



African Union



African Development Bank



Economic Commission for Africa

# Land Policy in Africa:

## West Africa Regional Assessment







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African Development  
Bank



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for Africa

# Land Policy in Africa: West Africa Regional Assessment



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## Abbreviations/Acronyms

AfDB	African Development Bank
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa Agricultural Development Programme
CBO	Community Based Organisation
CERAP	Centre d'Etudes et de Recherches en Administration Publique
CILSS	Comité Permanent Inter-Etats de Lutte contre la Sécheresse au Sahel (Permanent Interstate Committee for Drought Control in the Sahel)
CLAIMS	Changes in Land Access, Institutions and Markets in West Africa
COFO	Commission Foncière (Land Commission)
CSAO	Club du Sahel et de l'Afrique de l'Ouest (Sahel and West Africa Club)
ECA	United Nations Economic Commission for Africa
ECOPAS	Ecosystèmes Protégés en Afrique Sahélienne
ECOWAS	Economic Community of West African States
FDA	French Development Agency
GEPRENAF	Gestion Participative des Ressources Naturelles et de la Faune
GIDIS- CI	Groupement Interdisciplinaire en science sociale- Côte d'Ivoire
GRAF	Groupe de Recherche et d'Action sur le Foncier
GRET	Groupe de Recherche et d'Echanges Technologiques
HDI	Human Development Index
INADES	Institut Africain pou le Développement Economique et Social
INCO	International Cooperation
IRD	Institut de recherche pour le Développement
IUED	Institut Universitaire d'études du développement
IUCN	International Union for Conservation of Nature
LADEP	Lowlands Agricultural Development Programme
LAJP	Laboratoire d'Anthropologie Juridique de Paris

LAP	Land Administration Project
LCBC	Lake Chad Basin Commission
LGA	Liptako-Gourma Authority
MFA	Ministère des affaires étrangères
NBA	Niger River Basin Authority
NEI	Nouvelles Editions Ivoiriennes
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NRM	Natural Resource Management
OECD	Organisation for Economic Cooperation and Development
OMVG	Organisation de Mise en Valeur du fleuve Gambie (Gambia River Basin Development Organisation)
OMVS	Organisation de Mise en Valeur du fleuve Sénégal (Senegal River Basin Development Organisation)
ORSTOM	Institut français de recherche scientifique pour la recherche en coopération
RAF	Réorganisation agraire et foncière (agrarian and land rights reorganisation)
REC	Regional Economic Community
RECTAS	Regional Centre for Training in Aerospace Survey
RICS	Royal Institution of Chartered Surveyors
RLP	Rural Land Plan
UCL	Université Catholique de Louvain
UFM	Union du Fleuve Mano (Mano River Union)
UNCDF	United Nations Capital Development Fund
URED	Unité de Recherche Environnement Développement
UR REFO	Unité de Recherches Régulations Foncières, politiques publiques et logiques d'acteurs
WAEMU	West Africa Economic and Monetary Union
WAMI	West African Monetary Institute

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# Executive Summary

The African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and the Africa Development Bank (AfDB), acting as a consortium, 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 communities (RECs), 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 primarily from a desktop study, using existing literature and other information accessed via the Internet. It has been validated and enriched with inputs and comments gathered from a regional workshop held in Ouagadougou from 15–18 April 2008. Details provided on the countries in the region, as could be obtained from such sources, have been updated from the regional workshop and synthesised as country profiles.

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 communities and other regional initiatives, impact of demography, migration and urbanization, conflicts and post-conflict issues, as well as shared resources and ecosystems. The report then considers the relevance of key issues and challenges to the West Africa region as identified by the LPI consortium in the continental background document. 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, decentralization and its effect on efficient land management, land and mining, and gender and land issues. The issue of biofuels and the land requirement for providing the feedstock and HIV/AIDS are discussed as critical emerging issues.

Out of the key issues presented and discussed, the Ouagadougou workshop identified five priority issues of utmost importance to the region. These are:

- Security of tenure
- State sovereignty over land

- Good governance in land administration
- Funding for the development and implementation of land policies
- Protecting customary land rights.

The report then considers the land policies existing in member countries in the region, and the policy formulation processes. Only four countries have a land policy document, formulated through different mechanisms: Burkina Faso, Ghana, Guinea and Sierra Leone. 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 decentralization taking place in the region. Lessons from the various processes and 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, and 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 region to push the processes forward in a meaningful way and achieve real impacts on the livelihoods of the people in the region.

# I. Introduction

This study on land policy issues in West Africa<sup>1</sup> is part of the joint initiative of the African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB) under the overall leadership of AUC, and working in close collaboration with regional economic communities (RECs), to develop a framework and guidelines for land policy and land reforms in Africa under the theme “Land Policy in Africa: A framework to secure land rights, enhance productivity and secure livelihoods”. The framework and guidelines is a vital tool for complementing national and regional processes for land policy formulation and implementation. It fits within the Comprehensive Africa Agriculture Development Programme (CAADP) of the New Partnership for Africa’s Development (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 policies and land related institutions to deliver on and support Africa’s development objectives. This objective is to be achieved in the region through the Economic Community of West African States (ECOWAS).

Many countries in West Africa have also been pursuing economic development through the implementation of strategies enshrined in poverty reduction strategy papers (PRSP). Many of these strategies identify land issues (security of tenure, protection of rights, pastoral and water rights etc.) as one of the key issues underlying poverty and which must be addressed. Strategies for addressing these issues, however, differ from country to country, depending on the focus. Nevertheless, countries in the region recognize that dealing with the land issues is one way of fighting poverty in the region.

The AUC-AfDB-ECA process started with a continental consultative workshop held from 27 to 29 March 2006 in Addis Ababa, Ethiopia, where it was agreed that regional assessments be carried out to ensure that:

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<sup>1</sup> The countries are Benin, Burkina Faso, Cape Verde, Côte 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. Seventeen countries are therefore considered in this study.

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 aimed to identify 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 was intended to be used as a background document for a regional consultative workshop held in April 2008. The key outcomes of the study and workshop were used to enrich the draft of the continental framework and guidelines on land policy in Africa. A task force of African experts will then synthesize 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.

The report is based primarily on a desk review only, drawing on the background document prepared from the continental consultative workshop, other relevant literature and other sources accessed via the Internet. The report has been updated with inputs and comments from a validation workshop held in Ouagadougou from 15 to 18 April 2008. At the workshop, participants identified the following as the five top priority land issues in the region:

- Security of tenure
- State sovereignty over land
- Good governance in land administration
- Funding for the development and implementation of land policies



- Protecting customary land rights.

Country profiles for each country, prepared as part of the studies, were also updated at the workshop. The authors, however, wish to sound a note of caution in the use and interpretation of statistics provided in the text. Since comparative country data are not always consistent in terms of the year of collection or reporting and reliability, figures provided in the text can at 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 organized, according to the ToR, as follows: Chapter 2 discusses the context within which land policies in the region operate and the factors that have influenced the development of the policies. Chapter 3 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 zone to the Sahelian zone, and which are confronted by different issues. Priorities in land policy therefore differ broadly between the two zones. 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.

The colonial legacy 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 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 (Côte d’Ivoire, Liberia and Sierra Leone) are emerging from conflicts. Currently, almost all the countries are practising democracy. These political experiences have had a tremendous impact on land policy processes. For example, the revolutionary experiences in Benin, Burkina Faso and Guinea, and the liberation war in Guinea Bissau have all had impacts on land policy development.

Almost all countries in the region have prepared poverty reduction strategy papers (PRSPs) as the main socio-economic development framework for reducing poverty and enhancing economic growth. Since most of the countries in the region are dependent on agriculture and livestock as major sources of livelihoods and economic development, land issues become intrinsically important to the overall delivery of the outputs of the PRSPs and for poverty reduction in particular.

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 per cent of the population live below the poverty

line; the figure is 60 per cent in Nigeria. Chad, Burkina Faso, Guinea Bissau, Mali and Niger are classified among the 10 poorest countries in the world. Eighty per cent 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 3 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 these 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 per cent of the population living below the poverty line.

Many countries are agriculture dependent and produce cash crops for export, even though Chad, Côte d'Ivoire and Nigeria also produce oil for export. Major crops include cocoa, coffee, cotton, groundnuts, rice, maize, millet and sorghum. Agriculture contributes significantly to the gross domestic product (GDP) of most of the countries in the region. It provides the source of livelihood for more than 60 per cent of the rural population in each country and provides employment for at least 50 per cent 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), Côte d'Ivoire, Nigeria etc. Land issues in the region are characterized 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 country<sup>2</sup>**

Country	Land size (km <sup>2</sup> )	Population (growth rate p.a.) <sup>3</sup>	% 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)	1 176	162	a. 38% of GDP b. 75% of labour force	Land is nationalized 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)	6 418	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)	1 519	173	a. b. 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.
Côte d'Ivoire	322 463	17 654 843 (1.6)	45.4 (2.60)	1 800	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.

Country	Land size (km <sup>2</sup> )	Population (growth rate p.a.) <sup>3</sup>	% 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
Gambia	11 300	1 517 000 (2.9)	26.2 (3.9)	2 002	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)	2 786	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)	2 035	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 recognized.
Liberia	111 370	3 195 935 (1.4)	47.9 (5.34)	1 003	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.

Country	Land size (km <sup>2</sup> )	Population (growth rate p.a.) <sup>3</sup>	% 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
Mali	1 240 192	13 518 000 (3.0)	33.7 (5.17)	1 154	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)	2 402	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 collectives, 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)	1 188	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.

Country	Land size (km <sup>2</sup> )	Population (growth rate p.a.) <sup>3</sup>	% 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
Senegal	196 720	11 658 000 (2.4)	50.3 (3.86)	1 759	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 (mises en valeur)
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.

<sup>1</sup> The figures are for 2005 and the data have 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.  
<sup>2</sup> Over the period 2000–2005.

## 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 Mauritania and Nigeria 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 that all unoccupied land belonged to the state. This enabled the colonial authority to grant large tracts of land for plantation development, as happened in Côte d’Ivoire. The English, however, adopted a policy of indirect rule in its four territories—the Gambia, Ghana, Nigeria and Sierra Leone—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 categorized land three ways: urban lands, lands delimited for collective allocation according to local customs, and vacant lands. The colonial authority was solely responsible for land categorization and through the concept of vacant land expanded the colonial settlement. In Mauritania all unoccupied land was nationalized. 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 10 years lapsed. Togo was initially a German colony and later colonized 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 and 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 was adopted the colonial powers were unable to alter local tenure systems radically as recent development in the Francophone countries demonstrate. Neither were the customary laws harmonized 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; see also Lavigne-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 centralizing tendencies with the stated aim of binding the nation into closer unity (Lavigne-Delville, 2000). 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 chiefdom 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 nationalized 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 recognized in 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. ECOWAS is the main umbrella regional economic grouping, comprising the 15 member states. Its mandate, among many others, is to create an 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, recognized 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 Comité Permanent Inter-Etats de Lutte contre la Sécheresse au Sahel (CILSS; Permanent Interstate Committee for Drought Control in the Sahel) programme. It has nine member countries.<sup>2</sup> 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 organization that has focused most on land issues. In 1994 CILSS successfully organized a conference in Praia (Cape Verde) on land issues and decentralization in the Sahel and then launched the Praia process which sought to support civil society in natural resources management (NRM), support 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. CILSS also organized the Praia + 9 forum on Rural Land Tenure and Sus-

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

tainable Development in the Sahel and West Africa in 2003. Several challenges were identified that needed to be addressed in the region. They included links between NRM and administrative decentralization; 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 West Africa Economic and Monetary Union (WAEMU), which brings together eight countries in the region<sup>3</sup> through 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 tenure affects how the policy will operate and is one of the critical factors that affects the achievement of the policy objectives. Thus WAEMU initiated a study on land and agricultural policies in 2004 with a view to building the common regional market and to enhancing the integration process. The study made concrete proposals to address some of the challenges of land tenure and land development. Based on the recommendations of the study WAEMU has agreed with the government of Mali to undertake a pilot commercial agricultural development in the inland Niger delta, covering a total of 11,000 ha. A total of 5000 ha will be given to nationals of member states of the Union. The rest will be open to the private sector and parastatal organizations. Farmers will be entitled to 50-year renewable leases.

