

Panel 61. *Autochthony, citizenship and exclusion*
- *struggles over resources and belonging*

**“The construction of subjects in the colonial political economy
of the Spanish Guinea”**

Alicia Campos Serrano
Grupo de Estudios Africanos
Universidad Autónoma de Madrid

The categorization of people in “tribes” and other clusters in order to recognize different rights to them was the main instrument of the colonial government throughout Africa. The distinction between *citizens* and *subjects* was, however, the result of long and differentiated historical trajectories. This paper inquires into the historical process that engendered the category of “*indígena*” in Spanish Guinea, and maintains that the radical separation between colonists and colonizers came about only gradually, as the small African peasants fully participated in the colonial economy of cocoa and became serious competitors to the settled planters.

1. Introduction: Colony and Territory in the Spanish Guinea

The colonial situation is a starting point as good as any other to understand the dynamics of *autochthony, citizenship and exclusion*. As we know well, during colonialism, *categorization of peoples* and *relocation of resources* were among the main tasks of colonial authorities. The study of the relations between both processes in the case of the small Spanish colony in the Gulf of Guinea is the main objective of this paper.

The juridical differentiation of people among personal categories during colonial imperialism has been analysed by some authors through the basic distinction between *citizens* and *subjects*.¹ The former enjoyed the rights granted by the constitutional laws of the metropolitan state, whereas most of the colonized people could not claim such rights, being governed *indirectly* through local authorities, and *subjected* to revisited customary norms.

Certainly, this model eventually became a constitutive element of the colonial imaginary, and was based on the perception of Africans as individuals

¹ M. MAMDANI, *Citizen and Subject. Contemporary Africa and the Legacy of Late Colonialism*, Princeton NJ, Princeton University Press, 1996.

essentially 'tribal', belonging to differentiated communities, governed by chiefs, and whose personal freedoms were always subordinated to the group necessities.² Therefore, through indirect rule, the Europeans became the guarantors of a supposed African tradition and its immobility.

However, colonialism did not rigidified colonized societies, and social change became one of the main feature of colonialism, in part due to the contradictory nature of colonial rule.³ We know now that Africans did not simply accept the role that colonizers assigned them, and that as well as resisting, many of them tried to take advantage of new circumstances to increase their power, getting rid of old dependencies or transforming their institutions in a more favourable way for them. Some individuals actively participated in the reorganization of their societies during European domination, not as simple collaborators, but as representatives of certain local interests.⁴

This participation was especially dramatic in the economic domain, where Africans were considered cheap labourers, but many also became small and even big producers for the colonial markets. The argument of this article is that, in Spanish Guinea, the juridical distinction between *citizens* and *subjects* was strongly linked to the development of the colonial economy and the participation of Africans in it. Therefore, the establishment of such categories in colonial law did not appear clearly from the beginning of the colonial experience, and became an instrument of monitoring and disempowerment, through which the colonial state tried to control, not always successfully, the social processes.⁵

In the territories under Spanish colonialism in the Gulf of Guinea, trade, population movement and colonial rule generated a complex situation characterized by economic, social and juridical fragmentation. These dynamics can be followed through the history of colonial law and the successive regulations approved for the colony, especially those related to land and labour.⁶ And this is to which we will turn now.⁷

² T. RANGER, "The invention of tradition in colonial Africa", E. HOBBSBAWM and T. RANGER, *The invention of tradition*, Cambridge, Cambridge University Press, 1983.

³ On the contradictions of colonial state see B. BERMAN y J. LONSDALE, "Coping with the Contradictions. The Development of the Colonial State, 1895-1914", in *Unhappy Valle. Conflict in Kenya and África*, James Currey / Heinemann Kenya / Ohio University Press, London / Nairobi / Athens, 1992; R.F. BETTS, "Methods and institutions of European domination", *General History of Africa*, vol. VII, A. Adu BOAHEN (ed.), Unesco, Paris, Tecnos, 1985.

⁴ T. RANGER, *The invention of tradition revisited: the case of colonial África*, in T. Ranger & O. Vaughan, *Legitimacy and the State in Twentieth-Century África*, The Macmillan Press, London, 1993.

⁵ In terms of Frederick COOPER, "The distinction between colonizer and colonized, rather than being self-evident, had to be continually reproduced", and our case wants to show one of the way in which this reproduction took place. F. COOPER, *Colonialism in Question. Theory, Knowledge, History*, University of California Press, Berkeley / Los Angeles / London, 2005, p. 49.

⁶ On colonial law, and colonial law politics, see S. BERRY, *No Condition Is Permanent. The Social Dynamics of Agrarian Change in Sub-Saharan África*, The University of Wisconsin Press, Wisconsin, 1993; Id., "Debate sobre la historia y el problema de la tierra en África", *ISTOR, Revista de Historia Internacional*, IV, 2003; M. CHANOCK, *Law, Custom and Social Order. The*

2. Initial dispossession and juridical pluralism in Fernando Po

The access and use of land was a main scenario of colonial tension in Africa. One of the aims of colonial occupation of the 19th century was precisely the direct control of territory and production, justified in the need to “*mettre en valeur*” the continent.⁸ And indeed, the colonial situation altered everywhere the social relations around the territory.

However, the project of *colonial territorial engineering* was confronted with many limitations imposed by the colonial encounter, coming from the reactions of inhabitants, the resources available to colonialists, as well as the more or less interest of metropolitan economic groups to get involved in the continent. As a result, the reorganization and even dispossession of lands was felt in very different ways all along time and space. The diversity of uses and regulations of land during colonialism is well illustrated in the small territories of the Gulf of Guinea that corresponded to Spain in the European scramble for Africa.

The European presence in the island of Bioko (then known as Fernando Po by the colonizers), went back to the second decade of 19th century, when the British tried to establish an antislavery base there. This gave rise to a settlement of people of diverse origins, many of whom were liberated slaves coming from other parts of the West African coast who would become known as *Fernandinos*.⁹ The Creole society that came about dedicated itself initially to the palm trade, and shared the island with the previous inhabitants, known then as *Bubis*, who participated punctually in this economy through exchanging of products. When the Spanish government claimed sovereignty over Fernando Po in the middle of the century, it started governing a multicultural society, with a colonial economy in transformation, more similar to the settlement of colonies

Colonial Experience in Malawi and Zambia, Cambridge, Cambridge University Press, 1985; Id. *Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure*, in K. MANN y R. ROBERTS, *Law in Colonial Africa*, Portsmouth / London, Heinemann / James Currey, 1994.

⁷ The main sources of this work have been the Spanish public archive in Alcalá de Henares (Madrid): *Archivo General de la Administración*, Africa – Guinea collection (AGA Africa G); some contemporary studies in the *Biblioteca Nacional* (Madrid); and the norms approved and published for the Spanish Guinea, compiled by A. MIRANDA JUNCO, *Leyes coloniales*, Madrid, D.G. Plazas y Provincias Africanas, 1945 and J. M. PEÑA Y GOYOAGA, *Repertorio de Legislación Colonial. Años 1945-1954*, Madrid, 1955. The Royal Decrees (*Reales Decretos*) and Royal Orders (*Reales Órdenes*) are norms approved by the metropolitan government, and the Decrees (*Decretos*), Orders (*Órdenes*) and Ordinances (*Ordenanzas*) refer to norms approved by the general government of the colony, except where otherwise stated.

⁸ This was the title a book by the French Minister of Colonies justifying the colonization: Albert SARRAUT, *La mise en valeur des colonies françaises*, Payot, Paris, 1923. For the Spanish case see the one written by the Spanish Guinea's Governor General: J. BONELLI RUBIO, *El problema de la colonización*, Dirección General de Marruecos y Colonias, Madrid, 1944.

