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MAKING LAND RIGHTS MORE SECURE
International workshop for
researchers and policy makers
Ouagadougou, March 19 to 21, 2002

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Coordinated by Ph. Lavigne-Delville (Gret), H. Ouedraogo (Graf) and C. Toulmin (IIED) with the collaboration of P.Y. Le Meur (Gret).

For rural people security of rights over land and natural resources is important not only economically but also for social peace and well-being.

During the 1990s, our understanding of land tenure in Africa increased and we have tried to use lessons from the field to reduce the gap between law and practice, increase tenure security and resolve conflicts over land. Using different approaches, many West African countries are reforming the legislation that governs their land and natural resources. The time is, therefore, ripe for a broader debate of these lessons and results.

For three days some eighty participants – policy-makers, elected representatives, officials from farmer organisations and researchers met in Ouagadougou to discuss recent research findings and project outcomes in the land rights field, to debate the question of how to make land rights more secure and to refine approaches for achieving this. Bringing together the background papers and discussions from the seminar, this publication is useful to those interested in the land tenure field as it provides an overview of current challenges and achievements.

This document is also available in French.

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INTRODUCTION

Tenure and how to provide security for rural communities

In West Africa, the gap between what the law says and how land rights are managed in practice is still a major feature of the tenure issue. In general, governments pay little or no heed to the local rules governing land tenure practices. The vast majority of rural people lack access to legal procedures, which are too cumbersome and costly or fundamentally inappropriate. As a consequence their land rights are insecure in legal terms and sometimes in real terms, leading to conflict and loss of land.

In addition to this legal pluralism, there are many different stakeholders (customary, State, political, etc.) involved in allocating, acknowledging and arbitrating in respect of land rights, who act in an ill co-ordinated and often contradictory manner on the basis of different rules. Against a background of growing competition for land and resources, this can lead to rising conflict, as each party appeals to the rule or authorities favouring their cause. In the absence of a clear, shared understanding of the rules that are supposed to apply, land tenure in many areas has become uncertain, encouraging opportunistic behaviour and power struggles. Consequently, questions of governance lie at the heart of the tenure issue: How are rules made? Which rules are both socially legitimate and legal? Which authorities should enforce them?

Regardless of changes in tenure policy and whatever governments' longer-term intentions may be, different systems of rules and power over land will continue to exist for the foreseeable future. Consequently, it would be best to think of ways to combine State and customary or local systems in an appropriate manner. Whether seen as a panacea or a last resort, local management of land tenure is key to finding a realistic solution.

Even where governments aim eventually to transform local rights and procedures to conform with statutory law, it would seem necessary to start by acknowledging the relevance and force of such local systems. Governments should thus "make the first move", by recognizing what exists and suggesting ways of making land rights more secure that come closer to local practices and meet needs. This can be done either by applying the principle of subsidiarity within the framework of State ownership, or by rejecting the principle of State ownership. Recent legislation has made partial but nonetheless genuine progress in this regard. Administrative decentralization and the establishment of elected local councils can provide an opportunity for redefining legal arrangements and bringing about local management, although legislation on resources and tenure is currently completely dissociated from laws on decentralization.

Local land use management arrangements are a key issue, since all stakeholders are affected by decisions regarding land and natural resources. Mechanisms and procedures, of a more or less informal nature and enjoying greater or lesser degrees of stability, do exist to regulate tenure at local level, such as the village. The local administration sometimes of ratifies certain arrangements, as a pragmatic means of dealing with a problem, even if not legal in the strict sense. In a situation where the law has no answer for the specific problems faced by many local people, it would seem appropriate to support and strengthen this type of realistic solution.

The last ten years have seen a resurgence of interest by government and donors in managing access to land and natural resources in West Africa. The principle of local management is almost universally agreed, although methods of implementation are open to debate. Some field level projects have tried to implement procedures to recognize local rights. Legislative reforms are changing the legal framework. In parallel, recent research into land tenure has provided greater understanding of tenure dynamics and subjected a number of programmes and interventions to critical analysis.

On the basis of the progress achieved, approaches to the tenure issue are beginning to emerge that better reflect the situation actually faced by people in rural areas, with governments putting forward procedures that can help rural people place their land rights and arrangements on a more secure footing.

Reporting back and exchanging views at an international seminar

However, despite a growing body of publications, recent findings by researchers and consultants are still largely unknown to those directly involved in land use management. At the same time, neighbouring countries rarely share their experience in local matters. As West Africa moves towards regional integration, information exchange and sharing of experience between French- and English-speaking countries could be extremely fruitful.

The *West African LandNet, GRAF* (Burkina Faso), *GRET* and *IIED* jointly organised an international seminar in Ouagadougou, on 19th, 20th and 21st March 2002, so that researchers and policy-makers dealing with land tenure in West Africa could get together to report and discuss the main findings of recent work undertaken on this issue, as well as to share experience. The seminar focused in particular on the programme of research and land policy carried out under the aegis of the steering committee on rural land and renewable resources and development, financed by the *French Ministry of Foreign Affairs*, in the framework of the Franco-British Land Initiative, with financial support from the *UK Department for International Development*.

The seminar brought together some eighty participants - policy-makers, elected representatives, officials from farmer organisations and researchers from French- and English-speaking Africa. It offered the opportunity to report back to a broad range of stakeholders on recent findings of studies and interventions in the land rights field, allowing for open, fruitful debates between decision-makers, practitioners and researchers. This kind of meeting helps to build a common basis for understanding how land rights are evolving and provides a means to enrich the ongoing debate within the various countries involved.

> The recently created *West African LandNet* is a branch of an evolving continental network. Its aim is to support public debate about tenure policy options, by facilitating meetings between researchers, practitioners, decision-makers, NGOs and civil society representatives in Africa.
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> Le *Groupe de Recherche et d'Action sur le Foncier* (GRAF) is a Burkinabé organisation that unites leading researchers and consultants working on the issue of land rights issues.
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> Le *Groupe de Recherche et d'Echanges Technologiques* (GRET) is a French NGO working at the interface between research and development. Over the last six years, it has organised or co-ordinated a number of workshops on making land rights more secure, land transactions and the management of natural resources.
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> *IIED* is an international NGO based in London, whose aim is to promote more equitable, sustainable development, especially in developing countries. Its Drylands Programme has 15 years of experience in supporting research, training and communication activities in Africa in the fields of natural resource management, rural land tenure, decentralization and participatory approaches.

Organisation of the seminar

The seminar was built around two kinds of workshops: the first gave feedback on recent work, while the second was geared towards future prospects and issues of implementation. The first day provided a general presentation summarizing the tenure situation and referring to current issues and debates (acknowledgement of local rights, local management, decentralization, etc.), followed by a session devoted to trends in current tenure policies (summary table; insights into current experiences; changing position of international institutions, etc.).

Subsequent workshops began with a introductory paper taking stock of experience and ongoing debates. A major plenary session focused on how to encourage public debate at national level on these issues the problems mirrored. Following general discussion of the conclusions, the seminar finished with a round table session assessing the value of such seminars.

Funding

The seminar was financed by the French, Danish and Swedish Ministries of Foreign Affairs, with additional contributions from CTA (the Netherlands) and DFID (UK).

LAND TENURE DYNAMICS AND GOVERNMENT INTERVENTION

Land tenure policy in West Africa: current issues, debate and innovation

Ph.Lavigne Delville, H.Ouedraogo, C.Toulmin[1]

I. INTRODUCTION

Long regarded as a secondary issue, the question of rural land tenure returned to prominence in the 1980s. The emphasis was initially on privatisation of land by the State, as part of a programme of structural adjustment and wholesale liberalisation of the economy. However, this approach was soon modified to make some allowance for local land tenure practices, in acknowledgement of their effectiveness. The privatisation route, thought to be the key to promoting economic development, gave way to more diversified approaches based on the idea of *land tenure security*, and individual private ownership has come to be seen as just one of many possible ways of making land rights more secure. Recognising the diversity of local circumstances and the limitations of centralised management, governments and donor agencies are now promoting more local forms of land and natural resource management. Legislation and interventions in the field have followed this direction more or less. At the same time, debate regarding decentralisation, and the introduction of elected local government bodies, has also tended to focus attention on the local level and the institutions best able to take charge of local management.

Over the last decade, a great deal of research has been carried out, giving us a more sophisticated and accurate understanding of land tenure dynamics and changes in ways of accessing land. Interventions in the field, with all their achievements and limitations, have also helped us understand how best to make land rights more secure for rural producers. As a result, we have acquired a set of methods, procedures and tools for meeting their expectations of greater security, encouraging the peaceful and efficient use of land, and reducing insecurity over land tenure and the conflicts to which it gives rise.

The outcome of this work is not yet another blue-print solution which needs only to be reproduced throughout the sub-region. Such solutions do not exist and, even if they did, would come unstuck in not taking due account of particular national circumstances and historical differences. What does emerge is a way of understanding the problems which approximates fairly closely to the realities and issues as experienced by local people, and a range of answers which may provide concrete solutions to the problems they are facing and, at the same time, foster the rule of law. From these answers – as yet incomplete and subject to development and experimentation – the different countries can draw what best corresponds to their history and circumstances, or they can use them as a starting pooint for developing solutions of their own.

The purpose of this international workshop is to set out and debate the things we have learned from recent experience, and to share their content and relevance, as well as their limitations. The ideal method of land tenure management for the 21st century has not yet been discovered, but it is rather being pieced together from the various experiments currently conducted in the sub-region.

The various working groups comprising this workshop will be an opportunity to debate matters at length. But first, we would like to try and put this issue of making land rights more secure in perspective. We will therefore begin

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by presenting a brief analysis of the issues raised by land-tenure policy in Africa, as they emerge from recent research[2]; we will go on to examine recent interventions; and then consider the current debate.

II. THE PRIVATISATION POLICIES OF THE 1980S AND HOW THEY CAME TO BE CHALLENGED

1. The legacy of colonisation: a plurality of legal systems

Since its colonisation, rural Africa has had to live with conflicting legal systems. The existing land-tenure systems were themselves hybrids, the result of a long history of population movement, conquest and religious conversion. On these were superimposed national legislation introduced by the colonising power based on different principles and serving the interests of the newcomers. For various reasons (the limit to land registration in the francophone sphere of influence, policy of indirect administration in the anglophone area), the colonial power was obliged to compromise with the existing land tenure systems, which it was unwilling or unable to transform in a radical way, seeking rather to control or work with local chiefs. Rural Africa has therefore had to live with the political and social consequences of the de facto or de jure co-existence of different legal systems governing land tenure.

Since independence, African governments have not introduced radical changes in land tenure legislation, except to centralise control. This was seen as necessary to support by the role of the State in promoting economic development with, at the time, the support of the international institutions. Several arguments were advanced in favour of government initiatives in taking possession of land and redistributing it in this way:

- to promote economic development, it was necessary to make land an economic factor of production. This meant prising it free from the web of social relations and "traditional" values and making it available to those best able to use it;

- the State needed to be able to mobilise land for development projects (such as irrigation schemes), building infrastructure and enlarging towns;

- the State thought it should protect local populations from the effects of land speculation; therefore transactions needed to be controlled by administrative authorities.

Whatever the merits of these arguments, State control of land provided the opportunity for the political and administrative class to get its hands on an important resource, enabling its members to negotiate and strengthen political alliances by making grants of land or handing out permits to exploit forest resources. Control of land therefore figured prominently in the strategy of governmental elites. It was also a tool used by governments to break the power of customary chiefs, by divesting them of their prerogatives in land management and conflict resolution and entrusting these powers to more docile local administrative bodies.

Since the 1980s, state control of land has been increasingly opposed, both by international institutions, which advocate a limited role for the State in economic matters, and by NGOs and researchers, who decry the impact of public intervention on poor farmers and pastoralists. Far from preventing speculation, State intervention has often caused a great deal of insecurity, and led to a "land grab". Instances of land expropriation in the public interest have sometimes resulted in serious injustices, with rights-holders losing access to vital resources, without compensation, sometimes to the benefit of other social groups or urban elites. The theory that public intervention makes it possible to re-allocate land for more productive uses has not always proved to be the case: state-owned irrigation projects have often continued to be dependent on subsidies, while large-scale farming enterprises are not always the most productive.[3]

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[2] In particular, comparative work carried out as part of the Action Plan for land tenure and the Franco-British initiative in this field. Cf. Lavigne Delville dir. 1998 ; Lavigne Delville 1998a ; IIED, 1998 ; Rochegude, 2000 ; Toulmin and Quan eds., 2000 ; Lavigne Delville, Toulmin and Traore dir., 2000 ; Lavigne Delville et al, 2001. This text reproduces extracts form the introductory article by Lavigne Delville, Toulmin and Traore dir., 2000.

[3] Cf. Cheneau-Loquay, 1998, for an extreme case in Guinea Bissau.

2. The privatisation policies of the 1980s

During the 1980s, the issue of land tenure therefore came to figure prominently in the debate on development in West Africa. As a key aspect of their Structural Adjustment Plans, the international institutions advocated the privatisation of land as a way of achieving intensification and economic lift-off. Governments and populations were concerned at an apparent[4] rapid increase in conflicts over land rights, ascribed to growing demographic pressure, migration, the opening of agriculture to market forces and competition for vital space.

Though recognised and analysed since the colonial era, and despite changes in the legal texts, the gulf between national legislation and local land tenure systems was still enormous. In the francophone countries, the relevant legislation generally stipulated that the "domaine national", consisting of all land which was "vacant and without an owner" (i.e. unregistered land), belonged to the State until such time as it was duly registered. The result was the coexistence of local – or "customary" – rights, more tolerated than recognised, and national land-tenure codes, which were rarely applied and often virtually inapplicable. Moreover, the failure of the land-grant regime – created to give white settlers legal security – to meet the needs and expectations of rural people, cover the whole of the territory, and ensure a smooth transition from "traditional" regimes to "modern"-law practices, had been evident since the 1920s. In English-speaking countries, the touchstone was the Common Law, which makes more allowance for local circumstances. Heads of State have often asserted control of land by taking on the role of "trustees"of the land for the nation. Reproducing the colonial and post-colonial regimes, the State's hold over land tenure was increasingly recognised as a fundamental problem, partly because it led to "politicised" management of land, partly because the co-existence of "customary" and national legal systems resulted in a large degree of uncertainly as to which law should be applied.

As the international institutions saw it, the way to solve the problem of this duality was to privatise land, making individual private ownership the general rule. It was also thought that this would clarify rights and make them more secure, facilitate access to credit, and stimulate investment in agriculture. Thus, the reforms of the 1980s introduced the notion of private ownership, which had generally been absent from colonial and post-colonial legislation – except in the guise of registration of land rights, which continued to be the point of reference. But the reticence of local communities, worried by the social consequences of this idea, was matched by central government reluctance in the face of the political issues and the practical problems it raised. Consequently, except in Guinea Bissau (Cheneau-Loquay, 1998) and Mauritania (Crousse, 1991b), State-guaranteed private land titles have remained a marginal phenomenon.

3. Should land be converted to private titles, or land rights be made more secure?

In recent years, many observers have pointed out the dynamism of local land-tenure systems. Far from being hide-bound, or placing restraints on agricultural intensification (Migot-Adholla et al, 1991), they showed themselves to be flexible, dynamic and open to change. Consequently, many people believe that, rather than trying to replace local land-tenure systems with a "modern" system of registration and title of ownership, it would be better to recognise local rights and hand back control of land to local communities

Since the early 1990s we have seen a definite shift away from an emphasis on ownership, resulting partly from government hesitation to implement privatisation policies, partly from a revolution in thinking which called into question the "standard" theory of property rights (Platteau, 1996). Social and anthropological analyses have demonstrated the dynamism of land-tenure systems and pointed to the question of land-tenure regulation and pluralism of standards as the crucial issue. These analyses have been supported by a series of economic studies which question the supposed link between title of ownership, land-tenure security and intensification (Bruce and Migot-Adholla, 1994). The studies show that, as far as farmers are concerned, the main purpose of seeking title was generally to protect themselves from the State; in terms of investment, there was hardly any difference between plots over which farmers enjoyed title and those held in accordance with transmissible customary rights; and finally own-

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[4] Some historical studies show that conflicts – even bloody conflicts – between arable and livestock farmers are not in fact a new phenomenon. Their frequency has undoubtedly increased, but they do not automatically result from greater competition. They also result from the State's diminished ability to intervene rapidly (Raynaut, 1997), from increasing politicisation of the issues, etc.

ership was not in itself any guarantee of securing credit from banks. Applications for title were more commonly made by townspeople with holdings of land but, even in such cases, some preferred not to break off social relations with those who had granted them the land, and so did not apply (Faure, 1995), or were content to initiate the procedure and mark the boundaries of their plots, without carrying it through to completion.

From this point, there was a shift in the debate "*from a paradigm of replacement to a paradigm of adaptation*" (Bruce, 1992) based on the recognition of existing rights, and towards the issue of making land rights secure, i.e. the process whereby rights (of whatever origin) are validated and guaranteed (Le Roy, 1996).

This shift found expression in a new generation of land-tenure reforms, which marked a break with the approach aimed at the rapid generalisation of private ownership "from above" via registration (Comby, 1998). The aim of recent reforms has been to give legal standing to existing, locally recognised rights, breaking with their de facto negation in the legal texts, and to enable rural dwellers to escape the structural legal insecurity in which they had been kept for decades. We shall return later to the principal approaches adopted and the results they have since yielded.

4. Participatory or decentralised management of natural resources?

A similar debate has been going on regarding natural resources – those taken from the ecosystem, rather than produced: woody and non-woody materials, fish, pastoral resources, etc. Often neglected because attention is focused primarily on agricultural production, these resources nevertheless play an important role in the local economy, and particularly in the lives of certain social groups, such as women, herders, etc.

The confrontation between local people and central government approaches has been particularly marked in this sector. The principle of mobility, vital to pastoralism or certain fishing activities, or the overlapping of different methods of use and types of rights in one and the same area, are concepts not easily grasped by government technicians. Woodland resources are perceived through the prism of the professional outlook of forestry personnel, for whom the sole purpose of a forest is to produce wood, and therefore needs to be protected from rural dwellers (Bergeret, 1995). Wanting to impose supposedly "rational" techniques in the face of allegedly damaging local practices, and secure a monopoly of income-generating resources, the State established its hold over these resources even more strongly than over agricultural land, setting up administrative organisations responsible for their management and exploitation.

Here again, the evidence was clear: disruption of local methods of land management, where such methods existed (access to Sahel pasture lands –Velved, 1994 –, management of fishing activities, etc.), failure of technical structures to regulate access to resources. Faced with the tragedy of free access, which resulted from public intervention, some people advocated privatisation, particularly in the forestry sector, where the resources were potentially profitable. But this could not be a universal solution. Even disregarding the social cost, private ownership was not an economically viable answer for resources which are mobile (such as fish) or fluctuating and unreliable, such as pastoral resources in arid regions. Therefore, for these resources at least, it was necessary to think in terms of "joint" management. This necessitated a crucial debate on the respective roles of State and users and raised questions as to the social, institutional, legal and political conditions required for such local management to succeed. Internationally, recent research on the management of joint resources has shown that sustainable management is indeed possible, provided that the users have exclusive control of the resource concerned, and that clear and legitimate rules governing access to the resource and its exploitation are laid down and complied with (Ostrom, 1990; Mathieu and Freudenberger, 1998).

Consequently, many observers advocated *decentralised management*, with real power delegated to local communities, as opposed to "participatory management" (*gestion participative*), whereby agents of the State maintain control over resources (Bertrand, 1996). Nevertheless people tend to have an idealised picture of local practices, which in some cases were only "environment-friendly" in earlier circumstances when pressure on resources was still minimal. Not all resources are subject to strict rules of management. Finally, proven examples of effective local management are generally found in local communities which are relatively well protected from the State, whereas, in Africa, the issue of natural resources is generally complicated by a diversity of actors and interests (migrants, charcoal burners, woodlanders, town-dwelling herd owners, as well as local village people) and active interference on

the part of the State. The feasibility of sustainable local management is therefore by no means certain. Various experiments are nevertheless going on, attempting to give it shape. We shall be returning to this issue later.

Where both agricultural land and natural resources are concerned, at a time when the virtues of generalised, rapid privatisation are being called into question, a fair number of observers advocated more local forms of management, closer to rural people themselves, based on the recognition of existing rights. But, as in the case of privatisation, it was still not certain that the State was willing to countenance a break with past policy.

III. THE APPROACHES ADOPTED IN THE 1990s

In the 1990s, reforms were introduced to try and tackle this problem of legal duality and find new ways of harmonising customary and state-controlled methods of regulation, motivated by a stronger determination to take into account local rights and institutions.

In the context of French-speaking West Africa, E. Le Roy (1998) has identified four types of approach:

• *codification policies,* as adopted in Niger, with the formulation of a Rural Code based on the inclusion of local rules and practices;

• *instrumental policies*, based on cartography and the legal recognition of rights, as enshrined in Rural Land Tenure Plans (Plans Fonciers Ruraux / PFRs) in Côte d'Ivoire, Benin, Guinea, Burkina Faso;

• *decentralised management policies* involving the delegation of land management to local authorities. Such policies can be implemented within the framework of existing arrangements governing national property, by introducing the principle of *subsidiarity*: only problems which cannot be dealt with at a lower level are dealt with at a higher level;

• A fourth, less direct approach, is to set up *Land tenure observatories*, as instruments for supporting new policies (Mali, 1994-1998).

More recently a transaction-based approach has emerged. This approach has been discussed in Burkina Faso (Mathieu et al, 2000; Ministry of Agriculture, 2000) and tested in Guinea.

These different approaches can be used in combination. Finally, many countries have at the same time engaged in administrative decentralisation, creating elected local councils. Decentralisation on these lines reinforces the local management of public affairs and opens up new opportunities for local management of land and resources. However, it may also give rise to a number of problems.

1. Codification: identifying local rules and integrating them into national legislation

The idea of codification is a continuation of colonial attempts to draft "customary codes", taking stock of land tenure rules as actually practised and giving them legal definition. The aim is to integrate customary systems into a system of statutory law, setting out the rules in legal texts. Based on investigation of local practice, pastoralism and the status of trees, Niger's Code Rural comes into this category. However, the problem when taking local practices into account is their sheer diversity: local practices are not expressions of a code of law. They are not a series of precise rules which apply to everyone in a given area, waiting only to be formalised. They are rather particular expressions of general principles, depending on the social and political history of the locality, the social status of the individuals concerned, and negotiation with other rights-holders and the land-tenure authorities. Even within groups which are relatively homogeneous from an agro-ecological or socio-cultural point of view, the recording and formalising of "customs" can be no more than a crude simplification and systemisation of rules which in reality are more flexible and variable. Moreover, the rules are only meaningful in relation to the institutions responsible for defining them, ensuring that they are implemented and arbitrating when they are broken. Therefore the real problem with codification is that it fails to take diversity into account. This in turn gives rise to the danger it, too, may

be inappropriate or illegitimate in the local context (though very much less so than existing national legislation). Claiming to bypass the need for local governance of land tenure, codification at national level is ultimately based on a statutory, instrumentalist approach to law, whereby the law's purpose is to define how things should be and to transform reality into its own image.

2. Rural Land Tenure Plans (PFRs): identifying locally recognised rights over land

In Côte d'Ivoire, beginning in the early 1990s, and subsequently in Guinea, Benin and Burkina Faso, so-called "Rural Land Tenure Plans" have been introduced, their scope and institutional context differing in each case. These measures (based on instruments designed to identify rights rather than on legislation) aim to identify and map all existing, locally recognised rights, without investigating their origins. A flexible and effective survey and mapping system is devised, intended to result in a simplified "land register", the survey being performed in the presence of the parties concerned. The objective is to take stock of all existing rights which are agreed on by all parties at the local level. A legislative reform is then intended to define land tenure categories, and to give legal status to the local rights recorded in this way. The procedure is therefore supposed to be neutral, since it merely takes stock of existing local rights. In fact, despite the apparent simplicity of the procedure, in situations where land-tenure systems are based on a series of interlocking rights, it is frustrated by the difficulty of describing such complexity. Mapping has been emphasised to the detriment of analysis of the types of the land tenure rights that exist and their social implications (Chauveau et al, 1998). Despite a declared determination to avoid "ownership-oriented oversimplification", the different layers of inter-related rights encountered in the field tend, after the survey has been conducted, to be reduced to those of "land manager" and "farmer". Secondary rights (rights of women, tree tenure, grazing rights) are often neglected, the main emphasis being on cultivation of the soil.

Moreover, where their legal status is concerned, the rights recorded in this way are subject to different treatment. In Côte d'Ivoire, for instance, the 1998 land tenure law takes little account of the experience gained as a result of the PFR procedure, and the "land tenure certificate", which was a major legal innovation, is expected to disappear in the next few years, since all registered land must be converted to private title within three years. In Benin, the status of this land-tenure certificate is also rather unclear. Finally, the issues of maintenance (cost of introducing and carrying out the surveys) – a decisive factor in the long-term viability of such procedures – seem to have been under-estimated when the PFRs were launched.

3. Decentralised management of land and resources: restoring to local communities the right to define and implement the rules

Madagascar has seen an ambitious attempt to harmonise decentralised management and administrative decentralisation. Decentralised management of resources has emerged as the chosen policy for protected areas, as a result of failures to exclude people living in the vicinity. Since 1996, these measures have been extended to all rural areas. To encourage sustainable management and reduce pressure for land clearance, the policy aims to grant exclusive rights to local communities, and to harmonise agricultural intensification and use of natural resources. The objective is to achieve secure local management of common property by transferring management to grass-roots rural communities, based on a contract between community, local council and the State. Drawn up with the help of a specially trained "mediator", the contract includes provisions to transfer management of natural resources (marshlands, forests, etc.) and to make land rights in respect of agricultural and village land more secure (Sécurisation foncière relative / SFR). Implementation of these measures has gone hand in hand with a series of legal reforms (the 1996 law on the joint management of natural resources, decree 98-610 on SFR, the law governing local authorities, a new forestry policy). This ambitious and coherent approach relies on the systemisation of local negotiating procedures, which raises some doubts as to their general applicability.

Elsewhere, many less ambitious approaches to negotiating local codes or local conventions have been tried in the context of development projects. Though these have as yet rarely been given legal recognition, they are a way of implementing decentralised management. Though is not yet possible to assess the effectiveness of such arrangements, it is already clear that their recognition by the administration is essential if the rules are to be guaranteed and if the bodies responsible for implementing them are to be able, where necessary, to apply sanctions. In the absence of clear directives on the part of central government, these experiments therefore remain fragile, subject to the goodwill and support of the local administration.

4. Making transactions secure

Whereas PFRs involve the systematic registering of plots of land, the land tenure transaction approach focuses on the procedures whereby rights are transferred. The thing which legitimises a right is the fact that it has been obtained, in a legitimate manner, from someone who was empowered to dispose of it or who held it and was entitled to transfer it. Indeed, much of the insecurity relating to land tenure centres on the transactions involved, whether the problem is one of new, more money-oriented forms of transaction which are not regulated by precise local rules ("sales", some leasing arrangements, etc.), or whether it is the challenging of earlier arrangements (calling into question the validity of loans of land; repossession of borrowed plots, etc.). Consequently, clarifying the procedure and formalising the contract whereby an individual (acting on his own behalf or on behalf of his family group) grants to a third party, temporarily or permanently, all or part of the rights he holds over a given plot of land may be a good way of facilitating the circulation of land rights and helping reduce the attendant insecurity. In many regions, rural dwellers are now increasingly making use of written contracts when engaging in land transactions.

This raises questions as to the types of transaction recognised in a given area, how to determine what clauses are indispensable, whether or not a written document is necessary, the form it should take, and the legal status of such agreements – private contract or authentic deed –, given that too prescriptive a procedure could be unsuited to the means and expectations of rural people.

Still relatively untried (except in Guinea), this approach needs to be properly evaluated. On the face of it, it would seem to satisfy a number of important requirements: it supports the emergence of local use of written documents; it creates a link between local rules and national laws without being too rigid; it focuses on the most dynamic aspects of land tenure regulations, where many people are concerned to achieve security, without claiming to cover all aspects of land rights; and it encourages the transmission of rights.

5. Land tenure observatories: understanding local practices to help design new policies

The idea of a land tenure observatory (Crousse, 1991) is to establish, over time, the capacity to observe changes in land tenure, focusing on a particular problem and a series of locations regarded as representative or of special significance. The objectives (whether research oriented or responding more to a political requirement), the observation arrangements and the institutional framework may be extremely varied.

Following the events of 1991 in Mali, the États Généraux du Monde rural (an Assembley for rural people) put forward the idea of a land-tenure charter – a blueprint law capable of regional adaptation. To assist in drawing up this charter, a land tenure observatory was set up. This was an independent structure bringing together a team of specialised researchers, each concentrating on a particular region. They were to report to the team at the Ministry of Agriculture responsible for formulating the charter, enrich the process by contributing their detailed knowledge of different local situations and, more generally, lend support to the people involved in the land tenure reform. The advantage of the land tenure observatory approach, implemented prior to legislation being drafted, is that it ensures that information and analyses are channelled up the hierarchy and that mechanisms are established for dialogue with those taking the decisions. Its implementation can nevertheless be difficult. The Malian experiment suffered from a clumsy institutional set-up and, after a fairly short time, a lack of leadership on the part of the Ministry of Agriculture. The rural charter project was subsequently dropped in favour of recasting the National Property and Land Tenure Code (*Code Domanial et foncier*).

6. Administrative decentralisation: does it clarify or complicate the land tenure situation?

In reshuffling the cards of local power and creating elected local councils, administrative decentralisation would seem to be a factor in favour of decentralised management of land and resources. However, the relationship between the two processes is more complex than it first appears. In many cases, administrative decentralisation was undertaken without reference to the land tenure question. At the same time, the different branches of sectoral legislation do not always develop at the same speed, giving rise to conflicting structures and powers.

Moreover, because of its political character, there are grounds for fearing that elected councillors will not feel accountable to the electorate and therefore motivated to clarify the land tenure situation in a way which benefits local communities. In Senegal, for instance (Blundo, 1996), experience with Rural Councils appears to show that the processes whereby land is granted are not always the result of a concerted decision. Finally, administrative decentralisation is being implemented at supra-village level. Giving increased powers to authorities of this kind therefore represents a centralisation of powers from the local point of view, as it is at the level of village, group of villages or hamlet that land tenure issues are currently managed.

7. Many innovations, and on-going experiments

It is clear that many changes are taking place, both on the ground and in formulating new legislation. The legislative texts that have been revised over the last ten years form an impressive list. As well as the wide range of committees set up by development projects, many legal and institutional innovations have been introduced and are now part of the official landscape. Without attempting to be exhaustive, we might mention home grazing areas for pastoralists in Niger, land-tenure certificates in Côte d'Ivoire, local conventions in Mali, district land-tenure commissions in Niger, farmer-forest commissions in Côte d'Ivoire, and so on. All of these are steps forward in reducing the legal dualism and trying to reconcile legality with legitimacy. Related processes are occurring in other parts of Africa, for instance Land Boards in Uganda.[5]

These are important developments, but do not yet provide a complete answer. Firstly, they are still at the experimental stage, and we do not know all the issues and difficulties they raise. The PFRs have made considerable progress since they were launched, but a number of questions, particularly as regards the legal status of the rights recorded, have still to be resolved in most countries. The new legal and practical developments highlight new aspects of a complex reality. Time is still needed before we can claim to have mastered all the details of these innovative procedures and validated the theory in actual practice.

In addition, there has been a certain amount of resistance to these developments, taking the form of restrictions on the room for manoeuvre effectively offered by recent legislation, delays in introducing some of the decrees implementing these new laws, persistent contradictions between sectoral legal texts, and between their intentions and content. There has also been some instances of a return to former ways, as in Côte d'Ivoire, where the PFR has become no more than a tool for speeding the transition to generalised private ownership. It should be remembered that these new developments are taking place in a context of growing polarisation and extension of urban interests, sometimes encouraged by the State.

IV. KEY ELEMENTS OF LAND TENURE DYNAMICS

1. Customary regulations and changing rights

All the empirical analyses that have been conducted demonstrate the great flexibility of local land tenure systems, and their capacity to change when faced with new circumstances. Contrary to the persistent prejudice about the supposed rigidity of timeless "traditional" land tenure rules, there is no evidence for the collapse of local tenure systems, even under the pressure of high and rising population densities or the influence of strong market forces.

Apart from their diversity and openness to change, local tenure systems nevertheless share certain characteristics, as evidenced in particular by Berry (1988; 1993): rights over land and resources are linked with social connections, and access to resources is mediated by social networks and patronage. Moreover, one and the same plot may be subject to various interlocking rights. Whereas some parties hold property rights or the right to allocate land, others have access to resources only because a right to farm has been delegated to them, thanks to their social relations with the former (Lavigne Delville et al, 2001). The allocation of rights does not depend on the application of a set of precise rules, but on negotiation, starting from general principles and following a procedural logic (Chauveau,

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[5] For developments in Southern Africa, see Toulmin and Quan eds, 2000.

1998). Often – but not everywhere – the power of the first occupants stems from their control of relations with the earth spirits and therefore has a magical or religious dimension.

It is important to recognise the ambiguity of the term "customary right". A historical or anthropological approach generally reveals the naivety of the idea of timeless customary or community land tenure systems that have somehow survived despite the domineering influence of the State. Everywhere, local land tenure rights are the historical result of interaction between local actors and State intervention. Even though they have never been applied in their entirety, successive land tenure and forest laws have strongly influenced local realities, giving rise to successive reinterpretations. Though they hark back to historically based sources of legitimacy, today's land tenure practices are contemporary and modern in the sense that they reflect current social relationships and problems. Though most land tenure practices in Africa belong to the "customary" sphere, this does not mean that they are changeless mechanisms, but that the principles which govern this kind of land tenure management are themselves "customary" in origin. This is because the authorities which oversee their implementation derive their legitimacy, at least to some extent, from a source which is customary or claimed to be such.

The fact that the *mode of regulation* is based on *local* principles does not mean that the rules and rights concerned are following age-old practices. This is clearly demonstrated by the emergence of new rights and rules (regarding access to newly cultivated areas such as *bas-fonds*, valley-bottom land, the exploitation of natural resources, or the procedures governing new forms of transaction); the increasing individualisation of land tenure rights; or the development of monetary transactions even within local land tenure systems. Contrary to widely held belief, there is not necessarily any contradiction between these processes and a form of tenure which remains "local" in character.

This is true, for instance, of the controversial issue of the commercialisation of land, and its transformation into a marketable "asset". In places where land does not have a sacred character, the practice of selling land has developed without any apparent difficulty, despite the generally held belief that land in Africa is inalienable. In the Gulf of Guinea, the south of Benin, Ghana, the west of Cameroon, or along the River Niger in Niger, commercial transactions in respect of land are a frequent, and indeed long-standing, phenomenon (Mortimore, 1998). There are sometimes customary procedures to be respected (Kasanga, 2000; Hallaire, 1991) the purpose of which is to authenticate the transfer of ownership. Even in places where the customary rules decree that land is inalienable, commercial transactions can occur and develop, openly or in secret.

Though there is no automatic connection between population densities and involvement in the market economy (Lavigne Delville et Karsenty, 1998), we are indeed in a situation of "imperfect commercialisation of land" (Le Roy, 1997), in which the social relationships between the parties concerned still determine the procedures and content of their relationships in respect of land. Indeed, there is often ambiguity as to what is at stake in a transaction. Local inhabitants sometimes seek to sell the right to farm a plot, rather than the land itself. The restrictions imposed (limitation of the right to hand on the purchased rights to another purchaser, and sometimes even to one's own descendants; the possibility of repossessing the land if it is wrongly used, etc.) reveal that these are not always "genuine sales" involving alienation of the land and a renunciation of all rights over it. And yet, the purchasers may believe or claim that they have bought the land. The ambiguity surrounding the content of the transaction creates uncertainty, or opportunities for manipulation, which one or other of the parties may use to his advantage.

The fact is that change comes through the interplay of the actors involved: they grasp the opportunities offered to them, promoting their interests by exploiting "traditional" procedures or those sanctioned by the State, or a combination of the two. The reality is not an opposition between timeless customary systems and a State which has not been able to master them, but complex interplays between the parties concerned, who exploit the plurality of regulations in the context of hybrid local tenure systems.

2. Fluidity of regulations and institutions

Consequently, local land tenure systems are not based on a set of unambiguous rules defining the rights of each party. Actual rights are the result of arbitration and negotiation performed by the family or political authorities, working from a number of shared principles. Customary law is by nature procedural, not codified (Chauveau, 1998). Negotiation, dispute, manœuvring and manipulation are the key elements in the strategies the actors adopt

to defend or improve their position, obtain or retain land rights. This procedural dimension also explains the flexibility and dynamism of land tenure regulations (Chauveau, 1997).

As Berry has shown, State intervention – both before and since independence – has not put an end to the dominance of social networks in land-tenure matters. Whether it takes the form of nationalisation as in francophone Africa (Rochegude, 1998 ; 2000), or the allocation of land to the President of the Republic, who then acts as a "trustee", as in Ghana (Kasanga, 2000), State control of land and resources (i.e. the powers the State has taken upon itself to grant or expropriate land in the often rather vaguely defined "public interest") does not result in the establishment of impartial, technocratic management, but in a strengthening of social and political control. So we find the networks controlling access to resources re-forming around the State apparatus, together with increased politicisation of the land tenure issue (Bayart, 1989; Lund, 1998; Le Meur et al, 1999). Consequently, securing income and exercising patronage by granting plots of land or permits to exploit wooded resources (Ribot, 1999) are at the heart of the land tenure question, as powerful forces strive to acquire monopoly control in the management of land and resources. At the same time, national political considerations seem increasingly to be affecting and aggravating local conflicts, as the protagonists seek support from one political party or another. With the emergence of multi-party democracy, land-tenure conflicts offer politicians the opportunity to strengthen their credibility and number of supporters by demonstrating their ability to act as mediators. This phenomenon has been studied in such countries as Cameroon and Niger (Lund, 1996), and in the Ferlo region of Senegal (Juul, 1999).

These tendencies are encouraged by the complexity and contradictions of land tenure legislation and the administrative apparatus set up to implement it. The land tenure issue is characterised by a proliferation of regulatory bodies and institutions of different origins, each claiming some authority in this field. Land tenure decisions are not the result of clear prerogatives exercised by bodies founded for this purpose (whether of customary or State origin), but rather the outcome of a complex interplay of forces, in which each (including the administrative hierarchy, and even politicians) is trying to assert its authority in matters of land tenure and is opportunistically manipulated by the protagonists.

3. Insecurity, attempts to make rights more secure, and arbitration

This analysis changes the way we look at land tenure insecurity and conflict management – two important topics in the current debate, at least in francophone Africa. Insecurity has traditionally been seen as the result of competition for landed resources and the vagueness surrounding customary rights. However, a rather different diagnosis emerges from the case studies carried out in parallel with recent research work. Economic developments are indeed bringing about changes in land tenure relationships and sharpening competition for land and resources, but institutional arrangements are changing too. Farmers are increasingly relying on written documents to make transactions more secure (Lavigne Delville and Mathieu coord., 1999). Certainly, there is a generalised insecurity arising from the fact that local rights are "illegal" in the eyes of the law, but this insecurity is not always expressed. Delegated rights, which can be renegotiated, also tend to be somewhat precarious. But insecurity takes different forms, depending on circumstances, the actors involved and the relations between them. Moreover, the actors are not passive in the face of changing circumstances. They attempt, more or less successfully, to make use of networks and alliances, witnesses, recourse to the authorities and written documents in order to make their rights more secure, playing on both the local and government.

Conflict is an inherent aspect of social interaction. The thing which causes recurrent or explosive conflicts is not so much competition *per se* as deficiencies in arbitration systems. Gado (2000) examines this issue in the case of the Boboye region of Niger, recording many forms of conflict. There are also a large number of institutions through which people can claim or negotiate rights: village land management committees, *chefs de canton, commissions foncières d'arrondissement* (district land-tenure commissions), religious authorities and the local administrative authorities. People generally try to settle disputes among themselves, or at the *chef de canton* level. But it is possible to by-pass one authority by applying to another which one believes will be more favourable. The various committees set up by development projects are not mandated to manage conflicts, but they do lay down new regulations and are sometimes a factor in heightening tensions. Where there is a plurality of regulations and several different bodies claiming authority to arbitrate, lasting, legitimate arbitration is very hard to achieve.

Nevertheless, not all tensions result in violent conflict. It is therefore important to analyse the methods whereby conflicts are resolved and the ways in which the actors mobilise the different powers and authorities. This is the procedure followed by Traore (2000), who shows that, in the Ferlo region of Senegal, rural dwellers prefer to settle conflicts "in the bosom of the community" and are reviving customary-style authorities to arbitrate disputes, so avoiding having to call in the government administration.

4. The question of institutions

The essential issue, then, has to do with *institutions*, i.e. the systems of rules and authorities which govern – or are supposed to govern – the practices of the actors involved. *"Any property system is based on a system of authority. Only an efficacious authority can guarantee the effective, sustainable implementation of the relational fabric of reciprocal rights and obligations on which a property system depends."* (Mathieu, 1996: 41).

The multiplicity of rules and plurality of authorities makes land tenure regulation difficult, because a rule can be contested before another authority. This is one of the main reasons for the escalation or recurrence of conflicts. But even more than the co-existence of contradictory rules, dysfunctions arise from the plurality of bodies engaged in arbitration (customary chiefs, imams, préfets who soon move on to another post, project technicians, not to mention interfering politicians – Lund, 1996), which are not co-ordinated and tend to give conflicting or changing advice. In this situation, there is no universally recognised source of arbitration, since any decision can be challenged by another. Consequently, the situation following a conflict remains unpredictable: the arbitrator's decision can be questioned, which leads to escalation and militates against any durable solution. Nevertheless, legal plurality is not necessarily a problem in and of itself. It makes change – and therefore the adaptation of practices – possible, and so plays a relatively functional role. Moreover, in many places the co-existence of legal systems does not pose a major problem, either because a clear hierarchy has been established in practice,or because the different authorities have found ways of entering into dialogue and coordinating their efforts.

Focusing on actual practice, rather than the letter of the law, we find that at the present time land tenure regulation (as it results in practice from the decisions of the different actors who, one way or another, play an effective role in matters relating to land and natural resources) is performed, more or less effectively:

• mainly on the basis of local principles (sometimes contested);

• by a larger of smaller set of authorities and actors of differing status, who may of may not be exercising official prerogatives (customary authorities, administrative village heads, elected representatives, the territorial administration, technical services, political leaders or leaders of voluntary associations, etc.), which, depending on circumstances, act in harmony or against one another.

The main aim of public intervention to provide greater security should therefore be: to help clarify and stabilise rules which are legitimate in the eyes of most of the actors and recognised by the State, but without trying to produce a rigidly uniform local system, which in any case would be illusory, given the diversity of settings, actors and power relationships; to help clarify the mechanisms governing the granting of rights and arbitration, so as to avoid the most harmful effects of the prevailing plurality of powers; and to help stabilise over time recognised rights or rules.

V. MAKING LAND RIGHTS MORE SECURE

1. Productivity, social harmony, citizenship: the key factors in making rural dwellers more secure

The issue which first focused attention on the question of land tenure security was that of *productivity*: rural people cannot produce efficiently unless they enjoy adequate security of tenure, encouraging them to invest in inputs and improvements to the land they farm. With some exceptions, local land tenure systems do provide most producers with adequate security. Economic studies show that, there is no difference in the level of investment in plots to which people have formal land title and those held on a lineage ownership basis. Long-term investment is often

a way of consolidating more lasting and more individualised rights. In the case of plots acquired from third parties (by delegation of property rights), there are often restrictions (bans on planting trees or making permanent improvements), which reflect the land owner's concern to retain his rights: such restrictions prevent the grantee from claiming rights of ownership. But there are also arrangements permitting the planting of trees, in which case the produce or plantation is shared. It is quite likely that the spread of written contracts setting out the prerogatives and duties of both parties will provide solutions by securing the rights of those with the underlying land claims and shifting the emphasis to the sharing of investment costs and profits.

Finally, and this is the most important thing, the decision to invest in agricultural intensification depends first and foremost on economic circumstances, which may or may not make such investment profitable. The links between land tenure security and productivity are therefore more complex: only part of the insecurity arises from the prevailing legal dualism and its effects; depending on the actors involved and their production systems, the security requirements differ (Lavigne Delville, 1998c).

Land tenure security also raises the issue of *social harmony*. In the present situation of unregulated competition for land and resources, and with different systems of regulation promoting power struggles, acquired rights may well be called into question. Opportunist claims are made all the more easily, producing potential insecurity and provoking more and more conflicts. In some areas, particularly areas which have been subject to large-scale migration over a long period, the change of generation has led the sons of long-established local people and of migrants to challenge the arrangements made by their parents. The former claim the right to repossess the land formerly granted, while the latter claim full rights of ownership through long occupation and use. In this case, clarifying the rules is clearly in the interests of social harmony

Finally, more than forty years after independence, the fact that a large majority of the population do not have access to legal procedures and do not have their property and rights made secure by the State effectively continues the colonial distinction between citizens and subjects, to use Mamdani's expression (1996), and poses a real problem of *citizenship*. With the legitimacy of nation states in crisis, providing their citizens with this kind of security could be a way for the governing class to help reconstruct the social foundations and legitimacy of the State.

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2. Thinking in terms of making rights secure

There is no strict definition for the term "security of tenure". The kind of security an actor needs depends partly on his social status and place in local social networks, partly on what he produces and the investment required to do so (Lavigne Delville, 1998b).

Security requirements therefore differ, calling in turn for varied responses. Private ownership is just one way of achieving security. Indeed, *it is not the land itself one possesses, or a particular resource, but rights (prerogatives, obligations) over a certain portion of land or certain resources*. Security of tenure depends not so much on the nature of the rights one holds (appropriation, private ownership, temporary cultivation, etc.) as on knowing that such rights will not be unreasonably contested and that, if they are wrongfully challenged, they will be recognised and strengthened.

So it is possible to hold title and be insecure (if a stronger party prevents one from enjoying one's rights), or to be secure on borrowed land, even if the contract is short-term, provided that one has a good relationship with the grantor and the contract is renewed year after year.

Therefore, it is more helpful to think in terms of *making rights secure* (Le Roy, Bertrand and Karsenty, 1996), i.e. in terms of *the process whereby rights are recognised and guaranteed*. This brings us back to the question of the institutions which allocate, validate and ensure the effectiveness of such rights.

3. Offering a range of solutions to meet diverse situations

Needs differ from actor to actor. A transhumant herder needs to secure his access to grazing lands, watering points and holding areas. An arable farmer's need is to have his rights of ownership or use recognised and not challenged

unreasonably. Insecurity more often arises from the threat of interventions by external actors making use of concession procedures (according to local procedures, such grants cannot be made unless land has first been obtained). In some cases, where sales of land are a growing phenomenon, insecurity may arise from fear of family assets being sold off covertly This raises the issue of regulating sales: in what circumstances is someone who holds lineage rights entitled to dispose of part of the family inheritance? The need of a "newcomer" is to have his rights recognised locally (they must therefore have been obtained by a legitimate procedure), made visible locally (boundary markers, hedges, etc.) and officially guaranteed by means of a land tenure certificate or title deed. There is a universal need for arbitration arrangements to be more reliable and predictable, restricting opportunist behaviour. This will depend partly on reducing the different regulations, and providing a formal explanation of what can or cannot be done in a given area. By conducting an analysis of existing forms of insecurity, and expectations as regards making land rights secure, it is possible to identify the essential points on which work needs to be done.

4. Hybrid institutions: how to harmonise the different forms of regulation

The only way forward is to achieve at least some degree of reconciliation between legitimacy, legality and actual practice. The local actors will be more willing to cooperate in the legal process if it is accessible and the legal provisions offer them concrete answers to their problems. The State will be able to control practices and steer their development only if it begins by recognising the arrangements which already exist.

A land tenure management system consists of a set of principles, rules and authorities which allocate or validate rights and prerogatives, together with technical tools to give them material form. This system will be functional only if it includes this diversity of reference points in every aspect of its operation, i.e. if the legal rules, formal institutions and tools (registers, maps, minuted records, etc.) take into account, to one degree or another, the circumstances faced by local actors.

Clearly, then, it is the State which needs to take the first step, by broadening the range of legal and institutional solutions it can provide to rural people, by constructing intermediate systems which make it possible to harmonise local and state-controlled forms of regulation, and by clarifying its position with regard to local forms of land and resource management. This being the case, and given the diversity of circumstances, a decentralised form of local management would seem to be an indispensable pre-condition. This would recognise the right of local communities to manage their own affairs in the context of an open legal system, supported by the State and subject to compliance with certain procedural conditions to ensure fairness.

VI. CONCLUSION: THE DEBATE ON LAND TENURE POLICY

It is now generally agreed that the unregulated coexistence of a number of different institutions and systems of regulation is one of the major causes of dysfunction in land tenure management. Nevertheless, the idea that the State should seek to exercise control of land is discredited. At the same time, a return to "traditional" ways of doing things is unthinkable, given the economic and political changes of recent decades. Finally, it would seem illusory to believe that the generalisation of private ownership can resolve the contradiction in the short term, whether this is achieved by wholesale registration of land or the free play of market forces (the effect of which would be to marginalise a large part of the rural population, with high costs in terms of poverty and rural exodus).

This being the case, the best solution would be to harmonise the different legal regimes, retaining the dynamic flexibility of local systems, while building up a body of regulations. There are three aspects to this approach:

• *making rights more secure*, by offering a range of solutions;

• *making land tenure management a more local matter*, with debate as to the extent to which the State should transfer responsibility to local communities;

• *recognising the legitimacy of existing rights*, and so breaking with the present official denial of such rights.

This sets the scene for the current debate on land tenure policy, within which there is scope for a diversity of political choices and intervention measures. Government recognition of local land tenure rights is a way of overcoming the dichotomy between national legislation and local rights, with the options ranging from the State agreeing a degree of local autonomy in land tenure matters, with the accent on arbitration, to the establishment of land ownership rights based on locally recognised claims to property.

We hope this workshop will provide a fruitful opportunity to share and debate recent experiments and emerging trends, to clarify the terms of the debate itself, share achievements and make progress in renewing land tenure policy, thus taking up the economic and political challenges faced by West African countries as they enter the 21st century.

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ADMINISTRATIVE DECENTRALISATION AND DECENTRALISED MANAGEMENT OF LAND AND RESOURCES

What local mechanisms?

Workshop 1.1., Tuesday 19 March

It is not only State agencies which are involved in land tenure management at the local level. As well as the territorial administration, many customary authorities, new elites, community associations, politicians, and agents of the technical and conservation services also play a more or less recognised and influential role. Committees of a more or less formal nature are also set up under the auspices of development projects or by NGOs. In practical terms, the "local land tenure regulation mechanism" is an amalgam of all these actors, competing or working together in harmony. In some cases, the resulting system of regulation may be relatively effective; in others, it can give rise to conflicts.

In such circumstances, regulation and stabilisation of the land tenure situation will probably depend on clarifying the roles and competence of the different actors and stabilising the relationships between them at the "local" level (here understood in terms of the basic administrative unit). The principle of "local" management of land and resources is nowadays almost universally accepted, though fierce debate continues as to the respective roles of the State and the elected representatives of the local population, what bodies are fit to play a part in defining and implementing the rules, and so on.

There have been developments in the legislation applying to particular sectors. This has given greater autonomy to local communities, the aim being to foster participation or decentralisation. By establishing elected local government structure and breaking up the monolithic State, administrative decentralisation sometimes appears to offer greater opportunity for decentralised management. But in many cases there are continuing ambiguities between the bodies of legislation governing particular sectors and that applying to local government. Moreover, the links between administrative decentralisation and decentralised management of land and renewable resources are less direct than one might imagine.

The purpose of this workshop is to discuss the issues relating to the "local" management of land and resources (including the ambiguities in inherent in the term "local"), analysing recent development in the legal framework in certain countries. To provide a clearer picture of the conditions for local management, we shall also be discussing contradictions in current legislation: the creation of communes (the basic unit of local government) with ill-defined powers in land tenure matters, contradictions between local government legislation and the laws applying to particular sectors, which maintain tight state control over resources, etc.