LandNet West Africa is a regional network of experts and researchers that have engaged in providing capacity for dealing with some of the land issues in the region. The network has successfully settled disputes between communities in Guinea and Mali where the borders are vague. However, such actions require political support.

Increasingly land issues are becoming 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 re-

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3 Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.

gional 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 urbanization**

The population characteristics of the countries in the region are presented in Table 1. Growth rates differ from country to country and ranges from 1.4 per cent p.a. in Liberia to 4.1 per cent p.a. in Sierra Leone. This growth rate is high compared to the average growth rate for the world (1.1 per cent p.a.) and the less developed countries (1.3 per cent p.a.). An analysis of the population structure shows a relatively rural population. More than 50 per cent of the population in each country is rural. Agriculture provides employment opportunities for more than 60 per cent of the population and therefore the sources of livelihoods for the people (see Table 1). 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 per cent of the population live on 25 per cent of the land in the south due to southward movement of the people; 51 per cent of the migrant population in the south-western part of Côte d’Ivoire are from Burkina Faso and 23 per cent from Mali. It is estimated that about 3 million Burkinabé live in Côte d’Ivoire. There has been a lot of movement from northern Mauritania to the Senegal River Valley in the south to invest in 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 Côte d'Ivoire and the stranger usufruct in Ghana.<sup>4</sup> Sometimes the position of migrants has been strengthened by state policy as happened in Côte 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 Côte 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.

Associated with migration is the high rate of urbanization 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). The urban population growth rate ranges from 2.60 per cent in Côte d'Ivoire to as high as 6.08 per cent in Niger. Generally the countries in the Sahel have higher rates of urbanization than the countries along the coast, epitomizing 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 urbanization presents tremendous economic opportunities for the migrants in the form of a 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 most regular sources of income in the rural areas for the survival of rural communities. Yet migration and urbanization 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" (de Soto, 2000).

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4 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.

Examples include informal settlements around Abuja in Nigeria, Niamey in Niger, Bamako in Mali and the large urban sprawl in Accra, Ghana. Many young migrants are not able to find jobs in the cities, forcing them on to 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 urbanization, high rate of unemployment and urban poverty. Maxwell et al. (1999) estimate that about 16,000 ha of land in peri-urban Accra is converted from agriculture to urban uses 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 the Gambia there is increasing pressure on urban and peri-urban land 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 Côte d'Ivoire, and migrants moving back to their countries of origin as is happening between Côte d'Ivoire and Burkina Faso as a result of conflict. These "returnees" have been claiming portions of family lands, sometimes already occupied 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 urbanization have the tendency to increase female 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 a breakdown 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 feminization of rural poverty. It must also build the capacity of city authorities to be able to plan and cope with the rapid rate of urbanization so

as to derive the maximum socio-economic benefit from the movement of people.

The direct consequences of the high population growth rate and inheritance systems in most of West Africa (usually in patriarchal systems) is the fragmentation of land into sub-economic units which are not able to sustain livelihoods in many instances. The absence of affordable fertilizers means that the lands are overworked, become less fertile and eventually become prone to serious erosion and degradation. This is seen in the northern parts of Burkina Faso, Ghana, Mali and Niger.

## **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 11 years (1992–2002); Liberia has just emerged from a 14-year old civil war and is also engaged in post-conflict reconstruction. Côte 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 in several factors including 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 crystallization of the tensions for land along ethnic lines as was the case in Côte d'Ivoire.<sup>5</sup> In fact the politicization of land issues is among the underlying causes of the crisis and escalation of violence in Côte d'Ivoire. For example, 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,

5 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 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.

without troubles or 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 Côte 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 Côte d'Ivoire resulted in a large number of Burkinabé migrating back to Burkina Faso and claiming lands which were also occupied by other members of the family. The conflict in Liberia brought a large number of refugees to Ghana some of whom have refused to be repatriated 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 and 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

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 government levels in bilateral or multilateral conventions. They include watershed and river basins, wildlife parks and forests. Five regional organizations have been formed to handle the important river basins:

- The Niger River Basin Authority comprises eight countries—Guinea, Mali, Côte 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; and
- The Senegal River Basin Development Organisation groups Senegal, Guinea, Mali and Mauritania.

A Volta River Basin programme is being developed between Burkina Faso and Ghana. Shared wildlife and forest parks include GEPRENAF which transcends Côte d’Ivoire and Burkina Faso, and ECOPAS (W Park) which involves Burkina Faso, Niger and Benin. The primary objectives of these basin management organizations 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 agricul-

turalists must be properly negotiated to minimize 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 arid regions. Global warming has implications for future food security and sustainable livelihoods. The work of institutions that are managing ecosystems across countries such as CILSS ultimately affect access to land based livelihoods.

### 3. Key Issues And Challenges

The background document identified 14 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 (or pluralism) in property systems
4. Land tenure security
5. Good governance in land administration
6. Enhancing productivity issues in agriculture
7. Sustainable management of the environment
8. Protecting the commons
9. Managing pastoral land use
10. Improving land rights security in urban and peri-urban land areas
11. Addressing gender biases in land relations
12. Managing the impact of HIV/AIDS
13. Restructuring land administration systems and institutions
14. Managing land issues in post-conflict reconstruction

Some of these issues are discussed in different parts of the report: unequal distribution of land resources, dualism (or pluralism) in property systems, enhancing productivity issues in agriculture, managing land issues in post-conflict reconstruction are all discussed in chapter 2 as part of the contextual issues. Managing the impact of HIV/AIDS is discussed as an emerging issue in Chapter 7. The rest of the issues are discussed in this chapter. Due to the geographical location of the region drought, desertification, floods and climate change are discussed as part of the sustainable management of the environment. Customary land rights, and land and mining activities are discussed as additional key issues and challenges. The issue of biofuels and its potential impact on land rights is also discussed as an emerging issue in Chapter 7.

#### 3.1 State sovereignty over land

State sovereignty over land is twofold: 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 nationalized while in Guinea Bissau land is owned by the state even though use rights of individuals are recognized. 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*”,<sup>6</sup> even though the state also exercises powers of expropriation as is the case in Niger. In the Anglophone countries, notably the Gambia, Ghana and Sierra Leone, the state has access to land through its powers of eminent domain. In Ghana 20 per cent of the land 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 have 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.<sup>7</sup> 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 land 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 increased mobility of human and material resources and remove a major

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6 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.

7 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.

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 and control 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 the state has not been able to pay the ground rents for land acquired on leasehold basis. Under the Ghana Land Administration Project 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 such powers must be exercised with a 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, Côte d'Ivoire (through the process of *immatriculation*), small parts of the Gambia, the western area of Sierra Le-

one, Liberia and small pockets in Ghana. In Côte d'Ivoire companies and individuals own large tracts of land held under plantations or other commercial development. In 1983–1984 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 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 recognized 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 covers about 80 per cent 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 give 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; and crude oil in Côte d'Ivoire, Chad, Nigeria and recently discovered in commercial quantities in Ghana etc. These resources are big sources of foreign direct investment from developed countries and China, major sources of foreign currency to the countries, provide job opportunities for many of the populations and contribute considerably to the overall socio-economic development of the countries. 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 and social responsibilities of the mining companies to the local communities, security of land rights, livelihoods and compensation, resettlement packages, pollution and environmental degradation. These issues have caused tension in Ghana and Niger and have been among the causes of conflict in Sierra Leone and Liberia.

Of much concern has been the lack of enforcement of reclamation plans after mining operations, leaving communities degraded, the environment destroyed and excavations becoming puddles which then become breeding grounds for mosquitoes that spread malaria. The chain effect on the economy is enormous. These are discussed in detail in Chapter 7 of the report.

### **3.4 Drought, desertification, floods and climate change**

The West Africa region has to deal with some of the most serious ecological conditions and challenges in Africa—drought and desertification and floods. Large parts of Chad, Mali, Mauritania and Niger 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 experienced recurrent droughts in the 1970s and 1980s. The effect has been shortage of water, 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 per cent of the population are concentrated on 25 per cent of the land. This unbalanced distribution of the population creates land shortages and gives rise to various land-related problems and conflicts in areas where there is “land scarcity”. The soils are overworked, causing soil degradation. There is a very rapid rate of urbanization 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 realized. Serious efforts by institutions such as CILSS to combat desertification must be supported. Countries in the Sahel region have put in place 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.

Climate change is a serious issue to contend with in the region. With increasing uncertainty in rainfall pattern and intensity, as well as increased drought, rainfed agriculture is becoming increasingly less reliable, posing a serious threat to food production and food security. A combination of adverse weather conditions (particularly drought) and unsustainable human practices (including poor agricultural practices), a high rate of population growth and a significant rate of rural–urban migration with attendant conversion of peri-urban lands from agriculture to urban uses have led to severe deterioration of the environment in many countries particularly those in the Sahel. This has in turn led to soil fertility reduction and declining food production; increasing extraction of fuel wood without replacement;



pressure on rangeland due to loss of watering points as a result of successive droughts; expansion of agriculture into marginal lands resulting in depletion of vegetative cover causing severe loss of wildlife and biodiversity; and uncontrolled bushfires. For example, it is estimated that the average rainfall for the Gambia has dropped from 1100 mm p.a. in the 1960s to 900 mm p.a. in 2008. The effect of these factors—drought, desertification, floods and climate change—is severe erosion, soil and land degradation and deforestation, pushing marginal communities into very precarious conditions. Serious erosion has occurred along both the coastal belt of the region, Nigeria to Mauritania, and in inland areas. Sustainable management of the environment is one of the critical challenges countries in the region face.

Water resources and their relationship with land tenure must be recognized in the region. In many pastoral communities as found in Burkina Faso, Mali and Niger access to land is obtained through control of water. Land rights and tenure relationships and security between pastoralists and sedentary farmers thus become a complex system that requires critical analysis. Prolonged drought that tends to dry up the water bodies can upset the tenure relationship and have serious implications for sustainable management of the environment and livelihoods.

