

Grain de sel

JANUARY-MARCH 2012

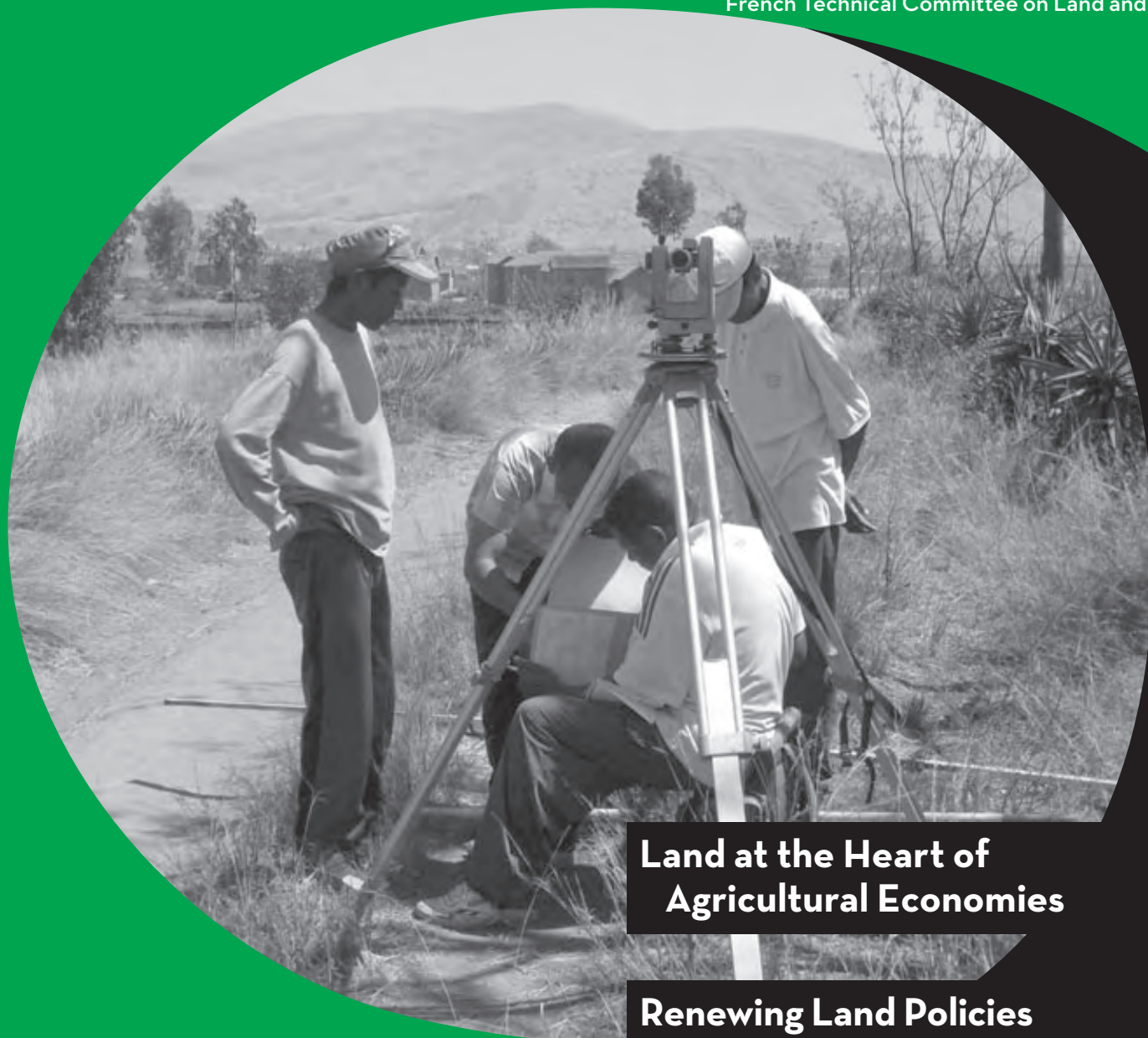
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57

Inter-Réseaux

Développement rural

Issue produced in partnership with The Rural Hub and the French Technical Committee on Land and Development



**Land at the Heart of
Agricultural Economies**

**Renewing Land Policies
in Africa**

Land Tenure: Innovating Together



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The Executive Secretariat of Inter-Réseaux Développement Rural is made up in **Paris** of Fanny Grandval (Network Facilitator), Christophe Jacqmin (Director), Sylvie Lopy (Executive Assistant), Vital Pelon (Network Facilitator) and Joël Teyssier (Network Facilitator); and in **Ouagadougou** of Souleymane Traoré (Network Facilitator), Salimata Diasso (Assistant) and Minata Coulibali (Organiser).

Special Land Glossary

Acquisitive prescription: principle according to which the continuous and peaceful possession of land, if not contested for a specific number of years, confers a real right on the holder.

Cadastre: official documentation, in map and in narrative form, providing information on the human occupation of land, its precise location and its limits. This may also designate the administration in charge of establishing these documents and keeping them up to date.

Customary law: the body of legal rules arising from practice in a region or country and set by custom.

Inviolable and inalienable ownership: ownership arising from the land-registration procedure; it is definitive, can be enforced against third parties and cannot be revoked.

Land registration: the administrative registration procedure by which the state recognises and guarantees the existence of an individual private-property right. It revokes all previous rights.

Land registry: document, which may be computerised or in paper format, responsible for recording the status of rights to land and resources.

Land title: document delivered by the administrative authority that officialises the existence of a right or rights to land. For some, land titles

are the documents arising from land registration and therefore correspond to a right of individual private ownership.

Lease: contract by which one party authorises another party to use a portion of land or its resources for a specific period of time in exchange for payment of rent.

Public property: all the property and land owned by the state and earmarked for public use and public services.

State ownership: designates the regime for property that belongs to public bodies (Gérard Chouquer).

State property: encompasses all property owned by the state and held and managed by the state under the same conditions as property owned by individuals (Gérard Chouquer).

Statutory (or written) law: the body of legal rules set by the legislative or regulatory authorities and established by official legal texts.

Use right: under civil law, an aspect of property rights that gives the holder the ability to make use of something and benefit from its proceeds within the limits of the holder and his or her family's needs.

Glossary terms are signalled by an asterisk (*) when they occur in the text.

News from Inter-Réseaux

The start of the year featured several important events for Inter-Réseaux. First, a **General Assembly** was held for the first time in Africa, in Ouagadougou. It was an opportunity to welcome 12 new members into the organisation, 11 of which were institutional: FO networks (ROPPA, Billital Maroobé), support structures and NGOs (SAILD, JADE, IED Afrique, IRAM, SNV, Afrique verte international), and consultancy firms and think tanks (IPAR, Larès, GRAF). The members discussed the Strategic Policy Plan for 2012-16. Small group meetings also made it possible to reflect on the content of three lines of work: information, working groups and inter-member pooling.

In January, IR also held a two-day **workshop** in Ouagadougou with ROPPA on the subject of 'FO participation in policymaking' (considerable information is available on this subject on the IR Web site). The discussions were based on the results of experience analysis conducted as part of the Réseau PAAR project (see previous issues) and, in line with ROPPA's five-year plan, helped nourish the work plan for ROPPA and its members (12 of the 13 member platforms were present).

For lack of space in this issue, we plan to provide a detailed update on the organisation's news in our next issue.

Land Is More than Ever the Focus of Concerns

LAND AND NATURAL RESOURCES constitute the main wealth of peasant farmers and herders in many African countries. Land fulfils functions that are so crucial to the survival of rural populations that it can lead to serious conflicts that will divide families, communities and countries. Many wars in Africa are partially, when not completely, land-related, such as in the Great Lakes region where land has been a critical factor in the violent conflicts that have marked the region for nearly 20 years.

In 2012, four years after a major global food crisis that was hoped would raise awareness of the need to support family farming, what do we observe? Pressure on land is increasing, notably in Africa, through massive land grabbing movements that favour domestic and international economic actors to the detriment of rural farmers' rights. The land reforms initiated at the end of the 1990s in many African countries

have enabled real progress towards greater recognition and consideration of local populations' land rights. The processes underway are, however, still fragile and are set in a context of rapidly growing population where fertile land is in limited supply or may have been degraded and where outside demand for land is growing.

Given the major stakes involved, this issue of *Grain de sel* seeks to dispel a number of preconceptions and reaffirm a number of truths. To mention just a few: Africa is not a reserve of land without rights; some forms of appropriation and exploitation are in no way agricultural investments; delivering private land titles to all peasant farmers is not necessarily a solution to secure their access to land; conducting land reforms does not only mean working on technical and legal tools, it requires, first and foremost, holding discussions with all segments of society, etc.

Six years after the publication of an issue of *Grain de sel* devoted to land tenure, Inter-Réseaux, the French Technical Committee on Land and Development and The Rural Hub, all partners in the production of this issue, have chosen a central theme: renewing land policies in response to the major evolutions and development challenges at the start of this century. The need to regulate access to land and secure the land rights of peasant farmers in West Africa has been largely accepted; now land reforms remain to be developed with the involvement of peasant farmers and herders, and the means to implement these reforms with their participation over the long term remain to be mobilised.

Inter-Réseaux, The Rural Hub and the Technical Committee on Land and Development



UNMATCHED IN AFRICA, The Rural Hub is a shared tool at the service of development, rural and food security actors in West and Central Africa, primarily national and regional public institutions, professional agricultural organisations and civil society. One of The Rural Hub's major specificities is that it is governed by these different categories of actors, which have entrusted it with a general interest mission able to provide individual benefits for each category of actors and collective benefits for regional communities by improving dialog on policies and programmes and contributing to their consistency, relevance and effective implementation in a deeply changing context. For further information, go to: www.hubrural.org/?lang=en



BRINGING TOGETHER EXPERTS, researchers and French development aid executives, the Technical Committee on Land and Development is a think tank that has provided French development aid with support for land-related strategies and action supervision since 1996 in a network with many international actors. It currently has approximately 30 members with very diverse approaches in terms of disciplines and skills, working in the main research, education, expertise and development aid institutions on land tenure and related issues in a variety of countries and continents. Under

the auspices of the French Ministry of Foreign and European Affairs (MAEE) and the Agence française de développement (AFD), this group monitors developments and helps land policy actors in their diversity maintain the course of the reforms underway. It provides new analyses, references and useful guidelines for reforms. It supports the promotion and defence of approaches based on the recognition of local rights in international debates. A large body of written literature on these subjects is available at www.foncier-developpement.org.

We wish to thank Aurore Mansion (GRET) for her assistance to the Technical Committee on Land and Development and Vincent Basserie (The Rural Hub, WAEMU) for coordinating this issue alongside Vital Pelon (Inter-Réseaux).

New Challenges for Land Policy Actors in West Africa

Vincent Basserie (vincentb@hubrural.org)

LAND ISSUES HAVE UNDERGONE BRUTAL MUTATIONS as a result of recent changes in the context at different levels. This article provides a rapid overview of these changes, the dynamics emerging in the different countries, and the challenges arising for the various actors involved.

► Vincent Basserie is a bridges, waters and forests engineer and holds the position of land policy expert with The Rural Hub. www.hubrural.org

Land under pressure... and under great stress. The recent 'global farmland rush' or 'land grabbing' triggered by the financial and food crises is spreading in conditions of no transparency and is the subject of sharp controversies. This race for land features a large variety of actors, public and private, domestic and foreign, seeking tracts of land, sometimes extensive, to produce foodstuffs or agrofuels.

Simultaneously, the older dynamics of land acquisition by domestic city dwellers is also speeding up, not to develop farming but as an 'investment' to be left later to their heirs, for their retirement or simply for speculation purposes.

Added to this are population growth and urban expansion, all of this contributing to a competition for land of unprecedented intensity, but in which regulations have not, for all that, become stronger. In a context where a crushing majority of family farms do not have secure land rights, the possible consequences of such land pressure are alarming: ejection of many family farmers, victims of eviction or of the development of an unregulated land market; increasing numbers of conflicts and the amplification of migratory movements that can cause serious identity-based tensions. Already in several countries (Mali, Senegal, Guinea, etc.), the coming together of these phenomena has triggered local peasant farmer uprisings, police repression, imprisonments, deaths, etc.

Nonetheless, West African non-state actors pushing for transparent land regulation and security for family farms are also increasingly numerous. International attempts at regulation have so far been limited to developing principles or directives, which the majority of these actors do not see as credible because they are not binding. For these actors, the field of action—the one that has the best chance of weighing in decisively—is primarily national and their demands are directed at renewing land policies.

The Challenges of Renewing Land Policies in Africa

Designing and steering policy dialog. In the past, land reforms were designed by states or by state-hired experts without any real involvement of other groups of actors. The reforms were strictly legal: there were no land policy documents. Today, the need for national debates on the stakes, orientations and effects of land policies is increasingly proclaimed.

Given the complexity and sensitivity of the subject, this shift in how things are done—drafting clear land policy documents via the development of dialog processes on national policy—raises considerable methodology and strategy challenges for governments: How can truly participatory methodologies be designed to identify the challenges and then develop policies? What is the minimum level

of consensus to be sought and how can it be reached? On what basis can the elements for which a shared position does not emerge be addressed?

Predicting the effects of land policy instruments. What land security and land regulation instruments (rules, measures and tools) should be chosen? There can be a large variety of instruments. Any given instrument can have opposite outcomes depending on how it is designed and implemented. Land policies provide for the implementation of various types of instruments and it is necessary to be able to predict the effects of these combinations on socioeconomic and environmental balances.

A new factor, global warming, is complicating reflections. Local changes are impossible to predict, so what needs

to be preserved and encouraged is the ability of actors to adapt. Given that the existing land rules both define and limit the range of possibilities, we now need to imagine combinations of instruments that will expand possibilities and foster the actors' abilities to adapt to future changes. Developing forecasting tools that can be used by all actors, from villages to government ministries, is without a doubt an area to explore.

Being consistent in planning implementation. When it comes to implementing these policies, how can the fits and starts caused by negotiations with donors be avoided? How is it possible to break out of the constraints of disbursement and execution timetables that are not suited to long processes? How can implementation be evaluated with measurable indicators when addressing a subject—land

security—that is above all an impression and a feeling of security?

Managing functional multilevel systems. Land management and governance is being or will be (depending on the country) transformed by decentralisation policies: distributing responsibilities (among the state, territorial governments, village bodies, etc.) requires innovation to design and manage functional multilevel systems. The causal link that has often been established between 'greater proximity of populations to (decentralised) decision-making centres' and 'better land governance' has been seriously challenged in recent years. For instance, in Senegal, the allocation of vast tracts of land by local elected officials has generated serious local conflicts as clientelism and corruption won out

'An instrument can have opposite outcomes depending on how it is designed and implemented'

over the general interest. Considerable progress needs to be made in decision making and in building multilevel interdependencies in terms of transparency, accountability, citizen oversight and access to legal remedies.

To have a 'fighting chance' to face these challenges, there is one first challenge to overcome: political will. In time, international and regional initiatives (ECOWAS and WAEMU) should have a leverage effect on national decision makers. These decision makers also need to be aware, however, that they will be increasingly solicited in their countries by non-state actors, who are growing in power.

The challenges for non-state actors.

Previously not very active in this field, more and more civil society organisations (CSOs) have decided to take up land issues. Allied with professional

farmers' organisations (FOs), they help populations in the event of land grabs and advocate for reforms favourable to securing family farms.

Capacities. Having resolved to be actively involved in future land reforms, non-state actors must imperatively improve their capacity to participate effectively in debates dominated by those who sell tools and by profoundly conservative land administrations with a heavy colonial legacy. For example, it is easy to convince a small farmer that it would be ideal for him to hold a land title*. Peasant farmers can often be heard demanding such titles. It is just as easy to convince a policymaker that setting up a rural cadastre* will solve all problems. Simple ideas are the easiest to spread. These tools are not neutral, however. Without strong regulatory measures,

this would amount to instituting an official land market in which the most powerful would win because, one way or another, they would manage to buy small farmers' land.

Recognition. The participation of non-state actors, and other actors, is tied to the quality of policy dialog, which must be inclusive (i.e. not exclude specific categories of actors, identify the diversity within apparently uniform categories), informed (allow all groups of actors to reach a minimum level of information on the subject) and balanced (prevent any one group of actors from blocking the full participation of others, ensure that legitimate views on the subjects under discussion weigh in on the choices to be made).

Representation. Finally, the quality of representation is also insufficient at this time: a great deal of progress still needs to be made for 'representatives' to truly promote the viewpoints of their groups rather than their own. For this, CSOs and FOs need to be organised and have the resources to do so, and land reform processes need to schedule time for internal consultations.

Conclusion

Contemporary land reform innovations. We can fear that recent evolutions may intensify. In-depth land reforms are urgently needed in many countries. Among the directions taken by emerging 'alternative' land reforms, we can cite the following:

- abandoning the principle of state ownership*, according to which (in simple terms) the state owns, in the name of the nation, all land not registered to a third party;
- recognising the existence of customary* land rights and the developing new tools (land possession affidavits in Burkina Faso, land certificates in Benin) to secure a diversity of rights (individual rights, collective rights, etc.) having the same legal value as land titles and through procedures that are much more accessible than the century-old system of land registration*;
- developing tools to secure land transactions (sales, rentals, loans, etc.);
- decentralising land management ➡

A Development Lever, Land Is at the Crossroads of Multiple Stakes

LAND TENURE is the full range of rules that determine the rights of people, social groups and institutions to land and the natural resources it contains. These rules define the nature of these rights, how they are distributed among the various actors and how they are protected and administered. It is therefore a social relationship covering increasingly coveted resources that, more than ever, underlies multiple challenges: preservation of social peace, human rights and food security, sustainable natural resource management, decentralisation, territorial planning and economic development, etc.

'Solving the land tenure equation' or 'finding a land tenure solution' is therefore meaningless on its own. Addressing the issue from this angle induces a sector-specific and technocratic approach that is limited to disseminating tools to the benefit of those who know how to use them. The point here is not to come out in favour of or against any given tool but to insist on the importance of rejecting the myth of 'miracle tools' and start by raising the question: What effects are desired on which stakes? Land

tenure must be thought of in light of the multiple stakes over which it will inevitably have a large influence and must be seen as a central element in public policies.

This requires, prior to reflections on land policy orientations, broad and inclusive debates on these stakes. The stakes are multilevel in nature: some make sense for individual farms (the ability to rent a plot of land, for example), others for a given economic activity (such as facilitating transhumance), a village (for instance, preserving social ties), a community (setting up local land taxes), a region (controlling urban sprawl), a country (such as developing agricultural production), or even the world (preserving the environment). Each actor, depending on his or her position, is facing only some of the stakes, some of which may seem contradictory. Only multi-actor debates can bring all the parties to accept the stakes faced by the other parties involved and build a consensus at the national scale on how to reconcile all the stakes and the legitimate interests of various actors when setting policy guidelines.

- and setting up local land institutions with which customary chieftaincies will ‘have to deal’;
- establishing mandatory procedures to attempt to settle conflicts before they are taken to court; and
- setting up affirmative action measures for women and young people.

The need to regulate land markets. Market regulation instruments are often forgotten in contemporary reforms. Moving towards greater privatisation of land continues to be promoted by certain elites and outside actors such as the World Bank Group Doing Business project (the goal of which is to increase the ‘ease of doing business’) or vendors of ‘turnkey’ tools. In this way, mini legal reforms are quietly being implemented to, for example,

facilitate access to land titles. Uncontrolled liberalisation of land markets would lead to land concentration. This is a crucial challenge for the future of family farming.

Opting to delegate the implementation of reforms. Establishing multi-actor steering bodies for these reforms is a forward-looking element, along the lines of the reform in Burkina Faso, which, steered by a national committee that included several ministries and non-state actors, led to many promising innovations. Land reform in Mali, steered by a tripartite committee (administration, CSOs and FOs, research), is going down this path. Hopefully, other countries will follow suit. ■

**Registration or Certification:
Two Concepts of Land Security**

TODAY IN AFRICA, and more generally in developing countries, there are two major types of approaches to land security, one based on registration and the other on certification.

What is referred to as ‘registration’ is a ‘top-down’ approach in which individual rights (private property rights, surface rights, use or utilisation rights) are registered and written down in a land registry*. This approach gives rise to the delivery of official documents, the conservation of which is guaranteed by the state. Registration and the delivery of a title are what certify the legality of rights. Ownership is created ‘from the top’ (Joseph Comby).

What is referred to as ‘certification’ is, on the other hand, an approach based on acknowledging local realities in which the registered rights can be individual or collective and acquired based on custom and local standards. Their registration leads to the delivery of official documents (certificates, affidavits, etc.) by basic local government units that guarantee the rights and keep land tenure information up-to-date. In this approach, the legitimacy of the rights is the basis for registration: no rights can be registered if they are not recognised as valid locally. Ownership is created ‘from the bottom’ (Ibid.).

Is Africa Available? You See What You Expect to See

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What Agronomists and Geomaticians Say

One-third of arable land worldwide is estimated to be actually cultivated. In a study commissioned by the International Institute for Applied Systems Analysis (IIASA) and the FAO published in 2002, the authors estimate that worldwide, only one-third of arable land is actually cultivated, or 1.5 billion hectares out of a total of 4.2 billion. There would therefore be 2.7 billion hectares of farmable land not being cultivated, half of which in developing countries. More recently, in 2010, Laurence Roudart analysed the three databases currently available to evaluate available land—the IIASA database (called GAEZ), the FAO database (FAOSTAT) and the Center for Sustainability and the Global Environment database (SAGE). They contain statistical or satellite data. According to three more-or-less conservative scenarios, the extent of cultivated surfaces worldwide could be 1 billion hectares in the lowest scenario, 1.45 in the middle scenario and 2.35 billion hectares in the largest scenario. Taking into account different correction factors and utilising the low scenario, which does not include forests, for example, Roudart arrives at a total of 527 million available hectares. Another study, Agirimonde (2009) by INRA and CIRAD, explains that by 2050 it will be possible to pick up 590 million hectares for farming, 224 of which for agroforests—a number that Roudart estimates to be ‘not only plausible but even understated’.