⁹ M. Lynn, “Commerce, Christianity, and the Origins of the “Creoles” of Fernando Po”, *Journal of African Studies*, 25, 1984.

of Sierra Leone or Senegal than to what would become common in the rest of Western Africa.¹⁰

The first general regulation of the Spanish colonization, the *Real Decreto sobre colonización de las islas españolas del Golfo de Guinea* (December 1858), established the General Government's prerogative to concede plots of land to particulars (even if it did not hold the military control and effective administration of the islands). Few years later the first norm on land concessions was approved.¹¹ The second general norm for the colony, approved in November 1868 by a provisional government in Madrid, considered "property of the sons of the country the lands they grow at the present, and the pieces of ground occupied by buildings".¹² This declaration would be maintained by the colonial statutes until the end of the century.

The aims of these norms were to facilitate the distribution of lands among the families of Spanish settlers who were expected and encouraged to arrive,¹³ and also to make the state the arbiter of this allocation, through the prescriptive property titles. However, the state was forced to start recognising rights before conceding them: to the African and European settlers already established and to the autochthon population.¹⁴ The handling of both cases were, however, very different.

The first ones, considered as "particulars" were recognized rights of property in the context of the European liberal state. The second, "children of the country", were not. Nevertheless, in this moment, this situation was more a reflection of a spatial and juridical coexistence than discriminatory. Most of the population in

¹⁰ On the first colonial society in Fernando Po see A. MARTÍN DEL MOLINO, *La ciudad de Clarence*, Centro Cultural Hispano Guineano, Madrid-Malabo, 1993; Dolores GARCÍA CANTÚS, *Fernando Poo: una aventura colonial española 1778-1900*, PhD Dissertation, Universitat de Valencia, 2004.

¹¹ *Real Orden* 20/3/1864.

¹² *Decreto* 12/11/1868, article 17.

¹³ The attraction of Spanish settlers was the objective of the *Real Decreto sobre Reglamento de colonización por familias españolas* (24/11/1894), suspended in 1900, and the *Plan para Favorecer la Inmigración Peninsular*, approved by the Governor General in 1907. J. M. CORDERO TORRES, *Tratado elemental de Derecho Colonial Español*, Instituto de Estudios Políticos, Madrid, 1941, pp. 195-197, 203.

¹⁴ Two years before the 1868 Decree, a report by Fernando Po Council of Government recognized that most of the island was unknown by the colonialists, and the state could only concede those lands not in use. "En concepto de este Consejo debe entenderse por terrenos propios del Estado y disponibles para concederlos á los que lo soliciten todos aquellos que no se hallen concedidos por el Gobierno á empresas ó particulares ni cultivados por los indígenas; no siendo posible expresar el número de hectáreas de que el Gobierno puede disponer para estas concesiones pues aun cuando según la carta levantada por los misioneros en 1865 de que se dio cuenta al Gobierno de S.M. los pueblos que la Isla contiene son cincuenta y tres, ascendiendo sus poblaciones á 30 ó 35.000 habitantes; es lo cierto que la total carencia de caminos, la impenetrable maleza del bosque y demás condiciones especiales de esta localidad, hacen que no sea conocido el interior de la Isla, por cuyas razones nada se puede manifestar sobre este punto" (*Informe del Consejo de Gobierno de Fernando Po*, 26/2/1866, AGA Africa G 154).

the island were not yet subjected to the Spanish government, but to what Spaniards understood as their '*usos y costumbres*' (uses and customs). This expression did not refer yet to the indirect systems of government established later, but to the recognition of Fernando Po as a space with different juridical and political realities, that only later would become incompatible.¹⁵

Until the 20th century, the Spanish legislation could not aspire to regulate all the existing situations of access and use of the land, because it lacked the devices to impose it. But this legislation would be the bases for the future colonial occupation.

3. Land and Labour

From the 1880 decade on, Fernandino and other African and European settlers, former palm oil traders, started to open plots of land and cultivated cocoa for the international markets. With time, the island would become a single crop farmer colony, producing for a protected market in Spain.¹⁶ During the two last decades of 19th century, the government tried to control this process through a legislation on concessions. A Royal Decree approved in 1880 limited them to fifty hectares, and subsequent normative did not allow concessions of more than 10 hectares to foreigners.¹⁷ This normative kept the principle of respecting the propriety, rights and necessities of the natives.

Meanwhile, the main conflicts would develop not around the land, but around another intimately related issue: labour. The local Bubi population was always regarded by the cocoa landowners as would-be labourers for their plantations, and this period saw an impulse to the colonial military penetration of Fernando Po. However, the Bubi fiercely resisted the periodic efforts to convert them in manpower. At the same time, the politics of attraction of the colonial government and the demographic decay of this population became limits to the violence that could be exerted against them.¹⁸

Therefore, workers in the commercial plantations came from different points of the Western African coast, and also from the Caribbean, where the end of

¹⁵ Proof of that is the article 32 of the liberal Decree of 1868 above mentioned, which recognizes their *religion, uses and customs* to the whole population, and not only to indigenous: "Así, los indígenas como los nacionales y extranjeros, serán respetados en su religión, usos y costumbres, siempre que no se opongan á las leyes de la moral y ordenorden público, ni excusen la obediencia que deben prestar á la Soberanía de España".

¹⁶ J. J. DÍAZ MATARRANZ, *De la trata de negros al cultivo del cacao. Evolución del modelo colonial español en Guinea Ecuatorial, de 1778 a 1914*, Ceiba Ediciones, Barcelona, 2005.

¹⁷ *Real Decreto de Organización de la Colonia*, 26/11/1888; *Real Decreto* 17/2/1888, *Reglamento para la concesiones de terrenos*, 5/2/1891; *Reglamento para la concesión de terrenos*, 12/11/1897.

¹⁸ I. K. SUNDIATA, *From Slaving to Neoslavery. The Bight of Biafra and Fernando Po in the Era of Abolition, 1827-1930*, The University of Wisconsin Press, Madison, 1996. G. SANZ CASAS, *Política colonial y organización del trabajo en la isla de Fernando Póo: 1880-1930*, Tesis Doctoral, Universidad de Barcelona, 1938; J. J. DÍAZ MATARRANZ, *De la trata*, cit., p. 122, 141-142.

slavery, far from generalizing the free and salaried work, had generated a social category with a not very defined personal status, and exposed to work as cheap labourers in more or less forced labour conditions.¹⁹ All that contributed to the intense movement of population around Fernando Po, and the existence of a human group, whose living and legal conditions can rightly be conceived as neoslavery.²⁰

This notwithstanding, the local populations were deeply affected by the political, cultural and economic dynamics provoked by the colonial presence in the island. They suffered two main transformations: their progressive displacement, forced by the establishment of big plantations, and the appearance of a class of small local farmers who adopted the strategy of establishing commercial crops for the colonial markets, especially cocoa on the south of the island.

The colonial politics and the growing agricultural commercialization, far from cloister the African population in niches of tradition, generated processes of change, economic accumulation and social differentiation. Afterwards, the same colonial authorities would consider some of the African initiatives as the best way to obtain benefits from the colony, maintaining at the same time certain legitimacy among the population. The law would be one of the instruments with which they would try to combine the economic profitability and the social order.

In short, during the second part of 19th century, the colonial society of Fernando Po was not characterized by a clear distinction between colonizers and colonized, or between Europeans and indigenous. In legal terms, the already mentioned 1868 Decree, approved during a short Revolutionary period in Spain, recognized the same rights to “the indigenous subjected to Spain, the nationals and the foreigners who settle and take root” in the colony.²¹ The situation was more of a multiplicity of social groups, whose interests were sometimes contradictory and sometimes complementary. The Creole bourgeoisie, represented by the Local Council (*Consejo de Vecinos*) in Santa Isabel, though anxious for labourers, found in the small Bubi owners good allies

¹⁹ I. K. SUNDIATA, *From Slaving*, cit.. For a context nearby see F. COOPER, “Conditions analogous to slavery: Imperialism and Free Labor Ideology in Africa”, in F. COOPER, T. HOLT and R. SCOTT, *Beyond Slavery: Explorations of Race, Labor and Citizenship in Postemancipation Societies*, University of North Carolina Press, Chapel Hill, 2000.

