grants and concessions to continue to pursue their activities on the land until they had received notification from the government of its decision. In many cases, such notification was never made. Moreover, those whose grants were confirmed by this process obtained absolute ownership (propriété) of the land, and any claim to state ownership was extinguished. Thus, although the review process did result in certain adjustments to certain pre-independence grants and concessions, the land law system established prior to independence experienced relatively little change.

Following the Bakajika experience, Zairian law continued to recognize four general categories of land-holding, as it had since the formation of the Free State.

1. State-owned lands included within the public or private domain;
2. Land owned by individuals and companies and registered under the land registration system;
3. Concessions (less than ownership) held by enterprises for varying periods of time with ultimate ownership in the State;
4. Lands occupied by indigenous populations in accordance with indigenous customary law.

The concept of ownership (propriété) in European law is central to its land law system and is generally defined as "the right to enjoy and dispose of a thing in the most absolute way, provided that no use is made of it forbidden by the law or regulations." To vest such absolute rights over vast areas of the land in private interests, particularly foreign private interests, was considered problematic by the Zairian government. It was claimed that such absolute rights of ownership in land and natural resources prevented the government from taking measures necessary for development of the country in the best interests of its people. In this regard, an example often cited by President Mobutu himself, was the opposition by the Société du Crédit Foncier

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2. G. Kalambay Lampungu, Droit Civil, vol. II, Régime Foncier et Immobilier (Kinshasa: Presses Universitaires du Zaire, 1985), p. 45.

Africain, the owner of a strip of some 37 kilometers of land along the Zairian coast, to the installation on that land of a much-needed government cement plant.

Believing that colonial land law was still being used to thwart development, the government, in the early 1970s, took steps to change the fundamental basis of the country's land law system. The first step was a constitutional amendment of December 31, 1971 which provided:

The Zairian land [sol] and subsoil, as well as their natural products, shall belong to the State.

The law shall fix the conditions for their assignment and concession, for their retaking and retrocession. However, the retaking or the retrocession in case of non-development [non mise en valeur] shall not give rise to the payment of any indemnity (Law No. 71-008 of December 31, 1971 amending the Constitution.)

To implement this constitutional amendment, a law (Law no. 71-009 of December 31, 1971) was enacted on the same day stipulating that the Republic of Zaire retook the full and free disposition of all rights in the land, the subsoil, and natural resources granted or signed before January 1, 1972, to physical or legal persons who had not assured their development. It went on to provide that the registration certificates relating to such lands were cancelled. Furthermore, it repealed the Bakajika Law. As a result of these changes, all lands in Zaire legally became State property. Since the State owned all land, rights in land held by individuals were to be less than full ownership (propriété). While retaining ultimate ownership, the State could grant concessions in land to individuals.

On the basis of these fundamental principles, Zaire enacted legislation in 1973 to organize a new land law system for the country. That legislation is entitled "Law Providing for a General System of Property, Land and Immovable System, and Securities System" (Law no. 73-021 of July 20, 1973 - Loi Portant Régime Général des Biens, Régime Foncier et Immobilier, et Régime des Surétés). A lengthy document of some 346 articles, as amended in 1980 (Law no. 80-008), this law, which will be referred to herein as the General Property Law, establishes the current land law system in Zaire. It consists of five parts. Part I (arts. 1-52), entitled "The Law Governing Things" (biens), sets down general principles applicable to movable and immovable property and the way in which rights in things may be acquired. Part II (arts. 53-218) is entitled "The Land and Immovables System," and it governs rights in land and immovable property. Part III (arts. 219-243), deals with transfers of rights in land and their registration. Part IV (arts. 244-366), entitled "The Security System," concerns the rules for the various types of property rights securing debts, including mortgages and pledges. And finally, Part V (arts. 366-396) enacts transitional provisions.

To implement the General Property Law, the President promulgated a series of ordinances the following year:

1. Ordinance No. 74-148 of July 2, 1974, providing executory measures for the General Property Law;

2. Ordinance No. 74-149 of July 2, 1974, fixing the number and limits of land districts of the Republic of Zaire;
3. Ordinance no. 74-150 of July 2, 1974 fixing the model for registration books and certificates;
4. Ordinance no. 75-151 of July 2, 1974 fixing the tariff of charges in matters of land and immovables, water and registration;
5. Ordinance no. 74-152 of July 2, 1974 relating to abandoned and non-developed property and other property acquired by the state by operation of law.

### III. The Legislative Model of the Land Law System

#### A. The Principle of State Ownership of All Lands

As a result of the 1971 constitutional amendment and the 1973 General Property Law, the State owns all lands in Zaire. Thus, article 10 of the present constitution provides as follows:

The Zairian soil and subsoil belong to the State. The conditions for their concession shall be fixed by law.

From this provision, it is clear that the State owns all land, and that individuals may only obtain a concession in land, not a right of ownership (propriété).

At the same time, it should be noted that the constitution's article 21 (which predates Article 10) also stipulates:

The rights of individual and collective ownership shall be guaranteed. These rights may not be infringed except by virtue of the law and for reasons of general interest, subject to a prior and equitable indemnity to be paid to the injured holder of these rights.

The precise interplay of article 10 and article 21 is not altogether clear. The adoption of article 10 had the effect of taking away existing ownership of land, but no provision was made for compensation.

Article 53 of the 1973 General Property Law further elaborates on the principle of state ownership of all lands. It provides: "The land [sol] is the exclusive, inalienable and imprescriptible property of the State." By declaring the State's rights in land to be "exclusive," this provision has the effect of prohibiting all private ownership of land in Zaire. To own property, according to article 14 of the General Property Law is to have "the right to dispose of a thing in an absolute and exclusive manner . . ." Any rights held by individuals in land must be less than absolute ownership. Such rights, which are of varying types, fall generally into the category of "rights of enjoyment," according to the statement of reasons accompanying the General Property Law.

The law also prohibits individuals from obtaining ownership rights in land in the future, since article 53 specifically provides that the ownership of rights of the State are inalienable and imprescriptible. According to a report of one of the legislative study commissions, this provision represented a return to "authenticity" with regard to the conceptions of land-holding in Zaire since African tradition considered land to be inalienable ancestral patrimony, a conception completely opposed to colonial ideas of private ownership of land. Perhaps a more realistic reason for the law was a desire to end once and for all the various rights in land granted to foreign interests during the colonial period.

Although the constitution and the 1973 General Property Law prohibit the State from granting individuals ownership rights in land, the law does allow the State to grant individuals concessions by which they may obtain "rights of enjoyment" in land. Subsequent sections of this report will discuss the nature of concessions and rights of enjoyment.

The 1973 General Property Law automatically converted pre-existing rights in land. Article 367 provides that all land ownership rights that had been properly acquired by a Zairian physical person before the enactment of the law are converted, to the extent that such rights have been legally established through development (mise en valeur), into a "right of perpetual concession." Furthermore, land ownership rights properly obtained by foreign persons and by legal persons created by public or private law before the 1973 General Property Law are converted into a new real right which is to be called an "ordinary concession" (art. 372). And finally with regard to lands occupied by local communities in accordance with customary law, article 385 provides that such lands are to become domain lands (i.e., State lands) from the effective date of the enactment of the 1973 Law. Thereafter, the nature of the rights held by indigenous populations in such lands are considered as "rights of enjoyment" (droits de jouissance). More important, article 387 of the 1973 law stipulated that such rights of enjoyment acquired on these lands are to be regulated by an ordinance of the President of the Republic. As of May 1, 1985, twelve years after the enactment of the General Property Law, the President has not seen fit to enact such an ordinance, probably because the status of traditional land rights is a highly-charged political issue.

As a result of the 1971-73 reforms, the legal dichotomy that had existed since 1885 between State-owned lands and all other lands disappeared. Whereas colonial legislation never specified who "owned" lands occupied by the indigenous population, the answer is now clear under current Zairian law. All lands now belong to the State. Individuals have only rights of enjoyment in land. Those rights of enjoyment are derived from two basic sources: (1) concessions granted by the State, and (2) indigenous customary law.

It should be noted, however, that although the law does not recognize private ownership of land it does recognize private ownership of certain types of immovable property (notably buildings and other forms of construction) affixed to the land. The establishment of such ownership rights in immovables requires that they be recorded on the concession certificate covering the land on which they are located (art. 219).

## B. The Management of State Lands

Administratively, Zaire is divided into eight regions (of which Bandundu is one) as well as the city of Kinshasa, which operates basically as a separate region. Each region is divided into sub-regions and cities (villes). The sub-region is divided into zones, which consist of collectivités. A collectivité may be roughly likened to a county in the United States. A collectivité usually includes several villages which are officially known as "localites," and they are bound together in groupements, with the chef de groupement at its head. The localité (village) is the country's basic administrative unit.

The responsibility for the application of the General Property Law and land policy rests with the Department of Land Affairs (Departement des Affaires Foncières), headed by a commissaire d'état. The department corresponds to a government ministry and the commissaire d'état to a minister. To implement the land law system, the law stipulates that Zaire is to be divided into "land districts" (circonscriptions foncières) to be determined by the President of the Republic. By ordinance no. 74-149 of July 2, 1974, the President has declared that the land districts shall coincide with the number and the boundaries of the country's regions. (Administratively, Zaire is divided into eight regions, of which Bandundu is one.) In addition, the city of Kinshasa is established as a separate and distinct land district. Each land district is to be administered for purposes of the law by a civil servant known as a "conservator of immovable titles" (conservateur des titres immobiliers). This official is in charge of the region's land registration system. A separate registry exists for each district, and lands within the district are to be registered at that registry (arts. 222-223).

The Department of Land Affairs is divided into several services: (a) Service of Immovable Titles, headed by a conservateur en chef, that deals with land registration; (b) Survey Service, which delimits lands, prepares plans, and carries out surveys; (c) State Lands Service, which manages State lands and grants concessions; and (d) Land Dispute Service, which seeks to resolve conflicts over land. In each region there is a conservateur appointed by the commissaire. Responsible to the regional conservateur are chefs de service for registration, surveys, state lands, and disputes in that region.

Following traditional European classification, the General Property Law provides that all State property is included either within its public domain or its private domain. The public domain of the State consists of all lands which are affected with a public use or service. Such lands may not be subject to concession unless they are properly disaffected of the public use. All other lands constitute the private domain of the State. It is from the private domain that the State may grant concessions to individuals. Accordingly, article 57 of the General Property Law provides that lands in the private domain may be the subject of perpetual concessions, ordinary concessions, or land servitudes. The concession is therefore the principal mechanism by which individuals may gain rights in Zairian land.

Lands within the State's private domain are further subdivided into urban lands and rural lands. Urban lands are those included within administrative

entities which the law declares as "urban." Rural lands are all other lands. The significance of the distinction, it will be seen, relates to the conditions for concessions of the two types of land. That is to say, the conditions and procedures for concessions of urban land differ from those applicable to rural lands. Since the concession has now become central to the development and management of Zairian land, an examination of the concession system is warranted.

### C. The Concession System

#### 1. In General

According to article 61 of the General Property Law, a concession is a contract by which the State grants to a collectivity, a physical person, or a legal person of public or private law, a right of enjoyment (droit de jouissance) upon land under the conditions and modalities provided for by the law and executory measures. Concessions may be granted for value or without charge. Moreover, as indicated above, the procedures and conditions for granting concessions on urban land differ from those applicable to rural lands.

The specific official authorized to grant land concessions depends upon the size of the concession and the nature of the land to be granted. In general, the larger the area to be granted, the higher the official required. For example, article 221 requires that contracts for rural land concessions equal to or exceeding 2,000 hectares or urban land concessions equal to or exceeding 100 hectares, be signed by the Commissioner of State for Land Affairs and approved by a law. For rural land concessions of between 1,000 and 2,000 hectares and urban land concessions of between 50 and 100 hectares, the concession contract must be signed by the Commissioner of State for Land Affairs and validated by an ordinance of the President of the Republic. For rural land concessions of between 200 and 1,000 hectares and urban lands of between 10 and 50 hectares, the contract must be signed either by the governor of the region or, for lands situated within the city of Kinshasa, the Commissioner of State and thereafter validated by an order of the Commissioner of State for Land Affairs. For rural lands of less than 200 hectares and urban land of less than 10 hectares, the contract must be signed by the governor of the region. In the case of rural lands of less than 10 hectares and the urban lands of less than 50 ares (i.e., 5,000 square meters), the governor of the region may delegate his powers to make concessions to the Conservator of Immovable Titles.

#### 2. Urban Land Concessions

The procedure for making concessions of urban land differs from the procedure applicable to rural land.

In order to make a concession of land in urban districts, the governor of the region or, in the city of Kinshasa, the Commissioner of State for Land Affairs, must establish a "sub-division" plan (plan parcellaire) which sets out the boundaries of the various lots in an area to be granted. This area is then specifically offered to the public through an order of the governor of the region or the Commissioner of State for Land Affairs. Copies of the "subdivision plan" are made available for public inspection. The State then

receives requests from the public to obtain concessions on individual lots. Normally, such requests are addressed to the Conservator of Immovable Titles in the land district in which the land is located; however, in Kinshasa, the request should be addressed to the head of the land division for the city.

### 3. Rural Land Concessions

The law specifically requires that any concession of rural land be preceded by a preliminary inquiry. Article 166 states: "In order to safeguard the rights of rural populations, all transactions on rural land shall be subjected to a procedure of preliminary inquiry as provided by the law." The nature of such a "preliminary inquiry" is set out in article 193. Similar to the "vacancy inquiry" of colonial times, the preliminary inquiry has the purpose of determining the nature and extent of rights that third parties may have on lands requested for concession. In rural areas, the specific rights in question are, of course, those granted by customary law to indigenous populations cultivating or using the land. The preliminary inquiry only takes place upon authorization of the local subregional commissioner, and it is conducted by the zonal commissioner or a civil servant or agent authorized by him. As provided by article 194 of the General Property Law, the inquiry is to accomplish the following:

1. To determine the boundaries of the land requested;
2. To make a census of the persons who are located on the land and are carrying on any activity there;
3. To describe the situation of the land and inventory natural attributes, including woods, forests, water courses, etc.;
4. To listen to persons who have made claims or other observations; and
5. To register and study all written information.

The inquiry is to be publicized in the locality so as to give all individuals an opportunity to be heard. Although one of the primary objectives of the inquiry is to determine the extent of the rights under customary law of indigenous groups, it is interesting to note that the new General Property Law, unlike the earlier decree of 1934, makes no reference to chiefs or other traditional tribal authorities. As will be seen, however, the local chef de terre in practice plays a predominant role in preliminary inquiries although he is nowhere mentioned in the law itself.

Upon completion of the inquiry, the responsible official must prepare a written report of his findings within one month and send it to the subregional commissioner, with a copy to the person requesting the concession. Upon receipt of the report, the subregional commissioner will make appropriate comments thereon and then transfer the entire file to the governor of the region. If the subregional commissioner is not satisfied, he can request that the inquiry be done again. If the governor feels that the file is adequate, he then transfers it to the government attorney (procureur de la République) attached to the Court of Grand Instance. If this legal official agrees, then the inquiry is formally closed. The administration may thereafter take measures to grant a concession to the applicant.

#### 4. The Obligations of the Concessionaire

The concessionaire has certain obligations which he must fulfil in order to obtain and hold his concession. First, he must pay an annual rental or fee (redevance). The precise amount to be paid is established by ordinance (see annex to ordinance no. 74-148 of July 2, 1974) and will depend on the locality in which the land is situated, the size of the concession in question, and its use. For example, the annual rental or payment on agricultural lands not exceeding ten hectares is 3 zaires per year per hectare.

The second principal obligation of the concessionaire is occupation and development of the land. Under the General Property Law, the concessionaire must take occupation of the land within six months of signing the contract and he must begin its development within 18 months. The purpose of these two conditions is to avoid land speculation. The nature of the obligation to develop the land (mise en valeur) is stipulated in the concession contract, and the law and regulations establish the principal contractual terms. In general, the requirements for development vary according to region, the nature of the land, its use, development plans, etc.

Because of the requirement of development, the establishment of concessionary rights passes through two distinct stages: (1) a period that one might call a "provisional concession," during which the concessionaire must undertake the necessary required development; and (2) the granting of definitive concessionary rights when the government is satisfied that the required development has taken place. During the first period, the concessionaire holds a type of lease. Article 154 of the General Property Law specifically provides that rural lands having an area of more than 10 hectares and to be used in agricultural or animal husbandry may not be made the subject of a concession unless the concessionaire has held the land by virtue of a "provisional title of occupation" for at least three years. However, the competent authorities may grant a definitive concession before the end of three years if the conditions for development have been met. Thus, a person desiring a concession must first occupy or rent the land provisionally for a period of time before receiving either an ordinary or a perpetual concession.

#### 5. The Legal Nature of Concession

The General Property Law provides for two types of concessions: perpetual and ordinary.

a. Perpetual Concessions. According to article 80 of the General Property Law, a perpetual concession is a right that the State grants to a physical person of Zairian nationality to enjoy his land indefinitely as long as the legal conditions are satisfied. Perpetual concessions are not available to foreign nationals, foreign corporations, or Zairian corporations. The holder of a perpetual concession has the right to full enjoyment of the land for an unlimited duration of time. As a result, he may acquire an ownership in everything which is incorporated on the land and has the right to construct, plant and enjoy the benefits on the land. As a perpetual concessionaire, he may also transfer, rent, mortgage or alienate his rights in whole or in part. In case of a total transfer, the new perpetual concessionaire is subrogated to the rights and obligations of the original concessionaire.

b. Ordinary Concessions. Unlike a perpetual concession, an ordinary concession exists for a period of time which may not exceed 25 years; however, it may be renewed under conditions specified by law (art. 70). As indicated earlier, corporations and non-Zairian nationals are limited to ordinary concessions.

By and large, ordinary concessions are similar to perpetual concessions except that they are limited in duration. The General Property Law provides for five legal forms of ordinary concessions. They include emphytéose, superficie, usufruit, usage and location. The details of each form are not really pertinent to the purpose of this report. Like the perpetual concessionaire, the ordinary concessionaire may transfer, mortgage, or freely alienate his rights. He may also obtain ownership rights (as opposed to mere rights of enjoyment) in buildings and other forms of construction on the land in question; however, his assignee takes the concession subject to any of the obligations and conditions imposed upon the original concessionaire.

In the event of the death of a concessionaire, his customary law will determine who will succeed to his property; however, the written law will govern the procedures for the administration of the deceased's estate. Such changes in ownership through inheritance must be registered to be legally effective.

#### D. The Registration of Rights in Land

Section 219 of the General Property Law provides that the rights of enjoyment in land and the rights of ownership in immovables can only be established by a certificate of registration issued by the State. Moreover, any transfers of such rights, whether among living persons or by inheritance, can only take place through the issuance of a new certificate of registration. The certificate of registration establishes the existence of property rights, and any transaction affecting rights in the land must be recorded at the land registry.

The applicable procedure calls for the land registry to prepare two copies of the certificate of registration. One copy is placed in the registration book and the other is delivered to the holder of the registered right (art. 225). Under most systems of land registration, recorded rights are unattackable once registration is made. However, because of consistent irregularities in the registration system in Zaire, and particularly the issuance of false registration statements, the General Property Law, article 227, was amended in 1980 to provide that any person injured by the registration of an alleged right may bring an action within a period of two years to rescind or reform the land registry records.

#### E. Land Held Under Customary Law

The new General Property Law says very little about land held under customary law, the vast majority of Zairian land. As indicated above, although neither colonial legislation nor post-independence legislation specified who actually owned the lands held under customary law, the 1973 General Property Law has answered that question: the State owns all such lands. Nonetheless, the new law has not really disturbed the pre-existing situation, for it does not nullify customary land rights. It merely provides that "lands occupied by

local communities" become State lands from the entry into force of the 1973 law. It then goes on to state that lands occupied by local communities are those that these communities inhabit, cultivate, or exploit in any way whatsoever--individually or collectively--in conformity with local customs and usages. And finally, it provides that the rights of enjoyment regularly acquired on these lands shall be regulated by an ordinance of the President of the Republic, legislation that he has yet to enact. Although the 1973 law does not really disturb the pre-existing situation of land held under customary law, it does cast doubt on the future status of that land. What are the government's plans with respect to this form of tenure? Will it eventually be abolished? Will it be converted to concessions? For purposes of the proposed development project, these questions may merit clarification since the vast majority of persons within the contemplated project area are occupying and farming their lands according to customary law, rather than according to written law of concession.

#### F. The Law of Security

The General Property Law, Part IV, also stipulates the rules governing security for debts. Since credit may be important to the proposed project and since the extension of credit may depend upon the debtor's ability to provide security, a brief examination of the rules on security is in order. The General Property Law specifies three basic types of security: (a) the pledge (gage); (b) the guarantee by a third person (cautionnement); and (c) the hypothec or mortgage (hypothèque). The pledge relates only to movable property and requires that it be transferred to the possession of the creditor. The third-person guarantee does not involve property at all.

The hypothec is probably the most important security for purposes of the project. According to article 244, it is a "real right" held by a creditor in immovable property owned by the debtor to secure payment of the debt. The property subject to the hypothec may be used to satisfy the obligation owed to the creditor if the debtor does not make payment.

The types of property which may be the subject of a hypothec include perpetual concessions, various forms of ordinary concessions, and immovable property affixed to land. No hypothec will exist unless it has been registered at the land registry on the certificate relating to the immovable property to which it relates. The law thus appears to provide a legal mechanism by which concessionaires might obtain credit. Whether it in fact fosters the extension of credit must be determined in subsequent studies. In any event, no hypothec appears possible on unregistered land.

#### G. Conclusion

In conclusion, the legal model for land tenure in Zaire is based on the following principles:

1. The State owns all lands.
2. Private persons may hold only a concession in the land. Such a concession, which is less than ownership, may either be perpetual (only for Zairian nationals) or for a limited period of time not to exceed 25 years. The establishment and maintenance of a concession requires occupation and development of the land in question.

3. The establishment of rights in land requires registration under a registration system based on the Torrens Act.

4. Customary law rights in land constitute a "rights of enjoyment;" however, their future status is unclear.

#### IV. The Land Law System in Practice

##### A. Introduction

The preceding pages describe the legal model of land tenure in Zaire as it appears in the law books. But what about the law in action? James Riddell's paper in this volume is a comprehensive discussion of actual customary tenure patterns and practices in the project area. As regards practices and applications of the national land law system, my own study in Zaire and particularly in Bandundu City enabled me to gain impressions of the way in which the national system functions. In order to assist subsequent researchers, the remainder of this report will attempt to suggest issues in need of further study and to speculate on the implications of the legal model for the development of the project.

##### B. The Relevance of the Formal Land Law System

Since so little land in private hands is actually registered, one may question the relevance of the formal land law system for agricultural development in the project area. At this point, pending conclusion of subsequent studies, one can only speculate. First, the extent to which the formal legal system protects or fails to protect security of tenure can have implications for investment by the land holders both of their labor and of what little capital they own. If tenure is precarious, occupants of land may be unwilling to make necessary investment or take appropriate risks to increase agricultural production on their lands. For example, it may be important to determine whether the uncertain status of customary rights in land, as a result of the 1973 General Property Law, has created uncertainty of tenure in fact in the rural areas? On the other hand, the rural population may be oblivious to these recent developments.

Security of tenure of properties in the towns--the site of most registered lands--may also have an impact upon agriculture in the countryside. Since agricultural production will depend upon processing and warehousing facilities in the towns, the security of title of those facilities may become important to the proposed project. For example, in her study, "Secondary Cities and Market Towns in Bandundu: Interurban Exchanges and Urban Services to Rural Development" (November 25, 1984), Deborah Prindle suggests that insecurity of land titles for warehouse owners in the Dibaya port has kept investment in these facilities low. Since their buildings are located on land owned by ONATRA and therefore could be seized at any time, the warehouse owners are unwilling to make the type of significant investments that would support agricultural production in rural areas.

The proposed project will probably have three components: (1) production, (2) marketing, and (3) processing. In each aspect, security of land tenure is important. To the extent that credit is necessary for any of these factors

(production, marketing, and processing) collateral to secure that credit may become essential. The General Property Law stipulates the rules governing credit security in the form of mortgages, guarantees, and pledges. To the extent that these rules are effective and instill confidence in lenders, they may influence positively the giving of credit. To the extent that creditors have little confidence in these mechanisms, the law may actually inhibit the giving of credit. Since secondary cities such as Kikwit and Bandundu support activities in the rural areas (e.g., with warehouses, processing facilities, transport), the availability of credit in these towns can also affect the agricultural sector. Subsequent studies should therefore explore the relationship between available security devices and the extension of credit in the project area. Although the law does provide for mortgages (hypothèques), to what extent do banks and other lenders actually use such security devices in extending credit?

### C. The Tendency Toward Concessions and Individualization of Land Tenure

#### 1. Individualization of Tenure

Although the vast majority of the inhabitants in the project area continue to occupy and use ancestral lands in accordance with African customary law, there appears to be a growing tendency toward individualization of land tenure. That tendency takes the form of the establishment of plots of land to be farmed by individuals apart from their traditional ethnic group. The concession system offers an avenue for such individualized forms of land tenure. But the concession is not its only manifestation. Along the road leading to Bandundu, one can see numerous small plots of land bearing a sign declaring that each is a "farm" (ferme). These "farms" do not seem significantly different from other forms of traditional agriculture, and they do not appear to employ mechanization or advanced agricultural techniques. According to my informants, the appearance of these "farms" is a relatively recent phenomenon. They clearly represent a transition from itinerant agriculture to more stable agriculture, as was noted in the project documents.

My informants offered two reasons for the trend toward individualization. First, the population is increasingly recognizing the commercial value of farming (i.e., the fact that farming can bring cash). Second, there is a growing perception that land is becoming much less readily available than in former times and that it is important to establish one's claim by either staking out a "farm" or obtaining some other form of individual tenure. The failure to do so may mean that a person or his children may lose the opportunity to obtain land when it becomes scarce.

According to the legal model of land tenure envisioned by the General Property Law, there would appear to be two general types of land tenure in the project area: (1) traditional peasants farming their ancestral lands in accordance with customary law, and (2) concessionaires holding rights in land under the General Property Law. With regard to the latter, it appears that concessionaires, who generally own between five to twenty hectares, hold about two percent of the total land under cultivation in Bandundu.<sup>3</sup>

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3. See U.S. Agency for International Development/Kinshasa, "Project Identification Document," April 13, 1984, pp. 16-17.

Based on limited research, I believe that many persons farming on an individual basis and calling themselves "farmers" or concessionaires are in reality not concessionaires at all--at least not legal concessionaires as provided by the 1973 General Property Law. As a result, I suspect that in Bandundu, as in other parts of Zaire, three basic forms of tenure prevail: (1) tenure by traditional peasants who hold the land exclusively under customary law and have "rights of enjoyment" recognized by law; (2) tenure by legal concessionaires who hold the rights in land under the 1973 law; and (3) "small farmers" (petits fermiers) who, having received the blessing of the local chef de terre and perhaps some documentation from local officials, farm their own fields for cash crops, apart from others and live there on an individual basis.