What we mostly understand is that we can only reach such totals (regardless of the scenario) if we include forests, do not exclude protected areas and land occupied by villages and cities, do not take into account severe constraints in

zones classified nevertheless as available and include pastures as possible zones for expansion. For example, in the highest estimates, the geographic distribution of land thus presumed available immediately points to Brazil and the Democratic Republic of Congo—that is to say, to the two countries that contain the largest forests in the world!

Africa is at the centre of these statistics and maps. This is the continent pointed to as having the largest expansion possibilities, thus instituting the concept of host continent. How can one refuse foreign investments when told that two-thirds of arable land is unused? How can one contest a few tens or hundreds of million hectares when told that there are between one and two billion hectares available?

Questionable use of statistics and maps. Such numbers are the result of questionable methodologies when they do not really examine what they are supposed to examine. Their universal and universally applicable nature is dubious. Some methodologies work with images in which a pixel represents five angular minutes, that is to say, covers a surface area of 86 square kilometres, which are then reduced in the images we are shown to less than a square millimetre. In fact, 86 square kilometres

is the territory covered by three or four large communities, their villages and their hamlets. Of course, they can no longer be seen! If we wish to identify considerations in

regard to occupation, there is no way to do so other than through detailed mapping and the inventory of forms. The shortcoming in these studies is therefore that they do not correlate overall examination with many high-definition surveys to see realities on the ground. When detailed mapping

is done, land that studies had mapped as empty shows up as being occupied. This is not the fault of the images themselves but that of simplistic use of the images. We no longer know how to combine automatic analysis at a very large scale with visual observation at a very detailed, specific scale.

Of course, my criticism is not aimed at the legitimacy of geomatics as a practice. It only targets those practitioners who do not know how to tell the decision makers who consult them that they can only meet their demands by including methodologies.

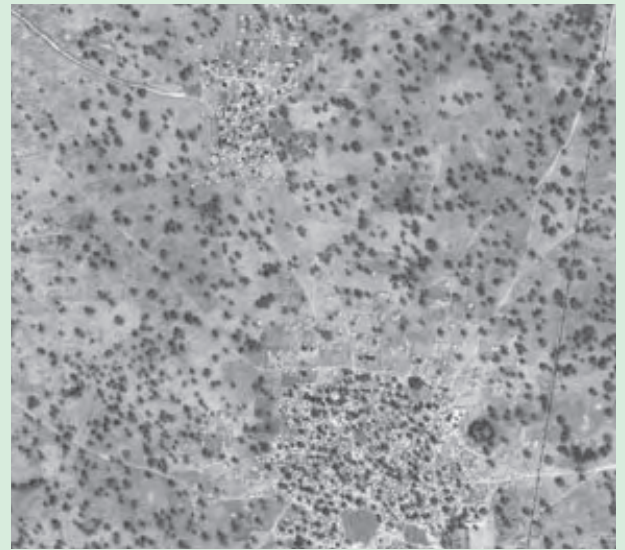
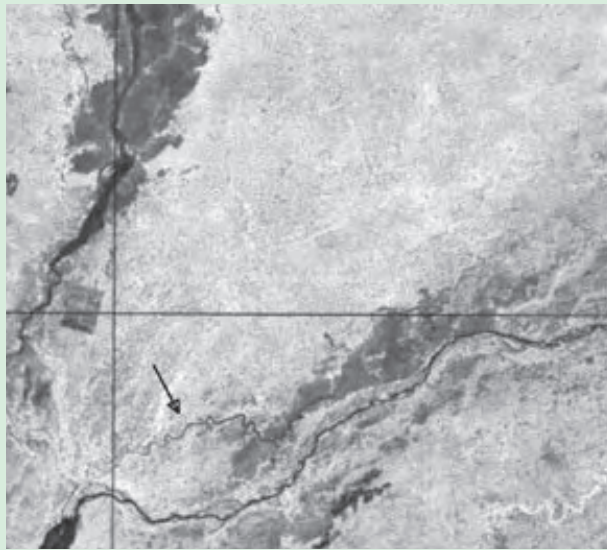
There is therefore one major risk: that extensive modes of observation and excessively ‘overall’ studies using the claimed ubiquity of satellite imagery lead to false assessments of geographic and social realities. Next, in the field, if we bring an investor who knows nothing about land tenure systems to certain bush lands, we can show him whatever we want: he will see fields like none he has ever seen in his home country, and he may conclude that the area is indeed available. More generally, we do not have serious and public cartographic inventories that show what land is occupied or abandoned, titled or not, a thoroughfare, used in cyclical agriculture, etc. Such maps need to be very detailed or they will run the risk of being empty... of meaning. This is one of the goals of the Observatoire des Formes du Foncier dans le Monde (world observatory of land forms) being developed by France International Expertise Fonci re.

What Theoreticians and Governments Say

‘Idle lands’, according to economists. For their part, economic theorists, such as those from Stanford (Paul Romer), have developed a rhetoric suited to the idea of vacancy: dark continents, idle lands, abandoned lands.

Let us look at the historic example of how fallow lands were manipulated ➔

‘Such numbers are the result of questionable methodologies’



On the LANDSAT image (left), the limited scale and uniform colours give an image of hopeless emptiness: Sanamadougou (arrow) cannot be seen. As soon as you zoom in (right), however, you can see the village shared equally by the Moulins Modernes du Mali and the Sosumar concession zones. (LANDSAT image and Google Earth screen capture.)

in Europe during the eighteenth and nineteenth centuries to support the appropriation of community commons by wealthy farmers and entrepreneurs. The fallow was, in traditional systems, the year of repeated ploughing to prepare the land (but not yet sow it) for another rotation cycle. Fallowing land meant working it, not letting it rest and even less letting the farmer rest. Yet at the time, the meaning of the term was inverted because the word now implies rest. What happened? To allow the land to be more easily appropriated, the proponents of new farming stigmatised fallows the better to fight and devalue them.

This is exactly what is happening now with the notion of idle and abandoned lands in continents reputed to be empty. When we speak of ‘idle’ land (literally, land doing nothing), all we do is stigmatise a mode of land occupation the better to justify grabbing the land. In this way, we confirm the far-from-innocent denunciation of so-called ‘vacant and ownerless’ lands. In some cases, we even justify the ability to grab the land without having to identify it beforehand through serious impact studies because it is empty or reputed empty. With this notion, therefore, we are repeating—on the global scale—a process of social and

geographical disqualification that we have already seen in the past.

Paul Romer, for example, uses a trick in his presentations: he shows a map of the world at night, which serves to compare dark continents and those that are lit up. This way, he encourages the idea that entire swaths of the planet are empty and destined to become hosts for other people’s economic projects. He can then summarise the world as a triangle made up of source continents (e.g. Southern Asia and Southeast Asia, that are the source of demands of all kinds), host continents (Africa, Latin America, that are empty or almost empty) and guarantor continents (Europe, the United states, China, that have financial mass and institutions).

A legal situation taken advantage of by governments. After imagery experts, after economists, what do the governments of host countries say? Their responses are along the same lines. They play on the concept of state-owned land that prevails in most developing countries. Indeed, in these countries, the legal situation is such that land is not owned outright by anyone because all the inhabitants are usufructuaries of state-owned lands. Under these conditions, governments claim that state

property is managed by the state, and they use the land at its discretion. In Africa, ‘land banks’, offices and agencies (‘boards’ or ‘directorates’) set up by governments that account for the land and place it with foreign investors, sometimes with assurances that the land is empty, have become too numerous to count.

If agro-industrial sectors are developed in Africa, we must remember that this will be done by transforming existing ecological or agricultural situations and not by moving from empty, unproductive land to fertile-because-developed land. It will be done by displacing people because populated zones will be affected. There will notably be fighting over how to share water resources: for example, investments in Mali are not made in the desert but in the Inner Niger Delta, where occupation is already very dense and the issue of how much water is available will rapidly become a problem. Land investments are not made in empty zones but rather in land on which there is already a presence and a legacy. This is the issue that statistics and speeches want to gloss over, and that governments intend to exploit. ■

When Civil Society Forms an Alliance with the Peasant Farmers' Movement: ENDA PRONAT in Senegal

Interview with Mariam Sow (www.endapronat.org)

In Senegal, NGOs have formed a national alliance called the Cadre de réflexion et d'action sur le foncier au Sénégal (CRAFS, framework for reflection and action on land tenure in Senegal). The coordinator for ENDA PRONAT, a CRAFS member, explains her vision and fight for healthy, sustainable agriculture at the service of fair development.



► This interview with Mariam Sow, coordinator for ENDA PRONAT, www.endapronat.org, was conducted for *Grain de sel* by Vincent Basserie from The Rural Hub.

A Short Introduction to the Rural Land Management System in Senegal

IN SENEGAL, customary law* has been abolished. The tracts of land in the territories are public property, owned by the state. Local elected officials, meeting in rural councils, are the ones who manage the territorial lands of their local government (called a 'rural community') under the supervision of prefects. This management takes the form in particular of the power to allocate land (to those who request it) and un-allocate it (notably if the land is not developed) through the deliberations of the rural council. Allocation is free, only the cost of boundary demarcation must be paid on installation, and recipients must remain in the rural community. Land development criteria are not, however, defined in any document, and the notion of residency is interpreted in many different ways. In fact, customary practices persist and very few farmers have official allocations.

Current events in Senegal have been marked by different cases of the allocation of vast tracts of land to investors. One of them—the allocation of 20,000 hectares to an Italian-Senegalese company in the rural community of Fanaye—ended in 3 dead and about 20 wounded in late October 2010.

GRAIN DE SEL: Could you tell us briefly about ENDA PRONAT's missions?

MARIAM SOW: ENDA PRONAT (which stands for protection of nature) is part of the Enda Tiers Monde organisation. In the early 1980s, Enda had produced a study that revealed that pesticides were a threat for the population and the environment.

After a strong campaign to raise awareness among farmers, scientists and decision makers about the dangers related to use of agrochemicals, we worked with grassroots actors on experiments to find alternatives to these environmentally destructive products and techniques. In addition to these chemicals, GMOs are also threatening peasant farming.

In our intervention zones, farmers' federations have begun to promote healthy, sustainable farming for the food sovereignty of our countries to make the current and future generations safer. The success of these alternatives must be supported by the political will of local and national decision makers.

GDS: Is direct foreign investment in agriculture on the rise in Senegal?

MS: Yes, and it is threatening the whole of the ideology we are promoting. It consists of land grabbing by multinational corporations and the bigwigs in our country. Today, the international community says that Africa can feed the world by opening its doors to agribusiness. This agribusiness will destroy natural resources and wipe out small farmers, and peasant farmers will become poorly paid hired hands on their own lands. This is not new in Senegal. If we look at Niayes (the coastal strip between Dakar and Saint-Louis), land grabbing has been going on for a long time. A market gardening and tree crop zone has been dilapidated, and big names are the ones who appropriated it. They say that the populations are the ones who surrendered their land. Indeed! But in the absence of informa-

tion, awareness and support, did these poor people really have a choice?

The law on national state property condemns people who buy, sell or rent it, but the elites have found ways to bribe rural councils and obtain disguised deliberations. In the Keur Moussa area, marabouts (witch doctors) have, with the complicity of local elected officials, taken land from peasant farmers who are left with nothing. With the Grande Offensive pour l'alimentation, la nourriture et l'abondance (GOANA, large push for food, nourishment and abundance) and the biofuel plan, the authorities asked rural communities to cede lands to those who had money and, once again, it was the bigwigs who rushed to grab the land from their fellow citizens.

So here, it was our domestic decision makers who were supposed to protect peasant farmers who started this unhealthy land grabbing. And now they are calling on foreign investors to exploit even larger tracts of land. But there are always Senegalese citizens involved in one way or another with the foreigners.

GDS: What do you say to those who believe that these investments are a unique opportunity to modernise the agricultural sector?

MS: To those who say that, I say 'No!' The land is there. It is up to the state and the people to mobilise our know-how, our system of traditional governance, and to innovate, reflect with people to define a very clear agricultural policy, find financing models to improve family farming systems. We need to achieve development by the farmers themselves, make farming a profession that provides a livelihood and make the rural world a pleasant place to live in. That is the only way to preserve fair development. Today, if you go to rural areas, there is nothing there. If you look at policies and reality, they don't match. They say that there is a lot

of land, but if you look at the growing population, the other rural activities like cattle breeding, gathering, wood for heating, you can see that people need this uncultivated land.

There are also investors' promises to build schools, health clinics, etc. But the state has ways of providing basic services without mortgaging people's lands.

GDS: *How do you work on these investments and notably on their implications for land tenure?*

MS: ENDA PRONAT is fighting to say 'no' to these investments that are made with no transparency at all. Investors tell peasant farmers that if they move in, there will be jobs. The population has been kept in growing poverty. When you are told that you will get paid 4,000 CFA francs a day to work, you say 'yes' without knowing how long the job will last or if that will be enough to pay for food and health care and ensure your children's future.

Locally, we are trying to raise these people's awareness, call on intellectuals from these areas and provide them with as much information as possible to help them build arguments. We also help them re-appropriate their land. No matter what the law books say, the people believe in only one law: the land is theirs. No forward movement is possible unless the state understands this. We must also work more with young people. They need help to remain on their land and to receive a civic and environmental education. Women also need to be more present in decision-making bodies to defend their own interests and say 'no' when needed.

Nationally, we formed an alliance, the CRAFS, with other organisations that share our concerns in order to develop advocacy in favour of rural populations. We organise to take action on the ground as soon as we hear of land grabbing. Take the case of Fanaye. As soon as the CRAFS was alerted by the people, it immediately

'We organise to take action on the ground as soon as we hear of land grabbing'

organised to collect information on site and discuss the situation with both sides: the chair of the rural community and the local population. The chair had received a lot of money to allocate the 20,000 hectares. And investors paid the state for the boundary demarcation costs. But

where was the people's interest in all that? When they decided to organise a march, we accompanied them. Then we circulated all the information we had collected nationally—for example, I gave interviews in newspapers—and remained in contact with the local population.

GDS: *Local elected officials, therefore officials close to the people, are the ones who allocate land. How do you explain that in some rural communities, these elected officials allocate vast tracts of land to outsiders?*

MS: Those who have the most work to do and are most attached to their land do not run for these offices. Most of these elected officials need to ensure their survival. They therefore do not fulfil their functions in the general interest but out of personal interests and for their political parties. This is why we need to target the entire population and not just these elected officials when raising awareness. I remember working for family centres in 1975 and providing training courses for elected officials and sub-prefects. When we said that we were also going to train villagers, the elected officials and sub-prefects were against the idea. They did not want the villagers to be informed and educated. There is a lot of work to do in this area. The system of governance needs to be changed, and the people must be able to oversee what elected officials do, call them out and even call into question their terms of office. Otherwise, we are moving towards people's uprisings.

GDS: *How do you think the situation will evolve in the medium and long term? Are you optimistic?*

MS: If things keep on as they have been, with this system of governance, things will be very difficult. But I have

to be optimistic when I see what is happening in other countries, where farmers' organisations have managed to involve the state in land reforms and get involved themselves. That is what we need in Senegal, that we move towards fair land reform promoted by farmers' organisations with support from a strong civil society and determined specialists. We also need intellectuals to get really involved with the people in their territories of origin. With that, we can certainly change the system. ■

Early Warning and Assistance to the People in Senegal: CRAFS

SET UP IN 2011, the Cadre de réflexion et d'action sur le foncier au Sénégal (CRAFS, framework for reflection and action on land tenure in Senegal) brings together approximately thirty CSOs and FOs determined to push the state towards participatory land reform. They are developing many different kinds of action towards this aim: studies, debates, advocacy, etc.

CRAFS has also spontaneously set up a system to support people who have been victims of land grabs. Its main strengths are rapid internal information sharing (via an email mailing list) and speed of action. Each member organisation has privileged contacts with numerous rural communities. This means that they are rapidly informed when farmers are dispossessed of their land. That day or the next, at least one of them makes an on-site visit, investigates and reports to the other members. The actions undertaken vary according to the specific circumstances: on the local level, informing people of their rights, mediation, helping to organise 'markets', recourse to lawyers, etc. On other levels: interviews in daily newspapers, using social media on the Internet, calling on the authorities, etc.

Investment: A Magic Word and a Trap

Michel Merlet (miche1.merlet@agter.org)

EVERYONE SEEMS TO ACCEPT THAT 'INVESTMENT' in agriculture is needed to fight hunger and speed up rural development, but there is only talk about investment funds and large entrepreneurs, and very little about peasant farmers. Is this word simply being used to hide a disinformation campaign intended to serve the interests of the few?

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IT WAS NOT UNTIL around 1920 that the French word *investissement* took on the meaning we are looking at here, borrowed from the English word *investment* meaning the placement of capital in a company for its equipment or the acquisition of production means. This meaning is directly linked to profit seeking. Today, the word is used in a broader sense: there is investment for farmers without capital or public investment where profit is not necessarily the main goal.

Investment and speculation are increasingly intertwined. An investment aims for a result at a later date. It therefore always implies some level of risk and of 'speculation'—in the most basic sense of the word (without the negative connotation usually associated with it), which is anticipation based on observation. We are betting today in the hope of getting greater profits tomorrow.

The large-scale speculation that we are seeing today is not of the same nature. It goes well beyond the risks taken in any investment. With the development of financial capital, the link to production is becoming less and less direct. People can turn a profit by buying and selling shares, betting not on the material counterpart of the shares but on the idea that other actors have of their future evolution. They can buy and sell goods that have not yet been produced (futures markets) and invest with borrowed capital. They can turn bank loans into marketable securities ('securitisation') and invent 'financial derivatives' of very diverse natures, which are constantly growing in importance in the world of trade. Originally supposed to limit company risks by transferring them

to entities specialised in managing them, these changes have led to an increased intertwining of investment and speculation; these evolutions have also considerably increased the virtual nature of the economy. The appearance of 'bubbles' that end up bursting with a bang and the recent financial crises have shown the dangers involved in such a situation.

An investment, even a private one, is never isolated from the society in which it is made. The interest of an investment for a private entrepreneur is evaluated through financial analysis, which only takes into account data that have an impact on the profitability of an operation. All the immediate consequences, both upstream and downstream, and the impact on jobs generated or eliminated, waste released into the environment, and resources taken from the environment are of no interest to investors if they do not interfere with costs and profits during the lifespan of the project. It follows that the implications for future generations are not taken into account. A financial analysis only reflects the investor's point of view.

To take into account the impact of an investment on society as a whole, other, totally different tools need to be used. These are grouped together under the heading of economic analysis. Not making this distinction amounts to implying that maximising the investor's profit is always the most interesting solution for the general interest. This is a massive error with serious consequences. There are two major methods of economic analysis. The 'effects method' seeks to measure all the ripple effects from each component of a project. The 'reference-price method' is based on fictitious prices

calculated to correct the many market imperfections and is 'supposed to be a better representation of the economic and social costs of the resources engaged in projects and the satisfaction that goods and services provide to society' (Dufumier, 1996, *Les projets de développement agricole*). These methods are, however, still insufficient to address environmental issues and all the things and services that do not have a price at a given moment but whose destruction could have considerable consequences.

Investing or capturing wealth? 'Private' comes from the Latin *privare*, which means 'deprive' (of a good, a right, etc.). Privateness is created by taking something out of the sphere of shared goods or services so that others no longer have access to it. That private investment sometimes leads to depriving certain users of access to previously partially or completely shared resources is therefore not surprising in the least!

What we call 'investment in land', but also more generally 'investment in agriculture', often amounts to the grabbing of commons or public lands (CTFD, AGTER 2010, *Les appropriations de terres à grande échelle*). In this situation, but also when land that has already been the object of privative appropriation is concentrated by purchase or long-term rental, the incentive for the investment often comes from the possibility of revealing productive capacities not yet developed. This is the case when investment funds buy extensive grazing fields and turn them into agricultural production units to grow soy, for example. The investor can be the first to profit from the fertile soil, water, wood resources, and/or minerals because he or she has access to capital, technologies and/or markets to which the previous users of the land did not have access.

By doing so, he takes risks and this lends a degree of legitimacy to the prof-

'As if the investor's interest always reflected the general interest...'

© it is he makes from the investment. Stopping at this interpretation, however, is not enough. Behind the investments is hidden the appropriation of a rent that the historical occupants were not able to optimise. What we call a rent, here, is the expression of a natural wealth that existed before the investment and that the investment did not create but rather exploits. Other actors could also have benefited from it if they had had access to the same resources.

Faced with the collapse of certain assets (such as real estate and sub-prime loans), one can understand that investors are looking to place at least some of their profits in goods that are not virtual. This is one of the reasons why demand for agricultural land has skyrocketed in recent years, turning it into just another financial asset. The expected profits must however be of the same order of magnitude as what could be obtained in other sectors. To do this, the share of value added used to remunerate capital must be as large as possible. Consequently, the remuneration of labour, the cost of accessing the land and the various taxes must be minimised (Cochet, Merlet, 2011, Brighton. www.agter.asso.fr/article600_fr.html). These are the conditions that international financial institutions intend to impose by liberalising markets right and left, and by diminishing the role of states.

A higher rate of profit for investors often goes against the general interest. Those who praise the advantages of win-win projects forget to specify that investing is only interesting for investors in specific conditions. This mystifying discourse is relayed by all those who have a personal stake in promoting these practices and in particular by many members of governments in developed and developing countries.

Building other forms of governance of natural resources. To take into account the interests of society as a whole, it is necessary to distinguish what is related to financial speculation and land grabbing or the grabbing of common wealth, and to understand which operations can best guarantee the interests of future generations.

Economic assessments must be used for any ex-ante study of the impact of large-scale investments, completed by ecological and social impact assessments.

The July 2011 report by the United Nations High Level Panel of Experts on Food Security and Nutrition mentioned, for the first time, the establishment of win-win-win projects. The third 'win' refers to society. This is not a detail. It is crucial. A forceful return of the 'public sphere' and 'policy' is unavoidable, and it involves strengthening public policies and arbitration bodies at various levels—local, national and global. The aim is nothing more, nothing less than to build new governance of natural resources progressively.