²⁰ I. K. SUNDIATA, *From Slaving*, cit., Among the scant normative in this period on labour, there existed a *Real Orden sobre Reglamento de Servicio Doméstico*, 1/4/1863 and the *Reglamento de Negros Emancipados* 1864: “Los emancipados serán en un todo reputados como libres, que han de prestar su trabajo por un tiempo y mediante un precio determinado, en justa retribución de la libertad que se les concede y de los gastos que esta concesión origina; pero como en el estado de esclavitud a que se les arranca no han podido adquirir el verdadero conocimiento de los derechos y obligaciones del hombre libre, quedan sujetos a la tutela del Gobierno hasta que sus facultades se hallen suficientemente desarrolladas”.

²¹ *Decreto* 12/11/1868, article 16: “los indígenas sometidos a España, los nacionales y los extranjeros que se avecinden y arraiguen en dichas posesiones”. B. CLAVERO, “Bioko, 1837-1876: Constitucionalismo de Europa en África, derecho internacional consuetudinario del trabajo mediante”, *Quaderni Fiorentini*, 35, 2007.

against the big corporations with interest in investing in the island.²² Some labourers regarded the autochthones as a society in which integrating after their contract, through marriage and acquisition of small plots of land. And among European settlers, the Spanish government tried to favour Spaniards, requiring to the foreigners more conditions to settle.

4. Land and colonial law: the Royal Decree 1904

This instable social situation was transformed with the progressive consolidation of the colonial state presence and the crisis of the cocoa economy at the beginning of the century.²³ This period was characterised by two different, but interrelated, phenomena. The first was the government's attempt to control the continental part of the colony, Río Muni, whose definitive territorial limits were demarcated by an agreement between Spain and France in 1900.²⁴ The second was the crisis of labour in Fernando Po plantations, where the creole elite was progressively displaced by a class of big Spanish landowners.²⁵

At this time, the pressures on land and labour in the island were reflected in a normative inflation, coming from the metropolitan and the colonial government. In 1904, along with a new framework law for the colony (*Estatuto Orgánico*),²⁶ they approved a Royal Decree on the *Regime of Property*,²⁷ and in 1906 a *Regulation of Indigenous Labour* which will be addressed in the next section. The state was trying to intervene in the colonization process as supplier of land and labourers for settlers, but also as arbiter and regulator of the occupation and exploitation of the territory.

The 1904 regime established the state property of all cultivable lands not in use, and ratified the monopoly of the government for conceding them: as property for pieces of less than 100 hectares or concession for more extension. Along with this kind of property, regulated similarly than in Spain, the norm established the *indigenous property (propiedad indígena)* (chapter IV), considered as "the lands usually occupied" by the naturals (art. 10). In this way, it was (consciously) ignored many of the heterogeneous uses and relations of Africans with the

²² See for example the report by the *Consejo de Vecinos* against the concession of 30.000 hectares to Mrs. Goyri and Olózaga, in an area with many Bubis small cocoa plantations, 17/5/1898, (AGA Africa G 155).

²³ "Memoria sobre la producción de los territorios españoles del Golfo de Guinea y las reformas convenientes para acrecer sus rendimientos al Tesoro. Que el Excmo. Sr. Ministro de Hacienda presenta Don Joaquín Coll y Astrell, comisionado al efecto por Real Orden de 17 de enero de 1907", 24/8/1907 (AGA, Africa G 166, exp. 1, cit. by J.J. DÍAZ MATARRANZ, "De la trata...", cit., p. 192.)

²⁴ The Treaty of Paris of 27 March 1900 between France and Spain mark out definitively the limits between French Gabon and Spanish Guinea.

²⁵ I. K. SUNDIATA, *From Slaving*, cit., chap. 6.

²⁶ *Real Decreto* 11/7/1904. A. YGLESIA DE LA RIVA, *Política indígena en Guinea*, IDEA, Madrid, 1947; J.M. CORDERO, *Tratado*, cit.

²⁷ *Real Decreto sobre el Régimen de Propiedad en los Territorios del Golfo de Guinea*, 1904.

territory, not easily identified with the private property of the European juridical imagination, and which made the forest a space, not only of additional resources to the agriculture, but of potential mobility for societies only partially sedentary. The colonial state decided not to recognise the character of rights to these practices, for this would have made very difficult the sharing out of the lands among the settlers. Therefore, the indigenous property, limited to the lands effectively occupied and cultivated, rather than assuring the rights of the population sanctioned a true dispossession. However, as we will see, not all the lands effectively used by Africans would enter in this category.

The indigenous property was regulated not by the Spanish law, but “by the naturals’ uses and customs”, in relation to the “nature and extension of the rights of the owner” as much as “the ways of transmission to other indigenous”. However, the norm reserved the metropolitan government the possibility of adopting arrangements contrary to the costume, “forbidding certain acts or modifying the character and the effects of others” (art. 13). The expression *uses and customs* was not reflection now of recognition of a juridical coexistence, but it aimed at integrating certain forms of African regulations in colonial law, in a selective manner. Proof of this selectivity and reinterpretation of custom was the collective character assumed by the indigenous property, which was not recognized to individual but to tribes, small villages (*poblados*) or familiar groups.²⁸

All that conferred certain Africans, ‘person(s) ordinarily invested by authority in the tribe, village or familiar group’, many prerogatives on the sharing out and use of land, especially in relation to the agreements established with the settlers. These relations were doubly restricted, for the indigenous property could not be transmitted to ‘non-indigenous’ without the permission by ‘the competent judicial Authority’ (art. 14). This regulation aimed to limit the capacity of Africans to enter into the colonial economic traffic, as much as to protect them from the settlers’ greed; and in any case, it turned the state into forced intermediary in the colonial social relations.

A *Regulation of the regime of the property*, approved in 1905, established that the General Governor would fix ‘the portion corresponding to the tribe, the village or the indigenous familiar group, generally trying to reserve two hectares per individual’.²⁹ In this way, not only was it presupposed the extension occupied by each population without taking into account the real use the land, but it was made without granting rights to Africans, for the authorities need only to *try* to safeguard a number of hectares. This process, that required the marking out and registration by a technician, were very much delayed,³⁰ and

²⁸ On the incorporation of customary law related to agriculture see S. BERRY, *No condition*, cit.

²⁹ *Real Orden sobre Reglamento del régimen de la propiedad* 11/1/1905, article 13.

³⁰ “The obligation to mark out the indigenous property would be reiterated in several occasions. A *Decreto* in 23/7/1907 tried to promote the creation of villages of at least 20 families to overcome the dispersion of population. Thirteen years later, the government general expressed again its interest for marking out the villages and gathering the disperse population (*Decreto* 31/5/1920)

only advanced as the settlers asked for the concession of big pieces of land which included African populations in it.³¹

Therefore, the regulation of land was part of the process of gradual legal differentiation between indigenous and particulars. However, this distinction was not made between persons but on the character of the tenure of land: communitarian by the population groups, or individual by the commercial farmers. The local farmers' small plots (*finquitas*) which also produced for the colonial markets did not enter into the category of indigenous property, and was rather considered as private property. Article 19 of the Regulation established that the land concessions 'could be granted in favour of Spaniards, indigenous or not, of foreigners, and of juridical persons or Societies, whether national or foreigner', though in this time almost none of these small pieces of land were registered and recognised formally by the colonial administration.

Therefore, the dichotomy *European / indigenous* was not so clear and did not incapacitate so much as it would do later. The 1904 regime of property recognized and established at the same time a diversity of economic and juridical situations around the tenure of land that was not always referred to the distinction between colonizers and colonized. Moreover, there were always other distinctions that discriminated rights, as that between Spanish and foreigners. In other juridical ambits, as the criminal law, the distinction would be another, related to religion: while Christians were judged by the Spanish law, the non-Christians were judged by their *uses and customs*.³² And of course, it was reproduced the one established by the Spanish legislation between women and men. Only after the surveillance of the whole territory to the Spanish sovereignty, at the end of the 1920s, the distinction between *citizens* and *subjects* would be clearly established.