### **3.5 Protecting the commons and managing pastoral land use**

The common property resources in West Africa include forests, wetlands, fisheries, ponds, rangelands, biodiversity colonies and sacred groves, 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. Examples are 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 International Union for Conservation of Nature (IUCN) as one of the most important flood plains of West Africa (Sanou, 2002); and the Kakum Forest Reserve in Ghana which is an internationally recognized 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 Côte d'Ivoire, Ghana and Nigeria. 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 reserve land. The state of grazing lands and the desire to protect them made the Nigerian Government 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 per cent of the national territory would be acquired and constituted into grazing reserves for allocation on leasehold to herders. Other countries that have tried to protect and regulate the use of grazing lands include Burkina Faso, Guinea, 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 Benin, Burkina Faso, Ghana and Nigeria. In Senegal the 1964 law on National Domain did not recognize 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 practise 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 Côte 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 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 Security of land tenure and evolution of land markets**

Rural land transactions in many countries in West Africa are embedded in customary principles and arrangements which have land tenure dimensions, socio-political dimensions and the moral economy dimensions (see Chauveau et al., 2006). From a 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. However, the principles underlying customary land transactions respond to economic principles of demand and supply of land but in a context that meets the specific requirements of the actors and are legitimate at the local level. Share cropping, rental and sale of land, the *tutorat* system in Côte 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 rising in Benin, Burkina Faso, Côte d’Ivoire, Ghana and Togo. It represents a relatively cheap means of accessing land and also emphasize 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 tenure, socio-political and moral economy dimensions. Land market practices thus exist and are consistent with the legitimacy at local level but transactions are hardly registered through state systems. Efforts to register rural titles through the Rural Land Plan in Côte d’Ivoire, Benin, Burkina Faso, 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.

One of the effects of the high rate of urbanization, discussed in Section 2.4, is the commoditization and commercialization of land. Access to land is becoming increasingly more determined by economic ability rather than membership of a land-owning community. The result is land grabbing and land speculation in some countries, notably Nigeria. However, 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. However, a high level of informal land transactions 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. The state structure operates as a layer above the customary systems. Indeed in some of the states such as Rivers State applicants have to show that they have 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, assert that about 80 per cent 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 land into urban development, which results in loss of land rights and livelihoods of indigenous people, sometimes creating tension between developers and indigenous users.

The land administration infrastructure that underpins the efficient operations of land markets is lacking in many countries in the region. Land registration cadastral and adjudication systems are not well developed; boundaries are not well surveyed; and surveying and mapping are still done in coordinate systems developed during the colonial administration, which are not able to provide geodetic reference systems that allow the use of modern technology such as global positioning systems (GPS). There is absence of good land information management systems, human capacity and appropriate institutional structures for efficient land administration. The result is inaccurate and out of date land records and undeveloped land registration systems—less than 1 per cent of land in Côte d’Ivoire, Ghana

and Nigeria are titled—dysfunctional or non-existent urban land markets; and a large informal land sector. Insecurity of tenure is high. There is the need to standardize the geodetic reference system in West Africa.

Specific policies must be designed to deal with these weaknesses so that the relatively high level of informality and insecurity of tenure can be addressed, especially in peri-urban areas. This may involve developing appropriate innovative tools and standards for recording of land rights and registration, including surveying and mapping to make the process affordable and dependable and developing decentralized institutions for land administration, adequate human and material resources for land administration and a good and up to date land information management system. It is in such a situation that land markets can be said to operate.

### **3.7 Good governance in land administration**

Governance is concerned with the processes by which citizens participate in decision making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws (FAO, 2007). It includes formal institutions of government and traditional and informal arrangements and deals with issues such as responsible leadership, clarity of laws and procedures, transparency, accountability, equity, effective and efficient bureaucracy, dispute resolution, professional ethics and corporate governance. Good governance in land administration promotes security of tenure and sustainable and equitable economic development.

Almost all the countries in the region have weak governance structures in land tenure and administration, reflected in corruption and land grabbing. Land administration institutions are weak and widely fail to deliver on their mandates; they do not function well as a result of weak technical and human capacities, outdated equipment and low infrastructure base. They suffer from vested interests, rent-seeking behaviour and corruption, compounded by the use of land as a tool of political patronage. The institutions are associated with lack of transparency, accountability and excessive and expensive bureaucracy characterized by delays in the delivery of land administration services.

The result of the current governance structure for land administration is exclusion of the vulnerable and weak in society from participating in the land administration processes. Those affected most are rural women and the poor. The high level of informal transactions (see Section 3.6) largely reflects the weak, inefficient and ineffective nature of the land administration institutions. Some countries have put structures in place to deal with the governance problem. The establishment of land commissions at the local level in Burkina Faso and Niger and the piloting of customary land secretariats in Ghana are some of the efforts made to address the issue of weak governance. There is certainly a case for improvement in the current governance structures for land administration in the region and lessons from Burkina Faso, Ghana and Niger and the Rural Land Plan (RLP) implemented in Benin, Côte d'Ivoire and a few other countries may be replicated to improve the governance situation.

### **3.8 Decentralization**

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 mainly outside these institutional arrangements. Decentralization is one of the key governance issues ongoing in West Africa and the extent to which it affects land administration is discussed further in Chapter 5.

### **3.9 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 no discrimination exists between males and females in the ownership and use of land. Both males and females can access, buy, own and inherit land and property through statutory systems, especially in urban areas. Once a person has the economic power to purchase landed property there is no rule inhibiting him/her.

Gender issues are critical in the customary systems of land tenure, especially in the areas of land ownership and inheritance. While women generally have access to land, their participation in decision making in land management and control over the use of land, as well as their ability to own land is virtually non-existent, especially in the customary systems where land relations are largely informed by a patriarchal orientation where women are usually excluded in land management and inheritance. Women's rights to land are usually secondary and related to rights obtained through primary rights holders such as brothers, husband, fathers or sons. They may also be shared rights which are vested in the community such as access to fuel wood in the forest and non-timber forest products. Access to land and the uses to which the land can be put are also gender sensitive. 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 countries in the region and in the Islamic states in Nigeria 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 develop-

ment. In south-western Nigeria women are considered ineligible to inherit land. The land of a deceased individual 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 decision-making processes involved in land management. In 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, affects food production and food security and ultimately the sustainable use of land. Women have relatively insecure land rights. The situation becomes more precarious in polygamous marriages (which are quite common in the region). Aryeetey (2002) notes that in Ghana the relatively limited security of tenure for women is one of the obstacles to the introduction of soil conservation practices. Where innovative programmes have been undertaken that guarantee 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 Lowlands Agricultural Development Programme (LADEP). Under this programme women beneficiaries permanently owned the land and their children could inherit. In Liberia reforms have been implemented since 2005 to secure women's rights particularly in inheritance. These are good lessons to be replicated.

Addressing the issue of gender in land tenure does not lie only in legislation, even though gender sensitive statutory arrangements provide a good framework for dealing with the issues. A multi-faceted approach is usually required as most of the issues that require reform are rooted in custom—land ownership, land use, access and control, inheritance, customary governance etc. Countries must therefore pursue a diversity of programmes through legislation, extensive public education and sensitization, and pilot projects that demonstrate the benefits to women and society, as in the Gambian case, to bridge the inequality gap. Women-centred programmes should be balanced by equally important men-centred programmes to en-



sure quicker dismantling of the barriers set up against women. Other options may also include recordable shared tenure which provides collective security for group-owned lands.

## 4. Land Policy Formulation

### 4.1 Policy formulation process

Only four (4) countries in the region have developed policy documents to provide direction for the process of formulating land laws and setting up land administration: Ghana (1999), Guinea (2001), Sierra Leone (draft, 2005) and Burkina Faso (2007).

Although the policy formulation processes have been different from country to country, they have adopted a participatory approach as indicated in Table 2.

**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: The ministry recruits researchers to collect data and draft proposals on a land policy. The ministry recruits a consultant to test methodologies and approaches suggested by the researchers. Policy formulation team made up of technocrats and researchers set up to submit draft policy proposals.</p> <p>1996: Draft policy proposals sent to stakeholders, including the National House of Chiefs, experts, academics and technocrats for review and comments.</p> <p>1997: National workshop held on the revised version of the draft policy proposals. Participants included all major stakeholders including chiefs, researchers, farmers, non-governmental organizations (NGOs), district assemblies, civil servants, the private sector and security agencies.</p> <p>1998: Final version of draft policy proposals presented to Cabinet for consideration. Cabinet held a retreat to discuss the proposals.</p> <p>1999: Cabinet approved the policy proposals which were launched in June 1999.</p> <p>2003: Land Administration Project developed as the main mechanism for implementing policy proposals.</p>	

Country	Policy formulation process	Remarks
Guinea	2001: Rural land policy.	No details obtained on the policy formulation process.
Sierra Leone	2005: Proposals for new Land Policy developed by the Law Officers Department through participatory processes. A Land Assessment Committee and officials of the Ministry of Lands organized sensitization workshops on the draft proposals for all land owning families. The draft is awaiting discussions by Parliament before ratification.	
Burkina Faso	2005: National land policy proposals developed through participatory processes. Land policy dialogues were organized by the National Committee for Rural Land Tenure Security (whose members represent key ministries, farmers' organizations and civil society organizations) at local and regional level for key stakeholders including farmers, local communities, local governments, traditional chiefs and the private sector. A national forum was organized for final agreement on land policy options. 2007: National Committee submitted land policy proposals to government. National Policy on Rural Land Tenure Security (Decree 2007-610 of 4 October 2007) was adopted. A framework land law on land tenure guided by consensus points in the land policy document is being prepared. Application texts under preparation.	

All the other countries have made land laws to deal with various aspects of land issues. The laws are not linked to specific policy proposals. In the Francophone countries, land laws are still based on the colonial-era state-controlled land tenure model where *immatriculation* is the sole means of private ownership (Chauveau et al., 2006, 51). For example, in Benin the Decree of 26 July 1932 reorganizing land and property laws in West Africa was replaced by the 65-25 Law of 14 August 1965 on land and property laws in Benin, while the decrees on public and private domain and the decree on compulsory acquisition remained in place. In the Anglophone countries, land laws were either maintained or re-enacted as Acts of Parliament of the newly independent states, but with minor changes in their content. Since

the 1990s, however, a combination of political, economic and social factors justifies 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 the issues of security of tenure, decentralization of land administration structures, land-related disputes and conflicts, rural–urban links and the place of land in broad development policies and strategies (Ouédraogo et al., 2006). Different countries have attempted to address country-specific issues. A summary of the laws in force are summarized in Table 3.

**Table 3. Land laws in force 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.
	2007	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 amended, establishing 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, and to create 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 adopted but repealed in 1993.
		Land legislation passed, particularly relating to the basis for land use planning (Legislative Decree 1/2006), standards and principles of land use by public and private entities (Legislative Decree 21/2007), law on establishment of special tourist areas (Legislative Decree 2/93), Forestry Law (Law No. 48/V/98)—section on standards for lands under the forest regime and legislation on creation of protected areas (Decree-law No. 3/2003).
		Legislation on land registration passed.

Country	Year	Focus
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).
Côte 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.
The Gambia	1987	National Environment and Management Act
	1990	State Lands Act
		Land Acquisition and Compensation Act
		Physical Planning and Development Control Act
	1994	Surveying Act Lands Commission established
Ghana	1986	Land Title Registration Law passed to introduce compulsory title registration in the country. The system, however, only operates in the Greater Accra Region and Kumasi.
	1993	Local Government Act (Act 462) which created metropolitan, municipal and district assemblies as decentralized physical planning and development control agencies.
	1994	Office of the Administrator of Stool Lands Act/OASL (Act 481). The OASL is charged with the collection and disbursement of stool land revenue.  Lands Commission Act/LC (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.

Country	Year	Focus
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 recognizes customary rights to land in the rural areas as registrable and established lands commissions as decentralized 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.

Studies indicate that over the past few years the major land reforms envisaged by the states in the sub-region have been undertaken using the principles and rules established by two main tools—land policy documents and land laws—which are not exclusive insofar as adoption of one does not in principle exclude adoption of the other. These two tools appear to pursue the key objective of securing land tenure, however, different they may be.