The link with the different concepts of ownership needs to be emphasised. One absolutist concept of ownership implies that all rights are held by the same owner. Buying land also gives the buyer all the resources it contains, whether or not they are listed, in compliance with the laws in force. This concept facilitates the privative appropriation of natural wealth but not sustainable development. New governance of natural resources and land necessarily implies a new distribution of different types of rights to these resources among individual and collective actors.

The construction of agricultural infrastructures, the protection of biodiversity, the fight against global warming, as well as education, research and the establishment of tax mechanisms that make it possible to re-socialise certain 'established rents' are also areas that need resources today and from which we will benefit tomorrow.

Public investment and non-capitalist investments by small farmers must truly be taken into account. Even if their financial performance is not as strong, their interest for society and future generations can be considerable. For each investment project, it is therefore necessary to examine the different possible options and the societal choices that each implies. ■

Titling, Titration, Securitisation: Jargon Warning!

THE CURRENT LAND POLICY CRAZE in West Africa has come with the emergence of a long series of new concepts borrowed from other fields, which can sometimes be confusing. For example, the notions of 'titration' and 'securitisation' did not initially have anything to do with land; one comes from the sciences and chemistry, and the other from the banking sector. Re-used for the needs of actors seeking to promote new approaches to ensuring land security that are not always new, these two notions are commonly used to designate processes by which land rights are identified and formalised and that result in the delivery of 'papers' with legal or administrative value.

The term 'titling' for its part was recently coined by French notaries to designate 'the materialisation by the government authorities of a right to a tract of land in the name of a person or group with the inclusion of this right in a public registry' (Conseil Supérieur du Notariat Français [high council of French notaries]). Despite appearances, it does not necessarily imply the delivery of a private land title and can cover the delivery of an affidavit, a certificate, and ultimately any piece of paper that attests to the rights guaranteed by the government authorities whatever their nature. We therefore need to be cautious with these notions, take them for what they are (approaches that aim to register rights and issue official documents) and ask the right question: to what right(s) and what title(s) do they refer?

Olivier de Schutter: Steering Investors to Upstream or Downstream Segments of the Value Chain

Interview with Olivier de Schutter (olivier.deschutter@uc1ouvain.be)

THE UNITED NATIONS SPECIAL RAPPORTEUR on the Right to Food is concerned about the trend to limit agricultural investments only to investments in land. Private investors should get more involved in value chains (both upstream and downstream) and not threaten poor people's only capital, land.



► Professor Olivier de Schutter has been the United Nations Special Rapporteur on the Right to Food since May 2008. Professor at the Catholic University of Louvain and at the College of Europe (Natolin), he is also a member of the New York University Global Law School and visiting professor at Columbia University.

Grain de sel: What do you think of the expression 'land grabbing'? How would you define it?

Olivier de Schutter: The question of how to define the expression already touches on the heart of the debate around it. Land grabbing is first taking land from those who farm it, often on the pretext that they do not have land titles, or sometimes even because 'public interest' is put forth as the basis for expropriation. But land grabbing can also be the outcome of what has become an unbearable amount of debt when land—often the rural poor's only capital—has been mortgaged to invest or pay for necessary expenses such as health or education. Finally, land grabbing can be the result of commercial trade, a 'give-and-take' situation, when the small farmer cedes his or her land in exchange for a sum of money at 'market' price because he or she does not have the means to cultivate the land in good conditions. The fact that the exchange is voluntary in this last case does not mean that it is fair, because some land sales known as 'distress sales' are the ransom of despair because small farmers have not received the support—services, access to credit at acceptable interest rates, training, access to infrastructures—that would have allowed them to make a living from their work. We therefore have 'violent' land grabbing, expropriation by the authorities or by large landowners who force occupants off the land, and 'soft' land grabbing, the result of market mechanisms. I don't confuse the two, but I do insist on the fact that you cannot dissociate protecting land users from the broader question of agrarian reform, not as a simple redistribution programme for fair access to land, but rather as a support programme for the men and women who work the land.

'Investments that do not change land rights should be the priority'

GDS: Can African states forgo foreign investment to develop agriculture?

OdS: I don't think so. They do not have enough budgetary resources. They need to make up for 30 years of underinvesting in agriculture, during which only the largest farms, those able to export and therefore bring in foreign currency, received support. But we should not confuse 'foreign investments in agriculture' with land investments: investments can serve to develop irrigation systems and storage or communication infrastructures, provide technical advice, in short, increase productivity

by acting upstream and downstream from production without changing land rights. Investors need to be steered towards these 'smart' investments

in agriculture that improve farmers' capacities to produce. This is why I presented a report to the United Nations General Assembly focusing on contract farming to show, of course, the limitations of this model and the guarantees it must include, but also its potential.¹

GDS: Do you know of any cases of responsible investment in Africa?

OdS: Yes. I know of investments that do not change land rights but instead strengthen farmers' abilities to produce, are channelled through farmers' organisations or cooperatives, respect the balance between food crops and cash crops, and therefore strengthen food security by increasing rural households' available income, food production and local food availability. The case of Mali Biocarburants comes to mind: a peasant farmer cooperative provides the company with a certain amount of *Jatropha*, which

is grown together with maize (maize yields are improved by the fertiliser used to grow *Jatropha*); the company has set up a small *Jatropha* processing factory nearby that produces biofuel to supply local communities with energy. The peasant farmer cooperatives involved are shareholders in the company: they are therefore co-owners of the company.

GDS: Can family farmers and large, industrial farms coexist in harmony? Do they complement each other? Under what conditions?

OdS: Coexistence is difficult but possible in my opinion, as long as the state fully plays its role of guardian of the public interest and ensures, through appropriate policies, that small farms are not completely marginalised by the expansion of large plantations. Here is an example of two production models that may compete with each other, either directly when they target the same markets, or indirectly when they need access to the same resources—water and land—and because they both want to attract investors and influence policy. But it's not a fair fight. The large farms that operate on an 'industrial' model—highly mechanised, saving on labour, large-scale irrigation and generally single-crop production—are more competitive in that they can sell their crops for less on the market (notably thanks to the economies of scale that they can achieve in marketing and because this type of production is less labour intensive), whereas small family farms are highly productive on a per-hectare basis and foster rural development (including the harvest processing industry because these small farms produce more for the local markets); they are also better equipped to use agroecological methods that are more respectful of the ecosystems. In short, the large industrial farms generate social and environmental costs that are not included in the price of the crops that they sell on the mar-

1. www.un.org/ga/search/view_doc.asp?symbol=A/66/262

kets, and inversely the services that the smallest family farms provide for society are not rewarded. The negative externalities of large farms need to be attributed to them, and the positive externalities of small farms need to be taken into account by supporting small family farming. This needs proactive policy: left to itself, the 'market' will allow distortions to remain, and family farming will be doomed.

GDS: *Can we really regulate investments through non-binding international initiatives (voluntary guidelines, responsible investments, etc.)?*

Ods: Voluntary instruments only work if they come with powerful economic incentives to encourage compliance. I do not think that this is the case at this time. This is why we need to recognise the risks of human rights infringements that are brought about by large-scale land investments and strengthen actors—including courts—that can force both investors and governments, who are often complicit in these infringements, to respect human rights. Human rights are in no way voluntary: they are legal obligations, and failure to respect them comes with penalties. But beyond the naiveté that characterises initiatives that rely on voluntary approaches and the marginalisation of human rights that these initiatives cause whether they admit it or not, I am struck by another problem: these

initiatives separate land investment from agricultural and rural development policy as a whole. This is dangerous, because land investment is presented as the only alternative to the status quo. Yet that's wrong: there are many ways to improve things for small farmers: by organising them better, helping them to get trained, providing them with the services they need, and developing local and regional markets to which they will have access. We need to be wary of this scenario, which positions large-scale land investment as the opposite of immobility, as if this were the full range of available solutions.

GDS: *How can countries' bidding war to attract foreign investors be avoided and more generally how can land governance be improved in West Africa?*

Ods: Regional dialog is key. The ECOWAS or WAEMU level is adequate: it is at this scale that we need to move towards the establishment of shared frameworks. This is the best way for governments to strengthen their negotiating powers in relation to foreign investors, who clearly have an interest in getting states to compete with each other to get better terms—the right, for example, to pay little to no taxes, be able to extract unlimited amounts from aquifers or be given the most fertile lands located near communication routes. The Committee on World Food Security's

adoption of voluntary guidelines on responsible governance of land, fisheries and forests, which is hoped for in the coming weeks—I'm writing this in early March 2012—must be an opportunity for a regional initiative: the most suitable would be to build these guidelines in each region and set up some kind of peer review to ensure that governments cooperate with each other in the interest of protecting their rural populations.

GDS: *What can FOs do to facilitate peasant farmers' access to land and fight against certain forms of spoliation?*

Ods: It is very encouraging to see that around the world, and recently especially on the African continent, peasant farmers are getting better organised. This shift is noteworthy in West Africa where FOs are participating in the development of policies within ECOWAP via ROPPA and are included in the implementation of the agricultural framework law in Mali or in the Agro-Sylvo-Pastoral Law (LOASP) in Senegal. Support to family farming must include the issue of land tenure. The difficulties encountered in this regard in Senegal—where the dialog between the state and the CNCR, the historical agricultural union, has made progress on many points but faltered on the issue of land reform—must, however, serve as a warning for us: it is a very sensitive area, one in which the interests of the elites are sometimes threatened. But FOs have a key role to play, including by pushing for the development of a regional framework on this issue. ■

'Build guidelines in each region and set up some kind of peer review'

Guaranteeing Real and Sustainable Investments: International Regulation Attempts

Caroline Plançon (car_sen@hotmail.com)

ACTORS TAKE DIFFERENT POSITIONS depending on their appreciation of the risks and opportunities offered by large-scale investments. To try to right the balance of power, the international community is attempting to define rules to ensure that investments are real and sustainable.

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FOR SEVERAL YEARS, investors—public and private, domestic and foreign—have been launching programmes to acquire, rent or contractually use farmland in countries presumed to have land resources. This trend sped up after the food and financial crises of 2008 and 2009. The lawsuits and land insecurity that have resulted are a worrying reality. They affect both foreign and domestic investments, notably investments by farmers at the family-economy scale.

The large need for investments today, whether foreign or domestic, must not mask the issues of food security, malnutrition and the protection of natural resources. From this perspective, three main lines of work can be identified: How can responsible investments be made in a context of social and environmental constraints? How can food production and the associated income be increased? And finally, how can the various actors' access and occupation rights be secured? The international community is using these questions to help define a regulatory framework for responsible investments that respect local rights.

Global initiatives underway. Against a backdrop of rising commodity prices, the G8 launched the L'Aquila Food Security Initiative (AFSI) in 2008. On that occasion, 27 countries and 15 international organisations promised to mobilise 22 billion dollars over three years for sustainable agricultural development. Simultaneously with the L'Aquila initiative, two international processes related to access to land were launched by different international organisations. Their results are being discussed by the Committee on World Food Security (CFS).

The CFS, a discussion body. Set up in 1974, the CFS is an intergovernmental body within the United Nations system, co-chaired by three agencies—FAO, IFAD and WFP. It is the

body that examines and tracks policies relating to world food security. The reform of this system in 2009 aimed to improve the relevance of this arena in the framework of the Global Partnership for Agriculture, Food Security and Nutrition (a G8 initiative in 2008) by giving it the means to promote new policies. The CFS is designed to steer and drive efforts to stimulate this investment regulation process. But for the time being, the conditions are not there for it to play this role in a fully satisfying manner, given the sensitivity of the subject vis-à-vis certain members of the G20, in particular those who feel the need to organise their food security by renting land in host countries.

The 'PRAI' principles for investors. In 2011, as part of the Action Plan on Food Price Volatility and Agriculture initiated at the Seoul summit, the G20 member countries commissioned four international organisations (UNCTAD, FAO, World Bank and IFAD) to issue a report on promoting Principles for Responsible Agricultural Investment (PRAI). This report was released in June 2011 during the French presidency of the G20. Seeking to define conditions under which land investments could be described as responsible, it also provides for the establishment of pilot responsible investment projects. Initially designed with little participation, the process encountered strong opposition from social movements. Consequently, the decision was made to have a working group open to all concerned actors work on these principles again in the framework of the CFS. These negotiations are beginning even though the Voluntary Guidelines have been finalised.

For their part, the 'voluntary guidelines' are addressed to states. Since 2008, the FAO has conducted regional consultation processes worldwide (with civil society, the private sector and states)

with the aim of developing Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. The aim is to propose a framework for states for them to voluntarily develop their own strategies for managing land and natural resources. The negotiation process is being steered by the CFS. The text was finalised on 9 March 2012, with a broad consensus among representatives of 96 states, NGOs, the private sector and international organisations. This text notably insists on the need to recognise and respect local land rights. The text was adopted by the member states on 11 May 2012.

While the PRAI are addressed to investors, the Voluntary Guidelines are addressed to institutional actors in priority by offering a framework that aims to promote respect for existing local land rights. In time, the ambition of these guidelines is to involve and address all concerned actors, notably civil society and the private sector.

State-promoted initiatives: the French example. Several analyses, one position. In parallel with these multilateral initiatives, some countries have undertaken national reflections. In France, these reflections are promoted by different ministerial structures that have long been concerned with these issues.

French Technical Committee on Land and Development (CTFD). For nearly 15 years, the CTFD, co-chaired by the Ministry of Foreign and European Affairs (MAEE) and the Agence française de développement (AFD), has aimed to support, through a network of researchers and experts, the development and implementation of alternative land policies that recognise local populations and make them more secure. In 2004, this group was notably the driving force behind the development of the EU Land Policy Guidelines for support to land policy design and land



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- policy reform processes in developing countries. It was also behind the formation of the 'European land group' led by France on large-scale agricultural land grabbing.

The Groupe interministériel sur la sécurité alimentaire (GISA, Inter-Ministerial Group on Food Security). GISA was created to provide a joint response to the food crisis in the spring of 2008 and following the news that the South Korean company Daewoo Logistics was said to be negotiating with the Malagasy government for the cession of 1,300,000 hectares of farmland. GISA operates as a reflection and discussion group, bringing together five French ministries,¹ research organisations, civil society organisations and private sector organisations.

A position paper from France. In April 2010, the CTFD and GISA produced a French position paper on large-scale land grabbing and responsible agricultural investment. This document provides a set of recommendations

on land governance and policy for French development aid actors. In particular, this text recommends—and this is where its originality lies—going beyond voluntary approaches by strengthening global governance of land issues, notably by setting up a legal framework to regulate massive land grabs and investments.

Recommendations to French investors. For its part, the report by the working group on 'the cession of agricultural assets to foreign investors in developing countries' (June 2010), set up at the request of the Secretary of State for the Prospective Development of the Digital Economy by the Centre for Strategic Analysis (CAS), provides an up-to-date analysis of the current situation and gives recommendations to help investors act responsibly from both the social and environmental standpoints. With this aim, the report recommended setting up a 'Responsible Agricultural Investment' label.

Despite their different orientations at the start, these different efforts have led to the same search for a balance between food security, respect for existing rights and promoting investment. Despite their relevance, they have not yet been able to truly weigh in on the public debate, whether in France or on the international arena, as economic stakes have won out over other considerations.

On the way to a binding framework?

These international initiatives rely on the good will of investors and states and their spontaneous compliance with the principles set forth. Consensus around these various initiatives is ultimately expected to make it possible to set up the conditions necessary for moving beyond voluntary approaches.

Voluntary and non-binding, these initiatives do not foster changes in behaviour along the lines of the principles of corporate social responsibility that advocate for the voluntary inclusion of social and environmental concerns in companies' commercial activities. Indeed, usually issued by only one category of actors (states or governments, international organisations, civil society or the private sector), they are insufficiently the subject of dialog. This is one of their main limitations: they do not involve all the interested actors and the diversity of their interests, which are sometimes very different and difficult to reconcile.

Only a binding, or at least incentive, framework of global governance on land issues would make it possible to protect users' land rights in a balanced cooperation among investors, government authorities, civil society representatives and farmers' organisations in a way that will ensure that profits are shared fairly among all parties. ■

1. The Ministry for Agriculture, Food, Fisheries, Rural Affairs and Land Use Planning (MAAPRAT), the Ministry of Foreign and European Affairs (MAEE), the Ministry of the Economy, the Ministry of Ecology, Energy, Sustainable Development and the Sea (MEEDDM) and the Ministry of the Economy, Industry and Employment (MEIE).

Land Grabbing Is a Societal Problem: ROPPA's Point of View

Interview with Mamadou Goita (mamadou_goita@yahoo.fr or mgoita@irpadafrique.org)

THE WEST AFRICAN FO NETWORK is alarmed by the current pressures on land. It reminds us that the harm produced by land grabbing runs deeper than people think. It contests the idea that West African states do not have their own resources to invest in agriculture and that development of the agricultural sector needs to rely entirely on the private sector.



► Mamadou Goita is an engineer and a development socio-economist. He is the executive secretary of the Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest (ROPPA, West African network of farmers' and producers' organisations). ROPPA brings together organisations from 13 West African countries. He is also the executive director of the Institut de recherche et de promotion des alternatives en développement (IRPAD, institute for research and promotion of development alternatives) and chair of Amassa Afrique Verte Mali.

GDS: For ROPPA, what are the major land challenges in West Africa at the moment?

MAMADOU GOITA: The situation is quite critical. A large majority of member countries are in the Sahel. They are faced with the problem of availability of fertile land and with land access difficulties, notably among the most marginal groups. In addition, when people do have access to land, their rights are generally not secure. We can say that we are in transition. This transition is in relation to land policies that are emerging here and there and to legal changes seeking to set up guidelines to secure users of the land legacy. Overall, the situation is going from not good to worse, with activities such as land grabbing according to modes of appropriation that differ from one country to the next.

GDS: How do you define land grabbing?

MG: People often have a very narrow vision of the concept. Some limit land grabbing to cases of cession (sale or very long-term rental) of large tracts of land (more than 20,000 hectares) by foreign actors, industries or investors. For ROPPA, land grabbing is a much broader notion. It refers to all forms of land transfer (cession, sale, rental and loan) to a domestic or foreign operator that has an impact on the tenure security of family farms, irrespective of the amount of land concerned. Size is not a fundamental criterion: grabbing 5 hectares in Guinea-Bissau, Gambia or Benin—countries where there is very little available land and where population density is high—can cause serious damages. We do not believe it is a question of nationality either: we also speak of land grabbing by domestic operators. There is also a debate on the crops targeted by land grabs. At ROPPA, we say that it is not linked to the type of production. Whether it is to produce food (millet, rice, etc.) or *Jatropha*, it is still land grabbing.

Grabbing is the idea that someone takes an asset that does not belong to him or her.

GDS: What do those who claim that Africa cannot forgo investors, notably foreign investors, to develop agriculture argue?

MG: There are a number of arguments used to justify what some call 'investments' in agriculture in Africa. The first is that there is available land, abandoned by farmers who do not have the means or the will to farm it. This is what is covered by the expression 'marginal land'. Another argument put forth is that so-called 'small-scale producers', who are none other than family farmers, have reached their limits to feed the growing population and therefore other actors need to intervene who have the means to invest in order to intensify farming, animal breeding and fishing. A third argument put forth is related to climate change: people say 'we come to invest in the production of renewable energies (biofuels) because the energy problem is at risk of becoming an obstacle for the economy in general and agriculture in particular. Fourth argument: the free circulation of capital is, in current neo-liberal thinking, seen as a condition for development. The agricultural sector, a major sector for many African countries, should not be left out. Investors need to be allowed to place their capital in the (agricultural) sector to produce, supply international markets and ultimately create the conditions under which everyone can be fed. Those are some of the arguments invoked. But fundamentally, what lies behind these arguments is that the state is seen as being itself incapable of investing in agricultural development and must

therefore call on other actors—'new actors'—and private investors.

GDS: Do you think that states have the resources to invest more in agriculture?

MG: Many of our countries have commodities: gold in Mali, oil in Côte d'Ivoire and Nigeria, uranium in Niger, etc. Mining resources are sometimes considerable and underexploited or exploited in deplorable conditions. Most of these countries have the necessary means to invest in agriculture, but these (domestic) resources are used for other purposes. Not to mention issues with governance and corruption. Take a country such as Mali, for example.

It is the third largest producer of gold in Africa after South Africa and Ghana. Mali only receives 20% of the income from the gold mined by multinational companies. We have

analysed that if this mining contract were renegotiated to bring it to merely 40%, this would make it possible to release more than 100 billion CFA francs in investment capacities per year, the same causes often producing the same effects...

GDS: How do you respond to the available land argument?

MG: Investors are being drawn to so-called marginal lands while family farmers are looking for additional land to produce better. For example, at the Office du Niger in Mali, a study covering more than 3,000 farmers showed that approximately 56% of family farmers had less than three hectares. The study also showed that the profitability threshold for a household of eight people was three hectares. With less than that, you cannot produce enough to feed your family and have a small surplus to sell in order to pay for basic social services (water, education, ➔

'Most countries have the resources to invest in agriculture'

health care, etc.). Family farmers need additional land. It is not because we call them 'small farmers' that they need to be confined to small plots of land that do not even allow them to feed their families.

GDS: *What do you think of contract farming? Are there any examples of foreign investments that are beneficial for family farmers?*

MG: Every experience has positive and negative points. There are cases where investors can trigger the generation of wealth. There are farmers who get small salaries; and there are cases of small-scale developments. But no matter what we say about private investors, whether national or international, they are seeking profits. As soon as they feel that it is no longer profitable, they stop investing. In Burkina Faso, companies have encouraged many households to invest in *Jatropha* fields. Today, these households are burning *Jatropha* to grow something else. According to one farmer, with *Jatropha*, farmers now earn 4,000 to 8,000 francs per harvest, but they could earn 175,000 or 200,000 on the same amount of land by growing maize with good support depending on the technical itinerary used. Things are often dangled in front of farmers but ultimately they do not come out ahead. There may be examples that were beneficial to everyone but I don't know of many in the Sahel today.