ADMINISTRATIVE DECENTRALISATION AND THE LAND TENURE QUESTION

A few thoughts

Ph. Lavigne Delville[6]

In the debate on land tenure in rural West Africa, most observers are now united in advocating decentralised management of land and natural resources. As they see it, restoring the control of rural populations over their territory and resources is a necessary step in breaking the State monopoly and getting away from the disastrous consequences this kind of policy has had on the relationship between central government and rural communities, and on the environment[7].

In the early 1990s, this issue coincided with moves towards administrative decentralisation. National governments were in crisis (there had been a breakdown in the form of governance established at the time of independence, triggered by deteriorating economic circumstances) and, as the democratisation process gathered strength, administrative decentralisation was seen as a panacea, a way of promoting local democracy and a form of local development based on active popular participation. In establishing legitimate elected assemblies responsible for managing local affairs, administrative decentralisation also seemed to offer a possible solution for the local management of land, as the Village Committees set up under village land management ("gestion de terroir") projects were experiencing difficulties in fulfilling the role they had been expected to play. The Praïa conference organised in 1994 by the CILSS (Comité Inter-Etats de Lutte contre la Sécheresse au Sahel) and the Club du Sahel was a key factor in bringing these ideas together.

However, the connection between these two issues is not so obvious as it might appear. Certainly, there are affinities and possible connections but, for land tenure as for other issues, decentralisation presents dangers as well as opportunities. Politically, decentralisation may be a way of further bypassing and weakening the State, providing a minimum level of services to avoid social explosion, an opportunity to create a local political class reproducing the "politics of greed" at the local level. Conversely, it may be an opportunity to re-establish the legitimacy of the State on new foundations and provide efficient management of public services which the State is incapable of providing (Laurent, 1997). It is likely that political decisions, as well as the purely "technical" apparatus of decentralisation (electoral procedures, competence of elected representatives, consistency or inconsistency of the legal texts, supervisory measures, etc.) will have a decisive impact.

Where land and the management of natural resources are concerned, there are a number of ambiguities regarding the forms and procedures of this kind of "local management". The aim here is to clarify this issue and open up some avenues for discussion.

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[6] Gret, 211-213 rue La Fayette, 7510 Paris, tel : 33.1.40.05.61.38; fax. 33.1.40.045.61.10; e-mail:lavignedelville@gret.org
[7] This text consists of extracts from Lavigne Delville Ph., 1999, "La décentralisation administrative face à la question foncière (Afrique de l'ouest francophone rurale)", *Working papers on African societies* n°39, Institut fur Ethnologie und Afrikastudien (Mainz University)/ Das Arabische Buch, 18 p. The conclusions it draws are based on the research of a group of experts on land tenure in Africa, carried out for the French overseas development administration (Coopération française), under the aegis of an interdisciplinary steering committee (Cf. Lavigne Delville dir. 1998, MAE, 1998). However, the author takes sole responsibility for the opinions expressed here.

DECENTRALISED MANAGEMENT OR PARTICIPATORY LOCAL MANAGEMENT: A BREAK WITH POLICY BASED ON STATE OWNERSHIP OF LAND?

"Decentralised local management rather than village land management (gestion des terroirs)"?[8]

Most observers and donor agencies agree on the principle of local management, which is also the solution demanded by rural communities themselves, when they are in a position to do so[9]. As always, however, this apparent consensus conceals different positions and degrees of conviction. The experts advocate a participatory and democratic form of local management based on customary systems and local authorities, without always seeming to be aware of the contradictions inherent in this position: not all resources are subjects to "customary" local management[10]; there is a contradiction between the advocacy of customary systems and the desire for democratic, transparent management which involves all the actors in decision-making and gives women and herders greater access to resources; finally, the arrival of newcomers and growing competition for resources is tending to undermine the existing rules and capacity for regulation.

International institutions pay lip service to the idea. The territorial administration and State technical services (Eaux et forêts/water resources and forestry department, development project technicians, etc.) adhere to the official line, owning the principle of subsidiarity in decision-making when it strengthens their autonomy, but often showing reluctance to apply it when it challenges their power over local communities and threatens some of the indirect advantages they derive from the status quo. By adopting the demand for local management – though without embracing the democratic and egalitarian dimensions preached by the experts – the customary authorities see it as an opportunity to strengthen their hold over land, and even use the "customary" tag to exclude people who cannot claim "local" status. Pointing to these potential abuses, the new elites naturally support the idea that management responsibilities should be vested in local associations, as a way of ensuring that things are managed in the general interest. In short, the prospect of a shift in the balance of power is causing ferment. Whatever its official position, each party is striving to establish its own claims to control resources.

Although it marks a break in principle with centralised State control, the term "local management" is sufficiently vague to cover a wide range of circumstances. Its very vagueness makes consensus possible: you can hardly be against it on principle. It is only when concrete legal and institutional decisions have to be made, when it comes to determining the rights and roles of the various actors, that the real issues begin to emerge. Though this is rarely stated explicitly, the real matter at issue is the transfer of power to local communities and their representatives; in other words, it centres on the choice between a simple deconcentration of power (with the State and its agents maintaining control but granting more local autonomy[11]) and genuine *"decentralised" management,* whereby the actual decisions are taken by the local communities and their representatives, with the State's role restricted to laying down guidelines (defining the conditions for decentralised management), advising and giving *a posteriori* approval. Of course, decentralised management means autonomy, not independence: the State and its technical services are still responsible for setting the parameters and exercising supervision. It is possible to devise different methods of co-management. But the key question is whether or not *authority to formulate the rules of management, using categories of thought which make sense to rural dwellers,* is actually delegated. This is very different from being given responsibility for implementing rules that have been defined by others on the basis of alien principles[12].

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[8] Bertrand (1996).
[9] This was one of the most pressing demands of the États Généraux du Monde Rural (representative assembly of the rural world), held in Mali in 1992.
[10] This is particularly true of woodland resources in bush areas.
[11] In fact, except for the registering of land, where cases in excess of a certain hectarage are quickly referred to central government, the local territorial administration (arrondissement, cercle or département) generally acts autonomously.
[12] The French term "gestion" (management) is ambiguous as it has two dimensions: the formulation of rules, and their implementation (English makes a distinction by using the terms "governance" and "management"). The issue here is one of "governance". Cf. Ostrom, 1990, for an analysis of the conditions for formulating lasting rules for the management of community resources, and Ostrom, 1994, 1997, for an instance of their application to irrigation.

Recent development in legislation covering particular sectors, forests for example, is significant in this respect: openness to "greater participation" is limited to asking villagers to acts as policemen on behalf of Eaux et Forêts and giving them a share of the fines, but without allowing them any say in changing the rules and regulations.

Initiatives and resistance

Some recent initiatives seem to be going in the direction of this sort of decentralised management: local procedures for validating transactions, projects supporting the negotiation and implementation of local agreements, local communities defining the rules of access to grazing land or new rules for cutting firewood, neo-customary associations taking charge of the management of a particular resource (Laurent, 1995, Sanou, 2000). These experiments are too recent for us to assess their long-term impact, but they are encouraging examples of new thinking. However, it is often difficult to distinguish between project-driven processes lacking real local roots and truly local initiatives (albeit supported by outside agencies). We should avoid too narrow a view of what is generated from within and what is imposed from without, but try to assess the degree of autonomy of the processes concerned. Analyses of the management of collectively owned resources show that the operational rules (what is authorised, prescribed or forbidden) can be applied only to the extent that they are based on shared, recognised principles, and are laid down and implemented by a legitimate system of authority with the other committees) designed and imposed from without becomes apparent: unless they are founded on concepts of space and resources which are owned as part of the social fabric, unless they are founded on legitimate authority systems (which does not necessarily mean the customary authorities), external rules prove impossible to apply[13]. Even in responding to new needs and new situations, it is likely that the only viable solutions will be those which provide continuity with existing collective modes of action and authority systems. From these, "modern" bodies (i.e. bodies set up today in response to today's problems) will be able to draw legitimacy and valid principles for action[14].

Such developments have also met with resistance, open or covert. In the south of Mali, for example, the agents of the Eaux et Forêts refused to recognise agreements governing the management of woodland resources concluded by a number of villages, on the pretext that they could not approve any such agreement until the legislation on decentralisation was published (Hillhorst & Coulibaly, 1996). Though much discussed, the principle of local management is sometimes in practice reinterpreted in terms of local participation, with the rules still very much dictated by the technical personnel. Nationally, the commitment expressed by the State sometimes seems to go hand in hand with the old strategies of maintaining legal ambiguity and putting up passive resistance by blocking implementation.

All recent analyses in fact show that local arrangements remain very fragile unless they are given legal and administrative recognition. Even when rules are shared and recognised within the community concerned, they have no validity vis-à-vis third parties in the event of conflicts, whether these are internal to the group or external (herds passing through, encroachment by urban dwellers, charcoal-makers, etc.). At present, such recognition is entirely dependant on the goodwill of the administrative authorities or technical services, and is therefore extremely fragile.

It is therefore really important that there be procedures for formally recognising local negotiated arrangements, and that such procedures be open to all. This will promote more such arrangements and oblige the technical services and administrative authorities to validate them, unless there is good reason not to[15]. But the cleavage between State and local communities (or, more precisely, between the politico-administrative class and rural dwellers) should not be allowed to hide the political and economic struggle for control of land and resources among rural dwellers themselves. Nor should it lead us to idealise the behaviour and legitimacy of customary authorities, which, while acting as arbiters, have their own interests to further in the competition for resources.

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[13] Cf. Vedeld, 1994, regarding pastoral associations in Mali.
[14] Attitudes of course vary from country to country: Sankara's Burkina Faso is very different in this respect from Niger.
[15] External evaluation is necessary so that agreements do not exclude – only allowing access to those that claim to be indigenous and to guarantee a certain level of equity.

IS ADMINISTRATIVE DECENTRALISATION A GOOD WAY OF ACHIEVING LOCAL MANAGEMENT OF RESOURCES ?

Although the principle of an – at least partial – transfer of responsibility for resource management to bodies deriving their authority from the local community seems to be universally accepted, the question of what kind of body remains. A latent, but recurrent, problem is that of the role of customary authorities and the State's on-going ambivalence towards them[16].

Some observers advocate village-based bodies. This – they say – is the context in which resources are really managed, in direct relation with the people concerned. They would prefer structures of the CVGT type (*comités villageois de gestion de terroir* / village land-management committees), elected or co-opted, with legal authority to take decisions concerning village land and resources. There are nevertheless problems inherent in this approach. Although development projects and other interventions tend to focus on the village, it is not always the relevant spatial unit. A neighbourhood, a group of villages dependant on the same land chief, a transhumance corridor stretching over a hundred or so kilometres, an area of wetland are interlocking realities, each relevant at one or another level of land management. But the main problem that arises is the legitimacy of the body concerned. Given that, in all the countries concerned here, central government refuses to accord legal status to the village unit, the only possible bodies are community associations, with all the attendant problems of representativeness and legitimacy. Above all, though, community associations can only be granted legal validation on an ad hoc basis, which leaves the State in a strong position to accept or reject them. And it is difficult for the State – lawyers insist – to transfer the national heritage to private bodies.

On the other hand, partisans of administrative decentralisation see the Commune Rurale (or its equivalent) as the most suitable local body. As territorial authorities, communes or their equivalents are sub-divisions of the State, enjoying legal status and financial autonomy. They are governed by an elected Council, representing the local people. Endowed with dual legitimacy – stemming from both State and People – they might appear to be the bodies best fitted to receive transfers of landed assets from the State, or at least a mandate to manage the resources located on their territory. They should be all the better placed to manage such resources in that, rightly or wrongly, ad hoc associations or village committees are often suspected of a lack of legitimacy and representativeness.

The political gamble of administrative decentralisation raises issues of its own (Gentil and Husson, 1995, Jacob, 1997, Laurent, 1997), which we will not try to deal with here. Sticking strictly to the issue of natural resource management, it is not certain that these bodies are the best fitted to fulfil the required resources management functions. Rochegude (1998, 2000) points out that, in the decentralisation processes currently being conducted or in preparation, the landed assets and powers of the rural communes are rarely spelled out. But this might be no more than a passing problem, which would arise in even more acute form in the case of village associations. The more fundamental problems are that:

- land and resources are managed mainly at the level of individual villages, encampments or clusters of historically interdependent villages. *From the perspective of rural dwellers, giving the communes competency in this matter represents a centralisation rather than a decentralisation of the locus of decision-making* (Le Roy, 1984, Blundo, 1997);

- *the territory of a commune is not necessarily an appropriate geographical area*: land may be managed at the family or village level, by the beneficiaries of a wetland development project (who may come from one or more villages) or, in the case of an area of bush land or grazing system, at a micro-regional level corresponding to social networks or the distribution of water points, which may well extend beyond the territory of a single commune;

- *transferring responsibility to an elected assembly does not settle the issue of the role of customary authorities*. The legitimacy of elected councillors in dealing with land-tenure issues is not self-evident; there is a danger that

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[16] Attitudes of course vary from country to country: Sankara's Bukino Faso is very different in this respect from Niger.

giving them authority in this field will increase the complexity of the land-tenure situation by involving yet another body;

- *There is a danger that the political, partisan or factional considerations which can motivate elected assemblies will increase the politicisation of land-tenure issues and efforts to settle conflicts.* Experience in Senegal shows that Rural Councils (Conseils Ruraux) are swayed by factional considerations and patronage. Empowering Rural Councils to allocate land further increases this unwelcome tendency.

The latter danger is undoubtedly the most serious. In attempting to re-establish their legitimacy and build a local power base, political parties may take advantage of decentralisation to offer their local managers positions of power and financial advantage, reproducing the practices of political patronage at the local level: misappropriation of natural resources, allocating land to faithful supporters, etc. Giving priority to applications from political supporters (a topic much debated in Mali) or doing favours for "local boys" now living in town can cause a lot of ill feeling.

In addition to this consideration, we can identify three major issues:

■ *Allocation of land*

Intended to create private property "from the top down", procedures for granting land have been used to maintain State control over such allocations, which can override local rights. The bureaucratic complexity of the procedures has meant they are closed to all but the urban elites, while the ambiguities of the "productive use" criterion (the condition for final transfer of ownership) strengthens the State's discretionary control over land rights (Traoré, 1997). In Guinea Bissau, in the context of privatisation, this procedure is widely used by elite groups to gain possession of large estates, while having hardly any impact on productivity (Cheneau-Loquay, 1998). Such estates are a throwback to colonial times, with no justification in the modern age.

Senegal decided to give Rural Councils the authority to allocate plots of land, provided they are put to productive use, thereby returning to a "concession aux petits pieds" policy. Practices vary from region to region but, particularly on the Senegal river, we find the same negative tendencies: using the law to being to secure the land of the *haalpulaar* aristocracy, and allocating land on a patronage basis.

Certainly, power to allocate plots of land is closely linked to political power, from land chiefs wanting to build up a body or support, or kings rewarding their allies, to the exercise of political patronage in the granting of land in the modern national context. But in the present-day situation, where the great need is to overcome the dualism between local rights and modern law, and recognise existing land rights, authority of this kind can only be seen as misplaced and dangerous. Practices in urban areas show that elected councillors continue to regard the sale of heritage assets as a source of income, whereas the taxation of the appropriated plots of land would bring in regular income, without reducing the heritage assets[17].

■ *Relations with the customary authorities and local management methods*

Again in Mali, the law stipulates that elected councillors must consult the customary authorities on matters of concern to them, but it gives no indication of how this should be done; it all depends on the goodwill of the councillors concerned. The question of co-ordination between the commune and the local entity (village, etc.) actually managing resources is not dealt with. Inevitably, then, the problem of the plurality of bodies involved, in unregulated fashion, in land-tenure management is left unresolved. The situation may even have been aggravated, with an additional body –potentially motivated by factional interests or considerations of patronage – now trying to impose its will in this area. There is also the danger of an even greater bias against cattle herders. In 1996, when studying the possibility of legal validation of a local agreement governing a pastoral development project, the *Ob-*

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[17] I would like to thank Alain Rochegude for drawing my attention to this point.

servatoire du foncier in Mali concluded that, in the final analysis, there were fewer dangers in having the agreement regulated under the *Code domanial et foncier* than by the communal authorities (OFM, 1996).

■ *Problem of boundaries*

The boundaries of village territories are not always laid down with precision. Sometimes they are concealed (Bouju, 1991). This is even more true of the boundaries of local communes. Of course, if communes are to have powers of land management, determining the precise areas over which they exercise jurisdiction becomes an important issue. In instances of conflict over irrigation projects (wetland developments, in particular), it is not uncommon to encounter problems of territorial jurisdiction, the overlapping or contradictions between different types of jurisdiction over a single area (e.g. the case of a village dependant on its village of origin where land tenure is concerned, but attached to a different arrondissement, which refuses to recognise the rights of the former (Lavigne Delville et al., 2000). Vagueness about communal boundaries is bound to encourage this kind of conflict, especially since – in Mali, at least – the boundaries on maps do not correspond to those of the incorporated villages. This results in areas of no man's land and portions of village territory attached to other communes (Crosnier, 1997).

CONCLUSION

The relationship between the decentralised management of land and natural resources, on the one hand, and administrative decentralisation, on the other, is more complex than it might at first appear. Although the State may indeed transfer land to local authorities, such authorities are hardly the ideal bodies to take charge of day-to-day management of these resources.

Local authorities may lay down rules which are valid for their territorial area, provided that such rules are seen to be legitimate and appropriate. However, there is no doubt that the management of a collective resource is primarily the task of the assembly of rights holders in a given area. It is therefore better performed by ad hoc organisations, with a direct interest in the resource in question. This raises the question of how such organisations can be legally recognised and have management responsibility transferred to them, and how the rules they set themselves can be given legal backing. This is a vital aspect of the process of decentralisation – and one that has not yet been properly dealt with: the need to formulate procedures for delegating authority and management responsibility for areas of land and development projects.

Giving Rural Communes legal responsibility for the resources within their territory can undoubtedly work, provided the Commune's primary task is that of giving legal form (by communal decree) to negotiated rules. The Commune need not necessarily exercise direct management responsibility; it may be better to delegate such responsibility by contract (terms and conditions to be defined) to ad hoc community structures, depending on the nature of the resource concerned. *This distinction between the ownership and the management of a resource* helps make the transfer of landed assets to communes more acceptable, while ensuring that users are as closely involved as possible and that issues of fairness can be appropriately dealt with. The fact that things are managed at local or village level of itself provides no guarantee against the misappropriation of resources or exclusion of "outsiders", which is a strong argument for introducing a regulatory mechanism with the involvement, moreover, of the technical services and/or territorial authority.

A two-level approach of this kind (with local government delegating management rights to ad hoc local associations) would appear to be the most promising way forward[18]. However, the State and its agents still need to accept the implicit challenge to the principle of State ownership and State control of rural areas – and, as we have seen, this is by no means guaranteed. It is also important that the legal texts lay down clear procedures to govern the relationship between local and communal space. This is necessary to promote the regulation of local practices and to prevent decentralisation from becoming an opportunity for "the politics of greed", replicating at local level the abuses that occur on the national scene. If national governments decide to grant real powers over the management of natural resources to local communities, the legal and institutional decisions accompanying decentralisation will largely determine the success or failure of the operation.

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[18] This is being tried in Madagascar (cf. Bertrand 1997).

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DECENTRALISATION, AN OPPORTUNITY TO REVIVE THE TENURE ISSUE

General observations on the evolution of land tenure

(Alain Rochegude[19])

Since the 1970s, tenure (the set of legal rules concerning access to and management of land as well as the natural resources upon it) has generated varying degrees of interest. Initially very "fashionable", it gradually became a kind of "no-go area" for many national and international agencies, because it was too complex, sensitive and difficult, before it once again came to be regarded, over the last few years, as both a challenge and a fundamental issue which must be addressed.

Work on tenure, whether undertaken by researchers, practitioners or legislators looking for new regulatory provisions, has long been influenced by the dual tenure system that is supposed to exist. This is also demonstrated in terms of norms, which oppose written, so-called "modern" or "colonial" law and customary, oral, "traditional" practices. To illustrate this dualism, the key word is "ownership", a term used to describe an immovable asset considered as legal property, provided that it is identified as such by an appropriate procedure.

Concepts and thinking have evolved to a considerable extent, as eloquently demonstrated by the work of the LAJP and APREFA, especially as regards the way land is controlled. However, on the one hand there has been a sharp decrease in interest in land rights, despite the fact that work touching on the subject is being undertaken in many other disciplines, especially sociology, agronomy and geography, on the other, interest in tenure is once again becoming widespread. There is an openness towards incorporating a range of approaches, which are essential to understanding rural and urban tenure practices, and a structural change in the original discipline which has become known as tenure.

At the same time, influenced by demographic pressure, urban development and changes in rural areas, these same tenure practices have altered considerably. The formal land market, so dear to the hearts of economists and certain tenure specialists, is not developing as expected in respect of plots whose legal status has been clarified by ownership. However, the informal market has reached considerable proportions, combining illegal practices and legitimate actions, arguments put forward, "rights" claimed and transferred, administrative tolerance and so on.

On the ground, although tenure is an underlying issue in most projects and harder than ever to ignore, there are few, if any, simple, clear solutions. Practices are often introduced and new procedures "institutionalised" on an experimental or pilot basis outside the formal legal and regulatory context, but they are usually only valid for the life of the project concerned. That being the case, it is essential that the positions of different private and public actors, who are or could be concerned, are clearly defined. In the context of contemporary Africa, French-speaking Africa at least, – although this also applies to many countries linked to Portuguese- and English-speaking areas, the new institutional context generated by the process of decentralisation provides a valuable, new opportunity for land issues to be tackled.

I. A FEW REMARKS ON DECENTRALISATION

Since the 1990s, decentralisation, based on a new division of power between the State as the central player and decentralised local government as the new local actor, has been undertaken, in various ways and to differing degrees, in most countries irrespective of their legal and institutional colonial heritage. This process too often in practice turns out to produce more or less successful "copies" of the country acting as the "administrative-institu-

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tional basis", i.e. France for French-speaking countries, give or take a few subtle differences. This initially emerges as the inverse-pyramid conception of territorial administrative organisation. The texts state, "The State transfers…" rather than, "responsibilities will be distributed in the following way…". Thus decentralisation clearly seems to be the crude application of one part of the definition[20], which refers to the process rather than to the result being sought, that is a new division of power between the national and lower levels of government.

This partial approach to decentralisation has been the subject of much comment, suggesting that it is founded on imitation, on the concern to devolve rather than properly to decentralise, and on the desire of the State to be rid of costly operational and functional responsibilities, by transferring them to the new local political representatives. What is certain is that the desire to decentralise does not appear at first to represent an explicit political choice, in the etymological sense of the term[21]. This is the case even if there is often a correlation, albeit temporal, between so-called processes of democratisation and the initiative of decentralisation. The State is being challenged, especially by outside funders, whether public (World Bank, bilateral aid) or private (all types of NGOs), by a desire to confer on others besides the State the management of development operations, in particular the allocation of funds. This seems to be the dominant factor in the promotion of decentralisation, and support to local government structures.

It is now possible to reach a better interpretation of the powers translated into the various laws, which nearly always focus primarily on areas that are the object of sector-based policies supported by outside projects and funding. Thus the following are listed: health, education, water management, and others depending on the hierarchy of the powers, which is set according to the legally established levels of decentralised administration; specific obligations such as powers over property management, budgeting, and legal procedures such as court appearances; more imprecise powers ranging from urban planning and protection of the environment in rural areas; also often mentioned are powers of a general policy nature such as the setting up of a national and regional development plan, or the production of development programmes ranging from local to national projects all slotting into each other like Russian dolls.

Conversely, decentralisation has produced a situation in which local powers in respect of services, infrastructure and local development are being exercised in new ways. Curiously enough, looking at the end result, it has to be said that tenure as we originally defined the term is largely absent from the remit of the new decentralised authorities, at whatever level, although some countries are taking the first steps towards transferring such power.

In other words, the matter of land and natural resource management has not really been taken into account. This is especially worrying since decentralisation was meant to bring the exercise of public authority closer to the people and their expectations, which were supposed to justify this transfer of power. The destabilising effect is all the greater in that the new legal provisions referring to the remit of the territorial authorities often overlook the practical level at which power is exercised locally, i.e. the village.

II. RE-ORGANISING LEGISLATION GOVERNING STATE-ADMINISTERED PROPERTY AND TENURE

The preceding remarks raise questions about two aspects: rights and stakeholders. In both cases, they are too far out of step with the legitimate expectations that are supposed to justify the remit given to locally elected bodies. There has been an obsession with standard packages, whether in terms of the legally recognised stakeholders or the rights themselves, the contracts, etc. The law is seen above all as a product of legislation, this instrument that is supposed to settle the fundamental issue of the citizen's equality within the broader institutional system.

In fact, it would seem that thinking should mainly focus on producing legal legitimacy, a precondition for establishing accepted norms. This should involve reflection on two things: building local autonomy, a prerequisite for

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[20] The *Petit Robert* dictionary in fact gives the following definition of decentralisation: "Action de décentraliser; son résultat" [act of decentralising; its result].
[21] "*Art et pratique du gouvernement des sociétés humaines*" [Art and practice of governing human societies] from *Petit Robert* cited above.

decentralisation, broadly based on the powers transferred; and land rights which need to be seen in terms of identifying the legitimacy of a transaction between two parties rather than its nature or that of the property, infinitely more virtual than real, that the land is alleged to be.

This requires a fundamental change of approach and the abandonment of a frame of reference that informs all current legal thinking and is based on the ill-fated coupling of the State, an anonymous structure far removed from citizens' realities, and no longer an instrument expressing the highest level of national legitimacy, with the law which is merely a technical instrument used by that same State.

It also means in-depth analysis of devalued terms such as "local", "public", "private", "common", "authority", "ownership", "right", "law" and so on. It is just as essential that debate should be conducted from a "horizontal" perspective, the only realistic way of tackling the rule of law which must above all be a rule for living. The users are waiting: it is up to the local authorities to support local land users and for the State to guarantee the implementation of such approaches. Rigid, "vertical" legal concepts can only do a disservice to all in a context of rising demand fuelled by the unsatisfied expectations of civil society and pressures from globalisation.

The fields of tenure, and decentralisation, seem particularly appropriate as a means of returning the different constituent parameters of national society to their rightful place. First and foremost, tenure concerns proximity, for nearly all the players, be they ordinary citizens, farmers, herders, or economic enterprises. It involves elements which, because they are founded on the legitimacy of proximity, can only assume their collective meaning at different levels in so far as practices and customs, acceptance of nuances, respect for different ways of "the right to act", are taken into account and closely observed. It would appear essential that political players, in the etymological sense of the term (the least "politicised" as possible), should engage in a process to identify of the legal rules that can reconcile different expectations, conflicting technical and legal constraints, and the contrasting realities of rapidly evolving rural and urban worlds undergoing rapid evolution.

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Local power structures, such as district councils or rural communes, can provide an acceptable standard of management of these problems at a lower level, because they bring together villages, neighbourhoods, hamlets, even nomadic units, within which traditional and customary communities have continued their existence. They must provide the appropriate institutional framework to ensure the recognition of rights, the distribution of land, guaranteeing the legitimacy of local practices. Institutional validation, confirmed by local government, can be carried out by powers devolved from the central State, which should act as guarantors of all citizens' equality before the law, a precondition of a state based on law, rights and justice. Put simply, this calls for nothing less than a new system of tenure, relying on actual practice, even if such ways of doing business are not always legal in a strict sense, and on a new division of political and administrative powers.

ADMINISTRATIVE DECENTRALISATION AND DECENTRALISED MANAGEMENT OF LAND AND RESOURCES: WHAT IS HAPPENING LOCALLY?

Summary of workshop 1.1.

Chair: Cheibane Coulibaly (CUMBU)
Rapporteur: Saïdou Sanou (GRAF)

1. Four major issues

The introductory talk, was given by Philippe Lavigne Delville, based on his paper "Administrative decentralisation and the land tenure question. *Two key ideas* emerged from this presentation:

• an apparent, but poorly formulated, consensus on the principle of local, decentralised management of land tenure, and

• initiatives to bring about decentralised management of resources are often resisted.

In addition, *four major issues* were identified, arising from the question of whether decentralisation is the right solution to the need for local management of resources. The issues were as follows:

1. The management of land and natural resources is not always dealt with by local communities in an open way. Equally, the delays in implementing administrative and legal procedures seem to go on for ever.

2. The issue of land allocation, which tends to perpetuate state control through its process of giving out concessions. It is generally the urban elite who benefit, as a result of the slowness and complexity of these procedures.

3. The relationship between state and customary authorities and local management methods: neither the procedures for working with customary authorities nor liaison between the communal and local levels are properly handled.

4. The problem of establishing the territorial boundaries of villages and the area covered by a district council or commune: it is not possible to define prerogatives in land-tenure management without exact knowledge of the areas involved. Several conflicts have arisen because of overlapping jurisdiction in land tenure matters.

2. Different stages of progress in the decentralisation process

The first round of discussion provided evidence of the *different stages of progress with decentralisation* in different countries and their principal characteristics.

In Senegal, decentralisation has been going on for many years; the law on the national domaine was adopted in 1964, and rural communities (*communautés rurales* / CRs) were established in 1972. Where areas of responsibility are concerned, the State continues to manage gazetted forests; the regional authorities are responsible for protected forests; while CRs manage village lands. An important trend at the present time is the entry of producers' organi-

sations into the political sphere. Traditionally, these organisations have been more active in economic matters, but increasingly they are feeling in need of political legitimisation.

In the north-east region of Ghana, (Bolgatanga), there is still fierce competition between land chiefs and village chiefs, especially following the re-vesting of lands in traditional hands.

In Côte d'Ivoire, the law governing rural land was adopted in 1998. Previously, decentralisation was a reality only in urban areas. Today, land under the customary regime is what remains, after gazetted forests, large-scale development areas, areas occupied by dwellings, etc. have been discounted. Before this law was introduced, all rural land belonged to the State, in contradiction with local practices and claims. The three levels of rural land management are the village, the sub-prefecture and the *département*. The administration does not interfere in village land management; this level is the sole preserve of the village land management committee (*comité villageois de gestion foncière*).

In Mali, the decentralisation process immediately took in the whole of the national territory (urban and rural areas). The texts affirm the principle of land management by decentralised authorities which, in their turn, delegate management responsibility to grass-roots communities. Responsibility for five sectoral fields must be transferred to these authorities, but the procedures for effecting this transfer have still not been announced.

In Burkina Faso, the first version of the Agrarian and Land-Tenure Reorganisation (*Réorganisation Agraire et Foncière* / RAF) came out in 1984. The RAF has been revised twice, the most recent version dating from 1996. The texts implementing decentralisation (*textes d'orientation de la décentralisation* / TODs) were promulgated in 1998. In practice, only urban areas are affected by the process of decentralisation; the rural communes have not yet been established. The RAF stipulates that a Village Land Management Committee (*Commission Villageoise de Gestion des Terroirs* / CVGT) will manage land at the village level. The TODs allow for the possibility of a communal domaine being created. It still remains to clarify the relationship between CVGTs and rural communes, and to define their respective prerogatives.

In Niger, the rural code gives pride of place to traditional chiefs, recognising their role in local land management. However, the issue of conflicting authorities is already evident in the current debate on the direction decentralisation should take. The fact is that the traditional chiefs think they should be accorded some continuing powers over land and associated revenues when the future decentralised authorities are established. But is this in accordance with republican principles?

A number of questions were raised in the initial exchange of views, the most important of which can be summed us as follows:

1. The concept of ensuring security of tenure seems to be unanimously accepted. It is therefore necessary to consider the different angles from which the issue is tackled. Each actor may have a different strategy for ensuring security for themselves.

2. How does one deal with the issue of migration in relation to land tenure, while respecting the rights of the citizens of the countries concerned? Migration is an issue within countries and between them (hence the importance of African integration).

3. The question of the type of structure with authority over land and the relevance of the level at which management of natural resources is best done.

4. The question of harmonising texts: on the one hand, sector-related texts (water resources, forests, soils, etc.) and land-tenure codes; on the other, texts implementing decentralisation.

3. Points of discussion

The workshop decided to refocus discussion and debate on a few key topics to try and arrive at some shared conclusions

● *The concept of ensuring security*

Land-tenure security was analysed from the point of view of preserving use rights in respect of resources. This angle takes into account most of the actors who are currently feeling the need for secure access rights (marginalized groups and beneficiaries of delegated rights). However, use rights have to be considered in relation to the crops concerned. For example, the period of time granted will differ depending on whether a perennial or an annual crop is to be grown. Nevertheless, current experience in the Mandé region of Mali shows that land loans need to be long term (even for annual crops) if the tenant is to show any practical interest in protecting resources (investment in fertility, especially in the Sahel region)[22].

Land-tenure security is never permanent; it can always be called into question. Users of resources and their representatives need to develop the skills to defend their rights and exert influence on the State and other bodies which manage resources. Situations are always changing and different actors are continually seeking to adapt to ongoing changes and associated opportunites.

● *The issue of the heritage of local communities*

In the sub-region, a number of the texts governing decentralisation affirm the principle of a landed heritage managed by local authorities. In many cases, however, the question remains in abeyance. Moreover, the communal territory may include several landed estates: that belonging to the State, that belonging to the commune and those belonging to individuals (including that of so-called *customary land-holders* in Mali)[23].

In practice, there are still a number of difficulties:

– The procedures for setting up communal estates have not yet been laid down (e.g. Mali and Burkina Faso). They presuppose that the State will surrender certain of its prerogatives, and that there will be a transfer of resources (human, material and financial) to match the new responsibilities

– "Customary" (local) rights are sometimes not explicitly recognised (e.g. Burkina Faso). Where they are recognised, they remain residual (e.g. Mali) or are subject to personalised management (e.g. Bolgatanga in Ghana).

– When communal landed estates are established, there remains the central question of the legitimacy of decentralised authorities. To what extent do the latter effectively represent the interests of the local people, and to what extent do the elected representatives use their privileged position to accumulate holdings of land for themselves?

● *Gender and land tenure*

The issues raised by gender are relevant to all marginal groups. As well as women, we also need to take into account members of lower castes, migrants, herders in some circumstances, etc. It is therefore an issue with cultural, economic and political overtones.

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[22] The President of the Amicale des Maires du Mandé (Mandé Mayors' fraternal association) gave a talk at the workshop on the experiment being conducted in this part of Mali. The experiment is deliberately pragmatic, given the urgent need to resolve conflicts. One of the key solutions adopted is the practice of drawing up written contracts in respect of land loans on a form specially designed for this purpose. The contract is then rubber-stamped by the administration.
[23] The workshop discussions showed that the notion of customary law remains ambiguous, as it does not exist in any formal sense. Rather, local practices are dynamic and subject to considerable change.

Where women are concerned, it would be helpful to raise the question of land-tenure security first of all in terms of access to use resources in situations where women are especially vulnerable. For example, there are key moments, such as the death of the woman's husband (and the process of negotiating the inheritance) or when a land loan is contracted, when the mediation of a man is necessary.

However, when the situation permits, access to landed property can be demanded. We have observed that women are sometimes "forgotten" in public interventions (large-scale development works, for example), whereas women's access to landed property could be facilitated in such circumstances.

Some changes are now evident in local practice. In the Maradi area of Niger, for example, some women (having sufficient economic clout) are able to buy land. Similarly, in Mali, in some cases women are able to inherit and purchase land.

Moreover, we need to recognise some specific situations where women are entitled to be allocated land (in Mali and Burkina Faso, for example). In such cases, they may inherit landed property belonging to their clan.

● *The roles played by different actors*

The decentralisation processes now in progress inevitably involves a power struggle, and the actors involved have a role to play in the definition of policy. More or less clearly defined strategic groups are forming, and different actors are taking up position in order to preserve their prerogatives or acquire new ones.

For example, the State sometimes tries to hold on to its prerogatives (attempts at re-centralisation); some customary authorities try to have a finger in two pies (exploiting both "ancestral" prerogatives and those they enjoy as elected representatives, e.g. in Mali, Burkina Faso and Niger); some leaders of farmers' organisations branch out into politics (Senegal).

This interplay of social and political relationships needs to be clarified. The political, economic and social spheres cannot remain in watertight compartments, and the way they inter-relate needs to be more carefully thought out. The character of the social actors, their roles and strategies need to be analysed. The organisation of public debate on the principal issues currently being faced would help in achieving a concerted definition of relevant and appropriate land-tenure policies.

RURAL LAND TENURE PLANS AND CADASTRAL SYSTEMS

What systems are relevant for identifying and registering rights

Workshop 1.2., Tuesday 19 March

"Rural land tenure plans" (Plans fonciers ruraux / PFRs) have been promoted as pragmatic tools for identifying locally recognised rights, leading to their legal recognition by the state. Such plans are based on investigations in which all parties give evidence, and on a cartographic survey of the plots concerned, so that the various rights being exercised can be identified and mapped. PFRs have resulted in progress in surveying/investigation and data-processing techniques. In some situations, this form of identification is intended to serve as the basis for new legislation, giving legal validity to the rights concerned.

Experience in Côte d'Ivoire (and more generally in Benin, Guinea and Burkina Faso) enables us to form a clearer idea of the conditions for the relevance of such systems, and to highlight a number of crucial questions. The purpose of this workshop is to identify and debate them.

In particular, these questions have to do with:

the objectives of PFRs – are they just tools for clarifying the local situation or a basis for the legal recognition of local rights? –; how they fit into the institutional framework; the capacity of PFR approaches to take account of the diversity of existing rights;

the relevance of systematic registration as a way of making land rights more secure: is it always necessary? How do such measures mesh with local practices which, to a greater or lesser extent, are already ensuring security of land tenure?

Finally, systematic registration would seem to imply that the State has the effective means to maintain the system, and that rural dwellers are able to register changes and that it is to their advantage to do so.

RURAL LAND PLANS

ESTABLISHING RELEVANT SYSTEMS FOR IDENTIFYING AND RECORDING RIGHTS

Jean-Pierre Chauveau. IRD [24]

The aim of this paper is not to compare knowledge and information on all the issues raised by the use of the "rural land plan tool", known in french as *Plan Foncier Rural* (PFR). Our contribution will focus on what these experiences teach us about the more general question of *identifying and recording customary rights*, in terms of how they contribute to the securing of these rights. In fact, this is one of the main concerns in the implementation of PFRs, although they are obviously supposed to take account of the legally sanctioned rights encountered in the field, and to contribute to other objectives like rural development and improvement.[25]

This contribution is structured as follows:

The first three sections aim to characterise systems for identifying and recording customary rights implemented under PFR, by:

– Describing the general aims and content of PFR

– Giving a brief presentation of experiences in different countries

– Characterising the nature of the "PFR tool", its specific procedure, and discussing whether or not it is a "neutral" tool that can be used in combination with other procedures.

The next two sections attempt to:

– Provide a quick summary of previous and ongoing experiences, in terms of how they contribute to securing land tenure;

– Identify the main problems encountered in implementing the tools for identifying and recording customary rights: problems relating to the limitations of these tools, those arising from difficulties in taking into account socio-political effects and dimensions and finally, organisational and institutional difficulties.

These last two points pick up the central issues of the debate about methods for registering customary rights.

I. SYSTEMS FOR IDENTIFYING AND REGISTERING CUSTOMARY RIGHTS

1. Aims and general content of PFR

"Rural land plan" type projects (PFMR in Guinea) have been conducted in several countries over the last decade. Côte d'Ivoire was the first to start, in 1990, with Guinea and Benin following suit in 1993-1994, and Burkina Faso, the last to date, in 1999.

All the PFRs share the following characteristics:

– They were designed to respond to the recognised inadequacies of existing legislation and its effective marginalisation of local so-called "customary" rights, despite the fact that most land and natural resources are actually managed according to customary practice.

– Their main aim is to contribute to securing customary land rights, thereby helping to manage and reduce conflict over land tenure and promote rural development. At the very least, this entails: 1) identifying all locally recognised rights, using surveys with local people to investigate their respective claims to land; 2) topographic mapping to demarcate the plots identified (which areas might be used for particular purposes, such as grazing lands for herds); 3) recording by an official agency; 4) putting in place local structures (village land commissions) responsible for keeping documentation on land tenure and ensuring that it is put into practice.

– To contribute to securing customary rights in law, according to different contexts and according to changes made by each country and its legislation. This entails codifying the documentation produced by PFRs, in the form of land tenure certificates or possibly ownership titles.

2. Experiences from different countries

While all the PFRs, apart from the Ganzourgou PFR in Burkina Faso, were launched as pilot projects, the fact that they have been implemented in various institutional contexts has led them to evolve in different ways.

2.1. Côte d'Ivoire

The exercise has been taken the furthest in Côte d'Ivoire,[26] both in terms of the area documented and its integration into a national framework. By the year 2000, around a million hectares had been covered with *plans foncier rurals* completed for over 300 villages and work was under way in another 300 villages. The PFR originally developed out of a project to identify lands that could be made available to young farmers. It was a pilot project until 1995-1999 (information differs on the official end date of this phase), during which time it was also supposed to contribute to the process of formulating new legislation. In 1997, before this legislation was adopted, the PFR was extended from 5 to 9 pilot zones, so that it could be put into practice at national level as the "securing land" component of the National Village Land Management Programme (PNGTER), jointly with the components "rural equipment" (PNER) and "agricultural framework and training" (ANADER) components.

The turning point for the PFR in Côte d'Ivoire came in December 1998, with the promulgation of a law on rural land rights and the state domain. The mass of documentation collected by the PFR had very little impact on preparations for this law, one of the reasons being that the PFR was not really in a position to build on its full potential. Moreover, the draft presented by the Minister of Agriculture, who masterminded the PFR, made no mention of the fact that the law would oblige holders of land tenure certificates to register them. It should also be noted that at the time the law was promulgated, PFR operations had ground to a halt in certain areas where the issue of land rights was causing serious conflict between indigenous and migrant populations.

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[26] Documentation: Ministry of Co-operation, 1996; Bosc et al., 1996; Okoin, 1997; Chauveau et al., 1998; Republic of Côte d'Ivoire, 2000; Balac, 2000; steering committee, 2000; Stamm, 2000; personal communications.

Most importantly, the PFR's role in managing operations was seriously undermined by the new legal requirement introduced by the 1998 legislation that all customary land rights must be formally registered within ten years. Released from its remit of managing operations, which was passed to the Ministry of Agriculture, and with the task of documenting rights made easier (reduced to the minimum required for producing land tenure certificates), the main task of the PFR, since 1998, has been to help with demarcation and registration of village territories (PNGTER June 2000). Once the land survey process was privatised there was no real justification for maintaining the PFR set-up. The operation has effectively been suspended as its scope has been increasingly restricted and due to various factors, donors have been hesitant to continue their support.

2.2. Burkina Faso

The situation in Burkina Faso[27] is very different, as the PFR was initially a much less ambitious undertaking covering just three Departments in the Province of Ganzourgou (36 villages on 150 000 ha of land). Its main aim is to clarify and document the current land rights situation in the area covered by the former Volta Valleys Improvement (AVV) programme, which created villages on neighbouring village lands from 1975 onwards. The area is now marked by serious disputes between indigenous land owners, migrants settled by the AVV (which never issued the promised titles to occupy the land) and new migrants. This PFR is seen as a project with limited objectives, addressing both a specific problem in a zone struggling with the legacy of conflict over land caused by a previous State intervention, and its insertion into a legal framework (it aims to develop a tool for clarifying rights in the context of existing law finally it is limited by its short lifespan (1999-2002).

It is hoped that greater security of tenure will be achieved by using documentation to clarify rights, and by encouraging the parties concerned to comply with existing legislation (the RAF). However, results are very mixed and vary according to local situations. The programme will not achieve all it set out to do within the lifetime of the project. So far, the documentation gathered has not resulted in the desired agreements in a significant number of villages where customary land owners and AVV migrants will not back down from their original position. New migrants either have their position formalised or are registered as being "in disputed zones", depending on their situation. Applications for official title to occupy land are no more numerous than they were before the implementation of the PFR.

2.3. Bénin

The PFR in Benin[28] seems to have followed a course between the two experiences described above. It began in 1994 in direct response to the PFR in Côte d'Ivoire, but was subsumed into a Natural Resource Management Plan (NRMP), of which it represents only one sub-section, "Land Tenure Operations", of a specific component relating to the development of five "catchment areas" (in conjunction with "Forest Development", "Fauna and Rural Eco-development", "Training" and "Institutional Support"). Although the project approach is limited both geographically (it covers about 50 000 ha in 5 zones: Dékanmé, Aplahoué, Ouessé, Ouaké, Boukoumbé) and in terms of the scope, the NRMP and the PFR co-ordination office nevertheless have an explicit mandate to help prepare legislation regarding land rights and management.

Subsequently, the PFR has been subject to organisational and financial uncertainties. Certain donors have pulled out, projects similar to PFR have been implemented, the "catchment area" approach has been transformed into a "village land management" approach (the NRMP is now the NRLMP [Natural Resource and Land Management Plan]) and operations have been privatised. Some of the original five pilot sites have been suspended, and resumption of work by private operators is uncertain while work will start at a new site in Sinende.

It is in this rapidly changing context that the pilot study for the code for rural land and the national domain is being conducted, which refers in its preamble to the need to take account of the progress made by the PFR and its extension on a national scale, subject to the explicit demands of the communities.

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[27] Documentation : Jacob 2001, ERGECI-Développement 2001, communications personnelles.
[28] Documentation : Ministère de la Coopération 1996, Hounkpodote 2000, République du Bénin 2000, Cellule de coordination 2000.

2.4. Guinea

We do not know enough about the PFR in Guinea[29] to be able to give even a brief account of the current situation there. However, we can note that it differs from the others in one respect, in that it was introduced after a new land code based on recognition of private land ownership came into force in 1992. This code institutionalised land plans (by 1996 there were 2 pilot zones of 100 000 ha) and further plans will be implemented. This could have enabled the PFR to encourage moves to secure customary rights by applying for title to them, but this does not seem to have happened, and customary rights still carry no real weight even when they have been recorded on land plans. However, this is not the fault of the actual mechanism of the plans (Republic of Guinea, 2000). While there is still policy support for the PFR, and registration of land under the plan confers presumed ownership, it is now combined with other methods of securing tenure, such as written formalisation of transactions and other agreements, and strengthening mechanisms for negotiation and conciliation within and between villages.

3. The nature of the "PFR tool"

3.1. Is it a specific procedure?

In the early days of the PFR it was thought that it could in itself constitute a coherent procedure, which could be put forward as an alternative both to the centralised model of securing land rights through top-down legislation and to the centralised model of rural development through financially non-contributory projects.

This led to the development of the "PFR procedure", which combines different objectives, and which was designed to be implemented in a linear manner:

– The objective of producing information constitutes the first phase of identifying and clarifying rights and land assets;

– The objective of securing all existing socially recognised rights simultaneously opens up a second phase of documentation, publicity, registration and putting the registration into practice. This phase can result in two main alternatives, depending on: a) whether the PFR is introduced when new legislation is being formulated (as in Benin, and Côte d'Ivoire before the 1998 law was passed), in which case it can also support the formulation of this legislation by providing mapping and information about the nature of rights; or b) whether it is introduced to support the implementation of existing legislation (as in Burkina Faso) or new legislation (as in Guinea, and Côte d'Ivoire since the 1998 law), in which case it simply facilitates the formalisation and legal ratification of the customary rights registered;

– It is then possible to pursue the " rural development" objective, building on agro-socio-economic information of phase 1 and the formalisation of rights insured in phase 2.

There has been some confusion as to whether an PFR is an agency or a procedure. This is probably due to the fact that, except for the recent one in Ganzourgou, these PFRs were originally pilot projects overseen by very different public agencies that were mostly funded by donors and governments. Most had to scale down their ambitions once the initial enthusiasm for a new institutional setting had waned, and it became clear how difficult it is simultaneously to pursue three main objectives and the multiple operations that each entails (particularly when they are not always properly equipped to achieve these objectives: see d'Aquino in Bosc et al., 1996; d'Aquino, 1998; Chauveau et al., 1998).

3.2. A neutral tool?

The PFR was thus conceived as a "tool" whose primary purpose was the identification and preliminary registration of rights and land assets. Most PFR activities focus on these aims, which do not include automatic legal ratification of the rights registered. The specificity of the PFR tool lies in the fact that it is intended to capture and "externalise" the procedures used to ratify such rights. This means that once these rights have been recorded and registered, the PFR aims to replace local procedures for endorsing them with another, legal procedure, which is not the responsibility of the PFR, and which can be more or less centralised according to the prerogatives and methods allocated to village "land commissions".

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[29] Documentation : Ministère de la Coopération 1996, Bloch, s.d., République de Guinée 2000.

For its promoters, the main interest of the "PFR tool" lies in its presumed "neutrality", as it is only supposed to take stock of the current situation without intervening in disagreements or replacing the authorities responsible for legalising locally recognised rights.

However, studies of PFRs show that there is little evidence of this neutrality, demonstrating instead that the "PFR tool" is selective about which rights are registered, and that it unintentionally contributes to the reconstitution and redistribution of land rights. Moreover, its very "neutrality", in the sense that it does not itself offer a procedure for legally ratifying rights, far from providing security for those involved, can cause uncertainty over the agreements registered and actually make them unsustainable. These points are fairly clearly demonstrated in the summary of the PFRs' experiences and their current situation.

II. ASSESSMENT OF EXPERIENCE

1. Brief assessment of experiences

1.1. A multifaceted tool
The experiences described above show that the PFR is a multifaceted and evolving tool, both in terms of its objectives and of its operations in practice. The brief review (I.2) of experiences from various countries shows that implementation of the "PFR tool" varies from country to country, not only in how it is expected to contribute to the legal ratification of customary rights, but also in how it has been implemented and the range of objectives being sought.

For example:

– An PFR may be viewed as the application of a tool in the context of a project with a defined lifespan and scope, or as one element of a more ambitious nationwide procedure;

– Its objectives of documentation, securing rights, and rural development, can be differently prioritised;

– The objective of formalising customary rights can slot into the framework of existing, previous or recent legislation. In a transitional situation, it should support the formulation of new legislation that is being developed;

– The objective of securing rights cannot be viewed in the same way: it depends on (a) whether local commissions are simply a continuation of the technical operation to register rights, or whether they originate from recognised local structures or different social groups with accepted powers over land; (b) whether they are simply responsible for putting the registered rights into practice or have the powers to manage them; (c) whether they are funded or not.

Any comparative evaluation of experience with PFRs should take account of these parameters, and doubtless others too, as they affect the way in which local players perceive the "externalisation" of procedures proposed by the PFR for recognising their rights.

The multifaceted and evolutionary nature of PFRs is not in itself a negative characteristic, as these are desirable qualities for an intervention tool. The problem is that in most of the cases mentioned here, the hierarchy of objectives and priorities for accomplishing operations seems to evolve in response to problems and emergencies as they arise, rather than as part of a rational plan.

1.2. Results still need to be confirmed

In all cases, it is indeed difficult to conclude that the PFRs have achieved a major advance in securing the rights registered in any of these countries, for reasons that will be explained in part II below. There are widespread deficiencies in the way that local commissions set up by PFRs function and in how rights are passed on and transferred.

For example :

– The Ganzourgou PFR aims at increasing security of tenure in an area characterised by chronic conflict, but may not even reach this limited objective (Jacob, 2001). The PFR's contribution to security of tenure is however noted. Certain groups, such as herders, have been reassured thanks to the PFR's mediation (a function which is not actually included in its remit). It is significant that the feasibility study for a pilot operation to secure land tenure in western Burkina Faso (Tallet et al., 2001) did not recommend the PFR option, except in terms of what it can do in topographical mapping and guidance for carrying out land surveys, on the grounds that this tool is not appropriate given the highly conflictual situation in the region.

– By contrast, the Ivorian PFR started as a project to identify spare land on which young farmers could be settled, and developed the ambitious objective of becoming a tool for formalising all customary rights and supporting the formulation of new legislation on land tenure (Bosc et al., 1996; Chauveau et al., 1998). During the course of the project however, it had to abandon its ambitions for generating rural development: it came up against strong resistance in areas where there was most conflict, precisely where its contribution to clarification of rights was most needed. Moreover, its achievements in terms of topographical mapping and land surveys for mapping out village territories have been diminished by the fact that the new legislation on land tenure owes little to the experience gained by the PFR (Republic of Côte d'Ivoire, 2000).

