



Draft

**LAND POLICY INITIATIVE: A FRAMEWORK TO
STRENGTHEN LAND RIGHTS, ENHANCE
PRODUCTIVITY AND SECURE LIVELIHOODS**

**REGIONAL ASSESMENT ON LAND POLICY IN
WEST AFRICA**

Ouagadougou, Burkina Faso

15 – 18 April 2008



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ABBREVIATIONS/ACRONYMS

AfDB	African Development Bank
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa's Agricultural Development Programme
CBO	Community Based Organisation
CEDEAO	Communauté Economique de l'Afrique de l'Ouest
CILSS	Comité Permanent Inter-Etats de Lutte Contre la Sécheresse dans le Sahel (Permanent Interstate Committee for Drought Control in the Sahel)
COFO	Commission Foncière
CSAO	Club du Sahel et de l'Afrique de l'Ouest
ECOWAS	Economic Community of West African States
GRN	Gestion de Ressources Naturelles
HDI	Human Development Index
IUCN	International Union for Conservation of Nature
LADEP	Lowlands Agricultural Development Programme
LAP	Land Administration Project
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NRM	Natural resource Management
OCDE	Organisation pour la Coopération et le Développement Economique
PFR	Plan Foncier Rural
REC	Regional Economic Communities
RECTAS	Regional Centre for Training in Aerospace Survey
UEMOA	Union Economique et Monétaire Ouest-Africaine
UNECA	United Nations Economic Commission for Africa
WAEMU	West Africa Economic and Monetary Union
WAMI	West Africa Monetary Institute

ACKNOWLEDGEMENTS



This Regional Assessment Report on Land Policy in West Africa has been prepared by a team of three consultants from West Africa: Malam Adam Kandine (University Abdou Moumouni, Niamey, Niger), Mariatou Koné (University of Cocody, Abidjan, Cote d'Ivoire) and W. Odame Larbi (Land Administration Project, Accra, Ghana), under the guidance of the Steering Committee comprised of the AUC, the UNECA and the AfDB and in close collaboration with the ECOWAS. The report forms part of the Steering Committee's initiative to prepare a framework for Land Policy development for Africa. The authors would like to acknowledge the financial assistance provided by the AfDB. The views expressed herein however are those of the authors.

EXECUTIVE SUMMARY

The Africa Union Commission, the United Nations Economic Commission for Africa and the Africa Development Bank acting as joint steering committee, have launched a joint initiative to develop a land policy framework in Africa to strengthen land rights, enhance productivity and secure livelihoods. Working in close collaboration with the Regional Economic Commissions, regional studies and regional consultations are being conducted to provide inputs into the development of the framework. This report is on the West Africa region. The report has been compiled from a desk top study, using existing literature and other information accessed via the internet. Details provided on the countries in the region are as could be obtained from such sources. Not much information could be obtained on Cape Verde, Guinea Bissau, Togo, Mauritania and Chad.

The report considers the critical issues providing the context for discussing land issues affecting West Africa as a region. These include the political social and economic context, colonial legacy and legal plural systems, the operations of regional economic community and other regional initiatives, impact of demography, migration and urbanisation, conflicts and post-conflict issues, as well as shared resources and ecosystems. There are critical challenges that can best handled at regional level.

The report then considers the relevance of key issues and challenges to the West Africa region as identified by the steering committee. The issues include state sovereignty over land, drought, desertification and floods, protecting the commons, including pastoral rights, evolution of the land market and security of tenure, decentralisation and its effect on efficient land management, land and mining, and gender and land issues. The issue of bio fuels and the land requirement for providing the feedstock is discussed as one of the critical emerging issues.

The report then considers the land policies existing in member countries in the region, and the policy formulation processes. It is noted that only four countries have land policies, formulated through different mechanisms – Ghana, Guinea, Sierra Leone and Burkina Faso. All other countries have land laws in operation with different foci. The implementation mechanisms of the various laws and policies are also discussed, particularly in the context of massive decentralisation taking place in the region. Lessons learnt from the various processes as well as what is needed to improve the land policy formulation processes in the region to ensure strengthened land rights, enhanced productivity and secure livelihoods are also considered. The gaps in terms of knowledge, human and financial resources needed to improve the land policy environment in the region are also discussed. Finally proposals for improving the draft for the Africa-wide land policy framework are made. The key recommendation which runs through the report is that some of the key challenges facing the region can be tackled at the regional level and that it will require more commitment from governments in the regions to push the processes forward meaningfully and achieve real impacts on the livelihoods of the people in the region.

1. INTRODUCTION

This study on land policy issues in West Africa¹ is part of the joint initiative of the AUC, the UNECA and the AfDB under the overall leadership of the AUC, and working in close collaboration with RECs, to develop a framework and guidelines for land policy and land reforms in Africa under the theme ‘Land Policy in Africa: A framework of action to secure land rights, enhance productivity and secure livelihoods’. The framework and guidelines are considered as vital tools for complementing national and regional processes for land policy formulation and implementation. It fits within the CAADP of NEPAD where it is noted that the governance of land and natural resources is necessary for augmenting the income and wealth of the farming population, and is measurable by the ability of land polices and land related institutions to deliver on and support Africa’s development objectives. This objective is to be achieved in the region through ECOWAS.

The process started with a consultative workshop held from 27 to 29 March 2006 where it was agreed that regional assessments be carried out to ensure that:

1. Regional specificities and diversities are taken into consideration while developing the comprehensive Land Policy Framework and Guidelines for Africa.
2. Stock is taken of existing and ongoing land policy initiatives and lessons learnt; identify challenges, gaps and implementation bottlenecks of land policy and land reform, including capacity building needs and resources.
3. Critical elements of the process at the regional level are clarified.

The report aims at identifying the critical land issues that affect economic and social development in the countries in the region and the various country initiatives to tackle some of the identified challenges to secure land rights and land development. It is intended to be used as a background document for regional consultation workshop to be held in April 2008. The key outcomes of the study and workshop will be used to enrich the draft of the continental framework and guidelines of the land policy and land reform framework. A task force of African experts will then synthesise the reports from various regional consultative workshops and use them to refine and further develop the draft land policy framework and guidelines. The final draft will be considered and adopted by a meeting of African Ministers responsible for land. The framework and the Ministers’ report will then be considered at a Summit of Heads of States and Governments for adoption, followed by a declaration on the policy framework and guidelines, its implementation and follow up. The Terms of Reference (TOR) for the assignment is described in detail in Annex 1.

¹ The countries are Benin, Burkina Faso, Cape Verde, Cote d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo as per resolution CM/Res. 464 (XXVI) of 1976. However, due to the involvement of Chad and Mauritania in the work of CILSS the Steering Committee agreed that the two countries be added to the West Africa Region. 17 countries are therefore considered in this study.

The report is based on a desk review only, drawing on the background document prepared out of the continental consultative workshop and other relevant literature and other sources accessed via the internet. Details provided in the report on the various countries are as can be obtained from such sources. This resulted in different levels of information on the various countries with the Lusophone countries (Cape Verde and Guinea Bissau), Chad, Mauritania and Togo being the most difficult countries to obtain information on. The authors also wish to sound a note of caution in the use and interpretation of statistics provided in the text. Due to the fact that comparative country data is not always consistent in terms of the year of collection or reporting as well as reliability, figures provided in the text can as best be regarded as broad indicators of current conditions rather than as precise measures of the situation on the ground for each country at exactly the same time.

The rest of the report is organised, according to the TOR, as follows: Chapter 2 discusses the context within which land policies in the region operates and the factors that have influenced the development of the policies. Chapter 3 then reviews the key issues and challenges identified as critical in land policy formulation and implementation in the region. Chapters 4 and 5 discuss land policy formulation and implementation across the region. Chapter 6 draws out lessons from the processes while Chapter 7 considers the challenges and gaps in the current processes in a 'needs assessment' with particular reference to human and institutional capacities and financial resources. Conclusions and proposals for improving the Land Policy Framework for the continent are presented in Chapter 8.

2. CONTEXTUAL ISSUES

2.1 Political and Socio-economic context

Geographically the West African region transcends different ecological zones, from the coastal region to the sahelian region and confronted by different issues. Priorities in land policy therefore differ broadly between the two regions. In the sahelian countries land policies are aimed at conflict prevention in the use of shared resources and the balance between agriculture and pastoralism. In the coastal countries the emphasis is on private property development either on large scale plantation development or individual small scale development.

Colonial legacy has left West Africa with three main language groupings: Anglophone, Francophone and Lusophone. The region has experienced different political regimes since independence – liberal and capitalist oriented, socialist oriented and revolutionary. Almost every country, since its independence, has experienced military dictatorship or political revolution or been engaged in a civil war. There have been armed conflicts over resources as well as ethnic conflicts in the region. A few countries (Liberia, Sierra Leone and Cote d’Ivoire) are emerging from conflicts. Currently almost all the countries are practicing democracy. These political experiences have had tremendous impact on land policy processes. For example the revolutionary experiences in Guinea, Benin and Burkina Faso, the liberation war in Guinea Bissau have all had impact on land policy development.

West Africa is a relatively poor region in Africa even though the region is endowed with numerous natural resources including forests, minerals (gold, diamonds, rutile, bauxite, manganese, iron ore, uranium, etc), fisheries and petroleum. In Liberia 80% of the population lives below the poverty line and in Nigeria 60% of the population lives below the poverty line. Mali, Niger, Burkina Faso, Guinea Bissau and Chad are classified among the ten poorest countries in the world. 80% of the population of Chad lives below the poverty line. The region faces several environmental challenges including drought, desertification and floods. It is a fragile region prone to conflicts among various ethnic groups. The countries are at varying levels of development, have different levels of population growth and other demographic characteristics. Many of the countries have very low human resource development. Out of the 17 countries considered in the study only three are ranked as countries with medium human development index (HDI). These are Cape Verde (ranked 105), Ghana (ranked 138) and Togo (ranked 143) out of 177 countries. The rest are all ranked as countries with low human resource development. Indeed the last six countries in the Index are all in West Africa. In such countries land is a major livelihood asset and access to it and security are major socio-economic factors. Only Cape Verde falls within a middle income economy but with 37% of the population living below the poverty line.

Many countries are agriculture dependent and produce cash crops for export, even though Nigeria, Cote d’Ivoire and Chad produce oil for export. Major crops include cocoa, coffee, cotton, groundnuts, rice, maize, millet, and sorghum. Agriculture contributes significantly to the GDP of most of the countries in the region. It provides the source of livelihood for more than 60% of the rural population in each country and provides employment for at least 50% of the

labour force (Table 1). However due to competing demands for land choices have to be made that affect the socio-economic development of the people and sustainable livelihoods. One such choice is between small scale agriculture which offers sustainable livelihoods to many of the rural dwellers and large scale commercial agriculture usually driven by national or foreign investors. Such choices confront governments in Ghana, Mali (for the development of the Niger River Central delta), Nigeria, Cote d'Ivoire, etc. Land issues in the region are characterised by growing commodification of rights and increased competition between various users of land in both rural and urban areas, and are rooted in the social, economic and political realities of the region. The broad characteristics of the countries in the region and a snapshot of the land ownership pattern are provided in Table 1.

Table 1: Selected socio-economic indicators per country²

Country	Land size (km ²)	Population (Growth rate p.a. ³)	% pop that is urban (Growth rate p.a.)	GDP per capita (US\$)	HDI rank for 177 countries	Economic significance of agriculture	Broad pattern of land ownership/land management
Benin	112,622	8,439,000 (3.2)	45.3 (4.39)	1176	162	a.38% of GDP b. 75% of labour force	Land is nationalised but customary principles operate in rural areas.
Burkina Faso	274,200	13,228,000 (3.2)	18.6 (5.03)	1284	175	a. 29% of GDP b. 80% of labour force	Land belongs to state and citizens have use rights.
Cape Verde	4,033	507,000 (2.4)	56.7 (3.54)	6418	105	a. 9.3% of GDP b. 70% of labour force	Unclear
Chad	1,284,200	9,749,000 (3.4)	25.8 (4.55)	1519	173	a. 80% of the active population live on subsistence agriculture	Customary ownership based on land chief in the forest south; Islamic system in the savannah centre; and nomadic herders in the desert north.
Cote d'Ivoire	322,463	17,654,843 (1.6)	45.4 (2.60)	1800	163	a. 33% of GDP b. 67% of labour force	Plural situation with claims of land ownership by the state, traditional chiefs, local farmers, autochthonous communities and migrants.

² The figures are for the year 2005 and the data has been compiled from varied sources but key among them are the UN Common Database (UN Population Division Estimate), UN Human Development Index, and the World Bank.

³ Over the period 2000 - 2005

Gambia	11,300	1,517,000 (2.9)	26.2 (3.9)	2002	155	a. 29% of GDP b. 75% of labour force	Four systems of land holding: customary, freehold, leasehold over state lands and leaseholds in the provinces.
Ghana	238,540	22,113,000 (2.1)	46.3 (3.22)	2786	138	a. 37.3% of GDP b. 60% of labour force	Land is owned through customary systems with a few owned by the state or held by the state in trust for customary owners.
Guinea	245,860	9,402,000 (2.2)	36.5 (3.83)	2035	156	a. 22% of GDP b. 76% of labour force	Complex system of national and customary structures for land ownership which is location dependent.
Guinea Bissau	36,125	1,586,000 (3.0)	35.6 (5.35)	736	172	a. 62% of GDP b. 82% of labour force	Land is owned by the State but use rights of individuals and customary rules recognised.
Liberia	111,370	3,195,935 (1.4)	47.9 (5.34)	1003	n.a.	a. 76.9% of GDP b. 70% of labour force	Land is principally the property of the State except a relatively limited amount held in freehold in urban areas and some plantations.
Mali	1,240,192	13,518,000 (3.0)	33.7 (5.17)	1154	174	a. 37.8% of GDP b. 80% of labour force	Land is by law the property of the State but co- existing with land practices anchored on customary and vestiges of Sharia laws.
Mauritania	1,030,700	3,000,000 (3.0)	64.3 (5.13)	2402	152	a. 25% of GDP b. 50% of labour force	Individual private property established through registration. Unoccupied lands are vested in the state under Islamic principle of <i>Indirass</i> .
Niger	1,276,000	13,957,000 (3.4)	22.7 (6.08)	872	177	a. 39% of GDP b. 90% of labour force	Urban lands managed by the State and land collectivities, vacant lands owned

							by the state and rural lands managed by customary authorities.
Nigeria	923,768	131,530,000 (2.2)	47.5 (4.35)	1188	158	a. 17.3% of GDP b. 70% of labour force	All land is legally vested in State Governors in trust for the people. This is however under laid by customary practices which differ from place to place. In the north Islamic property laws operate as well.
Senegal	196,720	11,658,000 (2.4)	50.3 (3.86)	1759	157	a. 16.7% of GDP b. 77% of labour force	All urban lands, classified forests and national parks, community lands and pioneer zones belong to the State. Rural lands are managed by locally elected officials according to customary practices and on principle that land is put to productive use (<i>mises en valeur</i>)
Sierra Leone	71 740	5,525,000 (4.1)	39.5 (5.65)	903	176	a.49% of GDP b. 66.7% labour force	Two main systems of land holding: freehold rights in the Western Area and customary system in the provinces where land is principally owned and controlled by families or villages.
Togo	56,790	6,145,000 (2.4)	35.8 (4.04)	1,675	143	a. 42% of GDP b. 67% of labour force	Three main types of land holding: Individual private lands owned according to laws and regulations in force; State lands; National domain lands.