GDS: *How is the fight against land grabbing organised?*

MG: There are many initiatives at every level: international, regional, national and even very local, like in certain communes or villages. In Mali, there is the Kolongo peasant farmer

forum. It was a national initiative designed at first to denounce very aggressive practices, particularly in the Office du Niger zone. But there have also been initiatives in Benin, where whole villages have been ceded with the complicity of traditional chiefs to Chinese investors who have tried to get people to leave. In the Kolokani zone in Mali, people mobilised and were able to recover their land. In the Office du Niger, the affair went relatively far, and the state tried to challenge certain contracts that had been signed by different people, the Minister of Agriculture, the Minister of State Property and the Director of the Office du Niger... This resistance also exists on the global scale. There are initiatives with Via Campesina, ROPPA, FIAN and many other actors present at the World Social Forum in Dakar. We also take part in the discussions on the FAO's voluntary guidelines and on the World Bank's responsible-investment principles, which we find pernicious. ROPPA is now writing a position paper on land grabbing. ROPPA believes it is important to maintain the concept of land grabbing, as opposed to those who wanted to speak of 'massive cession of land'. Our position is very clear in the network: we do not want speculation around land. Organisations like ours must mobilise at the regional level so that farmers in every country know that they are not alone. For this, we are surrounding ourselves with specialised lawyers to help us call out to the regional and national authorities.

GDS: *What do you think of the debate on securitisation? Do you think that every farmer should be offered a land title?*

MG: There are other ways of securing land today. There are collective modes of securitisation that allow farmers to remain serenely on their land without having an individual property title. The title is the royal road to concentrate land in the hands of a few operators, in particular banks, which demand it as a guarantee. Indeed, if the land is used as security to obtain a loan, but the interest rates applied are much higher than the profitability ratio of small farms, farmers are rushing into bankruptcy. After that, the land title* will be in the bankers' hands, and the bankers will retrocede it to the highest bidder. Most of our countries are operating from the standpoint of privatising the land. But in West Africa and in my country,

Mali, in particular, we say that the land belongs to three people. It first belongs to the dead, our ancestors, from whom we inherited the land. The land also belongs to the living, who must be able to feed themselves and obtain their livelihoods from this asset. The third owners are those who will be born. The land belongs to them. They need to be able to take advantage of this resource tomorrow. If we forget one of these three owners, we end up in the situation that we see today: people buy land, deplete it and leave. ■

'The title* is the royal road to concentrate the country's land in the hands of the few'

Land Initiatives by Regional West African and Continental Actors

Vincent Basserie (vincentb@hubrural.org)_

A FEW SHORT YEARS AGO, there were no regional and continental initiatives on land issues. The roles of various institutions were still fuzzy and there were differences of opinion on what should be undertaken at these scales. The situation has changed radically.

► Vincent Basserie is a bridges, waters and forests engineer, and holds the position of land policy expert with The Rural Hub. www.hubrural.org/?lang=en

The African Union's framework and guidelines on land policy. In 2006, aware of the central role played by land in Africa's economic development, the African Union Commission (AUC), the Economic Commission for Africa (ECA) and the African Development Bank (ADB) launched a joint initiative on land policy in Africa: the Land Policy Initiative (LPI). This initiative aims to promote participatory formulation and implementation of 'comprehensive' and 'inter-sector' land policies that contribute to the security and improvement of local actors' land rights, greater productivity and improved living conditions.

For three years, a continental process formulating the Framework and Guidelines on Land Policy in Africa (FGLP) was conducted in close collaboration with the Regional Economic Communities, combining periods of reflection, regional studies and multi-actor regional consultation. Hundreds of people were thus involved directly or indirectly in developing the FGLP: members of continental and regional African institutions and representatives of governments, land experts from all regions of Africa, representatives of different categories of land actors (farmers' organisations and civil society, women's organisations, traditional chieftaincies, the private sector, etc.) and development partners.

The draft FGLP was examined and approved in April 2009 during the Joint Conference of African Ministers of Agriculture, Land and Livestock in Addis Ababa (Ethiopia). Then, in Syrte (Libya) in July 2009, the Assembly of Heads of State and Government of the African Union endorsed it and adopted a Declaration on Land Issues and Challenges in Africa that notably called for effective use of the FGLP as a suitable tool to guide national land policy processes. This is therefore a form of commitment without legal value but on which civil society can validly lean to develop its lobbying efforts.

The LPI has since endeavoured to implement the FGLP by taking an approach that supports actors' initiatives by developing the following activities:

- information, awareness raising and lobbying on the FGLP, targeting various land policy actors (administrations, farmers' organisations, civil society, etc.);
- capacity building (for example, organising training courses for trainers on land policy development and implementation);
- technical support for participatory, inclusive processes to revise, formulate or implement land policies;
- provision of information on land (for example, placing various databases on the Internet); and
- monitoring and assessment (for example, drafting a core document on land policy monitoring and assessment).

The FGLP therefore has two major advantages. First, it enjoys real legitimacy because of the long consultative and inclusive process that was used

to develop it. Second, it was adopted during an African Union Summit, during which the Heads of State and Government committed to developing land policies based on the FGLP. Nevertheless, an enormous amount of work remains to be done to move from the commitment made on the continental scale to tangible outcomes on the regional and national scales. Initiatives by ECOWAS and WAEMU show that this is possible, however.

On the way to a 'regional framework for the convergence and implementation of harmonised land policies in ECOWAS countries.' As part of the implementation of its regional agricultural investment plan, the Economic Community of West African States (ECOWAS) decided in 2010 to launch efforts to promote land policies that facilitate responsible and sustainable management of natural resources and agricultural intensification. Relying on a regional multi-actor task force—containing the West African Economic and Monetary Union (WAEMU), the ➔

What Does the FGLP Contain?

THE FGLP IS NOT an African land policy and is not a binding framework; neither is it an attempt to harmonise national land policies.

The FGLP is based on an analysis of the lessons learned—both positive and negative—across the continent to identify best practices in the area of land policy development, implementation, monitoring and assessment. It therefore contains many points on 'how to do' things, for example when developing participatory and inclusive processes to develop land policies, rather than indications on the content itself of land policies.

Nevertheless, the FGLP insists on the need to address land as a priority

issue for development and governance, and to this aim it sets forth findings and gives important recommendations. For example: it insists on the need to take into account innovative local practices to enrich land policies; it deplores the fact that pastoral land tenure systems have been subject to 'a long tradition of neglect in the [...] policies of many countries'. It recommends a 'reform of land rights delivery systems' implicitly calling for the establishment of alternatives to land registration* systems; it calls for a 'reform of land governance institutions' whose 'patronage, nepotism and corruption' it denounces.

Permanent Inter-State Committee for Drought Control in the Sahel (CILSS), the LPI, regional professional agricultural organisations, civil society organisations, governments and West African experts—ECOWAS initiated a process to design and implement a ‘regional framework for the convergence and implementation of harmonised land policies in ECOWAS countries’.

This initiative is clearly based on the African Union’s FGLP. The regional framework arising from the ECOWAS process will in some way have the result of West Africa taking up the FGLP and fine-tuning them to place greater emphasis on West African specificities and realities. Nonetheless, the ECOWAS framework would be more than a regional adaptation of the FGLP. Indeed, it will need to foster the convergence of national land policies around core values and principles, as well as the ambitions of the regional integration process. For this purpose, it will notably define a vision, strong principles, convergence criteria and lines of intervention.

The strong principles should federate the region’s land policy actors and guide the formulation and implementation of national land policies. For example, they will promote economic growth, equity, good governance and sustainable management of the environment. These principles will be defined based on the policies (on agriculture, the environment, water, decentralisation, territorial planning and regional integration) adopted on the regional level, national land policies and laws, and the principles established or in the process of being formulated on the continental and international scales (in particular, the principles that emerge from the FGLP, the FAO’s voluntary guidelines on land governance, etc.).

The convergence criteria and lines of intervention will focus on the following five pillars: (1) having a land policy document, laws and application decrees; (2) having a land policy implementation strategy; (3) having an effective monitoring and assessment system; (4) having an appropriate steering mechanism; and (5) mobilising human and financial resources and equipment. These convergence criteria were therefore not intended

to harmonise the content of national land policies. They focus on ways of doing things and will promote good practices identified in the FGLP and fine-tuned on the regional level (greater transparency, policy dialog, etc.).

A team of consultants is currently drafting an initial version of this framework under the leadership of the regional task force and with support from the LPI. Once the framework has been adopted by the relevant ECOWAS bodies, the various West African countries’ land policies will be monitored and assessed according to the chosen convergence criteria. The regional land observatory in West Africa that WAEMU is thinking of setting up could contribute to this.

The WAEMU action plan on land.

In 2009, WAEMU validated its action plan on land during a regional workshop attended by approximately 50 participants representing WAEMU member states, civil society, the private sector and regional and international organisations. The workshop confirmed that the appropriate role for WAEMU was first to support and facilitate the national processes undertaken by states.

This action plan notably provides for the institution of a Regional Land Observatory in West Africa (ORFAO), capacity-building activities in the field of land tenure and assistance to states for the promotion and regulation of land markets.

In 2010, WAEMU set up a multi-actor working group (with the same types of members as the ECOWAS task force: professional agricultural organisations, civil society, experts, CILSS, ECOWAS, etc.) on rural land tenure to help steer implementation of its action plan; it relies on The Rural Hub, which is developing activities that contribute to the achievement of this action plan: building regional and national land capacities and assistance to states for the development of inclusive, informed and balanced dialogs.

As to the institution of the ORFAO, a feasibility study should begin shortly. Its missions, as currently envisaged, are as follows:

- *Information*: building relevant documentation on land issues and ensuring that information is circulated

among the states. This information should cover two components: the dynamics and changes in land tenure currently underway; and existing policies and laws within states.

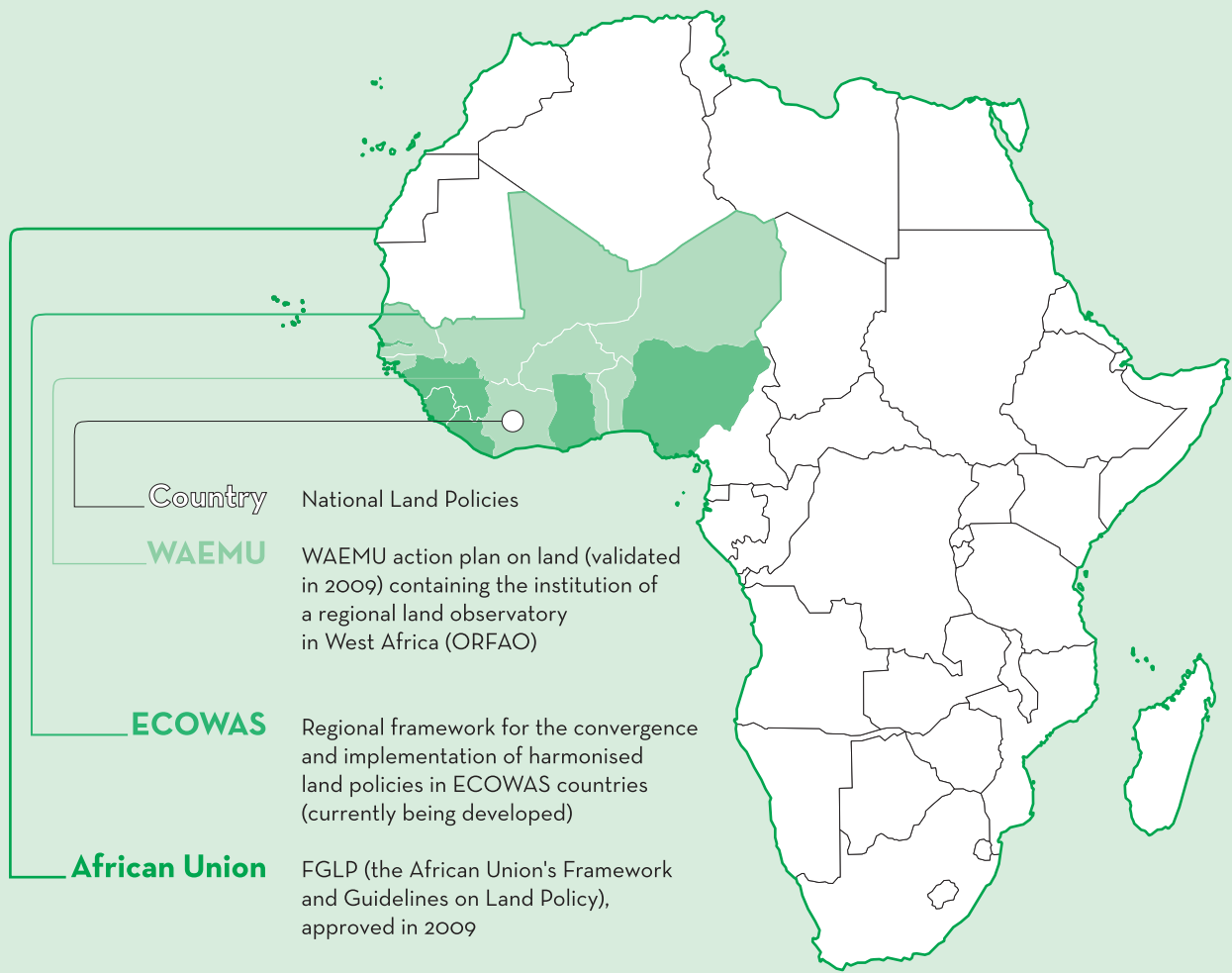
- *Monitoring and assessment*: promoting the development of shared land indicators and the establishing monitoring and assessment systems for land policy implementation and land laws.
- *Analysis and documentation*: identifying best practices and success stories in context for both the content of land policy and reforms, and the ways they are formulated and implemented.
- *Decision-making assistance*: produce documents to help policymakers and the heads of public and private structures concerned with land issues—possible relevant ways to respond to shared or vital problems, warnings on land dynamics and shifts, showcasing work analysing and documenting best practices, etc.
- *Communication*: promoting the observatory and its products, taking advantage of a flow of information on actors’ activities and on what is happening in the field, and knowing land actors’ needs, concerns and evolutions.

We can go so far as to say that public and private national and foreign investments that trigger the acquisition, rental or contractual use of large tracts of land will be ‘observed’ by the ORFAO. But two major areas remain to be clarified on this subject: What exactly will it observe and how will it do so? To what extent will its analyses and advice be heard and taken into account by decision makers? As these questions show, many first-level challenges will emerge during the ORFAO institution process and then during its effective operation. This undoubtedly makes it a highly strategic arena for non-state organisations, which will need to be able to participate effectively in decision making.

Initiatives that provide structure, and are consistent and complementary?

The initiatives taken by ECOWAS and WAEMU provide structure on the regional level and are consistent with the African Union’s FGLP. The LPI further provides technical and financial support for the establish-

Several Levels of Land Initiatives



ment of the ECOWAS framework; it is a member of the ECOWAS regional task force and the working group set up by WAEMU. It seems obvious that functional and operational ties will need to be forged between the ORFAO missions and implementation of the ECOWAS regional framework, notably when it comes to monitoring and assessing compliance with the convergence criteria. Several elements allow for optimism on this point.

First, the fact must be saluted that ECOWAS and WAEMU have both entrusted the steering of their initiatives to regional working groups involving a diversity of actors, some of which—such as the LPI, CILSS,

The Rural Hub and ROPPA, for example—are members of both groups and will ensure that decisions are complementary. Second, ECOWAS and WAEMU have both requested technical support from The Rural Hub, in line with two of its specific missions: facilitating inter-institution and regional dialog and providing methodological support.

Finally, ECOWAS has already come out in favour of expanding ORFAO's zone of action to cover all of ECOWAS once ORFAO has proven itself within WAEMU.

Ultimately, these initiatives will, however, only be relevant if regional civil society organisations and profes-

sional agricultural organisations manage to develop real positive influence over them. This means that they would need to develop their analysis and influence capacities on a particularly complex subject that is often covered only in part, with bias and preconceived notions. They really need support to reach this objective, something that a variety of actors (civil society organisations in developed and developing countries, donors, etc.) are attempting to provide, but their support must be better coordinated and should be brought into greater alignment with the challenges and agendas of these regional initiatives. ■

Acquiring Land Rights: In Africa, Everything Can Be Easily Bought and Sold. Everything Except Land

Joseph Comby (joseph.comby@wanadoo.fr) _____

IN THE MOST DISTANT TINY TOWNS, acquiring gold or a computer is less complicated than acquiring a small piece of land legally. This malfunctioning is caused by the fact that 50 years after independence, states have held on to the principles of the colonial land tenure system, tailored to serve the interests of the powers-that-be.

► Joseph Comby, a consultant, sits on the French Technical Committee on Land and Development.

► Writings and references available at www.comby-foncier.com

A colonial land tenure system at the end of its rope. The basic principles underlying land laws are therefore still those that were introduced at the end of the nineteenth century by the colonial powers, based, with a few adjustments, on the system applied by the British Empire in Australia starting with the Torrens Law of 1858. The original Torrens system was, in fact, clearly genocidal. Not only did it deny the existence of all territorial rights prior to the colonial conquest, it also refused to so much as consider that the Aborigines might be legal subjects (it would take until 1967 for a referendum to recognise their survivors as Australians).

The systems introduced in Africa are therefore watered-down Torrens systems: like in Australia, the colonial state saw itself as the founder of property rights thanks to the production of 'land titles' but, unlike in Australia, it admitted the existence of individual and collective 'indigenous rights' of customary origin. With one important reservation: these indigenous rights were only use rights that could not be ceded and therefore had no market value. They were never property rights in the strict sense of the term (see sidebar). Land ownership is too serious an affair to be left to indigenous peoples; it requires a cadastre* and boundary demarcation; it must be 'inviolable and *inalienable*';¹ only the colonial administration can establish it, oversee future changes (sales or successions) and conserve irrefutable proof of it.

1. In France, ownership has always been based on 'acquisitive prescription*': the right of ownership can no longer be claimed by its holder or the holder's eligible heirs if he or she has neglected to do so for a period of thirty years. So, ipso facto, the person who holds a tract of land becomes its legitimate owner: I own it because I behave as if I do and no one has provided any proof to the contrary for at least thirty years.

Still in force, the system is finding it increasingly difficult to work. There are two different kinds of reasons for this:

- In hot and humid countries where administrative means are limited, conservation of the land tenure documentation supposed to guarantee owners' rights in a definitive way is fiction. Most often, land services are left with only a mass of insect-eaten cellulose to conserve.
- Given the magnitude of the taxes and bribes to pay to record changes, changes are generally not registered and the gap between the information in surviving land documentation and reality on the ground is widening.

The modernisation of these services (computerisation) and the 'restoring' of land documentation, sometimes begun with international aid, are as many opportunities for falsification or deals. This is so extensive that the 'normal' land title system only works properly for an infinitely small portion of urban land and on even less rural land.

The development of a modern neo-customary system outside the law. To overcome this shortcoming, programmes to secure customary land rights* have been undertaken in many countries in the past 15 years or so. While they do not turn customary rights* into ownership rights, they aim to 'recognise' and 'formalise' them. Summary cadastres* have been designed, and different types of certificates and affidavits have been distributed to 'secure' these rights. The practical usefulness of these programmes, which have good intentions, is still small given that the law contin-

ues to see these rights as simple use rights, that changes in them are not legally recognised and recorded, and that any notion of acquisitive prescription* is rejected.

Does this mean that economic actors are doomed to remain trapped in a traditional customary system managed by chieftaincies and lineages that deny the land its commercial value when what it produces is marketed? In reality, the customary system often becomes nothing more than a game of shadows when financial interests are at stake. How can it be imagined

that, in a society where agriculture and real estate have become commercial products, the land that receives very real rent from these products could avoid being a commercial product?

Therefore, given that the law forbids financial transac-

tions over customary land and that official legal texts only tolerate use rights, the irresistible process of commercialising land is happening without the law. This is of course much more active in urban and peri-urban areas where we see former land chiefs turning into large landowners and where the customary land market is chugging full steam ahead along with the market for titled land held by owners who no longer have valid land titles. It is also encroaching on the most distant rural areas where customary land management includes de facto commercial relations and where, disguised as 'agri-businessmen', city dwellers are attempting to build up estates.

It is fascinating to see actors spontaneously cobbling together a new land tenure system, with no laws but not without rules, that strangely resembles the old European system from before cadastres*. Although literacy rates

'The "normal" land title system only works properly for an infinitely small portion of land'

are still low, ‘small papers’—actually sales contracts and succession agreements—are written up on computers by public scribes;² the property is described, the identity of those who hold the neighbouring plots is listed, and several witnesses are named and sign the papers. In some communities, a municipal office diverts its prerogative of authenticating signatures to add an official seal to the document, and sometimes keeps a chronological register and keeps a copy.

Of course, one can wonder why state institutions stubbornly refuse to recognise any legal value in all this but at the same time do not ban it. The answer is simple: by allowing it to go on without making it legal, they hold on to the very profitable ability to intervene on a case-by-case basis and make and unmake ownership on the pretext of the illegality of these documents.

The state, grand master of ownership. Thanks to old colonial laws, the state is still the grand master of ownership over most of the land. It is all the more easily the master that compliance with legal land tenure requirements is difficult and costly. In varying proportions, all African regimes seek to use this power to maintain their clientelism. They also, however, derive direct enrichment from the situation; for instance, major infrastructure projects almost always come hand-in-hand with large land manoeuvres at the end of which the land likely to be highly developed ends up in the hands of various prominent figures.

Where in Europe, the public authorities use their regulatory power to control land use, African administrations intervene directly in land appropri-

tion. Thus, the expression ‘land policy’ does not at all have the same meaning in Europe and in Africa. In one case, the policy addresses land use rules, while in the other land appropriation itself is much more at stake.

The multiplication since 2008 of instances of strong media coverage of ‘land grabbing’ in developing countries and especially in Africa is difficult to understand without taking into account the ability that states give themselves to make and unmake ownership.

The fact that massive land cessions take the form of long-term leases rather than full-ownership sales changes nothing. For a state to lease* several thousand hectares, it itself needs to have taken possession of the land and needs to ‘drive off’ the farmers who cultivated it, sometimes since time immemorial. Among other things, from a financial standpoint, the sale of a 99-year leasing right has almost exactly the same value as a definitive sale (the value of a 25-year leasing right is already worth 50% of the value of a definitive sale if we use 6% as the cost of money).