– The PFR in Benin seems rather uncertainly to combine a project whose objectives include rural development with making a contribution to the formulation of more appropriate land tenure legislation (Ministry of Co-operation, 1996; Hounkpodote, 2000). Although we do not know whether the pilot study for the land tenure Code (Republic of Benin, 2000) used information from the PFR concerning the acceptance of different types of rights, it does refer to rural land plans as a means of securing tenure, and guarantees that people whose rights have been recorded and registered as part of the rural land plan will obtain a land certificate, which carries a "presumption of proof of acquired rights that will be sufficient until proven otherwise before a judge" (which hardly differs from the provisional concessions subject to the rights of third parties made by previous Ivorian legislation, which were criticised for their ambiguity in terms of securing tenure). Moreover, we note in the PFR areas the positive development of local use of written documents (with no legal value) between partners engaged in transactions or land contracts (renting, pawning, etc.).

– Although the PFR in Guinea was built onto new legislation to promote decentralised management of land resources, it does not seem to have produced any more convincing results in securing tenure. The recent policy announcement on rural land tenure merely reminds the public that "the government recognises the legal value of the land plan, and is committed to taking measures to strengthen it so that registration with the land plan confers a presumption of ownership" (Republic of Guinea, 2000).

1.3. Main technical achievements

The main achievements of PFRs can be divided into three categories:

– The use of topographical mapping to identify rights which are then transcribed and registered by the PFR.

In general, PFRs have shown that it is technically possible to use topographical mapping to record locations and surface areas on a large scale. This was by no means certain when the pilot projects started, when the principle of exhaustive land mapping on a regional or national scale was inconceivable with the techniques usually used (cadastral surveys and centralised registration).

– Keeping the cost of operations to a reasonable level.

Initially, cost was a major challenge to PFRs, but actual estimates show that the pilot operations are economically feasible at national level. Results obtained prove that the cost per hectare is reasonable (from 5000 to 7000 FCFA per ha in Benin and Côte d'Ivoire). However it appears that operations in Benin have contributed to a rise in cost (from 4500 to 7000 FCFA: Co-ordination cell 2000).

– Wealth of qualitative information contained in land surveys.

PFR agents have systematically gathered a considerable amount of qualitative information, which constitutes a database on the state of land tenure systems in contrasting situations. However, the quality of this information does of course vary, notably because of the constraints the teams are under (see 4.1.). But on the whole the data have not been used to their full potential, either to improve the reliability of the methods of transcription of the rights concerned or to contribute to the formulation of a new land tenure code.

In the end, despite the progress that has been made, there is no guarantee that the information on land tenure will be used to its full potential, that the rights recorded will be reliably transcribed, that the agreements registered will be stabilised on a sustainable basis or that they will be put into practice. This is because of three main problems:

– the limitations of the tools used by PFRs to identify and register rights, which will be discussed below;

– difficulties in managing the scale and socio-political effects of these tools;

These first two problems explain the difficulties of getting a "snapshot" of "all existing rights", as the PFRs had intended.

– institutional and organisational difficulties.

2. Limitations of PFR tools

2.1. Identification and registration of rights based on cadastral surveys
Inevitably, the identification of rights by PFRs is to a certain extent pre-determined by the form of registration that will eventually be used to record them, which is cadastral: one plot, one right of appropriation (possibly one title of ownership) and one holder of rights (an individual or a collective)[30].

In reality, rights are made up of a collection of claims (rights of use, exploitation, improvement, assignment, transmission and inheritance, transferral and alienation). These may be split between different holders and, as is often the case in Africa, may be managed by different authorities or pertain to different management units. Also, a single plot can be used for different purposes, sometimes according to the season, which has further implications for rights of use and exploitation. The situation is further complicated by the sensitive issue of the reliability of procedures for transcribing and ratifying socio-land information. This causes a number of problems, which are outlined below[31].

2.2. Over-simplification and selective registration of rights
From the beginning the PFRs' ambition was to make an exhaustive identification of all existing rights. There is no doubt that this ambition should be downgraded in order to take into account practical constraints, on the basis of the following points:

– It is generally observed that the only rights over land identified and registered are rights of appropriation, attributed to a "land manager", which already denotes the holder of the property rights, even when the rights identified are collectively owned. However, in Benin, the PFR is planning to introduce a second phase of identification

[30] The cadastral tool is not limited to this simplified use and does not in itself only involve rights of property.
[31] We refer to the following studies: Basset, 1995; Balac, 2000; Bosc et al., 1996; Chauveau et al., 1998; d'Aquino, 1998; Lavigne Delville (ed.), 1998; Lavigne Delville, 1999; Lavigne Delville (ed.), 2000; Lavigne Delville, et al., 2001; Toulmin, C. & Longbottom, J., 2001.

of temporary rights, and in Côte d'Ivoire, new legislation makes provision for claimants of land certificates to declare the "occupiers in good faith", while leaving the holders of certificates the freedom to judge for themselves.

– The identification of rights separates them from the system of authority that ensures their social recognition and thus their local security, while the socio-tenure information gathered does little to clarify how community, collective and individual rights become established. The way village land commissions are represented and invested in by dominating interest groups also needs to be closely monitored (cf. 3.2).

– Because the process of identifying rights is selective, it is done to the detriment of the rights transferred or assigned to farmers who do not belong to local village communities.

– Customary transfers of land tend to be under-reported and, when they are registered, they become disconnected from the social clauses that remain in force after the land has been assigned.

– Rights over natural resources other than agricultural use are either ignored (produce that is harvested, hunted or fished) or highly under-identified (grazing lands). The result is that these uses are tacitly conferred on the "land manager" to the detriment of certain groups of users (particularly herders and women), while the fragmented use of topographical mapping means that much grazing land is not identified.

2.3. Limitations of transcribing rights

– The essentially cadastral nature of registration implicitly predetermines who can hold rights of appropriation. One example of this is the fact that people who manage land are pre-identified in the demographic census, and socio-economic surveys are carried out before the socio-land surveys and mapping exercises. Moreover, the ability of the cadastral tool to identify spatially identifiable resources is generally under-exploited.

– The transcription of rights is fraught with inherent difficulties that must be recognised. It is not easy to reproduce in translation the exact content of local categories of rights or the conditions for making them sustainable ("gifts", "loans", "sale and purchase"). Moreover, the practical constraints of registration require a process of codification that further weakens the actual content of rights.

– Because "disputed areas" are not usually registered, they constitute a kind of "rights-free zone", which clearly is not the case in reality.

2.4. Limitations of procedures for ratifying the information gathered

The information on rights gathered under these conditions is further distorted during the process of ratification if certain precautions are not taken (d'Aquino in Bosc et al., 1996, and d'Aquino, 1998):

– Ratification does not rely on social and tenure information gathered during surveys ("primary agreements" between registered players at the time of the investigative reports), but on information interpreted and transcribed by the PFR teams. This distinction is especially important considering the consequences of using the results in procedures involving the States' authority to ratify.

– The process of ratification is usually restricted to a publicity phase, which is used to ascertain whether rights are subject to challenge by third parties in the customary domain alone ("intrinsic" or local validation, as opposed to "extrinsic" validation of customary rights in the context of legislation). However, on the whole this phase which is not subject to much codification, is only partial, and while the information gathered from it will be kept, a systematic report is not always made. It seems then that this publicity phase cannot be considered, without some precaution, as a phase of intrinsic validation of customary rights in so far as it is not possible – even if the information is well circulated in advance with the support of administrative authorities – for all interested parties to be present when the publicity is carried out. Permanent ratification of customary rights will only be possible during a follow-up and implementation phase, required to complement the publicity phase.

– Even if we assume that the phase of "intrinsic" or local ratification of rights is entirely reliable, it does not provide any greater security for local players involved in land tenure in terms of getting their rights recognised by the legal authorities. The "extrinsic" validation of customary rights, generally announced by the promoters of the

PFRs as the final awaited product, is suspended, pending the implementation of legal procedures. This waiting period can deepen the confusion felt by local players, and reinforces the difficulties resulting from the socio-political dimension of all procedures of identification of customary rights, which we will examine below.

3. Difficulties understanding and recognising customary rights

3.1. Using a "technical" tool to identify rights

The PFR objective of formalising and recording customary rights echoes a long-standing concern in the history of land tenure policies in Africa that dates back to colonial times. This objective has taken on a new topicality and scope as various local groups, governments and donors increasingly focus on formal recognition of customary land rights as a precursor to more decentralised management that aims to provide greater security for customary users.

However, this widespread concern does not mean that everyone has the same interest in and expectations of operations to identify and record rights. In practice, the apparently technical PFR tool is used in areas of pre-existing tensions and conflicts marked by power struggles. This is notably the case where increasingly mobile and diverse players are competing for access to dwindling resources, whose exploitation is becoming more and more privatised and commercialised.

3.2. External agencies and identifying and registering rights

In this context, operations to identify and record rights may further complicate the situation, rather than providing a clear picture. Far from clarifying existing rights, these activities often lead the various local land groups to adopt defensive and offensive strategies that most PFRs can generally neither control or identify, nor have the capacity to manage.

– One unintentional but indisputable effect of PFRs is the behaviour of different groups of farmers who adopt various strategies to address their concerns. In most of the regions where PFRs have been implemented, positive expectations of the process tend to be countered by fears, and this ambivalence is particularly well illustrated by the differing reactions of indigenous and migrant groups, and groups of different social status. The condition set by the PFRs of a prior consensus between parties to engage in operations can lead to a constrained or false consensus that is fragile and unsustainable.

– In many cases, PFRs re-ignite conflict over land as old, unresolved disputes are registered and latent conflicts brought into the open. There may be renegotiation of rights considered up till now to be self-evident, but whose formulation brings to light prerogatives which did not have to arise in the course of daily farming practices. Land may be withdrawn, and opportunistic strategies adopted by certain categories of rights holders who use RLP operations to try to reinforce their rights or get their prerogatives recognised.

– The local follow-up committees put in place by PFRs constitute an important institutional level at which the rights registered are put into practice and managed. However, the composition and function of these groups is subject to the conflicting injunction of having to conform to administrative criteria while at the same time answering both to the representative criteria of land players and to local land committees (generally indigenous).

4.Organisational and institutional problems

4.1. Quality of information

In the field, teams are usually under great pressure to "deliver" in terms of the number of hectares surveyed, which is used primarily as an indicator of effectiveness to the detriment of the quality of information gathered in PFR evaluations. Moreover, in order to facilitate or accelerate operations, teams can sometimes intervene in land disputes and force through false agreements or impress upon different interest groups the positive aspects of the mechanisms of identification of rights, without being able to clarify the more obscure points that may crop up later on.

In order to achieve sustainable security of rights, identification must be rigorously monitored, which takes time and is therefore costly.

4.2. Difficulties of managing documentation
During an exercise to support the management of the PFR demographic-land database in Côte d'Ivoire (Balac, 2000) it was noted that questionnaires disappeared, certain questions on survey forms were left unanswered after villagers refused to take part in surveys, and statements were called into question after one of the parties involved died.

4.3. The risks of funding through projects
– Funding depends on donors whose support has proved unreliable and intermittent. The case of Benin illustrates how donors and different agencies intervene on different sites.

– Operations are always susceptible to changes in donor perceptions of what programme priorities should be.

– There is often no funding provision for monitoring and evaluation, which is essential to address problems associated with the tool for identifying rights and to assess the socio-political strategies employed by different groups of players.

– Follow-up operations are essential for all mechanisms for the systematic registration of rights, but these may be subject to separate and uncertain funding.

4.4. Should local people contribute to costs?
Without questioning the theoretical validity of this point, it must be acknowledged that payment of a fee for land registration is likely to make some local players reluctant to participate in procedures for identifying and registering their rights, especially those from the poorest groups, who have the least secure rights.

III. THE MAIN ISSUES FOR DEBATE

1. "Clarification" through identification does not result in greater security of rights

This linear approach to securing land rights is based on certain logical presuppositions:

a) that at any given moment, existing rights are the product of the rules and processes governing social recognition of rights, and it is possible to separate the product from the process;

b) that it is possible subsequently to transcribe these rights into legal categories that give them a definitive validity in the eyes of the State.

This process of "externalisation" and "bracketing off" of existing rights in order to safeguard them is based on the principles of codification, even though the procedure is seen as different from centralised codification through registration, and is supposed to operate in parallel with legislation that is more appropriate to the realities on the ground.

It contrasts with the "procedural" concept of customary land rights, which is based on the results of empirical research,[32] and which stresses that:

a) the effectiveness of customary rights of access to and control over resources is partly the result of permanent negotiation over time, aimed at ensuring the recognition and sustainability of rights by local authorities, which are sometimes in competition with each other;

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[32] See the following, among others: Griffiths, 1986 and 1992; Shipton & Goheen, 1992; Bassett & Crummey, 1993; Painter et al., 1994; Le Roy et al., 1996; Chauveau, 1997; Lund, 1997 and 1998; von Benda-Beckman & von Benda-Beckman, 1999; Ribot, 1999.

b) the ratification of customary rights by identifying suitable legal categories is not simply a matter of legal transcription, but also involves a negotiated balance of power between the various players involved, between different local authorities and between local and legal authorities.

The fact that different groups of players are given some freedom during PFR operations can thus reactivate the procedural nature of customary rights. This often explains the difficulties experienced by PFRs when identifying and registering rights, why so little has been achieved in terms of securing tenure for the long term, and why PFR-type operations have not done much to establish procedures for legally ratifying the rights registered.

The procedural nature of customary rights thus constitutes a major constraint to PFRs, both in terms of clarifying rights by identifying them, and making them more secure through registration and legal ratification.

2. How can the process of registration connect with local recognition of rights and with legal arrangements?

On this point, two general questions should be taken into account from the start of the PFR phase in order to identify the possible answers while the operations are put into effect (notably by means of monitoring and evaluation).

– The "externalisation" of procedures to ratify rights will be counter-productive if no attention is given to the authorities that legitimise rights. The fact that the mechanism for identification and registration appears to be "neutral", in that it does not in itself provide a procedure for the legal ratification of rights, far from providing greater security for those involved, can be a source of uncertainty that makes the tenure agreements registered unsustainable. The procedures for identifying and registering rights necessarily lead to pertinent political choices about the local authorities that ensure social recognition of rights: which authorities should be given preference, and according to what criteria; and which symbolic, political and material resources do they need to fulfil their functions successfully?

– If there are no positive incentives to ratify rights in law, the "externalisation" of procedures for ratifying rights will not have the desired effect. What will happen, as is so often the case, is that yet another institutional element will be added to the strategies used to secure tenure, in a context of even greater legal pluralism. What type of incentives should be promoted?

3. How better to harmonise registration with local situations and legal mechanisms?

If the "clarification" of rights is a necessary but not sufficient condition for their security, how can the tool for identifying and registering them be improved? And how can it link up with other possible approaches for securing land tenure?

– **It is not always possible to give "external" ratification of rights,** especially where situations over land tenure are highly conflicting. Local demands will be too contradictory to reach stable agreements immediately or rapidly and to permit statements on current tenure statutes (Tallet et al., 2001).

– Control of socio-political effects resulting from the operations also requires that adequate and permanent **information** is given to the populations and that registration should be independently **monitored and evaluated on a permanent basis**, notably where it concerns the village commissions in charge of follow-up and implementation procedures. Such a mechanism thus remains a **difficult procedure** to ensure the reliability and sustainability of agreements on rights.

– It is worth noting that **PFRs are not the only possible tool for the securing of customary rights at local level** (Lavigne Delville, 1999). While the PFRs take the body of customary rights that are socially recognised within village lands as their starting point, in order to identify, map, ratify and register them all, an approach that supports the formalisation of the most "sensitive" rights (especially rights arising from customary or hereditary transfers

and transactions) would be more selective, conditions permitting, and leave the way open to local demands as regards registration of the body of rights. Other approaches do not focus on rights as such or on mapping them, but on the conditions of agreement over the rules, of which rights are the result, and on the authorities in charge of putting them into practice. See, for example, the concept of the Land Charter in Mali, and the establishment in Niger, at the request of the land commissions, of titles that do not require identification through topographical mapping.

– **The registration of rights can require a phase of mediation, even of collective negotiation**, which can be delicate and protracted, according to each situation. In the case of very conflicting situations, mediation (especially to facilitate the agreement over rights arising from customary transfers and transactions between indigenous and migrant groups) is clearly a necessary precondition. Mediation is also a possibility in more common situations, in order to explain and render sustainable the "hidden negotiation" which procedures of registration of customary rights always involve.

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RURAL LAND TENURE PLANS AND CADASTRAL SYSTEMS

Relevant systems for identifying and registering rights

Summary of workshop 1.2.

Chair : Vincent Basserie (PAEPA)
Rapporteur : Pierre-Yves Le Meur (UR REFO)

1. General remarks

– The purpose of Jean-Pierre Chauveau's introductory presentation was not to "provide a comparative analysis of current knowledge and teaching on the whole range of issues raised by the use of rural land-tenure plans (Plans fonciers ruraux / PFRs)", but to deal with "the more general question of the identification and registration of customary rights as a way of helping to make such rights more secure". In fact, the discussions focused on three major experiments with rural land-tenure plans in West Africa: in Côte d'Ivoire, Benin and Burkina Faso (the Ganzourgou area, to be more precise).

– It is more appropriate to speak of "experiences/experiments" than "achievements", given that these initiatives are at different stages, with two or three not yet completed, and above all because their objectives are very varied and they mesh in different ways with national legislation and public policy.

– The discussion reflected the personal situations of the contributors, with participants divided not only on classic researcher-vs.-practitioner lines, but also by category of practitioner (surveyors, for example). The views of those directly involved in PFRs varied according to their role in the procedure, in particular their greater or lesser closeness to the practical realities of identification.

– The result of this was, on the one hand, a rich variety of points of views and, on the other, some ambiguity in the terms used. I will mention just three examples: "clarification", "mediation" and "ownership rights"/"customary rights". The term clarification was sometimes used in a descriptive and analytical sense, sometimes more prescriptively (tending towards the term "standardisation" (*normalisation*), understood as implying the registration of land). The term "mediation" emerged in a somewhat unexpected form from discussions of the reputedly "neutral" PFRs; again, it was not always clear whether it referred to negotiation and consultation procedures subject to precision or definition, or to something more akin to a transition between two states: informal "customary" and formal "modern" status. Vagueness surrounded the terms "ownership rights" and "customary rights", and in a way this may have allowed the debate to develop more fully.

The discussion revolved around three main topics:

1. Methodological conditions determining pertinence, with reference to the controversial idea of identification as a "photograph" of rights and its social impact. The focus of discussion was the principle of "externalisation" of rights (Chauveau) underlying the rural land-tenure plan, which aims to remove/extract rights from the social relationships and authority systems in which they are embedded.

2. Social and political conditions determining pertinence, with reference, on the one hand, to very diverse local land-tenure systems and, on the other, to bodies having competence in land-tenure matters, land-tenure committees, decentralised authorities and village chiefs. This raised the further question of the objectives of public policy and the legal recognition of the rights identified.

3. Organisational and institutional conditions determining pertinence, with reference to the inclusion of PFRs in (natural resources management or land management) programmes subject to short-term funding arrangements which are potentially in conflict with the long-term issues of land tenure. Other matters debated in this context were the monitoring and maintenance of registered rights, the contribution to be expected from the communities concerned, and the new skills required to perform these tasks.

It was difficult to deal with these topics independently, since they are inextricably bound up one with another. For instance, methodological choices are inevitably based on political orientations (not always spelled out with sufficient clarity) and have social effects which question the neutrality of the PFR. I have therefore organised my account of the discussions around three major themes: (1) the principle of identification and recording/registration *versus* that of mediation, (2) registration of rights versus delimitation of territories, (3) making rights secure, effectiveness of registration and authority systems.

2. Principle of identification and registration *versus* principle of mediation

PFR-type tools are often presented as "neutral", "objective" approaches to identifying land-tenure rights. A detailed account of the methodology adopted was given in the case of the pilot plan implemented in Benin (Romain Hounkpodoté). The discussion centred on the unforeseen social effects caused by the procedure. Jean-Pierre Jacob warned of the danger of this method of objectivising and externalising existing rights being affected by a kind of "positivism" compounded of claims to exhaustiveness and representativity, and a prescriptive intention. Chimère Diaw added that procedures for identifying and registering customary rights had a long history in colonial and post-colonial Africa.

The experiences described by the participants showed that the very fact of introducing the procedure tends to spark off negotiation and recomposition processes. This was remarked on by Jean-Pierre Chauveau in his introductory talk, then by Chimère Diaw, who stated that implementation of a new "catalogue/notebook" provoked reactions which complicated and "hindered" understanding and necessitated negotiation procedures. André Ouédraogo confirmed and illustrated these points in the case of the Ganzourgou. He particularly highlighted the "anticipation strategies" adopted by local communities, which "adapted" by organising discussions and mediation exercises before the project was implemented, in order to arrive at "security of tenure by consensus".

The question arising from recognition of these mechanisms – which were neither good nor bad in themselves – was whether or not one should intervene (Vincent Basserie). Intervention might well conflict with the alleged neutrality of the tool, the purpose of which was to identify rights and clarify land-tenure relationships (though this latter activity was not the automatic outcome of the former, as Jean-Pierre Chauveau pointed out). This led André Ouédraogo to raise the dilemma posed by a local request for mediation, given the necessary neutrality of the tool itself. To get over this problem, a higher authority (provincial committee) needed to intervene, but in the case he mentioned this intervention was not forthcoming. The non-neutrality of the tool also seemed to be inevitable when some actors took advantage of the PFR to influence local power relationships.

Registration forms for disputed plots – a methodological innovation introduced in Côte d'Ivoire and Benin – were a way of taking difficulties associated with identification into account, but without laying down formal procedures for negotiation and settlement of disputes prior to final registration. In fact, opinions on the place that should be given to mediation in relation to the identification and clarification phases varied considerably: some participants thought it should occur later, prior to final legal validation; others thought it should be a preliminary to clarification.

Another factor triggering "land-tenure games" and recomposition processes was the time gap between identification and registration procedures and the legal validation of the catalogued rights. This tended to lead to opportunistic behaviour, delaying tactics and the resurgence of conflicts, with the attendant danger of their affecting the whole community (Jean-Pierre Chauveau), especially when the time delay was compounded by uncertainty as to the nature of the validation [process] itself. Some of the participants saw the time dimension of the procedure as more central even than the cost of the operation, particularly in view of the need to organise really effective me-

diation and negotiation arrangements, which would mean local communities participating in devising the programmes (Ouédraogo).

3. Registration of rights versus delimitation of territories

Jean-Pierre Chauveau insisted that the issue of the nature of the rights requiring identification was more important than that of boundaries. Nevertheless, difficulties encountered in areas where dispute and conflicts are rife were often reinterpreted as issues of boundaries. It has to be said that there was no real debate in this workshop on the content of rights and in particular the nature of customary rights (e.g. concerning the social clauses not relating directly to land tenure, which tend to be neglected because of the tendency to simplification inherent in registration procedures). The PFR objective of making customary rights more secure was therefore explicitly advocated, without the content of such rights being really spelled out. The discussion was more to do with methods and procedures, even though it was stated on several occasions that it was necessary to "begin with what already exists" ("we have to respect the status quo", otherwise "things get out of hand", Mme Amon). Because of this omission, the discussion tended to deviate and points were raised about the objectives of Rural Tenure Plans: was the aim to make rights more secure generally, or customary rights in particular, or land ownership in the "modern" sense of the term (what Vehi Touré referred to as "normalisation/standardisation")? The ambiguities of this discussion were expressed in a nutshell by one participant: "We have to respect this photograph [that of "existing" rights, which might well be ancestral rights] in order to progress towards modern individual ownership" (Mme Amon). The same ambiguities were apparent in the exchange between A. Ouédraogo, R. Hounkpodoté, V. Touré and Mme Amon on the link between collective and individual security of tenure/registration.

Chimère Diaw raised the question of methods of triangulation as a way of improving the validity and reliability of identification. Romain Hounkpodoté explained that, in the case of Benin, a lexicon of local land-tenure terms was drawn up before any rights were registered. In the field, the identification procedure was performed openly in the presence of the customary owner, the user, neighbours and the survey team (topographer/surveyor and guide/interpreter). At this stage, marker posts were hammered in at each corner of the plot, the survey form was completed and the survey made. In the event of continuing dispute, a form specially designed for "disputed plots" was used. The parties had to reach agreement in order to complete the registration process in the presence of the team and witnesses.

For Mr. Rousselot, decentralisation necessarily raised the question of territories and their borders. At the same time, it was permissible to suggest, like Chimère Diaw, that the real issue was more the resources found in a given area, and the benefits deriving from them, than the territory itself. This discussion was not pursued in depth, but it was significant in that it signalled a shift in the nature of the problem: from the issue of (customary) land-tenure rights and ways of making them more secure towards that of land management and the delimitation of the territory concerned. At the same time, it was pointed out – by André Ouédraogo in relation to the Ganzourgou – that this latter aspect could be crucial in situations where boundary conflicts between villages were acute. It was also noted that the debate about delimiting territories had often been treated as a purely technical question, in terms of their registration and making improvements to the triangulation network.

4. Making rights more secure, effectiveness of registration and authority systems

The issue of ensuring security ran right through the discussions, and was indeed central to the original question. The points made by Jean-Pierre Chauveau and Jean-Pierre Jacob were somewhat pessimistic on this subject, stressing the ways in which the procedure had been manipulated and the uncertainties caused when identification was not followed up by rapid official recognition. Mariatou Koné also stressed the opposition, in Côte d'Ivoire, between two points of view on security: on the one hand, long-established local people wanting to know what areas they had granted to migrants; on the other, incomers aspiring to achieve recognition for the areas they occupy. As well as this opposition between locals and migrants, internal conflicts within each of these two categories had also been reactivated.

André Ouédraogo (Burkina Faso), and Romain Hounkpodoté (Benin) played down the importance of these conclusions. In Ouédraogo's opinion, the PFR had succeeded in "reassuring" some groups, in particular herders, following mediation and negotiation procedures which resulted in the delimitation and recognition of pastoral areas. However, he added that the areas officially adopted in the case of the AVV (Projet d'Aménagement des vallées des Voltas / Volta valleys development project) had been "nibbled away" by arable farmers, and that it was the responsibility of the land-tenure committees set up under the PFR to restore these areas to the agro-pastoralists. Hounkpodoté emphasised that in the areas covered by the Benin PFR, such as Dékanmé and Ouessè, disputes had almost entirely disappeared, as had attempts to usurp rights; on the whole, progress had been made in making rights more secure. In the case of Burkina Faso, André Ouédraogo also stressed that, although the maps identifying plots had no legal standing, they were nevertheless seen as providing security by local communities, which were very sceptical about later formal validation (cf. the expression "opposing our papers to your papers", an allusion to the generally unlawful appropriation of land by "new actors", *big men* and clients of the regime). In R. Hounkpodoté's opinion, the issue of "papers" needed to be treated with caution. The draft legislation on land tenure in Benin provided for a "land-tenure log book" (*livret foncier*) certifying the registering of a plot of land, and this could be used as proof of an acquired right in the event of litigation before a judge. Registration was subject to boundary marking, which – and this was an innovation – could be done in the "traditional" local manner (using plants and/or stones). For Michel Roze, the possibility of granting a provisional title, recognised by the rights-holders, neighbours and the customary authorities, at the time of registration would be a positive incentive, encouraging commitment to the clarification of rights and the settlement of differences on the part of farmers.

With regard to the issue of ensuring security by the registering and "clarification" of rights, Jean-Pierre Chauveau observed that what we were seeing was rather the emergence or manifestation of a social demand for mediation which was operative outside the logic of the PFR, and even in contradiction with the PFR's supposed neutrality. This point brought us back to the central issue of the difficulty in reconciling two objectives: establishing rights (at risk of rigidifying customary forms, which are by nature shifting) and supporting processes. On this subject, but from a completely different point of view, Vehi Touré noted that the Côte d'Ivoire PFR had failed in the area of making rights more secure. As far as he was concerned, the PFR was no longer on the agenda; the key thing was now to implement the land-tenure law – a point of view echoed by others, who believed that this law had in effect robbed the PFR of its *raison d'être*.

Where providing security was concerned, publicising the results of the land-tenure survey was seen as necessary and important, but still not sufficient to defuse potential conflicts. The role of publicity, in the three months between the [drafting of the] provisional document (register of rights-holders, cartographic survey) and any subsequent corrections by land-tenure committees, was described by R. Hounkpodoté in the case of Benin. However, he added that the procedure had not always been carried through to completion in the pilot phase, and consequently it was difficult to make a reliable assessment. Beyond this phase, one was up against the problem of the "qualification" and "specification" of the follow-up process, which was closely related to the local political and land-tenure situation (Jean-Pierre Jacob). It was not possible to stick at a purely quantitative evaluation of the PFR ("how many hectares registered"), as Mme Amon rightly remarked. In the Ganzourgou, for instance, potential conflicts (particularly between arable and livestock farmers) had been neutralised by land chiefs, whereas in the AVV area, outside their sphere of influence, no authority (land-tenure committee, administrative chief) had the same legitimacy (at this point, Jacob mentioned the notion of constitutional rights, borrowed from Elinor Ostrom). The lack of legitimacy of local land-tenure committees was also mentioned by André Ouédraogo, while in the case of Benin R. Hounkpodoté insisted on the importance of criteria of social and geographical representativity in the composition of such committees.

This raised the whole question of the way "rights systems" are embedded in "authority systems", and therefore the limitations of the "externalisation" mechanisms which underlie PFR-type procedures for identifying and registering land-tenure rights. A possible answer to this problem lies in rational coordination between the land-tenure issue and decentralisation, as provided for in Benin's future law on land tenure, for example. Where Côte d'Ivoire was concerned, the procedure seemed to be very bureaucratic (village land-tenure committees set up on the initiative of the sub-prefect, who chairs the land-tenure management committee one level up the hierarchy), with the aim of achieving registration in three years.

The duration of these procedures was also discussed from a more institutional and organisational point of view. On the one hand, the introduction of rural land-tenure plans in the form of projects causes particular constraints which may militate against their continuity (budgetary constraints, disbursement problems and short-termism); on the other, some participants pointed to the greater adaptability of private operators (Burkina Faso) as compared with state agencies (Côte d'Ivoire), though no convincing arguments were produced. Finally, the sustainability and continuity of the process were discussed from the point of view of the participation of local communities in conservation and maintenance (Ouédraogo, Hounkpodoté).

5. Conclusion

From these discussions, one might conclude that, apart from the need to take a critical look at methods of identification and registration (conclusion: avoid "positivism"), the central issue with procedures of this type is the way they fit in with legislation – hence a need to clarify the public policy objectives which underlie them. It would also be valuable to examine the feasibility of these procedures by studying instances in which they have not been implemented (Pierre-Yves Le Meur). In the case of Burkina Faso, a preliminary survey conducted in the west of the country reckoned that the PFR was neither desirable nor feasible as there was too much potential conflict over issues of land tenure. In Côte d'Ivoire, it is noteworthy that particular villages were avoided for the same reasons, without this having been really considered and discussed. And yet, these extreme cases could teach us a great deal about methods of identification and registration and the conditions in which these procedures are possible and pertinent.

LAND TRANSACTIONS AND DERIVED RIGHTS

Making transactions more secure and regulating emerging land markets

Workshop 1.3., Tuesday 19 March

As well as family quarrels (over inheritance) and boundary disputes, a large proportion of land-related conflicts arise from land transactions, whether they be "disposals", "sales" or similar arrangements, or (to a lesser degree) the various procedures for derived land use rights.

Although in some areas money payments have been a factor in land transactions for many years, studies have revealed a recent and rapid increase in money-based transactions of this kind (or indeed the appearance of such transactions for the first time). These transactions are sometimes managed in accordance with fairly transparent local procedures, and tend not to give rise to conflicts. However, other arrangements are more or less underhand, do not comply with local rules, and involve deception.

There has also been an observable diversification of the procedures for delegating farming rights to third parties. There may be three, four, or as many as ten, possible arrangements, the exact terms and conditions depending on geographical location, local farming systems and economic and social circumstances. Lease arrangements are gaining ground in many regions, and sharecropping agreements are also currently practised.

At the same time, we are seeing more extensive use of written documents in land transactions. This is almost always the case for "disposals", and sometimes for lease arrangements. This use of written instruments, and sometimes "semi-informal" procedures involving the local authorities, is evidence of local institutional innovation in the process of making land rights more secure. It would no doubt be fruitful to monitor and support these new developments. It is a reasonable assumption that giving legal recognition to the land-tenure contracts that rural people enter into among themselves, in accordance with locally recognised rules, would to a large extent solve the problem of insecurity and make it possible to regulate the emerging land market.

The purpose of this workshop is to take stock of our present knowledge of such transactions and their dynamics, as well as their economic and social impact. We shall be presenting and discussing ways of making transactions more secure.

LAND TRANSACTIONS AND DERIVED RIGHTS

Regulating emerging land markets

Mahamadou Zongo [33]

In developing countries, a very large proportion of the population is engaged in agriculture. The issue of land tenure is therefore of vital importance, not only in terms of the productivity of farming systems and the reduction of poverty, but also for the maintenance of social harmony, which is often threatened by the competing claims of different ethnic groups.

The land tenure situation in rural West Africa is characterised by a plurality of rules and regulations. Central government legislation, though legally binding, is not often applied, while local rules and practices are almost totally unacknowledged by the State. This leaves the vast majority of rural dwellers in a legal limbo and therefore in a state of potential insecurity. These contradictory systems of regulation have given rise to confusion over land management, which breeds insecurity for all those living in the countryside.

To achieve sustainable human development, it is necessary to resolve these contradictions by revising the procedures used to approach land tenure in the rural setting. In particular, we need to review the role hitherto accorded to local land tenure systems in land policy. It is important to understand the dynamics of these local systems, which have in most cases proved themselves to be flexible and effective. Their dynamics are characterised by sometimes rapid changes in land tenure rules and practices, leading to significant new developments in the way land is accessed.

As well as "traditional" forms of inheritance and "grant" (or conditional loan), land transactions now assume a wide diversity of forms, ranging from "sales" to the various arrangements covered by the term "derived rights".

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I. MARKET TRANSACTIONS AND "SALES"

Although land is, in theory, regarded by rural people as an inalienable asset, market transactions do take place, and have taken place for a long time in some regions. In others, they are an unknown phenomenon, while in yet others they have only recently begun to occur and are often kept secret, or at least are entered into discreetly. They are the result in some places, as in the west of Burkina Faso, of relationships with "outsiders" – migrants to whom the traditional procedure of being protected by a local "patron" does not apply – or townspeople.

"Sales" and other forms of disposal of land may be kept secret, or they may be regulated by a procedure involving witnesses, with the village headman in attendance, and the drafting of a more or less detailed contract.

Such transactions are not necessarily "sales" in the conventional sense. There may be restrictions on the rights transferred to the purchaser. Where they are of recent origin, or still not regarded as legitimate, there is often some ambiguity as to the effective content of the transaction, and in particular whether the property itself or merely the right to farm is being transferred. This lack of clarity sometimes gives rise to conflict: the dispute may have to do with the very existence of the transaction, its content, or the right of the vendor to dispose of what is considered to be a collectively held family asset.

Even in cases where they are recognised and legitimate, sales of inherited land are often subject to restrictions imposed by the family group. This situation has been referred to as the "imperfect commercialisation of land" (Le Roy et al 1996).

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II. PROCEDURES GOVERNING DERIVED LAND USE RIGHTS

By derived rights we mean all the ways in which it is possible to obtain rights to farm agricultural land held by a third party. What is involved is a non-permanent transfer of the right to farm the land, outside the family circle. The term covers a wide diversity of institutional arrangements, with significant variants, which may or may not be practised in a particular region:

• loans of unlimited duration;

• short-term loans;

• lease arrangements;

• sharecropping agreements;

• agreements involving a sharing of the productive capital;

• exchanges of land for services rendered;

• pledging land as security.

Access rights of these kinds play a very important role in the functioning of local land tenure systems. In particular, they make it possible to achieve:

• effective re-distribution of the factors of production among the various actors, say from those with land but no labour to those with little land of their own, but available labour and capital;

• access to land regardless of who "owns" it.

These rights are characteristic not only of relations between big landowners and small-holders . They have also provided the framework for the rapid expansion of agricultural output in West Africa, particularly in the groundnut, cotton, coffee and cocoa industries. Despite their importance in enabling local land systems to adapt to changing demand, derived rights have an ambiguous status in land policy, where they are often regarded as hindering investment.

III. RECOGNISING TRANSACTIONS AS A WAY OF REGULATING THEM

In West Africa, land transactions and derived rights have no legal existence since national legislation rarely recognises local arrangements. Transfers of customary rights are in some cases forbidden, because central government assumes that family farming is based on family-owned land alone. Even when transactions are formally recognised, the possession of an official document drawn up in due form is usually an essential condition of entering into a transaction. In areas developed by the State or by development organisations (such as irrigation schemes), any form of transaction (except for inheritance) is generally banned.

This situation gives rise to institutionalised insecurity because it effectively puts most rural producers outside the scope of the law. It also aggravates the confusion prevailing in the land tenure field, a confusion which the public authorities often prefer to skirt round rather than confront head on, resulting in a proliferation of regulatory bodies of limited competence and legitimacy. In a situation that contains the seeds of future conflicts with unpredictable consequences, what can be done?

• firstly, recognise derived rights as an integral part of local land tenure systems; and, where they occur, acknowledge market transactions as an accepted aspect of such systems, destined to become gradually more explicit;

• secondly, recognise their fundamental characteristics and advantages (effectiveness, diversity, adaptability, etc.);

• lay down the conditions on which sales – in places where they already occur – may be recognised as valid.

Acceptance of their characteristics needs to be accompanied by a degree of prudence in the way the State becomes involved. A bureaucratic form of recognition and intervention with a view to regulation, particularly codification, would have perverse and counter-productive effects, likely to block the inherent dynamics of such arrangements. This kind of approach would be doubly ineffective, since new laws and regulations, even if they remain a dead letter, can only make the present confusion worse.

On the other hand, central government can usefully propose tools and procedures intended to stabilise certain fundamental aspects of derived rights, without at the same time setting them in stone. In other words, the role of State intervention should be to define minimal conditions whereby land tenure arrangements concluded under local rules can be recognised. It is therefore vital to abstain from regulating the content, terms and conditions of such arrangements on an a priori basis.

This principle presupposes the establishment of two forms of recognition or validation :

– intrinsic validation (internal to the social group concerned), which implies that local arrangements are negotiated and concluded in accordance with locally recognised and accepted rules and norms. This is the basis of the contract's validity.

– extrinsic validation (by the State), which implies that the State recognises locally concluded agreements to be valid – provided certain conditions are complied with.

The twin requirements of legitimacy and legality are satisfied and reconciled by this dual validation process. In practical terms, it can be organised by making it part of the task of the new decentralised local authorities, provided that the prerogatives of each level of authority (central government, local councils and "traditional" authorities) are clearly defined. This process should enable the State to clarify the land tenure situation by getting rid of the prevailing institutional and legal insecurity that surrounds the issue.

State intervention should also encourage the drafting of contracts and use of written documents, in particular by proposing simplified printed forms, in both the official and local languages.

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LAND TRANSACTIONS AND DERIVED RIGHTS

Summary of Workshop 1.3.

Chair: Camilla Toulmin (IIED)
Rapporteur: Honorat Edja (LARES/Univ. of Parakou)

The group's discussions were sparked off by three initial presentations:

• Mahamadou Zongo: "Land transactions and derived rights: regulating emerging land markets";

• Sten Hagberg: "Regulating land markets in Burkina Faso";

• Mike Mortimore: "Changes in land tenure regimes in West Africa".

The aim of Mahamadou Zongo's introductory presentation was to report the results of two studies, one relating to land transactions, the other to derived rights; Sten concentrated on his own work in Burkina Faso; while Mike Mortimore's contribution was based on the results of two studies:

• Mamadou Dione, H. L. (2000). Changes in land tenure regimes in the Diourbel region of Senegal, *Drylands Research Working Paper 19*

• Boubacar, Y. (2000). Changes in land ownership regimes and the use of natural resources in the Maradi region. *Kano – Maradi study on long-term changes: Niger – Nigeria series. Drylands Research Working Paper 29*

The speakers analysed different aspects of land transactions and derived rights in relation to national contexts and experience.

1. National contexts and experience

The land transactions and derived rights referred to in this workshop differed considerably because the tenure regimes concerned were so diverse: arable land in individual, extended family or community ownership (Burkina Faso, Benin), pastoral and agro-pastoral land (northern Nigeria), and large-scale development projects (Office du Niger - Mali, Senegal River basin).

■ In Burkina Faso, the introduction of the *Réforme Agraire et Foncière* (RAF) (land reform legislation) has led to a renewed interest in the "Procès-Verbal de Palabre"[34], a tool now widely used in land tenure transactions at local level.

■ In Benin, the rural land tenure code (*Code Foncier Rural et Domanial*), currently in preparation, advocates the general adoption of rural land tenure plans (*Plan Foncier Rural*), at local authority level, and the issuing of land tenure certificates (*certificat foncier*). Widespread use of these two instruments, provided for in the forthcoming law on land tenure, will have repercussions for the procedures and mechanisms governing transactions and derived rights in relation to land and natural resources.

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[34] A written minute of discussions held in the presence of a government official (such as a *préfet*), recording the terms of an agreement made, such as a contract to sell or rent land, or outlining the background to a particular land tenure conflict.

■ In Mali, the land tenure and pastoral codes (recently drafted and adopted) mark a significant advance on the former legal texts. They ascribe an important role to local agreements (*conventions locales*), whereas the former texts accorded no status to written deeds drawn up by the parties to land tenure transactions at local level.

■ In Nigeria, two regimes are currently in existence, with very different effects on land tenure transactions: one in the south of the country, the other in the north (the area with which our speaker was concerned). The latter regime, consolidated by the 1978 law, is based on the *shariah* (Islamic law). There have recently been difficulties in applying it.

The discussions which followed the three presentations were an opportunity to analyse different aspects of land transactions and derived rights.

2. Land transactions and the sacred inalienable quality of land

The workshop considered the local context in which transactions (in particular, sale and leasing arrangements) have their origin. Discussion of the issue of sacredness and inalienability (introduced by Sten's presentation of the situation in Burkina Faso) highlighted the disparity between what villagers say about the inalienability of land and "sale" practices. Markets in land are developing, although reference to cosmological notions (particularly as regards sacredness and inalienability) is still common. Sten also showed in his presentation that, in recent times, thinking on sacredness and inalienability has been influenced by the development of markets in land. Increasingly the language used by local people enables them to adapt to the new situation in which land is becoming a marketable commodity. By way of example, the speaker cited the use of expressions such as "we want to have a little something" (*on veut avoir une petite quelque chose*), which appeared subsequent to the development of export crops to justify transactions akin to sales and leasing, or "we cannot take the place of God" (*nous ne pouvons pas nous substituer à Dieu*), to express the morally doubtful nature of "money" being exchanged for "land for growing food crops". It now seems less and less possible to claim that cosmological notions are a hindrance to the development of land markets in West Africa.

3. Too much "legalism" can make land rights less secure

Several contributors noted that land tenure practices are often dressed up in legal jargon, whereas the actual transactions (to which these practices refer) generally take place in a non-legal context. In land transactions, there is frequent reference to the law, and this is also true of procedures relating to derived rights.

The tendency to regard the law as a miracle solution is fairly widespread among all categories of actor. Strategic use of the law is not confined to any one group, though the frequency with which this tool is used, and shrewdness in using it, varies from one group to another.

Analysis of the "legalistic" attitude of the parties to land transactions and derived rights led workshop participants to consider the case of "new actors" (civil servants, town-based traders, ex-public employees, speculators, etc.). This category of "new actors" is fairly conspicuous by its resort to the law. Their emergence on the land tenure scene is therefore one of the factors stimulating and accelerating the practice of money-based transactions. Some categories are well placed to act as brokers between the State and local communities. In their use of the law, they could well create distortions in land transactions.

In the opinion of most of the contributors, this new context of decentralisation requires that governments establish systems of checks and balances to avoid manipulation of the law by the powerful.

4. Legitimacy of actors *versus* legitimacy of tenure practices

Regarding the issue of legitimacy and its influence on tenure security, several contributors (Sten, Mortimore, Toulmin, Zongo) observed that the problem is not so much a question of the "legitimacy of the actors". The actors are often legitimate, but this is not always the case with the actions and practices they engage in.

In addition to the problem mentioned above of strategic use of the law, other cases were cited. For example, in Burkina Faso, local people are happy to issue "certificats de palabres" to "purchasers" of land and other beneficiaries of derived rights. They do so to provide the purchasers with a sense of security in respect of their investment, but not so that the latter can initiate land registration procedures to obtain title to the land (which is what purchasers are often seeking). Making the purchaser's right to the land secure in this case depends on making his investment secure rather than on granting him title (which is a source of suspicion and conflict). The workshop concluded that the security conferred by both the legitimacy that actors are perceived to hold and "land tenure practice legitimacy" was more real and more fruitful than the solution of constant (and sometimes improper) recourse to the law.

5. Conditions for recognising and validating land transactions

Noting that derived rights originated independently of the law and State regulation, the contributors insisted that official recognition and validation of land transactions (leasing arrangements, sales, etc.) were fundamental to providing security. Discussion of the minimal conditions required to recognise and validate of such transactions led to the following observations and recommendations:

– local rules need to be taken into account in procedures for recognising and validating land transactions. Where the choice of validation authorities is concerned, it is important to include different categories of local actors: local councillors, traditional elites, and new land management authorities.

– the level, whether local or higher, at which validation by the State is performed will depend on the context and circumstances in each country. Each case needs to be judged on its own merits, taking into account local circumstances.

– it is important to avoid codifying the procedures for validating land transactions, since this often results in a lack of flexibility. On the other hand, a strategy based on a minimum of measures to stabilise the fundamental aspects of land rights (definition of minimal conditions) is more promising. This may be achieved through local and variable codification of some clauses of locally recognised arrangements.

– recognition of land rights needs to be based on various principles. It must go beyond recognition of the rights of "first comers" or "first occupants" (criteria which are fairly frequently adopted) and take in principles of citizenship, democracy and human rights.

The workshop noted that, as a general rule, the route involving validation of rights was preferable to direct intervention in local tenure procedures which tend to be very dynamic. State activity should be limited to ensuring respect for considerations of fairness, sustainability, social justice, the interests of marginalised groups and soil conservation. However, support of this option should not blind us to the fact that it is not free of difficulties:

• it is difficult to see how the land tenure system will develop, particularly with regard to the issue of fairness;

• it is not possible to provide long term security for everybody, given that this depends on the time factor;

• agricultural policies are not neutral (various examples were cited in support of this assertion for instance the experience of the policy of mise en valeur initiated in different parts of Africa).

6. A special case: the use of documents in making transactions secure

A major cause of land tenure conflict is the fact that many agreements are purely verbal. "Paper" is a valuable instrument in providing security, as witnessed by its growing popularity and local people's infatuation with negotiating some degree of their security by reference to locally drafted "agreements" (*conventions*) and other "little receipts" (*petits reçus*).

There are however some disadvantages:

- paper documents do not always fit into traditional legal categories. They are a form of "private agreement" (i.e. not legally certified), and are often very incomplete.

- in some circumstances, paper documents suffer from a lack of legitimacy. They tend to use legal-type language to disguise the weakness and lack of precision of their effective content, and this can be the seed of future conflict.

Workshop participants noted that one of the roles of the State in relation to the promotion of paper documentation should be to support the drawing up of contracts using the basic principles and procedures currently followed in negotiating written agreements. For example, there might be a basic formula for drafting written documents in different languages. Using only the administrative language, of English or French, might obscure the meaning and procedures involved with paper documents and jeopardise the important role they can play in strategies to make land rights more secure.

7. Documents … yes … but there are other ways of making land rights secure

With regard to this issue, the example which most interested the participants was the use of trees as a way of ensuring land tenure security. Trees, whether individual trees scattered over a field or whole plantations, are an effective instrument already used by some groups in their quest for security. In some regions, such as the Mangodara region of Burkina Faso, local people readily affirm their confidence in trees, rather than other instruments, such as paper documents, as a way of making their property rights secure.

It would seem that State-sponsored security is not the only solution; community-based security can be just as effective. Consequently, a number of participants spoke of the need to bring about a "convergence of methods and strategies" to flag up the importance of local practices in establishing formulae for providing tenure security.

8. The technical route to making transactions more secure

In recent years, increasing use has been made of cadastral tools in strategies to make land rights more secure: rural land tenure plans (*Plans Fonciers Ruraux/PFRs*, GIS for land use planning, etc.). The enthusiasm for such instruments led Mike Mortimore to remind us of the principles which generally underlie decisions in favour of cadastral tools. In his view, it is possible to distinguish two main routes to tenure security (where transactions and other derived rights are concerned): on the one hand, "systematic registration of transactions and rights"; on the other, "the cadastral tool". The first route is based on agreements between individuals and groups of individuals; the second depends on a relationship between the rights-holding individual or group and the State, mediated by a public land management apparatus.

Based on the observation that land registration requires rigorous but complex and demanding techniques, the workshop recommended that this tool should be reserved exclusively for communities which request it and, at the same time, demonstrate a real capacity to manage such a complex system.

9. Who wins and who loses with land transactions?

The discussion brought out the notions of real losers and presumed losers. Generally speaking, the workshop was unanimous in believing that women were not always the only underprivileged category. In most rural societies and communities there were ways in which women could negotiate land access for themselves, e.g. women in matriarchal societies. There were many categories of "losers" and other underprivileged groups, though these were not always the same in each region: first-generation migrants, young local people, land owners, holders of customary rights.

The traditional elite (e.g. land chiefs) were in an ambiguous position as a result of this new jockeying for position. In some localities, land chiefs presented themselves as the victims of growing land transactions, even if the lands they were managing were not their own private property and their primary function was to manage collectively held land.

New actors, for their part, have tried to position themselves so that they gain from income associated with land tenure transactions, but certain actors also found themselves having to defend advantages and prerogatives that had been granted to them. These prerogatives were increasingly threatened as a result of the monetarisation of land deals. Someone cited the example of civil servants and other persons returning to their native village who were increasingly subject to restrictive conditions on their use and transfer of land designed to guarantee (or preserve) access rights to plots of land or inherited shares in family or clan estates.

10. Land tenure and agricultural policy

One final topic discussed by the participants was the impact of land tenure and agricultural policies on transactions of this kind. It was agreed that it is not possible to make policy decisions on a purely technocratic basis, without overlooking issues of fairness, social justice and so on, as was seen in the earlier paragraph on the recognition and validation of rights. Moreover, attempting to resolve problems of fairness inevitably raises issues of political vision; for example, it is necessary to take longer term regional integration into account in defining national land tenure policy today.

Land tenure and agricultural policies need to be included in a real process of consultation and dialogue between the different actors involved. There are already some cases of this. Taking Senegal as our example, this was done when drawing up the land use plan for the Senegal River valley, and regional level councils were involved in the management of land in the groundnut-growing basin. Moreover, such policies must include the drafting of charters laying down the rules of the game (rules of acceptable behaviour, rules for the formulation of new land tenure legislation, etc.).

PASTORALISM AND NATURAL RESOURCE MANAGEMENT

Gaining local control over access to resources

Workshop 1.4., Tuesday 19 March

The issue of how to handle natural resources is one that clearly demonstrates the differences between government and local approaches to problems. 'Common' resources, such as grazing, can be managed in a sustainable manner provided that their use is regulated and access to them controlled (through recognition of the exclusive rights of a group of beneficiaries). Some local tenure systems achieve this, such as those governing rights to fish in certain pools, while others do not, as with firewood. Competition amongst local people over control of resources is often intense and may be heightened by external interests in firewood distribution channels or livestock owned by city dwellers, etc. Equally, development projects based on a 'village' approach are often unaware of the modes of resource management used for larger areas comprising many villages, and may undermine them.

While theories about 'common property resources' establish important points about the conditions for effective 'shared' management, they underestimate the level of competition between stakeholders. In many situations it is not so much a case of rediscovering 'traditional' modes of management as inventing new ones that take account of the current context (multiple stakeholders, regulating competition over resources, relationship with the State, etc.), and of creating 'new commons'.