5. Labourers or small landowners?

The contradictions of the colonial regime around the territorial and labour politics were expressed in different ways during the first decades of 20th century. In 1900, a strike by about 400 labourers from West African Coast and their subsequent repatriation at the expense of the colonial government, made the landowners' need of manpower a main element in the colonial politics. In this time, international denunciations of labour conditions in Fernando Po became recurrent, especially among the British, and later on at the League of Nations.³³

³¹ In the AGA there are found numerous records of paralysed demands due to lack of delimitation of the villages property. See for example AGA Africa G 153, 577 exp. 3, and 585 exp. 1.

³² *Real Orden* 23/7/1902.

³³ I. K. SUNDIATA, *From Slaving*, cit., p. 130-137; J. J. Díaz MATARRANZ, *De la trata*, cit., p.143-147.

In this context, an agreement between the Guinean colonial government and the Liberian one in 1905 for the import of workers had not many results.³⁴ And the search of manpower turned the continental inhabitants into potential labourers.³⁵ In the coasts of Río Muni, the island landowners had already established informal systems of contract through European and African intermediaries, and they expected the state would facilitate this human traffic. The recognition of Spanish sovereignty by the rest of colonial powers was considered as an opportunity for this, though history turned to be again less favourable for colonialist interests, as we will see later.

In order to assure the work of the colonial economy, but also to control the process of contracting, in 1906 it was approved a *Regulation of Indigenous Labour*, which established an institutional mediator between employers and workers.³⁶ The *Curaduría Colonial* should give its conformity to all contracts, those in the island as well as those in the African coast, in a system in which there were few rights recognised to the workers, considered more as a contract object than as contracting part. The Regulation established also the obligation to work for all residents of Fernando Po with no "property, trade or known legal occupation", "hired either by particulars or by the state".³⁷

The *Bubis*, autochthones of the island, were expressly excluded from this obligation, but they suffered the *prestación personal* or "obligatory service for local works of general interest" established since 1858 Royal Decree and reproduced in the 1904 *Estatuto Orgánico*.³⁸ In fact, since the last decade of 19th century, Governor General's edicts periodically compelled the local population to participate in the public works as well as the cocoa harvesting in big plantations.³⁹ Resistance to the *prestación personal* led to several small wars that only in 1917 finished with the total disarmament of the islanders.⁴⁰ This was therefore a time of violence and penetration by the colonial

³⁴ AGA Africa G 151.

³⁵ See the official inquiry in November 1903 among the Fernando Po farmers on the benefits to promote the immigration of labourers from other colonies or Río Muni (AGA Africa G 151).

³⁶ *Reglamento de trabajo indígena*, 1906. See B. CLAVERO, "Bioko, 1837-1876", cit. The Curador had been created some years before, 1901, by the Colonial Budget (J.J. DÍAZ MATARRANZ, *De la trata*, cit.

³⁷ *Real Orden* 6/8/1906, article 24.

³⁸ *Real Decreto* 11/7/1904, article 32.

³⁹ Governor General edicts (*bandos*) in 30/8/1907, 28/2/1908 and 21/4/1908 on the work of the bubis in cocoa harvesting and public works. Petition by Fernando Po Chamber of Agriculture to the Governor General in 30/5/1910, demanding dispositions to oblige bubi population to work in the settlers' plantations: "con lo que hará dos positivos bienes a la agricultura, evitándole el dolor de ver perderse la cosecha en los árboles; á los bubis encauzándoles en el trabajo que les llevará a la civilización" (AGA Africa G 151). On this politics from 1911 to 1912, see C. PETIT, *Detrimentvm Rei Pvblicae. Constitución de España en Guinea*, in *Constitución en España: orígenes y destinos*, a cargo de J.M. Iñurrategui and J.M. Portillo, Centro de Estudios Políticos y Constitucionales, Madrid, 1998.

⁴⁰ I. K. SUNDIATA, *From Slaving*, cit., pp. 167-171.

government, who also imposed taxes to oblige Africans to work for a salary with which to pay them.

Though the colonial government collaborated with the settlers in their search for workers, the state was also interested in the effective occupation and *mise en valeur* of all the continental territory. This process increased the competition for and pressure on an already scarce workforce. The colonial administration weakness pushed the Spanish government to consider cheap and effective ways to carry on this colonization and in 1905 it opened a competition for renting most of Río Muni lands to a colonizing private company.⁴¹ Finally it was not a private company but the same state that carried on the military campaigns that subjugated all Río Muni during the 1920s. The Spanish capitals that followed the soldiers' path invested mainly in timber extraction; and the colonial government could accomplish through its *Curaduría* the role of main intermediary between Fernando Po landowners and Río Muni labourers.

However, labour recruitment in Río Muni was extremely constrained by low demographic levels, new economic interests in colonizing the continental area, and the reaction of inhabitants. Effectively,, the continental population responded in a similar way than the Bubis before, violently resisting their conversion into cheap workers and since mid 1920s taking advantage of the colonial economy through the direct growth of commercial crops especially coffee.⁴² In fact, the integration of this territory into the colonial economy was only completed by the small African producers and their cocoa, banana and mainly coffee plantations.

The growing Africans' economic role in the colonial system would be an issue intensively debated by the colonizers, who observed with certain ambiguity the always growing agricultural activity of autonomous peasants.⁴³ Big landowners feared that this activity could reduce the available workforce for their plantations. But there were also those who benefited from the small cultivators as intermediaries between them and the colonial markets. And, the African production based on the personal and familiar work was seen by some officials as cheaper and more profitable than that of the big estates.⁴⁴

⁴¹ *Real Decreto* 9/3/1905 offered to concede "the exploitation, sanitation and colonization" of the territory between Campo and Muni Rivers, which meant to delegate the military penetration, but also the functions of government and police, the opening of roads and other infrastructures, the collection of taxes and the even the creation of schools and churches. Ultimately, the state did not reach an agreement on the distribution of competences with some of the interested companies, and this attempt failed. See AGA Africa G 153-156..

⁴² I. K. SUNDIATA, *From Slaving*, cit., pp. 122-123.

⁴³ On this debate, see for example the reports by the Public Works Official, the Santa Isabel *Consejo de Vecinos*, the Colonization Inspector and the Governor General in may-june 1900 as a result of a petition of 10.000 hectares (AGA África G 154).

⁴⁴ Engineer Eduardo Bosch, from the Colonial Section in the State Ministry, maintained the advisability to promote the small farmers agriculture in a report of 8/4/1904: "Actualmente los indígenas los Bubis, empiezan a solicitar terrenos para cultivarlos: piden pequeñas parcelas de media a una hectárea. Estos trabajarán y producirán sin necesidad de braceros venidos de fuera. (...) Los krumanes que han servido como braceros en las fincas y al terminar sus contratos se encuentran con algunos ahorros, solicitan también concesiones de terrenos

In this context, labourers coming from other parts of Africa kept arriving to Fernando Po, especially after the signature of a new covenant with Liberia's government in 1914. As for these workers, the authorities recognized that only granting them the access to land, their sustenance and reproduction could be assured.⁴⁵ After the end of their contract, some of them established themselves in the island, acceding to the land and integrating in the Bubi society through marriage.⁴⁶ In 1929 the *Cámara Agrícola de Fernando Poo* (Agriculture Chamber) proposed the reform of the land juridical regime, 'in order to create inalienable indigenous familiar heritages as a way to promote such kind of population and to settle down the indigenous labourers who come to our possessions for the agricultural works'.⁴⁷ This complementarity between the African labour effort and their familiar agricultural production clearly connected the colonial regulations of work and land.⁴⁸

As a consequence of the periodic arrival of labourers to the Spanish colony, there appeared a strong differentiation between the local population and the immigrant workers. It is true that the former could be compelled to forced labour in public works,⁴⁹ and that some of the latter became small landowners. But there were always a big number of immigrant labourers stacked in the harsh conditions of the farmworker's living quarters, and suffering the most the violence of colonial domination. The juridical situation of these peoples were very frail because despite the existence of norms regulating the *indigenous work*, they were not considered as carriers of rights and their access to the tribunal for claiming the application of the labour legislation was very difficult. Therefore, among the indigenous subjects, the distinction between autochthones and foreigners constituted a basic social and juridical difference.

pagando por ellos lo establecido: piden 1 ó 2 hectáreas. Estos son los que urge retener en la Isla". (AGA Africa G 153).