2.2 Colonial legacy and legal-plural systems

Land policy and land tenure issues in West Africa have developed within a legal-pluralistic environment underpinned and influenced by different colonial systems – English, French, Portuguese and German, and operating within different customary systems. Islamic rules also apply in some countries such as Nigeria and Mauritania while hybrid systems (colonial legacy, traditional beliefs and Islamic religious values and jurisprudence) have developed in the Gambia. In Mali vestiges of Sharia law derived from periods of Arab domination in the north of the country operates. These influences differ from country to country depending on the policies of the specific colonial authority. Thus the French adopted the policy of assimilation (later changed to association) and declared all unoccupied land to belong to the state. This enabled the colonial authority to grant large tracts of land for plantation development, as happened in Cote d’Ivoire. The English on the other hand adopted a policy of indirect rule in its four territories – Gambia, Sierra Leone, Ghana and Nigeria and ruled principally through local customary structures. This strengthened the customary structures in land administration but had a flip side – in some communities the system created confusion as the colonial authority established local chiefs and ruled through them, as happened in parts of Northern Ghana and in the provinces of Sierra Leone. In Guinea Bissau the Portuguese dispossessed the natives of their land rights and categorised land into three: urban lands, lands delimited for collective allocation according to local customs, and vacant lands. The colonial authority was solely responsible for land categorisation and through the concept of vacant land expanded the colonial settlement. In Mauritania all unoccupied land was nationalised. The Islamic principle of *Indirass* which demanded that property rights must be exercised to be valid was enforced. Land rights which were not exercised for ten years lapsed. Togo was initially a German colony and later colonised by the French. Both sought to promote individual land registration but customary lands persisted and success was achieved in only a few urban areas. They also adopted a principle of ‘vacant land without owner’ (*terres vacantes et sans maîtres*) to incorporate unoccupied customary lands into the state domain.

One common objective of the French as well as the British colonial land policy was to promote private ownership of land, as the customary land rights were considered as a constraint to economic development. However, whatever system that was adopted the colonial powers were unable to alter local tenure systems radically as recent development in the Francophone countries demonstrate. Neither was the customary laws harmonised with the colonial policy. What rather emerged were different layers of tenure systems where the local tenure systems were overlaid by national legislation, brought in by the colonial powers, which were based on very different principles and geared towards a different set of interests (Toulmin et al. 2002, 2; see also Delville, 2000). The result is a complexity of land tenure systems none of which is completely dominant and which creates a situation of legal pluralism in which different incompatible rules overlap. Traditional systems and principles themselves are not homogenous even in one country, which adds to the complexity of the land tenure arrangements.

Post-independence governments in West Africa retained the colonial legal system and sometimes reinforced its centralising tendencies with the stated aim of binding the nation into closer unity (Delville, 2000, 100). In Burkina Faso access to land and use in rural areas were regulated by the principle of legal dualism: the statutory land legislation inherited from the colonial period and maintained after independence; and customary law and practices. Chad did not undergo any major land reform after independence except to adopt laws based on colonial legislation which upheld state monopoly over land. In Guinea the state took over many of the agricultural farms owned by Europeans when the latter left the country just before independence. These farms were later managed as cooperatives but were abandoned after the collapse of the immediate post-independence regime. In Sierra Leone the state can acquire freehold rights in the Western area but in the provinces it can only acquire a leasehold interest in land. The customary arrangements have been influenced to a large extent by statute where all lands are vested in paramount chiefs and chieftom councils who hold land in trust for the native community concerned. Grants of land discriminate between natives and strangers – the Creoles from the Western area cannot buy land in the provinces since they are deemed to be strangers. It is a source of potential conflict. After independence in 1974 the Guinea Bissau Government nationalised all lands. In Togo a 1974 law classified land into three categories: individual private lands owned according to land laws and regulations in force; land owned by the State as part of its public domain; and national domain lands which are neither owned by the state or individuals and consist of all unused lands meant for agricultural development for the benefit of the Togolese people. Customary rights were recognised so far as they related to land that was put to use. Unused lands still became part of the national domain. In Ghana the structures before independence largely remained except that new laws were enacted which in substance were the same as the colonial laws.

2.3 Regional Economic Community and Regional initiatives

West Africa is one of the regions with many regional institutions (ECOWAS, CILSS, WAEMU, WAMI, RECTAS, etc) some of which have overlapping mandates. The Economic Community of West African States (ECOWAS) is the main umbrella regional economic grouping, comprising the 15 member states. Its mandate, among many others, is to create appropriate framework for the rational and equitable management of natural resources shared by neighbouring states which may cause frequent inter-state conflicts. This objective has relevance to land tenure issues in the region even though ECOWAS does not directly address land and natural resource management issues. It has however recognised that insecure land tenure is a factor contributing to low investment and productivity in West African agriculture (Ouedraogo et al. 2006).

Another initiative in the region is the CILSS programme. It has nine member countries⁴. Its primary objective is to ‘invest in research for food security and in the struggle against the effects of drought and desertification in order to achieve a new ecological equilibrium’. It is the regional organisation that has focused most on land issues. In 1994 CILSS successfully organised a conference in Praia (Cape Verde) on land issues and decentralisation in the Sahel and then launched the Praia process in the 1990s which sought to support civil society in NRM, support

⁴ Burkina Faso, Cape Verde, Chad, the Gambia, Guinea Bissau, Mali, Mauritania, Niger and Senegal.

member countries in the development of national legislation to be applied locally, mainstreaming gender issues in NRM, and building capacity for information, awareness creation and education on land and NRM issues in the Sahel. It again organised the Praia + 9 forum on Rural Land Tenure and Sustainable Development in the Sahel and West Africa in 2003. A number of challenges were identified that needed to be addressed in the region. They included links between natural resources management and administrative decentralisation, promotion and protection of land rights of vulnerable groups, incorporation of land issues into the broader poverty reduction strategies, and development of cross-border approaches to NRM. A key political challenge identified was the lack of political will of member governments to implement recommendations from the forum.

The WAEMU (which brings together eight countries in the region⁵) though a monetary system, adopted an agricultural policy in 2001 which sought to improve food security and better living conditions for producers by developing rural economies, increasing incomes and social status. Land ownership and tenures affect how the policy will operate and is one of the critical factors that will affect the achievement of the policy objectives. Thus WAEMU initiated a study on land policy in 2004 with a view to enhancing the integration process.

Land issues have become cross-border issues – the creation and delimitation of pastoral corridors, the management of land along shared water resources, management of wildlife corridors across borders, etc are issues that affect livelihoods across borders and will require concerted regional approach to deal with efficiently. Political will on the part of member governments is paramount if success is to be achieved.

2.4 Demography, migration and urbanisation

The population characteristics of the countries in the region are presented in Table 1 above. Growth rates differ from country to country and ranges from 1.4% p.a. in Liberia to 4.1% p.a. in Sierra Leone. This growth rate is quite high compared to the average growth rate for the world (1.1% p.a.) and the less developed countries (1.3% p.a.). An analysis of the population structure shows a relatively rural population. More than 50% of the population in each country is rural. Agriculture provides employment opportunities for more than 60% of the population and therefore the sources of livelihoods for the people (see Table 1 above). In this context land becomes a critical factor in the socio-economic development of the people in the region.

Apart from the relatively high population growth rate there has been tremendous movement of people especially from the arid regions in the north to the south and forest regions. Indeed West Africa has always been a region of important migration for centuries – both internal (inside the same country) as well as external (across countries). For example in Mali 75% of the population live on 25% of the land in the south due to southward movement of the people, 51% of the migrant population in South Western part of Cote d'Ivoire are from Burkina Faso and 23% from Mali. It is estimated that about 3 million Burkinabé live in Cote d'Ivoire. There has been a lot of movement from northern Mauritania to the Senegal River Valley in the south to invest in

⁵ Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.

irrigated perimeters. Similar movements have been recorded in Cape Verde and Burkina Faso. There has been movement also in Ghana from the north to the mining centres and the forest regions in the south in search of more fertile lands for agriculture and alternative source of livelihoods in the farming and mining areas.

Land transactions between migrants and indigenous owners have been based on customary principles which vary from community to community but focus on three dimensions: the land tenure dimension, socio-political dimension and moral economy dimension in which migrants are seen as useful for wider reproduction and development of the community (Chauveau et al., 2006). Examples are the practice in the *tutorat* system in Cote d'Ivoire and the stranger usufruct in Ghana⁶. Sometimes the position of migrants has been strengthened by state policy as happened in Cote d'Ivoire where by Presidential decree it was declared that 'land belongs to he who cultivates it'. Similar principles have been practised in Mauritania and Togo. Whilst such policies tend to strengthen the security of tenure for migrants they tend to create tension and likely conflict between autochthons and the migrants as has happened in Cote d'Ivoire and in the Senegal Valley in Mauritania. The situation is compounded by unclear arrangements, unwritten transactions and succession rights when the original negotiators die and subsequent generations inherit the *tutorat* or stranger usufruct. Migration has not only involved people but cattle as well. This is discussed in detail in Chapter 3.3 below.

Associated with migration is the high rate of urbanisation in the region. In all the countries the growth rate of the urban population is higher than that of the national population (see Table 1 above). The urban population growth rate ranges from 2.60% in Cote d'Ivoire to as high as 6.08% in Niger. Generally the countries in the Sahel have higher rates of urbanisation than the countries along the coast, epitomising the effect of the harsh environment and ecological conditions on the rural population. It is estimated that more than half of the population in the region will live in urban areas by 2015. The high rate of urbanisation present tremendous economic opportunities for the migrants in the form of dynamic diverse informal sector that is able to absorb all new comers, create market for urban and peri-urban agriculture, and a 'feel good' factor for the migrants who always consider the urban areas a better place compared to the rural areas. Remittances from migrants in the urban areas, as noted in almost all the countries, have become one of the regular sources of income in the rural areas and for the survival of rural communities. Yet migration and urbanisation are not without challenges. City authorities are unable to cope with the demands for planning, utility supplies and urban management services such as sanitation and waste management, resulting in the extensive development of informal settlements and slums. The land rights of the migrants are shrouded in informality, leading to lock up of 'dead capital'. Examples include informal settlements around Abuja in Nigeria, Niamey, Bamako and the large urban sprawl in Accra. Many young migrants are not able to find jobs in the cities, forcing them unto the street. This is evident in every city in the region. There is extensive conversion of rich agricultural lands in the peri-urban areas into urban land uses resulting in loss of livelihoods for the indigenous dwellers who are caught up the in process of urbanisation, high rate of unemployment and urban poverty. Maxwell *et al.* (1999) estimates that about 16000 ha of lands in peri-urban Accra is converted from agriculture to urban uses

⁶ In both situations land is granted by autochthons to the strangers (migrants) that require that the strangers observe all the conditions that pertain to the grant of the land, observe and respect the socio-political order of the community and the norms of the community.

annually, resulting in loss of livelihoods and undue tension between the urban developers, custodians of the land and the indigenous users of the land. In Gambia there is increasing pressure on urban and peri-urban lands particularly for the building industry which has led to high cost of land.

A recent demographic trend has been people moving from urban areas back to the rural areas as has been happening in Cote d'Ivoire, and migrants moving back to their countries of origin as is happening between Cote d'Ivoire and Burkina Faso as a result of conflict. These 'returnees' have been claiming portions of family lands, sometimes already in occupation by other migrants as has been happening in South Western Burkina Faso, or asking the community leaders to account for lands they have given out. This demand for accountability portrays a gradual change in the way land is perceived in a moral economy to the recognition of land as an economic good that can be traded for value, thereby undermining some of the customary principles by which land is held and used. This has the tendency to raise tension over land issues creating insecurity of tenure and the potential for conflict.

Migration and urbanisation has the tendency of increasing feminine rural poverty as the male counterparts migrate and customary norms do not allow the women to have unimpeded access to and control over land which they can inherit or bequeath to their children. It also causes brake down in institutional memory regarding customary succession which can lead to conflicts and insecurity of tenure. Government efforts must aim at addressing the problems that exacerbate inequality between the urban and rural areas make the rural areas more attractive to retain the youth, and also to deal with the imbalance in access and control of land in order to deal with the feminisation of rural poverty. It must also build the capacity of city authorities to be able to plan and cope with the rapid rate of urbanisation so as to derive the maximum socio-economic benefit from the movement of people.

2.5 Conflicts and post-conflict issues

West Africa is a fragile region prone to conflicts. Some of the countries are emerging from conflicts and have to deal with many post conflict issues involving land. Sierra Leone is dealing with post conflict stability and reconstruction, having been engaged in civil war for about ten years (1992 – 2002); Liberia has just emerged from a 14-year old civil war and is also engaged in post- conflict reconstruction. Cote d'Ivoire is still negotiating a permanent settlement to its conflict which erupted in 2002. Chad was engulfed in a long civil war that ended in 1990. Guinea Bissau was engaged in a civil war in 1998. Senegal is still facing internal conflicts in the Casamance region while in Niger and Mali the Touaregs are seeking a territory of their own through rebellion. The causes of the conflicts are rooted among others in access to land and other natural resources (as was the case in Liberia and Sierra Leone and is happening now in the Touareg region), growing tensions around the land conventions in the context of a new land scarcity and the crystallisation of the tensions for land along ethnic lines as was the case in Cote d'Ivoire⁷. In fact the politicisation of land issues is among the underlying causes of the crisis and

⁷ With the new scarcity of land and the economic crisis, there were growing concerns and frustrations about migrants land rights (original migrants from the 1960s and earlier, the successive generations, recent migrants), and particularly the security, duration and legitimacy of these rights. With growing economic value of land, the

escalation of violence in Cote d'Ivoire. For instance Article 1 of the Rural Land Law of 1998 states that only Ivorian citizens can own rural land. Such a policy is a recipe for conflict in the presence of a large migrant population, of which many have been in the country since independence, with land transmitted (until recently, without troubles nor concerns from the autochthonous groups) to successive generations. As a result of the troubles and violent conflict, about 300,000 migrants returned to Burkina Faso.

Post-conflict reconstruction efforts must deal with the root causes of some of the conflicts and address some of the issues that give rise to insecurity of tenure. Inter-ethnic tensions fuelled by uncertain land ownership and tenure issues due to ambiguous relationship between land ownership and use rights and post-war re-establishment of ownership, use and access rights are critical issues to be dealt with in Liberia, as is the case in northern Nimba County where ethnic Mandingos are returning to claim properties occupied by ethnic Gio and Mano groups. In Cote d'Ivoire the Linas-Marcoussi peace agreement of January 2003 considered the modification of the land law as one of the key priority activities needed to deal with the conflict.

Other countries might not have experienced conflicts but have had to deal with the aftermath of some of the conflicts. For example the conflict in Cote d'Ivoire resulted in a large number of Burkinabé migrating back to Burkina Faso and claiming lands which were also in occupation by other members of the family. The conflict in Liberia brought a large number of refugees to Ghana some of whom have refused to return after the war. There are other intra-country land-related ethnic conflicts that underpin the need to address land tenure issues to assure security of tenure in land use and ownership, for example in the Upper East and Volta Regions of Ghana and in the oil belt region of Nigeria (Rivers State). In Mauritania an amnesty granted by the military regime that seized power in 2005 is likely to bring back exiles who settled in the southern bank of the Senegal River who are likely to reclaim their rights to land in the northern bank, giving rise to land related disputes. In many of the countries there are tensions over forest reserves integrated in the public domain of the state as local communities consider the action as expropriation without compensation, and they keep claiming rights on these forests. There are tensions also between pastoralists and agriculturalist over the use of land and water resources at both the local and inter-state levels. The impact of the conflicts severely affects security of tenure, community development, investment in land and efforts to fight poverty.

2.6 Shared resources and ecosystems

As noted above, the West Africa region transcends a number of ecological zones ranging from the coastal zone to the desert conditions to the north. Within this varied ecological zones are shared resources that affect the daily lives of people at the local level but require management at the highest governmental levels in bilateral or multilateral dimensions. They include watershed and river basins, wildlife parks and forests. Five regional organisations have been formed to handle the important river basins:

principles of the moral economy at the village level became progressively inadequate to manage unclear and ancient land conventions and the new, monetary land values and transactions.

- The Niger River Basin Authority comprises eight countries – Guinea, Mali, Cote d’Ivoire, Burkina Faso, Benin, Niger, Chad and Nigeria;
- The Mano River Union involves Liberia, Guinea and Sierra Leone;
- The Lake Chad Basin Commission brings together Cameroon, Chad, Central African Republic, Niger and Nigeria;
- The Gambia River Basin Development Organisation involves Senegal, the Gambia and Guinea Bissau;
- The Senegal River Basin Development Organisation groups Senegal, Mali and Mauritania.