This third form of tenure may occupy a legal "no-man's land," for it does not seem based in either customary law or the 1973 General Property Law. Whether or not the small farmers actually sense this insecurity should be explored. They may face problems in the future when they seek to obtain credit. More important, they may be vulnerable to losing their lands to persons or companies who secure legal concessions on them.

The small farmers may constitute important developmental agents in the area, since they may possess greater initiative, drive, and adaptability than do the traditional peasants. On the other hand, they appear less well-financed than do those farmers who hold genuine legal concessions from the State.

The Inspector General in the Department of Agricultural and Rural Development in Bandundu, Citoyen Kalanda, reported that the ministry in the Bandundu area had for several years been pursuing a program known as "Programme fermier" whose purpose is to grant individuals plots of land to be cultivated apart from their traditional lands. Under this program, persons wishing to obtain individual plots make a request to the local authorities, who then allocate such plots to individuals. These grants do not conform to the legal requirements for concessions, nor are they registered. However, in each zone the authorities maintain a list of such "petits fermiers," whose holdings are small--usually between five and ten hectares. In Bandundu Region, agricultural agents have made an effort to inform farmers of this program and to encourage them to apply. Once application is made, the local customary law chief must consent to the allocation. The zonal commissioner then approves the grant and establishes a file for each farmer. The Inspector General of Agriculture did not have precise statistics on the number of persons who had taken advantage of this program, but he guessed that there were at least 1,000 in Bandundu Region. He also felt that these small farmers were more productive than the traditional peasants, and more often produced cash crops. Indeed, he stated that it was the desire for cash crops that prompted them to ask for land in the first place.

While the small farmers hold some documentation issued by the zone authorities, it must be emphasized that their plots are not registered under the country's land registration system; consequently, their security of title is not legally strong. The head of Land Affairs in Bandundu stated that he hoped to register all of these farmers one day. This statement appears to be simply a pious hope, since the Ministry of Land Affairs in the region does not have the resources to undertake such broad-scale land registration.

Future studies on land tenure in Bandundu should examine closely the status of these "small farmers," who appear for the present time to occupy a legal no-man's land between the customary law on the one hand and the written General Property Law on the other. Several questions may be worth exploring. Does their lack of legal security of title affect their agricultural practices? Would the provision of increased legal security for small farmers encourage them to increase investment in their holdings? On the other hand, if they are aware of the land registration system, why have they chosen not to take advantage of it? The results of such inquiry might lead to recommendations for improvement in the registration system to facilitate the registration of individual plots of land in the project area—particularly if it is determined that registered lands will have greater opportunity for obtaining credit than would unregistered lands.

## 2. The Concession System in Practice

Through its emphasis on concessions to individuals, the law appears to favor individualization of land tenure and the establishment of stable forms of agriculture. But to what extent have individuals actually taken advantage of the concession system? In Bandundu City, the head of the land affairs office was unable to provide statistics on the precise number of requests for concessions that his office had received; however, his assistant quietly told me later that during the first three months of 1985 the office had probably received 50 such requests. Subsequent studies should explore the question in detail, focusing on the number of concessions granted, their nature, and the precise role which the concessionaires might play in the proposed development project.

My informants in the Bandundu region described the procedure for granting concessions as follows:

a. A person desiring a concession of land should first make contact with the local chef de terre in order to obtain his approval. Although the law does not provide a role for the chef de terre nor require his prior approval, all informants in Bandundu stated categorically that without the approval of the chef de terre a person could not obtain a concession in practice. The head of the land disputes division in the department's headquarters in Kinshasa appeared to give less importance to the land chief. Clearly, subsequent studies should examine the role of the chef de terre in the concession process in particular and his continuing authority over land in general.

b. Once the chief's approval is granted, the applicant should then make a formal request to the zone for a concession.

c. The zone will then ask the officials at the division level to begin an "enquête de vacance." Although the term "enquête de vacance" originated in colonial regulations and no longer appears in national legislation, all informants used it in discussing concession procedures.

d. This preliminary inquiry takes place at the zone level. Zone officials often encounter numerous difficulties in undertaking it, primarily because of lack of adequate transportation facilities. The lack of vehicles

and the difficulties in traveling in Bandundu Region often result in long delays in completing the required procedures. In making the preliminary inquiry (enquête de vacance), Zairian officials clearly rely heavily on the land chief. Most informants stated that opposition of the chief would result in a denial of the concession application. On the other hand, a Belgian agronomist in the Ministry of Agriculture suggested that the 1973 law was being used to take away land from traditional farmers. He cited the case of a soap factory and plantation in upper Zaire where a 10,000 hectare concession in a densely populated area was granted over the objection of one of the land chiefs who argued that the proposed concession would deny his people adequate land for their future growth and eventual agricultural requirements. The agronomist suggested that preliminary inquiries were not being done in the interests of the local population and that the Zairian administration tended to take a position in favor of new concessions, particularly if they represented large investments.

e. A government agronomist usually conducts the inquiry, and he is sometimes accompanied by a veterinary or other technician. At the conclusion of the inquiry, they prepare a written report for submission to the zone commissioner, who then sends his report to the subregional commissioner, who then transfers it with comments to the procureur of the republic in the area to be sure that it meets legal formalities. If the latter does not object, the request is sent to the governor for his approval.

f. Thereafter, the Land Affairs Department prepares a contract of provisional occupation for a period of five years. At any time before the end of five years, the occupant can ask for a definitive title to the property if he establishes that it has been developed in accordance with the occupation contract.

g. Upon receiving such a request, or at the end of five years, an agricultural agent then visits the land to make sure that the occupant has fulfilled his development obligations under the contract. He then prepares a report on his findings. If the findings accord with the developmental requirements, the concessionaire will then be given a concession contract for 25 years. It was reported to me that a "perpetual concession" is not usual in the area, even though it is provided by law. Here too, it would be interesting to note whether the period of the concession is too short to encourage substantial, long-term investment in the land.

Although the law specifies a detailed procedure for the granting of concessions, one expert claimed that the state had no policy on concessions, that concessions were now being made in a policy vacuum. Succeeding land tenure studies might therefore focus on the nature and the extent to which policy determinants are shaping the concession-making process in Bandundu Region.

### 3. The Status of Legal Concessions

A further line of inquiry would examine the status of the concessions themselves. Specifically, to what extent are the concessions more productive and efficient than other forms of tenure? Equally important, to what extent are the General Property Law and the concession system being used to "stake

out" claims on lands by persons who do not have the resources necessary to develop those lands? Through conversations with various individuals, I gained the impression that many concessions are granted despite the fact that the concessionaire does not have the financial or technical means to develop them as required by the concession contract. While it is true that in law a concession may be lost for failure to develop the land, in practice that may not happen for at least two reasons. First, the obligation is on the State to monitor and control development activities on the concession, and the State simply does not have the resources to accomplish this task. Secondly, concessionaires, I was told, often bribe local officials so as to postpone indefinitely investigations to determine whether development has taken place. Thus, the present system raises the question of whether it is tying up valuable land resources without advancing productivity. One possible way to avoid this result would be to increase the annual concession fees.

#### D. The Strength of Customary Land Tenure and Land Chiefs

Although the 1973 General Property Law mentions customary law only in passing and grants no role whatsoever to the land chief, both remain strong. Far from dominating the customary land chief, local government authorities appear to give him great deference. Indeed, numerous officials in Bandundu Region stated they would not override the opposition of a customary land chief on land matters. Thus their authority appears strong, as does the force of customary law itself. Nonetheless, subsequent studies should focus on the role of the chief and the strength of customary law.

Although the 1973 General Property Law provides that the President of the Republic is to issue an ordinance to govern customary land tenure, he has not yet done so. I was told that his failure to act was caused by the political opposition of traditional tribal authorities to any change in their rights and privileges. It will be recalled that customary chiefs strongly opposed the Bakajika Law for precisely the same reason.

After reviewing the 1973 law, one wonders whether it might be used to reinforce and strengthen customary land rights. While most Zairians speak of concessions only in terms of grants to individuals, it should be noted that the law provides that a "collectivité" might also receive a concession of land. Therefore, it would appear that a village holding land under customary law could apply to the government to obtain a legal concession under the General Property Law on its ancestral lands. If nothing else, such a concession would affirm its traditional rights and preempt the possibility that outsiders might obtain a concession on the same land. When I presented that hypothetical case to several land officials, they replied that such a situation had never occurred and that they were not exactly sure what they would do if confronted with a similar request.

#### E. The Land Registration System in Practice

The system of land registration appears to be highly ineffective and insecure. As indicated, the General Property Law was amended in 1981 to give a two-year grace period to contest registered titles because of the issuance of false certificates by land registry officials.

Beyond matters of corruption, it appears that the land registration administration lacks sufficient trained personnel and resources to do an effective job. In Bandundu City, for example, the land registration office is located in the most primitive of quarters. After visiting the land affairs office, one finds it hard to imagine that their files are secure, readily accessible, and protected. Indeed, several persons suggested that the files in most land registry offices are very insecure and that individuals involved in land disputes often break into the offices to remove pertinent files and documents. If subsequent studies determine that land registration and security of title can contribute to agricultural development in the project area, some USAID assistance to the land affairs office may be warranted.

#### F. Land Disputes

The General Property Law provides that land disputes are to be resolved administratively by the conservateur. If a person contests the existence of a registered right in land, he is to make his opposition known to the conservateur, who will note it on the appropriate certificate in the registry. The effect of the notation is to prevent the registered holder from disposing of his rights for six months, during which time the conservateur is to decide the dispute. The decision of the conservateur may be appealed in the courts.

Many informants believe that the number of land disputes in Bandundu and in Zaire is increasing. The prevalence of land disputes may be both a cause and an effect of insecurity of title. It is also a manifestation of increasing population density in the area. Some disputes are caused by the inefficiencies and inequities in the land registration system, discussed above. Often, political interference obstructs the dispute settlement process. While most disputes appear to concern urban rather than rural lands, subsequent studies might explore the causes and frequencies of such disputes in the project area and determine their impact, if any, on potential development activities. The head of the dispute section of the Department of Land Affairs in Kinshasa had very few statistics on land disputes; however, he indicated that the Commissioner of State for Land Affairs had recently ordered that such statistics be assembled. The director is now preparing a study on the matter, and it may be available in the future.

Although the General Property Law seems to assume an expeditious handling of land disputes by the conservator, one has the impression that in practice land disputes languish interminably in the Department of Land Affaires.

Appendix A

Informants Contacted in Zaire

1. Maître Bokenge-Mpote - Belgian-trained Zairian lawyer; selected by USAID to be local counterpart on this study.
2. G. Kalambay Lumpungu - Professor of Law, Université de Kinshasa; Zaire's leading scholar on land law (B.P. 204, Kinshasa).
3. M. Effafe - Directeur des Contentieux, Département Des Affaires Foncières, Kinshasa.
4. George Conde - USAID contractor attached to Department of Agriculture and Rural Development, Bureau des Etudes.
5. Governor Sambia - Governor of Bandundu Region (recently appointed).
6. Citoyen Kalanda - Chef de Service (Inspector General), Department of Agriculture and Rural Development, Bandundu City.
7. Citoyen Benye - Head, Regional Division, Department of Land Affairs, Bandundu City.
8. Cheryl McCarthy - USAID/Kinshasa.
9. Citoyen Nkire - Agronomist, USAID/Kinshasa.
10. Lee Braddock - USAID/Kinshasa.

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**LAND TENURE IN CENTRAL BANDUNDU**

A Reconnaissance for the Agricultural  
Production and Marketing Project

by

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**Don't be like the rat  
that comes and eats with us  
and then leaves us hungry**

Praise song sung in Kisakata  
to a USAID Project.

**I. Introduction**

When driving on the back roads that crisscross the central Bandundu Region, one is struck by the vast amount of empty space, even by African standards. One can drive for literally several kilometers at a time without seeing any evidence of human use of the soil. It has been just such apparent emptiness that has many times led to ill-fated development efforts in Africa. It comes as a surprise to a person not familiar with Africa that there is not a square meter of this putatively unutilized land that is not jealously guarded by traditional owners.

The land and the group of people who own it are inexorably connected. But because it is a group of humans that is identified with the land in a very intimate and exclusive sense, land and labor have not traditionally been seen as commodities as they are in Western societies. One has rights to land because one is related to a mutually inclusive and exclusive set of people. This set of people will include ancestors and the yet-to-be-born. For the traditional community it is this finite pool of people and land that form the basic capital stock of the society.

From the point of view of the members of the society a project will involve very real costs which may or may not be outweighed by the benefits, long- or short-term. The experience of the Central Bandundu populations with "development" has not been universally positive. We are not the first generation to attempt development. The Belgian colonial administration, if one remembers, had maintained from the outset that its principal raison d'être was the social, cultural, political and economic development of the Congo. As more than one elder told us during our interviews, ". . . you are not the first ones to visit us talking of development and look around you, where has it gotten us?"

A project needs to make every effort to ensure that the target populations do not lose what rights and control they do have over their resource base. If all fails, we can return to our offices to contemplate the causes, and apply our lessons to future efforts, while the people are left with all the long-term costs.

In order to obtain a better understanding of the potential interaction between land tenure and project activities, AID/Kinshasa commissioned this study of the customary, but contemporary, land tenure systems found among the various ethnic groups in the project zone. The study is a structural rather than a statistical one. That is, in this paper I describe the social relations of land tenure as formally defined by the elders of the various groups. (The large-scale statistical study was carried out earlier and will appear separately [Pruitt, et al].)

I spent the period from July 1 to September 1, 1985 in Zaire. Every ethnic group and collectivité except Kidzwen and Kapia of the project zone were visited by the research team.<sup>1</sup> The team traveled more than 5000 kms. during the two months and lived in whichever village we found ourselves in at nightfall. Interviews were open-ended but the same questions were asked at each stop. No interview took less than three hours and most lasted over four.

In terms of procedure, the team first visited the governor of the Region of Bandundu. Next the heads of the sub-region, zone and agricultural offices were visited. At each level we asked for and received letters of introduction to the next level. We were graciously received by one and all and were invited to meet many other community leaders who also gave us letters of introduction. Next we paid a courtesy visit to the chief of each collectivité. Like other officials, once they understood the nature of the study, their cooperation was more than anyone could have asked.

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1. At all phases I worked with one or the other of my two Zairois colleagues: Maître Bokenge, a lawyer based in Kinshasa and native speaker of Kisakata, and Professor Freakha of the Institut Supérieur Pédagogique in Kikwit whose mother tongues include Mbala and Kiyansi. Neither of them is responsible for any errors of omission or commission.

The administrative levels are région (Bandundu), sous-région, zone, collectivité, groupement and villages. In general the traditional chieftaincies have been preserved and comprise the groupement.

The interviews upon which this report is based were done at the groupement level. This is because the groupement is the administrative equivalent of the pre-colonial chieftaincies. The leaders and elders at this level have the longest-standing authority in customary matters, especially those relating to land.<sup>2</sup> Thus, in each groupement we met with the chief's council, and always insisted on the presence of land chiefs from each of the ethnic groups. Although on the surface such demands appear to be both an imposition and a bit presumptuous for guests without gifts, the interest in discussing land tenure at all levels was such that cooperation was always readily forthcoming.

In the subsequent pages the discussion will focus first on what is included in the term land tenure. This will be followed by an examination of the relationship between forms of descent and land tenure, especially in matrilineal systems. Once this is outlined, the general characteristics of the descent groups in the project area will be described. There will be a special attempt to present the unities in what is at first glance a sea of diversity.

In order to make the specific land tenure issues more comprehensible, there will be a discussion of the importance of understanding the different kinds of descent groupings, clans and lineages, and their impact on land tenure. This will be followed by a more detailed presentation of specific data for each group--the diversity in the project area. The development of land tenure systems by these groups, however, is not a residual or passive social artifact; each is the result of a dynamic interchange of a set of humans with their physical and cultural environment. In spite of the limited data available, an attempt will be made to present some of the more important spontaneous adjustments people have made in land tenure rules. This will, it is hoped, provide some sense of the direction the societies themselves are moving in managing the man-land relationship.

## II. Land Tenure

Africa may have the lowest population density of any major continent, but even to the Africanist familiar with other regions it is the amount of open space that is the most striking feature of rural Zaire. The talk of demographic pressure and its role in selecting the project site seems incongruous. Yet, within a few days of residence in the villages one is forcefully made aware of the intense competition for land and its central role in social organization.

As elsewhere in Africa there is a claimant for every square meter of soil. The boundaries of each land unit are well known to the elders of the

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2. The current government policy is to have all offices determined by election. All chiefs at the collectivité level have been elected and are members of the MPR. In the project zone there is one exception and this is Batteredre, which will be discussed in more detail below.

kinship units and are vigorously and continually defended. What is important is that these leaders claim an intimate knowledge of their territory. The person most responsible for land matters among the ethnic groups in the project zone is the "land chief." During our interviews we encountered both men and women, ranging in age from mid-twenties (estimated) to near-ancestor, holding this office. Although the person is often referred to in the literature as the "owner of the land," he or she is in fact the representative and trustee for a larger group of kinsmen.<sup>3</sup>

Throughout the project area land is unalienable. This does not mean that land has not been alienated in the past, but that these transactions represent unusual circumstances associated with colonial and post-independence power politics. There is no active land market, nor did we find any evidence of an indigenous system giving a piece of land an exchange value relative to other factors of production, comparative fertility, etc.

This is not to say that there are no costs associated with the acquisition of land within the customary land tenure system--there are. The costs are embedded in the social relationships of kinship that surround access to land, and in some circumstances the gifts and food and drink required can be quite expensive relative to cost of these items in the local markets (e.g., Riddell 1979: 27).

In a very brief fashion we can outline how the above is true. Land belongs to a kinship group that extends over multiple generations. The use of land requires the maintenance or establishment (through marriage, for example) of proper social relationships. The more land that is used, or the more innovative the use, the more will have to be invested in the social system. Such transaction costs are not normally taken into account when we analyze traditional farming systems, but from a land tenure point of view, they are part of the "cost of doing business."

Finally, another factor influencing the real cost of land within the customary system is the general inflation of prestations and other obligatory gifts (transaction costs). One could, I think, argue that land use costs "shadow" rising bridewealth, funeral expenses, local court fines, etc. The agriculturalists in the project zone face rising land costs (in real terms) as the returns to investment (in labor, etc.) are falling.

Numerous authors have outlined the remarkably low returns that accrue to most African cultivators (Christianson et al., 1981; Berg et al., 1981; Please et al., 1984). If there are any real alternatives available, current agricultural policy in Zaire makes farming expensive in terms of missed opportunities. Over the entire project zone, the majority of cash crops are grown on customary land but under an innovation added to traditional tenure

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3. The quote attributed to an Oil Rivers chief in Nigeria that the land ". . . belongs to a vast family that includes the ancestors, the living and the yet to be born," is just as applicable here.

referred to as a ferme à convention.<sup>4</sup> Why are people developing these new tenure rules when there is the opportunity to grow readily marketable crops? This is a question that can only be partially answered given the present paucity of data, but it is certainly related to past colonial agricultural policy. We will return to this issue in discussing spontaneous innovations.

As important as these issues are, what is needed first is an understanding of the formal rules available to the population for determining who gets access to how much land and for how long--that is, the formal rules used by people for structuring the social relationships between them. It is necessary to understand these rules because land tenure is not at all the same thing as land use.

Land tenure is the possession or holding of the many rights associated with each parcel of land. If one conceives of these rights as forming a bundle, it is easier to see how they can be broken up, redivided, passed on to others and so forth. Some of the rights will be held by individuals, some by groups and others by political entities. For any land tenure system, each of the rights in the bundle will have at least three dimensions that go into their definition: (1) the social relations between various right holders; (2) the time frame in which the rights are held; and (3) the spatial boundaries to which the rights apply.

In the project area there is a general hierarchy of trusteeship. This hierarchy is best thought of as one of seniority of rights. There are generally two types. The oldest is that derived from being the first to settle in a locality. The other is associated with histories of conquest of one group by another. Where the dominance of one group is accepted by another, the chain of seniority of rights of the dominant group is that used by the subordinate group also. For example, where Bambala hold land in Yansi chiefdoms, any land disputes involving Bambala that reach the chief's court are judged according to Yansi customary law.<sup>5</sup> In cases of contemporary land disputes described to us, questions concerning seniority of rights are the

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4. In the project zone it is common to use the word ferme to refer to cash cropping as opposed to cultivation of staples (vivriers). This has led some observers to misinterpret the answer to the question, "Can women have their own farms?" The answer is almost always no. If one asks, rather, if women can have their own fields (champs), the answer is universally yes. Cash or industrial crops are always taxed by the government. Therefore, they must be registered at the nearest agricultural office. This is not a title or deed registry, but a tax registry. The term ferme is short for ferme à convention. Throughout this paper we shall retain local usage by the people in the project area and will use field, plot or parcel to indicate land devoted to food crops.

5. The ba prefix, common to most Bantu languages, when combined with a place name or other proper noun connotes a collection of people or ethnic group: Basakata; the mu prefix is the singular form: hence a Musakata is one Sakata. The ki prefix, similarly used, usually connotes the language; the Basakata speak Kisakata.

paramount consideration for determining who has the legitimate right to give permission to others for specific kinds of land uses.

The prevailing ideology in the project zone is communal in the sense that a group of people, as a corporate whole, hold the ultimate rights in the bundle that control transfers, exchanges and so forth. Ethnic identities are extremely important, even in polyethnic chiefdoms. Access to land is restricted almost exclusively to members of the same ethnic and kinship group. In terms of the hierarchy of trusteeship the general model is that the politics of land allocation are those of the dominant ethnic group in the chiefdom (groupement). With the exception of the central Yansi (to be discussed later) actual land access rests with the lineage or clan and finally, land use is by the household. There must be a very good reason for anyone outside the narrow kinship group to use land. This can be attained by petition, more often by marriage or special situational circumstances. In no case are these people ever members of the set of "real" landowners.

In Central Bandundu it is the permission to use land that is given, not the land itself. The conflicts described by the elders of each group corroborate this fact. This is especially true in the case of industrial crops like coffee. For how long a time is the permission to use the land granted? That is, what residual rights rest with all the other members of the local group?

This question is made all the more complicated by the hierarchy or seniority of rights discussed above. Often the group giving permission to use land was itself given permission to use the land only a generation or so ago. What is the role of seniority in this transfer of rights? On a single coffee farm there will be multiple interests in its long-term future and the relationship between claimants is recorded in the accepted history of the locality. To illustrate, many coffee farms in Tiempe (Sakata) are owned by men who do not belong to a landowning lineage. They have been given permission to settle and use land by the land chief. The various claimants to the land in the case of the death of the man will include his children, who belong to the matrilineage of the landowning group, the lineage of their mother. In addition, the man's matrilineal agnates will have some claims on the investments made on the land (the trees themselves, etc.). The memory of the original arrangements will be the sole basis for deciding which rights in the land are passed on and to whom. As elsewhere in Africa, the interest the various kinship groups in the project have in local history is more than an avocation; it is a necessary ingredient in legitimizing land tenure.

Because of the necessity of having an agreed-upon historical account of the raison d'être of particular tenures, the rules of security will be different in the customary systems of the project zone. Customary law recognizes that the person has full use rights to a parcel as long as he or she does with it what was agreed to with the land chief. Any agreement that is for a use outside the norm of subsistence agriculture will be made in front of witnesses. For any kind of cash cropping this will have to include the village, groupement and collectivité chiefs. Once all of these persons agree, a form is filled out, signed or marked by all those parties and registered with the district agricultural agent (agronome de la zone). Thereafter, for as long as the land stays in production, the cultivator will have to pay a tax to the state.

This payment of tax provides security as it is demonstrable proof that a new investment in agriculture has been accepted by traditional authority figures. Secondly, acceptance of the tax by the state implies that the government of Zaire recognizes the legitimacy of the tenure arrangements that have taken place at the village level. This optimistic description of a potentially positive conjunction of national and local land administration is possible only because there has been minimal land alienation, sales, rental or sharecropping in the area chosen for the project. If one were to do the same study in the regions to the south, especially around Kikwit, where many more "important" people have used their influence to gain holdings, the interpretation would be different. All the elders in the project zone are familiar with what has happened to others and there is an almost universal effort to resist outside penetration.

Traditionally, the cultivator recognizes the land chief with a small gift at harvest time (this is especially important among the Basakata). Acceptance of such gifts (prestations) is a confirmation that the relationship between a person and the land is an acceptable one. In case of conflict, if witnesses can be produced who will affirm that the traditional gifts were made, a person cannot lose his (or her) land.

These sources of security within the context of the customary system also emphasize again the importance of social relationships. A land tenure system cannot operate as nothing more than a set of rules. Security of tenure requires that others recognize the rights exercised on the land. Therefore, for example, if my behavior or economic activity becomes unacceptable to my neighbors, I will find that their memories become increasingly bad when I need witnesses to affirm my payment of taxes or customary prestations. Social pressure for conservative, conforming behavior is strongest for those who are the most weakly or distantly tied to the local kinship network or national power brokers. This probably negatively affects most, then, of those potentially entrepreneurial farmers who for reasons of economy of scale, edaphic characteristics or climate are searching for new land resources.

Land tenure rules, because they are invoked in an almost constant fashion in an agricultural community, are dynamic. Formal land tenures, therefore, are the rules of an on-going game. From the point of view of the customary system it is kinship rather than investment that provides the idiom of discussion. To understand this idiom in the project area it is necessary to understand the relationship between land tenure and matrilineality.

### III. Matrilineality

The system Westerners are most familiar with for determining who are real relatives is called by anthropologists bilateral or cognatic. In this case descent can be traced through females and males. Such a system does not have the mutually inclusive and exclusive membership that is found in patrilineal and matrilineal societies. This is because anybody who is a relative of either parent is a member of one's descent group. The same is true of any relative of their parents, and so on. This group of relatives is called a kindred by anthropologists, and its actual membership changes depending on the situation. For example, a wedding usually includes more relatives in its invitation list than would a meeting of heirs for the reading of a will.

For all the ethnic groups in the project area rights to land are derived with reference to matrilineal descent. In a matrilineal society membership in a kinship group is based exclusively on descent traced through females. That is, the mother, her sisters and her brothers are all relatives by descent while the father is a relative by marriage. The mother and father are always relatives in any kinship system--it is a question of whether or not a parent belongs to the same kinship group. If he or she does, they are the kinds of kinsmen from whom one inherits rights to land. The other parent then belongs to the kin group from whom one borrows land for short periods of time and for definite purposes. We are concerned with the society's socially and culturally accepted definitions, which may or may not correspond to some strictly biological frame of reference. This means that there will always be a fixed and finite set of people who can be members of a kinship group.