It is easy to understand why these leases are negotiated secretly behind closed doors. How much is the signature of a president worth on the bottom of a long-term lease* agreement, designed as an international treaty, with laughably low rent, unspecified investment promises, tax breaks and the designation of an arbitration body outside of national sovereignty? Who can know the identity of people who were given shares in the exploiting company, headquartered in a tax haven, which is also above all a legal haven?

Adopting codes of good conduct and ensuring that these large international investments are accompanied by food, social, economic and environmental studies does not answer these financial questions. ■

Words, Rights and Things

IN AFRICA AND ELSEWHERE, OWNERSHIP—defined as the right to use something and do what one wishes with it (keep it, destroy it, give it away, etc.)—exists since time immemorial. Land is not a thing, however. It is a space over which rights are exercised. Strictly speaking, being a landowner is therefore to own rights to a specific space. Furthermore, several different rights can coexist for the same space and be owned by different people.

Using a right (for example, the right to hunt), either individually or as part of a group, does not mean that one owns this right, that is to say has the ability to do what one wants with it freely, especially sell it or rent it out. The right of ownership includes use rights* but goes beyond use.

The private rights of individuals or families to their land are as old as farming. They must not be confused with the shared rights that a social group has to its territory. It is impossible to grow crops without being able to protect the plants, supervise them, harvest them and select the best ones to replant, etc., whereas a hunter-gatherer society can be content with rights to a territory.

In contemporary societies, this leads to the now classic distinction between private property rights over land and political rights (national, communal, etc.) over the territory.

2. We can note that French notaries (similar to specialised property lawyers) are themselves the descendants of public scribes.

Herders' Organisations Mobilising to Secure their Access to the Land

Dodo Boureima (goroubanda@yahoo.fr) _____

LAND TENURE TODAY IS CENTRAL to the development challenges of pastoralism. Faced with policies that usually seek to sedentarise herders, organisations have formed and are mobilising to defend pastoral mobility and promote the securing of pastoralists' and herders' access to the land.



► Dodo Boureima is a Fulani agropastoralist of Nigerien nationality. He is the standing technical secretary for the Billital Maroobe network of herders and pastoralists. He is one of the founding members and the executive secretary of the Association pour la redynamisation des éleveurs au Niger (AREN, association to revitalise herders in Niger).

► The Billital Maroobe network of African herders and pastoralists was created in December 2003 in Dori, Burkina Faso. The pastoral and agropastoral member organisations are located in the following countries: Benin, Burkina Faso, Mali, Mauritania, Niger, Nigeria and Senegal.

GRAIN DE SEL: What are the main land related difficulties facing herders in the Sahel today?

DODO BOUREIMA: First, land has very strong political implications. Production systems that do not have a choice seat in the political arena often have land tenure problems. Herders in particular are especially hard hit when it comes to land tenure. Modern laws do not take into sufficient account the question of mobility that characterises pastoralism, the dominant production system in the Sahel. In addition, even when there are laws, they are often ambiguous. The definition of pastoral land is never clear. There is no real legal guarantee to secure pastoral herders. In addition, since colonisation, herders have been pushed out of peri-urban zones, and it took them a long time to become aware of land tenure stakes. Laws were often developed without them. The difficulty is first to assert our rights to a pastoral route: it is very difficult to obtain recognition that routes and watering sites have a pastoral vocation; this is why herders are always in a situation of land insecurity. Currently, because land is becoming more valuable, many actors are setting their sights on pastures and pastoral zones to the detriment of herders. We are therefore facing two essential difficulties: laws that are not suitable and do not recognise pastoral herding, and policies that were inspired much more by an agricultural development model that came from the outside. Indeed, all current national policies tend to sedentarise herders and do nothing to make pastoralism a sustainable production system with land guarantees and guaranteed transhumance rights, whether domestically or outside the country. Finally, we can note that all laws are only national in scope, despite the political will to move towards regional integration.

GDS: Is this situation widespread in the Sahel or are there some countries

where efforts to recognise pastoralists' rights are more visible?

DB: I wouldn't allow myself to say whether this or that country has made more progress than another. There are laws that don't work, as I said. But even when the laws say positive things, there are problems with enforcement. Effectively, in most states, attempts have been made to change the laws to make them more favourable to pastoralism by taking into account certain concepts such as pastoral development or by recognising mobility as a fundamental right. All this exists in most countries. But the problem is that the enforcement of legal texts is still very limited.

GDS: What can a herders' organisation do in the face of these problems?

DB: There are objective and subjective reasons why pastoralism is not yet truly accepted today. You need to be aware that certain policies are underpinned by negative preconceptions and that certain communities have negative ideas about pastoralism. An FO can conduct advocacy by trying to deconstruct these prejudices about herders. And to deconstruct them, arguments must be developed based on concrete things that cannot be denied and can be scientifically proven. Another aspect is the economic issue, which concerns many of our states today. An FO can showcase the contributions of pastoralism to the national economy or the economy of a community. This economic dimension can give weight to herding today. If you look at Niger, there are communities where 80% of revenues come from herding. But these contributions are not visible. FOs have a real role in making them visible. In addition, we can take advantage of institutional reforms such as decentralisation: the Billital Maroobe network, for example, seeks to facilitate alliances between communities that share common resources to minimise conflicts so that everyone can take

as much advantage as possible of the benefits of pastoralism. There are a certain number of lines of work in which FOs can get involved to push the authorities—whether local, national or regional—to revise their views of herding and pastoralism.

GDS: Is your work on cross-border transhumance part of this determination to take into account and profit from decentralisation?

DB: Yes, the cross-border meetings that we organise tend to facilitate cross-border mobility at a time when we see problems in applying ECOWAS legal texts and problems in regard to unsuitable legislation. For example, the international transhumance certificate—the tool that allows herders to move from one country to another to find the resources they need—is the result of an ECOWAS decision with which all member states are supposed to agree. And yet enforcement is problematic. This is why we decided, before going any further on the sub-regional level, to work with territorial governments that share the same concerns and get them to reflect on how to resolve issues relating to transhumance between countries. It is always easier for our Sahelian countries to understand each other than it is with other countries in the region because there is a degree of reciprocity: animals move from one country to another. I think that these cross-border communities are really willing to work together to solve herders' problems.

That is the first step we want to take, before going any further, notably towards coastal countries, the host countries. With them, it is sometimes more difficult because understanding is problematic. Therefore, we would like to lead communities little by little to consult each other and reach agreements. For us, regional integration has so far only been political. It does not really affect the people; it did not start from the grassroots. Yet, it is the



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grassroots that are in contact with each other. When we hold discussions at the grassroots level, in communities, and reach agreements, we can overcome some of the difficulties linked to laws and regulations and to lack of enforcement.

GDS: *In addition to this 'grassroots' approach, what are you doing on the regional level with ECOWAS?*

DB: We are conducting simultaneous actions. We are also discussing within ECOWAS the issue of updating the international transhumance certificate, for example. Our work with the communities is to save time and solidify relations better between farming and herding populations. The work we are doing in the field fuels the regional discussions. During a meeting in Tera, we initiated a vast project, the highpoint of which was the meeting in Gogounou where we adopted a new approach to management of local transhumance with local actors and grassroots pastoral organisations (local governments, herders' and farmers' organisations, de-concentrated state offices). This made it possible to produce a roadmap to submit to ECOWAS, WAEMU and CILSS to foster the circulation of cattle within ECOWAS. There are therefore several lines of work: meetings between cross-border communities, sub-regional legislation. After the

Gogounou workshop, we undertook a critical analysis of laws dealing with herding in three countries: Mali, Niger and Burkina Faso. This allowed us to see the inconsistencies in legal texts and propose improvements. We have held discussions on this subject with ECOWAS and WAEMU. The next stage is to approach transhumant herders' host countries, the coastal countries. Thanks to our experience with consultations among Sahel countries, we hope to be able to make progress on an action plan for the relationship between transhumant herders' countries of origin and host countries. In addition, we have recently begun to work on the issue of animal feed in the sub-region. This is within the framework of task force discussions on storage strategy and the ECOWAS food reserve project. Our intention is, among other things, to warn actors about the need to include animal feed as one of the products in the region's food reserve.

GDS: *You say that pasture land is often coveted by foreign investors. What impact does land grabbing have on herders?*

DB: Land grabbing hits herders particularly hard because there is no clear framework for pastoral land tenure that is well-known to all. On the political level, and for many actors, commons are seen as not belong-

ing to anyone and therefore as places where resources can be extracted and investments can be made for the profit of private interests. Since herders do not have a legal status, they cannot assert their rights. Yet they were there first. Given that the value of this land is not recognised, herders cannot rely on legal texts to demand land security. If you look at Niger, for example, the largest land grabbers are not foreigners (although foreigners are indeed present, from Arab countries, for example) but domestic dignitaries. Traditional chieftaincy, former military personnel, everyone is part of the land rush because land has taken on an inordinate value. The main victims are pastoral herders. In addition, pastoral herders are in a position of weakness: due to poverty and successive droughts, many herders have lost their cattle and been forced to take up other activities temporarily. As a result, people take advantage of their absence to grab herders' lands and through often iffy administrative measures obtain documents that give them priority. Finally, beyond the land, herders are above all concerned about resources. More and more, communal natural resources are being appropriated: for example, many plants that herders use are becoming private (such as the jujube tree). ■

Niger's Rural Code: A Unique Experiment in Agropastoral Land Governance

Clara Jamart (cjamart@oxfamfrance.org)

IN ORDER TO MEET THE CHALLENGES of land management against a backdrop of limited natural resources in the aim of fighting food insecurity, environmental degradation and rural conflicts, Niger has established an original and innovative tool: the Rural Code.

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An original and ground-breaking land governance tool. When Niger became independent, several legislative and regulatory measures were taken to secure the rights of rural agricultural populations. Among these measures, the Law of May 1961 sets a northern border for crops, defines a pastoral zone above this border and bans the practice of rainfed agriculture above the 350 mm isohyet.

Specific reflections on land tenure were undertaken in the 1980s. Several national workshops—in which the political and administrative authorities, state technical services and their local representatives, customary authorities and representatives of various categories of rural farmers participated—identified a set of challenges relating to land management and natural resources in the country: the dwindling and degradation of farmland, shrinkage of pastoral areas (encroachment by farming in the south and by the desert in the north), land insecurity and risks of widespread land conflicts.

A National Rural Code Committee was set up following these workshops and proposed a framework ordinance, adopted in March 1993, setting out the basic principles of the Rural Code and rural land policy in Niger. The core objectives of the Rural Code are as follows: 'to define a legal framework for agricultural, forestry and pastoral activities, in the perspective of land management and planning, of environmental protection and human advancement' and 'to protect rural actors by recognising their rights and promote development through a rational organisation of the rural world.'

What is now called the Rural Code is a corpus of legal texts consisting of the 1993 framework ordinance and a set of sector-specific legislation covering each aspect of the rural world (natural resources, activities, land, societies, etc.). The phrase 'Rural Code' also refers to a set of institutions in charge

of implementing all established laws and standards.

The legal and institutional system set up by the Rural Code is an extremely original land tenure and natural resource regulation tool in West Africa for several reasons:

- It is the outcome of vast consultation processes that allowed the Nigerien people to express, from village to national level, their concerns about land tenure and natural resource management.
- The Rural Code is fully incorporated into the country's overall political strategies. Land and agricultural policy is not isolated, but integrated into the economic development policies that Niger is trying to promote.
- There is also a vital social and cultural dimension to the Rural Code. It asserts that land should be seen as collective national legacy, and promotes an open and participatory approach that notably includes women, young people and minorities while fully including traditional chieftaincies.

Major progress towards fairer and more sustainable land management.

Despite the successive political crises and extreme instability of the Nigerien state, determination to make the Rural Code into a participatory and inclusive system has not wavered since the 1980s. The traditional chieftaincies that were previously the only ones able to assign use rights to users continue to have considerable weight, but they are now merely one voice among others. Land and natural resource management is therefore more collegial and in this sense, the Rural Code is a step towards greater justice, equity and democracy. By contributing to the establishment of an arena for dialog at the local level through land commissions, it also shores up its vocation to promote the rule of law in Niger's villages.

Among other things, the prevention

and regulation work accomplished by the various land commissions has reduced the number and intensity of land conflicts. When conflicts do break out, the land commissions serve as regulation and mediation tools and make it possible to limit recourse to violence.

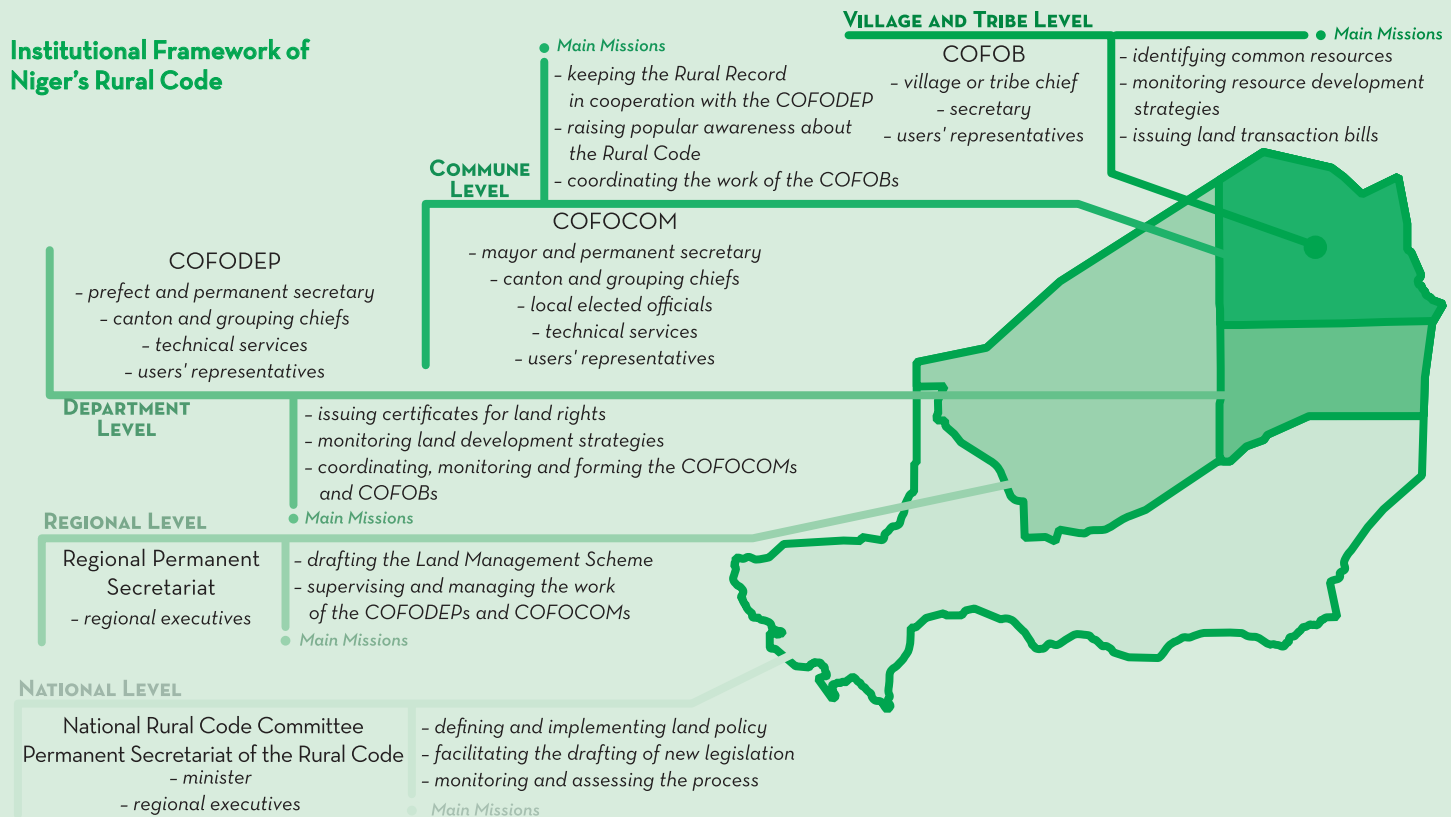
Finally, beyond this progress in the field, the Rural Code now comes across as an instrument of reference for the implementation of national policies—probably one of its main accomplishments. It is both an inspirational model and a powerful tool for the establishment of decentralisation policies since 2004. Ultimately, the growing adhesion of different groups of actors to the principles in the Rural Code makes it an example of successful joint policy.

Still fragile bases and challenges to overcome for the future. Despite these major advances, the Rural Code is still faced with a certain number of fundamental challenges.

First, that of spreading its principles. Indeed, the Rural Code is largely unknown in the Nigerien countryside, where literacy rates are low. In 2010, only 3,000 grassroots land commissions had been set up, out of a total of 15,000 villages and tribes—a coverage ratio of only 20%.

The challenge of the collegiality and representativeness of land commissions is also important. The influence of traditional chieftaincies is still predominant. Villagers continue to turn first to religious and customary leaders for everything pertaining to land and natural resource management. Institutional actors (secretaries, elected officials and municipal technical services) are not well-integrated into the social fabric, or even clearly identified by local people; in the end, they have very little influence over the decisions reached. Representatives of young people and women usually play a purely figurative role and do not have a say.

Institutional Framework of Niger's Rural Code



And finally, the challenge of financial independence is a fundamental stake for the future. Land commissions are lacking in material resources, premises, equipment and the budgets to implement awareness-raising activities or field trips. They are still entirely dependent on development projects. This situation obviously raises the issue of the independence and sustainability of land commissions.

An experience to be disseminated and discussed to get a better grasp of the challenges facing family agriculture in Africa. Today, the land issue is all the more pressing in Africa because resource limitations, global warming and heightened competition for land make it even more urgent to overcome the challenges of food insecurity. For African peasant farmers, securing land rights and access rights to resources is a fundamental prerequisite to setting up agricultural and trade policies that do not exclude the poorest and do not exacerbate already unsupportable inequalities. It is also a major prerequisite for reaching the development goals set by African states themselves and by the international community, and to

the actualisation of people's economic and social rights.

Despite all its limitations and imperfections, Niger's Rural Code is a particularly rich and ground-breaking process that takes into account the totality of agropastoral land users and attempts to build collective solutions to problems that affect all rural people and in particular the most disadvantaged. This participation and consultation effort posits the development of an iterative democratic debate as an indispensable tool to build fair and sustainable alternatives in the field of land and natural resource governance. Nevertheless, the Rural Code can in no way be seen as a model that can be replicated anywhere under any conditions. It is a source of hope and noteworthy progress, but this is above all because it was built progressively and continues to be improved and modified by the Nigerien people themselves. However, the principles underpinning the construction and foundation of Niger's Rural Code could certainly be a source of inspiration for the development of solutions suited to each context. ■

Institutional Framework of the Rural Code in Niger

LAND COMMISSIONS are the institutions that implement the Rural Code and ensure compliance with the standards established in legal texts. They are set up at all levels, from village to national level. At each level, the land commissions have clearly defined responsibilities and prerogatives. Mr Abdul Karim Mamalo, permanent secretary of the Rural Code from 2000 to 2010, explains how they operate:

'The COFOBs [grassroots land commissions] operate essentially at the community level: they control cattle corridors, access to watering places [...] and deliver land tenure certificates, especially in the case of donations, sales, inheritance, renting or customary pawning of land. It's a job that only grassroots land commissions can perform. The COFOCOMs [commune land commissions] on the other hand delineate corridors, watering places and forests, and they manage the marking and registration of these resources into the Rural Record. So basically they assume all missions that could not be performed by COFOBs. COFODEPs [department land commissions] not only supervise the work of COFOCOMs and train COFOB and COFOCOM members, they also deliver land titles [...]. At the regional level, it's a different job. The region supervises the whole system at the regional level. It also gets involved in drafting land management schemes. So as you can see, depending on the level the missions are completely different, but it's the addition of all these missions that defines the Rural Code.'

Côte d'Ivoire: Land at the Heart of Reconstruction Challenges

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THE IVORIAN CONFLICT (2002-11) was exacerbated by long-standing tension over land caused by intense agrarian migration, notably in the forest zone. A law on land property passed in 1998 had attempted to resolve these tensions. Can this law contribute to social peace and development today?

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► Noël Kouassi (doctoral student in anthropology, EHESS Paris and University of Bouaké).

► Moussa Koné (research assistant with the University of Cocody-Abidjan).

A Risky Land Reform against a Backdrop of Strong Migration

A large number of conflict-ridden land transactions between locals and outsiders. The vast majority of rural land in Côte d'Ivoire is not registered. This has not prevented commercial land transactions from being commonplace for several decades, notably between 'natives' and migrants in the forest zone. The economic dimension of these transfers does not remove their social dimension, with the receiver taking on a 'duty of gratitude' to the ceding party and his or her community. This specificity introduces a degree of uncertainty into the transferred rights, which may be contested by the natives on the basis of the migrants' failure to fulfil their social obligations. It also sometimes happens that the rights holders in the family of the local seller challenge the right to cede a plot that they believe belongs to the family. Often, the challenge (particularly when done by young natives returning to the village after the failure of their urban plans) aims to recover plots to sell them again at better terms, not to develop the land.

In response to the growing politicisation of the land issue, the Ivorian authorities have developed various projects to secure customary land rights, and these projects led to the Law of 23 December 1998, establishing the regulation of rural land. Based on conventional arguments, this law organises the systematic titling of customary rights* into private property rights. Its implementation has been regularly delayed since the first coup in December 1999. It is nevertheless

still on the agenda as the Ministry of Agriculture's 'Programme National de Sécurisation Foncière' (national land security programme).

We know that the systematic and sudden application of customary-rights* formalisation policies in the form of private property titles is questioned among both researchers and development operators. The pilot rural land planning projects tested in Côte d'Ivoire in the 1990s, prior to the drafting of the law, had already shown one of the main weaknesses of these formalisation programmes: they are very difficult to implement in the very places where they would be most useful, that is to say in conflict situations. They can even contribute to exacerbating conflicts or triggering new conflicts.