A Volta River Basin programme is being developed between Ghana and Burkina Faso. Shared wildlife and forest parks include the GE PRENAF which transcends Cote d’Ivoire and Burkina Faso, and the ECOPAS (W Park) which involves Burkina Faso, Niger and Benin. The primary objectives of these basin management organisations and wildlife parks include promoting inter-state cooperation for the integrated development of the natural resource to support agriculture, irrigation, transport and communication, trade, hydroelectric power generation, flood control and the rational use of water. The way and manner such resources are managed affect the daily lives of the people who depend on land drained by these river basins for their livelihoods. Thus the Niger Valley Development Project in Mali allows the state to expropriate private property for the public good. Again when in 2007 Burkina Faso opened the sluice gates for its dams on the White Volta it caused severe flooding and loss of lives and properties in northern Ghana.

Shared resources also include pastoral corridors between countries which must be managed for the mutual benefit of the countries and citizens involved. The interaction and relationships between pastoralists and agriculturalists must be properly negotiated to minimise losses and the potential for conflict that is usually associated with the southward movement of cattle during the dry season. This is a critical issue to consider in the face of global warming and its implication on availability of arable land especially in the arid regions. Global warming has implications for future food security and sustainable livelihoods. The work of institutions that are managing the ecosystems across countries such as CILSS ultimately affect access to land based livelihoods.

3. KEY ISSUES AND CHALLENGES

The background document has identified twelve key issues for the development of the Africa-wide land policy framework. These are:

1. State sovereignty over land
2. Unequal distribution of land resources
3. Dualism in property systems
4. Land tenure security
5. Enhancing productivity issues in agriculture
6. Sustainable management of the environment
7. Protecting the commons, including managing pastoral land use
8. Improving land rights security in urban and peri-urban land areas
9. Addressing gender biases in land relations

10. Managing the impact of HIV/AIDS
11. Restructuring land administration systems and institutions
12. Managing land issues in post-conflict reconstruction

The key issues which are of relevance in the West Africa region are analysed in this chapter, in addition to the contextual issues discussed above. Due to the geographical location of the region drought, desertification and floods; customary land rights and land and mining activities are discussed as additional key issues and challenges.

3.1 State sovereignty over land

State sovereignty over land is two-fold: the political interest of states that determines sovereignty over territories; and dealing directly with the way and manner land is appropriated and used by citizens. The discussion in this section is limited to the latter issue which differs from country to country. In Nigeria under the Land Use Act (1980) all lands are vested in State governors in trust for the people of Nigeria. In Liberia under an 1850 law land is principally the property of the State except relatively limited areas held in freehold located mostly in urban areas, some plantations and other commercial farms owned by descendants of Africans returning from America who concluded sale contracts with local chiefs. In Benin land is nationalised while in Guinea Bissau land is owned by the State even though use rights of individuals are recognised. In many of the Francophone countries the state controls the use of urban lands and grants land for private development through the process of ‘immatriculation’⁸, even though the state also exercises powers of expropriation as is the case in Niger. In the Anglophone countries notably Gambia, Ghana and Sierra Leone the state has access to land through its powers of eminent domain. In Ghana 20% of the lands is owned by the State. Other land resources such as the permanent forest estates (forest reserves) also form part of the landed estates over which the state exercises authority. Mineral resources in all the countries are vested in the State. This hegemony of the state over land dates back to colonial times but post independence governments has not changed the situation much. In Nigeria the Land Use Decree is perceived by some as an extension to the south of the Land Tenure Law of 1962 and the State Law of 1915 which applied to the north of the country.⁹ In Burkina Faso the 1984 Agrarian Land Reform sought to establish a national land domain over the entire national territory, abolish all previous customary and other property rights in land and reduce all rights to only land use rights.

Lands are vested in the state in the belief that the state is a better manager of lands than the customary owners. Thus the Nigeria Land Use Act was promulgated to stimulate investment in agriculture by enhancing land use security, curb speculation in urban land, and make opportunities to occupy land generally available to all Nigerians. By so doing it will bring about

⁸ Immatriculation is the procedure by which, in francophone countries, private ownership is given by the State to an individual (Chauveau, et al., 2006) as against ‘concession’ which is a temporary use right allocated by the State under conditions of effective use and investment, which can after some time be transformed into title through immatriculation.

⁹ Ghana had a similar legislation – the Land and Native Rights Ordinance of 1931 which vested all the northern lands in the colonial administration in trust for the people. This was retained after independence but was repealed in the 1979 Constitution and the lands were de-vested.

increased mobility of human and material resources and remove a major source of socio-economic inequality (Arua and Okorji, 1998). Similar reasons are given for the use of the state's power of eminent domain to acquire lands compulsorily.

The acquisition and management of lands by state are always beset with problems. In Nigeria for example the Land Use Act (1980) never extinguished the rights of indigenous owners. The State's interest therefore became a layer on top of the existing indigenous rights. Such a situation always creates conflicts between the state and the original owners regarding the ownership of such lands. Similar tensions are also reported in Ghana and the Gambia over lands acquired by the State for which no compensation has been paid. In Sierra Leone that State has not been able to pay the ground rents for land acquired on leasehold basis. Under the Ghana LAP an inventory of state acquired/occupied lands indicated that the state was occupying more land than it had legally acquired. In such situations the expropriated owners are impoverished and become worse off.

The management of land by the state has led to land grabbing and corruption in some countries such as Nigeria. In Ghana and the Gambia change of use of compulsorily acquired lands without due reference to the purpose of the acquisition has led to discontent among land owners. The bureaucracy associated with state management of land and associated delays has led to questions being raised as to whether the state should hold title to land and directly manage such lands or it should limit itself to land use regulatory powers. In Nigeria Certificates of Occupancy must be signed by State Governors while in Liberia allocation of land requires the approval of the President. Whilst the state cannot be deprived of its powers of eminent domain it is important that such powers are exercised with great deal of circumspection, used as the last resort, guided by standards and accompanied by prompt payment of compensation.

3.2 Private and Customary land rights

Outside the lands owned or controlled by the State are private lands and lands held under customary arrangements. Private lands in the form of freeholds occur in Mauritania, Togo, Cote d'Ivoire (through the process of 'immatriculation'), small parts of the Gambia, the Western Area of Sierra Leone, Liberia and small pockets in Ghana. In Cote d'Ivoire companies and individuals own large tracts of land held under plantations or other commercial development. In 1983-84 the Mauritanian government introduced land reforms that established individual private property through registration. By so doing customary land management officially ended, all lands that were not in the public domain or private property were declared to be covered by Islamic law. All lands that were not occupied or used by any person were declared to be state property through the application of the Islamic principle of *Indirass*. Such land was made available for public or private acquisition (Ouedraogo et al. 2006). The implication of this law was that many customary authorities especially the Black Africans in the Senegal Valley lost their rights over land to people that did not traditionally live in the region, heightening the tension between the users and 'owners' of the land.

By far most lands in the region are held in customary systems of ownership and tenure arrangements are negotiated based on customary principles and managed by customary authorities. The term 'Customary land' is used to represent all the different categories of rights and interests held within traditional systems and controlled by a chief, autochthon, head of clan or head of family. They occur where the right to use or to dispose of use-rights over land rest neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statute, but on the fact that they are recognised as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicitly and generally known, but not normally recorded in writing (Bower, 1993). Customary tenures differ from community to community. In Ghana this is about 80% of the land. Whilst the customary systems of land ownership reflect indigenous norms they are usually fraught with challenges. Key among them are undefined boundaries, unclear rights and titles, undocumented transactions and disputes which sometimes escalate into full fledged conflicts. For example in the provinces of Sierra Leone freeholds, leaseholds and hybrids of rights can be granted over customary lands. In the Francophone countries however, efforts have been made to address some of these challenges. In Burkina Faso and Niger local structures such as Village Committees and Lands Commissions respectively have been established and empowered to administer rural lands and settle disputes associated with the use of such lands. In Ghana however, the state through legislation controls the allocation and revenue accruing from some of the customary (stool) lands. Thus even though the land is owned by the customary authorities, the state's extensive regulatory powers render customary authorities relatively ineffective in dealing with their lands. The key challenge is how to fashion out simple and cheap mechanisms for recording customary rights and given them legal recognition in statutes. This has been done in Niger and Burkina Faso and to some extent in Ghana.

3.3 Land and mining activities

The West African region abounds in mineral resources – gold in Ghana, Guinea and Niger, rutile in Liberia and Sierra Leone, diamonds in Sierra Leone, Liberia and Ghana, bauxite and manganese in Ghana, uranium in Niger, crude oil in Cote d'Ivoire, Chad, Nigeria and recently discovered in commercial quantities in Ghana, etc. They are big sources of foreign direct investment from developed countries and China, major sources of foreign currency to the countries and provide job opportunities for many of the populations. However, the exploitation of these minerals has not been without problems particularly in the area of rural settlements, tension between local communities and mining companies with regard to expected direct benefits to the local communities, security of land rights, livelihoods and compensation, resettlement packages, pollution and environmental degradation. These are discussed in detail in Chapter 7 of the report.

3.4 Drought, desertification and floods

The West Africa region has to deal with some of the most serious ecological conditions and challenges in Africa –drought and desertification on the one hand and floods on the other. Large parts of Mauritania, Mali, Niger and Chad also form part of the Sahara desert. The desert areas have rich oil reserves as found in Chad and other minerals such as the uranium and gold deposits in Niger. These could be the economic growth nerves that can turn the economies of these countries around if they are managed properly. The Sahel region, from Mauritania to Chad has experienced recurrent droughts in the 1970s and 1980s. The effect has been shortage of pasture for livestock and poor agricultural yields, forcing people to move into cities in search of alternative sources of livelihoods. For example, the drought in Mauritania caused the Moor and Fulani people to move southwards to settle in the fertile zones of the Senegal River Valley. In Mali 75% of the population are concentrated on 25% of the land. This unbalanced distribution of the population creates land shortages and give rise to various land-related problems and conflicts in areas where there are ‘land scarcity’. The soils are overworked, causing soil degradation. There is a very rapid rate of urbanisation with the conversion of much of the fertile agricultural lands into urban uses as in the Kati and Koulikoro areas in the Koulikoro region of Mali. There are also problems of land ownership and conflict between pastoralism and sedentary agriculture as found in the Kayes region of Mali.

The desert areas are sparsely populated with transhumance as the main source of livelihood. This creates a serious challenge for the development of settlements and the provision of infrastructure as economies of scale from public goods cannot be realised. Serious efforts by institutions such as CILSS and the land observatory in Mali to combat desertification must be supported. Countries in the Sahel region has put in measures to combat the causes of desertification especially control of wildfires. For example stringent laws have been put in place to check wildfires in Burkina Faso.

3.5 Protecting the commons

The common property resources in West Africa include forests, wetlands, fisheries, ponds, rangelands, biodiversity colonies, sacred grooves and are major sources of livelihoods for many rural and coastal dwellers. Many of these common property resources are managed under customary principles although a few have been identified to be of international significance for example the five Ramsar sites along the coastal plains of Ghana (Densu delta, Keta Lagoon, Muni-Pomadze, Sakumo and Songor Ramsar sites) declared as significant breeding grounds for migratory birds under the Ramsar Convention, the Sourindou-Mihity basin in Burkina Faso which has been declared by the IUCN as one of the most important flood plains of West Africa (Sanou, 2002, 180), the Kakum Forest Reserve in Ghana is an internationally recognised biodiversity conservation area. These are important natural resources that require proper management.

Many of the common property resources in the region are under threat of extinction due to over exploitation and mismanagement. Almost all the mangrove swamps in Ghana are gone, having been used as sources of fuel wood. Many of the rangelands in the arid regions are under threat from over grazing and sedentary agriculture due to increased population; forest reserves are under constant threat from agricultural land uses as found in Ghana, Nigeria, and Cote d'Ivoire. Some of the Ramsar sites in Ghana are under threat from residential development. There is increased competition and tension between crop farmers and users of grazing reserved land. The state of grazing lands and the desire to protect them made the Nigerian Government to pass the Grazing Reserve Law in 1965 to ensure that specific lands are reserved as commons for grazing. Under the Nigeria National Agricultural Policy of 1988 it was indicated that 10% of the national territory would be acquired and constituted into grazing reserves for allocation on leaseholds to herders. Other countries that have tried to protect and regulate the use of grazing lands include Guinea, Burkina Faso, Mali and Niger.

A major issue of concern is the relationship between pastoralists and sedentary farmers. Conflicts between pastoralists and indigenous cultivators have been reported in Nigeria, Ghana and Burkina Faso. In Senegal the 1964 law on National Domain did not recognise pastoralism as a viable form of land use. This position was changed in 1980 when a decree was passed to provide for the reservation of grazing lands for herders. No physical demarcation of these areas was done and there continued to be tension between farmers and herders especially in relation to access to water – traditionally pastoralist groups have controlled access to grazing areas through water and not through control of land. One of the major causes of violent conflicts in Chad relates to conflicts between farmers and herders caused by distrust between different ethnic groups, strong demographic pressure on land and natural resources and availability of arms (Ouedraogo et al, 2006). Many of the pastoralists practice transhumance and therefore move across ecological zones and territorial boundaries in search of pasture for their cattle. Major corridors involve movement between Niger, Burkina Faso and Ghana, Niger and Nigeria, Niger and Benin, Burkina Faso and Cote d'Ivoire, etc. The absence of region wide policies is contributing to the conflicts between pastoralists and sedentary farmers. Major policy issues that must be dealt with at both country level and bilateral levels include the delineation of pastoral corridors, mechanisms for achieving mutual benefits by both the pastoralists and crop farmers, prevention of the destruction of food crops usually associated with the movement of the cattle, and the participation of local communities in the decision-making process. This form of 'symbiotic' relationship has been practised in Niger through the Rural Land Code and can be replicated in other countries.

3.6 Evolution of land markets and security of tenure

Rural land transactions in many countries in West Africa are embedded in customary principles and arrangements which have land tenure dimension, socio-political dimension and the moral economy dimension (see Chauveau et al., 2006). From standard economic viewpoint it could be argued that there are no land markets in operation or at best they are markets in transition or emerging land markets. It must however be pointed out that the principles underlying customary land transactions respond to economics of demand and supply of land but in context that meets the specific requirements of the actors. Share cropping, rental and sale of land, the *tutorat* system

in Cote d'Ivoire, *abunu* and *abusa* systems in Ghana are all economic responses to the demand and supply of land that meets the specific circumstances of the actors. Indeed renting of land has been on the ascendancy in Cote d'Ivoire, Benin, Burkina Faso, Ghana and Togo. It represents a relatively cheap means of accessing land and also emphasise the transition from purely moral economy to market-based land relations. Security of tenure is embedded in the fulfilment of the obligations of the land acquirer under the tenure, socio-political and moral economy dimensions. Many of these transactions occur in the informal system and are hardly registered through state systems. Efforts to register rural titles through the Rural Land Plan in Cote d'Ivoire, Burkina Faso, Benin, Niger, etc. provide alternatives to the formal registration systems that ensure security of tenure. These efforts have been largely successful and provide good lessons for the other countries. In this situation not much difference exists in the operations of the land tenure arrangements in the Anglophone and Francophone countries, providing opportunities for lesson-learning, sharing of experiences and replicating some of the best practices.

In the Francophone countries urban lands are controlled by the state. Lands are allocated through administrative processes (immatriculation) rather than the market through the forces of demand and supply. The same situation holds in the Anglophone countries with respect to lands managed by the state. There is however a high level of informal land transactions that leads to the development of informal settlements and slums. Security of tenure in these areas is therefore not very strong. In Nigeria under the Land Use Decree developers must obtain Certificates of Occupancy signed by the State Governor to access land. As noted above the state structure operates as a layer above the customary systems. Indeed in some of the states such as Rivers State an applicant has to show that he/she has fulfilled all requirements to access land under customary principles before an application for Certificate of Occupancy can be considered, leading to a high level of informal transactions. Legal pluralism is therefore in operation and is responsible for the large informal sector and accompanying insecurity of tenure. In Ghana customary principles operate in both urban and rural areas with a large level of informality in land transactions. Larbi *et al.* (2003) for example asserts that about 80% of all land transactions in peri-urban Accra fall outside the formal system. The greatest pressure of informality is felt in the peri-urban areas where there is a high rate of conversion of agricultural lands into urban development, which results in loss of land rights and livelihoods of indigenous people, sometimes creating tension between developers and the indigenous users.