⁴⁵ See the report by the engineer of the *Servicio Agronómico* in 1926 on a 2.000 hectares concession: "que alrededor de los núcleos de viviendas de los braceros que empleen en la explotación, se dedique una extensión adecuada de terreno, para que en ella cultiven maíz, cacahuete, judías, frijoles, yucas, plátanos, malangas y hortalizas y todo cuanto se crea indispensable" (AGA África G 581 exp. 4).

⁴⁶ The *Decreto* in 23/9/1919 tried to regulate the concession to indigenous from other colonies in Western Africa.

⁴⁷ Letter by the *Sección de Asuntos Coloniales* to the *Presidente de la Junta de Asuntos Judiciales*, both in the *Dirección General de Marruecos y Colonias*, reporting on a petition from the *Cámara Agrícola Oficial de Fernando Po*, 24/5/1929 (AGA Africa G 179, exp. 30).

⁴⁸ As Sarah BERRY maintains, the colonial labour policies were as oppressive as ambiguous, for colonizers were so interested in maintaining separated the land with the manpower, as in bringing them together. S. BERRY, "Debate sobre", cit. p. 72.

⁴⁹ During the 1920s bubis kept being obliged to harvest cacao, as shown by the *Decreto* in 9/7/1926 (article 1): "todos los bubis que no sean propietarios de fincas mayores de cinco hectáreas o no estén prestando servicio en casas particulares, se contratarán oficialmente durante los tres meses que dura el periodo de recolección". In a letter to the Republic Commissioner, the Ureka mayor-Botuko (Fernando Po) claimed against the compulsory public works: "viéndolo así se lo comunicamos a Vuestra Excelencia, que ya no queremos seguir trabajando sino a favor de nuestro Pueblo" (AGA África G 157).

6. Abuse and protection: incapacitating the Africans

The growing commercialization of land and its products, and the participation of Africans in it, would also bring into being transformations in the colonial law related to the access and use of land, and also to the juridical capacity of colonizers.

The growing African small commercial plots were generally in a juridical limbo, for they were not considered as the indigenous collective property established in the 1904 Royal Decree, but they were neither registered as individual property.⁵⁰ This permitted them to avoid in part the state control, although not always the payment of taxes.⁵¹ But it made them more vulnerable in front of the big landowners and traders: periodically, the local population suffered limitation in the access to the lands or its products where their activities clashed with the settlers' economic interests.⁵²

The economic relations between settlers and Africans around the land were intense and diverse. The selling of agricultural products, and sometimes of timber, was made to colonial intermediaries, almost without the intervention of the state.⁵³ With time, the same territory was object of transactions between Africans and colonizers, since the former rented during periods of times their

⁵⁰ Proof of this limbo was the explanatory preamble of *Real Orden* 18/3/1927, approved in order to mitigate the declaration of caducity of concessions, in which it was pointed out: "la posibilidad de que unos 1500 propietarios o poseedores, en su mayoría indígenas, puedan verse privados de sus fincas por la declaración de caducidad de peticiones o concesiones no invocadas en el plazo y forma previstos en aquella disposición".

⁵¹ The *Jefe del Negociado del Servicio Agronómico*, in a short report of 16/3/1913 on the extension of cultivated lands in the Spanish territories in the Gulf of Guinea, stated that fact: "Esta clase de concesiones (las tramitadas por la Inspección de Colonización y el Negociado del Servicio Agronómico que la sustituyó en 1908) figura en el Registro de la Propiedad y contribuye á los gastos públicos. No sucede lo mismo con numerosas fincas de corta extensión, abiertas por negros bubis ó extranjeros en medio del bosque y que carecen de titulación por no haberla solicitado sus dueños. De estas fincas algunas pagan contribución por haber llegado á descubrirlas los investigadores de Hacienda; otras están ocultas y no contribuyen". He also informed about the total conceded land 15,601 in Fernando Po, 249 in the continent, 3,000 hectares from previous concessions and 500 has. With no concessions (AGA Africa G 152).

⁵² Report by the *Patronato de Indígenas* on abuses against indigenous, May 1933 (AGA, Africa G 1799, exp.2).

⁵³ The Africans' demands were often about a greater role by the state: "Pedimos a la autoridad de V.E. una protección ó mejor dicho un privilegio en nuestros productos agrícolas ya que los producimos en muy pequeñas cantidades comparándola con la que rinden los europeos, por contar con mejores medios que nosotros. Así como nuestra aspiración es que se nos establezca un precio fijo ó variable, según presente la balanza comercial", *Reclamaciones de los Jefes indígenas del Continente español* al Comisario de la República de 2/9/1931 (AGA África G 157).

plots of land to the latter.⁵⁴ The participation in the colonial economy and the administration growing interests in taxing it, bring about the losing of their lands.⁵⁵ This permanent dispossession was one of the recurrent complains, more openly made during the Republican period (1931-1936).⁵⁶

The colonial governments regarded these dynamics with a mixture of tolerance, impotence and anxiety. On the one hand, for the metropolitan power, the European settlers and traders were the main sustenance of the economic exploitation of the continent. But the colonial administration was not a mere representative of the settlers' interests, and pursued other objectives, such as the control of economic exchange, or the social order. For all this, it found necessary to limit the freedom of African population, as well as some of the abuses committed by the settlers against them.

A main instrument of these politics was the definite consolidation of the distinction between indigenous and Europeans, and the consequent limitation of the formers' capacity to act. We have already seen how the 1904 regulation of land property required the 'competent authority' participation in any act implicating the disposition of the indigenous collective property. In the 1920s, these limitations were enhanced to any kind of property: a 1926 Royal Decree submitted the indigenous to the tutelage of certain colonial institutions which should supply their juridical capacity 'to the effects of transmission, charge and inscription of the real estates'.⁵⁷

The juridical minority and incapacity of the colonizers was definitely sanctioned in 1928 with the approval of the *Patronato de Indígenas* statute,⁵⁸ an institution created in 1904 that have maintained a low profile until this moment.⁵⁹ The new

⁵⁴ Report by the Servicio Agronómico de Guinea on ways of indigenous' collaboration with the European (sobre formas de colaboración del indígena con el europeo), 2/3/1945 (AGA Africa G 1944, exp.5).

⁵⁵ One of the more usual abuses was the appropriation by the part of Europeans of the small African pieces of land. These losses were due usually to the growing indebtedness suffered to the small producers, more and more obliged to pay taxes to the colonial state. This indebtedness brought many to rent their pieces of land to their creditors, who were normally colonialists. In many occasions, these ended up executing their debt against the lands, and judicially appropriating them. Report by the *Patronato de Indígenas*, cit., May 1933.

⁵⁶ *Memorium del Alma Indígena*, informe dirigido por Claudio E. Ricardo Burnley al Comisario del Gobierno de la República, 12/8/1931; *Proposiciones de los hijos del país, los bubis*, 28/8/1931, *Aspiraciones y medidas de urgente resolución, presentadas por los elementos indígenas de estos territorios al señor comisario de la República para que a su vez sea elevada al gobierno del nuevo régimen*, septiembre de 1931 (AGA África G 157). *Más vale tarde que nunca*, carta de los fernandinos al Presidente de la República, 1931 (AGA África G 1799, exp.2).

⁵⁷ *Real Decreto* 5/5/1926, article 9: the guardian institutions were the *Ministerio Fiscal* (Attorney General), the *Curador Colonial* or his Delegates, and the *Patronato de Indígenas*. A year later, a *Decreto* of 21/6/1927 punished the transmissions of "indigenous" property to non indigenous persons" without the intervention of the *Juez de Primera Instancia* (examining magistrate) or the Subgobernador (sub-governor).

⁵⁸ *Real Orden* 17/7/1928.