There are, in addition, several other structural factors that make matrilineal kinship an interesting social environment in which to work. It is a curious fact that in all known matrilineal societies the leadership of constituent social units is normally filled by males. The matriarchy, much speculated on during the Victorian period, has never materialized in fact. Thus, in the project zone the overwhelming majority of land chiefs, lineage and clan heads and other traditional leaders are men who have authority because of who their mothers and sisters are. It is the brother of my mother who is the head of my family, and not my father nor my mother. It is from this person that I will succeed to my land and social status if I am a male.

Women can and occasionally do hold these positions, and we visited two such chiefdoms. Such situations are, nevertheless, exceptions. The role of women in a matrilineal system is much more variable than the role of men in a patrilineal society. This is because of a certain structural ambiguity in a woman's position. One can see why this is so for the ethnic groups involved. In the project area the rule for post-marital residence is virilocal. That is, a wife goes to live in the village of her husband. She uses land that belongs to his matrilineage and will be inherited by his sister's children. Her children do not contribute automatically to the strength of the household as they have their own interests to protect in their mother's brother's village. Therefore, solidarity between husband and wife is not as important structurally as it is in the traditional (often semi-mythical) conceptualization of the Western cognatic family. There is a certain problem in such societies in focusing on the household in development projects. Each member of the household has opposing social alliances that are differentiated in space and time.

The fact that matrilineal systems have male leadership means that the clan or lineage segment will have to have both males and females born each generation. Experience has shown that where there is no male in the matrilineage, the role of lineage head is not assumed by one of the women, but rather, the unit merges with another matrilineage. This is a structural process that needs greater investigation, especially in light of labor migration, cashcropping, etc. For the young farmer in the project, then, it is his mother's brother and not his father who is the principal figure in his land use, his land tenure strategy.

This is also the rule for succession to the office of "land chief." This person is the allocator of land because he (and at times she) has succeeded to

that office in the matriline. Because of the structural relationships of authority discussed above, lateral succession is to be anticipated. That is, the office of land chief will normally devolve through a group of brothers before passing to the generation of their nephews.

Another structural peculiarity of matrilineal systems concerns residence. In a patrilineal society, such as the Luba for instance, an agnatic core of males resides together and brings their wives to live with them. This means that jural authority is always at hand to adjudicate land disputes as all the interested parties are present in the same village. On the other hand, things are quite different for the matrilineal society. Either the husbands go to live with their wives (uxorilocal residence) or the wives to live in the villages of their husbands (virilocal residence). The latter is the situation throughout the project area.

This means that brothers and sisters will be separated. The male leadership will also be separated from their sisters' children, who will succeed them in office. The children of the males will belong, of course, to their mothers' matrilineal group and will inherit from uncles who live elsewhere. But as was observed in the paragraph above, both male and female members are necessary for the normal working of a matrilineal society so there must always be social activity devoted to overcoming the difficulty of the spatial separation inherent in the system.

What this translates into is the observation that local-level politics are always dynamic in matrilineal societies. Brothers will be in competition with each other for influence over their sisters. The brother who is best able to claim the loyalty of a group of sisters will be the spokesperson for the social unit. Dissatisfied sisters can always accept the leadership of a more dynamic brother and the group is always subject to fractionation as competing brothers are able to convince groups of sisters and/or their children to follow them. This fractionation and the migration in small groups of matrilineal segments explain the relatively small size of the land-controlling groups among these ethnic groups. The basis of power is acceptance by sisters and the ability to give land.

Therefore, matrilineality is not a deviant form, or something to be shunned, nor can it ever be viewed as a mirror image of patrilineality. In the project zone it is the principal rule for determining who has access to the land. Land is "owned" by a matrilineage whose female members and inheritors are dispersed by marriage. Those wives and children who work the land along with the agnatic core of the matrilineage have long-term interests in land that belongs to their own matrilineage, which can be some distance away. Sons may work hard with their fathers to put a farm into production and to make long-range plans. But upon the death of the father, all their rights to the parcel are null and void. The sons may be allowed to stay, but they will always be little more than well-known and perhaps desired tenants at will.

There is a degree of flexibility involved that is related to the domestic group cycle. People do have options. There is always the choice of when to leave the father's matrilineal group to go live with one's own. This can be before marriage, afterwards, or even quite late in life, depending on the relative costs and benefits. There is a choice also of when and where to

invest one's labor. One can invest with one's own matrilineal group, one's father's matrilineage, or, as is happening today, the son and father create a ferme à convention on land borrowed from a third group and where there will be no kinship obligations or interests.

There is another possibility quite common among matrilineal societies that we anticipated finding among these ethnic groups. This is "complementary filiation," where the father's matrilineage tries to attach sons of its male members through the offer of land. It allows a matrilineage to build its numerical size in a relatively short time span. We were surprised to find that this is very rare in the project zone. The concept was well understood by the elders with whom we spoke, but it was not a general practice anywhere. One land chief among the Basakata suggested that it had been more common in the period before colonization when local wars were so prevalent. Its earlier use may account for the large number of non-landowning lineages among that group. In any case, as common as such an institution may be among other matrilineal societies in Africa, complementary filiation is not a factor in land allocation and only rarely in land adjudication in the project area.

Ever since matrilineal systems were first encountered by Europeans there has been concern expressed in the literature on the desirability of changing them into something else, or at least on their imminent demise in the face of Western influence. There is, however, nothing incompatible between matrilineality and successful rural development. Indeed the majority of success stories of small African farmers involve matrilineal peoples: the Chewa and Maravi of Malawi and Zambia; the Agni of southern Ivory Coast; and the Ashanti of Ghana, to name just the most famous examples.

From a purely structural point of view the matrilineal system has some land management advantages. Inheritance, succession and overall management will rest with an uncle. This uncle has, in the normal situation, many nephews. He is able, therefore, to recruit those he wants, something a father cannot do in a patrilineal or cognatic (bilateral) kinship system. In addition, in the matrilineal case an effective manager is able to use his sisters to attach through marriage those males outside his group that he feels are necessary for the success of his enterprise. This implies that a matrilineal system is going to work best in situations where there are expanding opportunities; that is, where the effective leader has something to offer (v. Douglas 1969). Such a kinship system will be an advantage if the beneficiaries perceive that the project is indeed providing expanding opportunities. While the above paragraphs present a general model of matrilineal societies, it is the specific application of these principles by the different ethnic groups that is in many ways the more interesting.

#### IV. General Overview of Ethnic Groups

In spite of the well-documented diversity of ethnic groups in the area chosen for the project, two months spent transversing it revealed some surprising commonalities. The various named groups in the region present something of a dilemma in just what to call them technically. In this paper the choice was made to follow Vansina's (1965) suggestion that they be thought of as ethnic groups. This also conforms to local usage where it is polite to refer to them as an ethnie.

What these named groups have is a set of shared cultural traits. The first of these would be the shared common language. There are, however, important dialectical differences, for instance, from one Mbala, or Yansi, group to the next. The groups also share a common migration history. This local history is used to explain why people are organized under certain chieftaincies (groupements nowadays) rather than others. That is, all villages, with some notable exceptions, belong to small chiefdoms.

The exceptions are villages that are independent. These were villages in the pre-colonial period that had land chiefs powerful enough to avoid being incorporated by more powerful neighbors. Today, they belong administratively in the groupement but all the customary leaders recognize their independence.

In our experience there was agreement on who were the customary leaders. That is, there was no indication of any disagreement on who were the legitimate chiefs of the land, of the clans and lineages or of the groupements and villages. This differs from other areas in Zaire, such as Mayombe (v. Doutreloux 1966) and indeed, more importantly, from the experience of the group leaders during the statistical survey (v. USAID/Kinshasa, 1984).

Needless to say, we struggled throughout the research with the reason why, no matter how much we pressed the issue, there was no evidence of any question of who was and who was not the legitimate land allocator. It could be that because we were dealing with the formal political structure we were given only one "official" view of the system. Given the large crowds that were present at most interviews and the often vigorous exchanges by multiple parties to other questions, however, this seems unlikely.

We then thought that it might be a question of the use of certain words. If one asked, for instance, ". . . Are there those among you who are claimants (prétendants) to be land chiefs?" the answer would almost always be yes. We would sigh with relief; we had found what others before us had. When the meaning was pursued we found that the matter referred to was land adjudication. One person had begun to use the land of another and the accepted land chiefs were called in to decide the case. Neither party, it turned out, ever claimed to be a land chief; they had simply allocated land to themselves and were hence acting ". . . like land chiefs."

While we were in the Idiofa Zone, we asked a group of elders if they could account for these responses, since this was a region that was supposed to have much land conflict. One suggestion was that it was seasonal. We had come after the farms had been planted and that if we had come at the land selection phase we would have seen a lot more discussion of such matters. This still did not yield more than one claimant to the title of land chief for each landowning group.

Another possibility would be that because we were investigating formal rules of land tenure rather than land use we missed the structural discontinuities in the system. This is obviously a problem we were unable to resolve. Because power and influence are related to the ability to give use rights to land, it should not be ruled out that such conflicts may always remain just below the surface. Our experience would seem to indicate, however, that the project should initially, if cautiously, deal with those elders who hold the formal titles.

## A. Variation and Its Sources

There is tremendous diversity, not only between the various ethnic groups, but within them. That is, one cannot say that Bayansi land tenure is such and so. Rather one must be aware of the differences as we move from one locality to another. This is true of all the groups in the project zone. The reasons for this intra- and inter-ethnic variation in land tenure are the same. The first reason is that land tenure is tied so tightly to religion and the role of ancestors. That is, the ancestors, the fetishes of fertility and punishments for transgressions against the land are tied to very specific pieces of ground. The development of these relationships is situational and refers to very local histories, environments and circumstances. Due to these site-specific conceptualizations, land markets (once they do develop) will in all probability look very different from those in the Euro-American situation.

A second reason for the diversity is that the land chief is a representative of ancestors and the mediator between the ancestors and the living. The ancestors can withhold the fertility of the soil, alter microclimates and in other ways punish unapproved acts. While this is very general to the region, the particular personalities of the land chiefs create institutional arrangements that are site-specific. There can be important differences between two lineages within the same village due to two land chiefs interpreting the wishes of ancestors differently.

The third major source of variation in the project zone is the migration history of a group. In broad terms there are two major migration streams, those groups who trace their origin to what is now Gabon and those who say they came from Angola. The Gabon group includes the Sakata, Yansi, Mputu, Dinga, Bunda, Ngoli, and Lori. Their presence in the area dates from the seventeenth and eighteenth centuries. They were established in the region before the arrival of the second group. The second group originally came from the upper Kwango and elsewhere in Angola. These were the Mbala, Hungana, Ngongo and Songo. Most of these peoples entered the zone in the nineteenth and early twentieth centuries, driven by the wars associated with Lunda and Chokwe expansion.

The seniority of rights in land is directly associated with who was where first. This is true both between and within ethnic groups. The set of peoples identified above as coming originally from Angola all have rights in land because of a gift or grant from one or more of the land chiefs belonging to the Gabon set. Within each of these groups will be kinship groups that do not have a land chief because they arrived to join relatives after the land boundaries between land chiefs were fixed. That is, they were accepted as "real" relatives, but not as "landowning" (vrais propriétaires) kinsmen.

Therefore, not everyone born in a village necessarily has the same kind of rights in land. Added to this is the fact that much of the population of the region was involved in the slave trade that was rampant in the area until the twentieth century. Descendants of slaves, who in some localities were said to number more than fifty percent of the population (Vansina 1969), will have claims that are junior to those of their former masters, even though they bear the same kinship group name today.

Added to the complexity of the ethnic diversity and variation within each of these groups is the ephemerality of social units that appear on first sight to be the very stuff of traditional organization. I refer here to the villages. There are important centrifugal and centripetal structural forces that lie just below the surface of the present residential patterns in the project zone. Almost all the villages are colonial or post-colonial creations. The pre-colonial norm had been small matrilineal groups of kin who lived in a dispersed settlement pattern on the land they claimed. The slave wars of the latter nineteenth and early twentieth centuries first forced some people to band together into larger communities.

In our interviews we found that most of the villages we visited were the result of regroupings undertaken either by the Belgians in response to the sleeping sickness epidemic of the 1920s (Nicolai 1963: 114, *passim*), the administrative reorganization of the 1950s (Derkinderen 1955: 20) or post-independence efforts associated with the Kwilu rebellion of the 1960s (Young 1967; Monnier 1966). Even to a person with much experience on the continent, the villages in the region appear much like nucleated villages elsewhere in Africa. Such an interpretation, however, could lead to very faulty socio-economic analysis. The villages have combined formerly separated kinship groups into one local unit. This means that some people are located much further from their fields than others. It also means that these social units will have tensions and fracture lines different from those of communities with a long history. Land tenure remains more factional in the project area than would be anticipated elsewhere in Africa.

Furthermore, even with regroupment efforts, village location is not of long duration. It is common to have whole villages move several hundred meters after the death of an important elder, especially a land chief. Among the Sakata and Dinga one could find the remains of recent former habitation sites, demonstrating the commonplace of this practice and the seriousness of such a death. As was explained, the deceased elder comes back for relatives, who sicken and die as a consequence. The only way to avoid further death is to move the entire village. Like households, villages may not be the social unit for basic project intervention. If there is a more effective alternative it will only be revealed through intensive sociological investigation. I would suggest, however, that the only social unit with any real historical depth and unambiguous social solidarity is the group of matrilineally related people who have a land chief.

On the one hand there are the centripetal forces of war and administrative regroupement and on the other the centrifugal ones of witchcraft accusations and land-based small kinship units. The history of the region has shown that the apparent calm that characterizes the project area today can quickly change. The common thread is that social order is based on the ability to give land. Who has such ability often depends on whose version of history has been accepted by the administration. Researchers and others should be warned that there is more than one version of local history in many areas.

The inherent tension within the system is exacerbated by two other land tenure-related phenomena that cut across the entire project: wage migration and cash-cropping. Cash-cropping changes the rules of the game, so to speak,

especially as the local preference is for coffee. The subsistence crops of maize, manioc, etc. are planted in response to family needs. That is, the amount of land occupied is expected to correspond more or less to the number of active members and their willingness to bring land into production. Because the number of active members in a family changes during the domestic group cycle as children marry and either move away or start independent operations, subsistence cropping results in a reordering of a commonly owned good (land) each couple of seasons as social positions and needs change. Coffee trees take land out of the pool for the life of the enterprise. It is not unusual to find elders with very limited economic capacity in the traditional sense holding relatively large coffee plantations, which, of course, makes that land unavailable for men with growing families. Therefore, it is not surprising that where land pressure is greatest or security of rights weak, such cash-cropping is minimal. Also, interestingly, palm trees that are tapped for oil or palm wine are not owned, but like the land, are considered to be community property. These are a major source of income in the Kwilu area and yet anyone who is a member of the landowning group can harvest from any tree and even tap a tree that was used by someone else the day before. Fishponds, on the other hand, are treated like coffee trees and the land is held as a ferme à convention for the life of the enterprise. Individual economic interstices on the land raise new questions that did not exist under traditional land tenure over who has the right to how much land for how long.

Migration to Kinshasa or other labor centers has introduced a different kind of land tenure problem. Migrants have found that when they return from a long residence in the city that all of the land to which they have claims by birth has been given out as fermes à convention by the land chief for their kinship group. Such cases often find their way into the courts and we were told during our visits to the parquets in Kikwit and Bandunduville that the land transfers, if they are registered with the local agricultural office and if taxes have been paid, are always upheld. Within the project area this has happened only along the southern boundary. The farther one moved from Kikwit and Idiofa, the stronger the resistance to such alienation of land to outsiders seemed to be. The solidarity of the kinship group and what constitutes its structural raison d'être seems critical. The next section will examine the two dominant types of kinship units in the region.

## V. Clans and Lineages

Over the past two and a half decades many have devoted their efforts to looking for a theory of development in the Third World, and in the process many of the terms of economics that were once considered esoteric have become part of our everyday vocabulary. If one uses terms such as shadow prices, functional expenditures and distributions, net dispersements or nonfactor service, no eyebrow is raised. Using sociological and anthropological terms in the context of an investigation into the nature of African social life, however--terms such as clan or lineage--often raises the cry of jargon. The present section attempts to illustrate why it is important to understand the meaning of such terms in order to fully comprehend a very important aspect of land tenure among these peoples.

Because of the importance of legitimacy, each social group has had to decide how it will assign land tenure rights with reference to descent. As mentioned above, all groups in the project zone have named social units, membership in which is determined by matrilineal descent. These descent groups are usually designated as a "clan" (un clan) in daily conversation and in most published commentaries of the colonial period. The word "clan" comes from the Celtic and referred originally to an organized group of relatives having a common ancestor and territory. The term has been reserved by modern anthropologists to designate only unilineal groups based upon stipulated principles. But the majority of landholding and controlling descent groups in the project zone, it turns out, are based on principles of demonstrated descent. For such groups anthropologists use the term "lineage" from the Latin linea (line). In the next section, which discusses the specific ethnic groups, the terms clan and lineage will be used in the anthropological sense discussed above to refer to social groups based on stipulated and demonstrated descent. What is important, however, is the fact that there is a very real difference between the two in la loi coutumière.

The question to be addressed is what is the relationship between these social units and an estate in land. The same name will be used for kinship units found in many villages. Not only will the same name (Kindia, for example) be found among Bayansi and Badinga, which is not surprising since they are historically related, but also among Bambala! Does this mean that all Kindia are related matrilineally to each other and if so, by what degree and manner?

Since this analysis is concerned with land tenure the following discussion will examine this question from two points of view: (1) how is one determined to be a true "owner" of the land based on descent? and (2) at which structural juncture does one have access to land through affinity (i.e., marriage)? The latter question addresses the level of exogamy and the kind of alliance formed by marriage.

In order to answer the first question we will have to determine whether the rules for membership in the group depend upon demonstrated or stipulated descent. The former refers to the principal that I must be able to demonstrate how I am matrilineally related to every other member.<sup>6</sup> This will result in a finite and fixed set of individuals who can belong to a descent group, and hence use its land. The term lineage is reserved to designate such a kinship group. This is in contrast to the clan, in which people are related following principles of stipulation. That means if a person belongs matrilineally to the same group I do, they are culturally recognized as being relative by descent and hence have full birth rights in the land claimed by my group. It is not necessary to show (i.e., demonstrate) how I am related to any person, only that I belong. In the project zone this is usually determined by having common food taboos, passing certain tests and having the same fetishes. In this situation the sum total of holders of

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6. These demonstrable relationships need not conform exactly to actual biological relationships, though they usually do. What is necessary is a culturally accepted demonstration.

birthrights in land can never be known and the structural position of the successful in-coming claimant is much more ambiguous. It is not hard to see how in cases of land pressure such consideration could become paramount in land adjudication under customary law.

To complicate matters even more, in the project zone there are many named social units based on stipulated descent (clans) that are made up of constituent groups formed on demonstrated principles (lineages). To find out which kinship unit holds land tenure, we need to determine whether birthright in land depends on demonstrated or stipulated descent. We will have to know this before we can begin to understand who holds which kinds of rights in the bundle of land tenure.

Another aspect of the same phenomenon involves marriage. Normally we would expect the landholding kinship group to be exogamous, that is, to choose marriage partners from outside the group. This is not always the case, as North African Arab societies illustrate. It is a question that needed empirical investigation. Our interviews turned up some very interesting variations. On the surface, marriage between people who belong to the same landowning descent group is forbidden. Upon further probing we often turned up cases where someone had contracted such a marriage. In these cases former slaves had taken the kinship names of the former ruling group, recognizing the same land chief and claiming rights to the same land and ancestors. Another exception was found among certain Mbala and Hungana groups who had migrated separately, but were regrouped by the Belgian authorities, chose a single kinship group name for the newly created village, yet intermarried on the basis of the original kinship groups.

For the project area a much safer and surer test is to ask when rights to use land by marriage are established. In-marrying women will use the land of their husbands' matrilineage and their children will only have the same rights to land as their mothers--rights established by marriage. Children of in-marrying males will have full birth rights as they belong to their mother's group. Therefore, asking children where they have rights to land can help clear up otherwise ambiguous situations.

I hope that the foregoing has convinced the reader of the importance of understanding the principle upon which the landowning social unit is based. The use of special terms such as "lineage" and "clan" make clear which kind we are talking about. To reiterate, the word clan is used for both demonstrated and stipulated and endogamous and exogamous social units in the literature and among the people themselves when they speak French. In this paper the terms clan and lineage are used in their more specialized meanings sense.

One final point before moving on to specific details for each group: as a rule throughout the project area the landowning group will have a leader or spokesperson. So far the paper has followed common usage of the project participants themselves by referring to this person as a land chief (chef de terre). As we shall see, the actual allocation decisions and the power of these people are variable. Some groups give the land chief considerable discretion. Others insist on a unanimous approval of all allocation decisions that involve anything out of the ordinary. Still others are willing to follow a majority vote. The following section will attempt to set forth the

essential characteristics of the land tenure of each of the ethnic groups in the project zone.

## VI. Land Tenure Specifics for Each Ethnic Group

### A. Sakata

The Basakata inhabit the region in the project zone that is north of the Kasai. The Basakata are divided into six collectivités of which two, Kamba and Battered, are included in the project (see map 1). In addition, we visited two others in order to see if there were major differences. The collectivité of Luabo is on the other side of the Lukenie River and that of Mfimi is the western extension of the ethnic group.

#### 1. Social Control of Land Distribution

In spite of some important differences as one travels from west to east among the Basakata, the outstanding commonality is the important role given to the mbe, the land chief. Each mbe is in charge of a territory (imve) for which he (or she, as women can and do occasionally hold this office) acts as trustee for his kinship group. The mbe jealously guard their territories, both as a responsibility to their kinsmen and, as we shall see below, for the rewards that come from being a land chief.

The land itself belongs to a kinship unit. These units in all the literature are called clans. But as discussed above, this can be misleading. Membership in the landowning group is based on demonstrated descent across the entire Sakata region. Therefore, when the landowning group is being referred to the term lineage will be used.

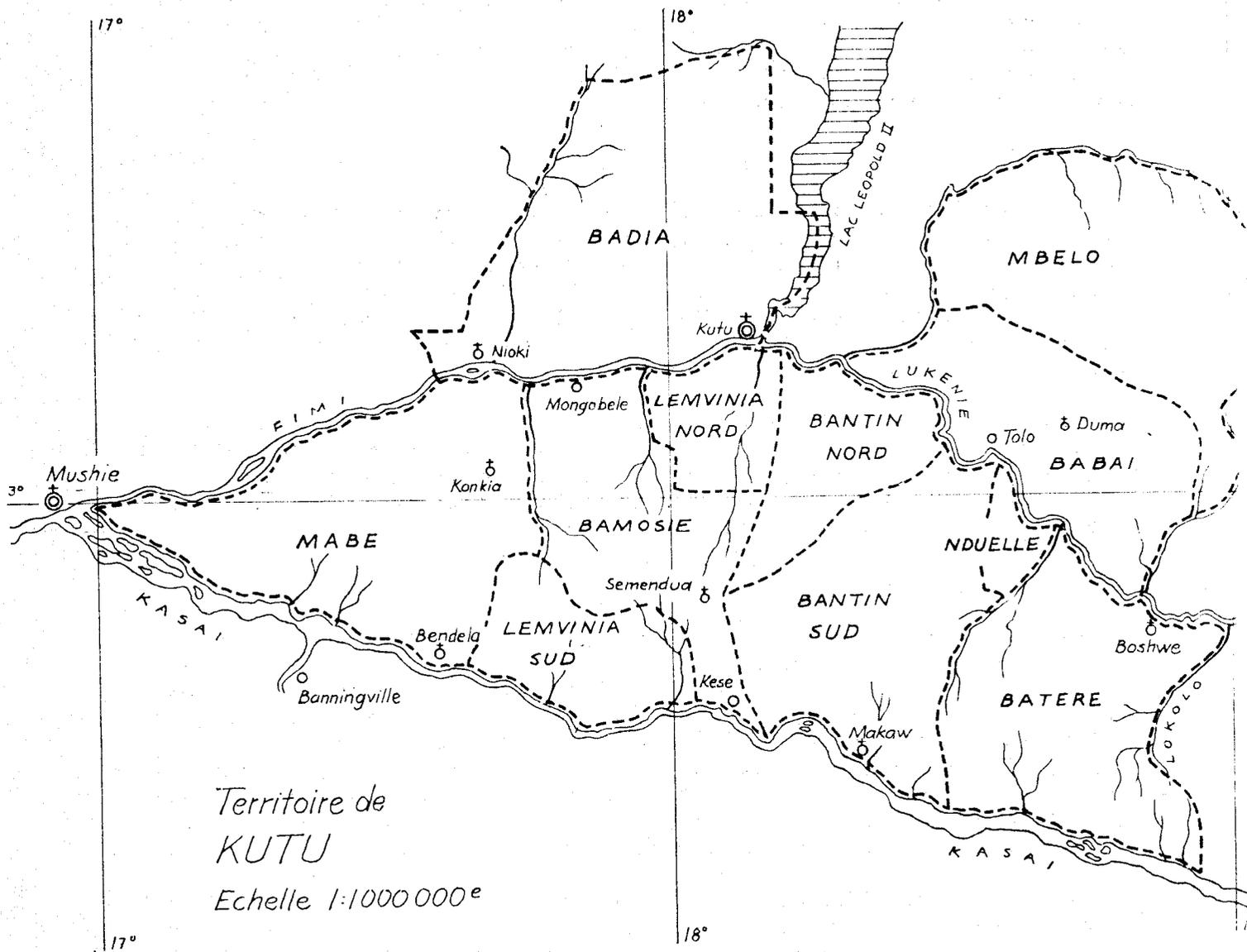
#### 2. Access and Security

Each of these landowning lineages (keboui) is named. In land tenure matters this can raise certain difficulties for the outsider. For instance, a name like "Ombon" is found in all the Sakata collectivités. In any given locality, however, the Ombon will be landowners only if they have a mbe. In this case, if individuals who are Ombon appear they are recognized as relatives if they have the same food prohibitions, religious practices towards the ancestors and fetishes. They are, furthermore, addressed as siblings. But unless they can demonstrate how they are matrilineally related to the mbe and his relatives, they will remain forever as land borrowers.

What this case illustrates is the problem that can be encountered in land tenure adjudication when there are lineages within a larger clan structure. "Ombon," therefore, is both a clan name and the name of many lineages among the Basakata, only some of which are landowning. It is assumed that each freeborn Musakata (nsha) has a lineage somewhere where he (or she) has his own imve.