A land policy contains a set of agreed principles to govern ownership, use and management of land resources and usually contains a statement of vision and objectives for each country. The principles are operationalized through a set of procedures and legislation. Thus, for example, in Burkina Faso the National Policy for Rural Land Tenure Security (PNSFMR) includes guidelines aimed at “ensuring that all rural actors have equal access to land, security of their investments, and effective management of land disputes in order to contribute towards poverty reduction, consolidation of social peace and sustainable development”. Implementation of PNSFMR will result in “the participatory and concerted elaboration of a rural land law which should include the adaptation of tools for land tenure, reduced costs and simplification of procedures, in relation with the socio-economic situation of the poor rural population”.

The approach taken by Burkina Faso is similar to that of Mali with regard to the Agricultural Orientation Law (LOA) which, although it has greater impact from a legal point of view and is likely to confer rights and obligations on government and individuals, is yet to take into account the land question. The objectives of Mali’s LOA include “securing tenure for farms and farmers, promotion of public and private investment, and equal access to land resources and their sustainable management”. Article 78 of the LOA makes the following provision: “an agricultural land law shall be elaborated as from the date of publication of this law”.

In Niger, however, the Order defining the Guiding Principles of the Rural Land Code (POCR), a consensual text elaborated using a participatory approach after a process lasting almost a decade, can be defined as a rural land law by virtue of its objectives and content, even though it is a guideline which would not on its own be able to determine land issues (Malam Kandine Adam, 2006). This means it is also an orientation law incorporating some general provisions and will require adoption of legal and regulatory texts. In Niger the orientation law can be compared to Guinea Bissau’s land

law (Law 5/98 of 28 April 1998) which has several objectives, including securing farmers' access to land and promoting the establishment of a land market. Implementation of this law necessitated the adoption of the general regulation on the land law in March 2008. A land policy document is being elaborated in Guinea Bissau.

## **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, 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” (OECD, Sahel and West Africa Club, 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 cross-cutting powers of national administrations and their territorial branches that intervene in land issues, such as the ministry responsible for agriculture, the ministry responsible for water and forest resources, the ministry responsible for land and cadastral matters etc.).

Thus in Niger, for example, the Order establishing Guiding Principles of the Rural Land 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. This involves traditional state administrations and the new bodies set up by the National Rural Code Committee (Comité National du Code Rural), and the rural code secretariats (Secretariats Permanents du Code Rural), especially the land commissions.

In Benin, Burkina Faso and Côte d’Ivoire, the RLPs adopted by each country provide for the establishment of land commissions. In addition to having strengthened the role of local governments in land management, specifically communes, in Benin Law 2007-03 establishes new land management authorities at the local level. These are village land management sections (SVGF) and land management commissions (CoGeF) at district level.



The RLP 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 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. RLPs are meant to identify what communities perceive to be their rights and what those rights actually are under various agreements; they will then prepare a pictorial record followed by a literal documentation. It establishes a parcel plan and a list of beneficiaries.

In Côte d'Ivoire, the RLP attempts to draw up an inventory of all existing rural rights as perceived by the various actors. In Burkina Faso, the focus is on assembling the most complete set of documentation possible:

- map all the data;
- move towards assigning title deeds whose content and value remain to be determined. (cf. Ouedraogo 2005).

### **4.3 “Participatory” approach and “Land management” approach**

Some of the countries studied have opted to promote a participatory approach to land policy/law formulation (Benin, Burkina Faso, Côte d'Ivoire and Ghana). 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. There are a few exceptions, notably Ghana which adopted a National Land Policy in 1999 as a result of a consultative process that started in 1994. Mali also involved producer organizations in discussions that followed the National Conference. Benin adopted the participatory approach during drafting of the law establishing the rural land regime. The process started off with trying out RLP, and proceeded to incorporate the local realities and dynamics of land use. This process involving compilation of people's needs culminated in the elaboration of texts on land tenure. Feedback workshops at community, district and national level were then organized.

## 4.4 Regional initiatives

In the past few years, organizations involved in West African integration have undertaken important initiatives in land and natural resource management. In some cases, Community decisions have been taken where management of shared resources is involved while in others it has been necessary to formulate guidelines aimed at harmonization of national policies and laws on land and natural resource management. Initiatives undertaken by ECOWAS, CILSS and WAEMU are presented below.

### 4.4.1 ECOWAS initiatives

ECOWAS has undertaken three major actions that should be noted: establishment of a mechanism for conflict prevention and management; a decision of the Assembly of Heads of State and Government regarding cross-border transhumance; and adoption of a community-wide agriculture policy.

#### 4.4.1.1. Establishment of a Mechanism for conflict prevention and management<sup>8</sup>

In 1999, ECOWAS established the Mechanism for conflict prevention, management, resolution, peacekeeping and security, adopted in 2001 by the Supplementary Protocol on Democracy and Good Governance. The Supplementary Protocol basically focuses on the political causes for conflicts in the region. It establishes constitutional convergence principles and defines a regional framework to deal with the issue of elections and election monitoring.

The Protocol requires member states to adopt *ad hoc* legislation for the social promotion of women and the youth. It also requires that the ECOWAS Executive Secretariat ensures the effective implementation of common policies and programmes relating to the education and promotion of the welfare of women and youth.

The Mechanism is regularly applied by the Assembly of Heads of State and the Executive Secretariat of ECOWAS to enable them to play their roles as

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<sup>8</sup> See Malam Kandime Adam (2006)..

regards to peace and security. Two elements of the Mechanism are particularly relevant in relation to issues of land and the youth. As stipulated in Article 3, one of the objectives of the Mechanism is to set up an appropriate framework for the rational and equitable management of natural resources shared by neighbouring member states which may be causes of frequent inter-state conflicts. Article 44, on peace building at the end of hostilities, urges ECOWAS to undertake the following activities: establish conditions for the political, social and economic reconstruction of the society and governmental institutions; implement disarmament, demobilization and reintegration programmes including those for child soldiers; resettle and reintegrate refugees and internally displaced persons; and provide assistance to vulnerable persons, including women and children.

#### **4.4.1.2. Regulation of transhumance within the community**

Aware of the issues surrounding transhumance in the states of origin and the receiving states, ECOWAS took in 1998 a decision to regulate the situation. “Decision A/DEC.5/10/98 regulating transhumance between the Member States of ECOWAS” was adopted by the Assembly of Heads of State and Government to establish harmonized regulation on transhumance within the community. Having defined inter-state transhumance, the text sets out:

- The conditions for movement of livestock;
- Rules relating to the care of transhumant animals; and
- Conditions for the reception of transhumant livestock;

One of the key provisions of this text is contained in Article 7, which stipulates that movement of transhumant animals must be done through the transhumance trails defined by the states, in accordance with the itinerary laid down in the ECOWAS International Transhumance Certificate. In any case, border crossing is only authorized by day.

With regard to reception of livestock, the ECOWAS text leaves it to the discretion of each country to set the period of entry and exit of transhumant livestock in its territory and to inform the other states of such regulations (Article 14 of the Decision).

ECOWAS Decision A/DEC.5/10/98 was subjected to an implementation rule adopted by the ECOWAS Council of Ministers on 28 January 2003. Rule REG.01/03 of 28 January 2003 defines corrective measures to be imple-

mented by member states and by the Executive Secretariat, including measures aimed at sensitizing all actors on the importance of transhumance and its practice in the region in accordance with agreed principles of ECOWAS.

Under the implementation measures to be undertaken by the states, Rule REG.01/03 clearly mentions “lifting of the suspensive measure on transhumance by Benin”.

ECOWAS Decision A/DEC.5/10/98 serves as a frame of reference for member states who wish to enter into bilateral agreements on transhumance among themselves. Such an agreement exists between Niger and Burkina Faso.

#### **4.4.1. 3. Adoption of an ECOWAS Regional Agriculture Policy**

The general objective of the ECOWAS Regional Agriculture Policy (ECOWAP), which was established in January 2005, is to contribute in a sustainable way to meeting the food needs of the population, to economic and social development, to the reduction of poverty in the member states, and thus to reduce existing inequalities among territories, zones and nations. The three main priority themes of ECOWAP are: increasing productivity and competitiveness, particularly in family agriculture; implementing a trade regime within the community; and adapting the trade regime vis-à-vis countries outside the region.

#### **4.4.2 Initiatives taken under CILSS**

CILSS is the regional organization that has focused most on land policy issues, which is part of its core activities. Land related activities culminated in the Praia (Cape Verde) Conference process, which is detailed in section 2.3 above.

The lack of appropriate strategy from CILSS as well as political will on the part of member governments to implement the Forum’s recommendations was among the major challenges identified at the political level.

One of the key recommendations of the 2003 Bamako meeting was that the Forum should “invite Heads of State of CILSS, WAEMU and ECOWAS Member States to take the appropriate measures to discuss, negotiate and

eventually adopt a common land policy instrument such as a Sub-regional Land Tenure Charter which would encourage securing investments in land, protecting the rights of local communities and managing the national interests of each State”. Since 2006, CILSS, as key player in the Praia+9 initiative, was given the responsibility of making the necessary arrangements to draw up a road map for elaboration and implementation of the Charter in collaboration with ECOWAS and WAEMU. According to this road map, which is currently under implementation, the Charter could be ready for application by 2020.<sup>9</sup> The Charter, which will involve the Sahel and West African States, “should establish guiding principles for integrated and secure land tenure and natural resource management in the sub-region”. It could constitute the basis for the development of a common law on land tenure issues in the sub-region, particularly in the framework of WAEMU and ECOWAS”.

#### **4.4.3 WAEMU initiatives<sup>10</sup>**

Faced with the prospect of implementation of the Agricultural Policy of the Union, and especially defining “the role of better land management in promoting sub-regional integration and in creating favourable conditions for sustained economic development within the area of the Union”, WAEMU initiated a study on land policy to strengthen the integration process (Ouedraogo, 2004a). The study recommended that WAEMU carry out a land policy initiative with the following priorities: appropriation of the initiative by WAEMU member states; the establishment of a West African Land Policy Observatory; capacity building in the field of land policy; and assistance to member countries in the promotion of land markets.

### **4.5 Major advances in land policy formulation**

Recent developments show that West African states have made significant progress in the formulation of land guidelines or laws. These include:

- most states have adopted the participatory approach when formulating texts and laws affecting land;

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<sup>9</sup> See CILSS Executive Secretariat, « vers la mise d'œuvre d'une charte régionale sur le foncier rural au Sahel et en Afrique de l'Ouest, Feuille de Route », [www.cilss.bf](http://www.cilss.bf)

<sup>10</sup> WAEMU comprises eight states in the sub-region: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

- the desire to establish a link between framework policies/laws relating to land and other sectoral policies and laws, particularly those concerning natural resource management;
- almost all states have carried out relatively broad land reforms;
- some states in the sub-region have adopted land policy documents;
- others have adopted framework laws on land or Agricultural Orientation Laws which refer to the formulation of rural land use laws;
- in almost all the states, achieving secure land tenure has been affirmed and reaffirmed, particularly with regard to rural land;
- the establishment of local land management structures to take due account of the reality and unpredictability of local situations; and
- gradual recognition of the land dimension in the regional integration process.

## 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 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 projects is a problem. However, it appears that where land reform is undertaken in the context of NRM, 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 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 cross-cutting 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;
- the application of defined rules; and
- the resolution of conflicts arising from the application of rules.