⁵⁹ *Real Decreto* 11/7/1904 approving the *Estatuto Orgánico*, article 34.

regulation forbade the indigenous to participate without the Patronato's consent in a number of transactions related in many cases to rights over the land. In this way, the state tried to monitor the Africans' participation in the colonial traffic, who now needed of tutelage and representation to do things such as "to alienate real estate, to contract lendings with real-estate guarantee, to contract on real estate, to appear in judgment, to assume obligations of personal character" of a certain quantity.⁶⁰

The *indigenous* category was obviously the cornerstone of this system, but its definition was not easy in such a complex social context. The 1928 statute did not clearly define who the indigenous were: sometimes they were referred as "the naturals of the country", to whom it was presupposed an "intellectual and moral" incapacity to rule themselves.⁶¹ In fact, indigenous category was crossed by a racial criteria: neither the white could be indigenous, nor the creoles ceased to be it in spite of their European style of life; so were the Africans from other parts of the coast, even if they were not naturals of Guinea. The second statute approved in 1938 would define them clearly as "every individual of coloured race".⁶²

The legal distinction between colonizers and colonized in racial terms created an immediate problem with respect to that Creole elite of Fernando Po.⁶³ The need to legally cover this social group, also important for the colonization project, led to the establishment of the figure of *indígena emancipado* (emancipated indigenous). The Royal Decree that regulated the emancipation was approved at the same time that the statute of the *Patronato de Indígenas*,⁶⁴ and established that "the indigenous of the Gulf of Guinea Territories who notoriously reveal, by the state of their intellectual and moral culture, to be in conditions to rule their persons and goods by themselves, could be emancipated and obtain therefore the corresponding letter of emancipation" (art.1).

The distinction between *citizens* and *subjects* was clearly reflected in the explanatory preamble of this Royal Decree, which expressly considered the emancipation letter as "title of his/her new state of citizenship". The category of emancipated was the institutional reflection of the assimilations and civilization discourse, which could satisfy at least the aspirations of that minority of Africans who could resent the most the lack of juridical capacity in the colonial

⁶⁰ "Enajenar bienes inmuebles, contratar préstamos con garantía inmobiliaria, contratar sobre bienes inmuebles, comparecer en juicio, contraer obligaciones de carácter personal" J. MIGUEL ZARAGOZA, *Ensayo sobre el Derecho de los pamúes de Río Muni*, IDEA-CSIC, Madrid, 1963, pp. 67-68..

⁶¹ *Ibidem*.

⁶² "Individuos de raza de color". *Decreto 29&9&1938*, article 6.

⁶³ *Real Decreto 17/7/1928*, explanatory preamble: "(T)oda vez que existe entre la población nativa de nuestras posesiones en Guinea una considerable minoría capacitada ya para el ejercicio de los derechos civiles".

⁶⁴ *Real Decreto de 17/7/1928*.

order.⁶⁵ This was, however, a reversible situation, and therefore it made impossible the total equality between metropolitan and colonial citizens.

The consolidation of the *Patronato* forced to revise many relations between Africans and the European settlers around the land, especially the renting contracts.⁶⁶ In 1934 a Decree nullified all contracts of administration over indigenous estates not authorized by the *Patronato*, though it did not eliminate their existence.⁶⁷ The new institution assumed also the role of credit entity for Africans,⁶⁸ and first instance in the trials generated by conflicts over the land.⁶⁹

In this way, at the end of the 1920s, when the military campaign extended the Spanish presence everywhere in Río Muni, and more and more Africans participated in the metropolitan markets, the law tried to squash the colonial society into a rigid dichotomy that limited the colonized legal capacity to act. The distinction was justified in the necessity to protect the autochthones from the settlers' greedy.⁷⁰ But this distinction was not made recognizing rights, but incapacitating to participate in the economic and juridical exchange of the colony.⁷¹

7. The indigenous agriculture colonization and the limits of civilization (1930-1944)

⁶⁵ The inequality so established, and the ambiguity of the criteria for defining the emancipation were denounced by some Africans, as shown in the claims "*Reclamaciones de los Jefes indígenas del Continente español*", cit. 2/9/1931, where signatories asked the emancipation to be recognized to all black adults ("morenos") who know how to read and write in Spanish.

⁶⁶ According to the *Patronato de Indígenas, in 1928* there existed 43 cases in Fernando Po in 1928: "relación del personal de los poblados de Fernando Poo que tiene fincas arrendadas sin la autorización del Patronato

⁶⁷ See note 88.

⁶⁸ In this way, the *Patronato* tried to monopolise, unsuccessfully, a function already accomplished by many particulars. *Informe del Servicio Agronómico*, cit., 2/3/1945; *La Voz de Fernando Po: proposiciones que elevan los Jefes de Poblados de Fernando Po al Gobernador General*, 29/8/1949 (AGA Africa G 1799, exp.2).

⁶⁹ See the records on conflicts collected in AGA Africa G 1799, exp. 4.

⁷⁰ This justification was stated clearly by the *Patronato de Indígenas* Secretary General, in a report of 20/6/1949 answering the claims by some villages chiefs of Fernando Po (note 61) "Anteriormente a la restricción de la capacidad civil indígena y por ende de la creación del Patronato de Indígenas, vivieron los naturales del país en un régimen de equiparación legal a los europeos y su diferencia de cultura unida a la imprevisión de que comúnmente hacen gala fueron causas de que gran número de individuos de raza de color perdiesen sus propiedades, origen ello de nueva orientación de política colonial restrictiva a la capacidad desde cuyo momento puede el Estado Español vanagloriarse de haber impedido el despojo de la propiedad indígena" (AGA Africa G 1799, exp.2).

⁷¹ In December 1944 was approved the *Ley sobre capacidad civil de los indígenas*, a law on the civil capacity of indigenous maintained and consolidated the distinction between *citizens* and *subjects*.

The 1930s started with the aggravation of the recurrent labour shortage in the big European plantations. It coincided with the world depression cycle started in 1929, and also by the international accusations at the League of Nations of the traffic of workers from Liberia towards Fernando Po.⁷² Finally, the existence of concessions to Europeans who did not cultivate them was considered by the colonial authorities as another problem that restrained the growing of commercial agriculture.⁷³

All that left the Spanish government in May 1930 to suspend all concessions of land for an indefinite period of time.⁷⁴ Two years later, in a Ministerial Order, the small Africa proprietors who requested less than 20 hectares were exempted from the rule.⁷⁵ This tenancy land would have juridical limitations, and could not be rented or transferred to "individuals of white race". Therefore, the authorities decided to support what was already a process among the colonial population: the conversion of colonized in small autonomous producers. And the settlers' colonization, always in need of workers, was restrained.⁷⁶

The Spanish government, which was then liberal-democratic in the context of a republican period (1931-1936), recognized the Africans as advantaged agricultural colonizers. Working their lands personally or in the context of familiar relations, they were not affected by the secular lack of labourers and did not stop cultivating them. However, most of these producers did not accomplish either with the new rules on concessions, and kept clearing their estates independently of the colonial law.⁷⁷ The new administration plan to consolidate the Africans as small familiar farmers were not necessarily shared by the most prosperous among them, who also demanded periodically bigger facilities for

⁷² I. K. SUNDIATA, *From Slaving*, cit., pp. 143-144: "The League of Nations condemned internal pawning and forced portorage in Liberia. Curiously, it did not address the issue of forced labor on Fernando Po."

⁷³ El Real Decreto de 5/5/1926 consideraba caducadas las concesiones que no cumplieran los requisitos legales. La Real Orden de 18/3/1927 y el Decreto de 22/6/1927 ampliaban los plazos para la convalidación de las tierras cultivadas. Ver también CORDERO TORRES, *Tratado*, cit.

⁷⁴ Real Decreto 3/5/1930 and Real Orden 21/11/1934.

⁷⁵ Orden Ministerial de 22/4/1932. Despacho 348 de la Dirección General de Marruecos y Colonias al Gobernador General de 22/4/1932 (AGA África G 583, exp.4).