This explains one of the most interesting anomalies among the Basakata. Every square meter is "owned" by a lineage and controlled by that lineage's mbe. Yet the majority of land users in most Sakata communities are land

Map 1: Sakata



Source: ByLin 1966.

borrowers. This is said to be the result of population movement, intermarriage, and children staying in their father's community. In none of our interviews was this seen as a problem. It does help explain, however, why the land chief has such importance.

### 3. Administration and Disputes

It needs to be pointed out also that each imve will have only one mbe. If an irresolvable conflict splits a lineage, all the members of both factions are still full right-holders in the territory but must work through the original mbe. It is impossible today for a new line of land chiefs to be founded. It is the eldest son of the eldest sister who becomes the next mbe. If he declines or for some reason is incapacitated, it is his next-in-line brother who takes over. Women can and do become land chiefs but under what circumstances was never made clear. Even the frequency of this happening was impossible to determine.

The mbe can assign his role to an assistant (mami), but in no way can this assistant be considered a real land chief nor does he have the power associated with the ancestors or the soil. A false land chief will be rejected by the ancestors who will withhold the fertility of the soil. Cases were related to us of plants not growing, droughts, and sickness all being visited upon villagers who had followed false claimants. Of course, it should be added that these stories were told to us by land chiefs.

The relation between land chiefs and political chiefs (i.e., the chief of a groupement) is an interesting one. The political chief, mojou, (pl., bajou), is not a landowner. His entire lineage borrows land from a land chief. Each mojou will have many mbe in his chiefdom, one for each landowning lineage. Historically only two or three of these loaned land to the mojou and his matrikin.

It was said that this institutional arrangement was started during the tribal wars of the last century (l'époch des héros) and that the original bajou were those men forceful enough of persuasion and prowess to organize chiefdoms. The mojou of the Baterre said that this was not quite accurate in the case of the Baterre. Here the present political chief is the matrilineal descendent of the chief who led the original inhabitants into the region. They were recognized as leaders by the people because they could perform the miracle of making cooked manioc produce a growing plant. All the other bajou interviewed held to the first theory of origin.

There is an additional structural relationship between land chiefs and political ones. Among the Basakata there is a very special kind of land chief called a mvanshou (mbianshou in the central Bambaintain dialect). Among the Bamfimi Sakata to the west the mvanshou is a matrilineal descendent of a mbe who was powerful enough to avoid incorporation into a chiefdom of a political chief. In the central Mbantain, Duéli and Baterre the term refers to those land chiefs on whose land the deceased political chief is buried. For instance, among the central Bambaintain only three landowning lineages out of the dozens in the chiefdom are mvanshou. These are, quite naturally, the land chiefs turned to first when the political chiefs need land.

It should be noted that the government has been trying to move the process for selecting new political chiefs from inheritance to election. The present chief of Mfimi is elected and we interviewed both him and his predecessor. Surprisingly there was no acrimony or bitterness that was in evidence and both men claimed to be bajou by descent.

Land disputes are taken to the mojou of the chiefdom (groupement in national administrative system) who then calls together the land chiefs in the disputed area. Like elsewhere in the project, the present villages were founded by the Belgians to combat sleeping sickness and to make administration easier. Prior to this regrouping the Basakata lived in dispersed settlements close to their fields. Therefore, the village chief is not a customary office but dates from the Belgian colonial administration of the area. This is supported by the name for this office in Kisakata, capita (also kapita). This person is today appointed by the mojou from candidates selected by the land chiefs. This is to reduce the possibility of conflict between land chiefs and village chiefs. The main role of the capita is to represent the mojou and to keep order.

When the land chiefs were asked if there were many people who claimed to be mbe falsely, the answer was often that yes, this was a problem. Initially it was easy to assume that such remarks referred to land tenure. They do, but only in the most indirect fashion. One of the most important prerogatives of being a land chief is the right to obligatory gifts from land users. It is common for a cultivator to give a small harvest gift as a prestation to honor the mbe. The claim that there were pretenders to the title always referred to the non-presentation of gifts. That is, people did not give game, beer, etc., because they behaved as though they were entitled to them.<sup>7</sup> In matters of land, we found no cases of such ambiguity, implied or real.

#### 4. Innovations and Investments

Coffee is the major cash crop in the area. The other major investment is in livestock. No fish tanks were reported. A few concessions from the colonial period remain but these are small and the concessionaires we talked with said that they made more money from buying produce from local farmers than from the oil palms on their concession. When non-concessionaires plant cash crops or start a livestock operation they must register as a ferme à convention with the local agricultural office. Security of tenure in a ferme à convention is assured by an obligatory gift made to the mbe on whose land the ferme is located. This is necessary in order to fulfill the terms of the grant of use rights, as the permission of the land chief must be secured before registration. In the case of a livestock operation one or more calves are given annually. For coffee, etc., it is a sack of produce. This is an innovation based on tradition, of course, but was explained to us as an extension of the gifts given by hunters, not by subsistence crop farmers. For the hunter it is the foreleg of the larger game animals that must be given to

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7. It should be added that the political chiefs also had the same complaint. One gains the impression that both the mbe and the mojou expend much effort in protecting these small symbolic prerogatives of office.

the land chief on whose land he fells the prize. This is because the forefoot is said to be the first part of the animal that stepped onto the ground where the ancestors of the mbe are buried (Hochdegger, personal communication, July 1985). When fish are caught, netted or trapped, some must be given to the land chief in whose territory (imve) the body of water is found. Additional gifts are given when a member of the mbe's lineage dies. This is to pacify the soul. Also, when one makes sugarcane beer, palm wine or something special a small portion will be sent to the land chief (v. also Bylin 1966: 235). In summary, gifts to the land chief are an expected cost of doing anything out of the ordinary. If the gift is accepted, permission is granted. Even the concessionaires and missionaries give such gifts to "their land chief."

#### 5. Additional Project Issues

Among the Basakata the land chief is an individual who must be consulted on all aspects of land use. If the mbe does not approve of an activity, we were told, his wishes will be respected by the mojou and Zairian government officials. That is, until the mbe concerned is satisfied no project activity that uses land will be tolerated.

In addition, project field directors should be prepared to make the necessary customary gifts to the land chiefs on whose territory an activity is taking place. This would include projects with demonstration plots, gravel pits, and so forth.

The Basakata struck us as being most willing to cooperate as long as their customs are respected. They are progressive, with a history of good schools in the area. In addition they have had their own bicycle factory at Bakoro and one sees a greater use of bicycles here than anywhere else in the entire project zone. Bicycles are used by both sexes for getting to and from the fields as well as for transporting goods to market.

#### B. Yansi

The Bayansi (Yan, Yans, Yanz, Yanzi, Bayey) are the largest ethnic group in the project area south of the Kasai (see map 2). They refer to themselves as the first to settle the area. Also, they have served as hosts to many communities of Bambala, Bahungana and others. In these situations, our interviews indicated that Yansi land tenure institutions dominated. The land tenure of each of these later-arriving groups will be described separately.

##### 1. Social Control of Land

There are two major models of land tenure. Among the Bayansi in the collectivité of Manzansai all the land is held in the name of the political chief (mvil ntor).<sup>8</sup> There is an interesting twist to this; the original site of the foundation of a chiefdom has its own land chief. Everywhere else

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8. There is considerable variation in the names applied to offices by different communities of Bayansi. This paper uses the terms collected in Manzansai.



in the chiefdom, access to land is dependent on matrilineal membership in one of the original lineages or by permission of the chief--that is, the mvil ntor.

This particular area (Manzansai) claims to be one of the epicenters of Yansi expansion into the Kwilu. The original migrants came to the area under the leadership of the matrilineal ancestors of the present political chiefs. Part of the basis of power of these individuals is their control of land tenure on the one hand and their generosity of access to land on the other. The mvil ntor is not the owner of the land but rather protector and guardian. The owners, if such a term must be used, are the ancestors and living descendants of all the original free persons (nsan) who came to the area with the founding chief. Owners also include, of course, members of the chief's matrilineage (the bamvil mbule), in contrast to the Basakata model.

It was maintained that the other Bayansi we had interviewed to the east and south had broken off because of conflicts that took place soon after the establishment of the Manzansai chiefdoms. The conflicts were associated with slavery of a special kind associated with payments for infractions, delicts and debt.<sup>9</sup> People became dissatisfied by the practice and their social position and together with matrilineal kin set off to found their own community. This led to different land tenure practices as we shall detail below after a brief but necessary discussion of milambu.

The same obligatory gifts that were present among the Basakata are found among all the Bayansi. In the core area of Manzansai these gifts (milambu) are not associated with land tenure in the same way, however. The hindquarter of a large game animal, all of a leopard, etc., are given to the mvil ntor. There are no gifts for the use of the land, whether for subsistence or cash cropping.

During the spread of the Bayansi they took these ideas of chiefly prerogative with them. To receive milambu is proof that you hold chiefly status. When the administration (both colonial and current) wants to dismiss a chief they simply remove his rights to milambu and he has no proof of any political meaning. That is, a chief with no people is hardly a chief. The receipt of milambu is more important than any number of old leopard skins and teeth as proof that one has recognized social power. The symbolic role of such gifts far outweighs any utilitarian value and explains why they are so vigorously insisted upon.

Therefore, in the Yansi areas outside of Manzansai, the mvil ntor is the matrilineal descendant of the first lineage leader to receive such gifts from other lineages. It was suggested that such chiefs and chiefdoms emerged out

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9. This is different from bilwa, which refers to the slave trade. In the pre-colonial period there would have been a range of slavery, from the transfer of a young woman of childbearing age to a criminal sold by the community to rid themselves of a social nuisance. The children of a female pawn would theoretically belong to the matrilineage of her possessors. The children of slaves of servitude would have no land rights. The role of these social distinctions in terms of land tenure remains obscure.

of the tribal wars and slave razzias. People organized for their defense under the leadership of a powerful man and his matrilineage continued to provide the chief from then on.

This spreading out from the Manzansai area has resulted in the same kinship names being found throughout the area inhabited by the Bayansi. The exact number of named kinship groups was not determined during our investigations, but others have claimed that there are perhaps a dozen or so, with nine being the most ancient: Kingom, Kindal, Kimbie, Kimwey, Kinsie, Kindia, Kinsian, Kinkie and Yam (v. Rezende 1970). If a person is a child of a Kimbe woman and travels to another part of the Yansi territory and is asked what name he (or she) is, he will find relatives there. From the other point of view, if Kimbie people come to a chiefdom in Manzansai, they will be taken to their Kimbie relatives. This establishes a stipulated kinship tie among them. In this sense, then, all Yansi freeborn (nsan) are members of one of these large dispersed clans. What are the land tenure implications of this?

## 2. Access and Security

Does common membership in a clan give access to land in a community different from the one from which the mother came? The answer is yes, but only use rights that are secondary and permissive. As was pointed out above, land tenure is not the same thing as land use. The relative by common clan membership can expect to be shown a plot on which to grow food crops, nothing more. When asked if this person is an "owner," informants answer no. To be an owner a clan relative must also be able to demonstrate how they are matrilineally related, a member of the same lineage, which will have, of course, the same name as the clan.

Within the chiefdom (administratively called a groupement) of Manzansai a person is able to make a farm anywhere he wants. That is, in these particular Yansi chiefdoms, there are no lineage territories. For fermes à convention the permission of the chief of the groupement must be obtained. Here, the chiefs of the lineages, mampe (administratively called chefs du clan) do not handle land allocation matters but come into the picture during adjudication of conflicting claims, parcel encroachment and inheritance.

Among all the other Yansi groups, however, the political chief is not the only land chief. The head of each lineage is also land chief. What this means is that as each lineage established itself in a new territory, that lineage became the possessor of its own land. In these Yansi villages a person cannot cultivate outside his lineage territory without the permission of the other lineage.

Nowhere among the Bayansi are land sales permitted. The Bayansi, chiefs and commoners, are well aware of land sales and loss elsewhere outside the project zone and are vigorously opposed to any kind of alienation. This does not mean that land sales and registration have not taken place. Rather, that any such transfers have been associated with very unequal political power on the part of Belgian colonists and Zairois elites. Security of tenure is assured in three ways: first by membership in a "landowning" lineage, secondly by permission obtained from the lineage members from whom land is "borrowed" and thirdly by paying taxes on investments as a convention.

### 3. Administration and Disputes

The literature gives a very confused picture of land administration and dispute resolution for this area. Various authors (e.g., Müller 1970: 18) state that it is the moniteur agricole or the agronome de collectivité that distributes the actual fields to the Bayansi cultivators. This is a position created by the Belgian administration and maintained by the present government. If this is the case, what possible role could there be for land chiefs, etc.?

When the people who assembled in each village were asked about this, they always said that it was true, the land was distributed by the moniteur agricole. This would have made our task quite simple if it were the case. We could dispense with the enjoyable but physically gruelling visits with cultivators and simply talk with the local moniteurs. Unfortunately, it turned out that they had visited very few villages, and then largely to get food for their families to supplement salaries that were many months in arrears.

In the project zone there are two cropping seasons. With each moniteur responsible for dozens of villages with hundreds of cultivators each preparing new fields twice a year the job at best would be formidable. When one adds that these individuals had neither four- nor two-wheel conveyance, it seems impossible. There was not one moniteur nor agronome that we met who had a Land Rover, truck, car, motorcycle, motorskooter or bicycle. Therefore, we began to ask the assembled cultivators just how land was distributed.

It appears that the moniteur visits the villages from time to time to find out if everyone is farming. The community leaders discuss the current availability of land, problems, and their solution and the moniteur either approves or advises further action and then leaves to visit the next village on his tour. The raison d'être of the office is to ensure that the rural communities are responding to national needs in their production strategies. The history of applications of this plan has always been one of heavy-handedness whether imposed by the colonial regime or the current one. There is simply no institutional base or financial commitment to make anything else possible.

Dispute settlement remains in the domain of customary institutions. If the problem cannot be resolved at the lineage level, the political chief convenes a council of elders (tribunal coutumier) whose decision is final. Cases involving fermes à convention can be heard in the national courts if the parties are not satisfied with the decision reached by the tribunal coutumier.

### 4. Innovations and Investments

For any innovative use of the land it is not enough in these communities to have the permission of the land chief, who is also invariably the lineage head; one must also obtain the approval of the lineage as a whole. The lineage chief (who is also land chief), if he or she agrees to letting the applicant use the land, then must present the request to all the other lineage members living in the village. Any adult, male or female, can object and, if the objection is strong enough, stop the transfer.

To have a ferme à convention in these Yansi communities a person will need the approval of the lineage head in his or her role as land chief. The village chief<sup>10</sup> then must affirm that the landowning lineage has agreed with the land chief. The application is then taken to the political chief who then delivers it to the chef de collectivité and the agricultural officer for the collectivité.

#### 5. Additional Project Issues

Throughout the Yansi area the project will have to work closely with the political chief. In communities outside the Manzansai region the lineage chiefs will also have to be consulted in their capacity as land chiefs who are autonomous in land matters from the political chief.

#### C. Mputu

The Bamputu are a distinct group of Bayansi who live in almost the exact center of the project zone. The elders said that the Bamputu came originally from Kwango and that the Bayansi came from someplace else. They also said that there is no intermarriage between the two groups. This is quite incredible if the two groups are as similar or close as is reported in the literature (v. Müller 1970: 15; Boone 1973: 352).<sup>11</sup>

#### 1. Social Control of Land Distribution

Among the Bamputu each lineage has its own distinct territory. The head of the lineage is also the land chief (mfum a mbil). This person is not necessarily the eldest, but rather is "elected" by the lineage from the matrilineal agnatic core. In French this person is referred to as chef de forêt, a fact which emphasizes that the competition has been for land with woody plant coverage. The grasslands that make up the mosaic of this part of the Kwilu region are considered much less fertile and it is here that later-arriving groups are allowed to settle. This is true for the entire Bayansi-Mputu area. The more densely forested a micro-environment, the earlier the "owning" group settled there!

In addition there is the communal forêt sacrée. This is where people go to be cured. Each disease has its own spot in the "forest" of the community.

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10. The position of village chief, it will be remembered, dates from the colonial period. As elsewhere in the project, most villages date from the various regroupements of the colonial and post-independence administrations.

11. The reason it is discouraged is probably the same as elsewhere in the project. One does not invite in members of another chiefdom (groupement) for fear of land tenure conflicts in the future. As one elder put it, "Others can use my land, but not as proprietors, the land is for my use." Further complicating this whole issue is the statement cited in Boone (ibid.) by the Belgian administrator Trokay in 1937 that the name mputu is a sobriquet that means sauvage. None of this was supported by our informants, who emphasized their ethnic differentiation.

One cannot, quite naturally, cut trees or plant crops there. These areas are well-marked and there is never a problem in identifying them.

## 2. Access and Security

The land chief is the controller and coordinator of lineage land. He cannot, however, make arbitrary decisions but will call the members in for discussion. The example given to illustrate the process was the lineage Bulong which has its territory called Nzambal. If individuals want to make a cash-crop farm or a fish tank there, they will first talk the matter over with the land chief of Bulong. If the land chief says yes, then all the other members of Bulong must affirm this decision. The people said that among the Bamputu it is the will of the majority that determines the outcome. In cases where a minority is really opposed to the transaction, some compromise will have to be reached.

There is a landless set of lineages that are grouped into a clan. They are the Angil. They are the blacksmiths. In each village they use the land of their spouses. Time did not permit exploring this interesting relationship, nor the origin of this craft specialization. It was added that the Angil arrived after all the land had been given out.

In response to further questions, however, the team was told that the direct matrilineal ancestor of the current mfum a men (chef de groupement) was the very first person to come here. It is he who gave out the land to the others. Therefore, the Bulong (the lineage of the chief) were the chiefs in the Kwango, according to our informants. As the different lineages arrived they chose a territory for the followers to use. The size was determined by need. Each lineage has its own cemetery and it is the mfum a men who determined its location.<sup>12</sup>

Our informants said that there was no problem concerning security. It was assured in two ways. First, a person has assured security to land that belongs to the lineage. Secondly, if a majority of the lineage approves of a new use and user of its land, the tenure is secure as long as a person does with the land that which was agreed upon. Whether or not land pressure will cause people to call these customary arrangements into question, as has happened elsewhere on the continent, only time will tell.

## 3. Administration and Disputes

The Mputu elders said that the most common land disputes are transgressions on the boundaries of lineage territory. They said that they have one or two cases a year in each of the chiefdoms (groupements). Such conflicts are settled by the two land chiefs, the political chief and the chief of the collectivité. The reference points for adjudication are the marks left by the ancestors. The assembled notables visit the disputed territory where they make a determination.

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12. The groupement chief (mfum a men) is not necessarily a land chief. There is a concept of a separation of functions.

When the disputants are members of the same lineage, it is almost always a case of someone advancing on another person's fallow. Such cases normally remain within the lineage moot. If the parties will not accept the decision by the lineage chief in the matter, the village chief (mfum a bul) is asked to adjudicate. Should the parties still not be satisfied, the case finally goes to a customary court (tribunal coutumier) which has the final say. Such cases were said to be rare.

As elsewhere in the project zone, the gift of meat from game animals is very important. Here the customary gift, mulam, is given to the chief of the lineage in his role as chief of the land. They said that it was a gift of thanks for the use of the land. The chief involved, however, is expected to divide the gift with the other members of the lineage.

#### 4. Innovation and Investment

If an activity that could conceivably take several seasons (such as construction of a fish tank) is contemplated, the land chief (mfum a mbil) has to be consulted. Thus, fish tanks and the planting of trees (coffee is the cash crop of the region) are largely restricted among the Bamputu to land that belongs to one's own lineage segment. There are two different aspects to this. The first is that the land of a lineage is divided between the segments that compose it. That is, families feel that they have some exclusive use rights to particular sections of the commonly held property of the lineage. The second is that a critical factor in cultivation strategy is the amount of time a piece of land will be dedicated to a specific use. This corresponds to the general distinction between subsistence (cultures vivrières) and cash crops (cultures industrielles). This raises an interesting point from the point of view of the project, because it is not the fact that a crop is sold that makes it different, but that it dates from the colonial period or later. For example, the most active participation in the national commodities market by local cultivators, by both men and women, is in manioc rather than coffee.

This is undoubtedly a response to the constant demand for manioc in the urban markets of Kinshasa that is perhaps almost perfectly elastic given current supply levels. Prices in the main market in Kinshasa have risen to 300 percent or more of those at the farm gate. According to those interviewed, the main block to further market participation was the lack of transportation facilities and small buyers (petits commerçants) for them to take advantage of the situation. Depressed coffee prices, on the other hand have made putting in new coffee farms a less attractive alternative and no one during our interviews was interested in any technical assistance on this score. In fact, coffee plantations and cattle ranching were actively discouraged.<sup>13</sup> Ways to improve manioc production were, however, viewed as important. The Mputu elders we talked with maintained that food supplies were adequate and this interest was oriented towards increased earnings from agricultural activities.

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13. This may not be related to returns on investment but rather the result of the fact that the principal investment activities by outsiders in the area surrounding the project zone is in these two activities.

Expanding operations and diversifying production into cash crops requires lineage approval. If there is not enough suitable land in one's own family territory, land can be gotten from another lineage. As was stated above, the majority of the lineage must approve. It is only when there is no concerted objection that the land chief will give permission. The seeker of land then goes to the village chief (mfum a bul). Once the village chief adds his mark to the paper the potential farmer of industrial crops must gain the confirmation of the political chief, the mfum a men (administratively designated as chef de groupement). Finally the paper is given to the agronome de la zone who sees that it is registered. All such farms of industrial crops are taxable so the government has a great interest in registering them. These fermes à convention are all on file at the Bureau d'Agriculture de la Zone in Bulungu. People in the region will also refer to them as une concession and compromis (!).

In no interpretation of the terms is this seen as anything but a temporary confirmation of use rights. The person has full use rights as long as he does on the land that which was agreed upon at the first meetings with the land chief and lineage members. That is, a person cannot change crops or production strategies without the permission of the land chief. This fact reminds us that there will be real transaction costs involving time-consuming negotiations before Mputu cultivators can adopt certain innovations.

#### 5. Additional Project Issues

The Bamputu shared with all other groups in the project the expressed need for better marketing and transportation facilities for the products (principally manioc) they wish to sell. When the women were asked, they wanted mills to make manioc flour. It was impossible to determine if this was seen as a potential for commercial price advantages in addition to labor savings or not. The Bamputu have been receptive to the idea of fish tanks. They are scattered throughout the region and are in various states of repair ranging from textbook examples to swamps that are only fishponds because someone says they are and pays the taxes on them. We found no evidence of sabotage to be a problem here. The Talapia (genus of fish chosen for the fishpond project) are being harvested at about one inch in length. People say they want larger fish. This indicates the need to have more technical assistance on each of these introduced technologies. Only by sound extension follow-up on a long-term basis will these ideas be able to take hold and become part of a programme d'autogestion.

The other side of the problem of selling their production, and one which is related to a lack of transport facilities and merchants, is the supply of inputs. It is rather remarkable but cultivator after cultivator complained that they lacked access even to the simple tools like hoes and machetes. We asked why they didn't turn to the local blacksmith. They said that they did, but that the blacksmiths were not able to keep up with demand. This is something that could be explored with some profit for project intervention. How were these needs met in the pre-colonial times? Demand was presumably smaller, but what factors mitigated against investments in expanding local productive capacity?

Related to this whole problem is the supply of canned goods. The petits commerçants cannot get merchandise to sell. We asked one of the village

commerçants about this and he agreed that it was a major problem. It may be a welcome area of project intervention.

Certain groups in the project area have behavioral taboos that can have an impact on project efforts. Among the Bamputu these have almost nothing to do with land tenure or agriculture. People said, when the question was asked, that you cannot commit adultery or incest on your cultivated area. But since the punishment and the role of ancestors in bringing wrong-doers to justice is the same no matter where you commit these acts, it doesn't seem particularly relevant.

#### D. Dinga

The Badinga (Dzing) of the project are not to be confused with another matrilineal people with the same name to the southeast where the Kasadisadi meets the Kasai. The Badinga in the project zone exhibit considerable variation as one moves from Mateko to Idiofa (see map 3). In the latter zone, where the Badinga were involved in the Mulele Rebellion of 1964, it is impossible to have an orderly discussion of land tenure. Questions that would take five to ten minutes in Mateko will take an hour to several days in Lwen (just north of Idiofa).

It was never a question of antagonism or a reluctance to discuss land tenure issues. Here as everywhere in the project area the topic of land tenure seemed to be something everyone readily wanted to talk about. The problem among the central Badinga was that everyone wanted to talk about it vigorously. Just what is behind this vociferous interest in land tenure here is something that should be investigated more intensively. In the westernmost Dinga villages the interviews proceeded pretty much as they did among the Basakata or the Bayansi. The elders and other notables analyzed each question like a judicial review board. Our days among the Badinga were, in any case, never dull.

##### 1. Social Control of Land

Land belongs to the lineage. The land chief is the head and spokesman for the lineage.<sup>14</sup> He is the guardian of the property of the lineage. This property includes the land, water sources and even the comportment of the lineage members. The holder of this position is chosen by the ancestors and confirmed by the living. That is, some ritual verification must be received before a new land chief can be installed. If the wrong successor to a deceased land chief is chosen or one forbidden by the former chief, nothing will go right for the lineage.

In traditional ideology the power of this person was formidable. "If someone dies it is the elders who have killed him." The attacks by the Christian missionaries who burned the fetishes of the land chiefs, the superior power of the colonial and post-independence administration and the

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14. The term to designate the land chief shows the same variation. In southern Kalanganda it was mubial a mpio, in northern Buluem ngaal, and in Mateko he was called nkum mbil.



chaos of the Mulelist period have left this person much less important than elsewhere in the project. It should be pointed out, however, that it is still common for an entire village to move a hundred meters or more after the death of a land/lineage chief.

Among all the Badinga there was agreement on one thing--that originally the lineage of the political chief did not have land. Like the Basakata they were borrowers of land. The revelation of this fact in front of the assembled crowd never failed to create an uproar. In one case the crowd became so unruly that the notables had to convene a small private conference in order to decide among themselves what the answer would be. This particular interview took place, appropriately, during a day-long installation ceremony of a new land chief.

The explanation was the same as we had been given in all the other Dinga villages. In time the chief's lineage decided they needed land so they took over the land of their slaves. These were always said to be debt slaves. Since debts were usually paid with a female, they were in effect taking the land from the indebted matrilineage. One can imagine the effect this had on the larger group. The three political chiefs present then convened with their spokesmen (porte-paroles). The next explanation was that they had taken over land of matrilineages that had died out. This seemed to please the assembly.

## 2. Access and Security

Land belongs to the lineage. A stranger coming into the area and claiming to be a relative must prove it. The first is a knowledge of the animal totem that belongs to the lineage. Second, a person must have the same ancestors and thereby be able to demonstrate how they are related. Even this is not enough, they said. A test is given to see if the ancestors recognize and accept the claimant. A pot of palm wine is hidden on the lineage's land. If the claimant finds it, this is proof of his or her authenticity.