Decentralised management of natural resources is essentially about local governance: systems of rules that make sense to stakeholders, and authorities with the power to define them and guarantee that they are applied. In some cases attempts have been made to restart or create 'endogenous' local institutions, while others have relied on building alliances with the state technical services. One approach that seems promising is through *conventions locales* or 'local agreements', where rules are negotiated by stakeholders and endorsed by the State. For pastoralism it is essential that access to key areas like water points, livestock corridors through cultivated areas, etc. is secured, while with firewood the focus is more on local control over access to forests and exclusive cutting rights for villagers. The way that these systems interact with local government prerogatives is a delicate and controversial issue that needs to be addressed.

This workshop reviews the problems experienced in managing natural resources and discusses recent approaches regarding local agreements and institutional modalities for decentralised management (local structures and powers, relationships with technical services, etc.).

PASTORALISM AND RENEWABLE RESOURCES

Issues involved in local control over access to resources

Oussouby Toure [35]

I. APPROACHES TO PASTORAL DEVELOPMENT AND NATURAL RESOURCE MANAGEMENT

Pastoralism is the dominant production system in parts of the Sahel where intensive farming is not an option because rainfall is poor and spatially and temporally variable. This would seem the most effective form of land use, given that 70% of the land in most Sahelian countries is unsuitable for farming but capable of supporting livestock, at least on a seasonal basis. Thus livestock rearing activities provide a chance to capitalise on the small amount of natural fodder available in arid and semi-arid areas unsuitable for farming or other types of productive use.

While this explains its economic importance and significant contribution to GDP, it should be noted that herding is much more than just an economic activity. It is also the basis of a way of life, shaping patterns of production and exchange, the system of ownership, kinship relations and the whole social culture of pastoralist communities.

The systems used to rear livestock in most countries of the sub-region are rarely specialised and still largely dominated by extensive herding. However, if we take account of criteria such as the relative position of farming and herding in the domestic economy, performance in terms of production, herding practices, etc. three major systems of production emerge: predominantly pastoral systems, agro-pastoral systems and intensive peri-urban livestock rearing.

The extensive livestock production systems prevalent in the Sahel are perfectly adapted to the constraints of an environment where resources are geographically scattered and temporally variable. In order to function, these production systems need to safeguard the mobility that enables them to exploit the ecological diversity of different ecosystems. Mobility also provides opportunities for herders to develop mutually beneficial relationships with neighbouring farmers and gives them access to markets for the produce generated by their activities.

The risks and imbalances associated with variable resources are managed in different ways, according to context. However, one constant is the fact that pastoralists across the Sahel have developed strategies to gain access to fallback areas, which are rarely used in normal circumstances but provide certain resources of strategic value when needed. Thus traditional livestock rearing systems manage to combine flexible use of natural resources with social control of space which helps create the conditions for producers to take responsibility for tenure.

Today, as a result of various interconnected factors like socio-political change, degradation of natural resources, encroaching farmlands, land reforms, etc., pastoralists face a number of constraints that challenge the very basis of their production systems. If we look closely at the ongoing changes in pastoral societies in the Sahel, it is clear that the major changes to longstanding systems of occupying and utilising space are a response to much more fundamental challenges to their whole traditional socio-political organisation. Obviously this has not happened overnight, but is part of a historical process that began with the advent of modern governments, when pastoral societies started losing their autonomy. As the colonial powers became established, pastoralists found that various aspects of their lives were constrained by economic and political controls imposed by administrations that progressively stripped them of their rights to manage their environment.

1. Policies of sedentarisation and challenges to traditional natural resource management systems

By the time of Independence pastoralists were scattered across the region, with their social structure crumbling and political influence dissipated. They found themselves caught up in 'modernisation' policies aimed at:

1) Establishing order and controlling mobile populations that are hard to pin down;

2) Integrating livestock rearing into the national economy and guaranteeing regular meat supplies for urban centres;

3) Controlling herd sizes and promoting the intensification of pastoral systems.

With a few exceptions, the main thrust of action taken by governments and donor agencies in the first ten years of independence was towards sedentarisation. The new authorities were preoccupied with rebalancing a farm economy dependent on cash crops, and they continued to treat livestock rearing as a non-priority activity, as it had been during the colonial period. Their objective was to restructure farming and this shaped the guiding principles behind their early development initiatives. Instruments for applying agricultural policies were put in place as the first plans for economic development were implemented, but no real effort was made to get to grips with development problems specifically related to livestock rearing. Instead, the authorities focused all their energies on adopting measures to consolidate what had been achieved during the colonial period, and implementing interventions aimed at limiting the movement of pastoral groups and their livestock.

The economic development programmes and policies introduced after Independence focused on productivity and reform of the tenure system aimed at encouraging extensive farming strategies. Little regard was shown for natural resource management, and the authorities in the Sahel tended to act as though these resources were inexhaustible or could automatically renew themselves.

Their reforms were intended to establish systems that would help promote the farming sector, which was seen as central to food self-sufficiency and a source of export income. Certain countries, such as Senegal, introduced reforms that were intended to suppress the customary tenure system and give the State pre-eminent rights over virtually all land, while others, such as Mauritania, maintained the traditional land tenure system but tried to ensure that it developed in a particular direction. In both cases reforms led to powers over natural resource management being concentrated in the hands of the State. One of the immediate consequences of this situation was that local communities lost the right to control the use of natural resources by incomers, and thus their ability to regulate the use of resources within their village lands.

As security of tenure was increasingly eroded, governments further undermined community-based natural resource management by prioritising the formulation and implementation of national codes over and above local regulations. Given the repressive and apparently arbitrary arrangements required to apply these codes, state initiatives to protect natural resources found little favour among local communities and were often rejected.

Livestock rearing activities were progressively marginalised as the new land legislation was implemented. The concept of '*la mise en valeur*' was particularly damaging in this respect, but the whole process was flawed by the lack of effective tools to apply reforms or appropriate arrangements for monitoring and checks, and the concomitant application of at least two systems of reference for land tenure (modern legislation and customary law), which resulted in some rather unorthodox land management practices.

With increasing restrictions on pastoral mobility, inappropriate land legislation and sedentarisation policies, the whole pastoral system was rapidly destabilised. It was only after a series of droughts hit the region in the late 1960s that these approaches were challenged, when the huge impact of these climatic crises on livestock numbers alerted the authorities to the complexity of the problems related to developing the pastoral livestock sector.

2. Stratification projects and regulation of livestock numbers

From then on the authorities saw the growth in the number of livestock as one of the main causes of overgrazing on pastures and over-intensive use of natural resources. In their eyes the strategy of accumulating livestock, which might be entirely logical in a system with unlimited natural resources, is unsustainable in a context of scarce resources and dwindling pastoral areas. And renewable resources in the region are scarce now, following several decades of steady encroachment by farmland. Woodlands and rangelands have disappeared as animal traction has facilitated the rapid and significant expansion of land under cultivation - the results of an overall strategy aimed at increasing the amount of land farmed in a context of declining and uncertain yields.

Some observers believe that pastoral areas will reach saturation point as regulated spaces disappear and livestock mobility is reduced, leading the authorities to conclude that if the present trend continues, natural resources will become irreversibly degraded and the foundations of the economy and entire social system threatened.

According to this view, extensive pastoral systems can no longer operate and are now being forced to change radically, with smaller herds and more intensive production techniques. This reasoning is based on the idea that the traditional model of community-based pasture management is prejudicial to the preservation of natural resources because it encourages their over-use. In other words, national authorities and their partners see customary tenure systems, which are characterised by community-based natural resource management, as backward and inefficient systems that lock local communities into the scenario described by Hardin as "the tragedy of the commons" (1968).

Hardin maintains that shared management of pastures creates the conditions for environmental degradation and desertification, because there are no restrictions on access and individual herders have no interest in limiting the number of animals grazing on these areas. More explicitly, he states that it is inevitable that resources will be over-exploited when they are freely accessed by a growing number of users, as individual users bear less and less of the direct costs, have few incentives to protect resources and even less to invest in maintaining or improving them. Their main concern is to maximize short-term advantage.

This line of thinking generated a number of livestock 'stratification' projects in West Africa intended to make the most of the complementarity between different agro-ecological zones, which were assigned complementary uses (breeding, rearing, final fattening). The three main aims of this stratification policy were:

1) To make the most of available resources through economic development of the complementarity between different agro-ecological zones;

2) To halt the degradation of grazing lands by controlling overall herd size (destocking policy);

3) To increase the productivity of traditional livestock rearing systems in a way that emphasised meat production rather than milk production or building up herds.

Stratification projects based on vertical integration of the main stages of animal production were hampered by constraints on several levels.[36] For example, the huge fattening programmes never became economically profitable due to insufficient local demand for high quality meat, difficulties in exporting produce by air freight and competition from cheap imported meat from Europe and South America.

Alongside these livestock stratification programmes governments in several countries started experimenting with ranching, particularly state ranches, which were mainly inspired by the theory of Range Management. In its original version this was based on certain requirements:

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[36] Herders found the policy of destocking young livestock raised for meat hard to accept. As mortality rates are highest during the first year of life (25% to 30% compared with 5% for 2-3 year old animals) selling calves at weaning meant that the herders specialising in breeding would bear all the risks and end up losing out. These and other factors related to the disfunctional marketing system and lack of any substantive form of saving meant that herders were not interested in livestock stratification projects (Bonifiglio, 1992).

1) Privatisation of pastures in order to create ranches;

2) Putting in place arrangements to provide water;

3) Setting up firebreaks;

4) Provision of subsidised veterinary services, which was linked to imported and subsidised technologies (metal enclosures, boreholes, satellite imaging, etc.).

These initiatives were limited by the fact that they took no account of land tenure or institutional and social issues. Moreover, every objective evaluation has shown that rather than producing genuine improvements in rangeland management, attempts to harmonise livestock levels with available natural resources have destabilised modes of managing space, accentuated social differentiation and further marginalised owners of small herds.

In this context, growing human pressure on resources, the increasing ascendancy of farming and its expansion into areas traditionally used to rear livestock have sparked dramatic and emotive conflicts that almost always involve different and antagonistic communities. The issues at stake concern the capacity of herders to maintain social control over land in pastoral areas and their ability to negotiate the harmonious integration of their activity into predominantly farming areas. It is not always easy for pastoral communities to see that they need to balance the interests of the different actors involved and develop appropriate mechanisms that will enable them to adapt to a changing context.

The setbacks experienced with Range Management clearly show that the best balance between herd size and available resources is achieved through mobility and communities sharing pastoral resources. Several recent pieces of research have highlighted the ecological and economic advantages of mobility for livestock rearing systems operating in unpredictable environments (Behnke & Scoones, 1991; Swallow, 1990; Swift 1988; Toulmin, 1988). If we recognise the crucial importance of mobility, we must therefore challenge all options in favour of privatising pastures and preserve what Thébaud (1999) calls " the right of pastoral commons", which is completely in accordance with the basic principles of traditional livestock rearing systems - sharing resources among communities. This economy based on sharing is built on reciprocal access to pastures and water points, without which the mobility of herds and fluidity of pastoral movements would be compromised.

This is one reason why it is difficult to establish private ownership rights over pastoral resources – what is really needed are priority rights held by a specific community. This option in favour of priority, but not exclusive, rights mitigates potential conflicts and encourages stable and sustainable systems. Thébaud emphasises the fact that in the context of extensive pastoral systems, land management is based on a body of rights regulating access to heterogeneous and scattered resources that are often seen to be of unequal value by herders.

Certain strategic resources (wells, wetlands or home grazing areas etc.) could be subject to more limited rights of access by specific communities. Conversely, other resources that play a less crucial role in the functioning of livestock rearing systems could be opened up to several user groups, through agreements that enable stakeholders to determine how they will be shared. In fact, negotiation is an intrinsic element of pastoral systems, particularly when granting incoming groups temporary rights of access to resources.

II. DECENTRALISATION AND VILLAGE LAND MANAGEMENT

As awareness of the advantages offered by community-based management of pastoral areas has grown, government interventions have shifted towards a more decentralised and grassroots approach to management, which has helped create more favourable conditions for community involvement in the planning and execution of local development policies. It is vital that these new perspectives are thought out in a way that promotes the greatest possible interaction between the different structures responsible for managing natural resources.

A central element of stakeholder concerns is the degree to which decentralisation and interaction between villages, municipalities and rural communities is desirable. Across the sub-region experiences with decentralisation have

shown that the powers of decentralised local collectivities vary greatly from one place to the next, and that supervisory authorities are not always representative. One general problem is the scope of powers transferred to decentralised local structures during the reform process, and the constraints they face in carrying out the tasks assigned them. These constraints include:

1) Weak human resources and skills;

2) The discrepancy between the scale of their tasks and the financial resources allocated by the State and generated locally;

3) The difficulty of developing a good working partnership with other actors (technical services and other government structures).

The evolution towards decentralised natural resource management has provided an opportunity to assess the complexity and importance of the issues involved in regulating access to and control of these resources, taking account of the effects of severe climatic crises and the ever-increasing demands of a rapidly expanding population. Current attitudes to natural resources are determined by economic considerations, meaning that competition over the right to control resources intensifies as their market value increases for communities with no viable economic alternatives. In this context the transfer to local collectivities of the power to control resources must be balanced by a commitment to adapt levels of use to the regenerative capacity of resources, or even, if necessary, to vary the use of resources in order to avoid compromising opportunities for the natural environment to recuperate.

On a social level, progress towards locally autonomous natural resource management has been accompanied by an increase in conflicts between individuals or groups, with each claiming legitimate rights over the resources required for their activities. The difficulty lies not so much in the cause of these conflicts, as in the practical modalities of preventing and managing disputes that set stakeholders with divergent or conflicting interests against each other. Because traditional systems of arbitration and power sharing have been destabilised, new rules for conflict resolution are needed. They will not only have to be appropriate to socio-economic realities and local socio-cultural values, but will also have to involve all protagonists in the search for solutions and take account of the strengths and resources of everyone involved in disputes.

Through their decentralisation policies, governments are now advocating new procedures centred around village land management. Their aim is to lay the foundations for sustainable natural resource management based on the re-appropriation of space by local communities and a redefinition of the ways in which natural resources are used.

Over time, village land management approaches have broadened to take account of transhumant herders, who were originally excluded in favour of those who used village lands on a regular basis. The most notable result of this is the involvement of incoming pastoralists in land management structures. Thanks to this new approach, there have been some interesting initiatives formulating local agreements for various pastoral and agro-pastoral zones of the Sahel. For example, in the Sikasso area of southern Mali, CAT/GRN[37] and pastoral organisations are working to implement a participatory and interactive procedure to assess the state of natural resources and draw up land management plans. Measures supporting the strategy to develop and manage village lands are centred around community-based actions, particularly the installation of water points (sinking wells, developing water holes, etc.) and formulation of local agreements on natural resource management.

The local agreements negotiated by stakeholders and endorsed by public institutions seem promising insofar as they make it possible to protect the spaces and resources that pastoral systems need to function. Despite their various shortcomings, which still need to be addressed, the innovations introduced by these local natural resource management tools show the way forward.

However, in the current context the interaction between the different authorities responsible for managing space is a sensitive issue. One of the limitations of decentralisation policies is the fact that the transfer of powers only concerns local governments as defined and identified by the law, but does not affect organisations, associations,

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[37] The village lands and natural resource management unit.

groups and other forms of producer organisations which have no formal legal status. In addition to this, core legislation on decentralisation has so far failed to address land tenure issues that are essential to the viability of various groups. In the end this could result in villages and encampments disputing decisions about land management taken by the management bodies of rural communities.

III. LIMITATIONS OF CURRENT REFORMS TO PASTORAL LAND TENURE

Because certain important aspects of the legislative framework regulating natural resource management are still hostile to extensive livestock rearing, the processes at work in different countries still pose a serious risk to pastoral systems. However, as a result of lobbying by various institutions the issues of rangeland management and the rehabilitation of pastoralism are now on the agenda of most Sahelian countries. Niger has started implementing the Rural Code promulgated in 1993, with the objective of clarifying the norms regulating tenure systems at the local level, while Mauritania, Mali and Burkina Faso have prepared new legislation seeking a more precise definition of rights of possession and access to pastoral resources.

While several notable improvements have been made to the legal mechanisms regulating pastoral resource management in these countries, the situation in Senegal is very different. In preparation for the formulation of a Pastoral Code for Senegal, consultations were initiated in the early 1990s under the aegis of the Livestock Department. However, no further progress has been made on this initiative despite the continued existence (formally, at least) of a national pastoral committee bringing together the technical services, livestock rearing projects and herder organisations. Furthermore, the current bill to reform the National Land Law takes no account of concerns regarding customary tenure of farmlands, but aims to encourage a form of private appropriation of land in order to secure investment. Thus, the options advocated by the Land Tenure Action Plan, which was formulated in 1996 at the request of the government, were developed entirely in terms of the need to intensify agricultural production, and intended to encourage people with capital to gain access to land and secure rights of tenure so that holders of land titles could get credit more easily.

New legislation on the use of pastoral areas formulated in other countries of the region should, in principle, make it possible to address the problems noted earlier, and enable pastoral communities to assume more responsibility for managing their resources. However, it should be noted that pastoralists and agro-pastoralists are still largely unaware of the content, risks and opportunities presented by this legislation. Questions remain as to their current ability to fulfil the roles devolved to them in this new context, while there is still no proof that the proposed institutional and legislative framework for pastoral resource management will be appropriate to the constraints of pastoral and agro-pastoral life in the Sahel today.

A recent study by Hesse (2000)[38] based on the preliminary results of two action-research projects under way in several African countries showed that rather than making pastoral tenure more secure, sectoral legislation may actually make the existing judicial arsenal even more cumbersome and confusing, especially if the new laws are not harmonised with earlier legislation. In these conditions it would seem desirable to combine all existing arrangements into a single law, which would be easier to understand and reduce the potential for conflict.

In other words, the diversity of contexts and intensity of conflicts over access to natural resources require a shift towards the formulation of a single charter or framework law guaranteeing collective rights of tenure in relation to existing production systems. These general guidelines should anticipate the possibility of specific, local level regulations that take account of the constraints and dynamics operating in each area under consideration.

Therefore the objective of the overall legal framework should be to respond to various major challenges, such as:

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[38] Managing grazing lands: who is responsible and who has rights to them? Paper for a regional workshop on "Approaches to managing pastures and development projects: what perspectives?", Niamey, October 2000.

1) Defining the parameters for developing land in a way that preserves pastoral mobility, promotes shared use of resources and guarantees reciprocal access to pastures and water points;

2) Identifying mechanisms for linking and harmonising local land tenure and pastoral practices and the orientations of the charter;

3) Defining procedures for reinforcing the local institutions that manage natural resources in pastoral and agro-pastoral areas.

New regulations in respect of decentralisation should be based on negotiation, as this is the only procedure likely to lead to genuine security of rights and use. Furthermore, these regulations should be built on a sound grasp of the issues involved, and of the nature of the relationship between pastoral areas and other spaces, especially those used for forestry and farming.

It has to be said that new legislation has brought about some positive changes such as: recognition of the economic importance of pastoralism and of the fact that it constitutes a form of productive land use; preservation of pastoral mobility; the opportunity for herders to gain access to the resources they need to develop their activities; recognition of customary procedures for managing natural resources; rehabilitation of endogenous mechanisms for arbitration and conflict resolution, etc.

However, we should not lose sight of the fact that the shortcomings of this legislation could help perpetuate the marginalisation of pastoralists and exacerbate conflicts between different user groups. The main problem areas concern:

1) The transfer of responsibilities to pastoral communities without giving them real powers over natural resource management;

2) The adoption of a technocratic and interventionist approach that could, in the long term, jeopardise herders' security of access to key natural resources;

3) The tendency to create false boundaries between production activities and different types of natural resources, due to a compartmentalised view of the development of rural production systems;

4) Low levels of compliance by herders, who do not always understand the issues involved in these reforms.

In this situation it is important to consider how to develop critical capacities and orient strategies in a way that will enable pastoralists to grasp the issues involved in land tenure reforms, formulate proposals for their integration into ongoing processes of decentralisation, define their own vision regarding the development of pastoralism, and improve their skills in thinking ahead, negotiation, planning, implementation and monitoring and evaluation.

One of the main challenges now is to strengthen pastoral organisations so that they will be capable of influencing decision-making processes and carry more weight in defining rural development policies. A review of ongoing experience in several Sahelian countries should make it easier to define the difficulties experienced by these organisations and to formulate better-targeted capacity building strategies.

Questions also need to be asked about the underlying reasons why local governments have done so little to address pastoral issues, even in areas where most of the population are pastoralists. Is it because pastoralists have not made any concerted demands for better representation on local government bodies? Or because of inappropriate policies? Whatever the case, there is an urgent need to develop the capacities of local elected officials, and to consider what can be done in concrete terms to enable them to use the tools available to plan development and local natural resource management more effectively.

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PASTORALISM AND NATURAL RESOURCES: THE CASE FOR LOCAL CONTROL OF RESOURCES

Summary of workshop 1.4.

Chairperson: Florence Lasbennes (DEP/MRDR Mali)
Report submitted by: Thea Hilhorst (IIED)

The discussion revolved around Oussouby Touré's introductory paper and supplementary presentations on the work of Intercoopération in Mali (François Picard) and the situation in Nigeria, presented by Jerome Gefu. This summary, follows the order of contributions made to the discussion as closely as possible.

1. Clarification, comments and discussion

Souleymane Fofana (Mali) wondered what meaning should be ascribed to the term "development" (*mise en valeur*) in this context. How could power be effectively devolved to pastoral herders for the management of natural resources? He disagreed with the claim that pastoralists were not adequately informed and did not understand what was at stake. He insisted several times that the Malian government had involved the population in formulating the legislation governing pastoralism, and that the pastoral charter that resulted from this process was a considerable advance which was widely supported by the herders.

Sylvestre (Burkina Faso) deplored the negative view of past measures taken to support the livestock sector. There had also been many positive results. He added that Burkina Faso was not essentially a pastoral country and mobility was primarily a cultural phenomenon, not a way of reducing the risks from animal diseases, as often claimed. For example, herders often do not use grazing lands of high potential because they want to meet up with other families somewhere else.   Another problem was that pastoralists were not attached to a particular area, or rooted in a particular territory. Their main activity was livestock keeping and they were constantly on the move. There was a danger that granting them rights over particular grazing areas would lead to problems, and very probably they would not take great care of areas which they were only passing through.

According to Balobo Dicko (AOPP, Mali), Touré was right in saying that many programmes and legislative texts were formulated without herders being involved, and this was true even of the pastoral charter in Mali. In addition, the government had neglected the pastoral sector in the north of the country. For example, it had allowed the *bourgoutières*, which were important grazing lands, to be converted into rice fields. Herders had gone to see the authorities to complain of this threat to their grazing, but the authorities had done nothing about it. The state livestock farming service was concerned only with vaccination work.

Aly Bacha Konaté (Mali), argued that the Mali pastoral charter had many weaknesses: We wanted a law to provide guidelines but it has become a detailed code, allowing very little flexibility for adjustment to local circumstances. To what extent do the experts and technicians really understand pastoral systems? The charter is really based on principles appropriate to settled farmers, with little attention paid to mobility or the instability and uncertainty of the state of natural resources in dry pastoral areas. From our experience of the pastoral charter, we are bound to conclude that herder involvement was very limited. Even if an inventory of local practices and regulations was drawn up as a preparatory measure, it is difficult to identify see any evidence of this in the legislation itself. There were some attempts at consultation, but these were rendered invalid by the lack of representativity, legitimacy and quality of the persons who participated on behalf of the farmers. Civil society was not represented at all. In addition, there are over a hundred laws, codes and decrees governing the management of natural resources in Mali. They are difficult for local people to understand because of their lack of education, and therefore the legislation is difficult to implement.

François Picard (Mali) noted a tendency to present a traditional image of pure pastoralism in the northern Sahel areas. And yet, many of these herds had moved south and many herders were now also engaging in agriculture. Systems were becoming more complex and diversified, and those adopted by arable farmers owning some livestock and by herders who also cultivated fields were tending to converge. Many agricultural communities had acquired real skills in stock-raising. Nevertheless, conflicts arise from herds entering cultivated plots and damaging crops. One way of reducing conflicts would be to work to demonstrate a growing community of interests between the two groups.

These changes should inform the thinking behind public policy towards pastoralism and livestock herding. However, in Mali the minister for livestock was concerned only with combating diseases; there was no minister for pastoralism per se. Issues of grazing areas or trees that could be used for forage were dealt with mainly by people in the forestry department who, in their relations with herders, were bound to give priority to protecting forests and trees.

When discussing the management of natural resources, some decision-makers had in mind a system of sectoral zoning, which was an essentially European concept. It was based on the opposition between a select arable area, where farming should be intensified, and an extensively managed non-agricultural area. Combined with local arable farmers' and herders' complementary and competing claims on land, this had important implications for land tenure.

Traoré (Mali) pointed out that the south of Mali had become the most important livestock producing area. Most cotton-producers in the south now also own animals.

According to Harouna Bary (Burkina Faso), new groups were becoming involved in the pastoral economy – for example, "new actors" often from the urban sector have begun to invest in livestock farming. Which groups, then, should one have in mind when discussing livestock production? Also, to avoid becoming fixated on a particular ethnic group, it would be more profitable to deal with central issues regarding the workings of pastoral systems, rather than focus on those who traditionally have practised livestock farming. This might help to take the heat out of the debate on pastoralism.

Access to natural resources and mobility were still key factors in pastoral production, even in regions such as the south of Mali or Burkina Faso, where animals still had to be moved around to gain access to grazing and water. Land was intensively cultivated and herds needed corridors to pass through to ensure that they had access to grazing resources and did not damage crops by straying into cultivated areas. Even civil servants investing in livestock were dependent on maintaining this mobility, despite the fact that it was in contradiction with their own professional lifestyle.

The concept of "development", as formulated in such legislation as the RAF, was an obstacle to the recognition of herders' land-use rights.

One important aspect of the new legislation on pastoralism in Mali and Burkina Faso was that it recognised the principle of access to grazing land. It was imperative also to preserve the principle of mobility.

Touré and Bary both thought there was a danger that the newly created local communes might restrict the movement of herds, either by introducing local decrees and orders excluding herders, or by levying taxes on those passing through or using grazing or water resources within the commune's territory. It was important to discuss ways of making herders' rights secure in the context of decentralisation, and to prevent conflicts arising as a result of new actors suddenly arriving on the scene and taking part in decision-making over natural resources.

Fofana was less pessimistic regarding the possible effects of decentralisation on herders in Mali, because the law provides for negotiation and the delegation of decision-making in respect of natural resources to other bodies, including farmer organisations. Others, such as Touré, pointed out that these organisations were rather weak and that, in Mali, the Chamber of Agriculture was often taken as representative of herders' interests. Dicko, of the AOPP, added that the Chamber of Agriculture was run by civil servants and was not felt to represent herders' rights and needs.

Jerome Gefu (Nigeria) observed that in his country, colonial and post-colonial policy had always favoured sedentarisation of herders. At the same time, production systems had radically changed, shifting from systems based on a nomadic lifestyle to agro-pastoralism. The best solution was to identify areas where the problems were most acute and concentrate on them, so as to maximise the use of resources, reduce the risk of diseases and epidemics, and develop market potential. Large-scale transhumance and mobility needed to be seen from an international perspective. This would make it possible to manage issues such as the use of resources, early-warning systems in the event of disease, and development of market information and opportunities.

According to Kissou (Burkina Faso): We should not be too negative about what has been undertaken to develop pastoral production. Everything has been done to help herders survive, not to sedentarise them. If we had not created special reserves for them, they would no longer exist in Burkina Faso.

Where public policy is concerned, the present trend is to involve all the parties concerned, including farmers and herders. The problem where the latter are concerned is that they are always on the move. We have therefore found that it is difficult to involve them in the political process, and often only their arable-farming counterparts attend meetings. Herders should show more interest in government initiatives and make sure that they attend so that their interests are not overlooked. It must also be said that they are sometimes rather "hard of hearing". There is an international certificate of transhumance covering Mali, Burkina Faso and Benin; it is inexpensive, yet only 5% of herders have applied for one despite many more requiring such a permit. Again, they need to get more involved. There is also a problem of education and literacy: herders are not even capable of taking notes when they participate in consultations with the government.

For Omar Seck (Senegal), Oussouby Touré's presentation had been very much to the point. One of the problems was indeed an overly technocratic approach to pastoral farming. Policy was not properly integrated because of the large number of donor agencies and other "development partners" involved. It was essential to harmonise and control what was going on, and that was the task of decision-makers. This was certainly true of Senegal at the present time. It was absolutely essential for all the parties concerned to be involved in formulating policy, and the choice of participants needed to be made on the basis of relevant criteria. Politics should be laid aside as much as possible. Another problem was the way technicians behaved in this process. They were too often motivated by personal and opportunistic considerations.

A contribution from Niger: There is a confusion of terminology here. The terms 'livestock farmer' or 'pastoral farmer' have different meanings in the context of public policy debate. And what is a herder? Does the term include actual owners of animals or just those hired to care for them?

Another problem in Niger is that national planners do not pay sufficient attention to the economic importance of pastoral production, although it is the central activity in most regions of the country. Government support for livestock keeping is limited to veterinary services, and that is not enough.

In formulating policy, we too often act in the name of livestock keepers, but without really involving them.

2. François Picard, Intercoopération (IC-Mali)

A second case was presented by François Picard, Intercoopération (Mali), concerning the district (*cercle*) of Yorosso, in the south-east of Mali, along the border with Burkina Faso. This area is in the northern part of the cotton belt and is crossed by one of the main corridors used by herds migrating between Mali and Burkina Faso and coastal markets.

In 1997, Intercoopération was contacted by a livestock keepers' co-operative, all the members of which were Fulani, who asked if IC could help them to obtain cotton seedcake to feed their livestock during the dry season. The CMDT had established a quota system for cotton seedcake, but it was only for cotton producers. However, even the producers had only limited access to this much sought-after by-product, as there had been a lot of speculative activity within the CMDT, resulting in under-the-counter sales of the cake to farmers in the areas around towns.

IC agreed to intercede for them, and this helped create a climate of trust. They then began discussing with the co-operative the reasons for their dependence on cotton seedcake. It emerged that this was a recent phenomenon caused by a reduction in their mobility and access to grazing due to an expansion of cotton-growing fields. The whole area was in fact becoming farmed and movements of livestock in search of water and grazing had led to increasing conflict with the owners of plots along the migration corridors, which had shrunk as fields had been extended. A further problem was that many of the grazing areas were virtually unusable because of a lack of water.

At the same time, Intercoopération was also contacted by a farmer organisation wanting to draw up a local agreement to protect an area of valley-bottom wetland from the intrusion of "outsiders". An agreement of this kind would have further restricted the mobility of herds, even though most of the farmers concerned themselves owned livestock, generally looked after by Fulani herdsmen.

At Yorosso, the various users of natural resources were all facing similar problems, even if they did not recognise the fact openly, but dialogue between them was broken off because of the increasing frequency of conflict. The representatives of different groups had stopped talking to each other. Intercoopération decided to work to re-establish dialogue, so that it would be possible to renegotiate ways of using natural resources in the region, and use rights. The organisation also tried to get beyond discussion between ethnic groups and talk about where there were points in common for all production systems. This process took three years. One result was that the livestock-keepers' co-operative opened up to receive new members including livestock-owning arable farmers (by reducing the subscription, which had previously stood at 50,000 CFA francs). As a result, the co-operative is now no longer based on a single ethnic group.

Another result was the re-opening of some of the livestock migration corridors leading to grazing and watering points, and the abandonment of fields which had been cultivated along these corridors. Not until 2002– five years after the operation began – did they begin boundary marking. They were very cautious in negotiating boundaries, because the erection of boundary markers is perceived as a very significant and potentially provocative

Intercoopération also encouraged a halt on all land development programmes in the valleys as well as the sinking of wells, which was begun at Yorosso in 1997. This decision was taken when the members of Intercoopération realised that they had been manipulated by some groups to secure their rights over certain resources at the expense of others. These groups tried to impose an exclusive right of use over areas that until then had been multi-functional and used by many categories of actor. They were also careful to involve women who collected fruits in the forests. These women were also increasingly involved in market gardening, but some of these gardens were situated along the livestock migration corridors.

The situation at Yorosso is now stabilised and conflicts are on the decrease. They break out less frequently and, when they do, are more quickly settled. There are several possible explanations for these results:

1. Crop farmers have increasing numbers of animals, some even owning large herds, and they have begun to experience difficulties similar to those encountered by "traditional" herders; hence a convergence of interests. Consequently, it was possible to discuss with them the importance of preserving herd mobility, and the dangers

of attributing to a specific group exclusive rights over resources. In the south of Mali, mobility is essential for large herds, given that the storage of sufficient forage for the dry season is always a problem.

2. The crisis in the cotton sector demonstrated the importance of maintaining a diversity of activities, including livestock farming. Expanding the area under cotton has therefore become less of a priority.

3. A situation of permanent conflict had become costly for all the groups concerned. None of them was any longer able to secure a favourable ruling from the courts: resort to corruption, always possible as a way of tipping the scales, had become unaffordable (costing several million CFA francs for each case brought before the courts).

4. There were no other major projects at Yorosso, which facilitated Intercoopération's work in bringing the different actors together, introducing consistent negotiating procedures and impose conditions. No investment was made without the prior approval of all other users.

5. They were prepared to "invest" in dialogue which could involve a single discussion possibly lasting several hours.

6. Patience was essential and the parties had to be prepared to wait for results, even withdrawing in the absence of any apparent progress. For example, nothing was done at all during 1999.

Intercoopération's role as mediator and facilitator raised some difficult questions: How long can one remain neutral? How can one avoid being perceived as an interested party? How can one limit one's function to that of "facilitator"?

Intercoopération supported the process and proposed the methods. They preferred tools which encouraged the actors to find out for themselves what was at stake and to analyse the results. Throughout the process, Intercoopération was asked to provide more technical information, such as maps and statistics, to enable the group to undertake their own analysis.

The results of the Yorosso experiment were shared in the context of a "think tank" set up in the south of Mali in 1996. This group consists of researchers, technicians, programme personnel, experts and representatives of farmer organisations. It meets three or four times a year to discuss a given question. However, it is not always the case that knowledge of these local and regional experiences finds its way up to national decision-making bodies. At best, only a partial and sector-based view is taken into account at national level. This is because, despite the holistic approach adopted, most of the technicians work in sector-based ministries and therefore tend to report only those issues which are of direct interest to that sector (Forestry, water, etc.).

During this period, decentralisation came into force, with the election of rural councils in 1999, and parallel structures at district (*cercle*) and regional level. It is vital to involve these different levels in discussion of the management of natural resources, as it would be absurd to work only at the village level where access to pastoral resources and the mobility of herds are concerned. We need to develop an operational notion of subsidiarity, which should be at the heart of decentralisation arrangements. Not everything can be transferred to the lowest political and administrative level. It is therefore important to take an interest in relations between different levels of local government, as has begun to happen at Yorosso.

However, the positive results achieved there can only be maintained if other districts (*cercles*) and the region as a whole take an active interest in pastoral resources, mobility and rights of access. It is beginning to be said in the region that Yorosso has become a relatively quiet and orderly area for livestock herders, with a resulting increase in the number of herds passing through, trying to avoid the daily problems and recurrent conflicts prevalent elsewhere. However, this increase could itself lead to more acute pressure on pastoral resources in Yorosso district, and so engender fresh conflicts.

3. Discussion

Some of the discussion that followed the presentation was concerned with the process itself. Some participants feared that it was too time-consuming, while others wondered who ought to be involved.

Harouna Bary mentioned an experiment conducted in the north of Mali, Burkina Faso and Niger. The intention was to set up institutions that would ensure access to water and salt for livestock visiting form neighbouring countries. They began by identifying leaders among the users of resources, but the approach proved unworkable in practice, because these leaders seemed to have no authority to take decisions relating to the resources concerned. Moreover, it was difficult even to arrange meetings because the herders were constantly on the move. They therefore turned to the people who controlled the resources, or to the opinion formers within the groups controlling them, who were not necessarily livestock keepers. These leaders were also often elected to local government positions. They then negotiated to involve the livestock farmers or their community hosts in the process of decision-making regarding access to resources.

Balobo Dicko then spoke of the problems that had arisen in the north of Mali when mayors had tried to exercise their authority, in particular their right to tax the use of strategic resources of regional (or even international) interest, such as salt deposits or water sources, found within the cinfines of their commune. Conflicts ensued, which were eventually settled by drafting of an agreement involving higher tiers of local government

4. The case of Nigeria, presented by Jerome Gefu

Until the 1970s, there was an abundance of land in Nigeria and everyone was able to clear land, cultivate it or rear livestock. In recent decades, human and animal populations have increased, leading to increased pressure on land. It is now impossible to leave land fallow and even marginal land is cultivated. The pressure on land has tended to reduce or completely eliminate corridors for livestock migration, and this causes conflict when herds pass through and damage crops. Livestock keepers and their herds are literally being "strangled". As a result, some of them have decided to reduce the size of their herds and adopt a sedentary lifestyle, buying land locally. Conflict has forced others to leave the region and emigrate, while others have just given up. Many of them have moved south, where there is more room and where livestock keeping was previously impossible because of trypanosomiasis (sleeping sickness).

In the 1980s a number of herders founded pastoral herders' organisations, which have now become very powerful in Nigeria. They mobilised support to obtain access to water, grazing, animal foodstuffs and veterinary services. The government reacted by launching programmes and setting up pastoral reserves in the 1980s. The consequences of these reserves were however disastrous: because these areas had to be used during both the wet and the dry season, grazing resources were depleted.

Pastoral livestock owners are still very well organised and know exactly where their animals are grazing and in whose care. They make every effort to reach a compromise with other land users and to avoid conflict.

There are various systems of land ownership in Nigeria. In some cases communities own the land and elswhere their chiefs are entitled to dispose of it. In many cases, a kind of zoning has been achieved, enabling arable and livestock farmers to co-exist peaceably. Customary systems allow only for the granting of rights of use, but a lot of other transactions also take place, including the leasing and sale of land.

In 1978, the government introduced the *Land Use Act*, which lays down who has access to land, where, how and for what purpose (agriculture, grazing, construction). The problem with the *Land Use Act* is that it takes no account of pastoral land use. It is important to realise that the development of livestock rearing around the farm is not the same as support for pastoral herding. Herders can come into villages and ask to be granted a piece of land; the grant of land will be ratified by a reciprocal agreement specifying the rights and obligations of each of the contracting parties. This customary and state-sponsored land-rights systems are in conflict.

The tendency in Nigeria is now for pastoralists voluntarily to adopt a sedentary lifestyle, encouraged by rural extension services and radio programmes explaining the procedures for gaining access and rights to land.

5. Discussion

Sylvestre (Burkina Faso) added that, over time, existing practice would have to adjust to new realities, and that sedentarisation was inevitable. Decision-makers would need to have the ability to deal with future problems. The livestock production sector was set to go on changing, and public policy would have to take this into account.

Touré (Senegal) challenged this view, saying that the environmental conditions of northern Sahelian areas created a grazing system which was always in unstable equilibrium, which made a sedentary lifestyle impossible. Mobility was essential. For example, in the Horn of Africa, a large part of the livestock was lost when armed conflict in the region made migration impossible. Those with just a few head of cattle might be able to adopt a sedentary lifestyle, but they would not be able to meet their needs from livestock farming alone.

Hubert Ouédraogo noted that we are faced with a complex and changing situation. In Niger, many livestock keepers also cultivate fields. Some have even bought land for grazing purposes. Decision-makers tend to see pastoralism as an unproductive system, an irrational "hunter-gatherer" type of livestock farming. However, we cannot afford to do away with pastoralism. On the contrary, it needs to be supported because it is still an important sector of the economy which fits environmental conditions. It also needs to be recognised that competition is increasing in respect of grazing areas and watering points – and here herders find themselves in a difficult position, squeezed between agriculture and forestry. Is legislation important? Yes, I believe that it can help to avoid a crisis.

Nevertheless, a multi-disciplinary approach is vital if we are to take into account all the social, economic and cultural dimensions of pastoral livestock production. Legislation of course has its limitations. However laws which ensured herders of the right to mobility would be nothing short of revolutionary in the present situation, where mobility is barely tolerated.

LEGAL CONDITIONS FOR THE RECOGNITION OF LOCAL RIGHTS AND PRACTICES

Workshop 2.1., Wednesday 20 March

One aim of efforts to make land rights more secure is to give rural dwellers legal security in respect of their rights and the arrangements they make among themselves. This means facilitating their access to legal procedures by introducing new formulae which are more flexible than conventional registration and are consistent with the kind of security they are seeking to achieve: the legal security sought for a family plot used for growing cereals will not be the same as that required by an entrepreneur who has invested in irrigated land in order to grow fruit and vegetables for sale.

Building on the discussions of the first day's workshops, we shall be considering the different avenues that have been or might be explored, together with their legal implications:

– more flexible ways of gaining title through accelerated procedures based on surveys with due hearing of parties (Côte d'Ivoire) or notary certificates (proposed for the Comoro Islands);

– validation procedures for land tenure transactions, recognising private agreements (*contrats sous seing privé*) having legal validity in civil law as valid in land tenure matters;

– recognising pastoral rights to certain areas;

– "local agreements" validated by the territorial administration and/or local authorities; etc.

Legal recognition need not necessarily be in respect of rights; it may apply to the rules in force in a given area. Validation of negotiated rules (such as regulating procedures for repossessing land, access to woodland resources, the management of a development project to ensure that it benefits the whole community) by local by-law (issued by a local authority or the territorial administration, as appropriate) is potentially a good way of ensuring greater security by giving arrangements negotiated between local actors (and, in some circumstances, with local technical services) validity in the eyes of the State.

This workshop will also discuss issues of implementation: which authority has the power to recognise these rights or agreements?, the terms on which the State would regard them as valid, and the autonomy accorded to producers in framing the rules.

LEGAL CONDITIONS FOR THE RECOGNITION OF LOCAL LAND RIGHTS AND LOCAL LAND TENURE PRACTICES

Hubert M.G. Ouédraogo[39]

For many years, colonial – and even post-colonial – writings on land tenure centred on the opposition between customary rights and rights enshrined in "modern" (i.e. statute) law. The artificial nature of this opposition has led to many harmful short-cuts and wrong-headed generalisations in analysing and interpreting African land tenure problems. Consequently, "customary" land rights have been characterised in terms of their oral basis, sacred quality, absence of private ownership and inalienability…; while, "modern" rights are typified by private ownership and the holding of title.

It would be unfair just to sweep aside the invaluable contributions made by colonial administrators with an interest in ethnology or learned African scholars who did pioneering work in this field [40]: they helped to lay the foundations for research on African land tenure systems and must be credited with undoubted progress in their discipline. However, the results of their research are now seriously challenged by the major changes taking place on the land tenure scene, both locally and at the regional and national levels [41].

And yet, despite the current transformation of the African land tenure situation, the issues are still in many respects unchanged. In particular, the place of "customary" rights continues to focus the attention of researchers, politicians and those responsible for framing legislation on land tenure.

Recent progress in land tenure research has, however, made it possible to take a fresh look at the rights of local groups and grass-root communities in relation to the resources of their territory (*terroir*). In particular, the classic opposition between "traditional" and "modern" land rights is giving way to analysis of new "local" practices, which are characterised by dynamism and an impressive adaptability.

The current questioning of customary land rights concepts has arisen, in particular, from the discovery that, far from being governed by static, immutable norms fixed from time immemorial and handed down from generation to generation [42], land tenure systems are regulated by flexible, dynamic principles which are proving remarkably adaptable to the most varied contemporary situations. At the same time, one could validly question the supposedly "modern" character of state-sanctioned rights of Western inspiration. Such legislation is after all based on Roman law, adapted to the needs of the colonial enterprise by borrowing from land registration systems (*immatriculation foncière*) with a long history in other parts of the world [43].

To do justice to the dynamics of local land tenure, authors have gradually stopped referring to "customary" land rights and have instead focused on local land tenure practices. This is because local actors have demonstrated the capacity to go on inventing new norms and a remarkable ability to adapt to new political, legislative, demographic and ecological circumstances. In this respect, we might be surprised by the results of a deeper investigation of the question: where do we look for the forces of modernity in land management?

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[40] See, in particular, the contributions of Guy A. Kouassigan (L'homme et la terre, 1966) or of Elias T. Olawale (*The nature of African customary law*…)

[41] It should also be pointed out that the "Africanist" analysis of traditional land rights has never been unanimously accepted by African researchers, in particular those with a legal background. Foli Messanvi, in particular, has always criticised the interpretation which holds that private ownership of land was never a feature of traditional systems. M. Foli, "La réforme agro-foncière et le droit coutumier au Togo", in *Enjeux fonciers en Afrique noire*, Paris, Karthala, 1982.

[42] In defining what is "customary", lawyers apply two criteria: on the one hand, there needs to be non-State-imposed regulation of ancient origin; on the other popular belief in its binding character.

[43] The system of land registration (*immatriculation foncière*) introduced into Africa at the beginning of the previous century was borrowed from an Australian land registration system instituted by the widely-known Torrens Act (Torrens Title System)!

For the jurist, the concept of local land rights raises questions on two levels. Firstly, it raises the question of the value and status of local land tenure practices from which they derive: are they lawful, or are they deviant practices which call for appropriate sanctions? In other words, we need to ask if the legitimacy of local land rights is based on a sufficiently solid platform of legality at national level. Secondly, local land rights present a challenge to African legislators where the social – and above all political – scope of observable local land tenure practices is concerned. Generally at odds with national legislation in this sector, they pose a challenge to the legitimacy of ineffective national laws. They also expose a lack of legal creativity – a quality which they themselves demonstrate in abundance.

If we look a little more closely at the question of the legal validity of local land tenure practices, the problem would be rapidly settled by a conventional jurist: resting his case on an orthodoxy for which no one could reproach him, he would not hesitate to pronounce all such practices as illegal, as they are not founded on any preexisting legislation or system of regulation. But acknowledgement of the illegal character of local practices does not diminish the relevance of the questions that concern us here. No doubt, jurists need to learn to be more modest in their faith in the transforming virtues of legal norms as a way of changing people's social behaviour.

Faced with local practices officially regarded as illegal, the attitude of the local administration is nevertheless one of prudence. Out of concern for public order and social harmony, it has often shown itself capable of combining tolerance for local practices with reluctance to pursue effective implementation of land tenure legislation of which local people express a barely concealed mistrust. The courts, for their part, are more intransigent when faced with local land tenure practices. Charged with upholding the law, and nothing but the law, they refuse to extend protection to "land rights" not strictly supported by the legal texts in force. However, they deserve strong criticism for the widespread practice of evoking the provisions of general legal texts (the Civil Code) to the detriment of the specialised provisions of legislation devoted specifically to land tenure [44].

If the law is seen as no more than a set of norms established by the competent legal authorities, local land tenure practices will be accorded no legal validity and excluded from the judicial arena. But if, on the other hand, one sees law (droit) [45] from an anthropological perspective as a social phenomenon for regulating individual and collective behaviour, one is obliged to acknowledge that the realm of justice does not necessarily begin with codified law (la loi) [46]. African societies have shown that they understand this by imposing models of behaviour on their members not on the basis of pre-established rules, but through a complex of social and cultural mechanisms, including magical and religious practices [47].

Seen from this perspective, local land tenure practices cannot be reduced to the status of non-legal or illegal activities and pushed to the margins of the legal system. On the contrary, local practice flirts with custom, without becoming confused with it. At the same time, it does not hesitate to borrow from national law, but without denying its popular roots. The real question posed by local land tenure practices goes beyond the issue of legality or illegality. It is whether or not they should be taken into account in land tenure legislation policy.

These preliminary considerations of a general nature will enable us to examine the legal conditions for recognition of local rights and practices with greater clarity and relevance. We will start from the general hypothesis that local land tenure practices merit recognition as the foundation for greater security and more effective management of local land rights. We will first discuss ways in which attempts are being made to recognise land tenure practices, before undertaking some critical thinking on the future of these practices.

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[44] In Burkina Faso, despite the existence of texts governing agrarian and land tenure reorganisation, it is not uncommon for judges to refer to the Civil Code in settling rural land tenure disputes brought before them. In Niger, despite promulgation of an edict setting out guidelines for implementing the Rural Code, judges still prefer to refer to the customs of the parties. The motives are different in each case, but the result is the same: paralysis in the area of land tenure legislation.

[45] *Jus*, which Pospisil rightly distinguishes from lex. Leopold Pospisil, Anthropology of lex: a comparative theory.

[46] See the works of Norbert Rouland.

[47] Michel Alliot in particular insists on the importance for African societies of the notion of the social imprint (*empreinte sociale*) made by a number of social mechanisms, both incentives and constraints (education, rites, religious beliefs, etc.). It is this which determines individual and group behaviour.

I. APPROACHES TO RECOGNITION OF LOCAL LAND RIGHTS AND LAND TENURE PRACTICES

There are three basic approaches to the recognition of local rights and practices: legislative, technical and contractual. The legislative option may be regarded as the classic approach, posing the question of how to incorporate local rights and practices into national land tenure law. In some respects, it is akin to recent international conventions on the environment, which show a concern to take local knowledge into account[48]. The technical option, for its part, as well as defining principles for recognition, is concerned with the mechanisms and tools best suited to identifying and securing land rights in all their local complexity and diversity. Compared with the previous two options, the contractual option is original in requiring initiative on the part of the local actors themselves. Justified by the ineffectiveness of existing land tenure laws, or outright mistrust of them, and the limitations of technical approaches, it advocates tailoring land rights procedures to the needs of the local actors and the circumstances of the local environment.

1. The legislative approach

The legislative approach depends on the public authorities taking a forward-looking view of the management of land rights and involves them in setting the rules regulating local land tenure in relation to the general objectives of economic development policy. For instance, the law governing agrarian and land tenure reorganisation (RAF) in Burkina Faso, motivated by the need to ensure self-sufficiency in foodstuffs in the countryside, specifies the persons in whom land ownership rights are vested (mainly the State), defines procedures for access to and productive use of land, and details the nature of the land rights accorded to local actors[49].

The legislative option has developed in two main directions. The first is a legacy of colonial land tenure legislation. Technocratic in character, its aim is to lay down the rules, mechanisms and procedures for managing local rights as exhaustively as possible. In practice, it results in monumental land tenure codes, characterised by great technical complexity but tending to obscure the fundamental principles of land tenure management. Typical of this first approach are the land tenure laws of Burkina Faso[50], Mali and Guinea. A second, more recent and more politically motivated approach is concerned primarily with defining the basic principles of land tenure management, while leaving the definition and application of detailed technical measures to secondary legislation (orders and decrees). Typical of this approach is the legislation introduced in Niger[51].

The legislative option is dominated by a voluntarist conception and a prospectivist perception of the land tenure question. In the final analysis, it raises problems of land tenure policy which – and this is something we must deplore – are not adequately examined and debated in land tenure research. In general, the land tenure legislation we are considering pursues unstated political objectives[52]. In most cases, the aim is to allow new rural entrepreneurs free access to land (by making private ownership the general rule) and thereby promote the intensification of rural production. The result is that local land rights are marginalised from a legal point of view[53] and effectively sacrificed[54].

The land tenure laws of the Sahel countries are more akin to frameworks for implementing the global development policies defined by the State. As such, they raise fundamental questions, in particular:

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[48] See the Rio convention on biological diversity; or the convention on combating desertification.

[49] However, the Burkinabé legislation covers more than just land tenure. It is also concerned with agrarian issues, setting the rules for regional development, laying down principles for the development of different categories of land (agricultural land, pastoral land), and dealing with environmental protection.

[50] Particularly in versions of the legislation prior to the 1996 reform.

[51] There is probably no other legislation which so explicitly adopts Niger's approach of setting out "guideline principles".

[52] A symptom of this is that the Sahel countries do not really have land tenure policies which are clearly formulated by the competent authorities. This may be an oversight on the part of the authorities, but it may also be a deliberate way of confusing the major land tenure issues of the different development policies.

[53] Burkinabé land tenure legislation, for example, contains only provisional measures for dealing with local land rights. Similarly in Côte d'Ivoire, although the land tenure laws recognise the existence of a customary domain, they treat it as though it were a temporary phenomenon!