⁷⁶ At the beginning of the Francoist regime, there existed a project of new normative, *Proyecto de ordenación y régimen de la propiedad*, aimed at raising the prohibition of new concessions: according to the justification by the Servicio Nacional de Marruecos y Colonias, the main aim was "to provide the naturals of the country of ..." The project considered openly pernicious for the economy and legitimacy of the colony the conversion of colonizers in labourers, and committed to their consolidation as farmer-proprietors and the generation of Christian families linked to the land. Servicio Nacional de Marruecos y Colonias, *Memoria explicativa del proyecto sobre ordenación y régimen de la propiedad en los Territorios Españoles del Golfo de Guinea*, 20/1/1939 p.15 (AGA África G 1891, exp.2). Informe del Jefe del Servicio Nacional de Marruecos y Colonias de 24/1/1939; Informe del Ministerio de Agricultura, sin fecha (AGA África G 1931, exp.2). Informe del Servicio Nacional de Política y Tratados de 18/2/1939; Informe del Ministerio de Industria de 6/3/1939; Informe del Ministerio de Agricultura de 3/5/1939 (AGA África G 1869).

⁷⁷ Servicio Nacional de Marruecos y Colonias, *Memoria explicativa*, cit., 20/1/1939. [See note 88.](#)

contracting labourers, or accumulated lands for renting them to big producers.⁷⁸ The latter would be, at the end, the primary beneficiaries of the suspension of concessions, who were now freed from the competition for workforce from new settlers.⁷⁹

The legal situation was maintained till mid 1940s, during Francoist regime (1936-1975).⁸⁰ The Civil War and the World War II strengthen the ties with the metropolitan markets, and initiate a period of authoritarian regime in the metropole, when a network big Spanish capitalist interests definitively displaced Creole and medium landowners in the colony and “(s)tatist economic policies, along with oligopolistic manipulation of cocoa and coffee prices, assured invested capital a handsome return”.⁸¹ What worsened in these years of European wars, was the obligation of the Africans to work at the infrastructures and big colonial plantations, with the widespread imposition of the obligatory service⁸².

The moratorium on concessions was raised by a Regulation on Concessions (1944) and the Law on Property Regime (1948).⁸³ The new norms established now two kinds of indigenous property: *collective* and *individual*. The old regulation of 1904 had only considered as indigenous the property of “tribes, villages and familiar groups”: now these were considered as collective, along with other figures such as the property of agricultural cooperatives or indigenous associations, reserves or familiar estates. The collective indigenous property was considered inalienable.

The individual indigenous property tried to regulate the many small holdings disseminated all along the colony, and to distinguish them from the settlers’ estates. The property on these lands was considered derived from the state concession. This regulation did not aim so much to convert the Africans in small

⁷⁸ Many small farmers complained about the difficulties to contract labourers through the *Curaduría Colonial. Proposiciones*, cit., 28/8/1931; *Más vale tarde que nunca*, cit. 1931. Ver también *Quejas presentadas por los primeros Jefes indígenas naturales y vecinos de esta Demarcación* (Santa Isabel), 12/6/1942 (AGA África G 1913, exp.6); *Solicitudes de los jefes de la Demarcación de Niefang*, sin fecha (AGA África G 1913, exp.6); *La Voz de Fernando Po*, cit. 29/8/1949.

⁷⁹ The report *Memoria explicativa del proyecto sobre ordenación y régimen de la propiedad*, cit. 20/1/1939, was expressing worry for the consolidation of agricultural oligopolies in the colony in hands of a few big owners.

⁸⁰ On the colonial system in the Spanish Territories in the Gulf of Guinea during Franco’s regime see A. CAMPOS SERRANO, *De colonia a estado: Guinea Ecuatorial, 1955-1958*, Centro de Estudios Políticos y Constitucionales, Madrid, 2002.

⁸¹ I. K. SUNDIATA, *From Slaving*, cit. p. 179.

⁸² This situation was denounced in a series of claims directed the General Governor in 1942 on the occasion of a visit of inspection to Rio Muni. *Carta de los Jefes de la Demarcación de Río Benito* de 9/6/1942; *Carta de la Tribu Baney* de 9/6/1942; *Quejas presentadas por los primeros Jefes indígenas*, cit. 12/6/1942 (AGA África G 1913, exp.6).

⁸³ *Reglamento sobre concesiones*, 1944 and *Ley sobre el Régimen de Propiedad*, 1948. J. MOLINA ARRABAL, *Propiedad territorial en Guinea*, in *Labor de España en África*, Barcelona, Alta Comisaría de España en Marruecos, 1946; J. MIGUEL ZARAGOZA, *Ensayo*, cit.

landowners, which was already a reality, but to control this process and to channel its development. This is why it established a limit of *four hectares* for these concessions. And its owner, indigenous not emancipated, should cultivate it personally, forbidding its renting to any European or emancipated African. They were not inalienable, but the owner's capacity to act was limited by his/her condition of indigenous, which made it necessary for the *Patronato de Indígenas* to intervene in the selling, renting or granting any right on these lands.⁸⁴

In this way, at the same time that the small farmer was protected and granted its access to the land, the process of accumulation in African hands and the appearance of a small land-owners' class were prevented.⁸⁵ The new normative was based on, and at the same time reinforced, the distinction between indigenous and Europeans. In its first article clearly established this inequality in juridical terms: while Spanish and emancipated indigenous were regulated by the metropolitans Codes, "the rest of indigenous would be ruled by the colonial dispositions that affected them, by their respective customs" (if not contrary to the Catholic moral) and "by the general principles of law".⁸⁶

At this point, the reference to custom served more to limit the rights of colonized than to respect the ways of access and use of land, which were well established in the Regulation itself. This was especially clear with regard to the so called *patrimonio familiar* (familiar estate): with this figure the colonial government acquired an instrument with which to carry out a truly colonial social engineering. The familiar estates could reach bigger extensions than the individual properties and they were granted a number of financial and other kind of benefits. The aim was to take advantage of the not salaried familiar work in the colonial economy, as much as to make Africans adopt certain Spanish ways of life.

Indeed, a familiar estate was conceded to family heads "with experience with the crops...", preferring the those "canonically married, older than 18, living with (their) wife(s) and legitimate children, and of irreproachable conduct"; those with "bigger number of children", especially male, and those with "better reports of conduct, religiosity, patriotism and moral habits" (art. 24). This was a whole program of civilizations that tried to transform the familiar and social forms in existence in Guinea for promoting the establishment of families as they were considered in the Spanish civil Code (art. 31). The gathering of some of them would form model villages, called *cotos familiares*, directed by a "sindicat" and with "chapel, schools and warehouses" (art.41).

⁸⁴ These limitations would be continuously objected by Africans. See *La voz de Fernando Po*, cit., 19/8/1949.

⁸⁵ *Informe del Servicio Agronómico de Guinea*, cit., 2/3/1945 (AGA Africa G 1944, exp.5); *Informe del Secretario General del Patronato de Indígenas*, cit. 20/9/1949.

⁸⁶ "(l)os demás indígenas se regirán por las disposiciones coloniales que les afecten, por sus costumbres respectivas en cuanto se acrediten debidamente y sean conformes con la moral católica, y, en defecto de ellas, por los principios generales del derecho." *Ley sobre Régimen de Propiedad*, 1948, art. 1.

The attempt to generate a society to be just like the colonial authorities' ideals did not mean however the application of the property general regime to these estates, for the legal limits were reproduced: the familiar estates could only be inherited en bloc by the successor of the family head or by another indigenous family unit, making extremely difficult its partition and alienation (art. 36-40). All this resembled more the old juridical culture of the Europeans and figures such as the *entailed estate*, than the contemporary capitalist culture or that of Africans.⁸⁷

In spite of this ambitious colonization and civilization program, the agricultural and social development of the colony would not prosper along the lines established by the new property regime, for there were not many Africans who decided to assume the familiar estates as their way of life and tenancy of land. Only the collective property of villages kept being slowly delimited, in the island and in the continent. As for the individual indigenous property, whereas it was gradually regulated and registered in Fernando Po, in mid 1950s the state did not have yet the capacity to know and to oversee most of the small African lands in the Rio Muni,⁸⁸ and the renting of lands to big settlers would continue.⁸⁹ Therefore, here the agricultural colonization by colonizers was carried on, for long time, independently of the colonial law, with the tacit toleration of the colonial government. The cooperative movement, so much loved by some colonial officials, would not have either much success in the island, but not in the continent.⁹⁰ The administration effort would hence concentrate in fixing the prices and regulating the local markets where the small producers, especially in the continental part, sold their crops.⁹¹

The different social engineering projects expressed in the colonial law did not shape the colonized society as it pleased. But the African social forms would

⁸⁷ This was recognised in a report by the Industry Ministry, *Informe del Ministerio de Industria*, cit. 6/3/1939.