The law of 1998 makes official the exclusion of non-citizens from land ownership and favours the rights of natives. In the case of the 1998 law, certain provisions clearly help fan latent tensions. Indeed, it formalises the exclusion of non-citizens from land ownership whereas, in the forest zone, 26% to 45% of farmers (depending on the region) are non-citizens who obtained the land through transactions with local customary 'landowners'. In addition, the procedures for identifying property rights indirectly officialise the primacy of rights arising from native ancestry in such a way that Ivorian citizens who are migrants living on the land are subject to the good will of their local 'tutors' to have their claims of property rights recognised.

In this way, independently of its aim of securing all existing rights, the new law interfered head on in the policy debate by generating conflicting expectations: for the natives, the expectation of having their customary rights* recognised over land previously granted to 'outsiders'; and for these 'outsiders', the expectation of final recognition of past transfers.

From its very enactment, the law gave rise to twisted partisan propaganda and conflicting interpretations that fuelled land tensions between communities.

In Western Forestlands, a Preoccupying Land Situation in a Post-Crisis Period

Violence between migrants' and natives' descendants. The civil conflict caused by the attempted coup of September 2002 has further exacerbated land tensions: in rural areas in the south, violence has concentrated on former migrants who obtained land rights from customary landowners. The young locals involved in the violence expressed the feeling of having been dispossessed of their land rights by 'outsiders' as well as by government agrarian colonisation policies and, in the process, by the customary authorities and local families themselves, who have also been accused of having 'sold off the land cheaply'. The most systematic violence has occurred in the western regions, where 'development' through plantation farming has taken place more recently, more massively and in a more authoritarian manner.

The risks of applying the 1998 law as it is currently written. Even before the conflict ended officially, when the Ouagadougou political agreement of 2007 seemed to have stabilised the situation sufficiently to relaunch land reform, the prefects and sub-prefects had shown their concern over the risk that the law would exacerbate latent conflicts during this particularly sensitive post-crisis period.¹ Since then, political and inter-community tensions have increased in the forest zone field areas, first during what is known as

WHILE THIS ARTICLE WAS BEING WRITTEN, our colleague and friend Samuel Koffi Bobo passed away in Côte d'Ivoire. This contribution is dedicated to the memory of the young researcher who had a brilliant future and whose human qualities were unanimously recognised.

1. 'Sécurité foncière: Les préfets émettent des réserves', *Fraternité-Matin*, 23/10/2007.

the 'post-election crisis' (December 2010–April 2011), and then during the government transition process itself. This was notably the case in the western forestlands, and more specifically in the Duékoué region and areas along the Liberian border, where the bloodiest clashes took place. The return of Ivorian refugees from Liberia, whose farms are currently occupied by Ouattara supporters, is a particularly sensitive issue. Under these conditions, any implementation of the National Land Security Programme as it is currently formulated (that is to say, the 1998 law) runs the risk of reviving sharp tensions.

The situation in the field does not therefore seem to have truly changed with the change in authorities. The socio-political situation in the field areas of the southern forest zone, the agricultural heart of the country, is not reassuring. In the present circumstances, implementation of the land security programme, which already included potentially perverse effects before the conflict, seems even less able to help bring back social peace and ensure the expected development of privatising property rights.²

Levers to support the local changes.

There are, however, several reasons for hope and levers to support the shift underway towards a 'modern customary'³ system.

The persistence of monetised transactions during the crisis. One element may seem surprising: until the November 2010 elections, the conflict had not in any way prevented monetised land transactions according to the extra-legal procedures in use. A study conducted in 2008 by Jean-Philippe Colin documented the main transactions between natives and non-natives, Ivorian citizens or not.⁴ In particular, the study showed that despite the risks involved, the purchases and

sales continued during the civil war period. Like before the crisis, these transactions fuelled suspicions with regard to non-native buyers and were frequently the subject of disputes, but the disputes were still generally limited to the protagonists. Simultaneously, land rental practices spread and a new mode of occupancy allowing the development of perennial crops without transfer of ownership of the land (the 'plant-and-share' system) underwent a sharp rise in popularity.⁵

The main factors behind these commercial land dynamics outside legal procedures are, notably: on the supply side, the temptation among rural young people to sell family land during a time of severe income contraction; and on the demand side, the powerful attraction to grow rubber trees, notably by urban social classes lacking regular income.

A need for public security. Nevertheless, one of the major obstacles to the establishment of peaceful regulation of rights transfers remains: the existence of monetised transactions does not mean that the parties involved are fully released from their social and economic obligations after the transactions are complete. In addition, political factors continue to make the distinction between 'natives' and non-natives a structuring element of the exercise of citizenship at the local level and a permanent cause of land tension polarisation.

Under these conditions, there is now a strong demand among actors for public security of transactions. The commercial dynamics of customary practices do not therefore preclude

4. Colin, J.-Ph., 2008. *Étude sur la location et les ventes de terre rurales en Côte d'Ivoire*. Rapport 1. Diagnostic des pratiques. Abidjan, Republic of Côte d'Ivoire, Ministry of Agriculture – European Union Delegation, 143 pp. See also F. Ruf, 2008. Côte d'Ivoire: la terre de plus en plus chère. *Grain de sel*, No. 43: 5-6.

5. Colin J.-Ph., Ruf F., 2011. 'Une économie de plantation en devenir. L'essor des contrats de Planter-Partager comme innovation institutionnelle dans les rapports entre autochtones et étrangers en Côte d'Ivoire'. *Revue Tiers Monde* 207: 169-187.



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the need for public security. But, like before the crisis, the expectations of different categories of actors diverge: natives are demanding the recognition of their right of ownership over land ceded in the past, while non-natives (both Ivorian citizens and not) want to secure the rights acquired in past transactions. In addition, many non-citizens do not know that the 1998 law does not allow them to hold property titles, and many migrants (both Ivorian citizens and not) do not know that the law gives natives decision-making power in the certification process.

Should private ownership be promoted or should local transfer practices be established as a priority?

In the current transitional situation, it is appropriate to wonder whether the determination to promote private property in a forced march as the favoured way to secure existing rights does not in fact help destabilise rights and open the door to unfurling the frustrations aggravated during the post-election period.

Would it not be more appropriate to pacify land relations without hindering local economic dynamics and support local demands for land security without following the letter of the law or even by adapting it? For this, it would be necessary to be clearly positioned in a situation prior to the legal registration of rights in which the priority, in terms of land security, was not to deliver formal titles but to consolidate, both nationally and locally, local transfer practices. This would be a matter of:

**Improvised
CICR camp
in Duékoué
(western
Côte
d'Ivoire)**

2. A declaration by President Ouattara according to which he is thinking about 'inventing something new on ownership rights' to 'finally tackle the rural land problem, which no one has done yet' seems in line with this and appears to open the door to new thinking on the subject.

3. J. Comby.



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- encouraging actors to clarify the social and contractual clauses that link (past transfers) or will link (future transfers) them, and by so doing avoid grey zones and ambiguities, the main sources of conflict; and
 - recording the promises made in the contracts with the local administration—the official registration focusing on individuals’ intent to reach contractual agreements and not on the content of the contracts themselves, which would remain private agreements. It would only be later, and if it turns out to be necessary, that the rights thus recognised would be formalised and validated within the legal framework proposed by the 1998 law, the provisions of which—possibly re-written—would therefore be better understood.
- It is undoubtedly in the transition phase prior to the legalisation of rights that public action must assume its full importance. Indeed, in the current situation in Côte d’Ivoire, it would be inappropriate to count only on the virtues of local communities to accomplish this clarification and social (more than legal) consolidation of existing rights because they themselves are hotbeds of division between natives and ‘outsiders’. For public intervention to play its role fully, however, it still needs to become more legitimate in the eyes of the people and avoid being overly subject to the imperious ‘desire for land titles’ among privileged social classes. ■

Makeshift
roadblock in
Côte d’Ivoire

Land and Migration: A Potentially Explosive Situation in West Africa

A LARGE SHARE of in-country and international migration in West Africa moves towards rural areas with the purpose of developing farming activities. Traditionally, the land is given or loaned for an indefinite period of time to migrants in exchange for social obligations: respecting local customs and traditions, providing one’s ‘tutor’ (the person who ceded the land) with assistance, staying out of village politics, etc. Other types of (increasingly monetised) transactions, however, are progressively gaining ground: short-term loans, rentals, trades, sales, etc.

Migration in West Africa is the source of numerous land conflicts for many reasons: dwindling land, of course, but also opposing interpretations of the nature of old transactions (was the land given or lent? rented or sold? including in monetised transactions), the transition from one generation to the next (migrants’ descendants and natives’ descendants disputing ownership), the overlapping of customary and legal remedies, and the

contradictory interpretations of the status of the land (according to migrants and herders, the land belongs to the state, that is to say to everyone, whereas the natives are opposed to this notion of state ownership). It is important that states appreciate the magnitude of the potential for conflict and set up effective regulation mechanisms.

This sidebar is taken from a 4-page pedagogical brief written by sociologist Mahamadou Zongo, from the University of Ouagadougou, for the French Technical Committee on Land and Development: <http://www.foncier-developpement.fr/wp-content/uploads/Fiche-Zongo-ENG.pdf>. Seventeen briefs of this type were produced and can be found in English and in French at the following address: <http://www.foncier-developpement.fr/outils/fiches-pedagogiques/>. These briefs are ideal for people who want to get a basic idea of the main land tenure challenges in West Africa.

The CNCR's Fight to Increase Awareness of Family Farmers' Land Concerns

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SINCE IT WAS SET UP IN 1993, the National Council for Rural Consultation and Cooperation (CNCR) has seen land issues in Senegal as crucial, both politically and socially. The experience acquired by this independent peasant farmer movement deserves to be shared, notably with other African farmers' organisations.

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► Oussouby Touré is a sociologist, an expert in pastoral land and a member of IPAR.

► Sidy Seck is a geographer and professor at UGB in Saint-Louis, an expert in irrigated land and a member of IPAR.

► Cheikh Oumar Ba is a sociologist, an expert in FO support and executive director of IPAR.

► Ibamar Faye is a sociologist and a research assistant specialised in rural land tenure at IPAR.

An innovative approach based on a system involving land tenure specialists and peasant farmer leaders.

The CNCR launched a vast land consultation process in 1998/99 based on an analysis of the land practices and realities experienced in the country's different agroecological regions, and factoring in the various types of land conflicts along with how they were resolved. The outcome of this process, which shed light on peasant farmers' land practices, was discussed and compared with the provisions in the law on national state property. The process and the joint reflections that it generated involved more than 200 rural communes (the basic administrative territorial unit in Senegal) with the organisation of 50 local workshops. The proposals formulated following these reflections were consolidated at five regional workshops. A national workshop examined and validated the diagnostic and the proposals for reform formulated by the peasant farmers. The process was interrupted in 2003 by the development of the agricultural framework law.

Reform proposals that acknowledge peasant farmers' real land rights...

The main proposals selected in 2004 by the CNCR can be organised along five lines: (i) recognising a use right* that can be negotiated on the land market for all current holders of allocation rights; (ii) setting up markets for local or community use rights; (iii) establishing a development tax for access to land developed with public funds; (iv) allowing use rights to be changed into land titles; and (v) establishing a pre-emption right for the rural councils (which bring together local elected officials and the rural community) over land transactions and setting up a land fund to encourage land transfers between family farms in the rural community.

... But have been ignored by the administration. The peasant farmers' proposals have been ignored by the various government land reform initiatives started in 2001. After the government drafted an agricultural framework bill, the CNCR asked that the section on the land tenure regime be stricken from the document to avoid confusion and proposed to split the two processes: the development of an agricultural framework law and the land reform process. Since the balance of power had tipped in favour of peasant organisations on the eve of the 2001 legislative elections, the government agreed to this request. As part of the Agro-Sylvo-Pastoral Framework Law (LOSAP) promulgated in June 2004, it was therefore decided that a new land policy and land law would be defined within two years.

The CNCR then got involved in the work of the 'land reform' thematic group set up under the auspices of the Ministry of Agriculture to formulate the land policy and law. Unconnected to this thematic group, the Presidency of the Republic set up a Commission nationale de réforme du droit de la terre (CNRDT, national land law reform commission) with the aim of proposing land reform within six months. The CNCR met with the chair of the Commission to discuss the document and bring its land reform proposals to the table. It was told that it was a discussion paper. The CNRDT did not involve peasant organisations in its work, which resulted in the 2008 drafting of a document titled: 'Quelques propositions de réforme sur la gestion foncière en milieu rural' (a few reform proposals for rural land management).

For the most part, the CNRDT recommended privatising land and above all setting out, in each rural community, a 'vast zone of intensive investment' for 'large investors'.

Updating peasant farmers' proposals to correct a number of inadequacies and take the new dynamics into account.

A process to update the 2004 proposals by peasant farmers was recently initiated, pursuing two major objectives: (i) to correct the biases arising from the fact that turning use rights into property titles would trigger the commoditisation of the land; and (ii) to take into account the issue of pastoral land and the new dynamics of large-scale land transactions. To conduct the process, the CNCR has received the expertise of the Initiative prospective agricole et rurale (IPAR) and financial support from the Rosa Luxembourg Foundation. It should be noted that this alliance between FOs and experts throughout the process made it possible to train a pool of peasant farmer leaders specialised in land tenure who then ran the consultation directly and today are still reference persons for the peasant movement on land issues.

At the start of the process, a brief on land reform and tenure security for family farms was drafted and discussed with peasant farmer leaders during a national workshop that took place in August 2011. This meeting validated the methodological approach encompassing: (i) the drafting of summary briefs; (ii) discussions with peasant farmer leaders at the national level; (iii) the organisation of zone-based workshops; (iv) discussions on land reform

'The alliance between FOs and experts throughout the process made it possible to train a pool of leaders specialised in land tenure'



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➤ issues with civil society actors; and (v) the formulation of updated proposals shared by several groups of actors, the main principles of which are:

- recognising real land rights for all current holders of use rights*;
- setting up the conditions for a supervised transferability and negotiability of land;
- setting up a cadastre* in rural communities;
- developing laws specifically addressing pastoral land issues; and
- developing natural resource exploitation contracts in the framework of local land charters.

To move these peasant proposals to the policy level, emphasis was placed on the need to actively include actors and organisations involved in advocacy actions. The choice was made to implement several initiatives, notably to:

- develop alliances aiming to promote the peasant farmer vision of

land reform, targeting rural council members, opinion leaders, civil society organisations, the media, heads of the territorial administration and executives in the technical offices;

- spark a debate on land reform stakes at the local and national levels;
- develop advocacy activities targeting parliamentary institutions, religious leaders, elected officials' umbrella organisations, etc.; and
- question the candidates in the 2012 presidential elections on their rural land reform proposals.

Beyond discussing land issues, the process of updating peasant farmers' proposals made it possible to build the capacities of the leaders and organisers in peasant farmer organisations in the area of land issues (legal and institutional framework for land tenure, land security challenges for family farms, the scope and limits of land security

tools being tested in some regions, etc.). This in-depth reflection has been crucial to allowing the peasant farmer movement to fulfil its role as a source of proposals and position itself as an actor able to mobilise public opinion and seize 'windows of opportunity' to ensure that peasant family farmers' concerns are taken into account.

The current context is conducive to ensuring the political promotion of peasant farmer land reform proposals. Indeed, the CNCR belongs to a broad civil society coalition mobilised on land issues with the aim of fighting land grabbing. This platform, called the 'Cadre de réflexion et d'action sur le foncier au Sénégal' (CRAFS, framework for reflection and action on land in Senegal) works to produce changes in land legislation so that the laws ensure land security for Senegalese farmers and herders. ■

On the Way to Establishing Community Land Management in the Senegal River Valley

Mathias Koffi (koffim1@hotmail.com), Claire Galpin (claire.galpin@wanadoo.fr)

IN SENEGAL, the law governing national state property is currently being challenged. Reform is being demanded, but references on which to build a reform are needed. Research and experiences are attempting to fuel the coming debates. One of these is the rural-community support programme in the Senegal River Valley.

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► Claire Galpin is a land surveyor engineer with Land Surveyors Without Borders (GSF).

► Further reading: Galpin, Koffi (2011). 'Les outils techniques du foncier sont des facilitateurs mais pas le moteur de la sécurisation foncière'. *Revue XYZ* n° 128 3rd quarter 2011, Paris (www.geometres-sans-frontieres.org) Koffi, Galpin (2011). 'Quelle place pour les outils dans le processus de sécurisation du foncier rural au Sénégal?' *Nouvel Horizon* n° 781, 1-7 July 2011, Dakar (www.inter-reseaux.org; www.hubrural.org)

An outdated, little enforced law. In West Africa, land tenure is generally characterised by two different regimes: land under state ownership* (usually called public property*) and private property that is either state property* or property belonging to local governments or individuals, subject to registration.

In Senegal, in addition to these two regimes, there is a national estate covering 90% of the country, for which the state does not own the land, but holds and administers it on behalf of the nation. The *Loi sur le domaine national* (LDN, national estate law) of 1964 (Law 64-46 of 17 June 1964, on the national estate) defines it, in Article 1, as 'land not classified as public property*, not registered, and the ownership of which had not been recorded in the mortgage registry on the date of entry into force of the law.' It classifies areas in this estate into four categories based on their purpose: urban, classified, territory and pioneer (this last category has now been folded into the category of territory). Administrative allocation and de-allocation procedures only assign users personal exploitation rights. Since the Law 96-07 of 22 March 1996, these procedures are administered by the Rural Councils; these Rural Councils are bodies elected by universal suffrage in the basic local-government units in Senegal, called 'Rural Communities' (RCs). The legal texts notably stipulate that 'all allocation and de-allocation of land must be notified to the interested parties' and that such decisions must be listed in a land registry*, 'two copies of which are held by the chair of the Rural Council and the sub-prefect.' These provisions aim to make decisions transparent. They are intended to limit fraud and misappropriation, and allow recourse when allocations are contested.

The land registries provided for in the law have never been set up as no application decrees have been issued to determine their format, content

and updating.

Some Rural Communities have registers but they are usually limited to lists of people, and they are difficult to update, with limited possibilities of locating the allocated land. It is also a challenge to archive land records and conserve documents.

Moreover, many studies have shown, unsurprisingly, that in Senegal, as in many African countries, there are two modes of land management:

- traditional management based on customary rules, in which land is sold and rented outside of the procedures set up by the law; and
- so-called 'modern' or statutory management, based on the national corpus of laws and regulations, which is however little or poorly applied.

Therefore, the National Estate Law is currently poorly and little enforced due to a lack of effective tools and having failed to adapt to contemporary evolutions (increasing scarcity of land, population growth, etc.).

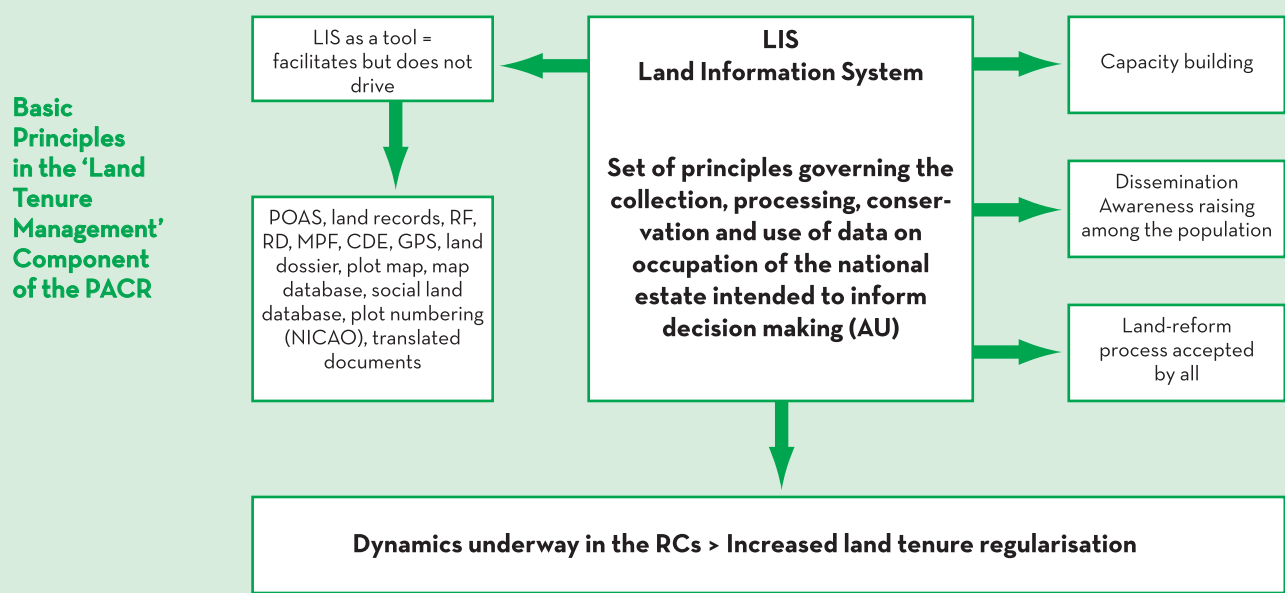
An experimental pilot project. Faced with this observation and the challenges that it raises, the state initiated a wide-reaching project in 2008 with the assistance of the Agence française de développement; the project aimed to provide the Rural Councils with the tools, procedures and know-how that would allow them to manage the land under their responsibility more effectively and more transparently. The project is called *Projet d'appui aux communautés rurales* (PACR, rural community support project) in the Senegal River Valley. The Senegal River Valley is an area with strong agricultural potential that has received massive public investment since the 1970s through the *Société d'aménagement et d'exploitation des terres du delta du fleuve Sénégal et des vallées du fleuve Sénégal et de la Falémé* (SAED, society for development and exploitation of land of the Senegal River Delta and Valley of Senegal and Falémé).

As part of this project, tools of several natures were either strengthened or implemented:

- *The Charte du domaine irrigué* (CDI, irrigated estate charter): The CDI was developed following the chaotic development of private irrigation schemes observed in the late 1990s in the Delta. The rapid degradation of these developments and their disorganised use were what prompted the development of the CDI. The main objectives of the charter are to foster intensive and optimal use of hydro-agricultural developments by preventing the degradation of resources (land and water) and by rationalising the design of irrigation schemes. It sets technical planning standards and defines reciprocal agreements between irrigation users and the state.