[54] In particular, the precarious legal status of local land rights prevents their holders from fully benefiting from constitutional and legal provisions relating to expropriation on grounds of public utility.

– what account is taken of local concerns and issues in the global development policies enshrined in national land tenure laws?

– what balance of forces is expressed by current land tenure policies and laws? Is this balance stable in the long term, or might it be called into question in the short or medium term as a result of the changes in the land tenure situation we are now seeing?

– do land tenure policies give sufficient weight to the diversity, and above all the interdependence, of local production activities? To put it more precisely, is there not a dangerous imbalance between agricultural policy concerns and other aspects of rural land tenure (in particular pastoral and forestry interests)?

– is it possible for there to be fruitful interaction between local land rights and national land tenure laws, to replace the usual unstated strategy of eliminating the former in the interests of the latter?

The great weakness of the legislative option lies in the ineffectiveness of the land tenure laws now in force (i.e. the fact that they remain a dead letter). This undoubtedly has some connection with the vision that the African legislator has of them. It is as if the legislator were content in the short term to have produced intellectually satisfying texts, untroubled by any concern for their effective long-term implementation.

It is true that democracies have found no better way of framing laws than by electing representatives to perform this task. However, we need to ask ourselves whether the demands for participatory democracy being made in the disciplines of environmental law might not also be a key to the formulation of more appropriate – and therefore more effective – national land tenure legislation. It must be a priority to consider the real needs and specific interests of the actors at the grass roots by involving them directly in the preparatory phases of drafting land tenure legislation; we cannot allow ourselves the luxury of land tenure legislation which remains a dead letter[55].

2. The technical approach

The technical option appears to be different from the legislative approach described above; in fact, it derives directly from it. It consists principally in the belief that the preliminary problem to be solved in making local rights secure is one of clarifying their nature, status and consistency. As a result of this process of clarification, it is then possible to register the rights in question, following a simplified investigation procedure and the issue of a certificate which constitutes proof of the existence of the right (whether of ownership or use). The system is completed by the establishment of structures to monitor the circulation of land tenure rights[56].

The advantage of the technical approach is that it enables the legislator, if he so desires, to invert the conventional process of framing land tenure law, starting from actual local circumstances and working towards the most appropriate legal principles. The much-advocated bottom-up procedure is the one that has been tried in Côte d'Ivoire. Even though doubts remain as to its effective implementation, the objective was admirable: the aim was to achieve as close co-ordination as possible, if not complete harmony, between the legal principles adopted and the perceptions of land tenure registered at the grass roots.

In other experiments, rural land tenure plans (Plans Fonciers Ruraux / PFR) have been used as a framework for gradually and appropriately implementing the law. This has been the case in Niger, where the compiling of rural dossiers as provided for in the decree setting out guidelines for implementing the rural code is supposed to afford legal protection to land rights arising from customary principles; these are to be given equal status with those enshrined in statute law. It has also been the case in Burkina Faso, where a pilot experiment to implement the rural land tenure code envisages issuing titles to rural people in development project areas, then extending the principle to traditional village territories.

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[55] There have been moves in this direction, e.g. recent experiments in initiating a widespread public debate on land tenure in Senegal and Burkina Faso.
[56] In the long term, the objective of the technical approach is to integrate local rights and practices into existing national legislation. This is clearly demonstrated by experience in Côte d'Ivoire.

By making it possible to issue titles which are not disputed locally, the technical approach makes an important contribution to the effective recognition of local land rights.

In some circumstances, it is a way of supporting and providing security in a process that has already begun. But it is certainly not a panacea. In some cases, the implementation of PFR-style operations is likely to exacerbate latent conflicts, or even cause conflicts which were previously unsuspected. There is also the danger that, if survey operations are not performed with sufficient care, land rights may be usurped by certain individuals to the detriment of the community (be it village, lineage or family) they represent. Finally, the question of how to maintain and update the system still remains unanswered. Nor should we underestimate the reluctance on the part of rural people to adopt such approaches, due on the one hand to their distrust of any innovation introduced by the administration and, on the other, the financial implications of registering and issuing titles.

3. The contractual option

The "contractual" option stands at the point where the two previous approaches intersect. It is based on the idea that, although the law should define the general rules governing land tenure relationships, it should not dictate the way in which an individual arranges every aspect of his relationship with others. In other words, land tenure legislation should always impose general standards of behaviour on everyone, but leave greater or lesser areas of freedom to each individual or group forming part of the community, allowing them to adapt the general legal principles to their particular needs.

To make a comparison, the law lays down rules for marriage, but it does not force anyone to get married, nor say whom they should marry. It does indeed set out the husband and wife's obligations, but does not lay down how the couple should organise the details of their daily life. As a result, no one couple lives in exactly the same way as another.

The same applies in land tenure legislation: the law lays down general principles regulating access to land, guaranteeing land rights and so on, but it does not tell each farmer how he should make his land productive or what types of arrangement he may conclude with third parties on his own property. Seen in this light, one of the criteria of a good land tenure law would be the extent of the freedom it affords to the various actors concerned. It is these areas of freedom, often undervalued in practice, that are emphasised by the contractual approach. It advocates exploiting them as a way of achieving flexibility in meeting the needs of actors at the grass roots. We might say that the aim is to promote the principle of subsidiarity in land tenure: the legislator interferes only in crucial areas where the general interest is at stake, while allowing individuals freedom to act as they wish in areas where their private interests are concerned.

The key word, as in all areas where freedom is concerned, is balance. The areas of freedom must not be unlimited (lest the law be robbed of all positive effect on local land management); nor must they be too restrictive (lest individuals be deprived of the legal flexibility they need to manage their property well).

The point of balance needs to be gauged in the light of universal principles (equality, justice, peace) and the specific values which a society regards as fundamental to its existence and development (solidarity, interdependence). At the present time, as the countries of the Sahel try to build democratic systems, the values of justice, peace and fairness in matters of land tenure would seem to be fundamental. The same is true of environmental principles favourable to sustainable development and participation.

There is no doubt that this is an ideologically liberal approach. It has the advantage of bringing land tenure policy into line with the liberal economic development policies that have been advocated since structural adjustment plans were first introduced. As in the economic field, the State should limit its monopolistic claims in matters of land ownership, allowing local people to demonstrate inventiveness in taking what they regard as appropriate initiatives in managing their land. Special attention nevertheless needs to be paid to protecting poor people; they should not be left to pay the social price of current changes. In this framework, the contractual approach merely erects some safety barriers, while otherwise leaving freedom of action to those involved on the land tenure scene.

II. A CRITICAL LOOK AT THE DIFFERENT OPTIONS

The approaches analysed above all have advantages and disadvantages, which need to be taken into account when it comes to implementation. The main point is that none of them, taken alone, offers a complete solution to the problem of the recognition and protection of local rights. Lets us now identify both the limitations and opportunities of the different approaches to validating local practices and recognising local rights.

1. Limitations

One lesson to be learned from experiments in implementing these different approaches is that it is not sufficient merely to affirm customary rights in order for them to become reality.

1.1. The difficulties inherent in putting the legislative approach into effect

Attempts to achieve recognition of local land rights through national legislation have often remained theoretical, because the legislation is not effectively implemented or has produced only derisory results compared with the magnitude of the need. Togo, for example, in introducing the land tenure law of 6 February 1974, decided to resist the tendency to ignore local rights and expressly recognised customary land tenure rights. But this judicious reform, though appropriate to local circumstances, is now bogged down[57]. Paradoxically, it failed to capture the interest of Togolese farmers, who rejected a number of technocratic measures relating, for example, to the size of farms, the productive use of farms, and the setting up of rural associations.

Similarly, the legislation passed in Niger, which affirmed the recognition of all land ownership rights of whatever origin (registered ownership or customary ownership) has run into difficulties over the setting up and efficiency of the local institutions (land tenure committees) responsible for implementing it. One reason for the inefficiency of these committees has been their remoteness from the local situation[58], another the high cost of setting them up and running them[59].

In Uganda, the 1995 constitution[60] and the 1998 land tenure reform opened up fresh opportunities for the recognition of customary land tenure rights. For the first time, customary law was recognised as one of the four types of land tenure regime[61]. However, many restrictions have prevented Ugandan farmers from taking advantage of these new political and legal opportunities. According to Rose Mwebaza, the alarming quantity of documentation required to obtain a certificate of customary ownership, and the related costs, leave poor Ugandan farmers with no other alternative but to remain in occupation of unregistered land[62].

Nor should we overlook the lack of political will shown by the administrative authorities in implementing legislation favourable to local land rights. Either no practical steps are taken to implement the law or, worse still, the administrative – and even judicial – authorities, "from a concern to calm social tensions", are sometimes persuaded to take decisions which fly in the face of the law[63].

1.2. The Achilles heel of the technical approach

The objective of the technical approach has been to clarify local land rights with a view to promoting the agricultural development which would result from investment on secured plots of land[64]. The innovative character of this approach has been sufficiently emphasised, particularly the point that for once the aim was not to force local

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[57] Alinon Koffi Olulumazo. *Sécuriser les droits fonciers pour combattre la désertification: le cas du nord Togo*. IIED issue paper n°92, March 2000, p8.
[58] The land tenure committees were initially set up at *arrondissement* level. As part of the on-going decentralisation process, they might now be relocated to the rural communes, with branches at basic community level (*commissions foncières de base*).
[59] Since the guideline principles of the Rural Code were adopted in 1993, only 21 land tenure committees have been established in the whole of Niger. These committees are functional only when they are receiving support for an external donor agency.
[60] Which declares that all land belongs to the citizens of Uganda.
[61] The other three are private ownership, *Mailo* and lease arrangements.
[62] Rose Mwebaza. *Intégration des systèmes fonciers modernes et coutumiers*. IIED issue paper, n°83, 1999, p.8.
[63] Alinon Koffi Oluluazo. Op. cit. p.9
[64] It has never really been possible to establish a direct cause-and-effect relationship between land titles and increased investment in the land. See Paul Mathieu, contribution to the Ouagadougou Round Table on "Ten years of agrarian and land tenure reorganisation in Burkina Faso".

land tenure practices and land rights into pre-established external categories, but to "conduct a survey of land rights as perceived and recognised by the villagers themselves…", then confirm them by an (intrinsic) process of validation, and guarantee them by framing appropriate rural land tenure legislation inspired by the experiments conducted in the field. These "intrinsic and extrinsic" processes for validating local land tenure practices[65] were supposed to produce the best possible system for safeguarding local land rights. However, in the Côte d'Ivoire PFR experiment "the contradiction … between respect for local practices and the demands of modernity was evident throughout the history of the project and even in the legislation relating to the rural domaine"[66].

The survey of longstanding local rights was based on the use of a questionnaire, the terms of which were at odds with the original approach of the PFR. This questionnaire fell into the trap of using European legal categories. The distinction made between, on the one hand, "holders of rights of disposal" and, on the other, "holders of rights of use" gave rise to many errors and simplifications which did not do justice to the spirit of the PFR[67]. The danger of such legal confusion was aggravated by the pressure of deadlines, with each team required to survey as many plots as possible in a very short time. It also emerged that the issuing of land tenure certificates confirming the existence of local land rights could be a source of conflict. There was always the risk of fraud, with the manager of lineage or family land having himself registered as the sole owner[68].

1.3. The uncertainties of the contractual approach

We have less material and experience to go on in evaluating this final approach. The intention in this case is to leave the initiative in land management to grass-root communities and their members. Where the former are concerned, they will have to establish local agreements regulating land and natural resource management in their own local circumstances by negotiating a consensus and a minimum of rules to which all can submit voluntarily. In the case of individuals, they will have to negotiate the land tenure arrangements (or transactions) they require to make productive use of land.

The advantage of local agreements is that they are flexible and can apply to those areas where the community considers that circumstances call for a negotiated consensus on the use of natural resources. However, there is the disadvantage that they apply only to the community that has established them. In practical terms, this means that there is no way of exerting legal sanctions on someone who violates a locally concluded agreement. This is particularly true of persons not belonging to the community, who have therefore not taken part in the negotiation and adoption of the agreement. The fact is that the community (unless it possesses powers by virtue of being a structure of decentralised government such as a local commune) has no legal authority to lay down rules which apply to everyone – and certainly it lacks authority to punish persons who break them. The effectiveness of a local agreement therefore depends on the strength of the group's hold over its members, and on its ability to influence the behaviour of external groups.

As compared with land tenure legislation, land tenure transactions have the advantage of daily use and effectivity. Mechanisms for transacting land are created and spread gradually and selectively, depending on need. In other words, in any area, local actors will use those arrangements which correspond to present tenure relationships and meet their needs. In some areas, the norm may be sales of land subject to a witnessed agreement such as the "procès verbal de palabre" arrangement; in others, it may be a new form of lease contract concluded in the presence of witnesses and formalised with a minimum of bureaucracy and cost.

There is less danger of illegality with land tenure transactions than with local agreements, because the legal systems in most West African countries allow people freedom to enter into agreements[69]. Provided that the minimum requirements for the making of a contract are met[70], the parties are free to negotiate whatever arrangements best suit them. This gives them scope for flexibility and inventiveness in organising a relationship which meets their particular needs and is appropriate to local circumstances.

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[65] Cf. Volker Stamm *Plan foncier rural en Côte d'Ivoire: une approche novatrice*. IIED issue paper, n° 91. March 2000 p.3.
[66] Volker Stamm, Op. cit, p.2.
[67] V. Stamm, op. cit. p.11
[68] Situations of this kind have also been observed during survey operations in Niger.
[69] Art. 1134 Civil Code: "legally concluded agreements have the status of law for those who have entered into them…"
[70] Consent; capacity; purpose and cause. Art. 1108 Civil Code.

2. …and the opportunities

Despite all the limitations mentioned above, there are many good reasons for developing local land tenure practices and recognising local land rights.

Running counter to the dominant tendency since independence, which has been openly hostile to the recognition of local land rights, there is now a strong movement in favour of a more realistic attitude in respect of such rights. One of the most frequently cited examples is the 1993 decree in Niger setting out the guideline principles for the Rural Code. Article 8 of this Code dismisses any hierarchical distinction between customary ownership and officially registered ownership: "ownership of land is acquired by custom or by the means prescribed in the written law". Article 9 further states that "…customary ownership confers full and effective ownership of land on its holder." The most recent legislation in Côte d'Ivoire allows for the existence of a customary domain, but only on a temporary basis[71]. According to article 3 of this law, the customary domain consists of "all lands on which are exercised customary rights in accordance with traditions and customary rights transferred to third parties[72]".

Recognition of local land rights should not be seen solely as a means of promoting individual ownership. It should extend to recognition of collective rights of ownership, and the recognition and protection of rights to farm. With this in mind, the Ugandan law advocates the establishment of associations to manage community land rights. It is to be hoped that African legal doctrine will be able to draw on these approaches so that legislators can consider the issue more deeply and provide African farmers with new mechanisms for managing land and making land rights more secure.

Finally, although PFR experiments appear promising in some circumstances, we must be careful not to destroy their credibility by trying to apply them everywhere regardless of context. Operations to clarify land tenure rights work well in some situations, for example peri-urban areas, agricultural development zones or rural areas in which agricultural is intensifying. In such circumstances, clarification of rights by means of a PFR is a useful means to support a process already well under way. On the other hand, in rural areas with little economic potential or areas where community use rights apply, the introduction of a PFR operation could destabilise existing relationships and give rise to conflicts over land tenure.

In conclusion, it has to be acknowledged that there is no single answer to making land rights more secure, but a number of ways, which need to be combined judiciously, with care and caution.

CONCLUSION

The proliferation of local land tenure practices demonstrates the variety and depth of the transformations now affecting rural areas. They can be seen as legal solutions initiated by local people in response to new circumstances of many sorts.

Land tenure practices provide African jurists and legislators with fertile ground for exploring new ways of making the position of local actors more secure. Careful observation and analysis of land tenure practices give researchers the opportunity to explore new territory, since these practices eschew the well-worn principles of customary land tenure, but without submitting to the rigours of "modern" State legislation.

In conclusion, by reflecting the underlying dynamics of land tenure relationships and giving a more accurate expression of the need for social regulation and changes to the law, local land tenure practices provide a strong foundation for a modern approach to land tenure in Africa.

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[71] One may smile at the "temporary" status ascribed to the customary domain, remembering that during the colonial period customary rights were eventually granted recognition on the assumption that they would disappear over time. What was regarded as temporary has survived to the present day!
[72] Law n°98-750 of 23 December 1998 relating to the rural domaine (Domaine foncier rural). JORCI, 14 January 1999.

LEGAL CONDITIONS FOR THE RECOGNITION OF LOCAL RIGHTS AND PRACTICES

Summary of workshop 2.1.

Chair: Amadou Keita (University of Mali)
Rapporteur: Lucien Aristide Déguénon (Ministry of Justice and Human Rights, Benin)

The workshop was structured around a talk given by Prof. Hubert Ouedraogo entitled "Legal conditions for the recognition of local land rights and practices". In his introduction, the speaker defined the meaning of the terms "local practices" and "local land rights". In his view, local practices covered a number of institutions and forms of behaviour based on traditional principles.

Local land rights were prerogatives acknowledged as belonging to their holder in accordance with customary norms, and were characterised by their oral nature, sacred quality, absence of appropriation and inalienability. The professor raised the issue of the place of "customary" delegated rights in the legal system. He then pointed out that, in order to give a truer picture of local land tenure dynamics, authors had gradually stopped referring to "customary" land rights. They were now more interested in local land tenure practices, which offered greater capacity for the on-going invention of new rules and adaptability to new political, legislative, demographic and ecological circumstances.

Focusing on the legal validity of local land tenure practices, he noted that, though rejected as having no legal standing in conventional jurisprudence, they were often treated with respect by the local administration, from a concern to maintain public order and social harmony.

He stressed that local land tenure practices could not be regarded as a marginal issue. Over and above the question of their legality or illegality, the real issue was whether they should be taken into account in the formulation of land tenure policy and legislation.

According to the professor, a solution to the problem of creating the legal conditions for recognition of local land rights and land tenure practices was dependent on three types of approach:

(1) A legislative approach based on the public authorities taking a forward-looking view of the management of land rights, and setting the rules governing local land tenure in relation to the general objectives of economic development. This approach raised the problem of the ineffeciveness of existing land tenure legislation (e.g. in Burkina Faso and Niger), because such legislation did not take into account the real needs and specific interests of the actors at the grass roots level.

(2) A technical approach based on the consideration that, before local land rights could be made secure, their nature and status needed to be clarified and consistency achieved. This would enable the legislator to work out the most appropriate legal principles, based on an understanding of local circumstances.

Prof. Ouedraogo cited two examples: a pilot scheme relating to the land tenure plan (PFR) in Burkina Faso, and the Rural Code in Niger.

(3) A contractual approach, adapting the principles laid down in the general rules of law to specific local needs. This approach advocated a broad measure of freedom and flexibility in adapting the land tenure rules to the needs of the actors at the grass roots, applying the principle of subsidiarity to land tenure management.

According to the speaker, each of these approaches had its advantages and disadvantages, and none could on its own provide a total solution to the problem of the recognition and protection of local rights. It had to be acknowledged that there was no single way of making land rights more secure, but a number of ways, which needed to be used and combined judiciously, with care and caution.

In conclusion, the professor identified local land tenure practices as a source of modernity in Africa, in that they reflected the underlying dynamism in land tenure relationships and were an expression of the need for social regulation and changes to the law.

The ensuing debate provided an opportunity for exchange on experiments being conducted in different countries in the sub-region and the sharing of concerns about factors threatening land tenure security. These included:

• the principle that land belongs to the State is often not applicable in practice;

• the relationship between local democracy and the rationality of systems;

• resistance on the part of State authorities to recognising local land rights, even though such rights provided for in the relevant legal texts;

• the fragility of local arrangements;

• the distinction between land rights based on lineage and land rights derived from occupation and use;

• the role of agencies set up to reform legislation;

• the inclusion of local land tenure practices in the State legal system;

• the application of existing texts.

The important thing to remember was that all these concerns related to two major centres of interests, viz.:

• the recognition of local land tenure practices,

• the relationship between modern statute law and local land tenure practices.

Concerning the recognition of local land tenure practices, all the participants agreed in emphasising the need to find appropriate mechanisms for granting official recognition to local land rights. Two possible ways forward were mentioned.

The first envisaged the incorporation of customary law into national legal systems. Experiments of this kind are already under way in several countries, such as Mali and Niger. The danger is that customary law might lose its flexibility and capacity for adaptation.

The second way forward is exemplified by the rural land tenure plans (PFRs) being introduced in Benin, Côte d'Ivoire, and Burkina Faso, which aroused a great deal of interest. The idea is to produce a simple cadastral plan, using a participatory approach to conduct a survey of local land rights and establish a body of graphic and textual documentation. One benefit is the way in which this clarifies local land rights. It was generally thought that this mechanism, still in its pilot phase, would be a useful tool in making the position of rural producers more secure, provided it was implemented prudently and was not imposed in every situation.

Regarding the relationship between statute law and local land tenure practices, the view that emerged was that the three approaches set out by Prof. Ouedraogo needed to be combined: the legislator needed to intervene to fix the overall legal framework and general principles for recognition of local land rights; such intervention needed to be based on the results of a technical approach; and it should be left to grass-root communities to define specific rules which were in conformity with the general interest and national legislation. These specific rules should

take into account the process of decentralisation going on in the countries of the sub-region and should incorporate local procedures for settling conflicts over land tenure.

In the final analysis, all these approaches were interdependent in the process of achieving recognition of local land rights and local land tenure practices –which together would make the position of rural producers more secure.

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LAND TENURE AND FARMING POLICIES

Distributing rights efficiently and effectively

Workshop 2.2., Wednesday 20 March

Farming policies and land policies are linked in the sense that land policy is a tool for encouraging the type or types of agriculture promoted by farming policies.

However, African farming policies seem to be in a contradictory position. On the one hand, by equipping and expanding productive farms they seek to promote productive agriculture through a strategy of modernisation that favours large holdings, namely farming enterprises run by urban actors. On the other hand, they seek to combat poverty and ensure that poor households have an income and secure rights. Behind all the talk about poverty reduction it seems that an implicit choice has been made that accentuates the dual nature of agriculture and heralds a shift towards farming as a business, involving what the Burkinabé call "new actors".

Discussions about this issue frequently seem to be based on a caricatured view of family farming. Even though most produce is grown on family-run farms, which have proved their capacity to respond to market incentives and intensify production both within organised distribution channels and to meet urban demand, comparisons between "large productive farms" and "relatively unproductive family smallholdings" ignore the adaptive capacities of the average family farm. While agricultural productivity is certainly dependent on farming structures, it also depends on the economic environment and price ratios. Apart from specific crops requiring major capital investment, average holdings are often farmed more intensively than large ones. Family farms do not pay their capital as they have access to cheap labour. Abandoning the creation of a favourable economic environment (inputs, credit, outlets) and leaving farming in the hands of those able to overcome the constraints imposed by the distribution chain would impoverish a dynamic part of the rural population and squander a significant opportunity to increase production.

The objective of this workshop is to discuss in detail these issues and their effects on land policy, and to consider the links between size and productivity, economies of scale, the effects of the land market on equity, productivity according to the type of production and the potential and limitations of family farming.

WHAT FUTURE FOR WEST AFRICA'S FAMILY FARMS IN A WORLD MARKET ECONOMY?

Jean-François Bélières, Pierre-Marie Bosc, Guy Faure, Stéphane Fournier, Bruno Losch[73]

I. INTRODUCTION: UNDERSTANDING THE CURRENT PROCESS OF AGRICULTURAL RESTRUCTURING

Agriculture in West Africa is facing a double challenge. It needs to become more productive to meet the growing need for food and, in particular, to supply the towns; and it has to provide income and employment for the rural population, so as to reduce migration and combat the inequalities and poverty by which the countryside is particularly badly affected[74]. Like most of the world's farming businesses, and with the exception of agro-industrial firms of the capitalist type, West Africa's farms are primarily family run. Policy debate in many West African countries shows a growing tendency to contrast commercially-orientated forms of agriculture, characterised by large inputs of capital and market integration, with more "traditional" family-based farms assumed to correspond to a common model. The latter are reckoned, almost by definition, to be less efficient, and less able to cope with the constraints, and take advantage of the opportunities, that derive from the new economic and institutional circumstances resulting from globalisation.

The rural sector covers a wide range of farming enterprises, characterised by big and often growing differences, particularly in terms of the land areas under cultivation and the technical means used, in some cases with a high level of investment and agricultural work being performed largely, if not exclusively, by paid labour. The issue of land tenure security, like questions of access to other factors of production, differs widely from one situation to another. This is why we need to examine the process of restructuring that is currently affecting African farming systems.

The central issue faced by agricultural policy-makers is how to manage the differentiation within West African farming systems now taking place. There is a widening gulf between, on the one hand, a minority of concerns, well-endowed with factors of production and capital, which are being run on business lines and are producing exclusively for the market and, on the other hand, a more "traditional" form of agriculture which straddles the line between subsistence and market-orientated farming, with poorer and more uncertain access to factors of production.

The pressure exerted by neo-liberal pro-market policies may reinforce and crystallise this dualism, the first category being encouraged by the whole arsenal of incentives associated with promoting the private sector, the second by measures introduced to combat poverty. But is the development of "modern and efficient" farming enterprises a real solution to existing needs? Is the priority in Africa today simply one of increasing agricultural production? Does not agriculture also have an important role to play in the management of natural resources and the preservation of employment? For what will become of more marginal farms and the people who make a living from them in the absence of alternative occupations, given that in 2000 sixty per cent of Africa's active population – 195 million people (Losch, 2002) – were still engaged in agriculture?

Here, then, is a major challenge: public policy and new support structures need to be able to take into account these "rural masses", along with the reality of the new international environment and its consequences for agriculture in many countries. Seen from this angle, family-based forms of agriculture are probably the best equipped to cope with globalisation, thanks to their flexibility and ability to adapt.

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[73] Cirad-Tera, "Agricultures familiales" and "Savanes et systèmes irrigués" programmes, TA 60/15, 73 rue J.-F. Breton, 34398 Montpellier Cedex 5.
[74] According to the World Bank (2000), 70% of poor people still live in rural areas.

I. Re-stating a few definitions

First we need to clarify a number of notions and concepts. Mendras (1976) contrasts the traditional "peasant" farmer (*paysan*) with the modern "commercial" farmer (*agriculteur*), using a number of criteria to establish opposing stereotypes. Some of these may be helpful for our present purpose: the relative autonomy of peasant communities in relation to the dominant society around them; the high degree of subsistence/self-sufficiency among peasant farmers, which is not true of commercial farmers; the involvement of family members in the way work is organised, with a low degree of specialisation in the case of peasant farmers and greater specialisation among "commercial" producers, reinforced by the preponderant influence of technology and the market. These differences are summed up in the following table:

Table 1: Comparative characteristics of two stereotypes

	"Peasant" farmer	"Commercial" farmer
Autonomy of the local community	Partial	Nil
Subsistence/ self-sufficiency	Combined with production for the market	Nil
Degree of specialisation	Low	High
Allocation of tasks	Domestic group	Technology and market

It is not easy to characterise African farming systems uniquely in terms of these two stereotypes. The fact is that a large majority of farms depend on the domestic group for their labour supply, with some recourse to paid labour. The latter is very variable but, except in commercial forms of agriculture, is supplementary to the labour contributed by the family itself. The degree of specialisation depends on the particular production system but, generally speaking, it is rare to find a form of specialisation which excludes other sources of non-agricultural income. Where the relationship with the market is concerned, the days of local village economies with little or no involvement in marketing are long gone. Indeed it is doubtful that they ever really existed. Everyone to different degrees – and often very closely – is linked with trade and markets. Whether they be herdsmen from the Sahel selling their livestock in the countries of the Gulf of Guinea, or Côte d'Ivoire cocoa producers directly engaging with multinational agri-business, few escape the laws of the market economy as they sell their products or labour as a way of supplementing family income. Agricultural production is increasingly developing into a complex business, giving rise to a range of incomes based on both farm and non-farm activities and, above all, reliance on remittances deriving from the growing, and often very important, role played by migration.

In terms of the Mendras stereotypes, the vast majority of African agricultural enterprises are therefore in an "in-between" position, to which neither the term "peasant" farmer nor the term "commercial" farmer really applies, in the sense intended by Mendras. These observations have led us to define what we mean by family-based farming (Lamarche, 1991 and 1994), a concept which we regard as valuable in examining current developments in West African agriculture. Family-based farming is a form of production characterised by a particular kind of link between economic activity and family structure. This relationship influences the choice of activities, organisation of family labour, management of the factors of production and transfer of property (Cirad-Tera, 1998). This type of farming, which accounts for the greater part of world agricultural production, holds a central position in the life of "Southern" countries, in that it plays an essential role in providing employment. To do justice to the diversity of forms of social organisation and local situations in Africa, it is necessary to use the plural; we will therefore refer here to "family-based farming systems" or family farming.

By comparison, the notion of "rural producer" refers to a far more diverse reality, which includes many forms of production. The essential aspect of a "producer" is that he produces something – implicitly for the market – regardless of the way production is organised. One can be a "producer" by virtue of owning the means of production and the resulting products, without being directly involved in the production process itself, nor necessarily living in the countryside or having one's family involved in farming (e.g. by resorting to share-cropping arrangements or employing paid labour). Similarly, it is possible to be a "producer" without owning land, by renting a plot on which to farm. Use of the term "rural producers" can therefore lead to confusion and cause us to lump together economic

agents who are very unequally endowed with productive resources or who adopt very different strategies [75]. The term fails to take into account the distinction between the head of a family farm who is directly engaged with his household in crop production and the head of a company who may absent himself from the scene of production and who is concerned mainly (possibly having delegated management responsibility) with the return on his assets and invested capital.

2. Economic liberalisation is accelerating differentiation

The process of liberalisation which began in Sub-Saharan Africa in the late 1980s has resulted in profound structural changes in the make-up of African farming systems[76]. These changes are increasing inequalities between different kinds of farmers as well as between farmers themselves[77].

The increasing divergence between different kinds of farmer stems from the withdrawal of national governments from playing a role in the agricultural sector, and the international movement of mergers and takeovers among industrial and trading companies. This has resulted in the emergence of large-scale private companies active in certain sectors of African agriculture and a balance of power which is less and less favourable to local operators.

Where production is concerned, the emergence of a small number of agri-foodstuff businesses, often specialising in exports (e.g. fruit, market-garden produce), or in supplying towns with certain products (poultry, pig and sheep farming), is explained by fiercer competition for access to factors of production (capital and land), the disappearance of State support to farmers, the growing dominance of international firms, and the way in which aid is allocated by donor agencies. Such businesses generally have a rural base, but in most cases benefit from conditions which have enabled them to build up rapidly in the early stages (particularly in terms of land holdings): membership of financial and political networks, privileged access to strategic information (frequent contacts with firms, donor agencies, banks and professional audit offices), or the fact that they have accumulated capital in non-farm sectors before reinvesting in agriculture.

The emergence of this "big-business agriculture" as a result of economic restructuring is sufficiently tangible for it to be seen as a challenge by the farmer organisations currently establishing themselves at national and sub-regional level. This is because it suggests a growing split in African agriculture, as happened in Latin America in earlier decades, between a small number of "modern and market-orientated" farms, and the large mass of rural dwellers, who are economically marginalised (cf. Losch, 2002).

This tendency is reinforced by international donor agencies and the new principles applying to development aid. Aid mechanisms now, by and large, involve different measures for different kinds of economic agent, according to their perceived competitiveness. Thus, on the one hand donors want to promote private enterprise through support to the private sector; while on the other, efforts are focused on ways to combat poverty, through various mitigation programmes. Nevertheless, some donors do not seem to have given up the possibility of combining the two, through modernising family farming systems.

There is, however, one notable change compared with earlier decades. Whereas the colonial and post-colonial periods were characterised by an ideology of modernisation which promoted new production structures which were

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[75] This debate about what terms to use is not neutral, as evidenced by the position currently taken by some French farmers' unions. They insist on the use of the term "peasant farming" (agriculture paysanne) in contrast to the more intensive and more production-orientated farms which have characterised the last forty years in Western Europe. In West Africa, the ROPPA (Réseau des organisations paysannes et des producteurs agricoles de l'Afrique de l'Ouest / West African network of farmers' organisations and agricultural producers) is insisting on the term "family-based farming systems" or "agricultures familiales", little used in Africa in the past. It signifies support for a certain agricultural model to counter the danger of integration and concentration associated with liberalisation.

[76] The post-colonial, development model maintained continuity with the mode of organisation that prevailed after World War II, combining State regulation with a large mass of farmers/planters/producers, without any real representative structures. This mode of organisation has been profoundly challenged by the structural adjustment reforms initiated in the 1980s.

[77] Liberalisation increases the financial risks for farmers, as the end of protective measures and international agreements, subsidies and other forms of agricultural support has led to fiercer competition and greater price instability.

seen as the future engines of economic and cultural" change in agriculture[78], some programmes are now concerned with improving the overall structure and broader environment of the farming industry[79].

3. Recent studies of current developments

How do family-based farming systems compare in their ability to adapt to market conditions with enterprises habitually referred to as "modern", simply because they can draw on larger inputs of capital and paid labour? What can we learn about the innovative capacity of family farms as compared with these commercial farms, which are often presented as the real engines of change? More generally, what are the consequences of these new actors (businessman farmers) for the overall functioning of the sectors in which they have established themselves? If we are interested in promoting "security of land tenure", for whom should tenure be made more secure, and who suffers as a result? What have local studies contributed to our understanding in this area?

In this paper, we shall not be considering the relationship between land ownership and intensification, which has already been dealt with elsewhere (Lavigne Delville, 1998). Instead, we present a number of case studies conducted over the last few years by Cirad teams. Drawing on a diversity of methods and tools, these studies enable us to assess the capacities of family-based farming systems in a variety of settings to make the most of their factors of production and engage effectively in processes of innovation.

In the West African context, we have taken two cases relating to irrigated areas in Senegal and Mali. Investment in irrigated agriculture by governments and aid agencies has been very substantial in recent decades, and has been seen as an essential element in the "modernisation" of agriculture. These irrigation schemes have relied mainly on family-based farms (except in the Senegal River delta, where various commercial farms have emerged, see below). To shed further light, we will then consider two other cases: one in the cotton-growing area of Burkina Faso, and the other in palm oil production in southern Benin.

These situations are, of course, not fully representative of the diversity of agricultural systems in West Africa. But they do permit a preliminary analysis and provide material for discussion. They also show the need for further work to improve our knowledge and the way we interpret current changes in the region.

4. Methods of analysis

It is difficult to put forward a simple, well-defined framework of analysis for the different types of farm found in Sub-Saharan Africa. How can we be sure of adopting a broad enough approach to understanding the dynamics of family farms and the way they are organised, so that our analysis is not limited to a few technical and economic parameters? What elements need to be drawn out if we are to make valid proposals for public policy? And, above all, how can we evaluate the effects on farms of the policies that have already been implemented – in particular land tenure policies?

The case studies presented here illustrate some of the methods used to grasp the dynamics of family farming systems. However, measuring the effects of agricultural policy remains a tricky matter, and constitutes a field of research in its own right.

4.1. Difficulties in evaluating the impacts of agricultural policy

The first obstacle to evaluating policy is conceptual: how to move from a theoretical understanding of economic problems to design of effective measures to address them? The second is no less serious, having to do with the scale on which the evaluation is conducted. It raises the classic controversy between "macro" and "micro" levels of analysis (often seen as an unbridgeable divide). Finally, the significance of the questions asked and their scope in terms

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[78] This need to change structures is a myth which recurs in all newly-independent countries as attested by past interventions. Take, for example, the various experiments with "young pioneers" in Côte d'Ivoire, Senegal (Operation Gopec) or Congo-Brazzaville (Agricongo). For many years, the French overseas development administration promoted this vision of modernisation (Sarraut-Woods, 1998).

[79] See, for example, the "professionalisation of agriculture" projects run by the French ministry of foreign affairs, or the reform of agricultural services supported by the World Bank, which seeks to involve farmer organisations in the negotiation and implementation of research and extension services (Bosc *et al*. 2002(a)).

of the application of economic policy measures often bear no relation to the resources and tools employed to obtain credible, coherent information. The analyst's desire to obtain rapid results, the concern to be understood and the strong need for legitimacy quite often lead to use of extremely simplified – almost skeletal – models to represent a set of economic relationships, the complexity of which is now widely accepted.

The approaches adopted to evaluate socio-economic situations, plan investment and development operations, and assess the effects of policies and projects, are often oversimplified. For a number of easily understandable reasons (lack of reliable statistics, lack of resources, the complexity of production systems in which social and economic factors interact, etc.), the full range of activities carried out by family-based farms is rarely taken into account. Very often, analysis covers only a small part of a farm's activities – those directly affected by the project. As a result, the productive capacity and broader adaptability of family farms in a given area is underestimated.

Generally, only the most specialised family farms, such as those in areas where export crops predominate and those which have benefited from public development projects, like large-scale irrigation, derive a large proportion of their income directly from agricultural production[80].

Moreover, there is often substantial slippage between the estimates assumed for planning purposes – often optimistic, forecasting high rates of internal profitability – and the actual technical and economic results achieved by family farms which benefit from the investment. This slippage may arise from several factors: yields and average sale prices overestimated in the case of the "principal" crop or activity or, conversely, yields and average prices underestimated in the case of the "secondary" crops or activities. Such factors may lead to recommendations in favour of increased crop specialisation, to the detriment of the traditional diversification of family farms in Sub-Saharan Africa.

Conventional sectoral analyses do not do justice to the real economic efficiency of family farming in a given area (Hugon, 1994). Such analysis is difficult to conduct because of the diversity and resulting complexity of the situations under study which limit the production of easy-to-use results (Benoit-Cattin, 1994). We need to improve our methods of analysis to assess productivity in complex and varied systems and activities, and the inter-relationships between these activities and the pattern of income earned from them. Progress can undoubtedly be made by taking into account local or regional economies (Bélières and Touré, 1999) and the new forms of co-operation brought about by liberalisation. Development is no longer regarded as essentially a process of capital accumulation, but as one of organisational change (Hoff and Stiglitz, 2000).

4.2. The methodologies adopted for the case studies

The methodologies adopted in the different case studies were all based on regular monitoring and detailed surveys which made it possible to assess the performance of the units under consideration (households, farms and/or farmers' organisations) and analyse the way they operated (micro-economic analysis). The data-collection methods differed, variously involving researchers, a member of the farming enterprise who had been specially trained for the purpose (as in the case of the Office du Niger in Mali), or advisors providing support to farm management. The resulting data were of varying accuracy, and included, for example, monitoring of the budgets of household members based on statements of expenditure and income (particularly in the cases of Burkina Faso and Mali). An inventory of the assets of each unit under study, and the way they changed over time, was another helpful element in understanding farmer strategies, as well as more conventional information relating to the factors of production, technical methods and farm budgets. The surveys were generally complemented by supplementary analyses which helped validate some of the results and gauge to what extent the different types of farm under study were representative.

The analysis depended on formulating a typology, which varied from situation to situation. In some cases it might be based on "classic" criteria such as the factors of production (in the case of Senegal, for example), on technical choices (e.g. Burkina Faso and Benin), or on the strategies adopted by farmers (e.g. Mali and Benin). The formu-

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[80] Even here, however, there are some obvious exceptions. For example, in the middle Senegal River valley, despite decades of project work, income from agriculture still amounts to only around 15% of total income. The bulk of local household income is in fact contributed by migrants (Bélières et Yung, 1998)

lation of typologies was an important aspect of the methodology and analysis, and it strongly influenced the presentation of the final results.

II. RECENT TRANSFORMATIONS IN IRRIGATED AREAS

Below, we examine recent transformations in family farming systems in two West African areas where irrigated agriculture is practised: the delta of the Senegal River and the inland delta of the River Niger in Mali.

1. The case of the Senegal River delta

The development of the Senegal River delta is a good example of failed attempts to create a "modern" agricultural sector in the Sahel based on commercial farm enterprises producing surpluses for the market. The way the agricultural economy of this region has developed suggests that availability of land and access to capital are not sufficient to ensure the emergence and consolidation of such forms of farming.

The measures introduced as part of the structural adjustment programme, such as the liberalisation of access to factors of production, encouraged for a brief moment the establishment of a number of commercial farms (large areas of land, major inputs of capital, a trader or civil servant as entrepreneur, employment of a paid labour force, etc.). But most of them soon collapsed when access to credit was restricted and the CFA franc devalued. It was smaller family farms[81] which then became predominant by increasing irrigated output through improved productivity. They thereby proved that agricultural productivity depends not so much on the structure of farming – since "it is likely that economies of scale play only a negligible role in agriculture" (Boussard, 1987) – as on the economic and institutional environment (particularly in terms of access to capital and markets, and of price ratios).

1.1. The quest for a modern form of agriculture to meet the country's food needs

The colonial powers organised the economic specialisation of their colonial territories according to what they regarded as their comparative advantage. This enabled them to produce and export agricultural produce cheaply and, in return, to sell within the colony the consumer goods they manufactured back home. The large-scale irrigation projects like the Senegal River valley development date from this period. In a very thinly populated area, with considerable productive potential due to the abundant water supply, the colonial power sought to establish a productive, modern form of agriculture. This development policy was taken up by successive post-independence governments (Sarraut-Woods, 1998) and for many years the Senegal River valley project constituted the cornerstone of the country's agricultural development policy, particularly following the collapse of the groundnut sector.

This resulted in the creation of an increasingly artificial environment, with the construction of canals and dams, the creation of large irrigated areas and the dissemination of "modern" production techniques and seeds deriving from research in tropical agronomy and European agricultural experience. This model of agricultural development, based on a capital-intensive approach, might have been expected to lead to an Asian-style Green Revolution. However, it was also very bureaucratically managed, because rice-growing was entirely administered by the State (Bélières, 1995).

The results achieved were well below forecast estimates, in terms of the land area under development, return on investment, and contribution made to meeting the country's need for rice (Bailhache *et al.*, 1982 ; Seck, 1991; Randolph, 1997). From the early 1980s, this model was no longer regarded as viable, even though commercial rice-growing was becoming the main component of the production systems operative in the area (Le Gal, 1992). Despite the commissioning of large dams and the concentration of agricultural investment in this region (Duruflé, 1996), the delta and valley did not become "the California of Senegal". This moved Engelhard to write (1991) that *"the development of the Senegal River valley is driven by mythology (the old "dream of Eden") and the ideology of "self-sufficiency"(to escape from food dependency and the blackmail practised by the rich, one needs to produce what one consumes)".*

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[81] Three types of farm were chosen for analysis, in terms of average irrigated land area: 1.8 hectares in the case of small farms; 9.7 hectares for medium-sized farms; 53 hectares for large farms.

Economic structural adjustment and liberalisation, introduced as part of the New Agricultural Policy (NPA) in 1984, heralded a gradual withdrawal of the State from the rice-growing sector. This slow withdrawal resulted in a changed approach, without being radically challenged. After the devaluation of the CFA franc in 1994, the disengagement was "brutal", bringing about painful upheavals in the sector and the structure of the regional economy.

These changes affected many productive and commercial activities: agricultural credit, the supply of inputs, management of water resources and land under development, etc. It also affected land tenure management. The initial effects were spectacular, with indicators such as area under cultivation, yields and gross production, showing very strong progress in the early 1990s.

The liberalisation of the economy fostered rapid private-sector growth both upstream and downstream of agricultural production, with new entrepreneurs forming co-operative groups (*groupements d'intérêt économique / GIEs*). Many of them had been civil servants, traders, professionals. Two of the key measures leading to this growth in agriculture was the transfer of responsibility for land tenure management from the State to local government structures, and a generous credit policy. These measures provided easy access to the two factors of production normally hardest to come by in the Sahel region of Africa: land close to a water supply, and capital to invest.

The development of a modern form of agriculture based on large farms seemed to have been achieved at last, and encouraged the idea that most of the produce needed to feed the country's urban population could be obtained from a modern agricultural sector, as opposed to a "traditional" sector consisting of small family-based farms still wedded to the idea of self-sufficiency. However, this "agricultural revolution" generated by making land and capital widely available proved to have been poorly conceived and lasted only as long as the loans that sustained it.

1.2. Agricultural growth linked to a "land grab"

From 1988 onwards, "big farmers" and people of importance in the rural world wanting to increase their land holdings, together with newcomers and city-based investors seeking to engage in what was thought to be the "profitable" activity of rice-growing, took part in a major land grab. Rural councils (*conseils ruraux*)[82] did nothing to prevent this phenomenon and granted large areas of land to the applicants, in some cases over and above what was really available. In the area of Ross-Béthio, for example, more than 50,000 hectares are said to have been granted for development between 1987 and 1991.

But the granting of land by rural councils was only a first stage: the beneficiary was then required to develop the land in order to have the grant confirmed, then farm it if he was to be allowed to keep it. The rural council could withdraw the land if the grantee failed to use it for three successive years. He therefore had to finance the development, obtain a motor-driven pump and bear the costs of actual rice-growing, with pre-harvest expenses likely to amount to 150,000 to 175,000 CFA francs per hectare (pre-devaluation figure). The race for land could therefore not result in the rapid development of newly farmed areas without large inputs of capital and the use of machinery to increase the cultivated area per worker.

The credit crisis of 1993 led to the calling in of outstanding debts and tougher borrowing conditions, bringing to an end this period of growth, which had been artificially sustained and superficial. The complete liberalisation of the sector after the 1994 devaluation, which brought an end to guaranteed prices and led to direct competition with internationally traded rice, steered irrigated production in a new direction. It resulted in an intensification of labour, whereas the emphasis had previously been on capital and land. In the end, it was small family farms which led to higher productivity rice production in the post-devaluation period.

1.3. Adjusting to the world market

The devaluation of the CFA franc (January 1994) occurred just as rice-growing in the Delta was entering a period of recession. It aggravated the crisis by causing an increase in the price of farm inputs. However, by enabling the State to complete the deregulation of the sector, it also brought about a profound change in farming practice, characterised by intensification. At the same time, it led to a radical restructuring of processing methods and credit systems, and obliged producers to address questions of product quality.

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82 In Senegal, the Conseil Rural is the decentralised local authority responsible for land management.

On the other hand, the liberalisation of imports, and particularly the marketing of low-priced broken rice from South East Asia, highlighted the difficulties involved in moving to a de-regulated system, as the greatest beneficiaries of the liberalisation of imports turned out not to be consumers – who should have benefited from lower prices as a result of the weakness of foreign exchange rates, the removal of State levies and the emergence of competition among operators – but importers and middle-men

1.4. Family farms adapt well to new circumstances
Faced with the double shock of external adjustment (devaluation and the opening up to world markets) and internal adjustment (market liberalisation and restrictions on credit), many producers proved able to reduce their costs, improve productivity and adjust the area under cultivation, while maintaining a minimal level of profitability. They then began to make progress.

These changes were to the detriment of the least efficient farms, many of which were large holdings owned by entrepreneurs. The earlier market liberalisation, following State withdrawal, had allowed these entrepreneurs to behave in uneconomic ways, since the race for land and access to cheap loans had become the driving force in the development of irrigated agriculture. The phase which followed, characterised by the liberalisation of all market and supply chains, devaluation and tighter credit, forced producers into greater competitiveness.

A large percentage of commercial farms went out of business, because of large losses. The agricultural bank (CNCAS) and other government structures also suffered great losses.

In parallel with these developments, farmers responded to the economic and institutional changes by:

• improving the productivity of farm inputs; for example, there was a substantial reduction in the quantity of urea employed (more than 60 kg of urea was used to produce 100 kg of paddy in 1993, as against 45 kg in 1997) ;

• managing technical factors more efficiently, particularly stricter compliance with cropping schedules;

• using labour more intensively.

These responses led to:

• an increase in yields per hectare;

• an increase in farm income and a reduction in the proportion of income spent on servicing loans and paying water-use charges;

• different outcomes depending on farm size: an improvement in the income of small farms; maintenance of the status quo in the case of medium-sized farms; and a significant drop in income in the case of the largest holdings (those which had benefited most from a range of indirect subsidies (such as non-repayment of loans and of water rates)).

1.5. The role of family farms in relaunching the regional economy
The micro-economic analysis was supplemented by a meso-level approach, to give a picture of the local economy. The results clearly demonstrate the secondary position occupied by irrigated agriculture in the local rural economy in terms of its contribution to overall income, of which it represents only 10% of all revenues. Other related activities provide the lion's share of local production. In other words, agricultural production is closely integrated with the markets in upstream factors and downstream products.

Analysis of the changes confirms the predominance of rice-growing in the creation of agricultural added value and gross output. Its contribution to the latter increased from 86% in 1990 (5.7 billion CFA francs at present-day rates) to 93 % in 1997 (7.2 billion CFA francs). Despite the decline in land area under cultivation, there was an improvement (at present-day rates) in the added value of agricultural activities. This is having positive knock-on effects on rice-growing. The distribution of economic surpluses is more favourable to farming enterprises, more especially the smaller ones.

1.6. A more prominent role for producers' organisations

So, despite growing constraints on access to land and capital, and the new risks associated with opening up the local economy to national and international forces, family farming has managed to respond positively. Large commercial farms, by contrast, have proved ephemeral, even though they had benefited most from direct and indirect subsidies.

To counter various failings of the market, farmer organisations have taken over seed production and the processing of paddy, thereby reaping a larger share of profits and reducing the scope for opportunist behaviour on the part of their customers and suppliers. Leaders of farmer organisations have been able to re-organise themselves to meet the challenges of the market, whereas earlier they had been mainly concerned with seeking the advantages that stemmed from running an association.

2. The Office du Niger in Mali: family farms respond positively to improved incentives

Between the World Wars, the French colonial authorities created a large irrigated area in the inland delta of the River Niger (in present-day Mali), to produce cotton to meet the needs of the French market. The area was intended to become a centre of economic and social development thanks to the promotion of a modern, intensive form of agriculture based on European models. However, from its establishment in 1932 until the late 1980s, agricultural production lagged far behind expectations. Several approaches to making best use of this irrigated potential were tested as governments came and went, with the settlers (or *colons*) suffering the consequences of each change of direction. However, after five decades of poor performance, rapid growth in agricultural and livestock production is now underway and more than keeping pace with the high demographic growth resulting from migration in the area.

2.1. Success is due to family farming

The Office du Niger is nowadays often cited as an example of agricultural and economic success, though for many observers this success remains fragile. It produces surplus rice and market-garden produce; livestock rearing is well developed; the market for imports and harvests are well structured; the "farmers" are organised; etc. This success must be credited to many causes, including the liberalisation of the economy, withdrawal of the State from certain functions and devaluation of the CFA franc. Equally, technical considerations have been very important, such as the rehabilitation of old canals and sluices, new cropping techniques, and the introduction of more suitable varieties. But this success is above all based on family farming which has responded strongly to improvements in institutional and economic circumstances, adopting intensive and competitive ways of exploiting irrigated land based on rice in association with fruit and vegetables and widespread use of animal traction.

From a situation of under-use of the irrigated area and disaffection on the part of the producers in the early 1980s, intensification is increasing, as is demand for irrigated land. As Sourisseau and Yung (2002) have shown, this is the result of a change in strategy on the part of many farmers: abandoning an approach focussed on self-sufficiency, many producers have gone onto the offensive, taking more risks, and in particular spending more on productive capital. The need today is to extend the irrigated area, to generate continued growth in agriculture to meet the objectives of food security and have a surplus for export. Such an expansion of the Office du Niger is also essential to prevent family farms from losing their viability as available land becomes scarcer under the double effect of demographic growth and rigid land tenure arrangements, which could eventually threaten the substantial gains achieved in recent years.

Unlike the situation in the Senegal River delta, the government of Mali has not withdrawn from involvement in land tenure matters. Market liberalisation has not relied on cheap credit, though heavy losses were suffered in the early 1990s (the combined farm debt owed by farmer organisations amounted to some 3 billion CFA francs in 1994, involving approximately 12,000 families with irrigated land holdings). Measures were taken to improve tenure security for farmers[83] at the time of the restructuring of the Office in 1996, and efforts have been made to

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[83] This has been a recurrent demand on the part of farmers working under the management of the Office du Niger. Since the colonial period, the administration has held out the tempting prospect of handing over land into family ownership, but has yet to do so.

give farmers greater responsibility in land tenure management, particularly by setting up land-management committees with equal representation (*comités paritaires*).