⁸⁸ GOBIERNO GENERAL DE LOS TERRITORIOS ESPAÑOLES DEL GOLFO DE GUINEA, *Memoria de la labor realizada en el periodo 1949-1955*, Madrid, 1955, p. 134.

⁸⁹ In a Governor General letter to the President of *Patronato de Indígenas* of 29/12/1949, he insisted in the prohibition of leasing of plots without property title between indigenous and Europeans (AGA África G 1799).

⁹⁰ Informe del Presidente del Patronato de Indígenas, *La política del Patronato de Indígenas en el Distrito Continental en relación con la actuación de su filial y la cooperación indígena*, 20/6/1950 (AGA África G 1799).

⁹¹ *Orden 22/7/1942 sobre mercados de productos del país*. The aims of the markets were explained by the General Government in a note: "con el objeto de evitar que algunos europeos obtengan ganancias excesivas a costa del indígena comprando a estos sus productos a bajo precio con lo cual no se estimula al individuo para que trabaje ni produzca. Además, pretende la Orden conseguir una atracción de los productos y los habitantes de las colonias vecinas para abastecer y repoblar la nuestra", *Nota del Gobernador General a la Dirección General de Marruecos y Colonias*, 24/7/1942 (AGA África G 1944, exp. 5). According to a report by the *Servicio de Agricultura*, the markets did never have effectiveness in Fernando Po, where buyers bought cash down in the places of production. Informe del Servicio Agronómico de Guinea, cit. 2/3/1945. See also J. NOSTI, *Notas geográficas, físicas y económicas sobre los Territorios Españoles del Golfo de Guinea*, IDEEA-CSIC, Madrid, 1947, p. 86.

suffer important transformations, in the context of the violence with European backed their *mission of civilization*, and the increased commercialization of agriculture products. The constant reference to the *uses and customs* of colonized and the changing economic and social contexts made social norms a context of continuous conflict and debate.⁹² The new conditions of access to the land and the possibilities to consolidate an individual inheritance altered the social hierarchies and inequalities, and also the gender relations.⁹³ The autonomy acquired by some women through their participation in the commercial economy, and the resistance of some men, were reflected in numerous judicial cases in front of the colonial tribunals. Marriage and inheritance questions were especially conflictive, and provoked intense debates on the applicable norms, in a context that never ceased to be of a juridical pluralism.⁹⁴

At the end of the period that we have considered, the colonial Agronomy Service engineer, Jaime Nosti, offered some data that showed the situation of commercial agriculture, and their distribution according to their producers, European or indigenous. The data, which I leave for the reader to interpret, is good illustration of some of the dynamics we have pointed out. I will only notice that Nosti forgot to say that among the *European* estates there were those owned by emancipated indigenous. The very classification used by the engineer shows how the distinction between two categories, citizens and subjects, was already consolidated in the colonial system.⁹⁵

⁹² As an example of the conflicts around the costume, see the one posed in December 1934 to the *Patronato de Indígenas*, in which a widow claim the Bubi costume and her brother in law the inscription in the Land Registry of the colony. In this case, the right of the widow prevail. (AGA África G 1799). See S. BERRY, *No Condition*, cit.

⁹³ C. ESTEVA FABREGAT, Algunos caracteres del sistema de propiedad "fang", *Revista de Trabajo*, 5, 1964.

⁹⁴ See the (usually not completed) records in the *Tribunal Indígena de la Administración Territorial de Santa Isabel*, 1939-1962 (AGA África G 2258). In the *reclamaciones de los Jefes indígenas del Continente español al Comisario de la República*, cit., 2/9/1931, a group of chiefs of Río Muni expressed their worries due to access of women to more favorable metropolitan norms: "Que los Jefes indígenas resuelvan las controversias que surjan entre los cónyuges de su clase según costumbre y tradición del país.

⁹⁵ J. NOSTI, *Notas geográficas, físicas y económicas sobre los Territorios Españoles del Golfo de Guinea*, IDEEA-CSIC, Madrid, 1947, chap. VI.

FERNANDO PO

Fincas indígenas	concedidas	explotadas directam.	803	4,510 h ^{as}
		arrendadas	182	1,189 h ^{as}
	sin conceder	explotadas directam.	758	3,950 h ^{as}
		arrendadas	23	162 h ^{as}
Fincas europeas	de españoles		445	24,079 h ^{as}
	de extranjeros		138	8,438 h ^{as}
	(todas concedidas salvo 6 fincas, 79 h ^{as})			

RÍO MUNI

Fincas indígenas	concedidas	100	5,301 h ^{as}
	sin conceder	8,985	12,220 h ^{as}
Fincas europeas	de españoles	79	10.675 h ^{as}

Conclusion

The trajectories of colonial law we have analysed reflect the permanent effort by the state to model social relations in continuing transformation. The norms approved for the Spanish colony were shaping successive forms of understanding the European mission in Africa. From the simple defence of a few settlers, who should share the island with other population and social forms that did not control, up to the creation of a new society made up of monogamous and Christian families converted into productive units; passing for the radical transformation of African population in a huge agriculture fabric led by the big capital.

These hesitations in the colonial plans, and their successive failures, show the extent to which the colonial society, and the processes that crossed it, were far more difficult to mould than the European mission of civilization presupposed. The initial settlement colonization, based on the appropriation of lands and the Africans' conversion into semi-free labourers, was confronted to the progressive participation of the later in the commercial economy as small cocoa or coffee producers, land renters or timber sellers. The Guinean colonisation was characterized by the articulation, sometimes conflicted, of European and Creole settler colonization based on the occupation of land and the intensive use of immigrant workforce, and autochthon small landowners' agriculture, based on family work, whose access to the market was always through European agents.

The law would respond to the Africans' economic activity in two complementary manners: trying to regulate and monitor the access to land through the norms on property, limiting at the same time the juridical capacity of most of Africans for participating in equal terms in the colonial traffic. The juridical consideration of Africans as indigenous, submitted to their uses and costumes and with no reclaimable individual rights, allowed at the same time to impose duties on them and to control their participation into the process of economic exploitation. The Africans' juridical incapacity and the subsequent distinction between citizens and subjects were not however the structure of the colonial domination since the beginning of the penetration. It was rather a process, which was consolidating as the state control encompass more and more social ambits, and the Africans tried to take advantage of the social and economic opportunities offered by the colonial presence.

The distinction between colonizers and colonized, particulars and indigenous, citizens and subjects, hid a huge diversity of interests and power relations. In this context, the state often played an intermediary role: often supporting the settlers in their search of cheap and disciplined workers, but also offering some protection to the autochthon sectors against the colonial capitalism harshest dynamics. And always trying to control the fast social transformations generated by the colonial impact.

de extranjeros
superficie forestal explotada

8

678 h^{as}
102.475 h^{as}

If finally colonialists did not get to impose their ideal forms of political and juridical organization in Africa it was due not only to the colonizers' resistance to consider the Africans as equals, but also their inability to dominate the whole process of conquest, government and social engineering. The Africans' reactions to the invasion, the divergence of interests of the European groups, or the scarcity of means, were main conditions of the colonial law in the making. At the end of the day, the colonial state and its law were shaped in the framework of contradictions between its diverse objectives, such as the social transformation, the economic exploitation and the political order. And of course, in the middle of social processes and the action of people.