- *Plans d'occupation et d'affectation des sols* (POAS, land occupation and use planning): The aim of POAS is to allow local actors to design, drawing on their cultural knowledge, and implement original collective rules governing access to natural resources on local lands. The rules are adapted to the social land situation in the RC, and must help to prevent conflicts over use of agricultural, forest or pastoral areas. POAS is developed based on the division of the RC into zones in which all uses are authorised but prioritised in terms of exploitation and resource management. Local actors are the ones who identify and set agricultural or pastoral priorities. At first, the POAS experiment took place in the RC of Ross Bethio and this has been the subject of many publications. After 15 years of implementation under the impetus of the SAED, many RCs have equipped themselves with this tool. The PACR extended this initiative by equipping all the rural communities in the valley with this tool. However, in its current configuration, and contrary to preconceived ideas, the POAS is





- not a land security tool. Indeed, it does not take into account either traditional or modern land rights, or plots and the demarcation of land boundaries. It secures uses but not those holding the rights.
- *A land information system:* The PACR therefore worked more specifically on a land information system (LIS) designed as a set of principles governing the collection, processing, use and conservation of data on occupation of the national estate, and helping to inform decision making. It is expected to answer the fundamental land questions: *who occupies what land and how* based on social

land surveys; and *where this occupation is located* based on mapping and a plot identification strategy. From the functional standpoint, the LIS is a set of tools allowing a CR to manage rural land more easily and more transparently. It is the basis on which a land registry* is built in each rural community.

- *Land registries:* The PACR land registry* makes it possible to document all stages of land allocation and de-allocation decisions within the RCs. It is designed in the form of a plot logbook allowing management of one plot per page (allocation, de-allocation, modification, etc.). It

was the subject of broad consultation with users and covers the gaps in registries existing up to then. It notably allows precise geographic location of allocated plots (thanks to plot identification by centroid and the provision of satellite images), and the assessment of plot consistency including an ‘exact’ surface area measured with the help of modern tools (navigation GPS). The land registry* can be seen as the first steps towards a rural cadastre*.

The tools will not be enough. The technical tools set up as part of the PACR provide better knowledge of the land in the local government unit and of its occupation. They foster changes in mentality, making it possible to supervise land operations and ensure their transparency. They facilitate land management, but they do not drive land security. The tools can only be effective if there is real political will to set them up and if the land management system takes into account practices in which the people feel at home, to which they adhere, and of which they take ownership.

The PACR has identified local practices that are now ‘outside the law’ (e.g. different types of land transactions such as rentals, sales, etc.) but nevertheless allow sustainable and optimal exploitation of natural resources. As such, they would deserve to be documented, developed and made official by the reform strongly desired by the rural population of Senegal. ■



The Stakes of Implementing the Law Governing Rural Land in Burkina Faso

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THE NEW LAND LAW IN BURKINA FASO offers the hope of securing peasant farmers on their land. Yet for this to happen it needs to be applied, unlike the previous law. Interviews with several actors involved in implementing this reform.

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► Jean-Pierre Jacob is an anthropologist and professor at the Institut des hautes études internationales et du développement (Geneva).

► Sayouba Ouédraogo is a land surveyor and doctoral student at UFR/SH (Ouagadougou).

GDS: How and why did the national rural land security policy emerge in Burkina Faso?¹

KOUDREGMA ZONGO, FROM THE MILLENNIUM CHALLENGE ACCOUNT: Burkina Faso is lucky to have had the *Projet d'appui à l'élaboration des politiques agricoles* (PAEPA, agricultural policy development support project) financed by French development aid, which contained a land security component. This is what made it possible to launch the reflections. We started from an interesting basis: we had the *Groupe de recherche et d'action sur le foncier* (GRAF, land research and action group), which, as a network of national experts on land issues, organised annual reflection sessions and disseminated information. And then the *Comité national de sécurisation foncière en milieu rural* (CNSFMR, national committee on land security in rural areas) was set up, bringing together representatives of seven ministries, associations and project leaders, which initially monitored pilot land security operations underway in a few parts of the country, and [this committee] was then entrusted with steering the *National Rural Land Tenure Security Policy* (PNSFMR), an initiative that was strongly supported by Salif Diallo, the Minister of Agriculture at the time. This policy emerged to overcome the inadequacies in the Agrarian and Land Reorganisation (RAF).

GDS: Why was the RAF never applied?

TANGA GUISSOU, FROM THE MINISTRY OF ANIMAL RESOURCES: The former law (the RAF) sought to place the land issue as part of the more general issue of territorial planning, while the new law only addresses the delivery of rights. The RAF was never applied because Burkina Faso has never had the means to fulfil its ambitions in the area of territorial planning: soil maps and agro-ecological maps would have had to have been drawn up at quite a few levels. Today, planning is done as things come along and without the necessary data. The accomplishments that should have allowed the country to know itself better and that the RAF sought to set up have been written off. Yet without these basic elements, how do you expect to manage land? In terms of rights? Rights are not edible...

GDS: What are the main innovations provided by the new law?

LÉGER KINDA, FROM THE MINISTRY OF JUSTICE: With the former land law (the RAF), judges faced considerable difficulties resolving conflicts. The RAF had placed the accent on urban land but offered nothing for rural land. There was no land management structure. There was no cadastre*. Verbal accounts were the basis on which people's ownership was established. And the arrival of money increasingly brought with it biased testimonies.

Rural land conflicts were therefore problematic. Land holders did not have titles. The administration did not have information and therefore had nothing to go by. When cases were brought to them, judges followed civil procedure: they visited the site, heard testimony, but did not have any legal guidelines and no pre-established information, location sketches were imprecise, and decisions were difficult to enforce. Most of the time, judges did not render their decisions on the central question in the affairs (the question of the various

parties' ownership), but on damages to fields or battery resulting from conflicts over possession of the land.

The new law solves these problems and has therefore been well-received by magistrates. Among the innovations that are appreciated, we can cite: the distribution of national land among the three regimes (belonging to the state, local governments and individuals), land charters, the creation of commune and village structures, communal consultation bodies, the creation of a village body in charge of resolving conflicts, the recognition of people's legitimate rights that gives the right to obtain a land possession affidavit... Instead of the usual institutional and legal pluralism, we now have a mandatory village-level mediation procedure, which aims mainly to maintain social peace, before seizing the Court of First Instance if a resolution is not reached. With the elements set forth in the law and that I mentioned earlier, judges now have enough information to make quality decisions.

GDS: What is challenging about implementing the new law, notably in economic terms?

TONGUIN SAWADOGO, TEACHER AT ENAREF, FORMER REGIONAL TAX DIRECTOR: Prior to Law 034-2009, rural land issues were not very crucial and were resolved in large part according to customary rules. For us, at the General Tax Directorate, our indicator of whether an economic area is crucial or not is the existence of private initiative. If the private sector becomes interested in a specific area, this means that the area is beginning to become economically important. Prior to Law 034-2009, the private sector took no interest in rural land. There was no interest in it. Now, with the law, the need is there. Every year, the Millennium Challenge Account trains cadastre* inspectors. Because there is a need for them. Subdivision in cities is occasional. Not very many

1. The excerpts of the interviews reproduced here come from material collected in the framework of the 'Une action publique éclatée' programme (University of Toulouse, Agence nationale de la recherche) and the Negos-NRM programme (Groupe de recherche et d'échanges technologiques [GRET] – Laboratoire Citoyennetés, European Union) by the authors of the article.

people are needed, so they travel from site to site. With rural land, things are different, there are structural needs. When the World Bank launched the initiative to facilitate investment in Burkina Faso (Doing Business Better in Burkina Faso programme), many people left government service to set up private firms. Agents from the General Tax Directorate therefore quit their jobs to become tax advisors. Thanks to the law and the establishment of institutions in charge of addressing land issues (rural land services, land registry* offices), public and private jobs will be generated around the registration of rights, dispute resolution, and economic and tax operations that are possible thanks to the delivery of titles: surveyors, cadastre* specialists, tax advisors, communication specialists, notaries, bailiffs, banking services, etc.

GDS: *What are currently the main obstacles to implementing the law?*

LÉGER KINDA, FROM THE MINISTRY OF JUSTICE:

One problem that I can see is the fact that the law is immediately applicable but all the tools needed for its application have not yet been designed. For example, to settle a conflict, judges need a non-conciliation report, but the local bodies that could deliver this document are not operational. But judges cannot dismiss the parties. If they do, they disobey Article 4 of the Civil Code, which states that judges are obliged to rule on cases, even when the law is inadequate. Most magistrates are forced to formulate their own strategies to decide on cases: in any event, they need to be able to obtain a non-conciliation report. Failing that, they need to send the parties to mediation. The civil code of procedure allows this. Administratively, there are also problems applying the law since deeds are not delivered because the local structures (rural land services) are not operational.

GDS: *How can it be made certain that farmers will request land possession affidavits?*

TONGUIN SAWADOGO, TEACHER AT ENAREF, FORMER REGIONAL TAX DIRECTOR:

On this subject, the going theory is that 'you do something when you have to do it'. Take the example of a car: if you don't drive it, you don't

need to take it in for the technical inspection, but if you do drive it, you must do so. You cannot undertake any land transactions if you do not have this paper. You are not obliged to pay right away. To get the document, you are reminded of the conditions, that's all. In cities, people do not pay the use tax on their homes. There is no way to pressure them, we don't even need to. We wait for them to need a document to complete a transaction involving their property or any other administrative procedure. Then, we explain the conditions: if they want the paper, they must pay the use tax over X number of years. We will never go tell a landowner in Zorgho or elsewhere that he needs to get his land possession affidavit. We will tell him his rights and simply wait for him to need the document.

GDS: *What has the law changed in regard to recognition of local rights?*

TANGA GUISSOU, FROM THE MINISTRY OF ANIMAL RESOURCES:

The state (through the intermediary of rural land services and state property services) will now give peasant farmers the land their grandfathers gave them. It is the state that now ultimately holds land administration rights because it is the state that has the right to grant rights. And farmers will have to come and pay to have their ownership of the land recognised. Let's hope that this payment will be small; for now, the tax schedule for land possession affidavit delivery fees has not yet been distributed. If 10,000 CFA francs need to be paid to obtain a collective land possession affidavit on tracts of land greater than 100 hectares, it is clear that customary holders will not be able to pay...

GDS: *How does the new law fit in with existing laws, and notably with the RAF?*

KOUDREGMA ZONGO, FROM THE MILLENNIUM CHALLENGE ACCOUNT:

Law 034 is a sector-specific law on rural land. There is sometimes a tendency to present it as superseding the RAF, when it simply completes the RAF in an unexplored sector, providing for application tools that had not been provided for in the RAF.

In recent decades, a number of sector-specific laws emerged in Burkina Faso (on water, pastoralism, forestry

Law 034-2009,

Article 36

WITH THE EXCEPTION of local areas of natural resource under common use, identified and integrated into the area of the relevant commune, the following in particular constitute de facto land possession:

- unanimous recognition by the local population of a person or family having de facto ownership of a piece of rural land, in particular the neighbouring owners and the local customary authorities;
- continuous development, in a public, peaceful and unequivocal way, having been recognised as de facto owner for at least thirty years, of rural land for rural productive purposes.

Loans and leases, recognised or proven, of rural land can never constitute de facto rural land ownership.

and housing) that progressively emptied the RAF of its meaning. The RAF therefore needed to be reviewed so that it served to ensure consistency between the sector-specific laws. But before the PNSFMR and Law 034 were drafted, we did not even know where to start reviewing the RAF. No assessment had been made that took the new laws into account... Now that Law 034 has been passed, it is possible—and urgent—to review the RAF. Here's an example. In the area of local development, the general code of territorial governments speaks of zoning, Law 034 speaks of land charters, and the urban planning code speaks of land occupation plans. If you give all three instruments to a mayor, he'll be lost.

GDS: *Ignorance of the law is no excuse. How is informing citizens organised?*

LÉGER KINDA, FROM THE MINISTRY OF JUSTICE:

Today, the difficult part is that everyone thinks that they can go in the field to explain the law. During a meeting with Ministry of Agriculture staff, I told them I did not agree with how they were explaining the law. For example, the explanation of Article 36. [See sidebar.] The notion of 'de facto owner' causes confusion

► People interviewed: Tanga Guissou, technical inspector at the Ministry of Animal Resources; Léger Kinda, director general of commercial and civil affairs at the Ministry of Justice; Tonguin Sawadogo, teacher at ENAREF, former regional tax director; Koudregma Zongo, land security project lead with the Burkina Faso Millennium Challenge Account (MCA) and former division head at the Ministry of Agriculture.

among non-specialists. In law, it is opposed to 'legal owner.' It is ownership arising from the 'right of clearance'. Neighbours' testimony and the customary authorities are there to attest to it. The first paragraph of the article would have been enough but the second paragraph was added to cover residual cases. If I occupy a plot of land peacefully, unambiguously and uncontested, and if I have consistently behaved as if I owned the land for 30 years, then it is recognised as being mine. But if someone loaned it to me—even 100 years ago—it is still a loan. Some, consciously or not, interpret the article differently and tell peasant farmers that whoever has been on the land for 30 years can become its owner. When the time comes to record the facts al-

lowing the delivery of land possession affidavits, the administration will have to be very careful. It will be forced to look at traditions and customs. It will have to look for the truth. In any case, peasant farmers are intelligent. They will resolve some issues among themselves. The agents only go along and confirm requests. I trust what will come next. I was disappointed in the members of parliament because they did not understand the law at all. This is causing tensions. One MP will use this article to say, 'land owners want to chase you off, but thanks to me they can't...' or, on the contrary, 'we'll get rid of the outsiders, count on me.' Poorly disseminated information can have unwanted effects. ■

The Groupe de recherche et d'action sur le foncier (GRAF) based in Burkina Faso, member of Inter-Réseaux, has produced a study on agribusiness and land tenure that is a must-read!



Clarifications on Burkina Faso's New Land Law

TAKING NOTE OF THE FEW LEGAL TOOLS set up by the Law of 1984 (the RAF: Réorganisation agraire et foncière [agrarian and land tenure re-organisation]) to manage rural land, Burkina Faso undertook to develop a national rural land security policy (the PNSFMR, Politique nationale de sécurisation foncière en milieu rural) starting in 2005. After many regional and national forums, the PNSFMR was adopted in October 2007 and Law 035-2009 governing rural land tenure was adopted in June 2009.

The latter officially ends exclusive state ownership of all land located within the limits of the national estate. It provides for bodies and official documents to recognise local land rights and practices. Each commune will have a Service foncier rural (SFR, rural land service) and each village will have a Commission foncière villageoise (CFV, village land commission) attached to the Comité villageois de

développement (CVD, village development committee). Comités de conciliation (mediation committees) are also provided for and will attempt to resolve conflicts between people before going to court. The main documents recognising and protecting land rights are as follows:

- *Land Charters*: These documents set forth the principles, rules, practices and proscriptions that govern the use of natural resources in a given area. They can be established for a village, group of villages or commune.
- *Land Possession Affidavit* (APF: Attestation de possession foncière): Individual or collective, these affidavits establish the rights legitimately exercised over rural land on the basis of local traditions and customs. They can be enforced against third parties and can be ceded, but cannot serve as bank guarantees.
- *Loan Agreements* govern the nature,

length of time and counterparts for transfers of rights between land holders and third parties.

- They are accompanied by *farm leases* and *rural land development authorisations*.

Given the historical absence of the state in the rural land sector, the Policy and Law are ambitious. They raise considerable implementation challenges.

The Ministries concerned (Finances, Territorial Administration and Decentralisation, and Agriculture) are progressively getting involved. They seem to count, above all, on support from donors. Alongside the PNGT2 and the IFAD and AFD programmes, the Millennium Challenge Account has advanced the most in applying the law. It is working in 17 pilot communes to set up local bodies and deliver official land documents. The operation will soon be extended to 30 more communes.

When FOs Set Up a Land Office: FIFATAM in Madagascar

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IN A DIFFICULT AND CHANGING LAND CONTEXT, FIFATAM has for 10 years offered its members assistance asserting their land rights. This service consists of legal advice, land security support and advocacy, working in mutual understanding with the technical services.

► Ando Ralandison holds a degree in journalism and is head of experience documentation for a project implemented by FERT and FIFATA.

► Elsa Lauga produced various studies for FERT Madagascar from December 2011 to November 2012.

► Set up in 1999, FIFATAM's mission is to support the professionalisation of peasant farmers in the Amoron'i Mania Region (central highlands). In 2010, FIFATAM had 215 member peasant farmers' organisations, or roughly 10,000 households receiving its services. It is part of FIFATA, a national federation of eight regional peasant farmers' organisations.

The land registration* stalemate in Madagascar and the 2005 reform.

Land issues are a crucial stake in Madagascar. Three-fourths of the Malagasy population live in rural areas—roughly 14 million people. Agriculture, on small family farms, is practically the only economic activity for approximately 60% of the workforce. Rapid population growth (3% per year) and the unequal distribution of arable land throughout the country are generating strong pressure on land.

Before 2005, the land allocation system was clearly insufficient. One statistic illustrates this very well: only 400,000 land titles have been delivered in Madagascar over a period of 110 years. To allow Malagasy peasant farmers to become owners of their land more easily, a far-reaching reform was launched in 2005. It initiated the transfer of some land management responsibilities to the communes.

The communes are now authorised to deliver land certificates, documents that fully and permanently guarantee ownership rights. The certification procedure, carried out in the communes through 'guichets fonciers' (one-stop land offices, of which there are 46 in the Amoron'i Mania region), has the advantage of being shorter and less expensive (six months and a cost of €10 per certificate) than land registration* (10 years on average and a cost of €300 per title). Recently still only tempted by land titles*, farmers are now tending to request land certificates, even if some farmers still have doubts about the legal protection they provide.

History of FIFATAM's land service.

FIFATAM's land service activities began when the Federation was set up in 1999 in response to the need of farmers to speed up and monitor the progress of their applications and be able to pay procedure fees outside of harvest periods. In 2003, FIFATAM took the initiative of signing a collaboration contract with de-concentrated

state services at the regional level (Topography and Land Administration). This contract outlines deadlines and procedure fees. It launches a dialog between FIFATAM and the administration, and restores farmers' trust. It guarantees that they know at the start of the procedure how much they will have to pay to obtain a title.

Since 2005, FIFATAM has continued this collaboration with the communes, adapting to the new elements introduced by the land reform.

Awareness raising and legal advice.

FIFATAM conducts awareness raising activities targeting member FOs (on land related laws and procedures), communes (on use of land offices and the usefulness of this service) and farmers (how important it is for them to secure their land rights). At the request of member FOs, FIFATAM technicians run legal advice sessions on topics tailored to the specificities of the intervention zone and the status of the land under consideration. It is then up to the farmers to decide whether they want to entrust their title or land certificate requests to FIFATAM.

The purpose of FIFATAM's legal advice service is to inform farmers of their rights and duties with respect to

the land they occupy. It does not aim to resolve disputes, but does attempt to prevent them. In 2010, 880 people attended these legal advice sessions, which covered topics as diverse as the land registration* procedure, applying for land certificates and transfer of property by death.

Land security support. FIFATAM also provides support services to member farmers in preparing their applications for their land title or land certificate. FIFATAM technicians are present at the various stages (boundary demarcation, acknowledgment, etc.) and the federation then keeps track of how the application is moving ahead with the administration (technical services, commune).

FIFATAM does not provide financial aid to its members, who pay all the direct costs relating to their registration and certification procedures. The federation collects the money from the farmers, pays the technical services and gives proof of payment to the applicants. FIFATAM's general assembly set the cost for the service, which amounts to 10% of the sums paid to the technical services.

To meet the high cost of the registration procedure, farmers use their own funds or take out FIF loans (with FIF

Testimony of an Inhabitant of Fokontany de Malakialina, Ihadilalana Commune, Amoron'i Mania Region

MME RASOANIRINA: 'There are five of us children in our family. When the land office opened in our commune, I tried to convince my brothers and sisters to secure the land we had inherited. But they did not seem ready to do it yet. So I decided to secure my share and asked FIFATAM for advice so that the federation would assist me with the procedures to follow. After several months, I received my land certificate, delivered by FIFATAM's technicians in our commune, in Ihadilalana. I am satisfied because I was able to secure my land. I hope that no one, not even members of my family, will be able to take this land from my children because they have this certificate as proof.'

standing for Frais d'immatriculation foncière or land registration fees) from the microfinance institution CECAM. FIFATAM had helped set up this line of credit. The federation's member farmers were complaining that they could not get loans to finance the registration of their land. FIFATAM relayed this request to CECAM, which responded favourably. The federation helps farmers with the formalities with CECAM but the loan agreements are only between the individual farmers and the microfinance institution. When the loans are disbursed, the farmers give the money directly to FIFATAM to pay the procedure fees. FIFATAM is there with the farmers when the loan instalments are paid out and when loan agreements are signed.

Thanks to its actions, FIFATAM made it possible for 55 titles and land certificates to be obtained in 2009 (16 titles in 2010 and a dozen in 2011), a major feat in the context described above.

Lobbying. FIFATAM is a founding member of the SIF¹ land intervention group, a civil society platform set up in 2003 to facilitate access to land ownership. As part of this platform, the federation helped draft the Lettre de politique foncière (land policy letter) of 3 May 2005, the document

marking the start of the land reform. It then stimulated collective reflections on this subject in the Amoron'i Mania region (by holding a workshop on land tenure in 2008) and also contributed to SIF land surveys.

Within SIF, FIFATAM sits on the land legislation committee in charge of examining the relevance of laws to people's needs in urban and rural areas. The federation has helped revise legal texts and has proposed new texts suited to farmers' needs.

On the local level, FIFATAM also lobbies the Ambositra technical services (Amoron'i Mania region, central highlands). FIFATAM has contacted the Service des Domaines (land administration department) to denounce the difference in fees paid by different people. This intervention led to the development of the above-mentioned collaboration contract.