Options for the development of this strategically vital area are currently under discussion, with the choices reflecting broader debate about which farming structures should be encouraged and the nature of tenure arrangements best suited to maintaining and stimulating growth in agriculture.

2.2. Family farms: constraints and adaptation strategies

The Office du Niger provides a good example of how it is possible to achieve agricultural intensification without full tenure security. Rice yields have risen 2.5 times over 15 years, despite the fact that farmers have only limited guarantees where land tenure is concerned, because the land is still managed by a public agency (the Office du Niger), whose powers of eviction were, and still are, considerable.

The long-term future of family farms now depends on their ability to extend their paddy-fields. However, due to rapid demographic growth and relative stagnation in the development of new irrigated land, the per-capita area under rice has decreased considerably: the average area devoted to wet-season rice was 0.38 hectares per person in 1987, compared with 0.22 hectares in 1999. This trend is threatening farmers' capacity to generate sufficient income and capital, and is provoking opposition from the younger generation. The concentration of farm income in the hands of the household head, and the way it is distributed among the family workforce, is giving rise to more and more conflict. Moves to farm land outside the irrigated zone (*surfaces hors casiers*) – reflecting the pressure on land – are one way in which younger farmers have sought to respond to the problem.

In contrast to findings elsewhere, agricultural productivity per person in the Office du Niger is higher in the case of large family farms than for smaller ones[84]. This can be explained by a combination of factors. Economies of scale are undoubtedly significant[85], but nonetheless secondary to: (i) unequal access to capital, since large family farms are in a stronger position to accumulate funds for production purposes; and (ii) the diversification to which small farms are obliged to resort (and the fact that their intensification practices are restricted to providing their own food needs).

The reduction in farm size is leading to more individualistic management methods. Where land is abundant, the amount of available land per person tends to remain constant in the transition from one generation to the next but in this situation, where land is scarce, the establishment of a new household as a result of family splits inevitably leads to plots being divided up. This phenomenon is accelerated by the household head's difficulties in balancing the system of rights and obligations of family members. Younger sons who feel they have been unfairly treated in the allocation of family land may ask instead for their share of farm equipment and go and work on their own account.

When rice growing is no longer sufficient to generate the income needed to satisfy family members, heads of household diversify their activities, mainly in the direction of performing services (threshing, hulling, weighing, etc.), in which there is already a high level of competition. Risk-taking is becoming more common, in contrast to the earlier dominant concern of ensuring food security, and this further exacerbates tensions within families. Market-gardening activities are one means of relieving such tensions, by giving family members freedom to earn money for themselves and significantly supplement household income. However, these options are proving to be inadequate, given the magnitude of the problem.

To preserve the viability of family farms and the gains which have been made, the problem of land availability must now be tackled. The main problem is not tenure security as such, but access to new irrigated plots. If this constraint is not removed and if, at the same time, access to land is made subject to market forces alone, it is probable that large numbers of people will be marginalised as they are forced to farm smaller and smaller plots. Since agriculture alone will not be able to ensure the continued survival of these families, a broader range of income diversi-

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[84] See the results of research carried out by Mariko et al. (1999), Mendes del Vilar et al. (1995), Sourisseau (2000), and Bélières and Bomans (2001).
[85] For example, the reduction in unit costs for indivisible investments, such as the cost of an oxen plough team.

fication activities is likely to emerge. In this situation, it may be possible to maintain the same level of rice production, but socio-economic development is likely to be far less even, with increasing numbers of people facing impoverishment.

2.3. Attempts to promote farming enterprises
Some participants in the agricultural modernisation debate argue that the main constraint on growth is the difficulty experienced by family farms in producing surpluses able to meet national food-security needs and provide crops for export. In the case of irrigated agriculture, the obstacles are compounded by constraints on the funding of irrigation works and their maintenance, and the difficulties associated with collective management of irrigated schemes, which are often a source of disappointment for the donor agencies supporting the implementation of such projects.

To mitigate these perceived deficiencies in family farming and, more importantly, to attract private capital into agricultural production, the promotion and installation of "entrepreneurs" or "private investors" has been seen as an obvious solution. But it has also brought the land tenure issue back into sharp focus, as titles of ownership are generally the main guarantee offered to the bank by the entrepreneur when it comes to borrowing.

Experiments in promoting agricultural entrepreneurship have been tried several times in Mali, particularly as part of the national rural infrastructure programme (*programme national d'infrastructures rurales / PNIR*) funded by the World Bank. One may nevertheless question why these entrepreneurs want to invest in an activity – the production of cereals for local and regional consumption – on which the return for investment is generally long term. Only major incentives (preferential interest rates, subsidies, exoneration from income and other taxes, etc.) and State funding of infrastructure are likely to attract such people. What really motivates these new farming entrepreneurs? Is it an interest in agricultural production, or rather the opportunist prospect of being able to access land and public funding?

This type of commercial farming also raises other questions. Family farming, as currently practised, is competitive due to the intensification of labour, but big businesses entering this arena must rely on mechanisation – making up for their lack of a family-based labour force with investment in technology. What would be the economic advantages for Mali of pursuing such an approach and how competitive would their products be on the world market?

The experience of agricultural entrepreneurship gained by the Office du Niger as a result of the Koumouna project[86] illustrates the principles and decision-making mechanisms at work in an operation of this kind. An initial economic feasibility study was carried out which demonstrated the profitability of mechanised agricultural production on "modern" farms of 30 hectares and over. A high return on capital was forecast. However, a fresh analysis of the technical and economic data, conducted as part of the master development plan for the Office du Niger area, points out the weakness of the proposed model. "*The type of modern farms presented in the study would seem to be relatively fragile financially, with very high fixed costs and profits reliant on a few key cash crops (potatoes, onions, bananas, okra), while related services (processing, quality standards, external sales outlets) will take time to develop. There are very real risks in such a context. Similarly, this kind of commercial farm will require first-class managerial skills and technical assistance and, above all, considerable experience in the growing and marketing of these products. However, an evaluation of those people who have applied to participate in the Koumana project has shown that many of them fulfil neither the financial nor the technical criteria. Some of them are also undoubtedly pursuing objectives at odds with those anticipated by the project, e.g. they intend to use share-croppers or rent out newly irrigated land. A comparison of the proportion of land allocated to each cash crop, with the anticipated profit on each crop, clearly demonstrates the great dependence on getting high prices for a few key cash crops, other than maize and rice, despite these being strategic crops for Mali, occupying the largest part of the cropping plan*" (Sogreah-Bceom-Betico, 2000).

This example typifies the debate about achieving modernisation by changing farm size. It is always easier to plan projects and formulate policies based on general hypotheses – with carefully selected technical and economic data, and assuming competent, rational entrepreneurs and "perfect" markets – than it is to tackle the challenge of changing an agrarian situation, consisting of diverse family farms and complex activities.

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[86] Installation of agricultural entrepreneurs on 1,800 hectares of land, funded by the World Bank.

2.4. Unresolved issues of land tenure

Whatever is decided about the optimum form of farm structure, land tenure remains an issue. The institutional measures taken in the 1990s, and confirmed by the management decree of 1996, strengthen the rights of those occupying the land, including family farmers. However, the ban on any land transaction between farmers has been maintained, and the allocation of written "permits to farm" (*permis d'exploitation agricole*, the arrangement ensuring the highest level of security) is still not the general rule. Because of pressures on land, many land transactions are developing outside the legal framework laid down by the Office du Niger. Though tolerated to a greater or lesser extent by the authorities, they remain illegal and can lead to the eviction of those involved.

The most widespread practice, affecting a significant percentage of the land area[87], is the granting of an annual lease, made "official" by an informal contract signed in the presence of a witness or simply by oral agreement. Since the late 1990s, a "transfer market" has grown up, whereby plots are effectively sold under the guise of a family division, the name of the new assignee being registered with the Office du Niger. As a result, in 2000, a one-hectare plot could be purchased for up to 1 million CFA francs in the best maintained irrigated zones.

Large sums are therefore at stake. For many of the parties concerned, the enlargement of their farms can only be achieved through increasing participation in investment arrangements, ranging from a straightforward "enhanced" contribution to a complete takeover in the case of "large private operators". At the same time, methods of organisation have changed and new actors have appeared on the scene (new local government structures, farmers' unions); and the older organisations have become more professional. But the situation remains one in which there is a large disparity between the official rules and actual practice, the development of a parallel market in land, and the failure of land management committees (*comités paritaires*) to function properly because the users are not organised.

The way ahead is unclear and experience suggests that there is no simple solution (Lavigne Delville, 1998). A prudent approach is called for, which builds on existing social structures. Preliminary studies are required to compare the consequences of different options in terms of their impact on efficiency and social equity. The information obtained by such studies could then contribute to the much-needed public debate on access to and management of land, this key element in agricultural development and valuable asset which lies at the heart of social relations.

III. COMPLEMENTARY EXAMPLES

The example of irrigated rice-growing in the Sahel region sheds useful light on the development and restructuring of family farms. Current changes also need further illustration from other situations which exemplify differing local circumstances.

The first case examines cotton-growing areas, since cotton production is one of the main resources of a fair number of West African countries. In some countries, such as Burkina Faso, family farms involved in cotton production have demonstrated considerable ability to make the most of local resources. We then examine the situation in coastal regions and the dynamics associated with perennial tree crops, which may occupy the soil for between 10 and 40 years. These sectors are of considerable economic importance, having at one time or another been the "mainstay" of many coastal countries of West Africa. Rapid change is currently taking place, along with falling world market prices and, in some countries, a recovery in local consumption. We examine the case of palm oil production in Benin, where a programme to encourage new plantations is affecting the organisation of the sector as a whole.

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[87] According to a survey of more than 3,000 farms throughout the Office du Niger area conducted in 2000, 9% of the land area and 15% of plots are exploited on an indirect basis (source URDOC 2001)

1. Cotton-growing areas of Burkina Faso: adaptive capacity amongst family farms

In the western part of Burkina Faso, in the 1970s and 1980s, the development of cotton-growing led to a process of economic differentiation between farm households, determined by their capacity to integrate this activity into broader production systems (Bigot et Raymond, 1991). This differentiation was further accentuated (Faure, 1994) by the favourable conditions granted to those who had adopted the new crop (i.e. access to credit for buying equipment and inputs). As a result, in 1989, approximately 35% of farms owned draught animals (Schwartz, 1991), while roughly 500 (i.e. fewer than 1% of farms) had a tractor. Recent studies show that this pattern of development has endured, even though the latest crisis in the cotton-growing sector is raising new questions (Pigé, 2000 ; Rebuffel, 2002).

Development initiatives have always pinned their hopes on the largest and best-equipped farms as the key to agricultural development. However, many household level studies (monitoring of agricultural activities, analysis of income and expenditure, rates of return, etc.) show (cf. Table 2) that the most efficient farms are generally those able to make the best use of local resources, such as family labour and animal traction.

Table 2: Structure and farm performance in relation to levels of mechanisation

	One tractor	At least two pairsp of oxen	One pair of oxen	Manual labour
No. of cases studied	25	15	15	17
No. of persons/farm	31.2	15.3	9.9	7.9
Total land area (ha)	34.8	15.9	9.2	3.8
Land area/person (are)	112	104	93	48
Total labour/person	88	89	77	40
Total labour/ha	79	86	83	84
Monetary income from agriculture in FCFA	1,018,000	436,000	312,000	71,000
Mon. inc. from agriculture: FCFA/ha	29,000	27,000	34,000	19,000
Mon. inc. from agriculture: FCFA/person	33,000	29,000	32,000	9,000
Mon. inc. from ag.: FCFA/day's labour	372	320	407	223

Data: 1990/91 and 1991/92 crop years, 12 farms per village (Faure, 1994)

The total income from agriculture increases significantly with the level of mechanisation, justifying the enthusiasm for animal traction or tractor use. However, though monetary income per person rises as soon as a farmer has a pair of oxen to assist him, there is little further improvement if he owns several teams of oxen (no economies of scale) or is equipped with a tractor (difficulty in making such costly equipment pay for itself). These findings are reinforced if we take the number of days worked into account.

Finally, farms reliant on manual labour or animal traction are better able than tractor owners to cope with unfavourable changes in the economic environment by accepting a smaller return on their labour. Farmers relying on tractors are more vulnerable to adverse circumstances, since their fixed overheads are high (repayment of loans, maintenance of equipment), as are their variable costs (fuel, hired labour). The ups and downs in cotton production over the last twenty years demonstrate the capacity of small and medium-sized farms to pursue alternative strategies when the price of cotton does not make it worth growing, whereas many mechanised farms have been obliged to sell their tractors to pay off their debts.

2. The palm oil sector in Benin: technical change, new actors and agricultural differentiation

Historically, the palm oil sector has been very important in Benin, having provided almost all the country's export income for almost a century. In the 1950s, growing international competition, difficulties in managing an entirely State-sponsored industry and declining rainfall began to undermine its position. The resulting reduction in supply, aggravated by rapid demographic growth (and therefore increasing demand from consumers), resulted in a dramatic decline in exports.

When the State stopped investing in the sector in 1974, Benin dropped off the list of significant African exporters. However, palm oil is still a staple of the Beninois diet and the industry continues to be of prime importance, given the number of people involved in the sector. Of these, women processing the palm oil on a small scale are the most numerous. Using entirely manual techniques and family labour, they account for 4/5 of the local market (Fournier *et al.*, 2001).

Given the heavy pressure on land throughout the area in the south of the country where oil-palm can be successfully grown, women's access to land ownership is strictly limited and, traditionally, these female processors have obtained almost all their raw material from small family farmers who have integrated naturally-occurring oil palms into their cropping system, unlike the monoculture oil-palm plantations encouraged by "modern" projects.

In the early 1990s, the government of Benin decided to get involved in the sector once again, but following a quite different approach. Industrial-scale processing facilities, the public management of which had been very inefficient, were privatised and small private enterprises encouraged. Government support consisted of distributing selected oil-palm plants, at subsidised prices, by State-approved private nurseries, and in the design and promotion of small-scale processing equipment.

The programme to distribute selected oil-palm plants was started in 1993. It soon proved successful. The share of national production accounted for by selected plant material will have increased from just 3% in 1995 to almost 20% in 2005, equalling the share accounted for by industrial plantations (*op. cit.*). Planters of selected oil-palms are almost all men. They are mostly family-based farmers who have decided to specialise (30%), but some are retired civil servants (16%) and traders wanting to diversify their sources of income (19%)[88]. They generally adopt a strategy very different from that of "traditional" family farmers who own naturally occurring trees. Whereas "traditional" farmers stick to a diversified pattern of crop production, they tend to specialise and seek to extend their plantations as much as possible. Thanks to the development of a market in land, these new planters are managing to buy plots, which they devote entirely to oil-palm growing. As a result, the area planted with palms, though still relatively small (50% of planters have less than 5 hectares) is growing rapidly.

These planters are newcomers to the sector. Initially, their arrival brought benefits to the female processors, as the quantities of raw material available increased. But, increasingly, the newcomers have themselves become involved in processing the crop. For the last ten years, development agencies have been supporting the dissemination of processing equipment (presses and mixers), aimed at improving efficiency. By increasing hourly production threefold, mechanisation has made it possible to increase the profits from processing. These may be substantial, especially if the processor also has storage facilities, allowing him to sell the resulting product when prices are higher.

In several countries in the sub-region (Ghana, Cameroon, Nigeria, …), the development of semi-mechanised oil-palm processing units is already well under way. In Benin, this trend has so far affected only the biggest planters, but it is likely to expand considerably, as the new equipment can be profitably employed on relatively modest-sized farms[89] and it is becoming less expensive to buy. Moreover, the "new planters" are emerging as a well-structured body, with organisations ensuring the dissemination of know-how and information, quite unlike the women who formerly processed much of the crop. For them, the new equipment is irrelevant, since the volume of raw

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[88] Survey conducted in the sous-préfectures of Pobé and Adja-Ouéré (May 1999).
[89] The purchase of a press/mixer is fully justified, according to Fournier when the annual quantity to be processed is in excess of 70 tons. This amount can be harvested from 7 hectares of selected oil palms. If the trend towards a concentration of land and palms continues, it could become a profitable investment for many planters.

material processed by each woman has remained small[90]. If this trend continues, women processors could find themselves excluded from the oil-palm sector as the planters increasingly process their crops themselves. This shows how a development programme which encourages the emergence of a new category of actors can damage the livelihoods of other people within the supply chain.

But it is not only the processing sector of the industry that is affected by restructuring. It is also having an effect on land tenure strategies, as the new planters adopt more aggressive strategies in accessing land. The current changes are therefore leading to a gradual polarisation of palm oil growers; a form of commercial farming is emerging in opposition to traditional family farms, with the risk that new opportunities in this sector will be monopolised by the former.

IV. FOOD FOR THOUGHT

1. The responsiveness of family farms in Africa

The examples we have studied, taken from very different situations, show the competitive advantages of family farming systems in making best use of local factor availability, responding to market signals and adapting to rapid economic and institutional change. In the Senegal Delta, in a situation of constraint and adjustment, it is small family farms which have achieved the best financial results, whereas large commercial farms, whose development depended on loans which have not been repaid, are in difficulty. In the cotton-growing area of Burkina Faso, it is medium-sized farms owning a single oxen plough-team which are the most efficient. Conversely, the example from Benin illustrates the dangers of economic polarisation in the agricultural sector, when modernisation projects are conceived and implemented without reference to the way the sector actually works; the result in this case has been the massive exclusion of women from an activity in which they had formerly played a key role.

These examples of the adaptive capacity and economic effectiveness of family farms – even though, given the great diversity of situations in West Africa, the cases taken into account are not necessarily representative of all contexts – is confirmed by similar analyses from other parts of the world.

2. The need to document what is happening within the agricultural sector

However, to progress beyond these initial findings, we need information on changes to family farming systems in Africa in areas other than those already documented. The detailed West African studies we have become rapidly out of date because of the continuous changes which have occurred in the economic environment. There has also been a decline in the effort invested in research of this kind.

Yet, there is a great need for information on these issues. Requests are being made by farmer organisations wanting to make a strong case for promoting family-based agriculture. This kind of documentation is also vital for aid agencies involved in poverty reduction strategies. Development aid seems to be deserting the rural sector (Fida, 2001) for lack of proposals adequately supported by reliable analysis of their contribution to the incomes and livelihoods of the rural poor. Researchers need to re-launch in-depth work to understand family-based farming today, the ways in which they are accessing markets and, more generally, new patterns of rural life. These fields of research require renewed co-operation between aid agencies, NGOs, governments, research institutes and universities.

There is recent evidence that, in some places, agriculture now accounts for a falling share of rural income, e.g. the Matam area in the Senegal River Valley (*cf*. Bélières et Yung, 1998). Often, therefore, it is the place of rural activities in family life that needs to be re-examined, taking into account family strategies, which often extend beyond the confines of Senegal, with substantial revenues deriving from long-distance migration. These changes are leading to the emergence of a highly dispersed family economy which is entirely new and very little explored. In areas where agricultural incomes are still significant, there is also a need to update our picture of what is happening, as

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[90] As the female processors mostly work individually (albeit with family help), none handles a volume which would make it feasible to invest in equipment.

saturation of the available land is pushing people to adopt strategies outside agriculture. The rural environment then retains a vital function as a place of sanctuary and "safety net" in family strategies.

It is essential to obtain regular, up-to-date information on such changes, which are affecting all types of agricultural structures. For example, recent social and anthropological studies have demonstrated the role of "newcomers" as mediators in the development process, but little work has been devoted to agricultural entrepreneurs from an economic point of view. Yet it is vital to shed light on this type of actor, to enable us to make economic comparisons between the different forms of agriculture. These agricultural entrepreneurs tend to form associations to promote their interest in influencing the formulation of public policy and generate collective goods and services which will benefit the development of their farms (e.g. palm oil producers who belong to the APPHO, or the farmers belonging to the *Groupement des Exploitants Agricoles* in Benin).

The risk of polarisation in the agricultural sector is very real, as the example from Benin demonstrates, although this trend is not as pronounced as in Latin America. It is not too late to raise the issue for public debate: is it desirable that Africa should countenance situations similar to those of certain countries in Latin America, where family-based farming and business agriculture are managed by two separate ministries? This is effectively what has happened in Brazil, where there is a ministry of agriculture devoted to large commercial farms, often producing for export, and a ministry of agrarian development concerned with family farms. As a result, agricultural policy-measures, such as assistance with irrigation, technical services, agricultural credit and training for farmers, are the subject of political clashes, often resulting in paralysis. This polarisation also presents obstacles to integrated management of resources at the local level.

3. Ensuring security of land tenure

Security of tenure is essential to ensure stability for investment, including investment in the annual production cycle, but land tenure security should not be equated with private ownership of land, in the Western sense of the term. The cases presented here show that, even in instances of imperfect tenure security (the relatively precarious tenure of Office du Niger settlers; the absence of private land ownership in Burkina Faso), intensification can occur. To go further by formalising and effectively creating a market in land – which is more than a straightforward factor of production, and constitutes an asset with powerful social and cultural connotations – would result in the development of non-egalitarian patterns of land ownership. Promoting market mechanisms to ensure security for some producers will inevitably create insecurity for others, who will then be forced to sell their plots and abandon agriculture. Does this make sense, given the employment opportunities in Africa today?

Providing secure tenure can be combined with modernisation. In the history and evolution of rural societies, these processes have often gone hand in hand. The central issue is to decide what types of farming should be promoted – and, conversely, what forms of activity society is willing to see disappear. Such debates cannot take place without the active participation of family farmers and their organisations. When dealing with these issues, and all issues of public policy in the agricultural sector, it is more than ever necessary that organisations representing the agricultural and rural world be involved in the process. However, to ensure that dialogue is not mere "window-dressing", managed and controlled by government or the aid agencies, it is essential to strengthen farmer organisations, to analyse situations and to propose policy options.

4. How can farmer organisations influence public policy?

In most African countries, farmer organisations gathered strength in the 1990s. Building on diverse experience, they made the most of the room for manoeuvre created by the withdrawal of the State from agricultural support and the partial democratisation of public life. Moves towards establishing a federation of farmer organisations intensified and resulted in national and sub-regional co-ordination of activities (e.g. ROPPA (Bosc *et al*., 2002 (b))). Whatever they may call themselves, farmer and rural organisations are mainly concerned with two issues: the creation and management of services to agriculture; and the representation and defence of farmers' interests.

In West Africa, farmer organisations are more and more clearly affirming their belief in the need to promote family farming. They are increasingly speaking out and taking initiatives to influence agricultural policy. It is worth noting that, just in the last two or three years, agricultural debate, as carried forward by farmer organisations, has taken

on board the concept of family-based farming as a means of crystallising and representing a type of agriculture in opposition to the agri-business model. This vision has been inspired by a global perception of the role of agriculture in society, not only producing food and fibre but also performing many other economic, social and environmental functions: food security, employment, management of natural resources, regional development, etc. This perspective has something in common with current debate in Europe on "multi-functionality" and agriculture's broader contribution to rural development (see, for example, the broadening of activities supported by the EU's Common Agricultural Policy).

Awareness of current changes in family farming is a matter of vital importance for the leaders of farmer organisations, at a time when they are being asked more and more frequently by governments and donor agencies to give their opinion on appropriate forms of public intervention in the agricultural sector. This information is of strategic importance, but it pre-supposes that the organisations concerned are able to define their position as to the forms of family-based farming they advocate. This kind of thinking is not yet widespread among the leadership. It has however been the subject of research activities and initiatives in Africa, Latin America and China (Mercoiret et al., 2000). In Africa, it is guiding the training programme, *"Université paysanne africaine"* (African farmers' university), launched in 2001, intended to train farmers' leaders in thinking and strategic analysis (APM, 2000). There is a great need for training, and only a strong commitment on the part of donor agencies and Northern countries will be able to mobilise the resources needed to take up this challenge, which is central to the future of African farming systems.

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LAND POLICY AND FARMING POLICY: DISTRIBUTING RIGHTS EFFECTIVELY AND EQUITABLY

Summary of Workshop 2.2.

Facilitator:Mahamadou Zongo (GRAF/IRD/Univeristé de Ouagadougou)
Report: Anne Floquet (CEBEDES)

The group sessions following the presentation by J-F. Bélières on "Family Farming in West Africa: what is its future in a free market environment?" enabled many participants to report on their experiences, albeit briefly because of the large number of contributors. I hope that if I have misinterpreted their thoughts or left out certain contributions they will not hold it against me, but will instead be inspired to put their experiences and questions down on paper for future discussions.

1. What types of farming should be promoted? Family farming versus commercial agriculture

Like the presenter, participants at the seminar defended the idea that family farming is productive when undertaken in a favourable economic context, often outperforming large commercial enterprises and, partly because of the role played by family support networks, better able to withstand economic setbacks. Farmer organisations argue that rather than contributing to the marginalisation of smallholdings, farming policies should aim to strengthen them and make them less vulnerable. It was felt that the impact and relevance of policies could be assessed more accurately if the performance of different types of farming was evaluated in terms of their efficiency and sustainability.

However, it seems that various governments are trying to promote large-scale commercial farming again. This is certainly the case in the *Office du Niger* in Mali, and in the *Vallée du Sénégal*, where the government is seeking funding from the private sector for developments that it can no longer finance. The favourable ecological conditions in both areas have attracted numerous producers from impoverished rain-fed farming zones, and continue to do so despite the fact that conditions have deteriorated since the first arrivals established themselves. This raises two issues: internal inequalities when *néo-ruraux*[91] and farming enterprises try to monopolise land for development, and regional inequalities between high-risk rain-fed farming zones and areas that have been developed at great expense.

The main policy issues in irrigated zones concern regional allocation of public funds and balanced regional development, the selective promotion of various types of fairly large farms ("*laissez-faire*" in itself being a policy that favours concentration) and equitable access to developed plots. Several contributors criticised the fact that no comparative evaluation had been made of the costs and impacts of policies promoting commercial rather than family farms and those focusing on the development of high potential zones or seeking to achieve regional balance.

Family-run farms have shown that they are more flexible and better able to regroup after economic crises and upheavals. For example, after the oil boom in Nigeria family farms switched from export production back to growing food for the local market. They were so successful in responding to rising local demand and prices that the food shortages so often predicted by experts never materialised, despite the fall in prices precipitated by imported veg-

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91 These newcomers to farming mainly consist of city dewellers, civil servants and entrepreneurs

etables. Conversely, the large-scale farms established during the oil boom did not survive. However, this flexibility does have its limitations if it adversely affects the renewal of the farm's capital.

Several participants rejected an overly dualistic view of farming. Commercial farming, such as the high-quality palm groves and related processing plants found here, can also have a knock on effect on surrounding smallholdings, which will rent the equipment needed to continue their activities or position themselves in different segments of the market from those occupied by commercial undertakings.

Farmer organisations are trying to influence policies to protect farming against unfavourable imports. In Guinea, organisations from each distribution channel and every zone hold annual general meetings to discuss their problems, before informing the government of their concerns. This has enabled them to stabilise prices by reducing the amount of food and market garden imports and getting the State to levy a surcharge during periods of high internal production. These organisations operate at the level of the WAEMU, the West African Economic Monetary Union. Thus the *Réseau des Organisations Professionnelles et Producteurs Agricoles d'Afrique de l'Ouest*[92] recommends amendments to WAEMU proposals for strengthening the Common External Tariff in order to develop a regional forum for agricultural development, and argues that the right to food self-sufficiency should be negotiated before the international authorities. One official noted that farmer organisations and their network could have a more positive influence on agricultural policies if they knew more about the factors affecting the vulnerability and resilience of farms in the different regions covered by WAEMU.

2. Land policies, securing and developing family farms

Insecurity of tenure takes several forms and triggers various adverse effects. One of the first comments made in this discussion was that insecurity of tenure is often caused by "*laissez faire*" land policies, as well as by government interventions.

Lack of land policies and insecurity of tenure
In certain migratory areas there is so little incentive for newcomers to settle and invest that they continually move on in search of new land. For example, insecurity of tenure in the region of Mopti in Mali has forced migrants into forest reserves, and 60 hamlets have sprung up there in less than a decade. In peri-urban areas of Lower Benin rights of ownership and rights of use (which are not based on purchase) are increasingly precarious. Farmers have to buy part of their holding in order to be able to cultivate it with a modicum of security, tying up a large part of their savings for long periods rather than being able to invest productively. This is particularly serious in peri-urban areas, where land is not just a factor in agricultural production but also constitutes people's savings and retirement funds, as well as a speculative asset for those who can wait for built-up areas to expand. With the "privatisation" of land tenure, prosperous farmers are forced to buy land, live in poverty and die rich, while the others have to give up farming and become waged labourers, sometimes even working on the land that they or their fathers had been obliged to sell.

Insecurity and intervention by government appropriation
In Cameroon, the government edicts of 1974 and 1976 interfered with the customary rules operating at village level by allocating unoccupied lands to the State and permitting the acquisition of rights of tenure. Encouraging individual appropriation became an integral part of a policy of promoting farming for export, and thus plantation agriculture. These titles are particularly beneficial to the *néo-ruraux*, many of whom are civil servants and rural entrepreneurs. *"Incomers use the customary authorities and customary rules get allocated land, and then one day you find a fence has gone up behind your compound because they've got themselves the title deed to their land…"* The *néo-ruraux* have been appropriating land in this way for 25 years now, turning indigenous farmers into waged farmhands, causing considerable frustration and generating numerous claims for the restitution of customary lands.

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[92] West African Network of Trade Organisations and Farm Producers, set up in 2000.

The government in Nigeria used the Land Use Act to appropriate rights over so-called unoccupied lands. Today, amid frequently violent conflicts over land tenure, the Land Use Act should simply be repealed, or at least amended so that it takes account of the needs of landless farmers. The question is, how can these changes be used to ensure that the allocation of land between different, often conflicting, user groups is planned, and the needs of future producers taken into account? Could this be done by creating a land reserve, for example? And is it possible to reconcile the Land Use Act with recognition of customary practices used to allocate land?

Dubious security of tenure through title deeds
Several participants highlighted the fact that if titles could be secured, policies and the very value of titles would change.

A system for managing contractual relationships has been developed in some areas, which involves fixing the limits and writing down the nature of the contractual arrangement in registers witnessed by recognised local committees. This seems to reduce uncertainty and respond to a need in very densely populated areas where numerous conflicts between owners over boundaries are literally poisoning social life. Landowners frequently denounce the contract with the farmer working their land, fearing that the latter will use every opportunity to try to appropriate the land (Mucuna, for example). *Plans Fonciers Rurals* (Rural Land Plans) and the agreements that accompany them are viewed much more favourably in rural areas of southern Benin than in the north, where the conflicts are taking a heavy toll.

However, securing tenure by title has its limitations. Côte d'Ivoire developed many rural land plans, but less than a decade later the government passed a law on rural lands aimed at encouraging privatisation by registration. "Holders of land rights involving appropriation of land" have to get these rights recognised in order to obtain a certificate of tenure, the first step in a staged process of individual registration that will initially be applied in a pilot zone. This individual or collective land tenure certificate is issued by Village Land Management Committees on the basis of land tenure and topographic surveys. Instigators of the law reported that they had learned from the experience of the PFR, but that the political context has changed since then and the law on rural lands reserves land ownership for Ivoirians.

A final example from Latin America confirmed that titles do not provide genuine security since they may be challenged following major political changes.

3. Who manages land? The State, municipalities, customs and markets as agents of regulation and allocation

The privatisation of land from the national estate is particularly topical in Senegal, where politicians are debating whether the national estate be should privatised, if management should be left to Rural Councils, which will allocate land, or whether it is better to go for a mixture of private and state-owned lands. Since 1996 the government has been using the Land Action Plan for Senegal as the basis of its reform of the national estate. This document, which is aimed at changing the law on the National Estate, has been the subject of major public debate since 1997, with the three options of privatising the national estate, preserving the *status quo* and managing it through local governments, or a doing mixed of both. A series of workshops have been held to enable local governments to consult their elected officials and community-based associations regarding these three options.

Farmer organisations are concerned about these developments because privatisation may well mainly benefit large enterprises and accelerate the break-up of family farms into smaller units of land. The *status quo* allows rural communities to manage land on the national estate, allocate plots to farmers and then recall them and redistribute them to others. Farmer organisations are seeking an alternative to privatisation or allocation by a public authority, even if it is decentralised. From its base in the different regions the three million-strong *Conseil national de concertation et de coopération des ruraux* (CNCR)[93] has begun a process of consultation specifically designed to take account of regional specificities and customary rules. Consultants were commissioned to organise a team of

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[93] National Farmer Council for Consultation and Co-operation.

farmers responsible for conducting surveys and analysis in the regions, and over fifty reports have been produced, analysed and presented at workshops so that farmers can formulate their own proposals. This is an innovative process, but participants have complained that those running it rely more heavily on lobbying ministers and development agencies to produce new proposals, rather than seeking ideas through national debate.

4. Conclusion

In conclusion, it should be noted that there has been little argument as such in these discussions, rather the presentation of a multiplicity of experiences. In the 1970s and 1980s the laws set out broad principles to enable the State to appropriate and regulate land, in an attempt to counterbalance "selfishness", reallocate land to those who needed it and encourage mobility, etc. Several years later they were advocating the disengagement of the State and regulation by the invisible hand of market forces.

Nowadays institutions are rarely established at national level, sometimes at municipal level, and most often at local level, as a result of confrontations or conflicts between actors with divergent interests. Despite the benefits of diverse experiences (with charters and agreements, various plans and codes), the multiplicity of actors involved (local associations, vocational organisations, mayors and NGOs) and attempts to build from the bottom up "on a step-by-step policy", efforts to break free from the legislative confusion reigning in many countries have so far proved relatively unsuccessful.

While key issues of effectiveness and equity in land tenure are dealt with as and when the need arises, there is a feeling that fundamental issues are not being addressed. Certain participants pointed out that political vision is required to deal with these questions and tackle major issues such as equity and citizenship. These themes surface in little comments like *"which law says that a farmer from southern Senegal cannot have access to irrigated land?"* and questions about the validity of concentrating State investments in a few high potential regions and farms.

Many hopes have been pinned on decentralisation, which could facilitate the creation of local state authorities and, as in Mali, the legitimisation of local contracts and agreements. However, this should not mean that issues of regional balance and equity are forgotten.

FORMALISATION OF RIGHTS, INFORMATION AND MEDIATION IN RELATION TO LAND TENURE

New roles and expertise

Workshop 2.3., Wednesday, 20 March

New approaches to land tenure security call for new roles and new expertise in various areas: identifying rights, processing information and maintaining information systems; registering transactions, mediating between parties with claims to land and supporting them in their negotiations; advising projects and local authorities; the work of rural notaries, and so on.

The purpose of this session is to highlight these issues, describe these new roles, and begin a debate on training methods and how these new roles should be exercised. In some cases, it may be sufficient to broaden the scope of the work performed by existing public and private actors, or it may be necessary to introduce new roles. Some tasks may be the responsibility of the government administration (maintenance of information systems); others may depend on private service providers (operations to identify rights and draw up land tenure plans (PFRs), the work of "rural lawyers", etc.). All these possibilities raise questions of competence, reliability, confidentiality and long-term funding. In particular, PFR-type operations to identify rights or establish land tenure certificates raise the problem of organising a large number of teams over a concentrated period then having to disband them once the work is completed.

It will also be necessary to tackle the question of environmental mediators and, more generally, the social and land tenure related skills required to help local authorities, projects and communities to negotiate and formalise agreements.

Finally, there is the question of how to provide adequate training for these new "experts" and, more generally, to ensure that all the actors involved in this field (lawyers, surveyors, agronomists, etc.) share a common vision of the land tenure situation and related issues.

NEW ROLES AND EXPERTISE IN THE MANAGEMENT OF CONFLICTS RELATED TO NATURAL RESOURCES

The case of the Burkinabé Sahel

Boureima DRABO (PSB/GTZ) [94]

I. INTRODUCTION

In the countries of the Sahel, there are many constraints on the management of natural resources. These constraints are mainly social and political in character. They are giving rise to increasingly frequent and serious conflicts between the various users of these resources. At the same time, mechanisms for managing conflict, both traditional and modern, are not working effectively. As a result, social harmony and progress are under threat in many areas.

Over the last few years, alternative conflict-management procedures have emerged in the Sahel. Procedures of this kind have been successfully adopted in some Northern countries (e.g. the United States in the 1970s), the aim being to encourage the parties involved to negotiate acceptable solutions, either directly or with the help of a third party. They are based on principles which give due importance to the maintenance of good social relations and take into account all the interests involved. By adopting these alternative ways of managing conflict, results are sometimes achieved which could never have been produced by an administrative or legal ruling.

In the Burkinabé Sahel, alternative methods of managing conflict are beginning to develop and grow. Building on experience of the village land management approach, mechanisms and tools for managing conflict have been defined by the local communities themselves. The introduction of alternative methods of conflict management requires specific structures to develop the capacities of both new and existing actors, which have given rise to new functions and responsibilities in the village setting.

Drawing on the experience of the PSB / GTZ project, one of the components of the Burkinabé Sahel Programme[95] (established to combat desertification and poverty), we shall seek to:

• describe alternative conflict-management mechanisms,

• draw out the lessons we have learned, and

• raise a number of questions about the new roles and expertise that have emerged.

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[95] The Burkinabé Sahel Programme is a multi-donor programme to combat desertification and promote development in the Burkinabé Sahel region. It was planned in 1986 on the basis of lessons learned from earlier German-Burkinabé aid efforts in the region, the activities of which were reckoned to be too sector-focused, and therefore limited, to do much about the ecological crisis caused by the catastrophic droughts of 1969 to 1973 and 1984/85. Adopting a global approach, the PSB is part of the regional strategy of the CILSS and implements the national policy to combat desertification (PNLCD).

II. ALTERNATIVE CONFLICT MANAGEMENT IN THE BURKINABÉ SAHEL

1. Land-tenure conflict in the Burkinabé Sahel

The Burkinabé Sahel is characterised by cultural and ethnic diversity, expressed in a multitude of social systems, land-tenure regimes, languages and even methods of agricultural production. It is an agricultural and pastoral region, where settled farming populations and herders co-exist. It is no less rich in natural resources: sandy soils with agricultural potential, ponds offering good opportunities for livestock watering, flood plains eminently suited to both herding and agriculture, salt deposits, and grasslands of high value. However, accelerated degradation of these natural resources, resulting from the droughts of 1972 and 1984, growing competition for what resources remain and a lack of monitoring and control mechanisms, have steadily reduced the people living in the region to poverty.

Nowadays, the Burkinabé Sahel is in turmoil. Insecurity over land tenure and growing competition for the use of natural resources are leading to ever more serious conflicts. The current conflicts are of various kinds, generally opposing agro-pastoralists and herders. There are many causes, usually connected with damage to fields (more than 80% of the cases in the 111 villages in the area covered by the project). The main issues and hidden causes are to do with control of territory and usable land.

2. Alternative conflict-management mechanisms

The project is part of a learning process relating to concerted local management of natural resources, in which local communities, technical services, authorities, project personnel and resource persons are all involved. This approach lays particular stress on:

• efforts to achieve agreement between communities over the use of natural resources;

• strengthening partnership between the different actors;

• support for the development of communities' negotiating skills;

• making good use of the abilities of local men and women.

The conflict management approach adopted by the project is based on action research involving various actors (local communities, projects, NGOs, technical service agencies, political and administrative authorities and other resource persons). The strategies adopted are based on traditional practices which have been disrupted in recent times, in particular:

■ the issuing of rules by *djoros* (village chiefs) and *amono'okal* (*canton* chiefs), who have authority in land-tenure matters, in collaboration with advisors. These figures used to play a key role in the prevention of conflicts, but have been pushed into the background as their authority has declined;

■ amicable methods of settling disputes, formerly effected by these figures in their spheres of influence. In the past, *djoros* acted to maintain social harmony.

Following an evaluation of these types of social expertise, the village communities defined strategic objectives in conjunction with project personnel. The strategies adopted were as follows:

■ **for the prevention of conflicts**:

• *the definition of* **local agreements** *governing the* **management of natural resources**

These local agreements are sets of rules drawn up by local people with the encouragement of the authorities and technical services tasked by central government with managing natural resources at the local level. The agreements

play a dual role: preventing conflicts and safeguarding local resources. In drawing up the agreements, the emphasis is very much on ensuring their legitimacy. In fact, the process of formulating the rules is approached from the bottom up (beginning with hamlets and local districts). This approach means that the communities concerned can identify with the rules that are eventually adopted. The legitimacy of the local agreement is the guarantee of its implementation.

■ *The planning and implementation of **village land development schemes***

The purpose of these schemes is to redefine the use of each type of area, starting from a shared vision of development. This is a way of mitigating the effects of anarchic herders and farmers which is the source of many conflicts.

■ *for the settlement of conflicts*:

• *The introduction or strengthening of **local conflict management structures***

Generally, these structures consist of a nucleus of three to seven people chosen by local communities at the inter-village level to facilitate negotiation between parties in conflict. They are affiliated to the inter-village bodies responsible for consultation on the management of natural resources.

3. The expertise required and the new roles that have emerged in conflict management

The emergence of alternative conflict management mechanisms has also given rise to new functions or roles. Here we present the various types of expertise that have resulted from these experiments.

■ **Local mediators**

These are people who have come forward or been chosen to facilitate a settlement between parties in conflict. As part of the support provided by the project, we initiated and implemented a jointly-agreed programme to strengthen the capacities of these local mediators, after resource persons had been chosen by the local communities.

The main aspects of this programme were:

• analysis of situations of conflict

• mediation techniques

• drafting of minutes (record of agreement reached)

Local mediators are generally people prominent in their communities (village chiefs, imams, group leaders, etc.). Some are more successful than others in facilitating the settlement of land-tenure conflicts in their spheres of influence.

■ **Para-jurists**

A para-jurist is someone with real authority, steeped in the social and cultural wisdom of his environment, whose main role is to facilitate the dissemination of knowledge of the law among local people. He also uses conflict settlement techniques to assist the parties in conflict. The knowledge a para-jurist needs to master includes:

• basic legal notions

• essential information on procedures for settling a dispute

• leadership techniques.

There is an acute need for skills of this kind. Ignorance of legal texts and judicial procedures poses enormous problems for farmers when they have to deal with the legal system. Nevertheless, it is not possible to establish a function of this kind without proper training structures.

■ Legal advisors on rural land tenure

As well as providing information and settling conflicts on an amicable basis, it is vital to give direct support to technical agents, local people and authorities in the formulation of local agreements. To avoid conflict between such agreements and existing regulatory and legislative provisions, the skills of specialists in rural land tenure are called for. The contributions made by experts of this kind in drafting agreements have been of key importance in the area in which the PSB project operates. They have made it possible to harmonise the points of view of different actors where there were significant divergences. Unfortunately, such specialists are few and far between.

4. The impacts of these experimental mechanisms

The experiments in alternative conflict management in the Burkinabé Sahel are still in their infancy, so it would be unwise to draw too many conclusions as to their impact. However, we can report on their initial effects. In 111 villages grouped together in 17 "poles"[96] in the PSB/GTZ intervention area, we have noted:

■ an appreciable reduction in the number of conflicts related to natural resources

In the areas covered by the experiment, there has been an average decrease in conflicts of over 75% (e.g. in the Kishi–Beiga area, there were an average of 60 conflicts prior to the local agreement on natural resources management (NRM) and only 10 subsequently – a decrease of 82 %).

■ an increase in the degree of autonomy of local communities in managing conflicts

The administrative authorities at Kishi–Beiga are now managing only 21 % of conflicts each year on average, as compared with 71% before the alternative conflict management mechanism was introduced.

■ a very significant reduction in expenditure related to conflicts

Again taking the case of Kishi–Beiga, there has been an average reduction in expenditure of 90% since the local agreement came into effect (from 500,000 CFA per annum to less than 50,000 FCFA per annum).

III. NEW ROLES AND AREAS OF EXPERTISE TO BE DEVELOPED

In the light of the experiments conducted in the Burkinabé Sahel, it is worth considering the following points:

■ In addition to the few existing training modules designed with alternative conflict management in mind, what training arrangements need to be made to support the development of skills in this field, and at what levels? What changes could be introduced at university level or in training schools to support the emergence of new qualifications better suited to the specific requirements of ensuring rural land tenure security?

■ How can we ensure the perpetuation of such functions and expertise, when they currently depend exclusively on voluntary efforts?

■ What support can be given to the private sector to encourage development of these new functions?

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[96] Groups of villages associated on the basis of shared objectives in the management of key natural resources (ponds, flood plains, grazing areas…). Each pole consists of between 4 and 12 villages.

■ How might legislation be more in line with alternative methods of conflict management, given that the latter are effective in spite of their informal character but by the same token have no formal basis in law?

IV. CONCLUSION

Alternative conflict management mechanisms are not a panacea, but they are a significant advance in the dynamics of effective natural resource management in our country. It is now vital that we pursue our research to arrive at more effective management of land and the resources in which our countries still abound. Where the management of land is concerned, the legislation enacted in our countries is still remote from the real concerns of local people. The experiments conducted in this field in the Burkinabé Sahel are encouraging, and the results achieved significant. In our policy-making, more consistent attention needs to be paid to the emergence of new roles and areas of expertise, for these are essential tools in developing new mechanisms for managing land.

In the short and medium term, we therefore think it important to envisage:

• more accurately targeted studies on the emergence of new roles and areas of expertise;

• the launch of action-research projects on alternative land management strategies and ways of validating them as part of the current decentralisation process.

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MAKING LAND RIGHTS MORE SECURE: NEW ROLES AND NEW PRACTICES

Jacques Gastaldi [97]

What specialised expertise is involved in establishing a system of land tenure management which provides security for rural dwellers? This is a difficult topic: as well as existing arrangements and forms of organisation, we have to take into account future prospects dependent on developments which are hard or impossible to predict. We must therefore both analyse the present situation and gaze into our crystal ball.

I. THE NEED FOR LAND TENURE SECURITY

Much has been said about titling as a way of securing loans against property. We believe that this approach is very narrow and that, where human attitudes to land, possessions and property are concerned, there are other fundamental factors that have to be taken into account.

Let us dismiss the theory that there is no such thing as private property in Africa. The desire to hand one's hard-earned assets on to one's descendants is so powerful in sociological terms that it drives people to find ways of acquiring and holding on to real rights.

In most developed and developing countries, there exists either a code of statute law or a traditional system whereby property can be handed on. This code or system may focus on the individual, or on the family or other social entity – communities of closely related persons whose interests are managed in common.

How then is this right to be protected, i.e. how is it to be socially recognised and guaranteed, not least by the State?

II. THE NOTION OF PROPERTY AND OWNERSHIP

A property right can be broken down in all sorts of ways and is subject to all kinds of limitations, be they of a contractual nature or dictated by public necessity.

There are complex rules governing inheritance, and there are very diverse regulations and conventions governing the use of land – not least the distinction which is often made between ownership, possession and use.

It is necessary to determine the attributes of ownership, the "absolute" character of which often turns out to be tempered by considerations of general utility – hence easements, restrictions on land use and compulsory purchase orders.

Private agreements give rise to all kinds of rights: rights of use, usufruct, temporary use rights, the right to plant on another's land, rights of way, and any other terms and conditions that may be agreed between owner and user. One of the most common forms of agreement is a lease arrangement, the terms of which may be relatively unrestricted or conditioned by customary rules or legal provisions.

Where inheritance is concerned, we know that different rules apply in different countries (equal sharing, primogeniture, entailment, conditions in respect of minors or the legally incapable, etc.) Because of their fundamental importance, the human and economic components of property rights need to be subject to social regulation, de-

termined by custom or by law (and here it is perhaps worth noting that law often derives from custom; otherwise it would have no relevance).

Thus, the first mechanism conditioning property rights is a civil code, a land tenure code, a code of public rights, or any other set of rules governing actions in respect of property (for example, the nature and proceedings of public enquiries when individual rights may need to be infringed in the general interest). In countries where such codes (or sets of laws and regulations) do not exist, the appropriate course is, of course, to take stock of current practices, retain or modernise them, and adapt them to meet current social and economic needs. Local adaptations may or may not be acceptable or necessary, depending on the way in which the State is organised.

A second, no less important, mechanism is how the justice system responsible for property matters is organised. What sort of courts have jurisdiction; how can one appeal; how are judgments enforced? Do the administrative courts also have jurisdiction in these matters? This may be the case when the public authorities intervene in matters of temporary occupation or compulsory purchase, or to obtain easements for the greater public good. In such cases, what advice and support can the individual count on? To avoid such legal proceedings, are there more or less formal ways of arranging mediation or arbitration?

A third mechanism is the organisation of the State and its decentralised local structures. Is it preferable that government be highly centralised or more or less decentralised? The present tendency is towards planning and organising powers being vested in local authorities, particularly where the development of land is concerned. A corollary is the need for decentralisation of the tax system, so that the local administration has the resources it needs, particularly for investment.

III. THE NEED FOR NEW EXPERTISE

Existing rights and the rules governing them are based essentially on local or customary principles. Given the part land plays in social relationships, both at family level and in relation to the powers and authorities involved in the regulation of land tenure, the first person with an interest is the sociologist. The rights held by an individual or group have been acquired by certain procedures, on which their legitimacy is based. It may have been by inheritance, right of first occupancy, or long-standing occupation and use. It may have been by purchase, exchange or a contractual arrangement of some kind.

When it is necessary to investigate the origins of an existing situation, analyse competing interests or research earlier arbitration proceedings in respect of land tenure, only an approach grounded in history, social analysis, and geography can reveal the motives for people's behaviour. Hence the need for the involvement of a sociologist, with specific skills in analysing social relationships and land tenure arrangements.

Relevant categories of analysis are of vital importance in land tenure investigations, both to reflect local circumstances and avoid interpreting them inappropriately, and to establish an atmosphere of trust with rural people. Knowledge of social relationships as they relate to land tenure is therefore fundamental in identifying land rights.

In common with all other areas of technology, topography as a purely technical discipline is constantly making advances. As well as determining what areas need to be mapped, it is important for the **topographer** to establish the economic framework of human and financial resources. Accustomed to mapping plots of land, the topographer sometimes finds it difficult to come to terms with other ways in which space is structured, for instance transhumance networks.

As a general rule, detailed, large-scale maps which can be read by the people concerned are needed in the work of identifying land tenure rights. Similarly, it is very useful to have aerial photographs, whether for purely representational purposes, or for actual surveying. Pictures are a precious aid in conducting a dialogue with local people, enabling each to recognise his property, and this makes it easier to identify boundaries.

There is now a large range of techniques to draw on, from the surveyor's drawing board via automated digital work-stations to GPS, from analogue photogrammetry to orthophoto maps. In a given situation, any one of these techniques may represent the best compromise between quality of results and cost.

Computer technology is increasingly used, making it possible to combine both topographical and textual data resulting from exercises to identify rights. However, though it considerably facilitates the production of maps and the management of information on land tenure, it can often result in the information being less accessible to rural populations.

The **legal expert**, must have the skills required to identify rights accurately, including their nature and scope. He must constantly refer to the rules under which rights were established or transferred and, if appropriate, to customary law, which is also often a key factor in maintaining social harmony. The task of the lawyer is to weigh up existing rights. Only as a final resort should land disputes be taken through the courts.

In fact, sociologist, topographer and lawyer really need to work together, as their different inputs are complementary in establishing the nature and scope of land rights. Each of these professionals, whose roles are well established, must be able to deploy their expertise in the context of a global, interdisciplinary vision of the land tenure issue. This raises the question of the training required by each.

The **legal agent** competent to draw up contracts, manage inheritance and advise the parties concerned is an ubiquitous figure in many societies where property matters are concerned. Working for the parties concerned, they give legal form to the agreements people make with one another. His archives, present and future, are the repository of ownership records, titles and personal rights.

In each country, questions arise as to the status such legal agents, whether they work in the public or the private sector: their monopoly position, competence, and whether or not their involvement in drafting contracts is mandatory. These are questions which every state has to resolve to its own satisfaction. At present these agents are generally only found in capital cities, and are mainly concerned with urban business. One may well ask what sort of person is likely to fulfil this role in the rural environment, and how he should perform his task.

The work of the **land registrar** (*conservateur foncier*) needs to be considered in conjunction with that of the notary. The existence and powers of the land registrar will depend on the system adopted for producing rights and land titles: whether or not they must be set out in an official public, legal, document (which will depend on the legal value set on contracts).

