

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure and Development” Technical Committee

Collaboration on formal land policies: the missing link for West African land tenure systems?

by Hubert Ouedraogo¹ and Vincent Basserie², June 2011

Most francophone African states nationalised the colonial land tenure systems they inherited at Independence and then periodically adjusted them according to the situation in each country. Their citizens have yet to enjoy secure land rights, and there is still a yawning gap between the law and actual practice at both the lowest and highest levels. This paper argues that the challenge of securing tenure can only be met successfully by adopting clear and consensual land policies; and that the policy frameworks guiding public action on land need to be negotiated with the various stakeholders concerned and written into official land policy documents.

Land policies have not been clarified since Independence

● Acknowledging the need to improve systems to secure land tenure

If there is one point on which everyone agrees, it is that a very small proportion of rural producers hold documents protecting their land rights.

The legislation and systems for securing land tenure that various governments have introduced to replace endogenous systems have ultimately proved ineffective. The same can be said of most attempts to ‘transfer the legal system’ and establish ‘modern’ land laws.

There are several reasons for this:

- land legislation often bears little relation to the realities on the ground, especially cultural, social and economic realities (people’s links with the land, literacy and poverty levels among the great majority of producers, and so on);
- decisions taken entirely by State technical services are less likely to receive public support;

- customary land practices have survived repeated efforts to eradicate them, and have proved highly adaptable to economic, ecological and social change...

● Attempts at reform have had limited effects

West African states have been vigorous reformers, especially since the 1980s; spurred on by the desire to make the most of their land resources and the winds of liberalism that prevailed in the 1990s.

These reforms shared the following characteristics in terms of their **substance**:

- confirming and sanctioning the State’s role by consolidating the concept of public lands;
- tentatively recognising the role of local governments alongside the State;
- moving towards individual private ownership, as with the 1991 revi-

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sion of the law regarding the Agrarian and land reform in Burkina Faso;

- attempting to simplify procedures to gain access to land titles.

... and **methodology**:

- these were periodic initiatives, usually instigated under pressure from technical and financial partners, and enacted by the State or its hired experts without consulting other groups of actors;
- they took little account of innovative land management practices adopted by projects or local communities;
- States did not communicate their overall vision of the problems and issues associated with land, either because they lacked such a vision (due to a short-term focus on managing their electoral mandate or failure to take account of major trends in long-term change), or because certain issues were not open to discussion (such as ambiguous relations

and links with customary chiefdoms or economic operators);

- there were no strategies for the effective implementation of these reforms.

It should be noted that these were essentially legal reforms, and that a law does not constitute a policy but simply expresses it in legal terms.

So what are land policies?

Land policies are *courses of action that States adopt in order to guide public initiatives regarding land*.

● **Land policies as an expression of choice**

As **courses of action**, land policies are based on choices that will be implemented, options to be taken, and responses to fundamental issues. Some of the questions that land policies can address are listed below:

- What kinds of relationship with land will be recognised and formalised?

Would it be better to formalise the ownership rights imported during the colonial period and/or other types of relationship with the land?

- Who does land “belong” to, or who are the people and/or groups whose land rights can be recognised?
- How can landholders and producers utilise and make productive use of land resources?
- Who makes decisions about land management, and at what levels should these powers be recognised?
- How should the inevitable conflicts caused by contested land rights or competing land uses be regulated?

These choices shape land systems and have a profound influence on a wide range of issues: economic (increasing agro-sylvo-pastoral productivity), environmental (protecting natural resources), social (guaranteeing equitable access to land and maintaining peace) and so on. Specialists express this idea by saying that land policies bring ‘social choices’ into play.

Although these are key questions for all land policies, they will vary according to specific national contexts.

For example, the situation in northern Mali is characterised by the presence of traditional landowners with vast holdings who have land tenure documents (customary conventions) and rent their land to local people. Farmer organisations argue that the country’s land policies will only be viable if they address and find an equitable response to this issue.

● **The State’s role in land policy matters is essential but not exclusive**

As lines of action adopted by the public authorities, land policies are clearly the responsibility of the State. And



given that this is a particularly sensitive area of public policy, they should obviously be initiated, led and supervised by the State. However, it should also be clear that the State's responsibility does not preclude other actors playing a role in the political process, especially those from civil society and the private sector, whose involvement should be taken as a measure of better land governance. It is also in the State's interest to involve all stakeholders in the discussion in order to help create the conditions for widespread acceptance of policy implementation.