Thus, many actors are 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 West 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” (OECD, Sahel and West Africa Club, 2006:20). 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, for example, where in 1983 the Agrarian Reform Law was adopted in a bid to reform the land regime by promoting direct farming, mechanization, increased production and creating conditions favourable to food security while discouraging 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 proved unpopular and met with resistance, even from the farmers for whose benefit it had been designed. 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 of transferring powers to local organs that do not have equal importance, such as local governments or local assemblies; 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.” (OECD, Sahel and West Africa Club, 2006:31).

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 a duality of land tenure practices exists, since customary authorities also set standards, even if it is true that they intervene more in land management, as we shall see later. Since administration of most rural land is subject to customary law, all matters pertaining to the content of laws, and to 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 Faso, 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. 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 significant progress has been made in these areas. For example, in Niger several implementing/supplementary texts to the guidelines to the rural code adopted by the 1993 Order 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 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). Mali also has a Land and Tenure Code.

## **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 West 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 (Réorganisation agraire et foncière) was multi-sec-

toral from the outset and today, an inter-ministerial committee continues to reflect on and coordinate rural land use. In Benin, the context has also changed. Since November 2006 the Ministry for Land Reform is responsible for coordination activities while the policy document is being finalized. A national land reform commission is being established. Its role will be to bring together the other concerned ministries.

In most countries of West Africa, 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.

Currently, however, the situation varies greatly from country to country. For example, countries where customary authorities have strong powers over land issues, as is the case in Ghana, have a double layer of land tenure and management. The system is grounded in statutory and customary law. State lands are administered by the National Land Commission and 10 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 land tenure and management system applies to 80 per cent of state lands. 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 in the country, whether they belong to the state, local collectives or to private individuals (Art. 1 of Order No. 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 landholding 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 Nigeria, rural land management is the sole responsibility of the local government, 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 landholding is very strong with wide variations from one part of the country to another. In the north, where land is communal property, traditional chiefs 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 public administrations being modernized to enable them better fulfil their traditional functions, some states have embarked on reform that attempt to consider all matters pertaining exclusively to land tenure. Institutions that specialize in land management have been established 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, bringing land management institutions closer to users is also 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 Plan approach**

Financed by the French Development Agency (AFD), the World Bank and the German Technical Cooperation (GTZ), the Natural Resources Management Programme (PGRN) in Benin was meant to address environmental issues within the broader context of a water basin development strategy; it was also meant to focus on rural land conflicts. The RLP component, as a response to land conflicts and tenure insecurity, was proposed by the AFD and the World Bank, which 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: in this country, the RLP was designed and implemented to address tensions which arose between the autochthons and migrants, whom the state settled there under AVV (the Volta River Basin Programme) operations in the 1970s and 1980s (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 that 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. It could also include people from outside the community or when rural areas are in danger of encroachment by cities.

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 Benin and Burkina Faso where the parties to a land transaction (Zongo and Mathieu, 2000) must have their documents validated by the local authorities.

Rural land 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. The process is implemented through field visits and, uses a combination of surveys, sociological and land surveys; a report of the findings is prepared and signed by the rights holders and their neighbours. 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 15 years, in an attempt to provide security for rural producers. In Benin, rights registered under RLPs may be subject to *immatriculation* (Articles 120, *et seq* of the 2007-03 Law).

At the institutional level, the approach provides for the establishment of local land management structures. For those countries that have opted for the RLP approach—Benin, Burkina Faso and Côte d’Ivoire—local *ad hoc* structures are involved in land management under various designations: land management committees at the commune level, and village management committees in Benin; village land management commissions in Côte d’Ivoire, and land commissions in Burkina Faso. The functions of these commissions and committees vary: in some cases they play a consultative role and have decision-making powers.

In Benin, for example, Law 2007-03 of 30 January 2007 establishing the rural land regime provides for the creation of new land management authorities whose composition and functions are defined by way of Decree. These authorities can be established both at commune and village level. At the municipal level, the President of the Commission for Land Domain and Environmental Affairs chairs the land management committee. Among the committee’s powers are the granting of land certificates that could eventually be changed to property titles. The village committees verify final or provisional deeds of transfer which should be in the form of written contracts.

The RLP approach appears to be a relevant means of securing both individual and collective rights in situations where land parcelling is already quite advanced. Its relevance is, however, hardly evident in the Sahel where pastoral areas can be highly diversified and land rights shared between an increasing number of actors.

RLP no longer exists in Côte d’Ivoire. It has been replaced by the law relating to the rural land domain. The “Rural Land Tenure Support” component, which was in operation with the RLP, is currently under implementation by the Ministry of Agriculture through the National Land Management and Rural Facilities Project (PNGTER)/Ministry of Agriculture.

### **5.3.2 Experiences involving orientation laws**

The two countries with experience in this area are Mali and Niger which have both set up land commissions at local level. In Niger, membership of the land commissions provided for in the Ordinance establishing the guiding principles of the Rural Code includes all those who play a role in land management at local levels; the lands commissions have real powers to undertake management. Thus, by law, a land commission comprises: 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 established at three levels: in the departments, and at commune and village levels.

Installations of these commissions started in 1994, barely one year after adoption of the orientation law, and they have been established in all the departments in the country. However, 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 operational needs.

In Mali, the land commissions envisaged in the Agricultural Orientation Law are not yet operational, but the Order establishing their functions, composition and mode of operation (January 2008) gives them responsibilities for customary land rights issues and dispute settlement. These commissions are all equal and their members represent the administration, local governments, villages, fractions (pastoral territorial entities) or districts, agriculture professionals and civil society.

In addition to these two cases, Guinea's Land Tenure and Domain Code also included provisions for establishment of land commissions. In 2001, the country adopted a Policy Paper on Rural Land Tenure (Decree D/2001/037/PRG/SGG) to synergize 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 Land Tenure and Domain Code in each prefecture and in each commune of Conakry. The Lands Commission monitors whether lands are actually being put to productive use; tries to reconcile

the parties or advise on the amount of compensation due when lands are expropriated in the public interest; advises on the price that should be paid for buildings during pre-emptive acquisitions; and gives its opinion on real estate transactions and any issues pertaining to the direction of the local government's land tenure policy. In Guinea the responsibilities of land commissions are not limited to rural land only, since they are set up even in the capital city, in addition to which the chairperson is the representative of the ministry responsible for urban development.

### **5.3.3 Improving capacity of customary authorities—the case of Ghana**

As part of the process of building local capacities for land administration, customary land secretariats (CLS) are being piloted as effective and publicly accountable local structures to support customary authorities in the efficient management of customary lands. They will operate in a manner which recognizes the diversity of different customary land tenure systems in Ghana. Their operations would be fair, accessible and accountable and address the concerns of all sections of the community. The main functions of the CLS include:

- Provision of information about the land owning community to the public.
- Provision of land information to the public—ownership, rights, use, etc.
- Keeping and maintaining accurate and up to date land records.
- Keeping records of all fees and charges associated with land grants.
- Liaising with town development committees to ensure that development conforms to planning schemes/layouts or as agreed by the community at the local level.
- Serving as the link between the land owning community and the public sector land agencies such as district/municipal/metropolitan assemblies, land agencies, Environmental Protection Agency, etc.
- Protecting the rights of the vulnerable—women, landless families and tenants.
- Ensuring cost effective and appropriate methods of surveying and demarcation of lands.



The CLS are currently not backed by any legislation, but it is anticipated that the legislative reforms proposed under the LAP (Land Administration Project) will provide the legal framework for their operations.

The countries that have established land management institutions are shown in the Table 4.

**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	Institution of RLP for each village; Institution of local land management committees (SVGF: Section Villageoise de Gestion Foncière)	Currently being put in place
Burkina Faso	Law No. 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 No. 98-750 of 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	Lands Commission Act (Act 483) (1994)	Lands Commission decentralized at regional level	Operational: Each region has its own Lands Commission coordinated by the National Commission
		Land Title Registration Law, 1986, (PNDCL 152)	Operates only in areas declared as compulsory registration districts
		Customary Land Secretariat	Operational in selected pilot locations

Country	Texts	Institution for implementation	Observations
Guinea	Ordinance 0/92/019 of 30 March 1992 establishing a Land Tenure and Domain Code	Land commissions in each prefecture and each commune in the city of Conakry	These commissions are not active in rural areas
Mali	Law 06-40 of 16th August 2006 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)	Ministry responsible for lands through the Lands Department	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 delicate for the states that have chosen to undertake this administrative reform.<sup>11</sup> 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 break state monopoly on the land, coincided with the introduction of administrative decentralization in the early 1990s. “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

11 See République du Niger, Haut Commissariat à la Modernisation de l’Etat (HCME), « Le foncier et la décentralisation : problématique du domaine des collectivités territoriales », August 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 pp. Rochegude Alain, Cahiers d’Anthropologie du Droit 2002, pp.15-43 Foncier et décentralisation, réconcilier la légalité et la légitimité des pouvoirs domaniaux et fonciers.

in carrying out the local 'land management' role assigned to them" (Lavigne Delville, 1999).

The issues surrounding land and decentralization in all the countries of the sub-region would appear to be a search to reconcile the legality and legitimacy of the powers of eminent domain (RocheGude, 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 local governments, 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, whose national policy of securing rural land tenure adopted by Decree 2007-610 of 4 October 2007 takes "due account of decentralization and its processes". The country's general options for decentralized rural development are encapsulated in its "Letter of Decentralized Rural Development Policy (LPDRD)."<sup>12</sup>

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 then 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 public lands belonging to local governments; (ii) measures to be taken urgently to draw up an inventory of government-owned lands and lands belonging to local governments; and (iii) proposals for transferring state powers of land management as a means to ensure secure tenure rights, productive use and sustainable development of these spaces."<sup>13</sup>

In practice, alongside these in-depth discussions, especially within the institutional context, local land management structures operate in concert with the institutions of the land collectives, 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

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12 See: 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, August 2007, p.17.

13 Haut Commissariat à la Modernisation de l'Etat (HCME), National Forum Report on « Le foncier et la décentralisation : problématique du domaine des collectivités territoriales », Niamey, 5 and 6 July 2007.

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. However, according to Gueye et al. (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, in Senegal for example, part of the mandate of the local elected body is to assign land. Similarly, in Burkina Faso, the village land management committee (CVGT), now known as the village development committee (CVD) under the supervision of the municipal council, can allocate land and 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.

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. In Côte d’Ivoire, the Rural Land Commission (Commission foncière rurale—CFR) is responsible for monitoring application of Law 98-750, in accordance with Decree 55 of 11 July 2003 defining the organization of the Rural Land Commission.

## **5.5 The process of involving the different groups of actors have not always been efficient**

All the envisaged rural structures are expected to incorporate the different categories of stakeholders to give the necessary legitimacy to the manage-

ment bodies. In reality, however, the desired neutrality and objectivity has not always been a trademark of these structures. In some cases, the focus is on mobilizing actors whose expertise marks them out to act as “watchdogs”. This is especially the case for land observatories whose experience has not always been conclusive.

### **5.5.1 Mobilization of actors in the local land scene**

The types of local actors involved in land institutions are different in most of the countries reviewed. These actors show national specificities even though the expected outcome is the establishment of institutions comprising the most representative groups of actors. Generally speaking, the expectation is that the bodies will include rural operators, customary authorities and representatives of various technical government departments operating in the land sector. Composed in this manner, land management institutions would be likely to result in consensual management and decision making which takes into account the interests of all parties.

In Guinea, for example, the commissions comprise four members at each level, nominated by:

- the Ministry responsible for Urban Development;
- the Ministry responsible for Agriculture;
- the Ministry responsible for the Interior;
- the Ministry responsible for Mines; and
- 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.