Specific policies must be designed to deal with the large levels of informality especially at the peri-urban areas. This may involve developing appropriate standards for registration, including surveying and mapping to make the process affordable and dependable and developing decentralised institutions for land administration. It is in such situation that land markets can be said to be operation. Currently there are 'sales without markets'.

3.7 Decentralisation

The legal-pluralistic environment for dealing with land tenure affects the institutional arrangements for land administration in West Africa. Land administration institutions perform judicial, regulatory, fiscal, cadastral and conflict resolution functions. However their roles are usually restricted to land under formal tenure arrangements. The large informal sector is largely outside these institutional arrangements. Decentralisation is one of the key governance issues on going in West Africa and the extent to which it affects land administration is discussed further in Chapter 5 below.

3.8 Gender and land tenure

The position of males and females in relation to land in West Africa can be considered under the main legal frameworks in operation – statutory systems, customary systems and Islamic system in the countries. Under statutory and constitutional provisions there is no discrimination between males and females in the ownership and use of land. Women can access, buy, own and inherit land and property through statutory systems especially in urban areas. Once a woman has the economic power to purchase landed property there is no rule inhibiting her.

Exclusion of women in land management and inheritance is generally a dominant issue in the region, especially in the customary systems where land relations are largely informed by a patriarchal orientation. In the Gambia male domination in tenure relations are sharply divided in spatial terms between men and women with the men cultivating upland areas where the lands are fertile and used for the cultivation of groundnuts/millet and the women control most of the swamp land lying along the main river and its tributaries and used for rice cultivation. In some instances women are granted access to land under terms that require the women to guarantee that they would water tree crops as long as they stayed in the perimeter of their farms and would leave the plot as soon as the trees reached maturity (Schroeder, 1997). In northern Ghana and the Gambia women generally have secondary rights and can access land through male relatives. In the provinces of Sierra Leone land rights of women and the youth are limited to the location or usage and subject to decisions of the land owners. The rights that women obtain are not usually clear. In Eastern Nigeria women normally cannot own or inherit land under customary law although they retain the use rights during their lifetime and as long as they remain in the husband's household (Arua and Okorji, 1998). In Benin access to land is gender biased and unless a woman buys land she has no access through inheritance.

Under Islamic law women are allowed to inherit land, even though they may not get the same share as their male counterpart. Women in the Islamic states in Nigeria and other Islamic countries in the region therefore do inherit land. In other areas inheritance is mainly through the patrilineage and women are not allowed to inherit. In most communities in Western Nigeria, women cannot legally own land and are denied inheritance rights. Men have control over land and take all decisions about its use and development. In South-Western Nigeria women are considered ineligible to inherit land. The land of a deceased is divided equally among wives who had borne male children whose sons then inherit the land (Adedipe et al. 1997).

In Ghana customary systems allow women extensive access to land but their rights are generally secondary and through male lines (husbands or sons). The rights are usually insecure and sometimes not properly defined. Women are generally excluded in the decision making processes involved in land management. In the patrilineal communities women are generally excluded from inheriting land.

The primary effect of the existing gender relations in land is that it weakens women's position, entrenches inequality between men and women and ultimately affects sustainable use of land. It has been noted in Ghana that the relatively limited security of tenure for women is one of the obstacles to the introduction of soil conservation practices (Aryeetey, 2002, 96). Where innovative programmes have been undertaken that guarantees security of tenure for women, the women have demonstrated their ability to improve the productivity of the land and improve food security as was seen in the Gambia LADEP. Under this programme women beneficiaries permanently owned the land and their children could inherit. In Liberia reforms have been implemented since 2003 to secure women's rights particularly in inheritance. These are good lessons to be replicated. Reforming inheritance systems which are rooted in custom is a daunting task. However, countries must pursue a diversity of programmes through legislation, extensive public education and sensitisation, pilot projects that demonstrate the benefits to women and society as in the Gambian case to bridge the inequality gap.

3.9 Bio-Fuels

An emerging issue that has implications for land policy development is the cultivation of crops for bio-fuels, as a response to the search for alternative energy sources. The crops include rapeseed, sunflower, soy, palm, coconut or jatropha. The land requirements for the feedstock are usually very large and will seriously compete with land for the cultivation of food crops. Large tracks of land have been granted for the cultivation of bio-fuels in Benin and there are demands for large tracks in Ghana. Countries in the region may like to seize the market opportunities offered by bio-fuels but the issue requires serious socio-economic analysis to work out the necessary trade-offs between food security, soil fertility and feedstock production. The issue must be addressed at the regional level for broad policy directives, weighing the incentives against the cost.

4. LAND POLICY FORMULATION

4.1. Policy formulation process

Only four countries in the region have developed land policy documents to provide direction for the development of land laws and land administration – Ghana (1999), Guinea (2001), Sierra Leone (2005) and Burkina Faso (2007). The policy formulation processes have been different but have been participatory as indicated in Table 2 below.

Table 2: Land Policy formulation process

Country	Policy Formulation Process	Remarks
Ghana	<p>1994: Cabinet transmits recommendations of Law Reform Commission to the Ministry of Lands Forestry and Mines (MLFM) for implementation</p> <p>1995: MLFM recruits researchers to collect data and make proposals for a land policy. MLFM recruits Consultant to test methodologies and approaches suggested by researchers. Policy formulation team made up of technocrats and researchers set up to draft policy proposals,</p> <p>1996: Draft policy proposals sent to key stakeholders including the National House of Chiefs, experts, academics, technocrats for review and comments.</p> <p>1997: National workshop held on the revised draft policy proposals. Participants included all major stakeholders including chiefs, researchers, farmers, NGOs, district assemblies, civil servants, the private sector and security agencies.</p> <p>1998: Final Draft policy proposals presented to Cabinet for consideration. Cabinet held a retreat to discuss the policy proposals.</p> <p>1999: Cabinet gave approval to the policy proposals which was launched in June 1999.</p> <p>2003: Land Administration Project developed as the main mechanism for implementing the policy proposals.</p>	
Guinea	2001: Rural Land policy.	No details obtained on the policy formulation process

Sierra Leone	2005: New Land Policy launched	No details obtained on policy formulation process
Burkina Faso	<p>2005: Proposals for national land policy developed through participatory processes. Land policy dialogues were organised by the National Committee for Rural Land Tenure Security (whose members represent key ministries, farmers' organisations and CSOs) at local and regional levels for key stakeholders including farmers, local communities, local governments, traditional chiefs and the private sector.</p> <p>A national forum was organised for final agreement on land policy options.</p> <p>2007: National Committee submitted land policy proposals to government for consideration and adoption.</p> <p>A framework land law guided by consensus points in the land policy document to be prepared.</p>	

All the other countries have had land laws made to deal with various aspects of the land problems which are not anchored on specific policy proposals. In the Francophone countries land laws are still based on the state-centred land tenure model of colonial origin with 'immatriculation' as the sole form of private ownership (Chauveau et al., 2006, 51). For example in Benin the 1932 legislation on land and property was replaced by a 1965 law while the decree on public and private domain and the decree on compulsory acquisition remained. In the Anglophone countries land laws were either maintained or were re-enacted as Acts of Parliament of the newly independent states but with marginal changes to content. Since the 1990s however, a combination of political, economic and social factors have accounted for the development of new laws aimed at restructuring land tenure relations particularly in the wake of structural adjustment programmes. These laws have attempted to address issues of security of tenure, decentralisation of land administration structures, land related disputes and conflicts, rural-urban links and the place of land in broader development policies and strategies (Ouedraogo et al, 2006). Different countries have attempted to address specific, country related issues. A summary of the laws in operation are summarised in Table 3 below.

Table 3: Land Laws in the ECOWAS region since 1980.

Country	YEAR	Focus
Benin	1994	Rural Land Plan Decree which provided for village level land use planning and decision making.
	2005	Draft law laid before Parliament. The law seeks to break away from the principle that land belongs to the State and to give formal recognition to local land rights.
Burkina Faso	1984	Agrarian and Land Reform Act was adopted which established a national land domain over the entire national territory.
	1991	Agrarian and Land Reform Act amended to re-establish private property ownership but under strict conditions, create local village committees responsible for land allocation and land use control.
	1996	Agrarian and Land Reform Act amended again to make the text more coherent and to meet conditions for selling empty plots under a new urban programme.
Cape Verde	1983	Agrarian Reform Law but repealed in 1993.
Chad	1967	Acts on the status of social assets, land ownership and customary laws, and limitation of entitlements to land (Acts no. 23, 24 and 25 of 22 July 1967).
Cote d'Ivoire	1998	Rural Land Law which established permanent land domain on which the state, public bodies and individuals have property rights, and transitional domain on which customary rights are exercised and concessions may be granted by the State.
Gambia	1987	National Environment and Management Act.
	1990	State Lands Act. Land Acquisition and Compensation Act Physical Planning and Development Control Act Surveying Act
	1994	Lands Commission established.

Ghana	1986	Land Title Registration Law passed to introduce compulsory title registration in the country. The system however operates only in the Greater Accra Region and Kumasi.
	1993	Local Government Act (Act 462) which created Metropolitan, Municipal and District Assemblies as decentralised planning and development control agencies.
	1994	Office of the Administrator of Stool Lands Act (Act 481) – the OASL is charged with the collection and disbursement of stool land revenue.
		Lands Commission Act (Act 483) – the LC is charged with the management of state lands and the certification of stool land grants.
Guinea	1992	Land Ordinance which affirmed State ownership of vacant lands and guaranteed individual ownership of land.
Guinea Bissau	1998	Land law which sought to guarantee farmers’ access to land, integrate customary rules and practices into the new law, and stimulate the development of a land market.
Liberia	1984	A new Constitution promulgated.
Mali	1986	Land law passed.
	2002	Domain and Land Tenure Code which declared all lands comprised within Malian territory as State Domain and that private ownership is possible through immatriculation.
	2005	Agricultural framework law based on wide consultations with key stakeholders at the national and local levels.
Mauritania	1983	National domain and land reform Ordinance which introduced individual property rights through registration.
Niger	1993	Rural Land Code which recognises customary rights to land in the rural areas as registrable and established Lands Commissions as decentralised local structures for the management and administration of lands and natural resources including pastoral lands
	1998	Laws on hunting and wildlife protection, fisheries and environmental management.
Nigeria	1990	Promulgation of the Land Use Act which vested all lands in State Governors in trust for the people of Nigeria with a view to providing equal opportunities to all Nigerians to access land.

Senegal	1980	Decree for the reservation of grazing lands.
	2004	Law for agro-sylvo-pastoral development enacted following extensive consultations with rural producers and civil society. Land component of the law dropped due to lack of consensus.
Sierra Leone	2004	Commercial Use of Land Bill prepared which seeks to reduce or remove disabilities on the provincial land owner without interfering with the land tenure system and provides for removal of barriers against Creoles owning land in the provinces. Bill is yet to be passed by Parliament.
Togo		No new substantive legislation has been enacted since 1974.

4.2. Institutional reform process

« Lessons drawn from reforms throughout the world have shown the limits of existing tools (for example, land titling and registration, land redistribution of national domain land, the processes involved in the recognition of different rights, etc.). There is broad agreement about the need to evolve innovative context-specific tools ». (OCDE, Sahel Club and West Africa, Land reform in West Africa, August 2006). Accordingly, several countries in West Africa have introduced institutional innovations, consisting mostly of new rural structures to take charge of land management at local level to ensure that local realities are taken into consideration. These structures do not acknowledge the crosscutting powers of national administrations and their territorial branches that intervene in land issues, such as the Ministry responsible for agriculture, Ministry responsible for water and forest resources, ministry responsible for land and cadastral matters etc.... ;

Thus, in Niger, for example, the Order establishing guiding principles for the rural orientation code provides for the creation of “local institutions » to administer and organize the rural areas. They help protect the rights of the communities concerned; ensure rational use and management of agricultural, forestry and pastoral resources, and they settle land disputes. This involves traditional State administrations, on the one hand, as well as the new bodies set up by the National Rural Code Committee (Comité National du Code Rural), and the Secrétariats Permanents du Code Rural, especially the land Commissions.

In Benin, Burkina Faso and Côte d’Ivoire, the Rural Land Use Plans (PFR) adopted by each country provides for the establishment of land commissions.

The PFR is based essentially on a local, participatory approach. The strategy behind it aims mainly to secure land rights. In addition to ensuring secure tenure for rural users, the RLP aims to provide the administration with tools for decision making

Rural land use plans target significantly different priorities in each country. In Benin, the aim is to increase tenure security for rural producers, limit the abusive use of prime land while helping to promote investment in agriculture. PFRs are to identify what the communities themselves perceive to be their rights and what those rights actually are under various agreements ; they will then prepare a pictorial records followed by a literal documentation. It establishes a parcel plan and a list of beneficiaries.

In Côte d'Ivoire, the PFR attempts to draw up an inventory of all existing rural rights as perceived by the various actors.

In Burkina, the focus is on assembling the most complete set of documentation possible;

- map all these data;
- move towards assigning title deeds whose content and value remain to be determined. (cf. Hubert Ouedraogo, étude comparative de mise en œuvre des plans fonciers ruraux en Afrique de l'ouest : Benin, Burkina Faso, Côte d'Ivoire Les *Etudes juridiques* Les *Etudes juridiques en ligne* sur <http://www.fao.org/legal/prs-ol/paper-e.htm>. <http://www.fao.org/legal/prs-ol/paper-e.htm>.

4.3 “Participatory” approach and “Land Management” approach (PNGTER, PGRN, PNGT)

Some of the countries studied have opted to promote a participatory approach to policy formulation (Benin, Côte d'Ivoire, Burkina Faso, Ghana...); reform is expected to respond to the needs of the users of the land in question and to be « at their disposal ». In reality, however, farmers seem, on the whole, to be conspicuously absent from these processes, except when they are associated in the context of ongoing consultations. One remarkable exception was the process of drawing up land reform proposals by rural actors in Senegal by the CNCR between 1999 and 2004.

Ghana's National Land Policy was decided in 1999, the culmination of a process of consultations started in 1994.

In Mali also, the AOPP has begun a similar process. In the case of Burkina and Benin, one can also identify a small number of resource persons, political entrepreneurs, people who will be part of discussions on land tenure issues in the long term and will play a key role, often moving from positions in one institution to another. This is an extremely important role and tends to be tied more to specific individuals (in Mali, when one such person who was responsible for land tenure issues at the MDRE died, the dossier was abandoned).

5. LAND POLICY IMPLEMENTATION

Land policy implementation here refers to the sum of all measures taken by the State to apply the principles adopted in the basic texts governing land tenure, as discussed in the preceding chapter.

In this section, an attempt will be made to assess the implementation of land tenure policies or laws.

Studies of the context of land reform in West African countries over the past few years indicate that their effective application depends on several factors and on social, economic, political and even legal and institutional contingencies.

The different processes that have attended the preparation of policies or framework laws have shown that most of the countries desire to evolve policies or legislation that are adapted to their local circumstances, and are keen to facilitate their implementation.

In actual fact, however, once the principles have been proclaimed, concrete standards are either not forthcoming, or the institutions to implement the reforms are not established. Even when they are established, they perform poorly either because they lack sufficient resources or because there is a mismatch between their functions and those of other structures from parallel processes. Clearly, therefore, the main difficulties facing implementation of reforms are the failure to integrate local practices and traditional institutions in the implementation chain, and (ii) the linkage between policy/land legislation and decentralization.

Furthermore, when land reforms take place concurrently with, or alongside, other global or sectoral reforms, ensuring coherence of the implementation measures with those of the other ongoing project is a problem. However, it appears that where land reform is undertaken in the context of natural resources management, agricultural development, environmental protection and rural development in general, it is implemented as a secondary objective of these other projects and programmes whose primary focus is not on land tenure.