● Tacit land policies

We have already established that land policies are formal discourses that clearly express the government's vision and set the guidelines for public actions regarding land. However, the absence of a formal land policy document does not necessarily signify that there is no land policy; it simply means that there is no explicit one. Beyond the official pronouncements, certain land practices and interventions by the State may reflect tacit policies. Setting out an explicit vision, guidelines and themes for land-related interventions is a measure of better land governance, and confirms the pertinence of formulating land policy documents.

Intermediaries between formalised and tacit land policies sometimes exist, as in Côte d'Ivoire, where a single phrase uttered by President Houphouët-Boigny ("the land belongs to the person who puts it to productive use") set the administration on a course of action that it would pursue for years to come.

Why are land policies important?

We will now consider the advantages of adopting explicit land policies rather

than maintaining the current practice of pursuing tacit ones.

● Formulating land policies provides a framework for participation and opportunities for partnership

Land policies are important in terms of their product (policy documents) and process (methodologies for policy formulation), and in facilitating debate around clear questions that are of direct concern to different actors. The main objective of the process of formulating land policies is to reach a national consensus on land (which is not something that can be achieved on every topic), through negotiations that start by clarifying and recognising the diverse issues that affect different actors and their various legitimate interests in land.

Structuring debates around clearly written draft policy documents is helpful in addressing unspoken issues, cutting through difficult legal language, and encouraging different types of actor to participate effectively in the process. The State should act as an arbitrator and promoter of economic development and social equity.

Land policies will then provide a common frame of reference and guidelines on land matters for the authorities, national actors outside government, and development partners. This can help strengthen trust between the State and other actors, and smooth the way for the acceptance and implementation of reform.

● Land policies as a means of linking land and development issues

Land policies are a means of linking land matters with development issues, and considering the long-term

prospects in both domains. There is no sense in looking at land matters in isolation, as they need to be considered in light of their usefulness for sustainable human development (poverty reduction, economic growth, environmental protection, and so on).

They are also far from static, as they evolve according to the ecological, demographic, economic and even social and cultural dynamics at national and global levels.

Demographic dynamics such as increasing land scarcity and competition over access to land, growing demand for food and social housing, and productive use of urban and rural lands are a major determining factor in land reform...

The same applies to the accelerating urbanisation of the continent and the intensification of direct foreign investment in its agricultural sector.

● Key principles for the formulation and implementation of land policies

Formulating land policies should now become a high priority for African states. Experience has shown that such policies need to be based on an assessment of the priority problems to be resolved (which should itself be recognised as one of the objectives of the process), and a socially inclusive approach centred around genuine participation by all land actors: the State and local governments, civil society (including farmer and women's organisations), traditional institutions, the private sector and so on.

Land policies will be of little use to governments or rural producers unless they are implemented effectively. Here too, experience has shown that this is something that States need to bear in mind from the earliest stages

of policy formulation. Effective implementation not only requires realistic measures and the capacity to implement them at the national and local levels, but also full stakeholder participation in the formulation of clear implementation strategies.

Formulating and implementing land policies is a long, complex but ultimately achievable exercise. It is also essential to monitor and evaluate land policies to ensure that they are periodically reviewed and updated as and when the need arises, and that any shortcomings or errors are rectified in good time. ●

FOR FURTHER INFORMATION

- >> Basserie V. and Ouedraogo H. "La sécurisation foncière : un des défis majeurs pour le nouveau siècle". In *Grain de Sel* n° 41-42. 2008.
www.inter-reseaux.org/revue-grain-de-sel/41-42-l-agriculture-en-quete-de/article/la-securisation-fonciere-un-des
- >> *French version of the national policy to secure rural land tenure in Burkina Faso.* www.hubrural.org/IMG/pdf/PNSFMR.pdf
- >> *French version of the land policy framework and guidelines for Africa.* www.hubrural.org/IMG/pdf/Land_Policy_Report_Final_FR.pdf
- >> D'Aquino P. and Basserie V. *Teaching notes: Securing and regulating land tenure: putting the issues before the tools. Some of the obstacles to coherent policies.* 2011.
www.foncier-developpement.org/outils/securisation-et-et-regulation-foncieres-des-enjeux-aux-outils-quelques-obstacles-a-la-coherence-des-politiques

ORIGINAL VERSION IN FRENCH "Les politiques foncières formelles et concertées : le chaînon manquant des systèmes fonciers ouest-africains", translated into English by Lou Leask.

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