In Niger, at the level of the commune which is the local government closest to the people, apart from the state through its technical departments, the following are part of the land commissions:

- three to four councillors of communes (depending on the population of the commune), one of whom must be a woman, excluding the mayor, who acts as chairperson;

- cantonal or group chiefs with authority in the community;

- one farmers' representative;
- two stock breeders' representatives, one of whom must be transhumant if need be;
- two women's representative;
- one representative of the rural youth;
- one forest workers' representative; and
- one representative from management committees of water supply points;

In reality, however, considering the complexity of land issues and the nature of the relationships between the stakeholders, somehow national political authorities dominate the land tenure and natural resource management scene. This situation is similar to the form of decentralization that gives significant influence to representatives of the state and other technical departments.

In the Anglophone countries, there is no dichotomy between decentralization and deconcentration because, and this is especially true for Ghana and Nigeria, the local governments are recognized as the highest administrative and political authority in local affairs. Indeed, in many areas the technical services and administration are under the authority of the commune. In Cape Verde, there appears to be a marked difference between deconcentrated responsibilities (for example, registration of urban and rural lands with representatives from the Registration, Notaries and Identification department in the country's "Registo Predial", or municipalities, to obtain property titles), and decentralized responsibilities (for example, registration of urban and rural lands in the "Registo Matricial", or town councils, intended for payment of taxes).

### **5.5.2 Mobilization of expertise in 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 of and significant to 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 2001,<sup>14</sup> tried out this approach. The experience resulted in fail-

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14 Decree 215 of 24 April 2001 establishing the setting up of the national land observatory.

ure for Mali which, however, took the strategy in a different direction by holding constant consultations with state structures, civil society and farmer organizations (CNOP), culminating in 2005 in the Law on Agricultural Orientation (LOA).

In Chad, the observatory is based on a cluster of institutions built around a steering committee presided over by the Prime Minister and a principal operator, the University of Ndjamena. The main objective of the observatory 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 land observatory are to:

- contribute to the formulation of suitable land legislation;
- capitalize and disseminate information among the actors concerned;
- contribute to the identification and utilization of the national expertise in the land tenure area, particularly training of the various stakeholders in land tenure issues; and
- to contribute to the development of teaching and research on land in the universities and professional training institutions.

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 cross-sectoral approach**

A look at the relationship between development activities in 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.

### **5.6.1 Land policies are being implemented as part of sectoral policies**

In some countries land policies have been implemented as part of NRM, agricultural development programmes, environmental programmes or rural development programmes. Thus in Benin, Burkina Faso and Niger the rural

land plans (Plan Foncier Rural) have generally been implemented as part of Conservation and NRM programmes. In the Gambia LADEP was one of the main projects for improving security of tenure in land for women. 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 Integrated Protection Project of agro-sylvo-pastoral resources in the region of North-Tillabéri, the Rural Development Project of Tahoua and the poverty reduction programme in Tillabéri and North Tahoua were all NRM 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 NRM programmes and environmental programmes. Land policies and their implementation should be considered as cross-sectoral and there is the need for closer coordination and harmonization between land policies and other sectoral policies particularly in the areas of NRM, human settlement development, agricultural development and environmental management.

Civil society participation in the policy formulation processes has had mixed results in the different countries. Many non-governmental organizations (NGOs) engaged in the areas of NRM 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 community based organizations (CBOs) engaged in NRM and other poverty reduction initiatives came together to form a "civil society coalition on land" 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 RLP in Benin, Burkina Faso and Côte d'Ivoire; GTZ, KfW and DED have all been engaged in the RLP in Benin; the World Bank, the UK Department for International Development (DFID), GTZ, KfW, the Canadian International Development Agency (CIDA) and NDF are all participating in the implementation of the Ghana LAP. Other institutions such as the International Institute for Environment and Development (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. However, 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, private contracts law, family law and inheritance rights, environment law etc. Considering the possible impact of a land policy reform, 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, especially those of the poorest and most vulnerable.

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 that implemented land reform on its own is Togo which, after its Order No. 12 of 6 February 1974 establishing an agrarian, land and domain reform, has not enacted any law (apart from two decrees in 1977 and 1978). This is 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 and 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. Implementation of 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 local governments, giving them power to possess their own public lands, develop the territory and allocate lands; a law on 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; and Law 055-2004/AN of 21 December 2004 establishing a general Code for local governments).

Niger also, following the logic underlying principles of the Rural Code and based on the idea of complementary texts, adopted several sectoral laws 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. However, decentralization laws which served as a basis for setting up local governments established important provisions related to land management, notably by local bodies (Law 2001-023 of 10 August 2001 establishing the creation of administrative constituencies and local governments; Law 2002-012 of 11 June 2002, defining the fundamental principles of free administration of regions, departments and communes; and Law 2002-013 of 11 June 2002, transferring powers to the regions, departments and communes).

## **5.7 Ensuring adequate mechanisms for the management of land conflicts**

In all West African countries settlement of land disputes is tackled at different levels, local or national, depending on the type of conflict and its gravity. A quick categorization of the type of conflicts is undertaken and the ideal authorities to manage or resolve them 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, in accordance with the provisions of the Order establishing the guiding principles of the Rural Code, before judicial procedure can be instituted, an attempt must have been made by the customary authorities to solve the dispute. The outcome of the conciliation by the customary authorities is recorded in a report of the proceedings. Niger has just added another innovation to its judiciary set-up with the introduction of a specialized judiciary: rural land tribunals. These tribunals handle:

- matters pertaining to ownership or possession of land and related rights, where the dispute is about a land registered in the rural register;
- matters related to customary based ownership or possession of land and related rights, ownership of fields or non-immatriculated lands or lands which are not registered in the rural register; and
- matters pertaining to disputes about rural land resources (Article 88 of Law 2004-50 defining the organization and powers of jurisdictions in the Republic of Niger).

However, despite this manifest desire to have local jurisdictions handle land matters, no effort is being made to begin establishing these land tribunals. In Mali, the decree establishing the functions, composition and functioning of the land commissions entrenched in 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 conciliation efforts are successful, the commissions prepare a formal record of conciliation to be certified by the judge.

### **5.7.2 Management of community-based land disputes**

Demographic pressure and environmental degradation are fuelling conflicts between entire communities or categories of land users. One such conflict is the recurrent dispute in the Sahelian countries between farmers and herders, which is 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 crises. In this connection, the Praia Declaration of 1994 identified the following priority lines of actions:

1. support to civil society as regards to natural resource management;
2. support to member states to elaborate national legislation to be applied at local level;
3. mainstream gender into natural resource management policies; and
4. strengthening capacity for information, sensitization and education about land tenure and natural resource management issues in the Sahel.

### **5.7.3 Management of land conflicts having sub-regional consequences**

West Africa is experiencing land conflicts which are deeply rooted in socio-political factors; these conflicts 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 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 management of natural resources, and the land sector cannot be excluded *a priori*. In any event, these conflicts may be impossible to resolve using national mechanisms. This is because the mechanisms may prove inadequate or inappropriate 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 WAEMU, 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 (see Section 4.4.1.1).

## 5.8 Major advances in land policy implementation

A study of the current land policy implementation practices in the sub-region indicated that in recent years most of the states have made noticeable progress in the effective implementation of guidelines and regulations, particularly in the area of rural land tenure. These advances mainly touch on the approach and mechanisms used in policy implementation, particularly:

- giving preference to participatory approaches for implementation of measures, particularly by involving the various local actors in application measures;
- establishing local land use institutions and services whose main objective is reducing the cost of securing land tenure, particularly for rural folk;
- effective transfer of skills and resources to local land institutions;
- setting up alternative mechanisms for prevention and management of rural land conflicts;
- taking due consideration of the distinctive features of rural land conflict resolution approaches by the legal systems;
- adopting supra-national rules with regard to NRM.

## 6. Lessons

These lessons relate 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. The different elements refer to experiences in land policy formulation and implementation of land policies and laws.

### 6.1 Lessons from experiences in policy formulation

From the 1990s most of the countries 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 laws. The changes were also prompted by the need to move away from the fuzzy legal situation 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 regulation) 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 and land policy and/or sustainable and applicable law(s) (Côte d'Ivoire, Togo, Benin and Burkina Faso). Firstly, very few countries have developed land policies and some of those that have done so have not adapted land laws to these policies. Most countries have drafted land laws before developing a land policy. Some have developed a land policy followed or preceded by land laws; others have land legislation but have yet to develop a land policy. In other countries, land issues are dealt with through agricultural and environmental laws. For the 17 countries reviewed, therefore, only 4, namely Ghana (1999), Guinea (2001), Sierra Leone (undergoing formulation since 2005) and Burkina Faso (2007) have land policy documents. In Ghana the LAP is currently being used to formulate new laws. Senegal and Mali have drafted agricultural orientation laws. (In addition to the agricultural orientation law, Mali has the Domain and Land Code [CDF]). The other countries have drafted land laws without

first developing a land policy. It is therefore difficult to say how land policies are being taken into account in land tenure laws.

Secondly, it is apparent that in most countries, there were discrepancies between the formulation of land projects such as the RLP and natural resource management (NRM) or land-use interventions and the way they are really reflected in legislation. The implementation of some laws does not take into account announcements made in the projects or policies preceding formulation of the laws (for example, the RAF in Burkina Faso or the land redistribution policy in Mauritania).

The influence of socio-political factors in the formulation of land policies: taking into account land policies and interventions in the land scene or the benefits of certain projects such as the RLP or NRM in the laws is dependent on several factors according to the country; these factors include socio-economic and political issues or contexts (donor requirements, urgent social and economic problems and major socio-political events).

To illustrate some of the issues or contexts:

1. Certain countries had to reform their laws to ensure coherence or conformity with more liberal economic policies in the framework of the structural adjustment plans of the 1980s. For example in 1991, at the insistence of the World Bank, Burkina Faso introduced the notion of “private property” in its agrarian and land tenure law (RAF), effectively removing the “revolutionary” content of the Sankara era during which it was elaborated in 1984.
2. Other countries opted for reform in response to socio-political events. Mali offers an example. The country 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 democratization enabled the country to experiment the recognition of local land rights. Law 2007-03 of 30 January 2007 establishing a rural land regime is a direct result of the PGRN then PGTRN projects, which tried out the RLPs (Lavigne Delville et al., 2003).
3. For others like Côte d’Ivoire, land reform provided an opportunity to address pressing socio-economic problems (settlement of

young modern farmers through the RLP) to deal with growing unemployment.

Thirdly, in most of the countries willing to undertake natural resource and land reform, the legal and regulatory context is not completed with regard to land policies (for agricultural lands); the same goes for the legal and institutional framework which is still in its early stages (for natural resources). Conflict situations in the context of rural and urban land use and natural resources also continue to be experienced.

## **6.2 Lessons from the implementation of land policies and laws**

The land issue and the way it is managed by the states depends on the choice for society made by each country during the colonial period as well as the post-colonial period.