A person who has the same food taboos and therefore same clan membership, but is unable to produce common ancestors, is still accepted as a true relative but not a member of the lineage and can, therefore, only be a borrower of land. This is true even if the person comes from a village belonging to the same migration history. This clan membership extends to members of other ethnic groups, such as the closely related Bunda, who have the same clan names and prohibitions. They can use land belonging to their clan relatives.

In all the Dinga groupements there were lineages that were not landowning. They were said to be the result of clan fractions arriving later after conflict elsewhere. They came and found that there were members of the same clan already settled. They settled as relatives, but do not "own" land. The important point is that to settle in an area requires that there be some connection established with the members of a landowning lineage. If one is not related by descent, marriage is the most common alternative avenue to land.<sup>15</sup>

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15. Among the Badinga clans are exogamous. Landless lineages can also result from sons staying with their fathers and inviting matrikin to join them.

Security in this case is assured by kinship. One's security is only as strong as one's social ties. The avid interest in land tenure among the central Badinga may indicate that there is an underlying insecurity of land which was not uncovered by our reconnaissance type of survey.

### 3. Administration and Disputes

The present administrative units, the groupements, were established chiefdoms from the earliest days of Dinga occupation. The chiefs were those who led the people on the migrations that were said to have started in Gabon with many stops along the way.

The term for this person varies considerably as one moves from east to west. In southern Kalanganda the appropriate term agreed upon (after much discussion) was mukanim vulayu msam. I am not sure how general this is, or in fact what it means. All the other chiefs (land and village) had the more common mubial designation. In northcentral Buluem he was said to be called mbwalakyeng. In spite of the fact that we interviewed three traditional chiefs separately and together, there was no lack of discussion of this seemingly small item by all present. Among the westernmost Badinga of western Mateko the office was called by the expected term nkum mean, where mean is Kidinga for territory.

As among all the other ethnic groups in the project area, the political chief is supposed to have mystical power that is beneficial to the people. This power is represented in the paraphernalia associated with chiefship. Among the Badinga these are usually special bracelets. One may not respect the man, but the power objects are always, in theory, respected. It was said that if the people did not respect the legitimate matrilineal successor to these objects they would suffer. The suffering would only stop when they accepted his authority and brought the gifts of game due to the office. Among the Badinga it is the hindquarter.

Unfortunately we were unable to witness the adjudication of a land dispute in the central Badinga region. Given the contentious nature of the interchanges between the chief and his "followers," such disputes must be something to watch. This will need further study. Interestingly, however, people in this zone said that land disputes were rare. It may be that everyone is so carefully watching each other that no infraction, no matter how small, ever has the chance to become a major one. This, however, remains to be seen.

### 4. Innovation and Investment

It is easy to borrow land for food crops. Due to the fact that most of the villages were founded by the Belgian administration and that they move around following the death of important individuals, some members of the community may find that their lineage's land is inconveniently far away. This accounts for most of the borrowing taking place today. Usually little more than informing the lineage chief is required. Still, as discussed above, one normally has to have some tie of kinship and a gift of thanks should be given to show respect to the owners of the land.

Farms for industrial crops are much more restricted. Here, the lineage head must gain the approval of all the members. Since this can be difficult, most people try to have their fermes à convention on their own lineage's property. If the applicant is successful in getting approval for a cash crop farm, coffee being the most popular crop, he must pay a gift to the lineage head as a symbolic gesture that he is a borrower.<sup>16</sup>

##### 5. Additional Project Issues

Disagreement over such an apparently small fact as what term is to be used to designate the customary office holders should put the project personnel on alert that traditional offices and officials are viewed quite differently in the former Mulelist territory than elsewhere. In Kalanganda and Buluem even the young did not hesitate to contradict the elders or the political and land chief, even in matters they were too young to know about, such as migrations, etc. Organization and consensus will be more difficult because one cannot rely on the traditional basis of power and influence, nor at the same time can one ignore it, especially in land tenure matters.

Among the Badinga it is forbidden to use or bury a fetish in the forest. To do so would be to pretend to the position of land chief. Another forbidden act that should not trouble the project overly is the prohibition against sexual relation in the field during the daylight. (It was said that it would endanger the crops; project personnel should practice restraint.) The Badinga do not share the prohibition against soil additives such as fertilizers that are found among some of their neighbors.

All across the Dinga region the greatest development problem was poor health and a lack of health facilities. The second was the familiar problem of a lack of marketing facilities and transportation. The third was the related problem of a lack of access to building materials and tools.

A last point before discussing the Babunda, Balori and Bangoli. Land tenure in its traditional political economy often reflects accommodations and agricultural strategy adjustments between ethnic groups in the same region. The Badinga see themselves as sharing a common migration history with the Babunda and the bangoli. They all have the same origin (souche), according to the elders. There is no competition between them for land, following the conventional wisdom, because they are different kinds of farmers and can be divided by environmental niches. One group chose the dense forest (forêt) and the other the open forest (brousse), depending on their original modes of production. What is interesting is that in Kalanganda the Badinga say that they are dense forest farmers and the Babunda have always been cultivators of the brousse. In Mateko the Badinga say that there is no competition with the Bangoli because the Badinga have always been users of the brousse while the Bangoli are dense forest cultivators. They do not even intermarry very often, they said, because the women from either group do not know how to farm in the "strange" environment of the other.

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16. Only men can have fermes à convention among the Badinga.

E. Bunda (Mbuun, Ambuun, Kimbunda, Bambunda)

Traditionally, the members of this ethnic group referred to themselves as Ambuun but since the imposition of colonial administration they have been referred to administratively as the Babunda. In the project zone all members of this cultural entity we met called themselves Babunda. The project contains only the northernmost extension of this people and our land tenure analysis refers only to the zone included in the project implementation area.

Interviews among the Babunda were like those conducted among their Dinga neighbors. Only when the very venerable and ancient chief of Ngala Mpanga was present did the young let the elders speak first. There was no ambiguity about his customary status.

1. Social Control of Land

Land among the Babunda is claimed by clans--that is, kinship groups based on the principle of stipulated descent. The clan chief (obial ayor, or ayer in some regions) is also the land chief of a clan. Obial means the oldest and this person has the responsibility for all rituals that concern the land. Therefore, anyone else caught performing some ritual in a field could be accused of trying to be a land chief. The land chief also must ask the ancestors to aid in any new enterprise. If anyone is hurt on clan land, it is his responsibility to ask the ancestors and thereby determine if it was an accident or not.

2. Access and Security

If a person comes from another area and has the same food restrictions as a local clan, there will be a test to see that the person is not an impostor. A meal will be prepared which contains the tabooed food and if the claimant eats it, he is sent away. If the visitor passes, they have full land rights as a member of the host clan. They cannot, however, become a land chief.

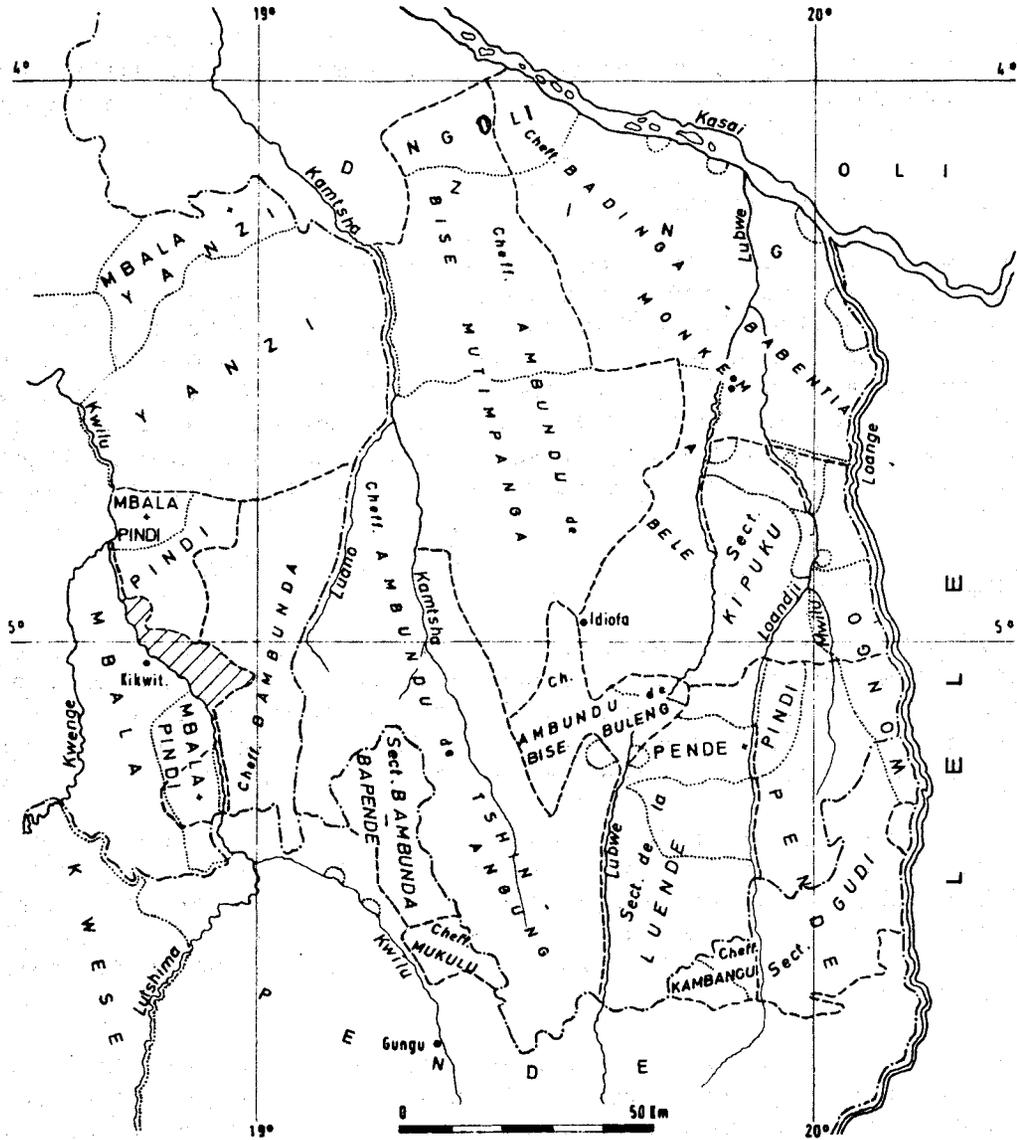
People can and do borrow land from another clan for planting food staples. The Bambunda claim to have millet as their staple as opposed to the manioc of the Badinga. In actuality both groups have both crops. As among the other groups reviewed, the borrower has to have some kind of tie, preferably of kinship, to the landowners in order to use the land. This is usually through marriage.

There is one major problem associated with outsiders' marrying in or living with landowning groups. This is burial. If one's ancestors are buried in the ground, that soil belongs to them and their descendants. This is the main reason for cemeteries for each non-landowning kinship group. The small plots of land set aside for this purpose belong to them. The tenure over these plots passes from the former owners, "givers," to the new owners. Also, in any land dispute, the graves of ancestors are an important bit of evidence of claims.<sup>17</sup>

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17. This is clearly illustrated in the current well-publicized Bunda-Pende land tenure conflict in the Gungu zone (v. Mbandi 1981).

Map 4: Bunda



Source: Boone 1973.

### 3. Administration and Disputes

In this area the missionaries tried to reduce the power of the clan/land chiefs by destroying the fetish houses (nzo aluun). It was said that with the destruction of these shrines the real power was destroyed and now the land chief was dependent on the government to guarantee the legitimacy of customary law. The missionary activity and the Mulelist revolutionary government, along with the protracted campaign to root the latter out of this area, have all led to a certain ambiguity in the role of traditional authority.

In spite of the reported conflicts over who was the real land chief among people in the Idiofa area, our interviews in four Bunda villages and with three customary political chiefs (chefs de groupement) did not turn up any confusion on who these persons were. Also, it was added that the land chief normally appointed an assistant (as among the Basakata) so that ". . . even in death there is no ambiguity."

### 4. Innovation and Investment

Industrial crops, fish ponds, ranching and other non-traditional activities are done on the person's own clan's land. Outsiders are not permitted to use the land for these purposes. When we asked if such a thing had ever happened, the answer was a little surprising. One of the elders said that some chiefs (land chiefs) will need money and ". . . when faced with great power (grande force) will sell." Sales are to be decided by a meeting of the clan. Also, the administrative chiefs will have to be involved. Everyone was familiar with cases where this had happened outside the project and were adamant that it would not happen in their village.

Women are not allowed to have such enterprises in most Bunda villages. One of the chiefs said that it was permitted (all the others had said that it was not) but that no woman did such things in his groupement. If a son works with his father to put in a coffee farm, for example, he will lose all rights to it upon his father's death. This is one reason why a father who has worked well with his sons will try to see them married to women from his clan.

This is what anthropologists call patrilineal cross-cousin marriage. Throughout the project area this is the preferred form of marriage as it solves several problems for the parties involved. The son can continue to farm in his father's village because he is now using his wife's land. Secondly, he has no fear that his children will not benefit from his efforts as they are already at home. For the women things are even better. She is close to the help and succor of her brothers and matrilineage. Her children are close to their uncles and have the opportunity to be intimately involved in lineage politics. In land tenure, as in all other aspects of rural African life, kinship is a tool to be used, albeit an esoteric one to the outsider. It is the idiom in which land tenure relationships and strategies are normally expressed.

### 5. Additional Project Issues

The Babunda do not allow the use of chemical fertilizers on their soils. A cultivator may complain of exhausted soil but when the possibility of

additives is brought up with the land chief one finds out that it is forbidden. As a bunda land chief put it to us, ". . . the ancestors taught us that the roots and leaves of the trees reestablished the fertility of the soil. They [the ancestors] do not accept it [chemical fertilizers]." We raised the hypothetical situation where the soil needed phosphorus or potassium in order to recover in time to feed future generations. Was there any way to negotiate with the ancestors along the lines one could in questionable marriages? The response was that Bunda soil was marvelous and that fertilizer was not a question now. If in the future the need arises, then they will worry about it with their children. When asked, even the farmers who had been complaining previously about low soil fertility agreed!

The above prohibition does not include manuring or composting. The rule is that one cannot put anything on the land that the ancestors had not given. Project personnel should promote organic farming in the Bunda region. Other acts prohibited on the land include having sexual relations in daylight in a field of growing plants, and urinating, spitting, etc., in any water source.

In relation to the project, the Bunda villages we visited said that the improvement of the roads and bridges so they could market their crops better was the principal need. In one village we were able to ask an assembly of women what they would ask of a project like this one. They said that what they needed most was some kind of machine to work the soil and mills for manioc and millet (and maize?). Like their Badinga neighbors, they wanted access to building materials, cement and corrugated roofing in particular. The list went on to include hospitals, schools and so forth. Perhaps of importance to present development theory and the ideology of the donor community is the desire of these cultivators to participate in the national market structures.

F. Lori (probably the Lwer of some Belgian reports)

The Lori migration history ties them with the other groups in the project who trace their origins to Gabon. The elders said that they felt closest to the Bateke and the Baboma.<sup>18</sup>

1. Social Control of Land

The matrilineages are the landowning social units. Different lineages of the same clan can be found in the same village. That is, two related lineages arrive at different times and each will have its own chief. The lineage chief (nkbaal) is also the land chief. Another case occurs when two related lineages inhabit the same village but one matrilineage begins to die out. The two lineages may unite but the power associated with the land is only given provisionally. There never is a problem over who is the legitimate land chief once the declining lineage begins to grow again. We counted thirteen matriclans during our interviews. Clans are exogamous, but it was added that this is tending to break down ". . . as people become more tolerant."

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18. We were fortunate to have several highly educated Balori visiting home on holiday during our interviews.



## 2. Access and Security

Each clan has a totem and several food taboos that are used to determine clan membership. Once clan membership has been established, a person can use the land as an adopted member. Demonstrated descent is necessary, however, to be a real member of the landowning social unit.

They said that there is little difficulty in getting land for food crops. Industrial crops (ferme à convention) are only placed on land belonging to the farmer's matrilineage. A person, it was stated, can have their own fields of staples before marriage, but not industrial crops (this would include livestock operations).

## 3. Administration and Disputes

According to our informants, the Balori were originally dispersed into clan villages. They said that the present Lori villages predated the colonial period and were not the result of the regroupements of the administration. Some Lori villages are independent--that is, they do not belong to any traditional chiefdom, while most were attached to a political chief. One of the histories of a chiefdom recounted to us was of a man brave enough to save several villages from a leopard. The people agreed to follow him out of gratitude. Related to this and to land tenure is the assertion that the ancestors created (?) three leopards in their forest. This is a way of ensuring proper behavior.

## 4. Administration and Disputes

The nkbaal is the guardian of the matrilineage and its property. This chief can be either male or female. It was claimed that all the lineage members turn over their harvest to the nkbaal and it is then redistributed. Unfortunately we were there during planting and had no opportunity to see this in action or understand how it works. Redistribution systems are fairly common in pre-industrial agricultural societies, but are not well-documented for this region (v. de Heusch 1972).

Another important person is the nkum ber who is the chief of all the women. This is an assistant chief for all matters that involve women. The holder of the office can be either male or female. The two chiefs share the customary gift of a hindquarter of a game animal killed in their territory. The nkbaal takes the upper half and the lower part goes to the nkum.

The two above chiefs have an assistant called the nsiy. The holder of this post is the spokesperson for the chiefs. Also, the nsiy is the one who presents all gifts to the chiefs, delivers their messages and carries out their orders.

The greatest source of land conflict was said to arise over cultivators of one lineage invading the land of another. Humorous examples were given of past cases in which one person was found to have moved clan and lineage markers. This involved replanting trees and digging up large stones.

## 5. Innovation and Investments

An interesting phenomenon was brought up during the discussions of the division of a large game animal. It was maintained the animal (minus the part that goes to the lineage chiefs) could be given to one's father if one were more attached to him than to the mother's brother. This then led to the statement that people were changing to patrilineal inheritance systems. There was a clear division among the Balori on this, they said. Some matrilineages will let a son inherit a cash crop farm from his father and others will not. The driving force behind this, according to the elders, was the desire to give their own children something. Also, since the father picks up the cost of educating and raising the children, he feels a greater responsibility towards them, according to our informants.

## 6. Project Implications

The cases described above by informants sounded much more like bilateral inheritance than anything else. Our stay was too short to determine how widespread this practice is among the Balori. One cannot help wondering whether the education level, and the occupational position of the Balori elders most interested in our work, did not over-represent urban patterns.

This bias also manifested itself in the consensus of most desired benefits from the project. They listed modern medical services along with regular vaccination of all the inhabitants on a regular basis as most important. Next came credit and commercial institutions and veterinary services for cattle owners. Only then did the usual concerns about the lack of transportation and access to markets make their appearance.<sup>19</sup>

The Balori do not share with their neighbors, the Badinga, any prohibitions on the use of chemical fertilizers. They do share, however, all the same prohibitions on any spoilage of sources of water. Water belongs to the lineage just like land and any use made of it should be confirmed by the appropriate nkbaal.

## G. Ngoli (Ngul, Angul, Anguli, Bangodi)

The Bangoli are most renowned for their women chief, Wi-Dwa, who currently holds court in the village of Lwumu (Lewuma on colonial maps). She is the customary chief who has been the most responsible for seeing that the current road-building project is adequately staffed with sufficient labor. It might be added that at the time of this study, Mateko had the best roads and bridges of the entire project zone.

The Bangoli arrived in their present location from Mai Ndombe. They migrated with the Bankumdu who still live to the north of the Kasai River in Mai Ndombe. They see themselves as related to the Batetela. The first village where they settled was Lwumu and all other Ngoli are said to have spread out from there.

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19. In many communities the assembled people broke up to discuss their most important needs in separate groups of young men, women and elders.

### 1. Social Control of Land

Originally each clan had its own village in its own forest territory. They regrouped because of tribal wars and the need for protection. The colonial administrators found them already in their present villages when they came to the region, according to the chief Wi-Dwa. The clan remains the land-claiming unit.

### 2. Access and Security

In the case of fields devoted to staples, a person is free to plant anywhere in the chiefdom (groupement). If it is the land of the same village, one does not need to ask permission. On the other hand, for land belonging to another village one must seek the permission of the land chief of the clan who owns the land.

### 3. Administration and Disputes

The Bangoli said that they followed a rule similar to the Basakata, among whom the political cheftaine (nkumu) and her clan are not landowners. They borrow from the land chiefs (nkum-mbel), who are also the heads of their clans. These chiefs wear the bracelets that have been inherited from the ancestors. They are designated by the ancestors to ensure the continuity of the resource base for the clan. When anything goes wrong, they are called upon to consult with the ancestors and to take corrective action.

This is why the gifts to the land chief of the group from whom one has land are so important. It demonstrates to all that both parties recognize the nature of the tenure involved. It also is a way of reducing tensions over land. In the case in which a large game animal has been killed, the political chief gets a hindquarter. All game animals, large or small, are supposed to be presented to the appropriate clan chief. If it is a large game animal, it is this person who takes the obligatory gift to the nkumu. If the game animal is small, the land chief gets the hindquarter.

The greatest source of land conflict is associated with people who borrow land for a number of seasons, claim to be the owners and insist that their clan's land chief has the right to intervene in the matter on their behalf when the original owners demand that the land be returned. In the past, such conflicts have resulted in violence as one person tries to force another off the land. The Ngoli elders said that such cases were rare nowadays.

### 4. Innovation and Investment

In terms of industrial crops a person must give something from each ferme à convention to the land chief after the harvest. In order to have such a farm on another clan's territory, the whole clan and its chief must agree. People say that they have plenty of land so this is not a problem.

During his life the father is the authority figure for his children. When they are grown, they can move to live with their uncles. The commercial farms and enterprises started by the father will remain the property of his matrilineage and be taken over by his brothers. The son can stay on the farm as long as his behavior warrants it. It is up to the father's matrilineage to decide.

## 5. Additional Project Issues

There are few if any restrictions on land use that are general to the area. Those that were listed involved actions not permitted to the members of the clan of the political chief. These people cannot collect mushrooms and grubs nor can they carry game animals into a village.

When asked what they thought were the greatest needs of the Bangoli to be addressed by a project like this one the elders listed bridges (culverts) and roads to connect the villages to the main road that is being improved by USAID. This need is related to the next two. One is getting buyers to take their produce out and the other is the lack of merchandise coming in. The only other major problem listed by the people was the lack of a dispensary.

### H. Songo

The Basongo inhabit the river valleys and control the natural oil palm groves along the Luniungu, Gobari and the Kime Rivers. They illustrate for us the role of seniority of claims and land tenure when a traditional agricultural practice becomes commercialized.

#### 1. Social Control of Land

The Songo are divided into clans and each clan is further broken down into lineages. Unlike the other groups in the project area, it is the village among the Songo that has the greatest sense of territorial integrity. Within the village, each landowning clan segment (i.e., lineage) has its own land.

Reflecting this conceptualization of territory is a hierarchy of land chiefs. In conversations each of the lineage chiefs of landowning lineages is called a land chief. However, the ancestors of most land chiefs were given their land by the ancestors of the lineage/land chief of that lineage that founded the village. The chief of the founding lineage of the village is always the village chief and always the land chief of the village. The ancestor of the village chief was assigned his territory by the head of the lineage that founded the chiefdom.

The seniority of land chiefs is unambiguous to the Basongo but can be confusing to the outsider when discussing land tenure. At first it appears that everyone is a land chief. The implication of this for the project is obvious. The number of levels of land chiefs that need to be consulted will depend on the particular activity. Also, the role of the village chief will be more important than elsewhere in the project. For the other groups discussed so far, the village chief is either the creation of the colonial regime or a representative of the chief of the groupement (chiefdom).

There are other lineages whose tenure rights to land are inferior to those above. These are the lineages that are the result of intermarriage. Post-marriage residence among the Basongo is the same as in the rest of the project area—the wife comes to live with her husband. In the pre-colonial period, apparently, Songo men brought many women in as wives. Since by rules of matrilineality the children belong to the lineage of their mother, many other lineages became established among the Basongo.



Finally, there are the lineages that were created out of slavery. The most common kind of slave in pre-colonial Songo society was the person given to pay a debt (muswo as opposed to kutol, a war captive) (v. Beaucorps 1941: 80). Understandably everywhere in the project it is considered extremely gauche to speak of such matters today. Yet project personnel should be aware that there are many people who cannot do certain things on the land without special permission that may be hard to obtain because of the lack of seniority of their lineage in matters of land tenure.

## 2. Access and Security

The further one moves from traditional land use practices the more people there are who must give their permission as land chiefs. This is to be expected. Customary crops have had their institutional arrangements well worked out in the past. Among the Basongo a member of any lineage residing in a village can use land anywhere for food crops.

## 3. Administration and Disputes

Administration has been covered above. Reported land conflicts all appear to involve competition for the best soils. Fallow lands are supposed to be respected for five to seven years but an ill-disposed person (mal volontiers) will try to profit by moving onto the land and claiming some residual rights in the land. Such cases are judged by the land chiefs and the usurper is forced to leave. He is to be compensated, nevertheless, for all work done.

## 4. Innovation and Investment

Tree tenure associated with oil palms is most interesting. Palm exploitation by climbing and cutting down the bunches of oil-bearing palm nuts for sale to Unilever, etc., is the main money-earning economic activity. All the trees are said to be natural—that is, no one plants oil palm.

Any member of the village can gather palm nuts from any tree. There is no restriction by lineage or land chief. Tree tenure can be said to be communal as far as palm nut exploitation is concerned. There is, however, a restriction when it comes to palm wine. Here, one can only tap the trees on one's own lineage's territory without the permission of a land chief. A person does not establish any lasting claims to a particular tree by tapping it. It was maintained in all the Songo communities we visited that if someone beat you to your favorite palm wine tree in the morning, that was perfectly all right.

Tree tenure along lines of lineage membership extends to kola trees, trees where one finds grubs, and to the musongi, a variety of Ficus dusenii which is always planted by a land chief (all levels) to establish legitimacy to land claims. When Songo land chiefs gave land to Mbala immigrants in the nineteenth century they also gave a sprig of their own musongi (Beaucorps 1941: 54). In one sense, all land tenure is verified by a particular musongi tree and one's relationship to it.

Tenure associated with industrial tree crops is always the opposite of the customary tree tenure practices described above. Fermes à convention are

becoming increasingly popular, especially for coffee, pineapple and bananas. In contrast to oil palm, planting such crops requires permission from the land chief and all members of the lineage on whose land it is planted. This emphasizes the point that in general it is not the commercial nature of the enterprise that affects land tenure but rather the introduction of exogenous crops. The implications for project personnel are obvious.