The issue will also depend on the existence of a cadastral survey and whether the information it contains agrees with other technical and legal records (private boundary marking; the archives of notaries and land registrars). There is also the question of the geographical scale on which a service of this kind is organised: there needs to be a compromise between centralisation (undoubtedly cheaper in terms of staffing and equipment) and proximity to the general public.

This all fuels a debate as to whether or not we need to support the creation of the occupations mentioned here, and what role should be assigned to each.

The need to **keep up to date**, periodically or an on-going basis, all the topographical and legal records produced for identifying and making ownership rights secure itself calls for one or more new occupations. This is a basic problem. Any efforts made by individuals or the State to establish primary documentation must obviously be supported by adequate investment.

This in turn raises the fundamental issue of the most appropriate type of land tenure documentation, to which the cost of updating is closely related. A high standard of topographical accuracy, the need for which is of course open to question, would be expensive to maintain in terms of equipment and staffing. Generalised boundary marking would also be expensive, not only because of the level of accuracy required, but also in terms of maintenance: for example, if a plot were divided. It might, be deemed sufficient if neighbours took charge of this operation, work-

ing in accordance with local policy. Another question is whether the State or development partners should be responsible for the cost of establishing such systems to ensure security of ownership.

Whatever solution is adopted, it would be advisable to organise a network of persons responsible for keeping records up to date, generally at the level of local government. They would need to have authority to be automatically informed of transfers, and it would be their duty to transmit the information received to the institution responsible for keeping the basic documentation. Computerising the documentation network would be an excellent way of making the data secure and ensuring speedy transmission.

The **valuer**. The above considerations lead on to the question of the value of a property, both as collateral and in terms of liability to taxation or at least charges for funding a land survey or land registry. In many circumstances – rental, purchase, loan, insurance, choice of landed investment, assessment of productive potential – the valuer has a vital role to play. He may also be consulted because of his knowledge of soil types, water resources and forestry. A modern economy therefore needs an expert in this field. He may be a self-employed professional, though there is nothing to prevent farmers' organisations or urban users from organising to fill this role.

The **administration** also needs to recruit new specialists. The gathering and checking of data, keeping data secure, drafting technical instructions, laying down guidelines for institutional organisations, organising and monitoring the updating of records are all tasks which need to be performed as efficiently as possible. One of the roles devolved to local authorities is overseeing the legality of operations, and ensuring that they are given due publicity. Public consultations need to be organised, where and when appropriate; information has to be provided regarding both ground rules and practical procedures. Documentation and educational activities are generally necessary and much appreciated by the local population (posters, public meetings, audiovisual material, newspapers, radio broadcasts).

In performing each of these functions, it is important to determine the appropriate geographical scale and operating procedures, and the status and remuneration of the actors concerned. Given that the conventional ways of performing these functions are accessible to only a limited percentage of the population (for reasons of physical distance, cost, knowledge, etc.), it is essential to consider strategy, beginning with a pragmatic analysis of land-tenure situations and identification of the essential roles involved. It will no doubt be necessary to make significant adaptations in terms of simplification, cost reduction and functionality.

Training activities are vital for all the above-mentioned occupations and functions. This means setting up a training network – possibly organised on a regional basis – and seeking help from universities, schools and professional bodies, depending on the subject or specialism concerned. This network must be able to meet the demand for all purposes – administrative, technical and legal – and at all levels: technicians, executives, engineers and administrators. It will, have to provide both initial and in-service training; and it will be necessary to lay down recruitment procedures and arrange for the mutual recognition of educational qualifications. Too much specialisation can be a handicap if it hinders understanding of the land tenure situations actually experienced by rural dwellers. It would be better to encourage a multi-disciplinary approach, based on an ability to understand local land tenure systems.

Where the civil service is concerned, access to employment is generally regulated and, if appropriate, profiles of the posts corresponding to the new needs will have to be drawn up.

We also need to look at the question of recognition of a professional body of private expert surveyors with competence in technical and legal matters, trained in drawing up land-tenure plans, land registers and cadastral surveys. Those with the required qualifications would be able to provide their professional services under the supervision of the public services. Further thought also needs to be given to NGOs, the limits of their competence and their role vis-à-vis the population.

IV. THE ROLE OF LOCAL AUTHORITIES

Administrative decentralisation – already begun or being planned in many West African countries – is leading to the creation of local or district councils with potentially important land management functions. These authorities operate at grass-roots level. Their role in land management, local development, providing advice and decision-making, needs to be better defined, in relation to the role of the State at national level.

Of course, a thorough understanding of land tenure is necessary in any development project with a spatial dimension. Therefore, when ownership rights are identified, it would be advantageous to conclude agreements between local authorities and individuals for the implementation of public works projects (road building, hydraulic works, soil protection, public space, etc.). Building up a set of procedures for concluding agreements of this kind should be one of the measures accompanying decentralisation. To help them exercise their functions, plan irrigation projects and formulate agreements, the new communes (local councils) may need to mobilise support in the field of social and tenure-related analysis or legal drafting, despite their lack of financial resources.

V. CONCLUSION

Though they may share historical, human and administrative similarities each country needs to decide:

– the legal principles governing the right of ownership, its attributes, and limitations, with due regard for constitutional principles,

– the organisation of public authorities and private bodies and professions responsible for making property rights secure,

– procedures for drawing up and registering contracts,

– the technical characteristics of plans defining landed assets and related procedures,

– how to organise the updating of documentation and appeal procedures at each stage leading to the official registering of data establishing a right of ownership.

In some countries, these rules and procedures appear to be well established. However, computerisation is still bringing about change, at least in terms of technology and the circulation of information, which raises the issue of access for the general public.

• As countries adopt the principles which meet their needs, there is one essential factor to consider: the cost of implementing their chosen form of legal, technical and administrative organisation (including updating) in the framework of an overall assessment of the nation's wealth. A part of this will be calculating the short and long-term human and financial resources their chosen principles will generate. The desire to provide security for the whole rural population, and not just a small elite, must go hand in hand with a concern for efficiency in public intervention and pragmatism in the proposing of solutions.

FORMALISATION OF RIGHTS, INFORMATION AND MEDIATION IN MATTERS OF LAND TENURE: NEW ROLES AND NEW AREAS OF EXPERTISE

Summary of workshop 2.3.

Chairperson : Vincent Basserie (PAEPA)
Report submitted by : Florence Lasbennes (MAE Mali)

The group discussion was preceded by a presentation by Boureima Drabo on "New roles and expertise in the alternative management of conflicts related to natural resources; the case of the Burkinabé Sahel, PSB / GTZ Dori project".

The discussion and debate that followed enabled the participants to share their own experience and ideas on the expertise mobilised in current approaches to making land rights more secure.

I. NEW AREAS OF EXPERTISE TO MAKE LAND RIGHTS MORE SECURE

The new areas of expertise identified by the participants in the light of their experiences were as follows:

1. Mediators

Mediators act as facilitators in the process of negotiation between parties competing over the use and control of land and natural resources.

They are particularly active in experiments with alternative methods of conflict management and in the formulation of local agreements (or local codes) governing the management of natural resources.

2. Para-jurists

A para-jurist was defined by Boureima Drabo as "someone with real authority, steeped in the social and cultural wisdom of his or her environment, whose main role is to facilitate the dissemination of knowledge of the law among local people".

He or she intervenes to complement the work of mediators in negotiating the settlement of conflicts, and informs people of legal procedures and the content of legislation relating to the management of land and natural resources.

3. Legal advisors on rural land tenure

Such advisors have an in-depth knowledge of the legal provisions and regulations governing land tenure and the management of natural resources.

They play a supporting role, advising local communities, project personnel, decentralised authorities and technical services, thereby ensuring that local agreements governing the management of natural resources are not in conflict with the national legislative framework.

4. Investigative commissioners

They take part in operations to identify land-tenure rights, such as rural land-tenure plans (Plan foncier rural / PFR).

5. Surveyors

Licensed surveyors are also involved in PFR-type operations, and in cadastral or land registry systems, identifying the boundaries of plots of land. PFR operations may be conducted in different ways:

– with an expert rural land surveyor, who performs the work of both investigator and surveyor,

– with a combination of investigators, who work with the villagers in staking out boundaries on the ground, and surveyors, whose role is purely technical, such as recording boundaries on the GPS and siting boundary markers.

6. Cartographers, technicians and data-processing specialists

These operators deploy their skills in processing and managing geographical information (Geographical Information Systems, Land Tenure Information Systems).

There is also a range of brokers or intermediaries between "buyers" and "sellers" of land.

II. CHARACTERISATION OF THESE NEW AREAS OF EXPERTISE

1. Technical skills

These new roles are characterised by the specific **technical skills** associated with each function.

The skills involved in each new area of expertise were not described in detail, but the following characteristics were emphasised, particularly in Boureima Drabo's paper:

Role	Skills and abilities
Mediator	Ability to analyse a situation of conflict
	Mastery of mediation techniques
	Ability to draft reports
Para-jurist	Knowledge of basic legal principles
	Mastery of the legal procedures involved in settling a dispute
Legal advisor on rural land tenure	Mastery of the legal provisions and regulations governing the management of land and natural resources
Investigative commissioner	Mastery of techniques of land-tenure investigation
Geographical information systems technician	Mastery of GIS tools

Although some participants tended to make a distinction between expertise in anthropology-related areas and the technical skills associated with geographical information, there was agreement on the need for truly **interdisciplinary** teams to be involved in the process of making land rights more secure. However, the lack of a theoretical

frame of reference common to all the operators tended to limit this interdisciplinary approach to the mere juxta-position of skills and expertise.

2. Objectivity and legitimacy of experts

The reliability of the information recorded and the quality of the work performed depend on the technical exper-tise of the experts, but they also raise issues relating to the objectivity and legitimacy of these new actors. The im-portance of these two factors is obvious, but how they can best be guaranteed is the subject of much debate.

In particular, mediators and para-jurists need to be objective and show no partiality in the situations they deal with (showing no partiality) and they must have legitimacy in the eyes of the parties concerned. This dual requirement raises the problem of their origins: should they come from the local community, which reinforces their legitimacy, or from outside, to ensure their impartiality? Moreover, the parties concerned must be able to exercise some con-trol over the mediation mechanisms if they are to be legitimate in the eyes of the local population. The ap-proaches currently being tried differ from one another and provide evidence of a number of real and potential aberrations.

In the PSB/GTZ project in Burkina Faso, objectivity in the work of mediation is ensured by a multi-level arrange-ment: an inter-village consultation structure, including representatives of all the groups concerned, delegates the task of mediation to a small nucleus of individuals chosen on the basis of their standing within their community, who also have acknowledged skills in "facilitating the settlement of conflicts".

In Niger, on the other hand, experience of training para-jurists shows how difficult it is to enable local communi-ties to exercise some control over mediation arrangements. The para-jurists have in effect lent a degree of "modern" legitimacy to *chefs de canton*, who have used them as secretaries to draft "*petits papiers*" (informal contracts) sanc-tioning, for example, land-tenure transactions. In the eyes of local communities, these para-jurists cannot legiti-mately play the role of mediator in negotiations.

The question of the origin of mediators and their mediation mechanisms is crucial in situations of inter-commu-nity rivalry. In areas where there has been a recent influx of herders or migrants, there are few mediation mech-anisms between newcomers and locals. It is then important not only to identify people who have legitimacy in the eyes of all the parties concerned, but also to harmonise the rules for mediation or for the settling of conflicts per-taining to each group.

Finally, we must not overlook the danger that the negotiation of local rules may be used as an instrument of ex-clusion. Residents may use a local agreement as a tool to confirm and legitimise their exclusive management of natural resources that they do not want to share with, for example, transhumant herders (a case of this kind in the south of Mali was mentioned).

We can conclude by saying that issues concerning the objectivity and legitimacy of mediators and other experts in the negotiation process need to be dealt with on a case-by-case basis, taking into account the social and political background. A detailed analysis of the composition and relationships between the social groups concerned is es-sential. And special attention needs to be paid to integrating minority groups into the structures and overall arrangement of the mediation process.

3. Status of experts

These two fundamental characteristics (legitimacy and objectivity) also raise the question of the status – public or private – of the actors concerned. During discussion, the different possibilities were illustrated by accounts of the options chosen in Benin, Burkina Faso and Côte d'Ivoire in implementing those countries' rural land-tenure plans. In Côte d'Ivoire, the PFR experiment was initially implemented by the State. All the experts (investigators, survey-ors, topographers) were members of the public service. Subsequently, a decision was taken to introduce partial pri-vatisation which changed the situation: the surveying operations were entrusted to private companies, but identification of rights remained the responsibility of the public service. In Burkina Faso, all the operations are per-formed by private operators, while in Benin the land-tenure plan is drawn up by private research agencies and/or

NGOs. Here again, it is clear that there is no "ideal" solution. The issue of the status of those engaged in operations to make land rights more secure will depend on political choices as to the role of the State.

The issue of status is just as important where the functions of mediators are concerned. Recent experience – for instance, cases in which local agreements governing the management of natural resources have tended to be exclusive rather than inclusive – raise the question of whether the capacities of communities for self-regulation have been overestimated. In its role as guarantor of the public good, it is important that the State be involved in these mediation arrangements to prevent aberrations resulting in this kind of exclusion. This aspect of the matter is beyond the scope of this discussion group, raising as it does the issue of the legitimacy of the State in the eyes of local communities.

III. MOBILISATION OF EXISTING EXPERTISE AND TRAINING IN NEW SKILLS

The question of the training of new actors is crucial, but it must not be thought of solely in terms of "academic" training; nor is it necessary to start from scratch. Several participants stressed that some of these areas of expertise can be covered by existing skills, which need to be rediscovered and made use of. For instance, the new technology represented by GIS should not cause us to forget or neglect the networks of informants, which already exist in pastoral communities. The condition of grazing land or the whereabouts of watering places, for instance, are facts which herders constantly need to know, and to obtain this information they can draw on efficient, albeit informal, networks of informants. These informants are often "trained" through initiation processes, and they use a whole body of local knowledge relevant to their needs. Such expertise should not be underestimated in the face of new technological skills. On the contrary, it is a matter of urgency that we become better acquainted with these traditional roles, and acknowledge and value them by including them in geographical information systems.

Similarly, in some ethnic groups the function of mediator is performed by men belonging to a particular caste. An instance of this was reported by the mayor of the commune of Bancoumana in Mali: the Niamakala are members of a caste specialising in mediation in conflicts between Malinké people, who acknowledge them as having a legitimate role to play. However, the existence of other ways of seeking redress in the event of conflict (through the administrative authorities or the courts) has weakened the Niamakalas' authority and conflicting parties have tried to by-pass them in the hope of obtaining a more favourable judgment elsewhere. Given the limitations of the legal system, the local council is now trying to reinstate this form of customary mediation.

In addition to this "customary" expertise, there are also some technical skills whose value is underestimated. In Burkina Faso, for example, the problem is not so much one of training surveyors, given the existence of efficient surveying firms, but of finding ways of employing them on behalf of decentralised rural structures, which lack both the technical and financial capacities to make use of their skills.

Here, then, are some examples of existing forms of expertise which we need to value and become better acquainted with, if necessary strengthening and supplementing it so that it can be integrated into new approaches to making land rights more secure. These examples are also a reminder that we need to take a global view of training, including the issue of how best to mobilise the new expertise obtained. However, these existing skills do not provide all the expertise required in new approaches to making land rights more secure. It is therefore also vital to provide technical training in certain new skills. Before setting up training schemes, in-depth studies of present and future needs are called for, and the needs will depend on the arrangements adopted in each country to make land rights more secure.

The number of people to be trained to play a given role in an individual country may be fairly limited. Therefore, the possibility of concentrating some training courses in sub-regional institutions was discussed. However, it is not necessary to create new institutions across the board. Some already exist (e.g. the Rural Polytechnic Institute at Katibougou in Mali) but need revitalising by introducing new training modules, re-working the programmes as a whole, or creating new training cycles.

The members of the group thought it important to make the point that it is not enough to provide technical training for specialists. Farmers and local councils also need to be informed and trained in ways of making land rights more secure, so that they can participate in choosing the appropriate structure, implementing it and monitoring the work of the "experts". Similarly, the administration is required to perform new functions and develop new working methods. Thought therefore needs to be given to its place in the structures set up to make rights more secure, and to the initial and in-service training of personnel in the State's technical and administrative services. However, the relatively high average age of civil servants in most of the countries of the sub-region raises the problem of the relevance and effectiveness of the training courses they should undergo. This is a vital issue, but it is certainly beyond the scope of the present discussion.

Training is therefore necessary for a wide range of agents and groups, the profiles of whom need to be more accurately defined so that the training needs can be properly identified, and these needs cross-checked against the training provision already being made within the sub-region. There is the prospect of significant innovation in the provision of training, which is worth studying in greater depth. Any such studies would have to be accompanied by lobbying of donor agencies to overcome their reluctance to engage in such a long-term activity, which could be expensive.

IV. CONCLUSION

The work of the group studying new roles and areas of expertise to make land rights more secure was an opportunity to begin considering an area which deserves further study. In particular, the discussion revealed a need to take careful stock of what areas of expertise and training provision are already available.

Moreover, it was thought important to broaden the scope of the issue to include the need for information and general training which would enable all the parties involved, in particular users of land and natural resources, to take part in the choice and implementation of structures to make land rights more secure. The sharing of general knowledge is of strategic importance in order to prevent the new arrangements being hijacked, to the detriment of the actors directly concerned.

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SUPPORTING BROADER PUBLIC DEBATE ON TENURE POLICY OPTIONS

Plenary Session, Thursday March 21st pm

Tenure policy options have substantial economic and social implications, especially for those directly concerned, i.e. the country's farmers and herders. Land tenure policies commit the country over a long period of time and have major implications for questions of power, distribution and equity. One of the ways of ensuring the legitimacy of policies adopted by governments is to allow debate about these options, involving all the different stakeholders and, particularly, rural people who are most affected by them. Open, democratic debate should not be limited to the National Assembly. Various intermediary bodies, such as professional associations, local councillors, researchers, NGOs and so on, can legitimately claim to play a part.

Moreover, farmer organizations, local councillors, local government officials, NGOs and projects working in rural areas have a wealth of experience, not just of tenure practices and the real issues at local level, but also of practical responses to difficulties experienced by those concerned. In a context where fitting in with local realities is key to the successful implementation of legislation, such debate provides an opportunity to come up with innovative proposals and improve the relevance and effectiveness of legal provisions. It can give policy-makers and legislators a better grasp of the situations that legislation seeks to address.

How can such processes of consultation and debate be carried out? How can the diversity of stakeholders be acknowledged? Of course, there is no standard answer to these questions, as the processes will depend on what is at stake. The aim of this session is to share experience, using examples from a few of the many different official and unofficial forums in which these issues have been debated, to illustrate particular facets:

• The National Tenure Conference, organized annually by the *Groupe de Recherche-Action sur le Foncier*, an association of researchers, consultants and senior government officials involved in land tenure issues in Burkina Faso;

• The GDRN5 (Network on Decentralized Natural Resource Management in the 5th Region of Mali), a regional network of local councillors, farmer organizations, NGOs and public sector employees; and

• The debate led by the FUPRO (Benin Producers' Federation) on the draft Land Use Code in Benin.

NATIONAL LAND RIGHTS DAYS IN BURKINA FASO

An annual forum for public debate on the issue of land rights

Saïdou SANOU[98]

I. INTRODUCTION

The idea of holding National Land Rights Days (Journées Nationales sur le Foncier / JNF) was contained in the GRAF's three-yearly activity programme, adopted in February 2001. The purpose of JNF is to capitalise on experimental initiatives in land tenure. This involves reporting on recent developments, discussing and analysing current projects, and comparing land-management experiments in different parts of the sub-region.

The initial objective was to organise and institutionalise an annual national meeting to study land rights issues in a scientific way. Another purpose of JNF was to widen the land rights debate to include all the players active nationally: farmers' organisations, customary authorities, national decision-makers, researchers, NGOs, development partners, and so on.

The JNF experiment in Burkina Faso is therefore a recent phenomenon. The first such event was held in Ouagadougou from 30 November to 1 December 2001. In our presentation, we shall try to draw some conclusions from this event, bearing in mind that it is still too recent for us to measure its full impact.

Our talk is organised around four points:

• The objectives of JNF;

• The organisation and content of the first JNF event;

• The difficulties and constraints we encountered;

• The prospects for making JNF a regular event.

II. THE OBJECTIVES OF JNF

For the GRAF, the general objective of the National Land Rights Days is to create a forum for airing views, discussion and exchange between people working on land tenure issues in Burkina Faso.

The more specific objectives are as follows:

• To make decision-makers and citizens aware of the central importance of land rights issues in relation to sustainable human development and the reduction of poverty;

• To disseminate the results of land tenure research and studies carried out by members of the GRAF;

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[98] Consultant, member of the GRAF/landnet Burkina Faso. E-Mail: sanou.s@fasonet.bf.

- To inform the various public and private actors concerned of the major issues relating to land rights and to initiate reflection and discussion of the main aspects of the government's land tenure policy and legislation;

- To contribute to defining policy in support of sustainable development and the reduction of poverty;

- To achieve recognition of GRAF's position as a national institution with competence in the field of land tenure policy and legislation.

By organising JNF, we hope to achieve the following results:

- that more consideration will be given to land rights issues in the formulation and implementation of development and natural-resources-management policies;

- that the results of research work and studies on Burkina Faso will be brought to the attention of decision-makers and the general public;

- that the various players will be more aware of the importance of land rights issues and the way they affect them;

- that a national debate will be instigated on land rights policy options, and that contributions will be made to formulating a land tenure policy appropriate to national and local circumstances;

- that the GRAF will be better known to its potential national and international partners.

III. CONTENT AND ORGANISATION OF THE FIRST JNF EVENT

The event was organised on several levels:

- *A permanent exhibition* of documents relating to land tenure;

- *A public conference*, including a talk by a national decision-maker;

- *A land rights panel* to deal with various land rights problems;

- *Land rights forums* to debate questions of interest.

The 2001 exhibition featured two main development projects: the PSB-GTZ and the PFR GANZOURGOU. The FAO ran a press stand, while the GRAF and the CEDA exhibited a number of documents on land tenure, natural resources management and sustainable development.

The public conference was on the theme of "agricultural policy and its implications for land tenure".

The land rights panel provided an opportunity to revisit a number of issues: land rights problems in West Africa; the relevance of the RAF (law on agrarian and land tenure reorganisation) and the texts implementing it to the imperatives of natural resources management; the RAF and issues relating to the management of urban land rights.

Finally, the land rights forums debated three major issues:

- Land rights and national strategies to reduce poverty;

- The allocation and management or urban plots of land;

- Ways of bringing about a reform of land rights appropriate and effective in the context of Burkina Faso.

As it turned out, the public conference provided an opportunity to appeal to decision-makers; the land rights panel was a good way of presenting the results of research and studies carried out in the field; and the forums were an opportunity to initiate debate on issues of real relevance to the main players involved.

In reviewing the results of this first JNF event, there are many reasons for satisfaction:

- *Good public participation, in terms of both numbers and quality (diversity of input),* throughout the two days of the event. It was attended by decision-makers, farmers' organisations, technicians from various state agencies, researchers, students, etc.

- *Technical and financial support from various partner organisations and institutions:* the CILSS (German support mission), the Project in support of drafting agricultural policy (Projet d'appui à l'élaboration des politiques agricoles / French overseas development agency), and the National Land Management Programme (Programme national de gestion des terroirs).

- *A large amount of documentation was made available in the course of the event.* This documentation was supplemented by the discussion that went on. Good use could be made of it.

IV. DIFFICULTIES AND CONSTRAINTS

There were many difficulties, for a variety of reasons. We will mention the most serious.

The preparation and running of the event suffered from a lack of availability and active involvement on the part of GRAF members. The responsibilities which some of them have within their organisation, and the many journeys they have to make, prevented them from being fully involved all the time.

Although the proceedings were enhanced by the participation of the Minister responsible for economic development and the presence of participants from Mali, Ghana and Togo, the event was unsatisfactory in the following respects:

- Though invited to take part in the public conference, the Minister of Agriculture was on a mission abroad and therefore unavailable;

- The customary authorities did not take part, though they had been invited in the same way as the other parties concerned;

- There was a rather poor attendance on the part of farmers' organisations.

In general, the schedule was badly managed, with the result that insufficient time was allowed for debate in the various forums. Several participants left feeling frustrated at not having been able to express their points of view.

In view of these difficulties, we need to learn the following lessons:

- As the JNF event was planned and organised by the GRAF, the members of this organisation must bear the main responsibility for ensuring that the event functions properly and continues in the future. They must therefore make themselves available and put in place suitable arrangements to ensure that people take responsibility. This includes responsibility for financial management.

- To achieve maximum participation on the part of players involved in decision-making and the implementation of land tenure policy, these partners also need to be involved in preparing the event. It is therefore necessary to set up a joint steering committee and ensure that they are effectively involved.

- The first JNF demonstrated that far greater professionalism is required in the organisation of meetings. It is important to schedule things effectively and appoint people to chair the various sessions well in advance.

V. PROSPECTS FOR MAKING JNF A REGULAR EVENT

It would be worth exploring the following ways of institutionalising the JNF process:

• Making the most of each JNF by *preparing and disseminating the proceedings*. This would also mean maintaining contact with each of the players who took part.

• *Taking the results of earlier sessions as the starting point in organising the next JNF* (to ensure continuity and try to resolve the issues previously raised).

• Given the plurality of legal regulation and the large number of strategic players involved in land tenure matters, national decision-makers, customary authorities and farmers' organisations must be involved in the current process.

• In Burkina Faso, local differences in matters of land tenure must be taken into account in future national forums, for instance in making preparations for the land rights panel. It might therefore be necessary to hold preliminary regional or local meetings in preparation for JNF.

THE GDRN5 NETWORK AND THE INFLUENCE OF NATURAL RESOURCE MANAGEMENT POLICIES

The bill for a pastoral charter in Mali

Aly Bacha Konaté [99]

I. INTRODUCTION

This document presents the experience of the GDRN5 network in the matter of its influence on the bill for a pastoral charter in the Republic of Mali. We would like to share this experience with all those, notably civil society organisations (NGOs, farming associations, etc.), who have the difficult task of promoting sustainable management of natural renewable resources, which are affected by a rather complex and inappropriate legislative and statutory mechanism.

This paper is organised as follows:

• A brief description of the socio-political context of natural resource management which, despite decentralisation and democratisation, is still affected by the lack of adaptability of the laws and policies and the almost total lack of participation in decision-making by the population;

• A brief presentation of the GDRN5 network: origins, structure, objectives;

• A case study of the influence of policies on natural resource management: the pastoral charter bill in Mali;

• A brief look at the standard formulation procedures for policies and laws to help the reader understand how the system functions;

• Finally, advice and practical tips to help the reader establish a better position in the process of policy influence.

Credit for this experience, which can be referred to other contexts, goes to all the members of the GDRN5 network and their partners, including the IIED. We are deeply grateful to all those, especially the members of parliament of the Mopti region, who were willing to accompany, whether closely or not, the GDRN5 network in this process.

II. CONTEXT

The Mopti region covers an area of 79 017 sq km. The population of 1 409 000 inhabitants (1995 census) is ethnically very mixed. In administrative terms, it is divided into 8 districts, 103 rural communities, 5 urban communities and numbers 2 038 villages. The region straddles the Sahelian and north Sudanese zones and is characterised by an arid climate and a great diversity of natural resources (forests, surface waters, agricultural land and aquatic fauna).

Dependent on rainfall, the region's economy relies essentially on the rural sector (agriculture, herding, fishing, forestry), which employs 80% of the population. The different systems of production (agriculture, herding, fishing) are closely linked and very dependent on each other.

There are many reasons why the national legislative and institutional mechanism for natural resource management, of western inspiration, is not very efficient:

• Inaccessibility, complexity and multiplicity of laws;

• As a result, local diversity and specificity is not taken into account;

• Insufficient coherence of laws with local practices;

• Populations do not take part in their conception;

• Lack of consistency between laws;

• Weakness of civil society.

The absence of a legal and institutional framework for herding, the key domain of Mali's national economy, aggravates these constraints. Development policies are still influenced by negative perceptions of pastoralism, characterised by the lack of legislation to control and protect pastoral areas. The sector-based vision of development and the insufficiently coherent approach to the formulation of policies and strategies have often resulted in failure because of the lack of involvement by players on the ground.

Decentralisation, which aims to transfer responsibilities, resources and powers to territorial authorities whose members are democratically elected, is however in the process of changing the situation, becoming part of a specific historical series of events (crisis of 1980-90, events of 1991, the National Pact, the National Conference, rural Assemblies).

Where formerly the State had exclusive monopoly of natural resource management (NRM), decentralised territorial authorities and farming organisations and associations will from now on have rights in NRM decision-making. According to the measures included in the authorities code (Act No. 95-034) and in Act No. 96-050 for the constitution and management of territorial authorities and methods of organising activities within them, communities will be responsible for the management, development, conservation of their land and for safeguarding its ecological stability. The operational framework for the implementation of decentralisation has already been set up with the outline of a plan for national and regional development (ESAT, 1995) and the pilot studies for regional development (AP-STRAD, 1997). Alongside the process of decentralisation, the State will undertake a series of new readings and institutional, legislative and statutory reforms. Included among the reforms is a law for a pastoral charter, which will fill a legal void in the field of natural resource management.

In the face of the challenges of decentralisation (lack of preparation of civil society and elected players, lack of information and education, exclusion of certain categories — women, pastoralists — from local decision-making, absence of mechanisms guaranteeing the participation of the population), some players, notably the NGOs such as the GDRN5 network, have been called upon to fulfil an important role of informing and organising the population and exercising influence over policy.

III. THE GDRN5 NETWORK: "FOR THE DEMOCRATIC AND DECENTRALISED CONTROL OF RENEWABLE NATURAL RESOURCES IN THE 5TH REGION OF MALI"

The opportunities offered by decentralisation and democracy acted as the catalysts for the birth of the GDRN5 network. In order to fill the gap in training and information exchange in natural resource management, the network was created in 1994 by three NGOs[100] wishing to combine their efforts. The burgeoning network attracted the attention of the NGOs of the region involved in resource management. The network now has 24 national and international NGOs and associations involved in natural resource management; its aim is to promote the introduction of sustainable natural resource management in the 5th region by means of the following objectives:

• To influence local and even national policies of natural resource management;

• To reinforce the technical and organisational abilities of members and their partners in natural resource management;

• To help members and their partners press for democratic and decentralised control of natural resources;

• To help members and their partners press for the introduction of community and cross-community institutions.

Unlike standard networks, the GDRN5 network was created to respond to the need to improve the linking and combining of its members' efforts. As such, it is unencumbered, flexible and open, and functions through three authorities:

• The General Assembly (GA): supreme body of decision-making made up of all the members. It usually meets once a year;

• The Strategy Committee (SC): made up of 7 elected members, the SC deliberates on decisions, orientations and monitoring of the network. It usually meets four times a year;

• The Supervisory Body (SB) elected by the SC acts as the "moral and legal person" of the network. As such, and supported by a permanent secretary (full-time co-ordinator), it monitors the activities of the network, its administrative and financial management and its financial control. Apart from the salaried co-ordinator, the members of the different bodies are not paid.

The network is funded by contributions from its members and their external partners. Its activities, centred on the training of its members, information (radio programmes), deliberations (workshops, studies, publications) have produced the following results:

• The training received has improved the expertise of the members and their partners who are placing more and more emphasis on reinforcing the institutional and organisational capability of farming institutions to lead coherent natural resource management programmes;

• The network has privileged relations with national and international natural resource management programmes and is involved in their implementation;

• Strategic alliances with members of the government, ministerial departments and international organisations have been created and reinforced;

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[100] SOS Sahel GB Bankass, CARE-Mali Koro and NEF-Douentza.

- A framework of periodic dialogue between members of the government and the GDRN5 network has been created in order to monitor natural resource management in the 5th region;

- The network's exchange facility has expanded from three founder members to more than 25 members to date;

- The network's products (case studies, experiments, reports and workshop proceedings, etc.) are cited in national and international publications;

- The network has had some influence on natural resource management policies, notably concerning the legal texts relating to the management of forestry resources and the pastoral charter.

IV. THE GDRN5 NETWORK AND THE INFLUENCE OF NRM POLICIES: THE BILL FOR A PASTORAL CHARTER IN MALI

1. Some historical elements of the bill for a pastoral charter in Mali

The bill for a pastoral charter is the result of a long process piloted by the Ministry for Rural Development (MRD) through the National Department for Rural Development and Equipment [*Direction Nationale de l'Aménagement et de l'Equipement Rural*] (DNAER) with the technical and financial assistance of the FAO[101]. The logic underlying the planning of a law on pastoralism goes back to the 1990s in the absence of legislation regulating pastoral resources whose management was dispersed in other legal and statutory texts[102].

The different stages leading to the bill for a pastoral charter are:

- 1995: the service in charge of herding requested funding from the FAO for the study of local management practices of pastoral resources

- 1996: funds freed by the FAO to finance the study

- July 1997: planning of terms of reference and methodology of data collection by the DNAER and the FAO

- March 1998: planning of tools for information collection and choice of sites

- May-December 1998: creation of an inventory of norms and customs of pastoral land tenure in seven zones[103]

- April 1999: presentation of results of the inventory of norms and customs to regional workshops. This phase involved, to a lesser extent, civil society organisations, notably pastoralists and their different types of organisations

- July 1999: planning of the pilot study for the pastoral charter discussed and ratified by a national workshop. Like the regional workshops, the national workshop did not fully represent civil society organisations. Moreover, not only was there insufficient time for discussion and ratification of the charter's pilot study, but the pilot study did not fully integrate the results of the inventory of norms and customs which had been the basis of the charter's planning.

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[101] TCP 6716
[102] Among others, the law on conditions of management of forestry resources, the Water Code, International Agreements and Conventions on Transhumance, etc.
[103] The seven zones are: western Sahel, the Niger Central Delta, the Gourma, the Niger valley, the Kidal region, the lake zone and the Sikasso-Koulikoro-Ségou zone dominated by agro-pastoralism in a context affected by the continuous extension of cultivated areas used for cash crops.

- February 2000: support by the SMCPR[104] for the GDRN5 network to organise a workshop[105] to analyse the pastoral charter's pilot study.

- October 2000: having consulted the CESC, the pastoral charter bill was adopted by the Council of Ministers and passed on to the NA [National Assembly] for deliberation and adoption. Access to the pastoral charter bill was facilitated thanks to the vigilance of the GDRN5 network Monitoring Committee members who asked the network to propose some amendments.

- October 2000: at the request of the Monitoring Committee members, a first meeting of the GDRN5 was held by the Rural Development and Environment Commission of the National Assembly. In view of the concerns, contradictions and ambiguities mentioned by the GDRN5 network, the Rural Development and Environment Commission decided to postpone the adoption of the pastoral charter bill until the parliamentary session in April 2001. The Commission asked the GDRN5 network to formulate amendments to the bill and communicate these before the next parliamentary session.

- January 2001: anticipation of the NA session by the convocation of the extraordinary parliamentary session of the NA for the adoption of the pastoral charter bill. Again, thanks to the vigilance of the network Monitoring Committee representatives, a second GDRN5 network meeting was organised by the NA open to all commissions, where essential debates and discussions concerned the proposed amendments to the pastoral charter bill.

- February 2001: adoption of the pastoral charter bill, signed and promulgated by the President of the Republic.

- July 2001: for almost the first time in the history of statutory procedures[106], civil society organisations will be asked to draw up proposals for decrees for the implementation of pastoral law. Thus, on the DNAER's initiative, the Mopti DRAER requested the GDRN5 network to draw up a proposal for a decree of implementation of the law for a pastoral charter.

2. The GDRN5 network's strategic approach to influencing policies

The influence over NRM policies comes under the remit of the GDRN5 network members who are quite often faced with the difficulties of obtaining support from grass-roots community institutions, because of the ambiguities, lack of coherence and contradictions contained in the laws on NRM. Thus, since 1998 the GDRN5 network's objectives are not only to reinforce the capabilities of its members and their partners, but also to influence policies so that they are more adapted to the realities on the ground. Essentially concerned with laws relating to NRM and the bill for a pastoral charter, the GDRN5's activities as regards influence over policies consist of the following:

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104 Executed jointly by the IIED and SOS Sahel GB, the SMCPR (Shared Management of Common Property Resouces) programme has been in existence since 2000 and is active in four African countries: Mali, Niger, Sudan and Ethiopia. In Mali its partners are NEF, PAGE and GDRN5.
105 Grouping together NGOs, socio-professional associations (herders, farmers, etc.), members of the government and State technical services, the workshop was led by Brigitte Thebaud (specialist in pastoral issues in the Sahel).
106 In Mali, the planning of decrees of implementation (the "regal" domain of the State) is the exclusive responsibility of the executive powers and is generally undertaken by the technocrats and lawyers of the department concerned. Drafts for decrees are submitted—through the SG/G—to the Council of Ministers for adoption, before the President or the Prime Minister signs them, without ever going through the NA.

Activities	Objectives	(Responsible) Players
1. Research and collection of laws for NRM and ongoing projects	To have the necessary information required for each individual case	GDRN5 members
2. Analysis of the laws, ground case studies on local NRM practices	To identify the strengths and weaknesses of each individual case	GDRN5 members + external consultants
3. Invitation to national institutions (DNCN, NA) to visit the field	To understand the realities and differences between practices and laws	GDRN5 members
4. Organisation of workshops to analyse NRM and pastoral charter laws	To identify the laws' strengths and weaknesses	GDRN5 members + consultants + partners + civil society + regional technical services
5. Publication and circulation of reports and workshop proceedings	To inform players of the results of the workshops	GDRN5 members
6. Implementation of strategy of influence		
6.1 Installation of Monitoring Committee and implementation of workshop recommendations	To ensure the monitoring of resolutions and workshop recommendations	GDRN5 members + members of parliament + partners
6.2 Identification of strategic allies (members of parliament, members of the government, International Organisations, heads of department)	To target levels of influence over decisions	GDRN5 members
6.3 Organisation of periodic meetings of Monitoring Committee	To finalize monitoring progress: problems concerning freezing of funds and proposals for the continuation of the process	GDRN5 members + members of parliament + partners
6.4 Formulation and circulation of amendment proposals to allies	To inform allies of the proposals	GDRN5 members
6.5.Organisation and chairing of conferences/debates on the charter bill with commissions by the NA and strategic allies	To explain and justify the arguments proposed and equip members of parliament	GDRN5 members + Monitoring Committee members + partners
6.6 Reformulation of the amendment proposal and second hearing by the NA	As above	GDRN5 members + enlarged to include the 8 NA commissions
6.7 Inter-parliamentary negotiations	To influence parliamentary groups and the government	Monitoring Committee members
6.8 Organisation of the planning workshop for the proposal of a decree of implementation of the pastoral charter	To continue the process of influence	GDRN5 members + Regional technical Services + civil society

3. Problems encountered

Certain cumbersome external elements have peppered the network's actions. These include among others:

- Withholding of information, lack of openness and transparency of the national institutions in charge of policy planning, with the result that the last draft of the pastoral charter bill was not publicly debated before being passed on to the NA;

- The low level of training of the elected members of the NA and their inability to analyse the laws that are submitted to them. This is not only due to their training profile, but also to the weakness of human resources (expertise) that the State puts at their disposal;

- The strong influence of the government over decisions made by the NA due to the fact that both institutions are majority members of the political party in power;

- Civil society groups' lack of organisation means that the network's influence is limited.

4. Results obtained and lessons learned

Despite these difficulties, the results achieved at the end of these activities included among others:

- There has been a big increase in listening and exchange in the network, both on a national and on an international level;

- The network has reinforced and developed numerous strategic alliances at a national and international level;

- The network has influenced certain ways of behaviour, policies and laws (NRM laws, pastoral charter);

- Products of the network (case studies, experiences) are cited in national and international publications and seminars;

- Thanks to this new confidence, the network has been requested by the government members representing Mopti and the *Commission du Développement et de l'Environnement* of the National Assembly to analyse the State Land Tenure Code[107] and evaluate the difficulties of implementing the legislative and statutory texts pertaining to NRM

Some facts gleaned from the pilot study workshop on the bill for a pastoral charter in the Republic of Mali

Strengths
- recognition of pastoralism, of mobility and other strategies specific to pastoralism (Art. 1, 2, 4); recognition of herding's important place "next to" agriculture in the national economy. This leads to the expectation of a truly balanced approach to both types of activity, especially as regards the conditions of security of rights (cf. Statement of motives).
- the distant vision of sustainable pastoral development and not just a stabilisation of the pastoralists' current situation which is known to be very precarious in some regions.
- recognition of agricultural pressure on pastoral resources (especially water supply points and grazing land), to the extent that the charter would function more or less as a law aiming to protect grazing land from agricultural clearing.
- the principle of dialogue between users and development players.
- conflict management is established at local level (Articles 59, 60, 61)
- recognition of the important contribution of the herding sector to national and local economies.

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[107] The State Land Tenure Code, accepted as an edict in March 2000, has to date not been ratified by the NA.

Weaknesses
- in general, the charter bill gives a rather compartmentalised vision of reality on the ground and tends to separate groups (farmers, herders, fishermen…), activities (especially agriculture and herding) and resources (grazing areas, agricultural areas).
- Articles 3, 37, 31, 32, 33 provide no details on "community bourgoutières" and "private bourgoutières", thus giving rise to confusion and different interpretations. Are "private bourgoutières" the natural pastures in which property rights reserved for the "Jooro" are considered, according to the law, to be acquired? Moreover, the special treatment given to the "bourgou" remains ambiguous, because the "bourgou" is a natural pasture in the same way that the pastures in the emerged zone are natural. Given this, why is the "bourgou" taxed when access to other natural pastures is free?
- Article 28 is ambiguous in the light of the measures listed in Article 29 of law 96-050 for the principles of constitution and state management of communities. The pastoral charter bill indicates that access to pastures is free. However, law 96-050 stipulates that, "territorial communities can charge a fee for the use of pastures".
- Article 42 does not detail any specific measure concerning the digging of private wells which might mean that "well-to-do individuals" will be tempted to control and appropriate surrounding pastures and exclude other herders.
- Articles 48, 49 and 50: the charter bill adopts a development approach based in a large part on planning of outlines and development. The principle of recognition of development on the basis of customary and prolonged occupation is in contradiction with the very principle of mobility, if communities have to leave their customary areas temporarily (this can be for several years) because of drought or some other equally determining factor. In these cases, the charter has ignored the notion of local connections with a region on which priority rights are recognised at all times (especially in the case of nomadic systems).

Moreover, standard development outlines involve compartmentalising areas (agricultural, pastoral, etc.), restricting movement and fixing norms of operation and management (burden of responsibility). This is contrary to the principle of pastoral herding based on the mobility of animals, access across areas, negotiation of rights of access between producers, variability and spread of resources and instability of the ecology. It is thus not possible to assign pastoralists to strictly limited pastures because it presupposes absolute control over all parameters of biomass production and of conditions for watering the animals. Outside privileged zones such as the Niger Delta, the extreme variability and instability of natural resources in the Sahel (due to unknown climatic factors) means that they cannot be controlled. Results from experiments conducted in Senegal (*see Thebaud B, Grell, Miehe S: Vers une reconnaissance de l'efficacité pastorale traditionnelle: les leçons d'une experience de pâturage contrôlé dans le Nord du Sénégal. IIED File No 55*) have shown that unlike modern planning, the animals' mobility not only provides the basis for an efficient pastoral system in the Sahel, but also contributes to the sustainability of a balanced ecology.

- Articles 56, 57, 58: there are ambiguities in article 72 of law 95-034 for the Territorial Authorities Code.

The latter obliges mayors to consult village, unit and regional councillors on the organisation of pastoral activities, while the pastoral charter bill indicates that, "territorial authorities must manage pastoral resources in conjunction with pastoralist organisations and in consultation with other users of natural resources". Thus the privilege given to pastoralist organisations can lead to confusion and carries a potential risk of conflict of responsibilities between those organisations and the territorial authorities. Indeed, law 96-050 stipulates that, "the organisation of pastoral activities is regulated by deliberating territorial authorities in collaboration with professional organisations and responsible technical services in accordance with the laws and conventions". But the pastoral charter bill gives priority to collaboration between territorial authorities and pastoralist organisations on questions concerning pastoral activities.

V. STANDARD PROCEDURE FOR THE FORMULATION OF NATURAL RESOURCE MANAGEMENT POLICIES

In Mali, as in other countries that follow the French legal tradition, the standard procedure for the formulation of policies is long and complex and involves much "to-ing and fro-ing" in government corridors. It can be summed up as follows:

• Following certain situations (isolated crises, legal shortcomings), studies and deliberations are led by the ministerial department and technical services who draw up a draft bill. This stage can, optionally and to a lesser degree, involve resource people and elements of civil society;

• The draft bill is sent to the General Government Secretariat (G/GS), which is the responsibility of the Prime Minister. The G/GS calls inter-ministerial meetings for study of and amendments to the bill. If the bill concerns the country's economic and social life, the Economic, Social and Cultural Council may be consulted. The final draft of the bill is submitted to the Council of Ministers[108] for examination and adoption. Before being passed on to the NA, the bill is passed on to the Supreme Court or to the Constitutional Court in order to check its legality and constitutionality;

• The bill, having been adopted by the Council of Ministers, is passed on to the National Assembly (NA) for deliberation and adoption. The NA appoints a commission to study the bill. Before adoption of the bill, the commission organises hearings with ministers and resource people for advice on the bill. Subsequently, the commission gives its opinion (with suggested amendments), which is then submitted to the National Assembly's plenary session for deliberation and adoption;

• The bill, adopted and passed by the NA, is handed over to the President of the Republic who promulgates and signs it;

• The law thus promulgated is returned to the G/GS for registration and publication;

• After its promulgation, the law is subject to implementation documents (decrees, orders, etc.), which determine the way in which the government executive ensures its implementation. How the implementation documents are drawn up is the sole responsibility of the executive, which may have "unilateral" control and does not have to refer to the NA or other representative bodies.

VI. SOME LESSONS AND PRACTICAL ADVICE ON INCREASING INFLUENCE OVER POLICIES

There is no special formula for influencing natural resource management policies, but to improve efficiency, certain principles must guide our actions, both before and after the process is concluded.

1. Before conclusion of the process

This relates to the different stages of the bill's planning by the technical services and the ministerial department concerned before its adoption by the Council of Ministers. In Mali, in view of the government's significant influence over the NA, it is difficult (even for the NA) to alter a bill once it has been adopted by the Council of Ministers. Here are some principles that can help influence the process:

• To establish a good position by exploiting to the full the information channels to ministries and other governmental institutions (G/GS, NA, CESC, etc.) on laws and policies in the course of planning or treatment;

• To research and identify strategic alliances (members of the government, members of parliament, national administrators, NGOs, international organisations, etc.) and develop links with them;

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[108] Ministers are not elected.

- To facilitate and promote exchanges and dialogue both with players on the ground and with decision-makers in order to integrate their concerns;

- To increase one's contribution to certain governmental institutions such as the CESC, *the Haut Conseil des Collectivités* (HCC), the *Association des Municipalité du Mali* (AMM), and technical advisers of ministerial departments involved in this work;

- To provoke and sustain debate and exploit to the full all information channels (newspapers, radio, television, cassettes, etc.);

- To work together with external contributors (NGOs, International Organisations) engaged in supporting NRM;

- To carry out periodic evaluations of local practices and implementation of the laws in order to expose any discrepancies or contradictions;

- To institute a periodic framework of exchange and dialogue with governmental institutions in charge of piloting the formulation and planning process of policies and laws;

- To help and/or support elected allies in drafting proposals, especially since the law recognises that they have this prerogative;

2. After conclusion of the process

This phase relates to the adoption of the bill by the Council of Ministers until its promulgation by the President via the NA. It also relates to the implementation of the law.

- To undertake studies and dialogue on the ground (interest groups, villages, districts, etc.) in order to understand their point of view and gain their support;

- To target the group to be influenced;

- To be well informed and have a good knowledge of the laws;

- To organise workshops for deliberation and exchange with strategic allies and partners in order to analyse the strengths and weaknesses of the laws;

- To use the media (newspapers, radio stations, etc.) to inform the public of the weaknesses of the laws in the national languages;

- To visit and encourage officials (members of the government, members of parliament, national administrators, donors, etc.) to visit the field so that they can understand the discrepancies and contradictions between local practices and the laws;

- To ensure allies are committed and to ask them for regular reports;

- To encourage monitoring and evaluation of the laws in force. The release of these evaluations will involve national players in the deliberations and help them appreciate the degree to which a law can solve the problem for which it was drafted.

- To organise debates between elected members of parliament and representatives of local NRM structures. Such workshops will allow those who suffer the consequences of these laws to "confront" those who have passed them. Inevitably, those elected will have to evaluate the laws and their efficacy;

- To broach the problem of monitoring and evaluating current policies through relations with governmental institutions and ministerial departments;

• To provoke deliberations with civil society in order to force the government to accompany their draft bills with decrees of implementation.

VII. CONCLUSION

The Mali experience in natural resource management shows that it is unrealistic to believe that a code or a law can easily and legitimately be applied to the whole of a country characterised on the one hand by a strong ethnic and cultural diversity, and on the other by a diversity of natural resources. That being the case, would it not be logical, in the drawing-up of policies, for the management of certain local affairs, including natural resources, to be regulated at local level (district, village, etc.) consistent with the real situation, and for the State to limit its remit to setting out the broad outlines and orientations? Thus, conditions for drawing-up a good natural resource management policy, of pastoral resources in particular, must follow a principle of complementarity between the State, the territorial authorities and the communities on the ground (villages, associations, etc.) on the one hand, and on the other a correlation between local or customary rules and modern laws.

The fact is that the formulation of natural resource management policies remains the prerogative of the government executive, which makes little effort to involve the real players (civil society). Their exclusion or low level of involvement in decision-making is aggravated both by the low level of organisation of civil society, by social and economic burdens such as illiteracy, and by poverty and a lack of information, both deeply damaging to societies. The inadequacies between the laws and daily natural resource management practices, the lack of reciprocal trust between executive powers and the population will last as long as players on the ground are pushed to the margins of decision-making.

Even if the opportunities offered by decentralisation are real and allow territorial authorities and rural communities to be more involved in the management of their own affairs, 90% of the population of Mali is still not in a strong enough position to grasp and exploit these opportunities. The road towards ensuring sustainable natural resource management is still long and paved with difficulties.

Thus, far from acting as a substitute for territorial authorities and local communities in the process of influencing decisions, the role and duty of the NGOs is to plead their case in order to ensure sustainable development and management of natural resources. The NGOs must therefore put into practice several collective and associated actions:

• To continue the training and information of territorial and local authorities;

• To support the construction of a strong, dynamic, representative civil society, capable of confronting its problems and claiming its rights;

• To support the implementation of dialogue and negotiations between communities and between the State and territorial authorities;

• To support the process of transferring responsibilities to communities in the field of natural resource management;

• To develop strategic alliances and to lobby at local and national level;

• To support periodic monitoring and evaluation of policies and laws for their implementation.

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PROMOTING PUBLIC DEBATE ON LAND TENURE POLICY CHOICES

Summary of the discussion

Chair: Bara Gueye (IIED)
Rapporteur: Pierre-Yves Le Meur (IRD, UR REFO)

I. THE GDRN5 AND THE DRAFT PASTORAL CHARTER (Ali Bacha Konaté, GDRN 5th Region Network, Mali)

Addressing his Malian colleagues, Ali Bacha Konaté said that his presentation should not be seen as a criticism, but as a contribution to an on-going process.

1. Genesis of the initiative and involvement of the Network

In 1999, the Network participated in the national workshop to validate the draft pastoral charter. It noted the following points: the participants did not have sufficient time to study the documents under discussion; the draft was adopted in haste, the work having been compressed into three days; the debate was highly technical, with very little participation on the part of civil society organisations, in particular herders' organisations (2/3 of the 100 participants were from government departments/services); the representatives of civil society who had been invited were not truly representative or legitimate. Having noted these points, the Network sent a message to the decision-makers, stating that the draft charter had not been a participatory exercise and that it was not in tune with the realities of the rural world:

- the charter had initially been conceived as a document for guidance, but the authorities had fallen into the trap of producing a code, which went too far and left little room for manoeuvre where specific local circumstances were concerned;

- the draft charter embodied a compartmentalised vision of the rural world, tending to make a false separation between groups (arable farmers and pastoral herders), activities and resources concerned;

- there were contradictions between some existing legislation especially on decentralisation and some of the provisions of the charter;

- the approach advocated in the charter was too often at odds with the principle of mobility, in a situation of very unpredictable, unstable rainfall and grazing resources.