1. Implementation of land policies and laws requires political will and, more especially, depends on the level of participation of partners—sponsors or donors; in general, when the donor subsidies stop projects also stops. Financing the implementation of land policies and laws is a major problem. The question is then: how can we develop sustainable “endogenous” mechanisms for implementing land policies?
2. Some countries’ land tenure policies are integrated into other sectoral policies, for example agricultural or environmental policy. In such cases, land tenure issues are neither treated explicitly nor comprehensively. Consequently, land issues are not addressed comprehensively. Nigeria has a national spatial planning project 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 the Gambia environmental management law deals with a few land-related issues, just as Togo does.
3. Some land administration procedures marginalize the poorest and benefit certain elites (Liberia).
4. Land titles are not the only means by which people can have access to land. A huge panoply of institutional arrangements exist; people can access land resources by taking out loans or through land rent-



al or sharecropping arrangements, donation and bequests (Amanor, 2001). Such mechanisms are often very important to 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 crucial to land policy implementation of and/or laws (FAO, 2007). It should include local governance.
6. Promoting new policies and legislation is useful, but not sufficient to improve access to land and land ownership for women. Customary systems do not adequately guarantee secure tenure for women; women use land but quite often cannot inherit it or transfer their rights. Sometimes women do not even have direct access to the land as they must pass through a man. And yet, women are major agricultural producers! In the 1970s, Côte d'Ivoire rewarded the female winners of the "National Cup for Progress", awarded to the best agricultural producers. In all the countries studied, the rights of women are not recognized.
7. Well-articulated innovative, pragmatic and creative approaches are needed to address most local land tenure issues. For example, "despite their obviously important qualitative and quantitative roles numbers and their positive in concrete agrarian situations, the different forms of indirect farming seem to be largely underestimated in discussions on land tenure issues, which usually 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<sup>15</sup> in systems of access to land and resources, but are rarely taken into account. They pertain to traditional forms of loans for an undetermined period and do not involve the more monetized 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 substantive law and rural land tenure systems is not operational. It needs to be abandoned and to be replaced by the recognition of the existence of rights and institutions that operate at local level irrespective of whether or not the state

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15 Benin, Burkina Faso, Côte d'Ivoire, Ghana etc.

- plans, ultimately, to transform and integrate them within a public system of land management.
9. Laws on Decentralization and land management and use of natural resources are not always compatible. These should be harmonized in the countries that have embarked on decentralization. In Niger, the 2001 law on decentralization is not really clear about what the relationship is between the land commissions responsible for titling and the institutions within the local governments.
  10. Establishment of rural institutions appears to reduce the cost of securing land tenure: the issue of the high cost and complexity of land titling procedures justifies the lack of interest land users have in land titles.
  11. Privatization of land tenure through titling and *immatriculation* is questionable 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 tenure security options 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 over-representation of the state in land issues needs to be changed.
  13. The state must 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 in the management of pastoral lands and delimitation of grazing areas.
  16. Common areas should be protected.
  17. Land tenure is a cross-cutting issue: inter-sectoral cooperation to elaborate and apply land policy and laws is crucial.
  18. Governments must explore alternative systems of documenting land tenure: harmonization, standardization of “papers” and local conventions.

## 7. Needs Assessment: Challenges and Gaps

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 to produce effectively. The issue of rules and procedures for access and control of land and resources are determinant issues both for promoting market-oriented agriculture and for combating poverty or even for helping ensure peace within a context where competition for resources within a framework that is not sufficiently clear breeds conflicts. The creation of local governments again raises the question as to which authorities should be responsible for land management. During the last decade several developments took place regarding the way land tenure issues are analysed and possible the responses in terms of land policy and interventions in the field.

### 7.1 Challenges

Several challenges can be identified in the West African sub-region:

1. Harmonization of texts towards a better sub-regional integration remains a major preoccupation: is preparing a regional or sub-regional land Charter the answer?
2. Effective decentralization of land management administration (establishment of effective institutions, simple and low-cost procedures): the example of Niger shows that to be effective, the procedures for obtaining recognition of customary land rights need to be simple, implemented at local level and at lower cost. However, studies (see, for example, Gueye et al., 2002) show that often little coherence exists between laws regulating decentralization and those that regulate land management and the use of natural resources; this situation 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 (Côte d’Ivoire, Liberia and Sierra Leone) and post-conflict situations (Chad): how to ensure equity of

- access to land 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 land and legislative reforms implemented since the 1990s, the vast majority of family farms currently have little or not tenure security. What we are seeing is a large-scale break-up of family farms (Amanor, 1999) with, paradoxically, land-grabbing by affluent urban citizens or the increasing appearance on the land scene of “new actors” such as returning city dwellers, returning exiles, and agricultural entrepreneurs (urban elites).
  5. Owners of family farms are feeling increasingly vulnerable because of the ongoing drive to privatize lands and because of speculation and conflict situations.
  6. Women’s access to land and land ownership: a human rights issue. 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’s rights activists. Men and women traditionally continue to observe this pattern of roles and relationships (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 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 marriages break up. Recognizing rural land rights only affirms this insecurity.
  7. In most local governments 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.

8. Young people's access to land and land ownership is also a human rights issue. The gender issue should not overshadow issues concerning the youth, who constitute another category in family agriculture.
9. Recognition and security of local rights and rights over natural resources: efforts are indeed being made to recognize local land rights in countries like Benin, Côte d'Ivoire and 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 local conventions for the management of natural resources.
10. 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 armed clashes between the local dwellers of the area, rebel groups, the army and the police. These clashes have left many dead; the causes are the people's anger at the poverty and the 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 12 years, and the most violent clashes were around the diamond mines. In Liberia, in addition to diamonds, the war was also about access to timber and iron.
11. A better management of resources 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 projects that will benefit local communities directly. In Niger, the law on mines (Law No. 2006-26 of 9 August 2006) allocates 15 per cent of earnings from the mines sector to local communities in the production areas (and 85 per cent to the national budget) to develop these areas. This law was enforced in March 2008.
12. Increasing urbanization: urbanization constitutes a constant threat to arable land and the future of agriculture, as can be seen in greater Dakar, Senegal, where close to 80 per cent of very rich agricultural lands with vegetable growing potential (NIAYES) and which

provides more than 60 per cent of the region's vegetable produce, is being built up.

The current food crisis (“hunger strikes”) is linked to various factors, including increasing urbanization and loss of agricultural lands. This crisis presents a challenge, but is also an opportunity in the context of land issues. When city dwellers start demonstrating against hunger, the whole world takes action; when rural dwellers are struck by famine, not a sound is heard.

### 13. Biofuels

Biofuels are an emerging issue in West Africa. Growing plants, including turnip rape, sunflower, soya bean, palm trees, including coconut palms, and euphorbia for production of biofuels to meet the need for alternative sources of energy, is an emerging issue with repercussions on land policy formulation. There is generally a huge demand for land to produce the raw material required and this creates fierce competition with the need for land for food production. In Benin, vast tracts of land have been allocated for production of biofuels, and similar demands exist in Ghana for the same purpose. In Banfora, Burkina Faso, an experiment is being conducted where a factory for *Jatropha curcas* processing is under construction. The countries in the region could be tempted to grab the opportunities that are being opened up by this new market. However, this issue calls for serious socio-economic analysis to establish its social and environmental acceptability and identify the required compromise between food security, soil fertility and growing of raw materials to produce biofuels. The issue must be considered at regional level so that strategic directives may be elaborated while balancing the costs and benefits.

### 14. Impact of HIV/AIDS

Another emerging challenge is the impact of HIV/AIDS on land issues in the region. The literature indicates that the impact of HIV/AIDS on the socio-economic life in the region is not comparable to the situation in East and Southern Africa although it is a cause for significant health concern. Adult prevalence rate ranges from as low as 0.035 per cent in Cape Verde to as high as 10 per cent in Guinea Bissau (see Table 5). Nevertheless the effect of HIV/

AIDS cannot be ignored. The impact of the pandemic has a debilitating effect on agricultural productivity, as it reduces the available labour force. It increases the operation of informal land markets, as heads of land owning communities are affected. It is recommended that a detailed study be carried out on the impact of HIV/AIDS on land tenure relations in the region.

**Table 5: HIV/AIDS adult prevalence rates (2003)**

Country	Prevalence rate (%)
Benin	1.9
Burkina Faso	4.2
Cape Verde	0.035
Chad	4.8
Côte d'Ivoire	7.0
Gambia	1.2
Ghana	3.1
Guinea	3.2
Guinea Bissau	10
Liberia	5.9
Mali	1.9
Mauritania	0.6
Niger	1.2
Nigeria	5.4
Senegal	0.8
Sierra Leone	7.0
Togo	4.1

## 7.2 Challenges and bottlenecks

### ***7.2.1 Long-drawn-out processes of land policy development and delays in implementation of land policies and/or laws***

Land reform processes tend to be long. In Côte d'Ivoire the process began in 1989 and the law was voted in 1998. It was almost 10 years after the law was

voted that the process of implementation began (2007),<sup>16</sup> probably for lack or insufficiency of funding and because of the war in 2002. The process in Benin lasted from 1991 to 2007. In Burkina Faso the process began in 1984 (RAF) and was resumed in 1991 and 1996 and is still ongoing, the same situation as for Cape Verde (1983, 1993). In Nigeria the process has been ongoing since 1991.

### **7.2.2 Omissions and taboo issues**

Some land tenure reforms fail to consider cross-border or regional dimensions of managing access and development of lands and certain natural resources, such as:

- Use and management of water resources: some states attempt to redress the situation many years down the line (Mauritania with Law No. 2000-044 of 26 July 2000 establishing a Pastoral Code; Guinea with Law 051/CTRN of 29 August 1995 instituting the Pastoral Code; and 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 Faso and Niger is a major problem. Conflicts between indigenous farmers and migrant herders are frequent, and the authorities in Benin have had to take often draconian measures.<sup>17</sup> The conflicts between Mauritania and Senegal are also a cause for concern.
- Population mobility (the issue of migrants—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 most serve their own interests, tensions may arise. Mobility as a result of war (return of refugees) is a problem in Burkina Faso, Côte d'Ivoire, Liberia and Sierra Leone. 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 in-

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16 Training of the stakeholders and awareness raising campaigns are ongoing. Land investigations are currently being undertaken.

17 Benin has on several occasions threatened to permanently close its borders to transhumant herders from Burkina Faso.



corporate 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, issues pertaining to fair and equitable use of land should be paramount in reconstruction efforts, in the interests of peace building and of establishing the ideal conditions for economic recovery. The World Bank, the United States Agency for International Development (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 Food and Agriculture Organization of the United Nations (FAO) has also 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 national Burkina Faso” (2003), the return of people repatriated from Côte d’Ivoire, which began with the events at Tabou in 1999 and was accelerated with the Ivorian crisis in 2002, has had an effect on land issues in Burkina Faso. At a meeting held at Banfora on 31 May 2003, organized by OXFAM Intermon and moderated by GRAF around the theme “The reintegration of Burkinabe 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 causes a modification of the demographic structure, sometimes to the detriment of the local communities.
- The need for clarifying the conditions of access to land; to specify the content, meaning and implications of the “procès-verbal de palabre” (written agreement of local communities to transfer part of their lands) sometimes obtained by local support organizations.
- As the support and assistance actions are exclusively reserved for the repatriates, the exclusion of the autochthons can lead to a deterioration of inter-community relations.
- The degradation of natural resources related to the anarchistic occupation of river 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 laws**

Poor dissemination of laws leaves room for subjective interpretations by people competing for land and looking to promote their personal objectives. 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 laws and anticipation behaviour change lead to social configuration changes, to weakening certain practices and to legitimizing others.

The population needs to familiarize themselves with the new laws and procedures put in place for their benefit; these should be circulated and disseminated quickly in a manner that will be easy for them to understand. Any proposed legislation must be published in a form and a language that will make it accessible to the entire populace. This is essential to ensure that illiterate people also can understand their rights.