It can be concluded from the different experiences in the sub-region, that the successful implementation of land policies depends on:

- The effectiveness of measures taken to apply land policies;
- the different land institutions being able to really carry out their functions;
- bringing land management institutions closer to the people;
- recognition of the interrelation between the functions of the decentralized structures and those of local authorities that have responsibilities for land management and tenure security;
- ensuring that the different groups of actors participate actively in land management and secure tenure;
- accepting that land tenure is a crosscutting issue; and
- adopting adequate mechanisms for settling land disputes.

5.1. Effective implementation of measures taken in application of land policies.

In West Africa, implementation of land policies involves all categories of institutional, modern and traditional stakeholders who can assist with the:

- elaboration of standards,
- application of defined rules, and
- resolution of conflicts arising from the application of rules.

Thus, there are very many actors involved in land tenure. In all the countries, land tenure issues are viewed from a very wide angle where the relationship with the land has many dimensions. All the institutions and authorities who play a role in the rural sector feel that they have a legitimate right to participate in setting standards and in the administration of land rights.

All rural development policies and strategies are based mostly on the recognition of the land tenure dimension of the problems that require attention. Despite the great diversity and specificity of the problems and challenges of the land issue in each country, the thrust of reform efforts in Africa has been on tackling the following problems : secure tenure, particularly for vulnerable groups ; land redistribution ; privatization of land property ; land estate management and administration in the context of political and administrative decentralization ; land disputes and conflicts ; rural-urban linkages ; and the place of land in expanded development policies and strategies (OCDE, Sahel and West Africa Club, land reform in West Africa, August 2006, P.20) Implementation of these reforms depends largely on political will and the capacity of the authorities to take all necessary accompanying measures at different levels.

This is important because without genuine commitment from the political authorities, it is very easy to fail. This was what happened in Cape Verde where an *Agrarian Reform Law* was adopted in a bid to reform the land regime by promoting direct farming and discouraging the practice of sharecropping. Thus, the State would expropriate lands that were not being used and give them to landless farmers who were then given user rights.

This law did give farmers more land even if it did not substantively transform the land regime. Several physical, technical, cultural and financial problems cropped up, and the law was revoked in 1993.

Other experiences are those of countries where reform has consisted in transferring powers to local organs that do not have equal importance, in these cases, reforms were quick to take effect.

This was the approach taken by Ghana and Nigeria, where, under the reform, considerable normative powers in land matters were given to local governments.

In Ghana, «in 1993, the Local Government Act (Law 462) provides for the creation of district assemblies and metropolitan assemblies that are involved in various domains. They have legislative authority to draft rules of procedure; issue planning and development permits ; and apply regulations and sanctions » (OCDE, Sahel Club and West Africa, Land Tenure Reforms in West Africa, Augusts 2006, P.31).

In Nigeria, the Land Use Act of 1978 places all lands in the territory of each State under the exclusive authority of the State Governor (with the exception of lands allocated to the federal Government or its agencies).

Here also, there is, in reality, a duality of land tenure practices, since customary authorities also set standards, even if it is true that they intervene more in land management, as we shall see later. The fact that administration of most rural land is subject to customary law, all matters pertaining to the content of laws, various changes and transactions are handled in accordance with customary law by the traditional chiefs. This is the practice in Northern Nigeria, particularly in Hausa areas.

In most of the countries that have opted for a land policy, for example Benin and Burkina, or those that have a land orientation law (Niger) or an agricultural orientation law (Mali), it is more difficult to apply implementing measures.

This is due, in part, to the many aspects that must be taken into account and, also, to the need to ensure coherence with other sector reforms, for example, decentralization.

Another aspect to consider is the fact that the pace at which implementing measures are taken often depends on the support that the various financial partners bring to the different processes. One cannot but note that the processes that are heavily supported are the ones in respect of which implementing measures are taken swiftly both at the different levels of government administration and locally.

Nevertheless, despite this general observation, it should be noted that significant progress has been made in these areas.

For instance, in the case of Niger, several implementing/supplementary texts to the guidelines to the rural code adopted by the 1993 decree have been taken. Among these are the texts that enabled the installation and functioning of the land commissions, the texts giving resource use rights to pastoralists, and texts on regulating productive use of rural natural resources.

In Mali also, one notes the recent Order defining the functions, composition and mode of operation of Local and Communal Land Commissions to accompany the Agricultural Orientation Law (LOA), which was adopted in 2006 and provides for the establishment of land commissions (Order adopted by the Council of Ministers on 23 January 2008).

However, Mali does not yet have a law on agricultural land tenure, an area expected to be addressed in the AOL whereas such a law would be immensely helpful in clarifying those areas that would fall within the competence of the land commissions.

5. 2: Ensuring the different institutions are really empowered to carry out their functions.

National and local institutions play a pivotal role in the implementation of land policies. The study of the situation in Africa shows that State institutions are charged with setting standards but they are also involved in land management, especially management of land resources that are part of the national domain.

Depending on the country, responsibilities for applying the land policy either fall to a single ministry or straddle several sectoral ministries. Each country has a different approach to land issues as a cross-sectoral issue: in Burkina Faso, the RAF was multisectoral from the outset and, is today an inter-Ministerial committee that continues to reflect on rural land use. In Benin, the strategy chosen is very much entrenched in the Ministry of Agriculture with alliances with the Ministry of Justice: there is no inter-Ministerial body that deals solely with these issues, coordination has not always been seamless and tensions arise regularly, particularly with the Ministry of Equipment, Housing and Urban Development.

In most countries in West Africa, the holding and management of rural lands is governed by customary laws with all the diversity of practices that exist within a given State and an array of local authorities. These practices very often give rise to interminable conflicts as a result of which, West African countries are increasingly putting in place concerted and participatory land management systems, especially at local level. At the moment, however, the situation varies greatly from country to country.

For example, in the countries where customary authorities have strong powers over land issues, as is the case in Ghana, what happens is that there is a double layer of land tenure and management. The system is, on the one hand, grounded in statutory law and on the other, in customary law.

State lands are administered by the National Land Commission and ten regional commissions whose administrative functions cover the customary sector (for, example, through the supervision of the Office of the Administrator of Stool Lands. The customary system applies to 90 % of lands that are not being put to productive use (OCDE, Club du Sahel et de l'Afrique de l'ouest, réformes foncières en Afrique de l'Ouest, August 2006). The two systems are applied in parallel, without any interaction between them, creating a source of conflict between rules that are underpinned by different principles.

Another example is that of Mali where the Land and Tenure Code institutes a National Domain comprising all lands situated on Malian territory, whether belonging to the State, to local collectivities or private individuals. (Art.1 of Order N° 000-027/P-RM of 22 March 2000). The national domain land is described as the property of the Malian nation represented by the state. In reality, however, the predominant feature of land holding and management is the sum total of land tenure practices rooted in African animist traditions and in the vestiges of Sharia inherited from periods of Arab domination of the North of the country.

In the case of Nigeria, rural land management is the sole responsibility of the local government, which is nevertheless assisted by a Local Rural land management advisory council. The Governor can give land to anyone with legal rights of occupancy for any purpose.

However, customary land holding is very strong with wide variations from one part of the country to another. In the north, where land is communal property, it is the traditional chiefs who determine the modalities for management of lands. (Arua and Okorji, 1998).

Faced with this plurality of institutions, certain countries have opted to set up specialized institutions, notably for the management of land matters at the local level.

5.3. Bringing land management institutions closer to users by setting up grassroots structures

In addition to the public administrations being modernized to enable them better fulfil their traditional functions, some States have embarked on reform that attempts to take into account all matters pertaining exclusively to land tenure. Institutions that specialize in land management have been set up as part of the global processes of introducing new momentum that will involve stakeholders more widely in providing security of tenure, in routine management, and even in setting new directions.

However, it should be noted that bringing land management institutions closer to users is expected to serve another purpose and that is to reduce the cost of providing tenure security. People in the rural areas no longer need to go to the major administrative centres to obtain land transaction papers, attestation of rights possession, or even land titles. These institutions are known by various names depending on individual experiences.

5.3.1 Experience versus the Rural Land Use Plan approach

In Benin, Burkina Faso and Côte d'Ivoire , countries which have chosen the rural land plan option, local ad hoc structures are also involved in land management under different appellations (COGEF and CVGPFR in Benin; village Land Management Commissions in Côte d'Ivoire, Lands Commissions in Burkina Faso). These commissions have varying functions. In some cases, they play an advisory role and have decision making powers, and can grant land titles, for example.

It should be noted that rural land use plans are a means of identifying and registering local rights (Gastaldi, 1998; Chauveau, 2003), using a parcelling approach. This is the so-called « pragmatic » approach, which, instead of starting off from the a priori legal definition of rights, focuses on rights that are recognized locally and accepted by all as conferring legal validation. A field visit is conducted, and using a combination of surveys, sociological and land surveys, a report of the findings is prepared and signed by the rights holders and their neighbors. This report is widely publicized and if no objections are recorded, a plot plan and a register of beneficiaries are drawn up. Where permitted by law, such rights may receive statutory recognition in the form of a land certificate. Rural land plans are part of the contemporary

approaches that people have been experimenting with for about fifteen years now in an attempt to provide security for rural producers. The plans also contain institutional arrangements that envisage the creation of local land management structures.

In Benin, for example, Law 2007-03 of 30 January 2007 establishing a rural land regime provides for new land management authorities whose members and functions are determined by decree. Such bodies are expected to be instituted at both commune and village level.

In municipalities, the land management committee is chaired by the mayor. Among its many powers, the committee can issue land certificates, which can ultimately be converted into deeds of property. The village committees have the power to control the final or temporary transfers which should be in written contracts.

Financed by the French Development Agency, the World Bank, and GTZ, the PGRN was meant to address environmental issues within the broader context of a water basin development strategy, and it also focuses on rural land conflicts. The Rural land Plan component as a response to land conflicts and tenure insecurity, was proposed by the AFD and the Bank, who had been financing that kind of strategy in Côte d'Ivoire since 1990. At the time, the « concept » had not yet been validated by practical experience, but this did not stop them from importing it, with a few new additions, such as field implementation by private operators. The same concept, initially introduced in Côte d'Ivoire to help identify free lands that could be taken over by young people, and later reconfigured with secure tenure in mind, was also imported by AFD in Burkina Faso, albeit on a smaller scale and in a specific format: tensions arose between the autochthons and migrants, whom the State settled there under AVV operations in the 70s and 80s (Jacob, 2004).

The fact that so many results are expected from using the same tool (or virtually the same) underlines the fact that secure tenure has many dimensions. However, it also shows a tendency to see the tool as a response in itself, and thus a process of « finding problems to solutions » (Naudet, 1999) emerges, whereby problems that fit available solutions are picked. Mapping villages and communities would be a valuable tool for preparing land use plans and for managing local disputes.

Titling, which this option of tenure security underpins, would also be useful given that it could play a potentially vital role in many different circumstances, within a rapidly developing land market for example, and it could also include people from outside the community or when rural areas are in danger of encroachment by cities, as is the case in Cape Verde.

At the same time, however, establishing titling arrangements can heighten feelings of insecurity and anxiety when the procedures allow politicians to intervene at the expense of certain individuals (migrants in Côte d'Ivoire,..) and to the advantage of other affluent citizens (urban elites in Burkina Faso). The other possibilities available should also be considered, such as recognition by the State of the different forms of land transactions, including simple written contracts. This exists already, to a certain extent, in Burkina Faso and Benin where the parties to a land transaction (Zongo and Mathieu 2000) must have their documents validated by the local authorities.

The Rural Land Plan approach appears relevant for providing security of both individual and collective rights in situations where land parcelling has reached an advanced stage. However, it seems to have no relevance in the Sahel where pastoral areas can be highly diversified and land rights are shared among a greater number of people.

5.3.2. Experiences involving orientation laws.

The two countries with experience in this area are Niger Mali, which have set up Land Commissions.

In Niger, membership of the land commissions provided for in the Ordinance establishing the Rural Code principles includes all those who play a role in land management at local levels and they have real powers to undertake management. Thus, by law, a Land Commission is composed of: the technical government departments at the local level; representatives of the municipal departments; customary authorities; and representatives of local civil society in the rural areas (Article 118 of Ordinance 93-15 establishing guiding principles of the Rural Land Code.).

Land Commissions are to be established at three levels: in the departments, and at commune and village levels. Installation of these commissions started in 1994, barely one year after the adoption of the orientation law, and they have been established in all the departments in the country.

It must be said, however, that these commissions depend mostly on foreign support to function properly as the financial resources allocated in the national budget or the budgets of the local governments are well below the amounts required for the operational needs of the COFO.

In the case of Mali, the land commissions envisaged in the agricultural orientation law are not yet operational but the Order establishing their functions, compositions, and mode of operation (January 2008) gives them responsibilities for customary land rights issues and dispute settlement.

These commissions are all and their members represent the administration, local collectivities, villages, fractions or areas, agriculture professionals and civil society.

In addition to these two cases, Guinea's Tenure and Domain Code also included provisions for establishment of land commissions. In 2001, the country adopted a Policy Paper on Rural land Tenure (Décret D/2001/037/PRG/SGG), to synergise actions in the land sector and its poverty reduction efforts.

The Lands Commission was instituted by Order 0/92/019 of 30 March 1992 establishing a Tenure and Domain Code in each prefecture and in each commune of Conakry,

The Lands Commissions (i) monitors that lands are actually being put to productive use; (ii) tries to conciliate the parties or advise on the amount of compensation due when lands are expropriated in the public interest; (iii) advises on the price that should be paid for buildings during preemptive acquisitions; (iv) gives its opinion on real estate transactions and any issues pertaining to the direction of the local government's land tenure policy. At each level, the commissions are made up: of four members from:

- the Ministry responsible for urban development,
- the Ministry responsible for agriculture,
- the Ministry responsible for the Interior,
- the Ministry responsible for mines;
- three members chosen by the prefect or by the Governor of the City of Conakry, and for the communes of Conakry, from local personalities recognized for their competence and experience.

The representative of the Ministry for urban development is the chairperson of the commission.

As can be pointed out in the case of Guinea, the land commissions' responsibilities are not limited to rural land only since they are set up even in the capital, in addition to which the chairperson is the representative of the ministry responsible for urban development.

The countries that have established land management institutions are shown in the table below and the last column « Observations » shows whether they are operational or not.

Table 4: Local land management institutions established in West African countries

Country	Texts	Institution for implementation	Observations
Benin	Law 2007-03 of 30 January 2007 establishing a rural land regime	<ul style="list-style-type: none"> - institution of a Rural Land Plan for each village ; - institution of Local land management Committees 	Currently being put in place
Burkina Faso	Law N°14/96/ADP of 23 May 1996, reorganizing the agrarian and lands sector	Local institutions for land management and administration	Operational in various forms under pilot projects in the country.
Côte d'Ivoire	Law. 98-750 du 23 December 1998 relating to the rural land domain	Institution of local Rural Land Management Committees	Operational
Gambia	State Lands Act (1990)	Institution of local Lands Administration Boards	Operational
Ghana	<p>Lands Commission Act (Act 483) (1994)</p> <p>Land Title Registration Law, 1986, (PNDCL 152)</p>	<p>Lands Commission Decentralized at regional level</p> <p>Land Title Registry which is not decentralized.</p>	Operational : Each region has its own Lands Commission coordinated by the National Commission
Guinea	Ordinance 0/92/019 of 30 March 1992 establishing a Tenure and Domain Code	Land commissions in each and each commune in the city of Conakry	These commissions are not active in rural areas

Mali	Law 06-40 establishing an Agricultural Orientation Law	Land Commission in each commune	Non-operational (implementing regulation adopted in January 2008)
Niger	Ordinance 93-015 of 2 March 1993 establishing Guiding Principles of the Rural Code	Institution of land commissions	Operational
Nigeria	Land Use Act (1978)	Institution of a local Rural Land Allocation Advisory Committee in each local government	Operational

5.4. Implementation of land policies is now dependent on decentralization

The quest to ensure coherence between the implementation of land policies and the implementation of decentralization has proved to quite delicate for the States that have chosen to undertake this administrative reform.¹⁰ In West Africa, decentralized management of land and natural resources, which is the only way to give back control of resources on their territories to rural communities and breaking with State monopoly on the land coincided with the introduction of administrative decentralization in the early 90s. « Constituting assemblies of elected officials, people with legitimate status and responsible for local affairs, and decentralization appears even more as a possible solution to the difficulties being experienced by village committees in carrying out the local “land management” role assigned to them. (Lavigne Delville, 1999).