A related issue with regard to land tenure is the attempt by what was said to be a growing number of fathers to ensure that their own children inherit their fermes à convention. This is accomplished by getting land for such farms from the matrilineage of their wives.

## 5. Additional Project Issues

The Songo communities we visited expressed many of the same requests vis-à-vis the project as their Yansi neighbors. Better roads and market infrastructure for their crops were foremost on everybody's list. Next were better tools for agriculture and the third was for competent technicians with whom to discuss problems, particularly the loss of soil fertility. Those Basongo we interviewed said that they did not share with the Bambala any interdiction on the use of chemical fertilizers.

### I. Mbala

The Bambala are one of the more numerous populations in the Kwilu area and are very well represented in the southwestern portion of the project. They and the Bahungana were the last arrivals and their communities are scattered and found in the interstices of those belonging to the Bayansi and Basongo. In general they were given permission to settle on the poorest soils.

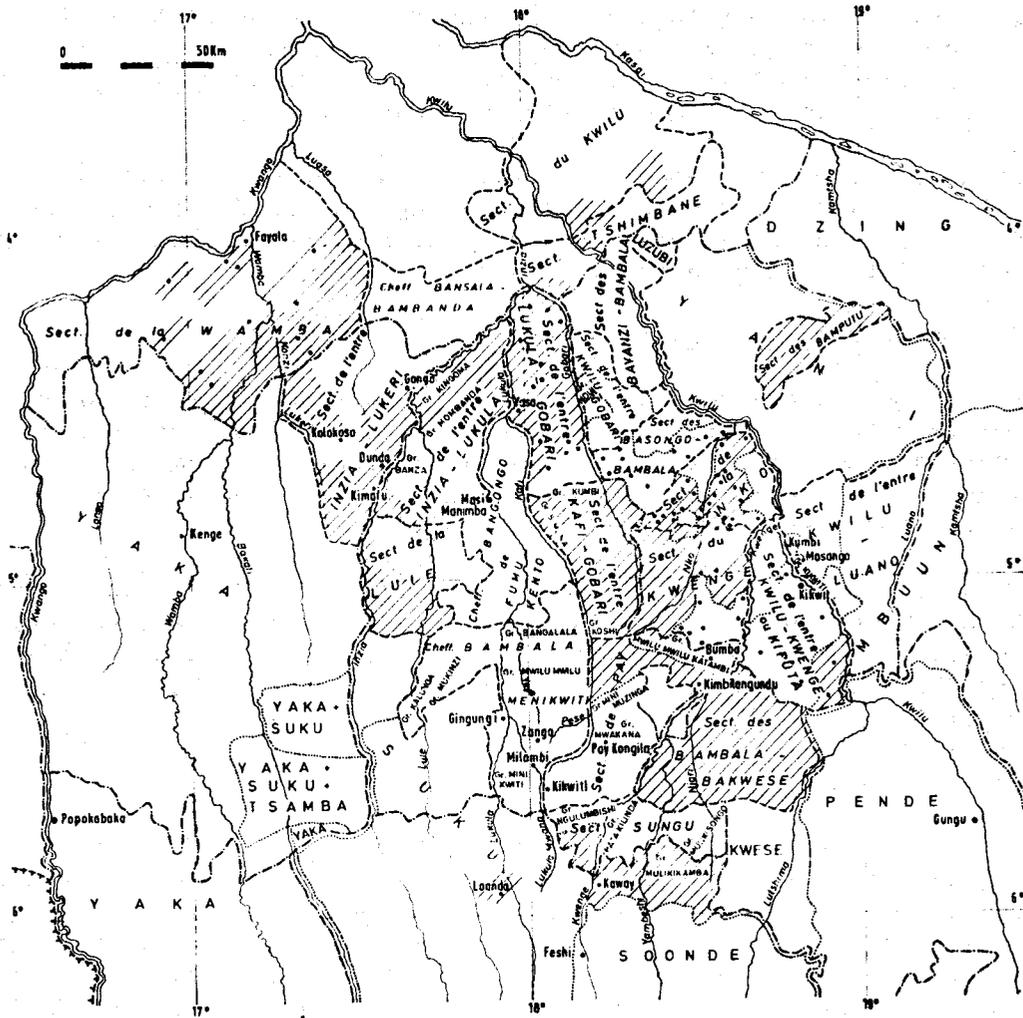
One cannot conclude from the above, however, that the Bambala are a subordinate population. Mbala culture has had a very direct impact on every region they have entered. From their historical perspective the others were able to settle in peace only because the Bambala fought the rearguard battles and hence were quite naturally the last to arrive.

#### 1. Social Control of Land

The lineage/clan distinction is less than precise here. The Mumbala sociologist Massey uses the generic term clan to distinguish groups of Bambala that use the land together (Massey 1980). A few hours, interviewing in any Mbala community in the project zone reveals quite quickly that the "clans" include immigrants and exclude close relatives that have broken away. Indeed, intermarriage between formerly united clans takes place with great frequency. This helps illustrate the dynamic relationship between social structure and kinship.

Reading the standard works on African sociology, one gains the impression that kinship structure is cast in bronze. Vis-à-vis the outsider it is. Yet how can one account for the change of customary law when groups of kin break apart in an irreparable rupture? If a couple wish to marry who formerly were forbidden to because of incest prohibitions, they go to the land chief (also "clan" chief) to have the ceremony of kumba performed. The headman in his

Map 7: Mbala



Source: Boone 1973.

role as chef de clan sacrifices a male goat (bouc) to the ancestors and gets their permission. The ruptures caused by land tenure disputes are more important to the living and the ancestors than maintaining the unity of kinship. The rules of kinship, like those of land tenure, are game rules to be interpreted and manipulated in meeting the exigencies of new situations. The Bambala, like all the other people of the project, are no more blind followers of custom than are cultivators in any Euro-American community.

## 2. Access and Security

There is a seniority of land tenure based on the person who was the head of the in-migrating Bambala who first received permission to settle from the Yansi or Songo chiefs. This person then assigned portions to the heads of families of these followers who subsequently became fumu ugizigu, lineage chiefs, and by extension land chiefs over their portion.

It is important to remember, however, that access and security for Mbala cultivators will be much more situational than it is for any of the groups so far discussed. As described below, only some of the Bambala have their own political chief and secure group tenure.

## 3. Administration and Disputes

Given the various conditions in which the Bambala had to seek land and the fact that they seemingly often had to take any deal they could get, there is undoubtedly more variation in their land tenure than among any other group discussed above. In the northernmost villages the Bambala have their land tenure decisions reviewed by the Yansi chiefs.

This is not to say that these Mbala communities do not have their own chiefs, nor elders who claim to be land chiefs. Rather, all recognize that their claims are junior (not inferior) to those of the Yansi chiefs. The northern Mbala chiefs have their own insignia of office but this has little or no legitimacy or precedence outside of strictly Mbala affairs. On the other hand, those of the local Yansi chief are always recognized and honored by the Bambala.

A further demonstration of the role of Mbala chiefs in the north is the distribution of mulam, the obligatory gift of game to chiefs. We found no examples of Mbala chiefs who got any more mulam than a lineage head. There were none that we encountered who could wear the leopard skin or teeth. In such situations, it means that the project will have to gain permission from the land chiefs of two ethnic groups for any activity involving soil resources.

As one moves to the southwestern collectivités of the project we find true Mbala chiefdoms. Here the political chief can wear the leopard skin and teeth and is the person to receive obligatory gifts. The distinguishing character from a land tenure point of view is that these chiefs will largely control a territory sparse in forest and long on savanna that was little valued by others.

Whether north or south, all ritual associated with the land in terms of ancestors buried there is strictly an Mbala affair. Any ritual undertaken by anyone but the chief is viewed as an affront to his legitimacy. The person is described as seeking to become a land chief.

#### 4. Innovation and Investment

The fact that one finds fewer fermes à convention, fish ponds and other commercial activities in Mbala villages is probably associated with a more fluid land tenure situation. Also, all the Mbala communities we visited had rules against chemical fertilizers, etc., even though the people they got the land from allow them. There seemed to be a concerted effort on the part of Mbala notables to reduce intra-community competition as much as possible.

#### 5. Additional Project Issues

The above land-related prohibitions are reflected in the demands these communities foresaw themselves making of the project. They were most concerned with improved varieties of food staples. They also saw the need for improved transportation. They said that basic tools were in short supply.

#### J. Hungana (Hungaan)

The Bahungana share a common history with the Bambala and Bangongo. They are said to be blacksmiths and are scattered in small communities throughout the western and southwestern collectivités of the project. Whatever unique land tenure practices they have are found only in the domain of religion and relationships with particular ancestors. In all other matters they follow the same structure as the people by whom they have been given land, usually the Bayansi.

##### 1. Social Control of Land, Access and Security

The Bahungana always have their own chiefs, follow their own kinship and marriage rules and thereby maintain a high degree of social independence. In terms of land tenure, on the other hand, their rights in land are always junior to the groups among whom they live. The Bahungana are said to be the last arrivals in every chiefdom in the project in which they are found.

##### 2. Innovation and Investment

In the project zone it is common knowledge that the Bahungana are blacksmiths. Yet one finds very little evidence of this craft specialization. Nor do they represent, it appears, a special craft-caste as one finds among blacksmiths elsewhere in Africa. We found no examples where they had been invited to a chiefdom because of this skill and Hungana villages were just as anxious for simple iron tools such as hoes and machetes as were other groups!

##### 3. Additional Project Issues

In matters outside of land tenure, the Bahungana present more questions than answers. One hopes that a Muhungana scholar will be tempted to make a full study in the near future. The first governor of the Region of Bandundu was a Muhungana, who is currently one of the highest-placed members of the present government. He is most anxious that such work be done.

K. Ngongo

Most of the Bangongo are found to the west of the project but there is at least one traditional chiefdom, Bangongo-Kisumba, where we held our interview, and villages of Bangongo here and there in the area between the Gobari and Kwilu Rivers. The Bangongo share a common history of migration with the Bambala and the Bahungana but arrived in the region at least several decades before them (Beaucorps 1941; Massey 1980).

1. Social Control of Land

Within the project at least, land tenure patterns are the product of migration histories. That is, a village was established and from this village new daughter villages migrated over time. Each village has at least one land chief but there may be more. This depends upon the number of families that settled in the area during the first migration. If more than one, then each family that belongs to a different clan will have its own territory and its own land chief.

Because of this movement from village to village, the original lineage is usually outnumbered by other lineages of the clan. The clan chief is elected by all the members and is often a person other than the land chief. What this means for the project is that on land where the Bangongo have claims the project personnel will have to deal in most cases with different factions of the same clan segment.

The elders said that the relations between these various segments of the same clan residing in a single village are often less than cordial. In our experience we found that they could be downright acrimonious. This, however, does not preclude land tenure relations. We found Bangongo that we interviewed in one area freely cultivating with their clan siblings in another.

2. Access and Security

The office of land chief is passed within the matrilineage of the original holder. Access to land, however, is based on membership in the same clan. Therefore, a Mungongo can travel extensively, and if he finds a Ngongo village with members of the same clan, then he is automatically a member of the landowning group in that village. But it is not quite as simple as it sounds. A person can claim to be a member of the same clan, so there needs to be some proof. That is, Ngongo clans share food taboos, etc., with clans belonging to other groups. Therefore, the ancestors are asked to determine if the person is really a relative. A communal hunt is held. If the person is not a real clan member, the ancestors will make sure no game is found.

Based on the data in hand it seems that security and clarity of tenure will become a problem once there is competition for land. If the project develops successfully, the rather casual movement from village to village will probably cease. I would predict that secure tenure will rest primarily with cultivators who can demonstrate how they are related to the original settlers.



### 3. Administration and Disputes

The emphasis is on flexibility. There is little evidence of any centralized hierarchy of authority, as one finds among the Bayansi immediately to the north. Here it is not a Ngongo political chief that gets the gift of a portion of each large game animal killed, but rather the mother's brother. The Ngongo chief recognized by the government was present while this was being explained. He confirmed that this was so and did not seem the least bit embarrassed by it.

This was a little surprising, because if the same thing had happened in front of say, a Yansi or a Sakata chief, there would have been an extremely emotional response. It happened that one of the elders sitting with us was the chief of a Ngongo village some 40 kilometers away. Here he was not recognized as having any chiefly duties but had chosen to cultivate here for the current season. As among the Bambala and Bahungana we need to anticipate considerable variation from one Ngongo community to the next.

The history of the village of Ngongo II illustrates for us one of these variations. It also represents the kind of situation that is probably not all that uncommon elsewhere in the project. Several generations ago, the Bambala from a neighboring village came to the Bangongo for wives. They took the women to reside virilocally, as is the general custom. For reasons that were never adequately explained to us, the children of these women stayed in the village of their fathers. This established a number of Ngongo clans who were landless except for the small cemetery given them. They say that they tried to leave several times to return home but were denied permission at each attempt by the colonial administration. They saw independence in 1960 as their chance and as soon as the new government took over they went back to their original "home," the village of Ngongo I. The elders of Ngongo I and the new administration met and assigned a separate section of Ngongo territory to their returning relatives, Ngongo II.

The name chosen for the new village is most important, as the land rights will be junior to those of all the surrounding villages. The members of Ngongo II wanted to demonstrate: (1) that the basis of their rights to land is from a source that is senior to those of the Mbala village they came from; and (2) that they are truly Bangongo.

### 4. Innovation and Additional Project Issues

They share with the Bambala an interdiction on the use of any chemical fertilizers or pesticides. We discussed the possibility of using special crops during fallowing cycles to speed up the soil recovery. This became the dominant topic for the rest of the interview. Land is currently left to fallow only two to three years even though everyone said that eight to ten years is necessary to maintain soil fertility.

All the traditional chiefs (Ngongo, Songo and Mbala) in Luniungu met to discuss this and the prohibition on chemical additives. They passed a rule placing minimum fallows at five years. This has proven unenforceable and the problem is as severe as ever. Next to roads, this was seen as the most important problem to be addressed by the project. The others were veterinary medicine and access to tools (hoes and other basic implements).

L. Nzadi, Samba and Humbu

The Banzadi appear on some ethnographic maps as a separate ethnic group. Nzadi is a term in Kisakata which refers to communities of Sakata fishermen who reside on the southern bank of the Kasai River (v. Boone 1973: 247).

The Basamba and Bahumbu represented something of a disappointment in our researches. Every time we were told that there was a Samba or Humbu chief, the person turned out to be Muyansi, the land was owned by the Bayansi and the land tenure practices were those of the Bayansi. Only further research will be able to uncover the number of people belonging to these ethnic groups in the project zone. Our investigations indicate that where they exist their land tenure will be dominated by the customary laws of the Bayansi.

VII. Project-Related Issues

The foregoing has repeatedly emphasized the dynamics of the land tenure situation in the project area. It is important to keep in mind that the practices we see in the villages may indeed be the product of longstanding customary behavior and ideas but they are definitely not "age-old." The people in the project have been making continuous, spontaneous adjustments in their land tenure practices for as long as we have any historical knowledge.

A. Political Environment of Tenure

When the Belgians entered the region they found tribal groups that had been adjusting for a century or more to almost constant war, razzias and slave trading (v. Vansina 1965). The putative customary boundaries were for the most part forged out of emergency. These same units are not necessarily the ones that are best suited to peace and economic development. This is not something that the project can change but the implications for the project are that personnel should not be surprised at internal fissure and dissension. It has a positive side in that as the project develops institutional bases of cooperation that transcend old units it builds a stronger base for the future and possibly reduces inherent tensions in the process.

The colonial period brought the slave trade and the associated wars to an end but introduced new forms of exploitation and extensive land alienation. Sets of people who had been united for the purpose of a particular war now found themselves with boundaries and alliances frozen. For example, Mbala leaders who had been promised land if they joined Yansi villages hard-pressed by enemies with superior military prowess now found themselves having to accept any deal they could get. What is important here is to realize that no one was a passive pawn in all of this. The chiefs who had been invited in Mbala were now trying to bargain with the colonial administration in exchange for a recognition of the seniority of their land tenure rights. As was discussed above, local histories are highly colored rather than merely factual. Project personnel should not be discouraged nor put off by elders recounting stories of the past. It is a way of codifying and explaining social precedence in a situation that would be ambiguous to an outsider.

These adaptations, manipulations and adjustments within what is normally called the realm of customary law took place along two dimensions. The first was one of accommodation to superior military power (v. for example, Monyawangere 1982 or Kitondo 1983). The second was a competition within the colonized societies themselves over who was to represent the leadership in the realm of customary law. Customary law was deemed useful by the administrators for public control and land tenure.

Chiefs who were cooperative had their land tenure decisions confirmed by the colonial powers. Chiefs who were not found themselves replaced by new appointees. The administration seldom came in and selected a new chief at random, but chose the leader of another, more cooperative, faction. This is usually viewed as arbitrary manipulation by an unfeeling colonial power, and it probably was. But from the point of view of the current situation in the project it needs to be recognized that there were important factions that had been in competition for power in the pre-colonial period that were willing to profit from the situation, and that almost everybody went along with it once the administration said that that was the way it was going to be. It is very easy to over-estimate the amount of solidarity in the rural community in Africa because of the surface homogeneity.

#### B. Customary and National Land Law (Vertical Integration)

Throughout the project zone, that which is customary law in land tenure, as well as the boundaries themselves, are legitimate only because they are the ones that emerged as recognized by the colonial administration. Proof of this interesting point is perhaps provided by the fact that all land disputes that cannot be resolved within the community and involve the arbitration of the national government rely on colonial land tenure documents. If two land chiefs contest a boundary, they go to the colonial archives in Idiofa, Bulungu, Bagata or Ilongo to see who is right (v. Mbandi 1981).

This in no way paints any aspect of the colonial period couleur de rose; rather it emphasizes that "customary" land tenure is always contemporary and adjusting in its own fashion to the reality of the existing political economy. This is just as true today as it was during the colonial period.

The political reality of the state in its symbolic representation and manifestation in the MPR is a reality in village decision-making. New ideas about, and adjustments to, land tenure have been part of a larger community since the colonial period. Today, dispute resolution, land adjudication, etc., are all made to conform to the plaintiffs' interpretation of MPR ideology and policy. Nothing can bring a heated discussion to a quiet lull faster than the village's party representative blowing on his whistle and chanting the first stanza of a pro-MPR slogan. The argument stops, the assembled audience gives the anticipated refrain and this goes on until the party representative is satisfied. It is unnerving at first to witness but a constant reminder of how intimately even the smallest community is tied, for better or worse, to the national government.

Also interesting from a land tenure dispute perspective is how well integrated the various "customary" offices that are filled by elected or appointed officials have become. Collectivité chiefs are "elected" and in

the project often come from another area. This fact means that they will have to rely on the land chiefs in any conflict which they have to resolve. This interplay of national administration and the traditional powerbase serves to enhance positions like that of the land chief which would otherwise be devalued by the government.

We had anticipated finding a lot of disagreement on who were the customary officeholders. We did not. This may be due to the fact that we came at a period of calm, as suggested by one of the elders with whom we discussed the matter. From our experience in the field the person who receives the obligatory gifts (mulam, etc.) that are due to an office is the legitimate land chief, etc. The leopard skins and teeth, bracelets and other regalia may or may not be important but if a chief does not have rights to customary gifts of office, his (or her) influence and authority will in all probability be negligible in land tenure matters. In the event that project personnel find themselves in a situation where legitimacy is unclear, the most readily expedient means of resolving the question is to ask who has rights to these gifts.

The project implementers will have to keep in mind, however, that within the project zone there is a sub-region where the mesh of customary, elected officials and the people they represent is less than smooth. As was mentioned in the discussion of the ethnic groups, we found that those communities that had been involved in the Mulelist movement exhibited the most dissension. The social dynamics in these communities is something the project could investigate with profit during the implementation phase.

The national land law (v. esp. Kalambay 1985 and Salacuse in this volume) has been a century-long development out of the chaos of early colonial adventurism, seat-of-the-pants administration by an under-staffed and under-financed colonial government, and the court of world opinion. It has had also to reflect the multiple pressures, political and economic, as well as social and cultural, that have characterized the post-independence period.

What we found during our visits with both customary and governmental policymakers in the project zone is that both sets of land laws work at the same time. From the local point of view there is very little conflict between the two. Hume argued that social power ". . . is a projection into the nature of our own awareness." All of the populations that we visited have projected their awareness of the power of the state into that which is "natural." To pay taxes on a ferme à convention is to recognize the state. On the other hand, to accept the tax is a form of recognition on the part of the state of the legitimacy of local arrangements. As long as land alienation through unequal bargaining power can be prevented, there is no reason to suspect that the two systems will not continue to accommodate each other.

Nationhood has different meanings vis-à-vis land tenure in different cultures. In the West it has normally meant a free flow of capital and people to those soil resources with the greatest potential. In the project zone we have witnessed the opposite trend. Access to land has actually become more restricted. Strangers are not invited in and kinship rules are applied very strictly as a way of reducing the number of claimants. Matriliney, rather than withering away, has remained as a vital aspect of land tenure and has assumed roles it never had in this regard before and during the colonial period. This can be seen in the case of industrial crops.

### C. Cash-Cropping

Cash-cropping throughout the project has a different "customary" set of laws applied to it than those that cover staples. The innovation of the ferme à convention has just as much validity in the customary realm as in the national legal system. Cases involving the security of tenure in such a farm can be heard at either level.

As was pointed out in the discussion of cash-cropping among the various ethnic groups, it is not the fact that a harvest is marketed that makes an enterprise an industrial crop. A food crop (vivrier) is one that is locally considered to be given by the ancestors. An industrial crop, on the other hand, is any crop that was introduced, usually imposed, in the colonial period or later. To have a ferme à convention means that minimally a land chief, a lineage, a political chief, a collectivité chief and one or more representatives of the Ministry of Agriculture will be involved in the tenure decision.

Production decisions will have to be made in this fashion before some project innovations can be accepted. Fish tanks are a good example. Because this is a use of the land that is new, they are handled as fermes à convention, with all the tenure-related transaction costs that this implies. There were reports of fish tanks being vandalized. We did not have time to explore these allegations in detail but the most preliminary questions indicated that it happened to fish tanks enterprises that had by-passed customary steps (usually not waiting for a meeting of the majority of the lineage in order to gain approval before proceeding). This needs further study.

We have noted other related innovations that have taken place. Men are choosing to put investments on the land of other lineages and clans so that they can decide who inherits them. Also, cross-cousin marriage is being used as a way for a man to ensure that a son who helps develop a coffee farm, for example, can inherit it within the matrilineal system.

It is very important, however, to keep in mind that those secondary forms of land tenure that are becoming increasingly evident in other parts of Africa have not developed. We found no evidence of share-cropping, renting or leasing of land among any of the ethnic groups we visited.

This was somewhat surprising. It is an indication that land pressure has not become severe. This has very positive implications for the project. Innovations can be introduced that will allow existing land resources to continue to be used by the original holders. It also means that social inequality has not become institutionalized in land tenure. In my opinion this is one of the more important findings of our study.

An additional note needs to be made about two other land tenure-related issues we anticipated finding: conflict over concessions given to outsiders and land-grabbing along the roads that are being improved by USAID. A concession is quite different from a convention (v. Salacuse in this volume). A concession is an arrangement between the government and an enterprise for

the use of a unit of land in excess of 50 hectares. As of this writing very few such concessions have been awarded in the project zone. All those that were discussed by informants date from the colonial period. This does not mean that this will not be a serious problem in the future, just that we do not have any indication at present. This is an area that will have to be monitored as the project gets under way.

With better roads there is likely to be greater attraction for powerful individuals to seek concessions. That we saw almost no evidence of this in the project zone proper is probably as much due to the fact that the road project, at the time of the research, was in Mateko as to anything else. The isolation of this collectivité guarantees that the impact of road construction will be minimal. As the roads make transport and communication easier we will need to study the changes introduced.

In addition, it was noted in the discussion of specific ethnic groups that in some areas some types of investments on the land are seen as threatening. Among the Bamputu, for example, coffee and livestock operations are frowned upon by the landowning lineages. This is because they are associated in the minds of the people with past attempts at land alienation. This fact has a possible important implication. It may be that the present security of customary tenure that was described to us is the result of the collapse of the local market economy in the project zone following the Zairianization program of the late 1960s and the Mulele revolt of 1964. The former caused the closing of most of the expatriate-run enterprises. This broke the back of a settler economy and one can see formerly vast plantations that have been abandoned. The latter event resulted in the area being neglected in national development efforts.

If it should be true that the relatively few land tenure problems turned up in our research are the result of benign neglect of the region, then the project has the potential of opening up the region to the same kinds of expropriation that it experienced in the colonial period. Fortunately this is an issue that can be studied in detail as the project is implemented. This is why it is very desirable to have a detailed study of the various forms of land registration. There is a great need to have a more detailed understanding of the implications of concessions versus conventions versus land sales. These alternatives will become very much more attractive to outsiders once the project puts in the necessary infrastructure. Such a study might be carried out in an area of early implementation of the project or it could look at the situation in more mature projects, such as those in Shaba Province, to gain an idea of possible scenarios in the this area.

#### D. Resiliency of Matrilineality and Culture

Another finding of this study is the trend toward smaller size of the economic planning unit. Men in their development of industrial crops are planning for the household rather than the future of their matrilineage. Migration, off-farm employment and intermarriage with women from patrilineal groups have tended to make many cross-generational considerations really bilateral. The same household head operates in two different systems when he is living in the city. There his property is registered under a modern title and cadastre system and is subject to the civil inheritance law. At the same

time his matrilineal agnates in the rural sector will feel free to exercise rights over any land or buildings he has in his natal area. After his death all parties will have to be accommodated in ways that were unheard of in pre-colonial times. This spontaneous response to competing centripetal efforts of lineage elders with the centrifugal ones of the national economy is a dynamic that will be part of the situation in Bandundu throughout the life of the project.

The above changes have been accommodated within the ideology of matrilineality. Even the use of bilateral principles of inheritance is not a rejection, but a use of additional strategies. Both customary and derived cultural practices are a response to change. The earlier section on the various ethnic groups has tried to illustrate some of the ways traditional concepts of land tenure have changed in response to migration, war, generational differences, changes in who has the effective power to influence behavior on the land and to economic opportunity. In spite of the multitude of changes that have taken place, there are ideas still strongly held that will run counter to project goals in certain cases.

The most serious of these that emerged from our interviews is the general interdiction on women having fermes à convention. Among some groups, such as the Basakata, it seems to be a question of precedent, but in the others the rule seems more firmly "cast in bronze." It is easy to see the reason behind this in a matrilineal society with virilocal residence. If a wife were to cash-crop in her husband's village, she would be using land that belonged to his matrilineage. This would be inviting in her matrilineage's senior males to make decisions and have some claims on land belonging to her husband's lineage. To encourage women to have industrial farms in their own natal village would be to invite fractionation within the household on the one hand, and pull labor away from food staples on the other. Culturally it would seem much easier for women to engage in marketing activities during the initial phases of the project. Women are active in marketing everywhere in the region.