In Côte d'Ivoire awareness raising about the law only started 10 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 (Chauveau, 2002, 2003; GIDIS-CI, 2005), even though the law actually gives user rights to foreigners already using the land (Zalo, 2003).

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

Several kinds of needs were observed. Some have to do with tools and approaches (formalization, instrumentalization and cartography), others relate to the people involved (gender, donors, governments), and others relate to the laws.

### **7.3.1 Secure tenure for marginalized groups and equity in access to land and natural resources**

This is a human rights issue. Among the marginalized groups or “those excluded from land”, as stated in the Praia Declaration, one may cite mainly women, pastoralists, migrants and refugees. Obtaining greater access to land 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 for 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. The governments of the region should be more committed to boosting the process of securing land tenure (formulation and implementation of policies, laws and reforms).

### **7.3.2 Innovative tools specific to the context of “imperfect land commercialization”<sup>18</sup>**

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 et al. (2004:1) point out with regard to Burkina Faso, “these transactions are ambiguous, at least because the meanings attached to exchanged ‘property’ are far from being clear, unequivocal and shared by all actors, as transactions are in most cases hidden, and very often done without clearly using the terms ‘sale’ and ‘purchase’ ; in addition they are hardly ever backed by legal proof of the transaction or of ownership for the buyer... what 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”. Accord-

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18 Leroy, 1997.

ing to Chauveau et al. (2006:7), “the practices of this market have deviated from both customary land principles and legal land tenure legislation as understood and accessed locally”.

Commercialization of lands and land related relationships are taking place at the expense of a section of the population, namely 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 urban or foreign entrepreneurs, and they disrupt sales to these vulnerable groups. Land tenure instruments that take into account these social groups should be put in place.

### **7.3.3 Need to recognize 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 be recognized by the state as being valid” (Lavigne Delville et al., 2001:18). Studies (2002) on the indirect farming or derived rights in Benin (Edja, 2002), Burkina Faso (Paré, 2002), Côte d’Ivoire (Koné, 2002), and Ghana Amanor, 2002) 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 flexible means of augmenting or reducing the lands they need without alienating their rights definitely. Rental markets make land access easier for the poor and allow them a partial or temporary withdrawal from their farms without losing ownership of their land.

Delegation of land rights “through rural contracts is now seen by economists as the best means of ensuring a more efficient (corrective to the imperfect market and existing risks) as well as equitable (because of the inverse relationship between farm size and productivity which benefits family farms) distribution of land as a productive resource, whatever the land distribution of property and possible market rigidities are” (Colin, 2001:16).

### **7.3.4 Formalization, a need for sustainable tenure security through “papers”**

Documentation of land rights (“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, in presence of witnesses of both parties present. This practice is a hybrid of local norms and legal procedures (Koné and Chauveau, 1998). It affords people not only a chance to record their transactions, but also to secure them. They do not hesitate to brandish their “papers” (Koné, Basserie and Chauveau, 1999) when necessary.

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

### **7.3.5 Adoption of trans-regional legislation**

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 and NRM) and ensure that they are implemented is real (for example, development of a regional land charter). Moreover and above all, guidelines at regional or sub-regional levels are crucial as a basis for land policy initiative; an option would be to develop a framework taking into account national as well as West African (Sahelian zone and forested areas) specificities to serve as a reference document.

### **7.3.6 Active involvement of donors, institutions and multilateral organizations**

In the countries reviewed, donors and multilateral organizations are helping and assisting, with or without conditionality, agrarian and land tenure reforms as well as reforms related to natural resource management. Others have concentrated on promoting delivery of property titles (World

Bank) and land information systems (French MFA and FDA regarding the RLPs). Others provide grant aid to meet the costly phases of reform preparation and implementation. Still others, such as the European Union with the CLAIMS<sup>19</sup> Project, help to promote research on rural land use in these countries. International institutions and agencies such as the World Bank and USAID are offering assistance in clarifying land tenure issues in post-crisis Liberia; FAO has also provided technical and financial assistance to help this country define a forest management policy that will put control over forestry resources back in the hands of the Forestry Development Authority.

In Benin the MCA (Millennium Challenge Corporation) is involved in the land reform process. In Côte d'Ivoire the World Bank and the European Union are supporting the implementation of the land law. In Ghana the World Bank is involved in the Land Administration Project; GTZ, DFID, KfW, ACDI and NDF are also involved in land tenure issues in Ghana. Such collaboration should be continued.

There are also several similar regional initiatives that should be harmonized to ensure synergy and consistency of actions. These are from:

- Sahel and West Africa Club;
- ECOWAS;
- CILSS and the land tenure charter;
- the ECA and RECTAS;
- WAEMU; and
- NEPAD

### **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 Laboratoire d'Etudes Foncières [LEFCI] and 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, ROPPA/CRDI land project already exist. Such initiatives should be encouraged.

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<sup>19</sup> Changes in Land Access, Institutions and Markets in West Africa - Changements au niveau de l'accès à la terre, des institutions et des marchés du foncier en Afrique de l'Ouest.

### **7.3.8 Building capacity of individuals or authorities involved in the dispute resolution chain**

The capacity to make interventions should be strengthened among local and national state and non-state actors, who should also be involved in the resolution of land conflicts.

### **7.3.9 The need for a permanent, reliable land information system**

The rural hub as a service providing agency set up to help actors involved in rural land management is extremely interesting: it focuses on sharing information, land related news and experiences from different countries.

## **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 information and communication technology (ICT) and computerized 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 the LAP in Ghana's and the RLP in the francophone countries. This support at the initial stages provides the initial capital needed to jump-start the process. Development partners need to consider their engagement in land issues in the region on a 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 mobilized 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 computerized land information systems that is linked to the national spatial data infrastructure, etc.

## 8 Conclusion

### 8.1 Main conclusion

The above analysis shows clearly that, firstly, 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, WAEMU and other bilateral and multilateral cooperation organizations are involved in land tenure issues within the broader question of natural resources management. Additionally, all research points converge on 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 to be essential from several points of view:
  - it seems to be absolutely critical for the success of activities in connection with the management of natural resources and environmental protection;
  - it is a key condition for achieving investments and increasing production;
  - it contributes to the preservation and consolidation of social peace.

In several states innovative reforms have been developed seeking to address the challenges identified. However, 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 assessment of land policies and laws in the region, the lessons suggest that there is need:

- to clearly define the status of the different land users and stakeholders, such as farmers, stockbreeders and fishermen;
- for a set of national guidelines on land management, based on principles of social justice;



- for political recognition of the principle participatory approach for decisions making about the implementation of natural resources management policies;
- to establish clear and viable frameworks to improve access to natural resources for vulnerable groups (especially women) and regulate relations between land owners and users;
- to fight against land speculation;
- to develop spatial planning initiatives aiming at protecting livelihoods and the environment;
- to draft framework legislation on natural resources management;
- to adopt and implement decentralization policies; and
- to set up a fund to support the development and implementation of land policies and legislation.

## **8.2 Differences and similarities between the countries reviewed**

Several differences and similarities were apparent between the 17 countries reviewed in this study.

### **Differences**

- Three national or official languages: French (Benin, Burkina Faso, Côte d'Ivoire, Guinea, Mauritania, Niger, Senegal, Mali and Chad); English (Liberia, Nigeria, Sierra Leone, the Gambia and Ghana); and Portuguese (Cape Verde and Guinea Bissau).
- Different poverty levels: Burkina Faso, Chad, Guinea Bissau, Mali and Niger are among the 10 poorest countries in the world.
- Ecological variety: Sahelian and desert zones or both/ forest areas; coastal areas (Benin, Côte d'Ivoire, Ghana and Togo)/ hinterland areas.
- Differing land uses: predominantly agricultural (Côte d'Ivoire, Ghana, Sierra Leone, Guinea, Liberia, Togo, Benin, Gambia and Guinea Bissau); predominantly agropastoral (Mali, Senegal, Niger, Chad, Burkina Faso and Nigeria).
- Efforts being made to recognize and register customary land rights in some countries (Côte d'Ivoire, Benin and Niger) but not in others.

- Depending on national and climatic or agro-ecological specificities (different regions of the same country), the land issue takes on a different dimension. In the southern part of Benin, for example, commercialization of the land is much more pronounced than in the north.

### Similarities

- Increasing urbanization;
- Increasing appearance on the land scene of “new actors” such as returning city dwellers, returning exiles and agricultural entrepreneurs (urban elites);
- The presence of these new actors (urban dwellers who are investing in the rural areas) has a significant impact on rural poverty, family agriculture and the break-up of family farms;
- Land speculation;
- Legal pluralism in the aftermath of colonization;
- Willingness to undertake land and 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 but do not have a land use policy, except Ghana (1999), Guinea (2001), Sierra Leone (under formulation since 2005) and Burkina Faso (2007). Senegal and Mali have an Agricultural Orientation Law (LOA).
- Generally, gender issues remain largely ineffective no matter the approach taken.
- In most of the countries, mining resources are to be found in varying proportions.

## **8.3 Proposals for improving the land policy framework for Africa**

The framework generally captures land issues confronting the continent and the skeleton of the framework is good as a working document. Even though the framework document has a piece on each region these are not

detailed enough. Based on the analysis made in this report, the following suggestions are made:

1. The framework should be enriched with the regional specificities identified in the regional reports which have not been captured in the document. The five top priority issues captured for each region should be emphasized, for example, shared resources and ecosystems, transhumance, land and mining activities are critical issues in West Africa.
2. Monitoring and evaluation should form an important component of the framework. In this sense the methodology for establishing a monitoring and evaluation system and performance indicators should be emphasized in the framework.
3. The role of research is weak in the framework and this should be strengthened. For example, whereas the impact of HIV/AIDS on land is quite well documented for some of the regions the picture is not so clear in West Africa and calls for research. This was one of the recommendations of the regional workshop.
4. The document should emphasize the issue of continued political commitment of member countries, as it underpins the successful implementation of the initiative.
5. Emphasis should be placed on financing the initiative from local or national budgets. The land issue should be identified by all member states as being critical to the socio-economic development of the countries and should not be donor dependent. In many instances once donor funds stop projects also stop, irrespective of the importance of the project.

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# Annex I: 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 ongoing 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-AfDB 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. Analyse 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. Analyse 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 RECs in preparing documents and planning for regional consultations and participate in the consultation workshop.



This West Africa regional assessment study has been prepared by 3 experienced land experts from the region. The report which was based on a desktop review has benefited inputs from the AUC- ECA -AfDB Consortium, as well as from a wide range of stakeholders during a regional multi-stakeholders consultation. The multi-stakeholders consultation led by the Economic Community of West African States (ECOWAS), with active support of the Permanent Inter-State Committee for Drought Control in the Sahel (CILSS), involved representatives of Governments, Regional Institutions, Civil Society Organizations, Traditional Chiefs, Private Sector, Centres of excellences and Development Partners.

The regional assessment study discusses key land issues and challenges in West Africa, and provides useful information on the ongoing land policy processes. It also draws lessons from successes as well as from failures in land policy development, implementation and monitoring.

The study helped to enrich the Framework and Guidelines on land policy in Africa with regional specificities from West Africa.

The AUC- ECA- AfDB Land Policy Initiative Consortium hopes that this publication will be useful to all stakeholders, especially to Governments, Civil Society Organisations, and Development Partners, in their efforts to promote experience sharing, document best practices in the land sector and build capacity for effective land policy development, implementation, monitoring and evaluation.