The issues surrounding land and decentralization in all the sub-region’s countries, would appear to be a search to reconcile the legality and legitimacy of the powers of eminent domain (Rocheude Alain, 2000). Countries approached this in different ways but all arrived at the same conclusion : that there is need to recognize the rights and property of the State, the territorial collectivities and individuals and an absolute need to promote legitimate institutions to take charge of local land management,

A good example in this regard is that of Burkina Faso, which is preparing a national policy of securing rural land tenure that will « take due account of decentralization and its processes ».

¹⁰ Voir, entre autres, République du Niger, Haut Commissariat à la Modernisation de l’Etat (HCME), « Le foncier et la décentralisation : problématique du domaine des collectivités territoriales », août 2006 ; Ph.,La décentralisation administrative face à la question foncière (Afrique de l’ouest francophone rurale) *Working papers on African societies* n°39, Institut fuer Ethnologie und Afrikastudien (Mainz University)/ Das Arabische Buch, 1999, 18 p.

Rocheude Alain, *Cahiers d’Anthropologie du Droit* 2002, pp.15-43 Foncier et décentralisation, réconcilier la légalité et la légitimité des pouvoirs domaniaux et fonciers.

The country's general options for decentralized rural development are encapsulated in its « Letter of Decentralized Rural Development Policy (LPDRD)¹¹.

A similar in-depth study of the problems opposing land and decentralization was carried out in Niger by the Haut Commissariat à la Modernisation de l'Etat (HCME), which, having commissioned a study on the subject, organized regional forums and a National Forum to « give the floor to all those concerned by land management in the context of decentralization and build a national consensus on (i) the estate in land of the territorial collectivities, and (ii) measures to be taken urgently to draw up an inventory of government-owned lands and lands belonging to the land collectivities (iii) proposals for transferring powers of management of these state in land as a means to ensure secure tenure rights, productive use of and sustainable development of these spaces »¹².

In practice, alongside these in-depth discussions, within the institutional context, especially, local land management structures operate in concert with the institutions of the land collectivities, with varying degrees of clarity.

In Niger, for example, the decentralized land administration system set out in the law establishing the principles of the Rural Code 1993 easily fits into the functions of the local institutions set up during the decentralization process. Thus, mindful of the general powers assigned to the local bodies, and after these institutions had been effectively established, especially those for the communes in 2004, the Act defining the organization, functions and operation of the land commissions in the communes, villages and among tribes was passed. The elected officials are the members of the land commissions in the communes.

But, according to Gueye, Ouédraogo and Toulmin (2002), in other countries, coherence between the laws governing decentralization and those on land management and use of natural resources is less evident, and this sometimes creates ambiguities.

In some cases, Senegal, for example, part of the mandate of the local elected body is to assign land.

Similarly, in Burkina Faso, the CVGT can dispose of land and it is also responsible for more general development plans at village level.

In other circumstances, the decentralized local governments can meet at the same time and these meetings can be attended by the customary chiefs who exercise their formal roles in land administration (Ghana). Each model has different consequences for effective and responsible land management.

¹¹ Voir ; Ministère de l'Agriculture, de l'Hydraulique et des ressources animales, Comité National de Sécurisation Foncière en Milieu Rural, politique nationale de sécurisation foncière en milieu rural, Août 2007, P.17.

¹² Haut Commissariat à la Modernisation de l'Etat (HCME), Rapport of the national Forum on the thème « Le foncier et la décentralisation : problématique du domaine des collectivités territoriales », Niamey, Les 5 et 6 juillet 2007.

One key question concerns the extent to which there is a clear separation of powers between the local council and the land administration authority. Many people believe it is vital to have this separation in order to reduce the possibility of corruption by elected officials who might abuse their powers to allocate land to reward their political allies. Having control over the land and land allocation confers status and legitimacy on local authorities. ...' (Ribot, 1999) as they have power to control an important good which they could distribute to friends and clients.

5.5 The processes of involving the different groups of actors have not always been efficient.

All the envisaged rural structures are expected to associate the different categories of stakeholders so as to give the necessary legitimacy to the management bodies. In reality, however, the desired neutrality and objectivity has not always been a trademark of these structures. In other cases, the focus is on mobilizing actors whose expertise marks them out to act as « watchdogs », and this is particularly the case for land observatories whose experience has not always been conclusive.

5.5.1. The choice of actors or authorities mobilized is determined by the « decentralization » formula chosen.

The types of actors that are mobilized are different in most of the countries that were studied, and show national specificities. One constant feature however, is that the political authorities have a certain power, in one way or another, with regard to management of lands and natural resources, even though most have opted to decentralize land and resource management (despite the risk that land issues could become more politicized in certain areas because of decentralization and the fact that decentralization gives the local elite a stronger hold on natural resources.).

In countries like Benin, the organization structure goes directly from the State to the communes whose responsibilities include land management. Other countries register intermediaries to act between the State and the communes (a grassroots community comprising several groups); after that, there are the Cercles or Departments, which constitute the intermediary level that groups together the Communes, then there are the Regions, which is the level immediately below the State.

In certain Francophone countries, the decentralization of political authorities goes hand-in-hand with the deconcentration of the State administration. The setup of local units of administration, such as Prefectures and Sub-Prefectures, the deconcentrated services of technical ministries, and the representations of the Ministry of Land Administration is, by and large, adequate for the decentralized authorities. For example, in Mali, the Prefecture corresponds to the Cercle, while the Sub-Prefecture comprises two or more communes, depending on the post-colonial division into sub-divisions.

In the Anglophone and Lusophone countries, there is no dichotomy between decentralization and deconcentration because, and this is especially true for Ghana, Nigeria and Cape Verde, the territorial collectivities are recognized as the highest administrative and political authority in local affairs. Indeed, in very many areas, the technical services and administration are under the authority of the commune.

5.5.2. Mixed results by land observatories

In theory, a land observatory is a tool that makes it possible to observe and understand existing land tenure practices in areas that are representative and significant of the country, and formulate a new policy ; it is an instrument for reflection and for capitalization of information and experiences on land tenure issues (and, in theory, natural resources). Mali, in 1993-1998 and Chad in 2001¹³, tried out this approach , which resulted in failure for Mali. The country, however, took the strategy in a different direction by holding constant consultations with civil society and farmer organizations (CNOP), culminating in 2005 in the Law on Agricultural Orientation.

In Chad, the observatory is based on a cluster of institutions built around a steering committee presided by the Prime Minister and a principal operator, the University of Ndjamena. The observatory 's general objective is to help improve knowledge and understanding of land-related problems in order to support the development of relevant land policies and legislation.

The specific objectives of the OFT are:

- Contribution to the formulation of suitable land legislation;
- Capitalization and dissemination of information among the actors concerned;
- Contribution to the identification and utilization of the national expertise in the land tenure area;
- National and local capacity-building, in particular training of the various stakeholders in land tenure issues;
- Contribution to the development of teaching and research on land in the universities.

Despite the relevance of these objectives, very few results are available for the activities of the Chadian observatory.

5.6. Implementation of land policies is open to « transversality ».

A look at the relationship between the development actions in the rural areas and the principles of tenure security and land management in West Africa reveals that land issues are being taken into consideration on many fronts, notably the land dimension is being factored into the implementation of sectoral policies and accompanying measures.

13 Decree N° 215 of 24April 2001 establishing the National Land Observatory

5.6.1. Land policies are being implemented as part of sectoral policies

In some countries, land policies have been implemented as part of natural resource management, agricultural development programmes, environmental programmes or rural development programmes. Thus, in Benin, Burkina Faso and Niger, Rural Land Plans (Plan Foncier Rural) have generally been implemented as part of the '*Natural Resources Conservation and Management Programme*'. In the Gambia, the LADEP was one of the main projects for improving women security of tenure in land. In Nigeria the need to examine the land tenure problems of rural communities was to be undertaken as part of the National Agricultural Development Authority's mandate. In Niger, the *Project for the Integrated Protection of Agro-Sylvo-Pastoral Resources in Tillaberi –Nord Region*, the *Tahoua Rural Development Project* and the *Poverty Reduction Programme in Tillaberi and Tahoua Nord* were all natural resources management programmes that also addressed land issues. In other countries, land issues have often been pursued as a sectoral issue with little coordination or harmonization with other sectoral policies. Thus, in Ghana, the land policy initiatives have been pursued independent of the community based natural resource management programmes and environmental programmes. Land policies, and their implementation, should be considered as cross-sectoral and there is a need for closer coordination and harmonization between land policies and other sectoral policies particularly in the areas of natural resource management, human settlement development, agricultural development and environmental management.

Civil society participation in the policy formulation processes have mixed in the different countries. Many NGOs engage in the areas of natural resource management and other rural development and poverty reduction initiatives have often found themselves also engaged in land issues. In Ghana with the implementation of the Land Administration Project NGOs and CBOs engaged in natural resource management and other poverty reduction initiatives came together to form a Land Coalition to support the implementation of the project. Several Development Partners have also participated and supported the policy formulation processes and implementation in the region. The French Development Agency has been instrumental in the implementation of the PFR in Cote d'Ivoire, Burkina Faso and Benin, GTZ, KfW and DED have all been engaged in the PFR in Benin, the World Bank, DFID, GTZ, KfW, CIDA and NDF are all participating in the implementation of the Ghana LAP. Other institutions such as IIED have been participating in the desertification control programme in the Sahel. These institutions bring a wealth of knowledge and valuable international experiences to support Government initiatives but it is important that their actions are driven by local demands, and that they provide support to local initiatives which will increase ownership of the intervention.

5.6.2 Resolution of land issues taken into account in the accompanying measures in other key policy sectors

The ways in which land is used have a direct bearing on poverty reduction, economic development, public administration and local government, the private law of contracts, family law and rights of inheritance, environment law etc ,..... Considering the possible impact of a reform of land policy, a multidisciplinary approach is needed to make sure that due consideration is given to the many implications of the reform programmes and the needs of the different parties involved.

Some agrarian or land reforms are implemented on their own, others are accompanied by several laws covering different areas (decentralization law, pastoralism law, environmental law, etc).

An example of a country in this first category is Togo which, after its Order n° 12 of 06 February 1974 establishing agro-tenure and domain reform, has not enacted any law (apart from two decrees in 1977 and 1978) ; and this was a country that had planned to launch a process designed to culminate in the adoption of a new Land and Agrarian Code that would provide a new framework law on the management and protection of the environment, and encompass every aspect of the environment, including land tenure, as well as a new Forestry Code and a new Mining Code.

The second case (integration) is illustrated by countries such as Benin, Burkina Faso, Niger, ... : whose approach is based on the delegation of land management to local authorities (transfer of powers to communes, local communities etc ...) . Additionally, an attempt is made to accompany land reform with laws from other fields that interfere with land reform. This policy is accompanied, or preceded by, a series of legal reforms. For example, Benin adopted five laws on decentralization : (Law 97-029 of January 1999 defining the organization of communes) between 1999 and 2000, reorganizing the local collectivities, giving them the power to possess their own estate lands, develop the territory and allocate lands ; a law on the environment was voted in 1999 (Law 98-030 of 12 February 1999 establishing a framework law on environment). Burkina Faso also adopted several laws (Law 006/97/ADP of 31 January 1997 establishing a Forestry Code, Law 002-2001/AN establishing a water management orientation law, Law 34-2002/AN of 14 November 2002 establishing a pastoralism orientation law, Law 055-2004/AN of 21 December 2004 establishing a general code for territorial collectivities). Also in Niger, following the logic of the code's underlying principles based on the idea of complementary texts, the texts of several sectoral laws were adopted in the wake of the framework law. Among these were the 1974 law establishing a forestry regime, which was revised in 2004, the law establishing a water regime, adopted in 1997; the 1998 law establishing a fishery regime, and the Order establishing a rural cooperatives regime

5.7 Ensuring adequate mechanisms for the management of land conflicts

In all West African countries, resolution of land disputes is tackled at different levels, depending on the type of conflict and their gravity. A quick categorization of the type of conflicts is undertaken and the ideal authorities to manage or resolve are identified.

5.7.1 –Management of minor disputes between individuals

Land disputes between rural users are often settled at the local level, using traditional means of settlement and usually by customary authorities. Such matters are referred to the competent judicial authority only when they cannot be solved at the local level.

In Niger, for example, disputes between rural users are settled based on the law that determines the organization and powers of jurisdictions and the provisions of the law establishing rules of procedure before jurisdictions hearing civil and commercial suits.

However, before judicial procedure can be instituted, an attempt must have been made by the customary authorities to resolve the conflict. The outcome of the conciliation by the customary authorities is recorded in a report of the proceedings.

It should also be noted that Niger has just added another innovation to its judiciary setup with the introduction of a specialized judiciary : rural land tribunals. « Rural land tribunals” handle: - matters pertaining to ownership or possession of real estate and the rights that derive from them, where the dispute is about a building registered in the rural domain;

- matters concerning ownership or possession of customary real estate and the rights to be derived from them, ownership of farms or plots that are not immatriculated or registered as rural land ;

- matters pertaining to controversies about rural land resources» (Article 88 of Law 2004-50 defining the organization and powers of jurisdictions in the Republic of Niger).

However, it should be noted that, despite this manifest desire to provide local jurisdictions to handle land matters, no effort is being made to even begin putting these land tribunals in place.

In Mali, the decree establishing the functions, composition and functioning of the land commissions entrenched in the LOA gives these structures powers to conciliate in agricultural land disputes. Once these commissions are installed, their powers will include resolution of disputes between parties in a land dispute. The decree makes it mandatory for disputes over agricultural land to be taken to these commissions before being taken to formal courts. Where the conciliation efforts are successful, the commissions prepare a conciliation to be certified by the judge.

5.7.2 Management of communal land disputes

Demographic pressure and environmental degradation are fuelling conflicts between entire communities or categories of land users. One such conflict is the recurrent disputes in the Sahelian countries between farmers and herders, which are now assuming alarming proportions because it is affecting the normal cycle of pastoralism. Preventing and managing conflicts of this nature requires having mechanisms for consultation and conciliation, and this will involve raising awareness among rural actors and strengthening their capacity to manage land-related crisis.

In this connection, the Praia Declaration of 1994 identified the following priority lines of actions :

- 1) support to civil society as regards NRM ;
- 2) support member States to elaborate national legislation to be applied at local level ;
- 3) mainstream gender into NRM policies ;
- 4) strengthening capacity for information, sensitisation and education about land tenure and NRM issues in the Sahel.

5.7.3 Management of land conflicts that have sub-regional consequences

West Africa is experiencing land conflicts which are deeply-rooted in socio-political factors and have seriously tragic consequences for the entire region. Examples are the war in Côte d'Ivoire, following the promulgation of the land tenure law in 1998, and those in Sierra Leone and Liberia. To these can be added conflicts which may be considered to be more political, such as the armed rebellions that go as far as threatening the territorial integrity of the country, as is the case in Northern Mali and northern Niger. Those who take up arms against the State are often protesting about problems concerning management of natural resources, and the land sector can be excluded a priori.

In any event, these are conflicts that may be impossible to resolve using national mechanisms since these may prove inadequate given the violence they spawn and the fact that the victims are likely to be distrustful of all acts by the national institutions.

As the heads of State of the sub-region were being called upon to intervene in conflict resolution, either directly in their personal capacities or indirectly through ECOWAS or UEMOA, they initiated mechanisms for the prevention and management of conflicts , even internal ones. In 1999, ECOWAS instituted the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security, a system through which the Community organs act to prevent crises from degenerating into conflicts.