In the discussion of the specific ethnic groups, several societies like the Mbala forbid any use of the land that was not approved of by the ancestors. Many of these taboos, such as prohibitions against incest, are not project-related. Others, however, that exclude any use of chemical fertilizers and pesticides can be more serious. Rather than viewing such beliefs as constraints, the project can use them to build rapport by providing technical support in composting, natural pest control and so forth.

#### E. Summary

Matrilineally based rules of land tenure need be no constraint to effective project implementation. There is abundant evidence that cultivators have been able to make personal investments on the land in fermes à convention, fish tanks and livestock raising without difficulty from customary land law. In many ways such innovations and investments are more secure in terms of customary than national law. It is a lack of means available at the local level that is the constraint, not insurmountable blockages in social structure.

Nowhere in the project can we treat land like a marketable commodity. Nor can its cost be determined like other factors of production. The value of

land is "embedded" in the social structure and social history of a particular set of matrilineally related kin. This is because each parcel has a land chief who is attached to that piece of ground because of a special relationship to ancestors who are buried there. Thus land tenure, social organization and structure, and history are all facets of the same reality, as viewed from the perspective of customary law.

Land tenure matters are best left to local mechanisms. If there is one thing that this study reveals, it is that every action on the land done by or in the name of the project should be discussed beforehand with the appropriate land chiefs--although hard-pressed technicians trying to complete a road that is already behind budget and schedule may see hunting down the land chief of a patch of ground that contains much-needed gravel, for example, as an unnecessary waste of their valuable time and something to be done by a government representative. A few minutes spent with the traditional leaders, a small gift and the demonstration that their rights in land are recognized will save time in the long run.

The project is designed for the people. It is hard to predict the outcome of new ideas, crops, techniques, roads, etc., on social systems. Since land is the most valuable property of the villagers, the project must do everything in its power to insure that its actions will not jeopardize the rights people had in land before the project started. It is not enough to rely solely on host government promises as governments can change and there is a question of the capacity of existing agencies and institutions to protect such rights once they are removed from the local context.

The people living in the villages in the project area already operate in two sectors, the rural and the urban. Everyone has kin at an urban center. The same person may be using two different kinship systems or styles, one in each domain--that is, matrilineal when in the village and bilateral when in the city. People who are successful in the city are viewed as both resources and as leaders. For all the project zone the village and the city belong to the same economy.

The rules we have focused upon in the pages above are like an armature around which the actual behavior of the people oscillates. Laws are called upon, defended, enforced, ignored and reinterpreted, depending upon the situation. We do need some knowledge of these laws before we can understand the strategies and responses of agriculturalists in central Bandundu.

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by Professor Robert E. Smith\*

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LAND TENURE AND REFORM IN ZAIRE:  
AN ANNOTATED BIBLIOGRAPHY

by

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1. Biebuyck, Daniel

"Le problème des terres du Congo dans ses rapports avec les systèmes fonciers traditionnels," Synthèses 14:163-164 (1960): pp. 78-90.

The author notes that understanding problems of land tenure in the Congo requires an understanding of the total traditional society. He describes the multiple coexisting rights to land in a group of people, and socio-political links to land; he analyzes the variety of social groups who may hold land rights in different ethnic groups, differing rights of women, varying kinship principles, or rights proceeding from residence. He sketches the multiple rights which may be exercised upon a particular domain by the multiple groups of people connected to the land. He notes the complementary way individual rights coexist with group rights.

2. Biebuyck, Daniel

"Introduction," African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 1-51.

An anthropologist surveys insights into and problems connected with African customary land tenure and agricultural development. The author discusses the historical context of various peoples and their systems of land tenure; customary rights in land and examples of impact of scarcity and increasing value of land; the connection between land and religious values of various peoples; various colonial attempts to develop agriculture in a particular direction and impose land reforms. The author makes numerous references to peoples of Zaire.

3. Biebuyck, Daniel

"Systèmes de tenure foncière et problèmes fonciers au Congo," African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 83-100.

The author sketches the major principles and characteristics of systems of land tenure in Zaire. He notes the limits of variation in tenure systems; details the characteristics of the most important unit in a land tenure system: the local corporate group; and summarizes reasons for litigation over land: colonial concessions, regrouping of villages and immigration of strangers into another ethnic area, and disputes between lineages over boundaries or disputes over alleged illegal occupation of land.

4. Biebuyck, Daniel

"Rights in land and its resources among the Nyanga (République Congo-Leopoldville)," Académie Royale des Sciences d'Outre-Mer, Classe des Sciences Morales et Politiques, N.S. XXXIV-2, Brussels, 1966.

An anthropological study of a descriptive, non-quantitative nature of the complex of rights and claims in land and its resources among the Nyanga of the Kivu region of Eastern Zaire. The study is based on fieldwork carried out between 1954 and 1956. The author surveys the Nyanga approach to land in terms of seven categories: history of land occupation; Nyanga ecological classification and subdivision; agricultural techniques; structures of descent; effect of fluid interpersonal relationships on land use; the local administrative hierarchy, including kings, ritual wives and local headmen; code of sharing, and religious sanctions. The author illustrates inheritance and distribution of rights in land and its resources with a case study of a single clan.

5. Biebuyck, D. and J. Dufour

"Le régime foncier du Congo Belge: étude ethnologique et juridique," Zaire 12 (1958): 365-382.

The authors describe the design and some conclusions of an extensive, unpublished documentation of the major types of land tenure in Zaire. The full results are set forth in the "Rapport Synthétique de la Commission foncière," Leopoldville, 1957 (copy in archives of La Direction de Terres in 1970). The authors established in this unpublished work a precise typology of systems of land tenure, customary laws of each group studied, determination of the social group constituting the true land holding entity, variously said by others to be clan, lineage, village, family, tribe, chiefdom, collectivity, etc.; and finally, cases of socio-political problems of land in local areas were examined.

6. Boelaert, E.

"La propriété foncière dans l'idée des Nkundo," Académie Royale des Sciences Coloniales Bulletin des Séances 1:1-2, 1955, pp. 162-168, Brussels.

The author describes Nkundo conceptions of their customary land tenure. The Nkundo are members of the Mongo cluster and live in the central Cuvette,

Equateur region. The author describes the definite individual rights and role of family patriarch with respect to land and its products. He examines Nkundo notions that land is inalienable in the context of cessions to Europeans and to other Nkundo. He describes social organization of families under authority of patriarch, divisions within families, and notes complex situations in existence near cities.

7. Boelaert, E.

"Législation foncière de l'Etat Indépendant et droit naturel," Aequatoria 16:2 (1954): 41-50.

The author describes the attempts of the Congo Free State to gain rights to forest land, noting various decrees and administrative actions of the time. He describes the evolving legal basis for distinguishing domanial lands from lands under customary law. The author then reviews those who protested the colonial notion that forest lands were vacant. The author notes importance of family landholding groups versus the fiction that chiefs held the land rights to great territories.

8. Boelaert, E.

"Faut-il créer des réserves pour les indigènes?" Zaire 9 (février 1955): 133-142.

The author briefly describes the customary land tenure in Zaire, the original doctrine which made vacant lands state lands, and the subsequent substitution of "uncultivated" for "unclaimed" to define vacant lands. The author summarizes the colonial government arguments supporting the above substitution, and suggests that a de facto policy has evolved which creates native reserves. He discusses the negative consequences of the state policy of acquiring domanial lands.

9. Boelaert, E.

"Les trois fictions du droit foncier congolais," Zaire 11 (1957): 399-427.

The author analyzes the mistaken perceptions on which colonial legislation is based: the government is ignorant of true owners of land, and of the full range of native land rights, and is contradictory in its acknowledgement of land rights of natives. The author notes widespread agitation by natives for recognition of their land rights.

10. Bours, L.

"La propriété foncière chez les Bekalebwe," Bulletin des juridictions indigènes et du droit coutumier congolais 4:9 (1936): 196-204.

The Bekalebwe are Basonge people of the Lomami area near Kabinda in the Eastern Kasai region. The author describes the historical origin of the Bekalebwe, agricultural methods, the collective rights to land, rights of the clan, of the stranger, rights to trees, distribution of lands to be cultivated, family use of land, role of chief of land. The author was conseiller at the appeals court at Elisabethville (Lumumbashi).

11. Brixhe, A.

Les Lotissements Agricoles du Nord-Sankuru, Edition du Centre d'Etudes des Problèmes Sociaux Indigènes (Third Edition). Elisabethville: CEPSI, 1948.

The author notes in the introduction that the method involving the allotment of plots, but otherwise a minimum of intervention in Nord-Sankuru, has raised agricultural production. Nord-Sankuru is in the Eastern Kasai region. This pamphlet describes the location of the project in a forest area, the reasons necessitating a project, including: former policies which immobilized farmers and led to over-cultivation and sterilization of soils; tendency of increasing dispersion of farmers; need for assured supply of food. The author describes rationale and method of choosing blocks of forest land to be allotted. He notes results of agricultural research which inspired approach in Nord-Sankuru. He describes practical difficulties of surveying and allotting forest land. He describes the administrative organization of farmers under colonial supervision and the social impact on some of the communities involved, along with suggestions for future policies. He concludes with a justification of the need for such a project and suggestions for policy elsewhere in the Congo.

12. Buelens, Karel

"Analyse économique du problème de la propriété foncière au Congo," Zaire 12 (1958): 227-249.

The author, an agricultural engineer, based his study on two visits to Zaire. The author emphasizes the economic aspect of his study while keeping in view complex social and political implications. He sees a need for individual ownership of property. He describes the special status of the European property owner in Zaire, the collective ownership of land by Africans, factors determining values of land and product of land and its fertility. Importance of geographical location of land, the isolated nature of local markets, and the key importance of labor invested in land are also described. He discusses the evolution of freedom to transfer land rights and obstacles to individual ownership under the system of collective ownership. He describes possible ill-effects of a future land market. He advocates caution while perceiving problems pertaining to access to unowned land, security of tenure, and access by farmers to credit.

13. Clement, J.

"Etude relative au paysannat indigène" in Contribution à l'étude du problème de l'économie rurale indigène au Congo Belge," Numéro Spéciale du Bulletin Agricole du Congo Belge, XLIII (1952): 135-158.

The author, an agricultural engineer, notes that the problem facing the paysannat is to provide a means to farm intensively cultivated land, which previously risked sterilization due to over-cultivation, in the wake of policies which settled farmers in large villages. He describes the basis for traditional land tenure, the collective sharing of work, which must be adapted to the paysannat. He describes difficulties of selling idea of paysannat to farmers, need for commercial outlets for products, and looks at several cases of paysannats in operation, especially in the territories of Nord-Sankuru in Eastern Kasai region.

14. Collier, J.

"Les paysannats du Nord-Sankuru (territoires du Lodja et de Katakoko-Kombe)," Bulletin Agricole du Congo Belge et du Ruanda-Urundi L:3 (1959): 569-648.

The author describes the physical and climatic geography of the areas involved in the paysannats, which are in the Eastern Kasai region. The ethnic groups involved are Mongo, Batetela and Basambala. The author briefly notes historical migration of people to the area, social structure, demography, vegetation, soils. He describes the technical criteria affecting the design of the paysannats, including topography, agronomic effect of choice of land allotment system, crop rotation, distance of paysannats from villages, the cadastre. He notes problems connected with above choices. He also notes economic and social criticisms: paysannats are oriented toward coffee production, allotment of lands do not respect clan rights, women's labor is increasing. He describes persisting role of chief of land, of customary land tenure, and discusses problem of dispersion of members of clans. He describes method by which fertility of soil is protected, cultivation of rice, of peanuts, of cotton, attempts at mechanization, economic returns to labor. He gives figures describing the commercialization of products. He describes schools and social groups established. He discusses in detail the growing and commercialization of coffee.

15. Crine, Fernand

"Aspects politico-sociaux du système de tenure des terres des Luunda septentrionaux," African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 151-172.

An anthropologist sketches the origin, nature and changes in the Luunda administration of land. The northern Luunda or Aruund occupy a large part of the western and southern peripheral zone of the Shaba region. The author analyzes a balance between imperial or chieftain powers and that of landholding kinship groups. The author examines changes which are disturbing this traditional balance: concentration of villages along roads, the increase in power of political chiefs over heads of landholding groups and the loss of lands by some groups to ranches.

16. De Beaucorps, S.J.

"La propriété chez les Basongo de la Luniunga et de la Gobari," Bulletin des Juridictions Indigènes et du droit coutumier congolais 11:1 (1943): 1-10.

The Basongo live in central Bandundu region by the Kwilu River. The author describes the origin and basis for the Basongo landholding rights; rights to the produce of the land; extent and proof of landholding rights; hunting tribute; fishing tribute; controls over firing of bush; clan and village roles in managing land.

17. De Briey, P.

"La propriété foncière indigène," Congo 1:4 (1933): 435-501.

The author describes briefly the way communal and individual rights coexist in Zaire under customary law. He describes in detail how the Dutch

rulers of Indonesia dealt administratively with a similar customary structure. He concludes by suggesting that individual customary property rights be recognized by law and that individuals be protected from unfair expropriation of land by chiefs.

18. Decapmaker, P.

"Le droit foncier et le matriarcat," Aequatoria 21:4 (1958): 139.

This brief statement notes that while the colonial administration attempts to create a cadastre which registers the titles to land of matriarchal families, the matriarchal institution is formed by a complex series of alliances which only elder members of the family understand well. Testimony of elders is thus the traditional "cadastre" and the colonial written records would somehow have to reflect this complex testimony to be valid.

19. de Coene, R.

"Agricultural settlement schemes in the Belgian Congo," Tropical Agriculture 33:1 (1956): 1-72.

The author, director of the INEAC research station at Bambesa, gives a clear, succinct description of the technical and social design of the two model types of paysannats exemplified by the Babua settlement in the Bambesa-Uele area and the Turumbu settlement in the Yangambi area of Haut-Zaire. He describes the nature of agriculture before the paysannats, problems and experiments which led to their development, the agronomic principles of the settlements, including explanation of layout of allotted land, different procedures for allotting individuals or families access to land but which in all cases respect rights of clans. He notes disadvantages and advantages of "individual" and "semi-communal" approaches. He describes results of studies indicating best crop rotation sequences.

20. Deloof, R.J.

"Notes sur le régime foncier des Bena Mulimi," Bulletin des Juridictions Indigènes et du droit coutumier congolais 22:10 (1954): 247-252.

The Bena Mulimi of the Luba cluster, Shaba region, by the Kay River are the subject of this study, a detailed look at the landholding clans of the villages of the area, their origins and rights to land. Deloof also describes the right of individuals to use of land, absence of rights to fallow land, hunting and fishing rights. Deloof was an assistant territorial administrator when he made this study.

21. Dipumba, Barthélémy

"Le régime foncier coutumier," Revue Judiciaire Congolaise 1 (1962): 72-77.

The author, a lawyer, analyzes the common principles of customary land tenure in Zaire. He defends the customary principle of inalienable collective rights to land from attacks made by colonial jurists. He offers a definition of the traditional collective right to land. He distinguishes between

customary rights to land, collectively exercised, and individual rights to the use of land. He describes the groups holding collective rights in terms of tribe, clan and family, and discusses the consequences for customary land tenure of different political structures of chiefdoms. He notes group restraints on individual use of land, respect for individual rights of others, customary rules and role of chief of lands regarding choice of farm plots. He describes individual property rights resulting from investment of labor. He discusses three basic customary principles: collectivity, exclusivity and inalienability. He describes relationships of landholding groups versus strangers, and religious sentiments connected to the land. He discusses traditional administrative role of chiefs of land.

22. Doutreloux, A.

"Note sur le domaine foncier au Mayumbe," Zaire 13:5 (1959): 499-508.

This study of the Mayumbe, members of the Kongo ethnic group, of the Patu and Bundi sectors in Bas-Zaire was based on fieldwork and interviews. The author describes the historical structure of the principal matrilineal clans and their evolution into sub-groups. He describes the position of chief of land, and the way land is organized and distributed. He notes cessions of land to strangers. He discusses the complex of alliances through marriage which affect landholding "sentinel" arrangements, investiture of land chiefs, boundaries of lands, importance of land disputes. He notes consequences of European intervention on traditional institutions. He suggests land disputes are not over boundaries of land but rather are expressions of internal social conflicts between sub-groups. He notes development of cash crops as an aggravating factor.

23. Doutreloux, A.

"Tenure foncière et valeurs socio-culturelles dans un groupe africain," Anthropologica 8:2 (1966): 217-234.

The author, an anthropologist, bases this article on fieldwork carried out among the Yombe, who are members of the Kongo ethnic group and live in the region of Bas-Zaire between Lwango and Zaire Rivers. The author notes the importance of land disputes among the Yombe both pre- and post-independence. He argues these disputes cannot be understood in western terms as disputes over boundaries and titles to property. The author describes the fragmentation of land into units held by small landholding groups, notes the flexible nature of land boundaries, the difficulty of resolving land disputes based on changeable boundaries, colonial attempts to resolve land disputes, cessions of land to Europeans which aggravated disputes. The author describes the procedures and rules of village tribunals with respect to land disputes, the rights of first occupants of land, the social organization and succession within landholding groups, the impact of the matrilineal system, the role of the ancestors. He suggests that it is of key importance to analyze shocks to the traditional belief system, which relates land to religious and social values.

24. Dufour, Jean P.

"Quelques aspects juridiques du problème foncier au Congo," African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 172-173.

The author reviews the colonial legal conception of dual land tenure, which consists of lands occupied by native peoples and lands considered "vacant." He notes criticisms made of the concept of vacant lands by anthropologists, and describes some findings by anthropologists on the nature of the native landholding system. He suggests the traditional structures will face increasing socio-economic pressures as economic development proceeds.

25. Dufrenoy, Paul

Le régime foncier au Congo Belge et l'Acte Torrens. Brussels: A. Hauchamps, 1934, 220 pp.

The author notes that the colonial land law is not founded in Belgian law but in the Torrens act and Tunisian legislation. He describes the evolution of colonial legislation on land, the effects of this legislation on Africans, the recognition of customary land rights, limits to those rights, vacant lands, the rights of the Katanga Company, the Comité du Kivu, the Huileries du Congo Belge. He describes the registration of titles to land, and the system of administration of lands under the Torrens act.

26. Food and Agriculture Organization

Land reform in the Congo. Rome: FAO, World Land Reform Conference, RU:WLR-C/66/1, 1966.

The article summarizes reasons for developing paysannats, describes the main types of paysannats developed for different ecological and social structures, including the Turumbu, Babua, Gandijika and perennial crop paysannats, and paysannats experimenting with intensive cultivation and irrigation, such as those at Luberizi and Kiliba (Kivu region). Administrative mistakes in development of paysannats are noted, as well as existence of private farmers called "fermiers." Erosion control is described, as well as management of palm groves, and decrees affecting growing and sale of cotton. The article discusses reforestation, game and fishing policies, animal production, agricultural credit and agricultural education. The article lists future rural development projects soon to be carried out.

27. Grevisse, F.

"Les Bayeke (suite)," Bulletin des Juridictions Indigènes et du droit coutumier congolais 5:5 (1937): 134-140.

The author was territorial administrator at the time of this study of the Bayeke, who inhabit central Bandundu region. The author distinguishes between political and land rights; rights of the chiefdom chief and the village chief; he describes at village level individual and family rights to use of land, rights concerning houses, trees, particular fields, fallow land, hunting, fishing and gathering rights.

28. Harms, Robert

Land tenure and agricultural development in Zaire, 1895-1961. Land Tenure Center Paper No. 99. Madison: Land Tenure Center, 1974, 25 pp.

The author discusses general characteristics of the social organization of customary land tenure in Zaire and then sketches the land tenure systems of four ethnic groups in order to suggest ecological, political and social variations prevalent in Zaire. The four groups are: Kuba, Mongo, Zande and Nyanga. The author also discusses the impact of colonial agricultural policy in the Congo, including expropriation of land, forced cultivation of crops, paysannats, and he discusses post-independence needs.

29. Hecq, J.

"Le système de culture des Bashi (Kivu, Territoire de Kabare) et ses possibilités," Bulletin Agricole du Congo Belge et du Ruanda-Urundi XLIX:4 (1958): 969-1000.

The territory of Kabare lies southwest of Lake Kivu in the Kivu region. The author, member of the INEAC research station at Mulungu, describes the geographic features of the area. Three ethnic groups live in Kabare: Batwa, Balega and Baluzi. The author describes the political hierarchy and customary land tenure of the area: 45 percent of farmers have long-term, inheritable Kalinzi leases, while other land is held under various short-term customary leases. He notes the landholding social structure of proprietary families and clients grouped in villages on hills. He describes the layout of farmlands, and customary land laws which affect perennial banana groves, food crop land and pasture land for cattle. He discusses customary rotation of crops and use of fertilizer in banana groves, and suggests policies designed to rationalize traditional agriculture. He describes the design of a pilot paysannat at Mwendo, near Mulungu, which tests new methods. He compares statistics of agricultural production by customary methods and increased production under new methods involving rationalization, intensification and redistribution of land between crops.

30. Henry, J.

"Les bases théoriques des essais de paysannat indigène au Congo Belge," in Contribution à l'étude du problème de l'économie rurale indigène au Congo Belge, Numéro Spéciale du Bulletin Agricole du Congo Belge XLIII (1952): 159-192.

The author, at the time head of agricultural research at a station at Yangambi, Haut-Zaire, discusses the agricultural research which led to the development of paysannats. He notes the initial failure of European farming techniques, the recognition of the value of shifting cultivation, and describes the way paysannats attempt to build on and improve traditional agricultural practices. He describes the layout of fields alternating with bands of forest. He describes methods used in savanna area of Gandijika in Eastern Kasai. He describes crop rotations, returns per hectare and future mechanization. He also discusses living conditions and domestic work of farmers. He notes problems connected with land tenure, particularly with the introduction of individual property. He reviews role of cooperatives, lists

key principles underlying establishment of paysannats, and closes with a look at three paysannats: at Bambesa, Babua ethnic group; at Gandajika, Lusambo area; and at Yangambi, Turumbu sector.

31. Herbots, J.H.

"Les droits fonciers et l'administration à Léopoldville," Etudes Congolaises 6:3 (1964): 22-44.

The author describes the authorities who manage the private domain of the city of Leopoldville (now Kinshasa) and the state. He describes the administrative procedure for declaring land to be vacant, the way the urban land is distinguished from rural land, and explains the terms "cité" and "centre extra-coutumier." He describes the role of the Office des Cités Africaines. He describes the legal relationship between state and city "owned" land. He describes laws which affect the management, sale or rental of provincial city land, and describes disputes between city administrators and the State conservator of titles (Land Registrar) over management of land transfers.

32. Herbots, Jacques H.

"Commentaire de la loi dite Bakajika," Etudes Congolaises 10:4 (1967): 57-62.

The author, a professor of law at the University of Lovanium, briefly analyzes the provisions of the ordonnance-loi no. 66-343 of June 7, 1966 (called Bakajika). He notes provisions which allow the Republic to reassume full property rights over the national land. He describes how land enters the private domain of the state, leaves the private state domain and returns to the state domain. He reviews procedures of cession and concession, and reversion of rights ceded and conceded, pre-independence, to the state.

33. Heyse, Theodore

"Grandes lignes du régime des terres du Congo Belge et du Ruanda-Urundi et leurs applications (1940-46)," Institut Royal Colonial Belge 15:1, Brussels (1947): 1-111.

The first part of this work describes the colonial legislation affecting indigenous lands, focusing particularly on the rules permitting cession of native rights to land. Legislation affecting mortgages and paysannats is described. The author also includes a bibliography of land tenure in the Congo. The author analyzes the 15th article of the colonial charter of 1942 with respect to cessions and concessions of land, and includes a list of those who had received cessions and concessions.

34. Heyse, Theodore and H. Leonard

Régime des cessions et concessions de terres et de mines au Congo Belge. Brussels: Weverbergh, 1929.

The authors discuss the 15th article of the colonial charter, concessions of rights to "emphytéose"—a long-term lease, restrictions on the granting of very large concessions. The authors discuss the concessions of palm tree

plantations, the policies to be adopted in the interests of Africans, the nature of the contract with the Huileries du Congo Belge, free cessions and concessions of land to benefit infrastructure, and the legislation on the mines in the Congo. The legal regime of the four mining zones is described as well as rights of Africans.

35. Hulstaert, G.

"Propriété chez les Mongo," Aequatoria 9 (1946): 20-31.

The Mongo are an ethnic cluster of peoples living in central Zaire: Bandundu, Equateur and Kasai regions. The author is concerned with distinguishing individual rights versus collective rights to land and property. He describes rights of the wife and husband, communal lands versus those to which individual farmers have rights, the roles and rights of the chiefs of the clan, groupement and family. He describes the impact of colonial legislation, issues of land and suggests insights into the future of Mongo land tenure.

36. Hulstaert, G.

"Sur le droit foncier Nkundo," Aequatoria 17:2 (1954): 58-66.

The Nkundo of this study live in the Equateur region, in an area near Mbandaka. The author is particularly concerned with distinguishing the extent of individual and family rights to land versus a vague notion of collective ownership. He describes a number of cases among families of cessions of land and successions to rights to land. He compares historical cases before the arrival of Europeans to present-day cases to suggest the flexibility and modifications of customary land tenure over time. He notes the role of the patriarch and the fragmentation of land among small landholding groups who trace lineage to common ancestors.

37. Kalambay, Gaston

"Les droits fonciers coutumiers à travers la législation de la République Démocratique du Congo," Revue Juridique et Politique, Indépendance et Coopération 24:4 (1970): 1175-1180.

The author briefly discusses written land tenure legislation and its impact on traditional land tenure in Zaire. The author first summarizes the general principles of traditional land tenure in Zaire; the origin of rights to land, powers of land chiefs, rights of the group and of individual members of the group. He then looks at the importance of colonial legislation on land rights in Zaire, the fading of the paysannat system and the enduring quality of traditional institutions and principles.

38. Kalambay, Gaston

"L'expropriation pour cause d'utilité publique en République Démocratique du Congo," Revue Juridique et Politique, Indépendance et Coopération 24:4 (1970): 1017-1040.

The author discusses the legislation guiding expropriation of land for reasons of public utility. He notes that legislation from the colonial era

still provides the basis for such expropriation. He describes the historical evolution of laws affecting expropriation from the Congo Free State era to the present constitution of the Democratic Republic of the Congo. He notes provisions of the Bakajika law of 1966 affecting cessions and concessions. He notes possible reasons for public expropriation, various lands and rights to land which can be expropriated, including urban registered land, rights to mining concessions, customary rights to land. The author defines "customary lands," registered urban land, vacant lands. He describes the administrative procedures used to expropriate land, possible recourse to the courts over compensation, registration of expropriated rights, and subsequent sale of expropriated rights. He includes texts of several administrative actions expropriating rights to property for reasons of public utility.