As well as not encouraging participation, the procedure followed was typical of the way in which natural resource management policy is formulated in Mali. I will point out its inadequacies and show how local actors are excluded from decision-making:

- ■ Policy formulation is initiated by the technical services of the ministries conducting the preliminary studies. There is no institutional process for evaluating draft legislation and the need to adapt it to a changing situation. The starting point is usually a crisis situation, which is managed by adopting rough-and-ready methods. Policy is therefore formulated by fits and starts, on an ad hoc basis.

- there is little or no participation on the part of local people at this stage of thinking out and formulating policy;

- the consultation process is hurried;

- there is little transparency at this stage;

■ When the study for the draft legislation is completed, it is sent to the Secretary General of the government who is in the Prime Minister's office; he organises inter-ministerial meetings to get it adopted. Here again, there is little transparency, and weak participation on the part of civil society.

■ After its adoption by the Council of Ministers, the draft law is sent to the National Assembly to be debated and adopted. The Assembly studies the project and organises hearings with ministers and resource persons such as NGOs. The problem at this stage is a lack of financial and human resources, preventing in-depth analysis of the legislation concerned.

■ Having been adopted by the Assembly, the law is forwarded to the President of the Republic for promulgation. The problem here is that the President has exorbitant powers. He is not constitutionally obliged to follow this procedure, but can issue laws by decree, bypassing the National Assembly.

2. Measures taken by the Network to influence the formulation of the Mali Pastoral Charter

Our initiative consisted of six major stages:

– gathering existing legal texts and current draft legislation;

– analysis and study of existing legislation, case studies of current practices;

– inviting national institutions, such as the Direction Nationale de la Conservation de la Nature and National Assembly, to make on-the-spot visits and see the discrepancies between the legal texts and actual practice;

– organising a workshop involving technical services and civil society organisations to analyse the charter and together evaluate the strengths and weaknesses of the text;

– publication of the workshop proceedings to keep all those involved in the analysis informed;

– implementation of a strategy to influence the formulation process.

This strategy in turn consisted of seven stages:

- setting up a committee to monitor the recommendations of the workshop (including assembly members from the Mopti region);

- identifying strategic allies in international organisations and in the government, the better to target our activities;

- organising meetings with all these actors to develop a charter monitoring programme;

- the network being invited to attend a hearing at the National Assembly by the Rural Development and Environment Committee responsible for the draft legislation, to explain and discuss the issues and problems associated with the legislation;

- organising a regional workshop to consider and draw up proposals for improving the draft legislation. This was at the request of the Rural Development and Environment Committee (given that the assembly members on the committee did not themselves have the necessary skills and expertise);

- second hearing of the network, this time extended to include all the Assembly's working committees, with a view to adopting the draft legislation, followed by parliamentary negotiations (the committee set up by the Net-

work to influence the different parliamentary groups played an active role in this, and its work is still continuing);

• making proposals for the decrees being drawn up to implement the charter.

II. THE LAND-RIGHTS ACTION RESEARCH GROUP (GRAF) AND "NATIONAL LAND-RIGHTS DAYS" (JNF) IN BURKINA FASO (Saïdou Sanou)

Saïdou Sanou presented activities being conducted at regional and national level in Burkina Faso: the holding of national land-rights days. The idea stemmed from the three-year programme of the Land-Rights Action Research Group (GRAF), adopted in February 2001. The purpose of the Days was to capitalise on experimental initiatives in land tenure, involving several dimensions.

The initial objective was to organise and institutionalise an annual national meeting to study land-rights issues in a systematic way. Another purpose of the Days was to widen the land-rights debate to include all the players active nationally: farmers' organisations, customary authorities, national decision-makers, researchers, NGOs, development partners, and so on. The first such event took place towards the end of 2001 and it is still too recent to measure its real impact.

The general objective of these Days is to create a forum for airing views, discussion and exchange between people working on land-tenure issues in Burkina Faso. More specifically, the aims are to make decision-makers and citizens aware of the central importance of land-rights issues in relation to sustainable human development and the reduction of poverty; to disseminate the results of land-tenure research and studies carried out by members (and non-members) of GRAF; to inform the various public and private actors concerned of the major issues relating to land rights and to initiate reflection and discussion of government's land-tenure policies and legislation.

The event was organised around four activities:

• A permanent exhibition of documents relating to land tenure;

• A public conference addressed by a national decision-maker;

• A land-rights panel to deal with various land-tenure problems;

• Forums to debate questions of interest.

The public conference was on the theme of "agricultural policy and its implications for land tenure". The land-rights panel provided an opportunity to revisit a number of issues: land-rights problems in West Africa, in particular the Agrarian and Land-Tenure Reform (Réorganisation Agraire et Foncière / RAF) in Burkina Faso as it relates to the demands of natural resources management and issues of urban land rights management.

The land-rights forums debated three major issues:

• Land-rights and national strategies to reduce poverty;

• The allocation and management or urban plots of land;

• Ways of bringing about a reform of land rights appropriate and effective in the context of Burkina Faso.

1. Results and future prospects

Where results are concerned, we can report good public participation, in terms of both numbers and diversity, throughout the two days of the event. It was attended by decision-makers, farmers' organisations, technicians from various state agencies, researchers, students, etc. It also enjoyed the technical and financial support of various institutional partners: the CILSS (through the German support mission), the PAEPA (Projet d'appui à l'élaboration des politiques agricoles / Project in support of drafting agricultural policy, and the PNGT (Programme national de gestion des terroirs / National Land Management Programme).

Difficulties included a lack of availability and active involvement on the part of GRAF members (due to other commitments), despite the fact that the GRAF was the initiator of the event; and the failure of the minister concerned to attend the pubic conference (he was away on a mission).

In future years, the aim is to build on the results of earlier work by pursuing issues raised at earlier land-rights days.

– Given the plurality of legal regulation and the large number of strategic players involved in land-tenure matters, national decision-makers, customary authorities and farmers' organisations must be involved in the current process; the GRAF must ensure that the Days are organised in consultation with representatives of the above groups.

– Local peculiarities in matters of land tenure must be taken into account, in particular in the composition of the land-rights panel. If the aim is to involve and receive input from farmers' organisations, it would be advantageous to make preparations at grass-roots level with these bodies, to ensure that their input is visible when the national forum takes place.

III. LA FEDERATION DES UNIONS DE PRODUCTEURS DU BENIN ET LE PROJET DE CODE RURAL (Jacques Bonou, Vice-Président du ROPPA[109] Secrétaire Général de la Fupro Bénin)

The Federation of Producers' Unions in Benin has taken initiatives to deal with the land-tenure difficulties experienced by farmers there. A peculiarity of Benin, since independence, is that the profitable crops (oil palms, coffee) have occupied large areas in the rich south of the country. Since the state began to withdraw, the expectation has been that the people would take charge of their own destiny, taking in hand these oil-palm and coffee plantations. This has led to land-rights problems. It was therefore important that the producers' organisations take steps to strengthen their capacities and perform the role of intermediaries.

Faced with these issues, the Federation of Producers' Unions (FUPRO) was established in September 1994. In 1995, the Benin government organised a round table to discuss the rural sector. They invited farmers' organisations to attend as observers. Many participants asked themselves - How is it possible to organise a meeting of this kind to take decisions on behalf of producers' organisations, when the state is withdrawing from the field? However, the agricultural policy paper at that time clearly set out the respective roles of the state and the private sector. In adopting its position, the FUPRO was guided by this text.

The FUPRO took the initiative of holding its first farmers' forum at Parakou. The initial reactions were that we should attend the round table on the rural sector, but as participants, and that we should bring up all the land-rights problems from the grass roots. There were problems relating to taking over the management of oil-palm plantations which the state had handed back to producers, with the support of several development agencies (destruction of plantations, people killed, land-tenure disputes). If a round table on the rural sector was to be held,

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[109] Réseau des Organisations Paysannes et des Producteurs Agricoles / Network of Farmers' Organisations and Agricultural Producers.

this issue must not be brushed under the carpet. At the time of the first forum, an appeal was made to the government on this subject, and farmers' organisations were finally invited to attend the round table as participants.

Even before they gave their opinion on the preliminary draft of the rural land-tenure code, the producers' organisations had raised a "cry of alarm" to draw the government's attention to these matters. The government took note, and the FUPRO saw it as its duty to pronounce on the chapters of the preliminary draft which concerned producers. With this in mind, the FUPRO invited the experts who had contributed to the draft, and other resource persons who were already working with them, to take part in a two-week programme of work. At an initial 3-day extension workshop, the experts were to explain the content of the text, in particular its technical vocabulary. The second phase was conducted on a decentralised basis for each of the six departmental unions (UDPs) making up FUPRO Benin (themselves made up of unions in each sub-prefecture, with a total membership of 4,500 village groups).

It would be good to extend this kind of procedure to all countries. It should be pointed out that the state decided to withdraw at a time when civil society was quite unprepared for it. We were obliged to go with the tide, though we did establish certain priorities. Sometimes, when someone says that we have not reached the grass roots, not done one job or another, it is important to remember that, until the 1990s, over 80% of the population was systematically excluded from the decision-making process, then we were suddenly asked to take charge of the situation. This process needs to be extended to the different ROPPA member countries, with the help of aid agencies and experts, given that central government no longer has the means to take charge of these policies.

IV. THE CNCR (CONSEIL NATIONAL DE CONCERTATION DES RURAUX) AND THE DEBATE ON THE LAND-TENURE ACTION PLAN (PLAN D'ACTION SUR LE FONCIER) IN SENEGAL (Lamine Sonko, CNCR)

The example we are presenting is one in which policy-making has been influenced by producers, who know that they are not the prime movers in drawing up public policy. Farmers' organisations know that formulating policy is the task of central government. However, there is a second principle which says that, where problems affecting the rural world are concerned, the state cannot understand those problems better than we understand ourselves. We need to negotiate with both these principles in mind if we are to achieve results which meet our own needs and also benefit the not exclusively agricultural context and the legal framework in which people live. The formulation of land-tenure policy is a case in point, and we shall be analysing it from this perspective.

The aim here is to try and show how producers can express their own position and participate in discussion forums with other actors. In 1995, when the state launched the process, a steering committee was set up, on which producers were represented. The process was conducted by a consultancy group recruited for the purpose and, in every region, they summoned the different actors to discuss the problem of land-tenure, to enable it to make a diagnosis and put forward recommendations. A year later, a land-tenure Action Plan was drawn up, proposing a number of possible scenarios:

1. Maintenance of the *status quo*, i.e. legislation to govern the national domain stating that land belongs essentially to the state, and giving certain powers of management to the decentralised authorities, though everyone knows that traditional authority is still important;

2. A middle-way situation whereby the state devolves its management functions to a slightly greater degree and transfers to local authorities management powers which can be transformed into private property arrangements or rights of use;

3. Privatisation, allowing those with resources to buy and engage in property transactions which are recognised and made secure.

At this point, we saw that these proposals were very important and that it was not enough to be represented on the committee or summoned to give evidence; we needed an additional mandate. We were fortunate in having an annual meeting with the Head of State, at which we were able to update him on all issues of interest to the rural world, local elected representatives and producers. During one such meeting in 1996, we told him we thought that the proposals made by the administration following the work of the consultants did not provide a sufficient basis for taking a decision and legislating in this area. We needed to submit these proposals to people at the grass roots. It was then agreed that each category of actor should be allowed to make its proposals independently.

We fought to ensure that those with a legitimate interest in this matter – i.e. locally elected representatives (councillors) – were in turn given the means to consult with their constituents. We therefore supported them in mobilising funds and put certain technical facilities at their disposal, so that they could summon all categories of actor at local authority level to discuss the best way forward. We demanded of the local authorities that in each region they include at least ten representatives of farmers' organisations, carefully selected by us (to represent different fields of activity, women's interests). While the local councillors were doing their work of canvassing opinion and drafting proposals, in each case we called together the ten representatives and asked them to tell us how they perceived the current debate, what was lacking, the points they would have liked to discuss, and the direction that they would have liked to give to the discussion on reforming the land-tenure action plan.

Following the local councillors' consultation exercise, there was a national workshop at which they chose the second "middle-way" option: "the state hands back management rights to us, but we can decide to implement private-property arrangements of rights of use". They also asked central government to do a lot of work in rehabilitating and improving land, delimiting local authority territories and improving the legal framework, given that it would be their job to manage local authority estates.

It was at this point, knowing the positions of central government and of the local councillors, that we decided to conduct our own consultation exercise. It began eighteen months ago. The first stage was the awareness-raising stage, which takes a long time and started in 1995. It involved regular discussions with the leaders of the CNCR, inviting them to take a close interest in what was happening around them, to the point where they were fully aware of the issues involved. At this point, the management board met and discussed its commitment and how it could be given authority to deal with the matter, with certain principles to guide it. This meeting was held, attended by representatives of central government and local authority leaders. Some partner NGOs and actors in the land-tenure field were also invited. A mandate was given to carry forward the work, and we discussed the various stages:

1. Consulting people at the grass roots.

2. Establishing a system for influencing policy-makers (national assembly members, central government, head of state) to ensure that our interests were taken into account.

The work of the *first stage* was entrusted to experts whom we also regarded as allies (Oussouby Touré can tell you more about this). The objective was to formulate farmers' proposals on land-tenure reform and, to do this, we needed to maintain the principle of their autonomy: they might not be able to analyse the general situation since each farmer lives and works in his own little world. We asked three consultants, experts in this field, in consultation with the steering committee chosen by the board of management, to train a group of farmers who would then be able to go into the different regions and hold discussions with people. This was a very interesting experiment in that the consultants knew that they would not be the ones gathering information from people; their task would be to transfer skills which would enable the trainees to perceive how people were living and make a preliminary analysis of their practices and the conflicts and difficulties they faced. A training exercise was conducted at national level. Then, the consultants visited two different agro-ecological areas with the farmer trainees to carry out analyses and construct a land-tenure analysis grid, taking into account the consultants' knowledge of the areas concerned and their experience in land management. This grid was applied by the farmer trainees in their own time (which was to affect the length of the process). Fifty to 60 reports were then sent in from the regions, which the consultants used as the raw material for a regional analysis. The results of the regional analysis were submitted to regional workshops, making it possible to compare farmers' sometimes divergent points of view on land-tenure issues. The other actors – local councillors, NGOs and private operators – were invited to attend these workshops. The idea was to compare points of view; we realised that, if we were to negotiate effectively with central government, we needed

to understand the interests of the other parties. This work was brought to a conclusion at a national seminar, where the different regional problems were pulled together, special circumstances recognised, and a mandate to negotiate granted by the management board of the CNCR. At the end of this first stage, we had proposals from farmers and a dossier that would enable us to hold discussions with all the other national actors on land-tenure reform.

The *second stage* is going to be very interesting in the present circumstances, with a change of government in Senegal. In the past, with support from the donor agencies, we were able to build a direct relationship with our former government, but this was not based on relations with the parliamentary institutions. We did not have much contact with the National Assembly or ministries, though we had ready access to the top levels of the administration, ministers and the Head of State. There were regular mechanisms: discussions every three months, an annual meeting with the President of the Republic, and we could meet with the minister on request. In future, we shall have to go through elected representatives and the National Assembly to a greater extent. This being the case, the experiment in the 5th region of Mali is very interesting.

Two or three important lessons can be drawn from the process :

– Firstly, the cost. To formulate a position, you need people with a wider view of the situation than is possible at grass-roots level; therefore, you need to employ consultants. Holding so many meetings is also expensive, so you need financial support. It is not enough just to tell people to attend; their fares have to be paid, and that is expensive. The experiment has been funded by the French overseas aid administration (to the tune of 50 million CFA francs) and the government, seeing the advantages of the experiment, has given us a free hand.

– Throughout the process, people have been travelling around and, as well as working on land-tenure issues, we have had talks with the government on our vision for agriculture. We have tried to get them to accept that the emphasis needs to be on family agriculture in the next ten to 15 years. From the outset, the ministry of agriculture told us that this decision did not depend on them, but on the UEMOA. We soon realised that, even over land-tenure issues, we would have to approach the UEMOA, and we began to do so over the same period. It is not possible to settle the issue first at local then at national level; a linear approach is not possible. It is a very complex process and you have to be on the alert for developments, be on the spot when necessary. At the UEMOA, they told us there was no place for us in their institution. We had to fight for a week before they would let us use their conference room, have office space, touch their computers….

– Expertise of the kind represented in this meeting will be necessary. We do not always have the resources, but we do have clear expectations. Farmers have their own field of work; they do not always have the capacity to set up systems to quantify, analyse and monitor the strategies that people are developing in respect of land tenure.

V. DISCUSSION

Sten Hagberg (University of Uppsala): There is one very interesting point in each of the four talks which is worth raising. In Ali Bacha Konaté's presentation, it seemed that the actors most involved were the President and the National Assembly – not really the producers. In Benin, we learned how the farmers' organisations refused to be excluded and made a direct approach to the people responsible in order to be included. The example of Senegal demonstrates the importance of having direct links with the highest level of government. In Burkina Faso, people often say that you have to have long arms (i.e. be able to pull strings), and it is interesting to see how these organisations managed to do so. But what does this tell us about decentralisation; what does it tell us about changes of regime? It means that, for the Malians, it is perhaps better to enter into direct contact with the President than to work through the various regional and local structures. The interesting question in all these presentations, and these meetings, is how do you involve decision-makers and customary chiefs? These questions give us cause both to applaud these experiments and to be a little worried: it means that society is not working properly if you have to pull strings in order to exert influence.

François Picard (Intercoopération): What struck me in all four cases was the absence of political parties. No one spoke of making contact with them, though the issue of a change of government was touched on in the case of Senegal. The impression one gets is that the situation is still one of one-party states, with confusion, or perhaps symbiosis, between government, administration, etc. Countries do not seem to have got free of this situation, which

maybe explains why you have to be able to pull strings. There does not seem to be any work going on, in the opposition or in the party in power, to take up or carry forward the messages coming from the farmers' organisations. This is very striking in all four cases.

Adama Camara (Mayors' Association of the Mandé region): I am mayor of the local commune of Bancoumana and chairman of the Mayors' Association of the Mandé region. As mayors, we are first and foremost representatives of political parties, because we come to office though politics. Then, as representatives of the public prosecutor, we are officers of the judicial police. We are also officers of the administrative police, helping the administration to implement legislation that has been enacted. Finally, we represent the people, because they voted us into office. Therefore, whenever there are problems, we are the first to be involved. In the Mandé region, because there were so many problems, we set up a mayors' association, i.e. we joined forces to work together as sixteen local communes. The most acute problem was the issue of land tenure, so we organised a workshop to try and deal with this issue. More than 100 people took part, 50% of whom were landowners, i.e. farmers. Then there were the people from the Department for the Conservation of Nature, representatives of the council of cercles (the unit above the commune), a representative of the AOPP (Association des organisations professionnelles paysannes / Association of farmers' organisations) and representatives of the APCM. Therefore, all classes were represented. The workshop lasted three days. On the first day, people were rather tense because there was a lot of mistrust. The second day, they began to relax a bit; and the third day, they began talking to one another. But one thing is certain: a lot more was left unsaid than was actually said. We tried to make an analysis of the reasons for the lack of land-tenure security and move on to find solutions. We identified twelve problems and eighteen causes of insecurity, for which we came up with thirteen solutions, some of them very important, such as the rehabilitation of traditional values. I say this because sometimes the courts are unable to settle problems which we are able to settle by applying these values. It is also necessary to create a framework for dialogue between the administration, local authorities and traditional society (of which the landowners are part) and the state technical services. Following this meeting, we were able to settle a violent conflict (in which people had earlier been killed), and which the administration had not been able to resolve.

Oussouby Touré: One observation on the Senegalese experience. What Lamine Sonko described is how they took a short-cut to influence the decision-making process. But what emerges is that the results achieved were very fragile, because they had not established a power base within the country itself. Lamine said the decisive factor was support from the donor agencies. The strategy was to establish power bases in Brussels, Washington and London. The government goes off to negotiate an aid package, and the donors send them back saying they must first hold discussions with the farmers, come to an agreement with the farmers, formulate proposals which the farmers accept, before the donors will examine the aid package. The government then adopts a crafty seduction strategy: it agrees, opens some doors… but goes back on its word as soon as it decently can. The change of government has proved this beyond all doubt. Certain things had been achieved with the former regime but, immediately after the change of government, those achievements seemed to be called into question; farmers' organisations seemed to be penalised because, during the elections, most of them had sided with the former regime. This is what many of the leaders of the farmers' movement felt, and the difficulties are on-going. There was no question of building on and extending what had been achieved; they found themselves fighting to keep some of the things already established. The issue of establishing a power base is vital, otherwise it will always be a labour of Sisyphus: you achieve something, it is called into question, and you have to go back to square one.

Jean-François Belières (CIRAD-IER Mali): I do not think the real problem is whether one can "pull strings" or not. In the four presentations we have heard, it seems to me that there were two completely different ways of exerting influence. On the one hand, there were groups acting as pressure groups; on the other, organisations which already existed or were set up for a particular purpose. There are therefore two completely different modes of intervention, adopting completely different procedures. First, the organisations: they exist; they have a degree of representativity, and they intervene at different levels of government. The interesting thing, in my view, is that at a certain moment these organisations were called on to legitimise a change in agricultural policy and were then faced with this problem: a) how do we respond to what is being asked of us? are the proposals good or bad? – even though some already held a number of positions, and b) how to we consult the grass roots, with all the problems of organisation, expertise and transfer of expertise which that entails, and, beyond all that, how do we organise to obtain the opinion of all the producers of a country, with the enormous problem that was raised, especially in the case of Senegal, of reconciling diversity? It is not easy to ask a producer in one region to adopt a position taking

into account circumstances of which he knows nothing elsewhere. And so, in Senegal, they decided to organise, regroup, train people, and so on. I find all these measures interesting – the problems of mobilising expertise and making use of such expertise. Secondly, there were two other groups which were set up and function more as pressure groups, i.e. they had experts they could call on, results from studies and analyses in relation to the proposed changes. And they found ways of operating differently, organising and mobilising all the actors concerned to discuss and influence the direction of change – with a large input of research, it would seem, in the case of the GRAF. I find these two ways of intervening and exerting influence interesting. I get the impression that, on the one hand (in the case of Benin and Senegal), they were surprised – here, perhaps, I oversimplify – by the problem and failed to anticipate it. Therefore, they had to react after the event by mobilising a lot of resources. The other two groups, however, seem themselves to have raised the problems and, therefore, had the advantage of being on the front foot as to what proposals they should make. It would be interesting if one could mix the two, as Mr. Sonko said (he was very interested in the GRAF experience), by setting up groups to consider the issues and mobilise data, and to exert influence by raising the awareness of actors who would then take decisions, and prepare for the consultation.

Bagna Djibo (AREN Niger): I would like to thank the people who presented the case studies, but I have a few questions for my friend from Mali, concerning the Pastoral Code. Throughout the process, what was the position of the livestock herders, because the matter at issue is that their problems were not taken into account. We know that herders are generally passive; there have been conflicts involving them. But did they lend any support to the leaders of the farmers' organisations? My second question also concerns Mali: what was the position of the donor agency? I ask because, generally when such codes are being drafted, it is always promoted by a partner organisation. Did you meet the donor agency? What was its position? Where the presenter from Burkina Faso is concerned, he talked about a national land-rights day. Here again, I would like to know how the farmers organised themselves to take part in these days. Did they organise at the grass roots to appoint delegates, or did the government say who should take part? I would also like to know what becomes of the results of these days. Each year, does someone make an evaluation of the previous event, or do they go over the same ground each year? A question for my friend Jacques Bonou: there was a round table discussion; they took part. Was this because they issued threats, or did the state feel a real need to include them? I would also like to know why they included other resource persons in addition to government experts. Was it because they did not have total confidence in the experts, or because they felt there were other people whose positions they needed to know? For my friend Lamine: I would like to know what strategy they developed to persuade the French overseas aid administration (Coopération française) to provide the funds for organising their workshops, particularly when this institution is know to be very demanding when it comes to funding. I would also like to know – and this question is addressed to all four presenters – what level of government was involved, and the level of influence of the producers themselves. You can embark on a procedure which is not well thought out by the producers: how did they manage to mobilise the producers to support the proposals?

Diène Ndiobo (DAPS, Ministry for Agriculture and Livestock, Senegal) : I would like to congratulate all four presenters on the cases they outlined to us. There was a clear dichotomy between Benin, which enjoyed no support but roused itself to face up to the preliminary draft of a law when it was submitted to it; and Mali, which faced a challenge but did not use all the means at its disposal to reject the project. Even if it was up against a government, I am quite certain that, at the level of the Malian administration, there were nevertheless ways of stopping it happening. Burkina Faso and Senegal did benefit from support. I prefer to enlarge on the case of Senegal. The CNCR benefited from a project in support of dialogue between government and the agricultural sector. The interesting thing in the case of the CNRC is that it is not only a programme which has been negotiated between the state and the French government, but they have managed their side of it with all the autonomy they demanded, with no interference on the part of the state. They were technically and financially responsible for what they had to do with this programme. The only comment I would make at this stage, as we are moving towards an evaluation of this programme, is that the Coopération française will be coming back to discuss a second phase. The problem I would emphasise is that they have not monitored the programme at the pace of the progress of the project – and this is a failing on the part of the CNCR. Maybe they are not well enough equipped to run projects. Even the state experiences problems; how much more true must this be of a CNCR which has just embarked on a process whereby it was given funds so that it could use all possible means to strengthen its negotiating capacity vis-à-vis the state. Nor was it excluded, in using the funds, from asking for expert opinions from political parties. They were free to do anything they wanted in respect of the measures they wanted to promote. This is what he meant when he said: let

the mayors tell us what they think; we know the government's position; then we will set out our own position. But I think that all this has been done at a very slow pace, so that they are now in danger of finding themselves in trouble, maybe very soon, either because they have not had the time, or they lack the money, to carry it all through. I think they will have to get a move on if they want to benefit from a second phase.

Kalifa Diakité (Commissariat for institutional development, Mali): I shall be indulgent with Mr. Ali Konate, as he requested at the beginning of his talk but, since I represent the administration at this meeting, I would like to say that, when the process of decentralisation began, there were legal texts in existence which had to be brought in line with the principle of decentralisation. Hence, there has been a question mark over the code governing the state domain and land tenure (*code domanial et foncier*) ever since the events of March 1991. This code is concerned with all aspects of natural resource management and land tenure. When the principles of decentralisation were introduced, it was necessary to determine the power and control over land of the local authorities. To formulate the texts governing the constitution and management of these local authority lands, it was necessary to work out a policy based on the pre-existing legislation. At that time, the need for a pastoral code became apparent. But, since 1995, much thought has gone into this and various actors took part in the drafting of Law 96-050. To claim that people have not been involved, as some are claiming here… They certainly did participate in drawing up the code but, as the speaker said, those who took part were not as representative as they might have been: there I can agree with him. In fact, the APECAM, (the Permanent Assembly of Chambers of Agriculture) was very much involved and was consulted when the National Assembly was examining the texts, in just the same way as the GDRN5.

Christophe Sawadogo (Burkina Faso): I would like to share some experience relating to Burkina Faso. *The Réorganisation agraire et foncière* has now been going on for 15 or 16 years and, shortly before the most recent revision, my colleague Hubert Ouédraogo and I organised a round table discussion here to mark the first 10 years of the RAF. We were fortunate to have contributions from neighbouring countries, including Senegal and Niger, but where Burkina Faso was concerned, our concern was to evaluate the negative or inapplicable aspects of the RAF – which is why I am mentioning this experience. One of the participants was the deputy (member of the NA) who at the time was responsible for the forthcoming revision of the document. Maybe Hubert can assess how the results of the round table influenced the provisions of the revised version of the text.

Unu Odigie Didi (Nigerian Law Reform Commission, Nigeria): I am very pleased to have this opportunity to speak. Having listened to the four presentations, it seems to me that each activity, each effort, to bring about land-tenure reform takes place in an isolated "pocket". In other words, there is no link between the various activities: with "a" doing this, "b" doing that and "c" doing the other. So there is no harmonisation of objectives or agreement on what is needed. It also seems to me, as in the case of Benin, that the final result is too technical, so people need help. Maybe what is needed is a body to be responsible for reform, which could take a detached view, not too close to the government or under its influence. Then it could bring about a true reform. Through consultation – of every farmer – such a body should be able to meet their real needs, and then be able to present its findings to the government of any country. It would, of course, require full participation on the part of everyone concerned.

Balobo Dicko (Sexagon, Mali): I would like to thank Ali for his exposé on the pastoral charter. I agree with him that people did not really participate; the level of participation was poor. The chamber of agriculture has been mentioned, but everyone knows the problem with the chamber of agriculture in Mali: the people who are supposed to represent us are bureaucrats. Where the charter is concerned, it was not the people most directly concerned who took an active part, and it was not something people wanted. The chamber of agriculture may have been represented, but it consists of government civil servants representing the farmers. So, what Ali says is right, and we as a farmers' organisation back him up.

Ali Bacha Konaté: With reference to the contributions made by Mr. Picard and his predecessor saying that the producers did not seem to have much involvement in the process of exerting influence, I concede that that is true. But what I forgot to say in my introduction was that we in the GLRN5 network had to jump on a moving train, because there were no other options or opportunities. We became involved when the document had already been adopted by the Council of Ministers. So we did our level best – even though, as I said at one point, the representatives of some civil society organisations lacked legitimacy and representativity – to do a good job at grass-roots level and hold discussions with organised groups to gather information and pass it on. As regards the absence of political parties, the same applies, but I also wanted to point out that I did not finish my talk. I do not know about other

countries, but in Mali the government exercises a powerful influence over the National Assembly, a large majority of whose members are from the ruling party. This makes for a subtle and rather dangerous game. Where the position of the livestock herders is concerned, the top-level public debate everyone was expecting did not really happen, so the way in which we became involved in the process meant that we did not conduct enough consultations at the grass roots. But we nevertheless tried to make the effort to consult resource persons and representatives of herders' organisations, so as to include their concerns. As for the opinion of the donor agencies, it was not a donor agency that pushed us into this process, nor is such an agency behind our objectives to influence policy.

Jacques Bonou: Mr. Djibo asked two pertinent questions: was it as a result of pressure that the farmers' organisations were able to participate in the round table discussion of the rural world? And was it because of a lack of confidence in government experts that we included other resource persons? Where the round table was concerned, it was as a result of pressure: we had been invited as observers, but we did not see how anyone could take decisions for us and in our place. So we exerted pressure by threatening to bring our cattle down to Cotonou. I had been invited as an observer, but the next day my status was changed to that of participant. So we took part, and then declarations of commitment were given us by the partners, specifying how the partners would support civil society in future. As for the fact that we added resource persons of our own to the government experts, it was because we were already working harmoniously with some people whom we saw as being on our wavelength, and they came with us. So, it was not that we lacked confidence in the experts, but because, first of all, the experts are experts in their subject, but we also have extension workers working with us, and they will be able to inform us and continue their work after the experts have gone. That, then, was the thinking that led us to include resource persons of our own choice – all in the context of the skills transfer that the state has not been able to carry through.

Saïdou Sanou: I am going to give answers to two key points. Concerning the use made of results, this was the first time we had held the JNF (national land-tenure days) event, so we do not yet know what impact and influence it will have had on decision-makers. As for the lessons we have learned, it is important that the next event of this kind be built on the results and knowledge gained from the previous experience.. Secondly, regarding participation on the part of producers, I should point out that the government and decision-makers have nothing to do with the choice of participants representing farmers' organisations. The GRAF issues invitations directly to them and they are free to choose their own delegates. But I did say that, where participation in the first JNF event was concerned, the level of participation was disappointing. In future, it would be good to find a better way of helping them prepare to take part in the event, so that we have additional input from them at the national level.

Lamine Sonko: In answer to the question raised, it was the government which helped mobilise the funding. There was a project involving the French overseas aid administration (Coopération française), which was not very keen to include the CNCR. But as the government said the CNCR must be included, they gave us active support vis-à-vis the donor agency. I want to say a bit more about the following issues: (1) The construction of an institutional mechanism, regardless of its neutrality or expertise. In Senegal, we have experience of the Strategic Reflection Group (Groupe de réflexion stratégique), a mechanism which the government set up with backing from the donor agencies to make this sort of analysis. In fact, all the decisions were made by the government. When we expressed opposition to certain types of approach and decision, the government said: no, we take the decisions. So we are not well disposed towards this kind of arrangement. The first requirement is that we be included, that we be allowed to say what we want, that we play our part in the power politics involved. This is a field that really needs opening up. (2) The question of how we bring together the platforms that represent real users, people who have a real interest because the decisions taken are likely to transform their way of life. Well, platforms of this kind may do valuable work and the results they achieve be ignored. I think that networking is a good way forward. When the Landnet network was launched, we thought it would serve as a forum/resource, in the different countries, in which we could raise questions and gain experience and results. Maybe this is a good way to press forward: considering the relationships we need to develop between local authorities, producers' organisations, central government (as an interested party), and the various think tanks (which all too often produce papers which serve no purpose in bringing about change). (3) The third issue was our analysis of the mechanisms we can use in relating to those with power and authority, and this is an extremely important question. The states of which we are citizens are in a sense "unfinished". They should not be judged in terms of the great writings on democracy, institutional structures, and so on. The problem is that we are viewed from that sort of perspective. To influence policy, we have to act at several levels. You cannot just go to a village, speak to the village chief, and think that the matter is settled. It is a fact that here the French ambassador often has more clout than the national parliament; so you have to act accord-

ingly. We are not concerned with theory, but the way things are done in the real world. We, for instance, have tried, through our farmers' organisations, to speak to civil society in European countries. They in turn have spoken to their political representatives, who have spoken to the donor agencies, because you often find people there with enlightened ideas. These are the sort of alliances we have developed. And to get to speak to the President of the Republic, we had to go knocking on his door because an audience with the minister would have taken six months before we could get to see him. We had to go to his home town, Louga, and get his uncle to arrange a meeting. And when he received us with his cabinet, what did he say? "They tell me you have come to turn things upside down. I realise you are making proposals which will help us make progress, and I'm willing to go along with you. That is the important thing." We have to rebuild our countries, and the administration does not always play a helpful role in this respect. The administration often acts as a very negative filter in the construction of a political process.

FINAL ROUND TABLE DISCUSSION

Thursday, 21 March, p.m.

We asked four people – a researcher, the representative of a farmers' organisation, the representative of a public institution, and the representative of a donor agency – to pick out three points that had struck them during the seminar and to share them with us.

Chairperson : Jean-Pierre Chauveau, IRD
Participants: Philippe Ospital, MAE France; Oussouby Touré, sociologist, WEP support advisor, Senegal; Jacques Bonou, ROPPA, FUPRO Benin; Kalifa Diakité, Institutional Development Commission, Mali

Oussouby Touré, Sociologist, WEP support advisor, Senegal

1. The discussions have been meaty and fruitful, particularly as regards decentralisation-related issues. As a result of these days spent together, we have a clearer perception of the new challenges facing us – issues of power, questions of local governance, economic dimensions – and of their implications. We have also tackled the problems of co-ordination between different areas and levels of intervention, and between the processes of decentralisation and sub-regional integration. However, this latter topic, closely linked to our thinking on land-tenure policy, has not really been openly addressed. This is a pity because the UMEOA has now initiated a debate on the prospects for formulating a common agricultural policy, and the land-tenure issue does not seem to me to have been given due prominence, for reasons which you may appreciate. However, I do not think they shall get very far, unless they decide to tackle this question explicitly.

2. My concern, shared by some colleagues, is that there is a need to promote findings from innovations with land tenure management conducted in the field, the independent views of various groups concerned with land tenure issues, and the results of research work. Over and above the need to achieve this sharing of knowledge, there are three observations I would like to make.

   • Where research is concerned, significant work has been done, but there are problems associated with measuring the impact of land-tenure policies which have not yet been resolved. The various countries are rather like a social laboratory: we reproduce experiments without drawing the conclusions needed if we are to make adjustments leading to further progress.

   • African research institutions are not much in evidence. We do not even know what they do, although they run land tenure research programmes. What results are they obtaining? There is a need for GRAF and similar networks to build more solid bridges with West African research institutions.

   • Finally, building on the dynamism imparted by these meetings, we need to strengthen the platforms that exist in our different countries, the mechanisms and arenas for debate which can influence land-tenure issues at national level. This would provide inputs for fuelling thinking on land-tenure policy and broaden the vision of the different groups concerned. This seems all the more necessary to me in that decision-makers often have a biased view of the realities of land tenure. We need to work for a deeper understanding of the complexity of these situations, before going ahead with the implementation of projects devised, for example in the framework of the NEPAD initiative.

Kalifa Diakité, Institutional Development Commission, Mali

1. The connection between decentralisation and land tenure is vital. It is a universal issue, even though it appears in different guises and at different stages in the decentralisation process. Everywhere we are seeing early effects of the decentralisation process on land tenure issues. We need to continue in the direction of decentralisation by supporting the effective transfer of powers and authority, (which is not happening) even though the texts pro-

viding for it already exist. We need to correct this and take things further by identifying the powers required and the procedures for their transfer, and allowing the now established local councils to assume these new responsibilities. There are constraints connected with these powers: every transfer of power depends on a transfer of resources. Supporting measures need to be adopted by central government and development partners to strengthen the capacities of local communes and so assist them in assuming their new responsibilities.

2. The recognition and enhancement of customary rights is very important, as we are seeing with the formulation of such tools as rural land tenure plans and cadastres (land registers). Where natural resource management is concerned, this work needs to be organised jointly by technical services, local councils and socio-professional organisations, in accordance with local legislation and agreements, thereby taking customary rights into account. For these to be recognised, we need to define criteria and improve existing tools (land-tenure plans, cadastral plans) so that the boundaries of communes can be jointly agreed on. We have often lamented the fact that in Mali communes were established without clearly defined boundaries has frequently been questioned. It has to be realised that land tenure management is such a delicate matter that, were boundaries to be fixed by decree, it might lead to armed revolution. We have the tools required to get the various parties together and agree on territorial limits which will be accepted by the all neighbouring communes, and devising a coherent development plan, to ensure that development plans are consistent over a wider area and can accommodate the migration routes used for transhumance. Natural resource management programmes everywhere have the necessary tools, but boundaries have to be fixed at village and inter-village levels, without laying down the law from above; therefore, a gradual approach is required. When the communes are ready they refer their case to the National Assembly, which will ratify the agreed boundaries.

3. The activities of think tanks bringing together farmer organisations and NGOs are able to influence public policy. Often it is the State which says: "I am going to decentralise; I am going to devolve some of my functions on territorial authorities." So the State becomes the architect, the initiator of the various transfers involved. This is a "top-down" form of decentralisation, in which the State agrees to give powers to recognised bodies which already have some financial and managerial independence and legal status. But there are also autonomous socio-professional bodies that have organised themselves to manage their own activities and are supposed to refer to the local council - on an equal footing – and can form federations at the communal and supra-communal levels. The point at which top-down decentralisation and bottom-up decentralisation meet is the forum for dialogue. It is the task of the other partners in decentralisation to support these socio-professional organisations in using this forum and becoming a counter-weight to potential abuses perpetrated by the local communes and the State. This is how civil society can best accompany the decentralisation process. What are the prospects? We need to strengthen the capacities of all the actors involved in land-tenure matters, in particular socio-professional organisations, to enable them to participate in decision-making. Where recognition of customary rights is concerned, not enough is being done: we need to define criteria and devise tools that will facilitate their recognition. Finally, I believe that this is a very important forum that we need to strengthen and to ensure that its work continues.

Jacques Bonou (FUPROBEN/ROPPA)

1. On behalf of ROPPA (*Réseau des organisation paysannes et professionnelles agricoles*/ Network of farmers' and agricultural professionals' organisations), we would like to acknowledge the organisers of this workshop. We have formulated proposals relating to the UEMOA common agricultural policy, with special emphasis on the land-tenure aspect. Any proposal motivated by a concern to make rural land rights more secure needs to be carefully defined: it is important to know what points we are considering and in what geographical area, as well as the level of awareness of the population on whose behalf we are doing this thinking. Where results are concerned, we note in Togo for instance that, faced with the withdrawal of the State, producers lack support and skills. Despite this fact, we are struggling to find our identity, to strengthen our capacities and be real spokespeople for the common farmers, to demonstrate to the authorities that we are competent to put forward a point of view. Progress in this area varies from one country to another and also depends on the political will to open up to the large majority of rural producers, i.e. both men and women.

2. The conclusions of this workshop should rather be seen as advice to be followed in each country, providing inspiration for further workshops at other levels. We have had the opportunity to learn about very varied

experience, but it is now necessary to return to the national level The ROPPA has also made some proposals to the UEMOA; these will only become effective if serious lobbying is done in association with others, but without the latter replacing the farmers themselves. We hope that the instigators of this workshop can continue to support the work of ROPPA, which is active in ten West African countries, and of other professional organisations, in particular by organising national workshops so that decision-makers will take notice of us.

Philippe Ospital

1. As a preliminary comment, it should be pointed out that France is a fairly modest donor; also that there are two French donor agencies, the Ministry of Foreign Affairs (MAE) and the French Agency for Development (AFD), each performing well-established tasks, which I hope you are familiar with. The second point is that I have come as a non-specialist in land tenure matters, to see what people are saying and what is happening – to "feel the pulse", you might say.

2. My initial response as representative of a donor agency is one of frustration: we like to have standard answers to standard questions. But, of course, there are no standard answers to land tenure issues which would work in all countries; each has its specific problems in this area. Moreover, local situations are themselves complex combinations of modern and customary law. There is also a fashionable phenomenon on which donor agencies rely for a clear conscience: women. The issue of women has, of course, been touched on here, but I am aware that in this land tenure related area something really needs to be done. So I wonder if it would not be a good idea to carry out comparative studies in different West African countries. How about the Franco-British development committee working on this issue? Then, although the grass roots are well represented at this seminar, it is regrettable that there are so few decision-makers. This makes me wonder if there is a precise and explicit demand for and any real will to have a clearly defined land tenure policy. If not, there is little point in doing this work.

3. In the course of the seminar, some remarks were made about the involvement of donor agencies. The role of donor agencies in a country is to help that country to define policy and, if really necessary, to implement it. But I do not believe that their role should be to impose pre-established plans, and certainly not to intervene at one level or another to get projects accepted, especially given that for some time now, donor agencies have been promoting a participatory approach. Taking account of grass roots is a matter of growing concern for all donor agencies. In conclusion, where land tenure in West Africa is concerned, all the actors concerned, including donors, must keep within a framework of sustainability in its widest dimensions, especially in matters of funding. Then there needs to be a new awareness and determination on the part of politicians, at central government level, in decentralised authorities and among users of land –all those, in fact, who are concerned with the issue of access to land and associated natural resources.

CONCLUSIONS

The purpose of the seminar "Ensuring security of tenure for rural producers" was to consider the results of recent research and practical experience in the area of land tenure security. Over a three day meeting, some eighty people – researchers, decision-makers, leaders of farmers' organisations and elected councillors from ten West African countries – have got to grips with the notion of tenure security and debated new approaches which might improve the situation for rural producers. In his speech, the Secretary General of the Ministry of Agriculture of Burkina Faso insisted on the importance of land tenure policy for the development of more sustainable forms of agriculture. The initial plenary session showed why the issue of tenure security had come to the fore in the economic and institutional context of the 1990s. Characterised by economic liberalisation, structural adjustment, democratisation and administrative decentralisation, this period marked a clear break with the post-Independence situation. With the advent of globalisation, further wide-ranging changes are appearing on the horizon. It is therefore all the more essential to work out appropriate rules governing competition for land. Negotiations between the State and farmer organisations, some examples of which were discussed during the seminar, are leading to more democratic practices involving civil society organisations and experts in the debate on agriculture and land tenure.

Ensuring security for farmers is emerging as a fundamental economic and social issue, and also as a key issue of citizenship. This raises institutional questions, such as the nature of rules and sources of authority, which need to be both legal and legitimate, and able to ensure regulation in rapidly changing social and economic contexts. If this is to be achieved, there needs to be a break with the legal dualism derived from the colonial period, which continued to be the basis of land tenure policy until the 1980s. Whatever the objectives of the State in the long term, it would seem essential to begin by recognising local rights and institutions. What is needed is "local" management of land and resources, giving greater responsibility to rural communities and their representatives (elected councillors or local associations). This is not to deny the role of the State in land tenure regulation, but to challenge a certain mode of government intervention. The State ought not to intervene directly in land tenure issues; its role should be to define the rules of the game and lay down procedures, while allowing a degree of local autonomy in the way they are implemented.

There is no automatic link between land title and security of tenure. The means to achieve security depend on the context and the parties involved. People's needs may also be in conflict: it is not always possible to achieve security for everybody. Although it is often possible to identify "win-win" strategies, hard choices sometimes have to be made.

Over the last ten years, various important developments have been underway in different West African countries: administrative decentralisation, new legislation and innovative pilot initiatives, which have wrought significant changes. Four main approaches to land tenure security can be identified, which are being tried in varying degrees. They begin from different starting points (rights of property and use, regulations, authorities, transactions) and have in many cases taken different directions, but progress is being made. These approaches, and issues common to them all, were discussed by seven working groups during the workshop. Other issues were examined in depth in the course of open sessions. The points these groups came up with provide valuable areas of knowledge and experience to share.

What general conclusions can we draw? Firstly, where agricultural policy is concerned, the contribution made by family farms to national food security, urban demand and to exports is fully confirmed, as is their dynamism and ability to adapt. This does not mean there is no place for commercial agriculture, but governments would be depriving themselves of an important engine of production and income distribution if they failed to support family-based agriculture. Tenure security is certainly an indispensable pre-condition, but it is only one of the elements in the construction of a supportive economic and institutional environment: access to credit, information and markets are also important factors. At the same time, in most cases, recognition of local regulations is sufficient for most farmers to feel secure, provided that ways of getting round them by resort to parallel procedures are prevented.

A number of measures are required to give due recognition to rural producers and ensure their land tenure security:

– First and most importantly, positive recognition should be given to local regulations governing land which is neither part of the national domain, nor registered as being in private ownership. By the same token, arrangements should be avoided which make it possible to register land without its first being acquired in accordance with local procedures; to develop land without prior negotiation with the rights-holders; or to arbitrate conflicts without taking into account local criteria regarding legitimacy. To ignore local values and processes is bound to engender conflict.

– There is a need to clarify the general principles (in terms of fairness, citizenship, etc.) which the State intends to defend. It should reaffirm its intention to delegate effective responsibility to rural communities and their representatives, in accordance with the principle of subsidiarity.

– There is a need to clarify the procedures by which land can be transferred from local regulation to private ownership.

– It is important to improve the procedures for arbitrating and settling conflicts, in particular making it clear that recourse to the administration or the courts is allowable only if local arbitration procedures have failed to follow the principles laid down by government.

– There need to be means for giving legal approval to the diverse local arrangements, so long as they are in compliance with the relevant legislation.

The workshop discussions were an opportunity to make an initial assessment of the different approaches being followed within West Africa, their strengths and limitations. A few points have emerged very clearly:

– Though tried since the early 1990s, Rural Land Tenure Plans *(Plans fonciers ruraux)* raise a number of fundamental questions, in particular their capacity to take into account diverse farming systems based on different ways of using land, and the problems of establishing and maintaining registers and other land information systems. Nowhere have they progressed as far as actually issuing certificates, so their effectiveness in providing tenure security is not yet proven.

– The approach based on formalising land transactions is a response to changes in land tenure and the increasing prevalence of informal written contracts. Helping to encourage such arrangements, while insisting on including clauses to avoid ambiguity, seems a promising way forward, but there are as yet few concrete examples to go by. The degree of formalisation that should be encouraged is a matter of debate.

– In the case of common property resources which different social groups use on a shared basis, it is essential to lay down rules governing access and use, with effective supervision and monitoring systems. Rather than trying to codify everything, generally it is usually sufficient to establish a few crucial principles, for example access to water points and livestock grazing routes. There are some good examples of local agreements where local people and the administration have defined and negotiated suitable rules. State recognition of such agreements is essential if they are to be effective in the longer term.

– In all these respects, administrative decentralisation offers a valuable opportunity to strengthen local land management systems, not just because the rural commune may often be the most appropriate level at which to manage resources, but also because rural councils, in Mali in particular, have explicitly been delegated powers by the State to define the rules in such cases. The fact that the people's elected representatives can draw up local agreements, recognised by the State and having the force of by-laws provided they comply with the relevant legislation, gives enormous scope for the validation of appropriate and generally acknowledged rules.

There is one point which is vitally important: it is essential to get away from "dualist" thinking, which sets modern State law in opposition to customary law. The function of law in a society is to reflect the state of society and social relations, and to define norms for the future. Today, there is a plurality of land use patterns; land tenure regula-

tions are essentially local, reflecting hybrid rules and practices. They should be the starting point for constructing locally-tailored, adaptable modes of land tenure regulation which combine local principles with those of the state legal and institutional system, thereby bringing realistic answers to the problems experienced by the rural population.

The approaches discussed in the course of the seminar are clearly integrated within this way of thinking. They are not mutually exclusive, and it is probable that an effective system will borrow from each of several approaches in different proportions. Although there is now a consensus on the need to start from the reality of land tenure at local level, there is still a great deal of argument as to which of two basic options is preferable:

– The first, which we might term the "incorporation" option, begins with the recognition of local rights, then seeks to incorporate them into a state-led system by the issuing of land tenure certificates.

– The second, which could be described as the "linking" option, believes that systematic codification or registration is neither possible nor desirable, preferring greater autonomy in the definition of the rules. The issue in this case is primarily one of finding ways of linking together different systems of land tenure regulation.

Behind these two options are different political views as to the most appropriate relationship between central government, rural communities and local authorities. As well as these differences of principle, there are also questions of relevance (given the diversity of agrarian and land tenure situations), and questions of priority and duration (between what is desirable in the long term and what is needed here and now – the first steps in the process). There are also questions as to practical feasibility: the supporters of the first approach believe that the 'linking' option can only be a stopgap, while others question the ability of governments to ensure reliable, on-going maintenance of land tenure registers and the associated systems needed to cover the whole country.

It is not for us to decide these issues. These are matters of political choice in each country, depending on its own political and institutional pathway. In countries undergoing democratisation, local people need to be involved in debating such choices, as is borne out by the experiments in the participatory formulation of policy discussed during this meeting. These experiments, taken together, mark out the current area of debate on land tenure policy, within which there remains a wide range of choice. Moreover, the new approaches we have discussed here are still very much in process, and it is too early to judge them definitively. It is vital that we have the means to monitor and analyse current experiments, to carry out in-depth evaluation of different options, and find opportunities for sharing and comparing notes.
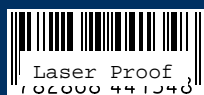
Removing the barriers between countries and disciplines, applied research, learning from experience, sharing and debate: these are the steps that have produced the results shared at this meeting, and this is the way to go forward, in dialogue with governments, elected representatives and the leaders of farmer organisations. Formalising and disseminating the know-how gained in developing these new approaches to land tenure security, is another objective to be pursued.

Making Land Rights More Secure

For rural people security of rights over land and natural resources is important not only economically but also for social peace and well-being.

During the 1990s, our understanding of land tenure in Africa increased and we have tried to use lessons from the field to reduce the gap between law and practice, increase tenure security and resolve conflicts over land. Using different approaches, many West African countries are reforming the legislation that governs their land and natural resources. The time is, therefore, ripe for a broader debate of these lessons and results.

For three days some eighty participants – policy-makers, elected representatives, officials from farmer organisations and researchers met in Ouagadougou to discuss recent research findings and project outcomes in the land rights field, to debate the question of how to make land rights more secure and to refine approaches for achieving this. Bringing together the background papers and discussions from the seminar, this publication is useful to those interested in the land tenure field as it provides an overview of current challenges and achievements.