To that end, according to the protocol establishing the mechanism, "**Member State in crisis**" refers both to a Member State experiencing an armed conflict as well as a Member State facing serious and persisting problems or situations of extreme tension which, if left unchecked, could lead to serious humanitarian disaster or threaten peace and security in the sub-region or in any Member State affected by the overthrow or attempted overthrow of a democratically elected government ».

6. LESSONS LEARNED

These are the lessons that have been learnt with regard to providing security of tenure, ensuring transparency in land management improving land administration, promoting key changes and improving access to land even in conflict and post-conflict situations.

6.1 How land policies are taken into account in legislation : (experiences in policy formulation).

We have said earlier that, beginning in the 90s, several of the countries that we studied have been making attempts to reform their policies/laws relating to land tenure and natural resources, following the clear failure of past policies and the manifest will to do away with the fuzzy legal mix inherited from the colonial period. The stated objective is virtually the same everywhere : to ensure that the policy formulation process gives greater consideration to customary practices in terms of laws and regulation. New laws and policies incorporate local rights to natural resources, and the countries also include in their sectoral legislation (forestry, water code, and pastoral legislation) the legitimacy of local practices and the possibility of delegating management of resources to local authorities. Depending on their different country circumstances, some States have made more progress than others in achieving their stated objective of designing domain land and land policy and/or sustainable and applicable law(s) (Côte d’Ivoire, Togo, Benin, Burkina, ..).

Only Ghana (1999), Guinea (2001), Sierra Leone (2005) and Burkina Faso (2007) have land policies ; in Ghana, the LAP is now used to formulate new laws. Senegal and Mali have prepared agricultural orientation laws.

It is therefore difficult to say how land policies are being taken into account in land tenure laws. One can however inform on the discrepancies between the formulation of projects such as the PFR and GRN or land-use interventions and the way that they are really reflected in legislation. .

The extent to which land policies, land-use interventions or the outcomes of certain projects (PFR, GRN, ...) are being taken into account in legislation depends on several factors and varies from country to country :

- the challenges that reforms need to address or the context surrounding elaboration of the laws (emergency ? conflict ? socio-political upheavals ? strong urging or conditionalities of donors?...)
- the tenure security tools and options chosen (titling and registration ? redistribution of State lands ? policy instrument such as the RLP with mapping ? the land observatory approach as in Mali ? A combination of approaches? etc.).

6.1.1 The legislation preparation process : different challenges

Certain countries have had to reform their law to ensure coherence or conformity with more liberal economic policies in the structural adjustment plans of the 80s ; for example, in 1991 Burkina Faso, at the instance of the World Bank, introduced the notion of « private property » in the reorganization of its agrarian land (RAF), effectively removing the “revolutionary” content of the Sankara era during which it was elaborated in 1984.

Other countries opted for reform in response to socio-political events. Mali offers an example, having set up its Land observatory following a recommendation in 1993 by the national conference on rural land tenure, which followed the Revolution of 26 May 1991 (it opted for liberal democracy and decentralization) and rural mobilization (Djiré, 2004 ; 2005). In Benin, also, democratization enabled the country to experiment with recognition of local land rights. Law 2007-03 of 30 January 2007 establishing a rural land regime is a direct result of the PGRN projects, followed by PGTRN which tried out the Rural Land Plans. (Lavigne Delville et al, 2003).

For others like Côte d'Ivoire, land reform provided an opportunity to address pressing socio-economic problems (settlement for young modern farmers through the RLP) within a context of conflict between indigenes in the West and Baule migrants just before presidential elections were due to take place in 2000. Although it explicitly recognizes customary law, Law 98-750 individual immatriculation and private landed property and its main thrust was to deny property rights to non-Ivorians, introduce « customary » land certificates, immatriculation of lands...

6.1.2 Tenure security :tools and options

All strategies to provide security of tenure are in accordance with the participatory approach, involving consultations nation-wide or limited to a few stakeholders. A number of countries have only one option and others use a combination (Benin).

Sadly, persistent discrepancies continue to be noted between legislation and the realities on the ground (PFR and the law in Côte d'Ivoire, the RAF in Burkina Faso, the lands redistribution policy in Mauritania, ...).

In most of the countries wanting to undertake reform of land tenure and natural resources, an incomplete legal and regulatory context for land policies (agricultural land) is to be noted as well as a fledging legal and institutional framework for natural resources.

When certain laws reach implementation stage, any earlier announcements made in the projects or policies prior to the preparation of the law are quickly forgotten. For example, the law on rural domain land (Law N° 98-750 of 23 December 1998) , unfortunately, takes no account of the outcomes of the Rural Land Plan (deviation, dérive, flaws).

People continue to bear the brunt of the conflicting situations that surround issues pertaining to rural land , urban land and natural resources.....

6.2 Lessons learnt from the implementation of land policies and/or laws

1. Implementation of land policies and/or laws requires political will and, more especially, it depends on the level of participation of partners – sponsors or donors (generally, when the funds run out, the project stops). The question here is : how can we develop sustainable « endogenous » mechanisms for implementing land policies?

2. Some countries' land tenure policies are integrated into their policies for other sectors, agricultural or environmental policy, for example. In such cases, land tenure issues are neither treated explicitly nor comprehensively. Consequently, the problems, too, are not resolved in their entirety. Nigeria has a national land development policy which deals with land tenure issues in rural communities, Guinea has an agricultural development policy whose aim is to promote agro-industry in the private sector, and Gambia touches on a few land-related problems in its environmental management law, the same as Togo....
3. Land administration procedures marginalize the poorest and benefit certain elites (Liberia)
4. Leaseholds and titles are not the only means by which people can have access to land. A huge panoply of institutional arrangements exist ; people can acquire land by taking out loans, or through land rental or sharecropping arrangements, grants and bequests ...(Amanor 2001). Such mechanisms are often very significant for the disadvantaged groups. More equitable results would also be obtained by finding a mechanism that would make such arrangements more secure (Lavigne-Delville et al 2002).
5. Good land governance is a vital issue in the implementation of land tenure policies.... It should be decentralized.
6. Promoting new policies and legislation is useful but not enough to improve access rights to land and land ownership for women. Customary systems do not adequately guarantee secure tenure for women :women use land but cannot inherit land, transfer their rights and, sometimes, do not even have access to the land because they are women and must pass through a man. Yet, women are major agricultural producers! In every single one of the countries that we studied, the rights of women are not recognized.
7. Well-articulated, innovative, pragmatic and creative approaches are needed when addressing most of the local land tenure issues. For example, « despite their numbers and their positive contributions in concrete agrarian situations, the different forms of indirect farming seem to be largely underestimated in discussions on land tenure issues, which usually the focus on ownership and the right of appropriation» (Le Roy, 1998 : 87). These indirect forms of land access involving delegation of farming rights to a third party are frequent ¹⁴ in systems of access to land and resources but are rarely taken into account. They date back to traditional forms of borrowing for an undetermined period and do not involve the more monitories arrangements such as land rental or sharecropping.
Countries need to draft laws that are suited to their national and local circumstances.
8. The dichotomy between positive law and rural land tenure system is not operational. There is a need to set it aside and start by recognizing the existence of rights and institutions that operate at rural level irrespective of whether or not the State plans, ultimately, to transform and integrate them within a public system of land management.

¹⁴ Ghana, Benin, Burkina, Côte d'Ivoire, etc.

9. Decentralization laws and laws concerning landed property and the use of natural resources are not always compatible, and these will need to be harmonized in the countries that have embarked on decentralization. In Ghana, for example, there are land laws, such as title registration, in which local authorities do not play any role. Their role is to control aspects of development, issue licenses for land development but only in relation to the lands register. In Niger, it is not really clear what the relationship is between the between the land commissions (communal bodies or non-communal bodies ?) responsible for titling and the institutions within the collectivities. (2001 Law on decentralization, introduction of communes in 2004)
10. Establishing rural institutions appears to reduce the cost of secure tenure.
11. Privatization of land tenure through titling and matriculation is indicated in certain countries. Caution should be the watchword (the countries must ensure that no one is dispossessed or stripped of their rights in the registration process). A range of different forms of secure tenure should be proposed so that they can choose the one best suited to their needs, using locally accepted and practicable procedures, without making immatriculation the only procedure through which a substantive entitlement can be recognized.
12. The State is omnipresent in land tenure and this must change.
13. It is necessary for the State to recognize customary or local rights.
14. It is vital to build capacity for land tenure reform,
15. There is a compelling need for a paradigm shift as regards the management of pastoral lands and delimitation of grazing areas.
16. Common areas should be protected.
17. Land tenure is a crosscutting issue : inter-sectoral cooperation to elaborate and apply land policy is crucial....
18. It is important to explore alternative systems of documenting land tenure : harmonization, standardization of « papers ».

7. NEEDS ASSESSMENT: CHALLENGES AND GAPS

Everywhere, there is a need for stabilization of agreements between those involved.

In West Africa, land issues appear crucial : in a context of growing pressure on resources, people in rural areas need to have enough tenure security to enable them produce effectively. Access to rules and procedures, and control of land and resources are determinant issues both for promoting market-oriented agriculture and for combating poverty, or even for helping to ensure peace within a context where competition for resources within a framework that is not sufficiently clear helps to breed conflicts. The creation of local governments again raises the question as to which authorities should handle land management. The last decade has seen several changes in the way that land tenure issues are presented and the responses that are possible in terms of land policy and interventions in the field.

7.1 Challenges

1. Harmonization of texts towards a better sub-regional integration remains a major preoccupation : is preparing a regional or sub-regional Charter the answer ?
2. Effective decentralization of lands management administration (establishment of effective institutions, simple, inexpensive procedures) : the case of Niger shows that, where this is done effectively, the procedures for obtaining recognition of customary land rights are simple, and can take place at rural level at little cost. However, studies¹⁵ show that there is often little coherence between laws regulating decentralization and those that regulate land ownership and the use of natural resources ; a situation that creates serious ambiguities, particularly in countries where decentralization is relatively recent.
3. Securing access to lands for vulnerable groups (women, migrants, refugees, repatriated people, ethnic minorities, ...) in « normal » as well as in conflict –emergent (CI, Liberia, Sierra Leone, ...) and post-conflict situations (Chad) : how to ensure equity of access to tenure and renewable resources? Which authorities should be involved at the different stages throughout the entire process? How should the proliferation of “land markets” be managed ? What types and levels of formalization should be disseminated to provide tenure security ?
4. The future of family agriculture : despite all the tenure and legislative reforms implemented since the 90s, there is little or no tenure security at present for the vast majority of family farms. What we are seeing is a large-scale breakup of family farms (Amanor 1999) with, paradoxically, the increasing appearance on the land scene of « new actors » such as return citizens, returning exiles, and agricultural entrepreneurs (urban elites.)
5. Some family farmers are feeling increasingly vulnerable because of the ongoing drive to privatize lands and because of conflict situations For example, the land tenure system in Liberia is disadvantageous to young people who have, historically, been particularly marginalized in terms of access to land resources once they do not fit the predominant profile of being farmers, (or where they are low-paid laborers) or if they have no relatives in the capital (Monrovia) that would give them access to land ownership. The situation of women and migrants is even more precarious because, for them, access is possible only through a parent or a sponsor.
6. Women’s access to land and land ownership : although the principle of gender equality is widely accepted in land laws and policies, a few countries like Mauritania and Senegal have not translated this principle into legislation. Rights are tenuous and poorly articulated. Even where such laws actually do exist, as in Côte d’Ivoire, they are not respected or applied. Legal reforms seeking to improve women’s rights are not likely to change their situation in rural areas if parallel measures are not taken to promote and raise awareness of such legal reforms, and to provide support to women rights activists. Men and women traditionally continue to observe this pattern of roles and relationships

¹⁵ Gueye, Ouédraogo and Toulmin, 2002

(Koné, 2003) instead of applying their formal rights, and the women lack the confidence, the information, the experience and the resources to obtain what is available to them by law. Under some customary rights systems, women only have access to the land, accommodation and property only by being daughters, mothers or wives. Very many women thus find themselves in a position of constant legal insecurity where they stand to lose their homes, lands or means of livelihood if their marriage breaks up. Recognizing rural land rights only affirms this insecurity.

In most collectivities in Western Nigeria, women cannot legally own lands and are denied inheritance rights. Men have control over land and take all decisions about its use and development..

Recognition and security of local rights and rights over natural resources : efforts are indeed being made to recognize local land rights in countries like in countries like Benin, Côte d'Ivoire or Niger, ...- others, such as Ghana, have even incorporated these into their laws but many countries are still lagging behind in this process. Mali and Senegal are experimenting with local conventions for the management of natural resources.

Promoting rights or land rental contracts :

Transparent and effective management of natural resources (mines and forests, ...) : inequalities account for much of the social and political tensions in West Africa and make it easy for armed groups to find supporters among communities. For many years now, Nigeria's oil rich southern delta region has been the theatre for several clashes between the indigenes of the area, rebel groups, the Army and the Police which have left many dead ; the causes are the people's anger at the poverty, pollution they have to live with Wealth from oil has not translated into better living standards for them. In northern Côte d'Ivoire, since September 2002, a rebel faction controls a major diamond mine a similar situation played out in Sierra Leone for about twelve years, the most violent clashes were around the diamond mines. In Liberia, in addition to diamond, the war was also about access to timber and iron .

This form of management would help fight poverty and inequality : every effort must be made to spend a large percentage of the wealth from natural resources on social services and national development project that will benefit local communities directly. In Niger, the law on mines (Law n° 2006-26of 9 August 2006) allocates 15% of earnings from the mines sector to local communities in the production areas where (85% of the national budget) to develop these areas. Unfortunately, the implementing regulation has not been prepared and this provision is therefore not yet operational, and this may to be used as a pretext to stir up social and socio-political tension.

7.2 Challenges, bottlenecks

7.2.1 Long, drawn-out processes

Land reform processes tend to be long and interminable. In Côte d'Ivoire, the process began at the end of the eighties and the law was voted ten years later. The process in Benin lasted from 1991 to 2007. In Burkina, the process began in 1984 (RAF) and was resumed in 1991 and 1996 and 1996 and is still ongoing, the same situation as for Cape Verde (1983, 1993), and in Nigeria the process has been ongoing since 1991.

It takes an equally long time to implement the laws. Each country has its own explanations for these delays. In cases like that of Côte d'Ivoire, there was a long period between 1998, when the law was passed and its implementation in 2007, a delay attributable to socio-political events : coup d'état in 2002, war in 2002

7.2.2 Gaps/censures

Some land tenure reforms fail to take note of cross-border or regional dimensions of managing access and development of lands and certain natural resources.

- Use and management of water resources : some States attempt to redress the situation many years down the lines (Mauritania with law n° 2000-044 of 26 July 2000 establishing a pastoral code, Guinea with law 051/CTRN of 29 August 1995 instituting the Pastoral Code, Mali with law 01/004 of 27 February 2001 establishing a pastoral charter, ...).
- Cross-border transhumance : In Benin, for example, the seasonal arrival of herders and their cattle from Burkina and Niger is a major problem. Conflicts between indigenous farmers and migrant herders are frequent and the authorities in Benin have been had to take often draconian measures¹⁶ (conflicts between Mauritania and Senegal, cross-border management (Côte d'Ivoire-Burkina with the GEPRENAF project)...

Population mobility (the issue of refugees (refugees or otherwise), in conflict or post-conflict situation. The rules and laws governing ways of using land in most of the reviewed countries do not reflect changing circumstances. Yet, where contradictory rules coexist and people have a chance to pick and choose the ones that that most serve their own interests, tensions may arise.

Mobility as a result of war (return of refugees): this is a problem in Côte d'Ivoire, Sierra Leone, Liberia, and Burkina Faso...