The FIFATAM federation therefore conducts pro-farmer advocacy in the Amoron'i Mania region. As an interface between farmers and technical services, it facilitates dialog between the two sides. Its 10 years of supporting farmers in their efforts and its tracking of applications allow it to speed up the procedures and position itself as an

1. Sehatra Iombonana ho an'ny Fananantany.

influential actor in Amoron'i Mania. At the national level, FIFATAM conveys farmers' expectations and needs within SIF, which conducts advocacy and lobbying, targeting the Ministry of Territorial Planning and Decentralisation. ■

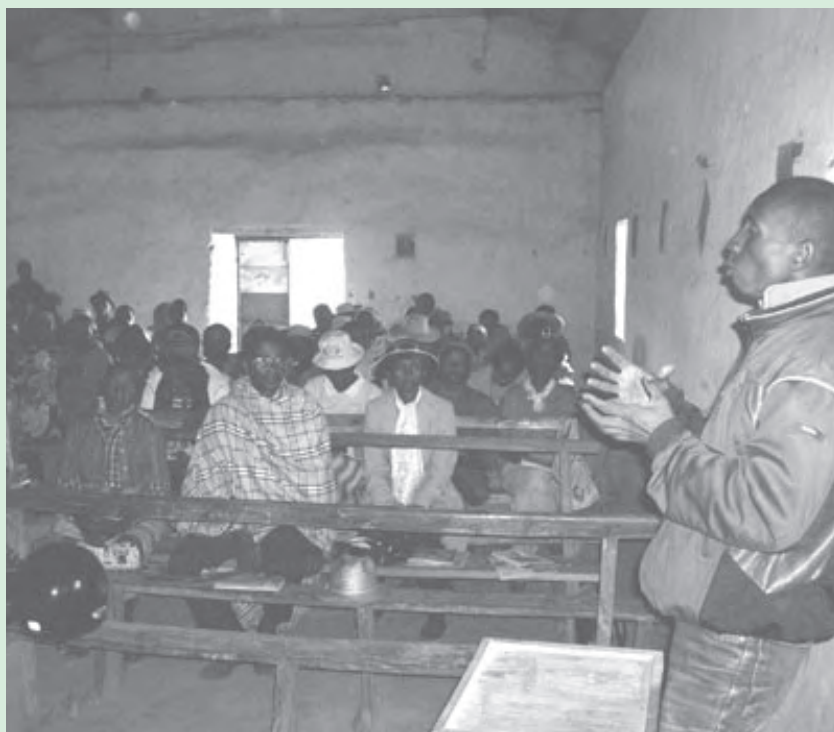
The 2005 Land Reform

THE 2005 LAND REFORM marked a true turning point in land management in Madagascar by eliminating the principle of state ownership* inherited from the colonial period, according to which the land is presumed to belong to the state. Ownership can now be recognised through alternatives to state-granted titles.

More generally, the Lettre de politique foncière (land policy letter), validated by the Government Council on 3 May 2005, sets forth four major strategic lines:

- modernising and restructuring land services: digitising land information, setting up one-stop land offices combining the topographic and land administration offices in each constituency to facilitate administrative procedures for users;
- decentralising land management: some aspects of land management have been delegated to the communes, by setting up one-stop land offices to deliver land certificates;
- overhauling land laws; and
- training in land professions.

According to the Land Observatory (which evaluated the reform in 2011), 440 one-stop land offices are now operational and 71,264 land certificates have been delivered since the start of the reform. The evaluation also revealed that the impact on improvements to public services is still weak and some legal statuses have not yet been clarified (lands titled in the name of former colonists, for example).



Rural Land in a Comprehensive Land Reform: Opportunities and Risks in Benin

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► Claire Simonneau is a doctoral student in development at the University of Montreal. Her research focuses on urban land information challenges and the implementation of the Urban Land Registry in Benin. She has a degree in urban planning from the University of Paris 1 Panthéon-Sorbonne and has worked for the Agence française de développement (AFD) in Benin.

RESPONDING TO the same need to fight land insecurity, experimental reforms have been undertaken simultaneously in the rural and urban areas of Benin since the country's independence.

Since 1960: Stalemate with the registration system and individual land titles*. At its independence in 1960, Benin's legal framework for land ownership was still closely modelled on the colonial system. It officialised the land registration regime and individual land titles* as the only pathway to land ownership. Partially applied in urban centres, registration is nearly inexistent in rural areas. As legal provisions were both poorly suited to real situations (coexistence of collective and individual rights) and the means of households (complexity and cost of the procedure), people (a majority in cities and almost everyone in rural areas) have remained 'outside the law' while following customary rules, undertaking commercial transactions and reaching informal local arrangements. Not regulated by customary institutions, not recognised by the government authorities, these transactions and arrangements increase the risk of land conflicts and bring a high level of insecurity to land transactions.

Alternatives Proposed Simultaneously in Urban and Rural Areas

In urban areas, several tools with very different degrees of effectiveness. In urban areas, the establishment of the *Permis d'Habiter* (occupancy permit) in 1961, which confers a temporary and revocable occupation right to inhabitants of land previously registered to the state, was supposed to allow city dwellers to have formal land tenure. However, the weak coverage in urban outskirts, the many irregularities marring its delivery procedure, its use by local governments on land not registered to the state, and the growth of a market for occupation

LAND DYNAMICS IN URBAN AREAS are unlike those in rural areas. The two sectors are often administered differently. Trying to address rural, urban and peri-urban land in a single, uniform framework can raise problems, especially regarding the nature of the recognised rights.

permits all lessened its impact on land security. In the 1990s, several studies funded by international development aid showed the magnitude and costs of this insecurity and fuelled reflection on urban land reform, but proposals were never put into concrete application.

Simultaneously, new tools were set up for communes, destined to improve urban management. The *Registre foncier urbain* (RFU, urban land registry), for example, contributes to a pragmatic management of the urban land issue by taking an inventory of land occupation and presumed owners for tax purposes. Registration in the RFU and regular payment of property taxes can also help prove land ownership. In 2010, the government launched an accelerated and simplified process through which to transform occupancy permits into land titles; in reality, only a small number of such requests has been processed.

In rural areas, a major innovation: the Plan foncier rural. In rural areas, a major innovation emerged in the early 1990s: the *Plan foncier rural* (PFR, rural land planning), a process to identify and map individual and collective local land rights. At the request of villages, social land surveys of the rights held and plot boundary identification are used to establish a plot map of village land and a list of rights holders. With the 2007 law governing rural land, holders of plots identified in PFR can receive land certificates, a new legal status that attests to their individual or collective rights. Rural land planning is the communes' responsibility, and land information is managed by villages and communes. Very innovative, the PFR approach makes it possible to give legal recognition to local rights that have customary references and sets up a specific system for those who cannot, or do not want to register their land.

Until 2006, there were therefore two parallel processes—one for urban land

and one for rural land—that offered alternatives to the registration system.

In 2006, an attempted comprehensive reform based on the generalisation of individual land titles*. With its Land Access project, the American Millennium Challenge Account (MCA) Benin programme both extended and upended these two processes starting in 2006.

To facilitate private investment by formalising property rights and the development of a land market, the project promoted a unification of land tenure systems. It pushed for a comprehensive reform, covering rural and urban areas, and targeted the simplification of registration procedures and the generalisation of individual land titles*. This reform project was accompanied by assistance with the massive transformation of occupancy permits into land titles in urban areas and the establishment of 300 PFR documents in rural areas. The PFR system was taken up by the MCA project, but its objectives were adjusted in comparison to the initial experiments: the delivery of a certificate is seen as merely one step on the road to registration and not as a goal in its own right offering a pragmatic response to the land security needs of most rural people.

The ministerial restructuring in 2006 made the ministry in charge of urban planning responsible for land reform, which resulted in a marginalisation of rural land accomplishments. The 2011 *Déclaration de politique foncière et domaniale* (declaration of national land and state-ownership policy) confirmed this orientation. PFR documents are cited as a tool to clarify land rights and not as a tool to guarantee these rights, implicitly recognising the supremacy of land titles in this area.

Two opposing concepts of land rights and land right administration. All Beninese actors agree on the need



for land reform to secure rights and formalise extra-legal situations, but the means for the reform are widely debated, as are the types of rights it would address.

The 2007 law governing rural land had recognised local land rights in their diversity, whether they were individual or collective (family land inheritance).¹ The approach underpinning the establishment of the PFR was decentralised to communes and villages, bringing land administration procedures closer to the population. Finally, the allocation of land certificates would make it possible to formalise existing local rights according to the local consensus on those rights, and would also be a low-cost response to the needs of most rural people.

On the contrary, the reform project conducted by the ministry in charge of urban planning reaffirms that registration and individual land titles* backed by the state are the only guarantees of tenure security. At the same time, the procedure is being re-centralised because the establishment of a land certificate is seen as a step towards a land title*, which involves the central administration and its future de-concentrated bodies.

There are therefore two opposing concepts of land rights and land right administration. The political stakes are high: the aim is to clear the way to make progress on an important

issue and implement a fundamental and strongly desired reform. The social stakes are vital: the situation of nearly all of the rural population depends on it. If confirmed, choosing registration (if it materialises) implies a massive transformation in land tenure systems and comes with the risk of excluding a large share of the population. Even more than with PFR, long-settled migrants are at risk of having their rights challenged; family lands, managed by the head of the family for the benefit of all, will become the private property of the head of the family, weakening the position of women, young people and, in the case of extended family groups, the younger branches of the family. The development of the land market could lead to high land concentration. Yet none of this offers any guarantees in terms of improved production.

Finally, management of land tenure information is itself uncertain. The current land administration has a reputation for inefficiency and corruption. The institution of a land agency and its de-concentration to communes will require considerable resources and take time. Even if it is done, the elimination of the village level in land administration makes registering sales and inheritances more complex with the risk that registers may not be updated, which is a frequent cause of failure in cadastral approaches.

The risks of standardisation around land titles* alone. It is certainly useful to harmonise legislation across urban and rural areas. This makes it possible

to clarify procedures, in particular at the edges where urban and rural lands meet, and avoid legal grey zones and land conflicts that are often resolved to the detriment of farmers and farming. The question is however really one of knowing what basis should be used for this harmonisation, around what concept of land rights. Does harmonisation mean better coordination among diverse legal statuses corresponding to the reality of situations? Or the standardisation of land titles* only?

By choosing to recognise the various individual and collective local rights, land security can be achieved through local social consensus, confirmed by the delivery of a legal document at the scale of a commune. The state recognises the diversity of ways that land tenure is organised in its territory and responds to the population's choices. By choosing registration and land titles* as the only guarantee of security, we enter, on the contrary, into a system of central land tenure information based on individual private property alone. Yet most rural lands are currently family-held assets. At a time when more and more research is showing that privatising land rights does not have any automatic impact on agricultural development, is the social cost of such transformations in land relations really being measured? When there are more non-updated cadastres* than operational ones, are the practical conditions for such a policy to be successful being seriously assessed? There are grounds for doubt. ■

1. In practice, PFR ignores rights to natural resources, in particular those of herders, and ignores the commons—a considerable limitation.

What Are the Outlooks for Land Issues in West Africa? Reader's Note

Aurore Mansion (mansion@gret.org)

SOME CONTEMPORARY POLICIES offer real alternatives to ensure land security for the majority of people. But will that be true tomorrow? In their report 'La situation foncière en Afrique à l'horizon 2050' (the land tenure situation in Africa in 2050), Alain Durand Lasserre and Étienne Le Roy offer several points of reference for the coming decades.

► This summary was written by Aurore Mansion, anthropologist by training, currently project manager for GRET on land policy. Aurore Mansion notably runs the secretariat for the French Technical Committee on Land and Development (www.foncier-developpement.org).

► Alain Durand Lasserre is a geographer and economist by training. Étienne Le Roy is an anthropologist by training. These two authors work as support to many land policies (Senegal, Benin, etc.). They are also members of the Technical Committee on Land and Development.

Benchmarks for anticipation and action.

The initiatives documented in this issue of *Grain de sel* show that significant progress is being made in many West African countries, but the road to attaining real land security for the people who earn a living from the land and its resources is still long and full of pitfalls. How will the processes underway evolve over the long term? Will rural populations in their diversity (farmers, breeders, pastoralists, etc.) always face as many difficulties to live peacefully on their land in the coming decades? It is simply impossible to provide an exact image of what the land policies currently at work will become in the long term. It is, however, possible and useful to identify factors of change that will influence land dynamics and produce scenarios that can serve as benchmarks to guide the reforms at work. This was the undertaking initiated by Alain Durand Lasserre and Étienne Le Roy, at the request and with the support of the Agence française de développement and the African Development Bank, published under the title 'La situation foncière en Afrique à l'horizon 2050'.¹

Five major factors that will influence land issues in the coming decades.

The authors of this report examine land issues from three standpoints:

- Land tenure systems: A land tenure system is a set of rules that govern access to land and use of land. In West Africa, they are often made up of several formal and informal regimes (civil law, Common Law, Islamic law, local practices).
- Land governance and administration: These cover the rules, instruments (legal and technical) and institutions (the state, local governments, custom-

ary authorities) that administer land tenure in a given country.

- Land markets: These encompass all transactions (sale, rental, etc.) involving land and its resources, whether recorded or not.

The authors identify five major factors that could in the long term bring about changes to these three key areas:

- the global economic situation and investment policies, notably agricultural investments;
- the state of the environment at the local, national and international levels: dwindling water resources, climate change, land degradation, etc.;
- social cohesion and the overall governance framework of the country;
- demographics, population, agricultural development, jobs and income;
- and finally, urbanisation levels.

Each of these factors acts upon the systems, governance and land markets in a different way. Some evolve slowly (society's ideas, agroecological spheres). Others evolve in somewhat unpredictable ways (the macroeconomic context, climate change). States alone have only little or marginal influence over exogenous factors that are all the more weighty in landlocked, sparsely populated countries with little in the way of infrastructure and natural resources, and that are heavily dependent on other countries to ensure their food security.

Evolution assumptions and possible scenarios.

Depending on the trends that these different factors will follow and on the policy decisions that will be made at the national, regional and international levels, different scenarios as to how land dynamics will evolve are possible. The authors have identified four such scenarios.

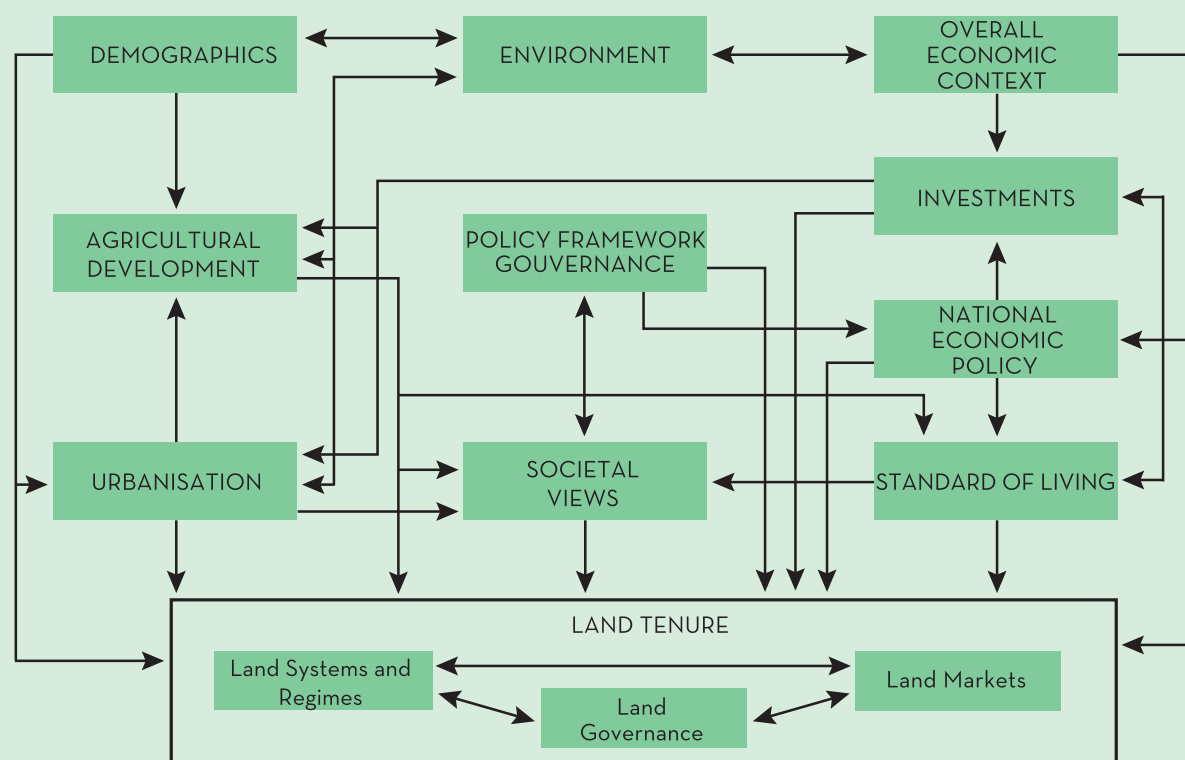
Long-term continuation of the trends seen over the past three decades: The

trends influencing land issues remain the same. Demographic changes are similar to those underway in countries today. Agricultural investments continue at the same pace. The countries maintain a degree of political stability. This scenario assumes state intervention, notably to improve the overall policy framework. The impact on land will not be the same everywhere and will depend on societal choices (private or collective ownership). Populations will need to migrate to cover their food needs, notably in landlocked countries that have little farmland and high birth rates. These population movements could have negative impacts on regional balances if they are not well-anticipated.

Improvement in access to land and natural resources: Overall environmental factors remain exactly the same. The demographic transition is more rapid than expected. Regional economic and political integration (ECOWAS, WAEMU) makes it possible to improve access to investment and markets. Improved land governance ensures better regulation of land markets and limits the magnitude of land related conflicts. Urbanisation is controlled. This 'catch-up' scenario is not impossible, but it assumes deep-reaching political and social changes (improved economic growth and land governance, controlling birth rates, etc.).

Greater imbalances and loss of control over land tenure: This scenario would result from the steady deterioration of environmental conditions, those of access to water in particular. The international context deteriorates (conflicts, economic crisis) with consequences on investments, jobs, income, migration, development of farmland, etc. Lack of land market regulation and failure of land policies bring about rising inequalities in access to land, a greater number of land conflicts, social instability and uncontrolled urbanisa-

1. Complete report (in French) available for download from the following address: <http://www.afd.fr/home/recherche/actualites-publications-rch?actuCtnId=75992>



The Interactions Between the Various Factors and their Impacts on Land Dynamics

tion that generates the rapid sprawl of cities to the detriment of agropastoral areas. This scenario is characterised by a loss of state control. Nearly half of African states are already facing this situation. To avoid it, far-reaching political and economic measures must be taken at the national, regional and international levels.

The emergence of new forms of land governance based on legal pluralism: In this scenario, rights to common goods and bottom-up regulation systems are recognised. Land governance continues to favour the market and economic stakes, but rights in all their diversity are formalised. Informal trading is still possible, but not encouraged. States and local governments play an effective regulatory role. In urban areas, emphasis is placed on progressive forms of achieving land ownership. Family farming is encouraged and modernised while preserving its advantages (relatively labour-intensive). This scenario assumes the

establishment of specific mechanisms to finance agriculture over the long term and requires inventiveness and pragmatism.

Strong trends, but the field remains open. Alongside these typical scenarios, several intermediary situations are of course possible, as shown by the processes currently underway in various countries. There are many paths. Countries will advance in terms of their histories and their vision of the society they want to build for future generations. They will need to deal with three heavy trends currently characterising land dynamics:

- *Land tenure systems are tending to become individual and privatised.* Land is increasingly concentrated in the hands of a minority. The resulting land rent is distributed to the detriment of the most vulnerable populations, particularly family farmers.
- *The state's hold over the land is weakening.* Land management responsi-

bilities are shared with other actors (local governments, customary authorities, civil society, farmers' organisations, etc.).

- *All methods of accessing land and its resources are progressively entering a market economy,* even if in some cases they are still governed by social relationships. Land prices are rising everywhere. There is currently little to no reflection among decision makers on the future impacts of the growth of markets and the means to supervise them.

This report, like this issue of *Grain de sel*, identifies the opportunities and risks involved in these trends and provides a few points of reference for land policy actors when making their choices. It is up to development aid actors to support the construction of true democratic debates that do not exclude any segments of society so that these choices are finally possible and guaranteed to last. ■

Inter-Réseaux in Brief

INTER-RÉSEAUX Développement rural was founded in 1996 with support from the French government by a group of individuals committed to rural development. Its aims are to:

- enable stakeholders in the South to participate in the construction of national and sub-regional agricultural policies, with access to information and a network for exchange and discussion of rural development issues;
- coordinate and strengthen a network for discussion, sharing and debate for the stakeholders in rural and agricultural development in French-speaking countries to share thinking and experience; and
- provide support to stakeholders in developing countries (mainly in French-speaking Africa) as they work to promote family farming in the context of globalisation.

Our Convictions: Inter-Réseaux is convinced that by learning, comparing and freely discussing many different kinds of experiences, by bringing together people of different professional and geographic backgrounds working in a variety of fields who share a commitment to rural development in the South, all stakeholders can improve their professional practices to address complex national and international issues. By constituting a network, sharing thoughts and circulating information widely, we can build and propose development policies and practices that take into account the interests of those most directly affected.

Our Strengths: Inter-Réseaux has more than 6,000 members drawn from farmers' organisations, NGOs and the civil services, in the North and in the South. Inter-Réseaux activities are supported by the dynamic involvement of its members.

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We welcome contributions of all types and formats, as long as we can make use of them in a variety of ways: 1- or 2-page articles, sidebars, Web content, etc. You can also suggest topics to be covered in greater detail, by email, postal mail, text message or telephone at +33 (0)6 20 79 21 38.

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recent issues:

- N°54-56: Les céréales au cœur de la souveraineté alimentaire en Afrique de l'Ouest ;
- N°52-53: Les semences : intrant stratégique pour les agriculteurs ;
- N°51: Nigeria: A Look at the Agricultural Giant of West Africa (available in both French and English).

We are preparing the next issue

Its main theme is:

- N°58: Valorisation des produits locaux.

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