39. Kremer, E.

"Le droit foncier coutumier du Congo Belge," Bulletin des Juridictions Indigènes et du droit coutumier congolais 24:9 (1956): 233-258 and 269-286.

Kremer has written a general analysis of customary land tenure in Zaire, basing his work on the existing literature. He discusses customary land law with respect to the landholding group and its social organization, the collective character of land property; role of chief; inalienable nature of land rights; rights of strangers versus landholding groups; cessions of land to strangers; boundaries of land and of political territories; distribution of rights within landholding groups; and the rights of the first settlers of land. Kremer discusses the separation of powers of political chiefs versus chiefs of land, social checks of the group on powers of the chief, and the managerial, rather than proprietary, role of the chief of land. He discusses reasons why a chief of land may intervene in decisions on the use of land made by group members, including the allotting of farm lands, house sites and allowing strangers access to land. He describes payments made to chiefs of land, discusses cases illustrating individual and family rights to land and discusses changes in customs and the impact of colonization on customary land tenure.

40. Lebrun, A.G.

"De la tenure de la terre chez les populations indigènes du territoire de Kabalo," Bulletin des Juridictions Indigènes et du droit coutumier congolais 24:8 (1956): 181-222.

The author at the time was territorial administrator. The people of Kabalo territory, Shaba region, are of the Luba ethnic group, on the right bank of the Lualaba, and Basonge on the left bank. The author describes the origin and different customary tenures of the Basonge and Luba. He describes and names in detail the various landholding and political groups of the area. He describes rights to cultivation of land according to different laws, inheritance of land, lists the distribution of land by clan and village, and describes clan rights and role of chief of clan with respect to land. He discusses the suitability of stable land holding groups as a precondition to the establishment of paysannats.

41. Leplae, Edm.

"Résultats obtenus au Congo Belge par les cultures obligatoires alimentaires et industrielles," Zaire (février 1947): 115-140.

The author was for many years director of colonial agricultural policy and based this article on 1937 statistics. He describes the motives for introducing obligatory cultivation of crops: regular and balanced food supply and improved standard of living. He notes problems of seasonal food shortages and famines. He notes mining corporations' support for a regular food supply, and he notes existence of malnutrition among rural population. He describes size of obligatory fields, and breakdown by province of food crops planted. He describes role of monitors and success so far of policy from educative and economic points of view.

42. Lumpungu, G. Kalambay

"Le nouveau droit foncier zairois," Cahiers Economiques et Sociaux 19:1-2 (juin 1981).

A law professor describes the changes in the law governing land at the end of the colonial regime upon the enactment of ordonnance-loi no. 66-343 of 1966, law no. 71-009 of 1971, and law no. 73-021 of 1973. He describes the rationale for the new laws, the reason for the 1966 and 1971 revisions, and suggests the need now is for future provisions codifying the rights of traditional communities in land versus the rights of the state.

43. Lumpungu, Kamanda

"Land tenure system and the agricultural crisis in Zaire," African Environment 2:4 and 3:1 (1977): 56-71.

The author notes that the traditional rural socio-political organization, though legally abolished and its leaders given new names, still maintains its traditional powers. He describes village chiefly authority over land, collective and individual rights to land. He gives statistics on intensity of cultivation of land, and describes changes in customary tenure in areas of dense population. Among Bakongo, Bapende and Babunda immigrating strangers must pay customary land taxes, while among Banande in Kivu region, the author sees "feudal" abuses by chiefs of customary land tenure. He notes drop in private investment in agriculture, inefficiency of administration yet sees continued need for supervision of farmers. He describes effects of deteriorating roads and difficulty of maintaining high prices for farm goods.

44. Maenhout, M.

"Droits des indigènes en matière foncière," Bulletin des Juridictions Indigènes et du droit contumier congolais (mars-avril 1941): 35-44.

The author was a territorial administrator who studied the land tenure of the Bashu chiefdom, Ruwenzori sector - Watalinga chiefdom and the Bambuda chiefdom. The people involved are a mixture of Banande and Bambuda, and reside in the Kivu region. The author describes the landholding hierarchy with a chief of land at top, then a chief of clan, and chiefs of families.

The author notes oral histories of the origin of various landholding peoples, the collective right to land, the social organization of management of land, payment of tribute, inheritance of land and of role of manager of land, movement of villages, boundaries to land, political power versus power over land, hunting rights.

45. Malengreau, Guy

"Le régime foncier dans la société indigène: le Bas Congo," Congo 2:1 (1939): 1-46.

The author is concerned with the region presently called Bas-Zaire, which includes Bakongo, Bawumbu, Bambinsa, Bayaka and Mayumbe ethnic groups. He gives a historical overview of these people in the area, and describes the evolution of the traditional land tenures. He notes the origin of a clan's right to land, collective and individual rights, inalienable rights and role of ancestors. He describes the role of the chief of clan, payment of tribute, and the evolution of land rights and adaptation of institutions under new pressures. He describes the nature of land disputes common in the area. He notes the numerous concessions made to Europeans in Mayumbe territory.

46. Malengreau, Guy

"Les droits fonciers coutumiers chez les indigènes du Congo Belge, essai d'interprétation juridique," Institut Royal Colonial Belge 15:2 (1947): Brussels: 1-260.

The author attempts a thorough analysis, based on the existing literature, of aspects of customary rights in land common to all indigenous peoples in the Congo. He refers continually, though, to particular representative cases. He traces the notion of collective rights in land in the cases of family groups, clans, and large political groups. He examines rules of use of land by individuals vis-à-vis the collective, alienation of land and rules of inheritance. He concludes with a section on the chief of land and customary patterns of authority over use of the collective land.

47. Malengreau, Guy

"Les lotissements agricoles au Congo Belge," in Contribution à l'étude du problème de l'économie rurale indigène au Congo Belge, Numéro Speciale du Bulletin Agricole du Congo Belge XLIII (1952): 193-218.

Malengreau notes the low standard of living and prevalence of forced labor in rural areas, exodus from rural areas and drop in fertility of soil after introduction of obligatory planting of crops. He describes the paysannat system as a method to introduce successful intensive cultivation under European surveillance. He discusses the necessity to adapt future expansions of the paysannats to customary land tenure. He describes administrative methods to be used in establishing more paysannats. He notes need for individual security of tenure within context of collective holding of land. He notes negative effects of constant surveillance by State. He discusses marketing of products by cooperatives. He concludes that paysannats are only a start at solving rural problems.

48. Marchal, R.

"Le droit foncier coutumier des Bazela, des Balomotwa et des Banwenshi," Bulletin des Juridictions Indigènes et du droit coutumier congolais 1 (janvier-février 1937): 17-21 and 2 (mars-avril 1937): 41-52.

The author was a territorial administrator who studied people of the territory of Sampwe, in Haut-Shaba. He notes the historical origin of the people studied, their organization into villages, the rights and cooperation of spouses, rights to produce of land, women's rights to land, rights of small landholding groups versus conquerors or chiefs, role of chief of the groupement; cessions of land, rights of strangers to land, inheritance of land, rights to choose and use land for cultivation; the author gives detailed histories of how several landholding groups gained and passed on land rights.

49. Massitu, J.A.

"Le cadastre congolais," paper presented by the government of the Democratic Republic of the Congo to a United Nations Seminar on the Cadastre, Addis-Ababa, E/CN.14/CART/266.

The paper briefly places Zaire's land tenure in its historical context, discussing domanial lands, vacant lands and lands under customary tenure. Registration of land and administration of the cadastre is described, as is the role of the cadastre for lands under customary tenure. An experimental documentation of the cadastre of customary land in the Mayumbe in 1965 is described. The convocation of customary authorities and the recording of landholding groups and their rights is noted. A report to the President by Minister Okuka on the subject of further such cadastral projects is included, along with the text of a proposed law governing the extension of the cadastre into lands under customary tenure. The need and usefulness of extending the cadastre, and therefore written law, into lands held under customary tenure is described. The personnel and role of the service of the cadastre are described. The role of the service of the cadastre in the allotment of lands from the State's private domain is noted. The role of the Conservator (registrar) of land titles is explained, as well as the cooperation of the service of the cadastre with the Conservator. The paper concludes with responses to a questionnaire on the nature and obligations of the cadastre and its service in Zaire.

50. Mavundu, Kika

"Propriété foncière traditionnelle et utilisation des terres et des savanes chez les Suku du Zaire," Cahiers Economiques et Sociaux XVIII:3-4 (sept-dec 1980).

The author, a rural economist, briefly surveys the notion of land property among the Suku of Zaire; their use of their lands and savannas, and the influences of traditional Suku land tenure and practices on agricultural innovations. He briefly examines the influences on land property of the traditional socio-administrative structure and the impact of the Bakajika law on Suku practices. The Suku live in the Bandundu region between the Kasai and Kwango Rivers.

51. Mignolet, J.

"Note relative à la tenure de la terre dans le groupe Munene de la chefferie Bakonkolo," Bulletin des Juridictions Indigènes et du droit coutumier congolais 22:8 (1954): 189-194.

The author was at the time chef du territoire de Manono. The Bena Munene are members of the Luba cluster, and live by the Lukushi and Kay Rivers in the Shaba region. Mignolet describes the migration of the Bena Munene to the Luba chiefdom; their client status with respect to land and the Luba chiefs; and gives a detailed breakdown of landholding social groups at clan and family levels, rules of distribution of land, hunting rights, tribute payments. The author concludes land is thoroughly inventoried and managed.

52. Muller, Ernst

"Le droit de propriété chez les Mongo-Bokoté," Académie Royale des Sciences Coloniales, Classe des sciences et morales et politiques: N.s. 9:3. Brussels: 1958.

The study is based on fieldwork by the author among the Ekonda, neighbors of the Bokoté, and on existing literature on the Bokoté themselves. The Bokoté are members of the Mongo culture group, and live in the region of Mbandaka, Ingende and Bolomba in the Equateur region. Muller reviews theories of the nature of customary land law in the area, citing Malengreau and Possoz, Hulstaert and Boelaert. Muller describes customary rights to use of land, dwellings, hunting, water, the marriage dowry; he describes the way the land boundaries are marked; rules of transfer of land; and bonds based on marriage alliance and extended families which affect landholding.

53. Munzadi, E.

"Agriculture et propriété terrienne chez les Yansi," Agriculture et Elevage dans l'entre Kwango-Kasai (Rép. du Zaïre): Rapports du Ve Colloque de Bandundu, Herman Hohegger (ed.), Bandundu: Centre d'Etudes Ethnologiques Bandundu (CEEBA), Serie 1, vol. 5, 1973, pp. 53-63.

A Yansi describes the practices and ideas of his own people concerning land. The author focuses on the Yansi who live in the Bandundu region between the Kwango and Kasai Rivers. He discusses Yansi concepts which relate land and ancestors, land and proprietary clans, land, fertility and the responsibility of chiefs for land, slavery and land, and he discusses the implications of burial customs for the future of the clan. He discusses payments by farmers to chiefs and then suggests reasons why the Yansi do not respond to initiatives by agricultural planners to promote intensive agriculture, the planting of trees and the stabilizing of tenure to protect investment. The author's statements are "personal thoughts" based largely upon his participant observation of the Yansi.

54. Nonkel, Roger

"Notes sur le droit foncier coutumier Bwaka," Institut Royal Colonial Belge - Bulletin des Séances 22 (1951): 630-667.

The author describes the customary land tenure of the Bwaka ethnic group, who live in the Equateur region, Gemena territory, Congo-Ubangi district. He describes the historical source of Bwaka rights over their land, individual

versus collective rights, distribution of land to individuals, guarantees of individual rights to land, consequences of regrouping and stabilizing villages along roads. He analyzes the role of clans holding communal lands, suggests there exist vacant lands, describes a clan and family based traditional approach to public sanctions. He notes absence of rights for strangers. He discusses changes made in chieftdom tribunals by European administrators. Land disputes traditionally were rarely brought before courts.

55. Paluku, Matumo

"La loi foncière du 20 juillet 1973 et son impact sur l'habitat," Zaire-Afrique 161 (1982): 31-44.

The author is avocat général, conseiller principal aux affaires foncières. The author presents an historical analysis of the origin of the law 73-021 of 20 July 1973, later amendments, and the present impact and implications of provisions of the law. He describes the motives for and main ideas of the law, the change in status of formerly "native lands" to domanial lands. He describes the role of the Department of Land Affairs, the rules guiding future public and semi-public organizations designed to manage areas of rural and urban land, and the need for certificates of registration. He describes the terms by which land is leased from the state, and sanctions established by the law.

56. Phanzu, Valentin

"L'Evolution du régime de la propriété immobilière en République Democratique du Congo," Revue Juridique et Politique, Indépendance et Coopération 24:4 (1970): 741-744.

The author, premier avocat général with the Cour Suprême de Justice, describes the dual law governing land in Zaire, and its colonial origin. Written law based on the Australian Torrens act governs private registered land while unwritten customary land law is still in force elsewhere. The author describes the role of the conservator of land titles and registration of titles in a land book. He describes the origin of lands administered under written law, rights of transmission and protections guaranteed lands under written law.

57. Philippe, René

"Notes sur le régime foncier au Lac Leopold II," Aequatoria 17:2 (1954): 51-57.

The article concerns two ethnic groups of the Inongo Territory: the Bolia and the Basengele. These people live near Lake Mai-Ndombe in northern Bandundu region. The author notes the historical origins of the Bolia and Basengele in the area. He describes the social organization of the Bolia into clans and villages. He describes the role of the chief of land, tribute due him or her and how individuals acquire the position. He describes individual versus collective rights in land, fishing and hunting rights. He similarly describes the Basengele clan organization, the role of chief of land, rights of clan and of individuals, and tribute paid for use of land.

58. Philippe, René

"L'accession des congolais à la propriété foncière individuelle," Aequatoria 21:1 (1958): 5-28.

The author notes the importance for future agricultural policy that rights to property evolve towards individual property rights. He describes the nature of land tenure in centres extra-coutumiers, noting persistence of traditional rules. He describes the situations of the merchants and small artisans, abuses with respect to their access to housing. He notes the development of "parasitic clans" dependent on urban workers and the likelihood that individual ownership of land would increase disputes between clan and individual. The author similarly suggests dangers of promoting individual ownership of land in rural areas. He describes principles of customary land tenure, role of clan, and customary mentality which hurts individuals. He sees need for reform of some customs. He explores in more detail problems of cessions of land to strangers among Mongo people living near Mbandaka. He discusses the paysannats, the role of commercial corporations, and concludes there is a need for individual ownership of urban land used by merchants.

59. Philippe, René

"Les modes de propriété chez les Mongo," Kongo-Overzee 25:1 (1959): 17-72.

A study of the land tenure system of the Ntomba e Njale inhabiting the shores of Lake Mai-Ndombe, Bandundu region, of the Ntoma-Nkole in the Tshuapa district and the Basengele of the area around Inongo. The author discusses the historical context and nature of customary land tenure of the various peoples, members of the Mongo cluster, but he particularly concentrates on the Ntomba e Njale. He discusses in some detail various rights of use of land and the effect of economic and political pressures on these rights. He particularly focuses on the difficulties the colonial administrators create for the smooth operation of the customary system. He explores traditional methods of acquiring use and title to land and analyzes actual cases in which land rights were ceded or strangers were permitted to farm. He concludes by advocating various approaches to colonial land policy. The study appears to have been based on fieldwork by the author.

60. Schils, M.

"Enquête politico-foncière. Province du Katanga, district du Lualaba, territoire de Dilolo," Bulletin des Juridictions Indigènes et du droit coutumier congolais 25:4 (1957): 99-109.

The author was at the time a territorial administrator when he made this study of a Lunda people of southwest Shaba region. He traces the political history of the present inhabitants and the history of their installation on the land and the present borders of their land; he describes the nature of positional succession within a family lineage to rights to land; he describes rights to cultivated land, hunting, fishing, honey wine, wood; he describes rights of villages to parcels within the larger lineage domain. He describes in detail the history and extent of present land rights of two family lineages.

61. Sladden, G.E.

"Evolution possible du paysannat indigène au Congo Belge," in Contribution à l'étude du problème de l'économie rurale indigène au Congo Belge, Numéro Spéciale du Bulletin Agricole du Congo Belge XLIII (1952): 7-28.

The author notes the different approaches to the paysannat followed according to crops planted, availability of land, vegetation, i.e., savanna or forest, economic possibilities, and local customs. He notes all approaches are based on knowledge of local land tenure and maintain integrity of clan. He describes method of land allotments, social distribution of allotments: (a) individual family allotments, (b) shifting family shares of communal land, (c) access to communal land according to traditional patterns of distribution. He notes choice of method may depend on relative individualization of local ethnic groups. He notes criticisms of various methods, in particular that individual allotments rigidify access to land. He describes hopes for the future evolution of paysannats.

62. Soret, Marcel

"La propriété foncière chez les Kongo du Nord-Ouest. Caractéristiques générales et évolution," in African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 281-296.

The north-western Kongo live in the Bas-Zaire region of Zaire. The author notes the matrilineal kinship structure but suggests there exists an evolution towards patriliney. He describes the collective, inalienable basis of rights to land, how the ideology of the ancestors affects rights to land, and historical instances demonstrating that conquered people retained rights to land. He briefly describes the historical movement of the Kongo into Bas-Zaire and Kongo expansion into land once held by the Teke. He notes that land boundaries are more precisely marked where population is dense. He describes rights to land which strangers may acquire, varying "rents" paid by strangers, and limits on cession of hunting and fishing rights. He notes that in spite of exposure to change and urbanization, the Kongo conserve their traditional institutions. He discusses the political and demographic factors affecting Kongo land tenure, including demographic expansion and dispersion of power over land among small social groups.

63. Sousberghe, L. de

"Régime foncier ou tenure des terres chez les Pende," Académie Royale des Sciences Coloniales, Bulletin des Séances 4:7 (1958): 1346-1352.

The Pende live in central Bandundu region. The author describes the customary land tenure and role of chief of land of the Pende matrilineal landholding clans. He notes importance of the kifumu, sack containing chiefly attributes of the clan; he describes hunting and fishing rights, payment of tribute to chiefs, gathering rights, rights of husband living in village of his wife, and rights to economic trees.

64. Thorigné, J.H.

Le développement de la production agricole dans le paysannat Turumbu.  
Programme des Nations Unies pour le Développement, Organisation des Nations Unies pour l'Alimentation et l'Agriculture; Institut National pour l'Etude et la Recherche Agronomique, Centre Agronomique de Yangambi. Yangambi: République du Zaïre, 1971.

The author was at the time employed as an agricultural expert, member of an international team, with the re-establishment of the Turumbu paysannat as one of his duties. The Turumbu paysannat is in the Isangi Zone, Tshopo sub-region, region of Haut-Zaïre and comprises 68 villages, 3,312 farmers. The author describes the lamentable state of the paysannat, improvements to be made and methods for carrying out improvements. He describes the paysannat marketing organization, the Turumbu Cooperative, which is supposed to market products and provide credit, but which is also in a state of disarray. He provides a plan for reorganizing the cooperative, a market study, and a final assessment suggesting a need for training of monitors.

65. Thorigné, J.H.

La relance des coopératives agricoles et l'organisation de la commercialisation des produits vivriers dans la région du Haut-Zaïre.  
Programme des Nations Unies pour le Développement, Organisation des Nations Unies pour l'Alimentation et l'Agriculture; Département de l'agriculture division régionale de l'agriculture du Haut-Zaïre. Kisangani: République du Zaïre, 1973.

The author was at the time employed as an agricultural expert charged with promoting the development of agricultural cooperatives in the region of Haut-Zaïre. The author briefly reviews the national policy regarding cooperatives and the number of cooperatives in existence. He then describes the history and state of six cooperatives, a dairy and a fishery in Haut-Zaïre. He suggests plans for strengthening these organizations, including selection and training of personnel, statutory and financial reorganization, and possible governmental financial and technical assistance.

66. Tondeur, G.

"Une expérience d'économie rurale coopérative au Congo Belge," in Contribution à l'étude du problème de l'économie rurale indigène au Congo Belge, Numéro Spéciale du Bulletin Agricole du Congo Belge XLIII (1952): 219-242.

The author, an agricultural engineer, describes the Luberizi paysannat and cooperative in Uvira territory, Kivu region. He notes that paysannats must respect collective customary title to land while allotting individual access to plots. He describes and provides maps of the geographic area of the paysannat, describes a history of attempts to organize agriculture in this area, until the present policy of collective allotments of land was adopted. He notes number of hectares, animals and farmers involved. He describes how customary land tenure has been respected; land is allotted to family or village groups rather than individuals. He notes scientific studies of the geography of the lands involved, patterns of crop rotations, collective and

individual work in fields, agricultural credit, and mechanization. He notes choice of location of villages, improvement of poor soils, policy of reforesting land, and future returns expected on investments.

67. Van Boeckhout, J.

"Le droit foncier du groupement Bakwanga du secteur Baluba Bushimaie," Bulletin des Juridictions Indigènes et du droit coutumier congolais 26:10 (1958): 285-291.

The Baluba of this study inhabit an area near Mbuji-Mayi in the Eastern Kasai region. The author describes the land tenure of a groupement composed of several villages and clans headed by a chief. He describes the basis of rights to land at groupement, village, family and individual levels. He distinguishes between rights to cultivated land, fallow land, uncleared and cleared forest, settling of strangers on other's land, movement of villages, rights to economic trees, rivers, lakes, pasturages, hunting, houses, ant hills, fruit trees; he also discusses the legal approach by colonial administrators to declaring land vacant so that a stranger can farm the land.

68. Van Boeckhout, J.

"Le droit foncier chez le groupement Bena Kakonde du secteur Bena-Ngoshi," Bulletin des Juridictions Indigènes et du droit coutumier congolais 25 (1957): 33-38.

Lulua people of the Western Kasai region are the subject of this study. The author describes the ideology and basis for the customary inalienable, collective rights to land; he describes rights to cultivated land, a stranger's right to land, rights to fallow land, rights to cleared and uncleared forest, rights to economic trees, rivers, pasturages, houses, ant hills, and hunting rights.

69. Van Hecke, Etienne

"Structure agraire et habitat au Bas Congo," Etudes Africaines du CRISP, 106-107. Brussels, 1970.

The author studied a rural area south of Kinshasa in Bas-Zaïre. He notes presence of Angolan refugees. He describes the customary land tenure of the area, referring both to his own survey data and to previous literature. He notes variation in size of landholding groups: sometimes family, sometimes clan, and differing freedom of individuals to choose plots to cultivate. He discusses appearance of strong individual rights to plots of land, rights to fallow land, payments required of strangers who wish to farm land, increasing commercial value of some land, farming methods used, crop cycle and fallow period, agricultural calendar, and marketing of crops. He describes results of his surveys of the origin and movement of villages, reasons why villages moved: clan reasons, to be nearer roads, or other reasons. He describes several cases of village movement or division. He describes the domestic property of the family, layout of houses, storage of food.

70. Vanderlinden, Jacques

"Principes de droit foncier Zande," Revue de l'Institut de Sociologie 3 (1960): 557-610.

A non-quantitative, anthropological study of the principles of customary land tenure among the Zande, who inhabit the Haut-Zaire region. The author summarizes the rules of the pre-European Zande Vungara society with respect to land and discusses how the principal elements have been affected by the colonial administration. The study was carried out over a year: six months' library research and preparation in Brussels and six months' field research consisting of interviews with Zande authorities, study of recorded cases of Zande tribunals, and questionnaires.

71. Vanderlinden, Jacques

"Problèmes posés par l'introduction de nouveaux modes d'usage des terres Zande," African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 331-348.

A descriptive, non-quantitative study of the impact of colonial policy on customary institutions of land tenure among the Zande Vungara of northern Haut-Zaire. The author first sketches the traditional social and political organization of the Zande with respect to land. He analyzes the principles of customary land law and the balance normally maintained between family groups and chief. He then points out how colonial agricultural and political policy has disrupted the traditional balance of power and freedoms of individual Zande farmers. The study is based on six months' fieldwork in Zande country and the existing literature on the Zande.

72. Vannes, J.

"Le droit foncier coutumier en territoire de Kabongo," Bulletin des Juridictions Indigènes et du droit coutumier congolais 22:8 (1954): 161-179.

The author was at the time an assistant territorial administrator. The people of the Kabongo territory are members of the Luba cluster in Shaba region. The author describes the importance of the family as the landholding group; he lists landholding families in villages and size of family land; the political organization of the family and role of family head; the rights of individuals within families; inalienable rights to land; payment and beneficiaries of tribute.

73. Vansina, J.

"Le régime foncier dans la société Kuba," Zaire 10 (1956): 899-926.

An anthropological, non-quantitative study, based on fieldwork by the author, of the land tenure system of the Bakuba. The Bakuba studied inhabit the western Kasai region of Zaire between the Sankuru and Kasai rivers. The author describes the farming systems, clan and village rights with respect to land, conditions under which land can be alienated but not sold from one village to another. He maps out in detail the land use of two different villages. He traces the importance of land tenure to the larger political

organization of the Bakuba and notes the intervention of agricultural administrators into this political system because of their promotion of paysannats and role as monitors of agricultural activities.

74. Vansina, Jan

"Les régimes fonciers Ruanda et Kuba--une comparaison," African Agrarian Systems, Daniel Biebuyck (ed.), London: International African Institute, Oxford University Press, 1963, pp. 348-363.

The author bases his study in part on his own fieldwork. He uses the land tenure system of Rwanda as a means to evoke similarities and differences with Kuba land tenure and illuminate reasons for this evolution of differences among the Kuba. The Kuba Vansina studied inhabit the Western Kasai region, particularly the area around Mweka. Factors considered as possible forces behind Kuba land tenure are: low density of population; farming methods; differences in social structure (patrilineal Rwanda versus matrilineal Kuba); the political structure; and the introduction of cash crops.

75. Willaert, M.

"Les coopératives indigènes au Congo Belge," in Contribution à l'étude du problème de l'économie rural indigène au Congo belge, Numéro Spéciale du Bulletin Agricole du Congo Belge XLIII (1952): 85-124.

The author notes a need for a special statute governing African as opposed to European cooperatives. He describes and explicates the existing statute governing cooperatives, and lists various African cooperatives formed under this statute. He also describes experimental organizations called "agronomats." He then describes colonial governmental actions based on the notion that autonomous African commercial organizations should not be allowed to manage their own finances. He describes the creation of two groups of pilot cooperatives in Uele and the Kasai, the creation of an administrative department devoted to cooperatives and the draft of a Decree on Native Cooperatives, which is published in full. He describes the source of credit, management and commercialization of the product of the pilot cooperatives.

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