War has forced people to abandon their lands. What will happen in the post-conflict period when these people return and find their lands occupied ? Côte d'Ivoire plans to implement its land tenure laws but is yet to incorporate an amendment to this effect even now that the country seems about to emerge from crisis. Liberia and Sierra Leone have « ended » their own wars. In countries that have gone through armed conflicts, civil wars and mass displacement of people,

¹⁶ Benin has threatened many times to close its borders to breeders and their transhumant livestock from Burkina.

issues pertaining to fair and equitable use of land should be paramount in reconstruction efforts, in the interests of peacebuilding and of establishing the ideal conditions for economic recovery. The World Bank, USAID and many other institutions or international agencies are working on this issue in Liberia ; this is one of the priorities of the country's new president. The FAO also has provided technical and financial assistance to help the country define a forest management policy that will put control over forestry resources back in the hands of the forestry development authority.

According to the « Document revue nationale Burkina Faso » (2003), the return of people repatriated from Côte d'Ivoire, which began with the events at Tabou in 1966 and was accelerated with the Ivorian crisis in 2002, has had an effect on land issues in Burkina. At a meeting, organized on 31 May 2003 by Oxfam Inter, and moderated by GRAF around the theme « *The reintegration of Burkinabés repatriated from Côte d'Ivoire and their Access to Land in the Communities of Reception* » the following major issues were identified :

- the massive nature of the return and settlement of the repatriates involve a
- modification of the demographic structure to the detriment of the local
- communities.
- The need for clarifying the conditions of access to land; to specify the
- contents, direction and implications of the palaver report sometimes to the
- benefit of some local support organizations.
- the support and assistance actions are exclusively reserved to the
- repatriates; the exclusion of the autochthons can involve a deterioration of
- inter-community relations.
- the degradation of natural resources related to the anarchistic occupation of
- banks and biodiversity zones.

On the subject of mobility through « classical » immigration : some countries should take due account of the socio-demographic configuration before drafting their laws. People are constantly migrating from the arid Sahelian regions to the coastal regions where there are better opportunities. These migrations affect the use of land and agricultural production, and also generate political tensions.

7.2.3 Poor dissemination of texts

Poor dissemination of texts leaves room for subjective interpretations by people competing for land and looking to promote their personal objectives and the lack of appropriate information encourages some communities to adopt anticipation strategies, based on their understanding of the law and their perception of the way their specific interests might be served. The interpretation of texts and anticipation behaviour change certain social configurations, weaken certain practices and legitimize others.

The population needs to familiarize themselves with the new laws and procedures put in place for their benefit and these should be circulated and disseminated quickly in a manner that will be easy for them to understand. It is important for any proposed legislation to be published in a form and a language that will make them accessible to the entire populace and this is essential to ensure that illiterates also can understand their rights.

Awareness raising about the law only started ten years after it was voted, with everyone applying it according to their own interpretation. Most Ivorian rural folk say they have never been informed about the content of the law but a few are aware of some of its Articles and use them to their advantage : the fact that non-Ivorians cannot buy land is widely used to justify the withdrawal of lands , even though the law actually gives user rights to foreigners already using the land. (Chauveau, 2002 ; 2003 ; GIDIS-CI, 2005).

7.2.4 Texts are incomplete or contradictory

In some of the countries that we studied, the following observations were made :

- legal frameworks without an explicit policy, as in Benin (experimenting with several tenure security options and where Law 2007-03 dated 30 January 2007 establishing a rural land tenure regime)
- internal contradictions or provisions that raise implementation problems that are virtually impossible to resolve, as for example, the obligation in Ivorian law for all land certificates to be published in the National Gazette, and all immatriculations three years thereafter, which would involve millions of plots. The Ghanaian State interferes in the management of customary lands.
- incomplete statutory provisions where the necessary Orders are not enacted.

Partial conclusion

All these gaps and problems have left the people with several « tenure security pathways », to choose from and they are left to find their way and try to stabilize their position.

7.3 Needs

Needs observed are of several kinds. Some have to do with tools and approaches (formalization, instrumentalisation, cartography, ...), others concern the people involved (gender, donors, ...), while others relate to the texts ...

7.3.1 Innovative tools specific to the context of « imperfect land commercialization»¹⁷

Transfers of land, whether between indigenous owners and migrants or even between migrants are increasingly being done in exchange for money. Some of these transfers are considered as « sales ». However, as Mathieu, Bologo and Zongo (2004 : 1) have pointed out in Burkina Faso « these transactions are ambiguous, not least because the meanings attached to the word exchanged «property» are far from clear, unequivocal and the same for all involved, mainly because the transactions are in most cases, hidden, and, very often, they are done without the terms “sale” and “purchase” being used publicly and they are hardly ever backed by legal proof of the transaction or of the property for the buyerwhat we have here are “sales without markets” or as economists call it, a highly problematic and “imperfect” market, or one could even call it an “emerging” market. According to Chauveau et al (2006 : 7), the practices of this market have deviated from both customary land principles and legal land tenure texts as they are understood and accessible locally”.

Commercialization of lands and the miniaturization of tenure relationships are taking place at the expense of a section of the population, i.e. the vulnerable social groups, essentially women, some young people, migrants etc.. ... Land « markets » sometimes lead to ineffectiveness and inequality because of speculation and the acquisition of rural lands by entrepreneurs from the cities or from abroad, and they disrupt sales to these vulnerable groups.

7.3.2 Recognizing the legitimacy and dynamics of derived rights

Granting legal recognition to derived rights does not mean defining what contracts should contain but rather « recognizing the contractual nature of the arrangement made between the two parties, and defining the conditions and procedures that would make such an agreement concerning the land to be recognized by the State as being valid» (Lavigne Delville, Toulmin, Colin and Chauveau, 2001).

Studies (2002) on the indirect farming or derived rights (Koné for Côte d’Ivoire, Edja for Benin, Amanor for Ghana, and Paré for Burkina Faso) show that in contrast to « sales » of land, rental markets and secondary rights pose fewer problems. Where the contracting parties can offer adequate guarantees of security, rental markets provide users with a flexible means of augmenting or reducing the number of lands they need without having to reassign their rights permanently. Rental markets make land access easier for the poor and offer them a partial or temporary withdrawal from their farm without losing ownership of their land.

Delegation of land rights « through agricultural contracts » is now seen by economists as the best means of ensuring a more efficient distribution of landed property, as the possible rigidities that can crop up in buying-selling can be avoided, (an answer to the imperfect market and the attendant risks). It is also equitable (because of the inverse relationship between use-productivity which benefits family farms) distribution of land as a productive resource. » (Colin, 2001).

¹⁷ Leroy, 1997.

7.3.3 Secure tenure for marginalized groups or equity in access to land and natural resources

Among these groups of the marginalized or « those excluded from land tenure » as they are called in the Praia Declaration, one may cite mainly women, herders, migrants, refugees, Obtaining greater access to funds and natural resources for poor families, minorities and vulnerable social groups is an important means of expanding the economic opportunities available to them. Direct and guaranteed access to land is an essential basis to their survival and growth. Fighting unequal land distribution, making the land « market » more accessible, and helping users protect themselves against the degradation of their lands should be a priority for achieving sustainable management and improved living conditions.

7.3.4 Formalization, a requirement for sustainable lasting tenure security through « papers »

Documentation (« having papers ») is of utmost importance in most of the reviewed countries. These papers, signed between « contracting parties » are sometimes validated by local customary authorities or administrative structures, with witnesses of both parties present. This practice is a hybrid of local norms and legal procedures (Koné and Chauveau, 1998). It not only affords people a chance to record their transactions but also to secure them. They do not hesitate to brandish their « papers » (Koné, Basserie et Chauveau, 1999) when necessary.

It might be worthwhile to encourage people to obtain papers (Lavigne Delville & Mathieu (dir.), 1999) because contracting parties can rely on local procedures and are able to solicit or use local systems of tenure security arrangements.

7.3.5 Adoption of transregional texts

Although vast differences exist between systems of production, agro-ecological contexts, socio-demographic characteristics and economic development levels and options, the need to adopt laws that go beyond the mere national framework and state borders (pastoralism, transhumance, natural resources management, ...), and ensure that they are applied is real (charter ?). Provision of guidelines at regional or sub-regional level is another, and especially important need, to encourage an initiative on land policies.

7.3.6 Active involvement of donors, institutions and organizations, ...

Donors and multilateral organizations are helping to drive the processes of agrarian and tenure reform and reform of natural resources in the countries studied, with or without conditionality's. Others have generally concentrated on promoting delivery of property title certificates (World Bank) and land information systems (MAE and ADF toward the RLP). Others provide grant aid towards the costly phases of reform preparation and implementation. Still others, such as the European Union with the CLAIMS 10 Project, help to promote research on rural land use in these countries.

Such collaboration should be continued....

7.3.7 Action research

Researchers networks should be involved in updating land information at national and sub-regional level (in Côte d'Ivoire, there is the Laboratoires d'Etudes Foncières (LEFCI), in Burkina Faso, there is the Groupe de Recherche et d'Action sur le Foncier (GRAF), ...). Networking between West African researchers would also help to strengthen existing capabilities and some such networks, such as LANDNET West Africa, already exist.

These initiatives should be encouraged.

7.4 Financial resources

To address the key challenges and gaps associated with land policy formulation and implementation, the restructuring and capacity building of institutions and the use of ICT and computerised land information systems in the region will require substantial financial resources. Current land policy initiatives have largely been supported by the donor community as with Ghana's LAP and the PFR in the francophone countries. This support at the initial stages is very important as it provides the initial capital needed to quick start the process. It is also important that development partners consider their engagement in land issues in the region on long-term basis as a critical mass of interventions is required to build capacities, change attitudes and build the land administration infrastructure. Ultimately however, local resources should be found to ensure long term sustainability. In Ghana debate has started over the possibility of establishing a land fund to provide long term financing for land administration to meet the cost of compulsory acquisition, comprehensive mapping of the country, demarcating and registering allodial boundaries, maintaining computerised land information systems that is linked to the national spatial data infrastructure, etc.

Partial Conclusion

In the countries studied, the colonial domain model is still in use with immatriculation as the sole means of owning private property : unregistered lands are part of the State private domain, local rights are more or less recognized, sometimes merely tolerated . Immatriculation, first in the name of the State, and then to an individual involves a procedure that is often as arduous as it is costly, but is supposed to guarantee recognitions of rights and solid land titling. Countries like Liberia continue to operate a nebulous legal mix. In northern Nigeria and Senegal, Islamic law applies.

The challenges that land reforms set out to address are very different ; they reflect the national specificities and trajectories, the vestiges of past dependency and anteriority, and the linkages between land reform policy and global challenges.

To be effective, land policy must embody of rules, authorities and tools that are both practical and coherent; considered to be legitimate and legal, and offering solutions to the different problems facing the community, and minorities and other marginalized groups.

8 CONCLUSION

8.1 Main Conclusion

The above analyses show clearly that, firstly, that policies, regulations and land use practices are very diversified in West Africa.

Sub-regional institutions have been at the forefront of efforts to mainstream land tenure issues into the region's economic and social development. CILSS, ECOWAS, UEMOA and other bilateral and multilateral cooperation organizations within the broader question natural resources management.

Additionally, all research point towards the following major observations :

- Tenure security and good land management are key conditions for development and for poverty reduction in the West African region, especially in rural areas ;
- Ensuring security of tenure appears essential from several points of view :
- it seems to be absolutely essential for the success of activities in connection with the management of natural resources and environmental preservation ;
- it is a key condition for achieving investments and increase production;
- it contributes to the preservation and consolidation of social peace.

In several States, innovative reforms have been introduced seeking to address the challenges identified, but they have often come up against various implementation problems , mostly in the form of delays in taking measure to operationalize and establish coherence between tenure reforms and other reforms and sectoral policies.

At the end of this evaluation of land policies in the sub-region, the lessons learnt, suggest that :

- there is a need to clearly define the status of the different users of the land and those concerned by land issues, such as farmers, stockbreeders and fishermen ;
- there is need for a set of national directives on land management that would be founded on social justice ;

Political recognition of the principle of adopting a participatory approach when making decisions about and implementing policy on natural resources management.

- Establish clear and viable frameworks to improve access to natural resources for vulnerable groups (especially women) and regulate relations between land owners and users;
- Develop land development initiatives to protect livelihoods and the environment ;
- draft framework legislation on natural resources management.
- Adopt and implement decentralization policies.

8.2 Differences and similarities between the 17 countries reviewed

Differences

- 3 national or official languages : French (Benin, Burkina Faso, Côte d'Ivoire, Guinea, Mauritania, Niger, Senegal, Mali, Chad), English (Liberia, Nigeria, Sierra Leone, Gambia, Ghana) and Portuguese (Cape Verde and Guinea Bissau)
- Different poverty levels : Mali, Niger, Burkina Faso, Guinea Bissau and Chad are among the ten poorest countries in the world.
- Several environmental challenges : drought, desertification and floods.
- Ecological variety : Sahelian and/or desert zones/forest areas ; coastal areas
- Differing uses : predominantly agricultural (Côte d'Ivoire, ...), predominantly pastoral (), combination of the two (agro-pastoral)
- Efforts being made to recognize and register customary land rights in some countries (Côte d'Ivoire, Benin, Niger ...) but not in others (....)

Similarities

- Increasing urbanization
- Legal pluralism in the aftermath of colonization
- Willingness to undertake land and/or agrarian reform and reform relating to natural resources
- Willingness to consider or recognize local or customary land rights
- Decentralization of land administration (?) with variants in some countries
- The majority of countries have an agrarian or land use law or land use policy, except Ghana (1999), Guinea (2001), Sierra Leone (2005) and Burkina (2007). Senegal and Mali have an Agricultural Orientation Law (LOA).
- The reality is that, by and large, gender issues remain largely ineffective no matter the approach taken.

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Annex 1: Terms of Reference

Rationale, Objective and Expected Output

The regional assessments aim to raise land policy issues that highlight regional specificities, existing initiatives and lessons that will enrich the framework and guidelines. The assessments will also help to identify challenges, knowledge, institutional and resource gaps as well as on-going initiatives. This will assist in mapping out a strategy for capacity building and lesson-sharing activities vital to the implementation of the framework in the medium to long-term. Using the Background Document and the skeleton framework resulting from the consultative workshop, as well as regional assessments as the basis for discussion, the consultations will ensure that regional specificities, initiatives and lessons are used to enrich the framework. The AU-ECA-ADB Joint Secretariat will work closely with Regional Economic Communities (RECs), African member states and other stakeholders in conducting the regional assessments and the consultation workshops.

The key outcome of the regional initiatives is an enriched draft of the continental framework and guidelines of the land policy and land reform framework. In addition, a regional background document will outline the key elements and processes that are needed in the medium and long-term to facilitate the implementation of the framework and hence support sub-regional and national processes aimed at implementation of land reforms to strengthen land rights, enhance productivity and secure livelihoods.

Tasks

The specific tasks involved in the regional assessments include:

1. Identify priority land issues and challenges in the sub-region that constrain social and economic development, sustainable natural resource management, and the achievement of peace and security.
2. Document and give a historical perspective to key policies and legislation relating to land in the sub-region, referring to countries as is necessary.
3. Document any complementing policies, legislation and laws that might facilitate/impede the implementation of land policies.
4. Document relevant processes used in policy formulation and implementation (e.g. commission of enquiry, identify key stakeholders involved, etc.).
5. Identify key authorities involved in administering land rights, dispute resolution, etc.
6. Document any institutional reforms related to land administration.
7. Document other existing initiatives relating to land policy reform, including land policy facilities, highlighting key stakeholders and partners.
8. Analyze the extent to which land issues and challenges (in 1 above) are addressed by the policies, legislation, laws, and processes identified above. Make special reference to lessons and areas for improvement.

9. Analyze the extent to which institutional reforms have facilitated the formulation and implementation of land policies, highlighting innovative reforms, e.g. use of traditional institutions and processes. Make reference to potential lessons and best practices.
10. Based on assessment above, document challenges, gaps and implementation bottlenecks of land policy and land reform, including capacity building needs and resources.
11. Based on the regional assessments, make suggestions for revision of skeleton framework and guidelines with a view to ensuring that regional specificities are included.
12. Prepare a report of the sub-regional assessments including all the elements above.
13. Work closely with the Joint Secretariat and the RECs in preparing documents and planning for regional consultations and participate in the consultation workshop.