

BRIEFING NOTES

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

“Land Tenure & Development” Technical Committee

Changing forms of land governance in West Africa

by Sidy Mohamed Seck¹, October 2016

The recent rise in large-scale land acquisitions in West Africa has raised questions about land management and prompted considerable criticism of the systems used to govern land. Although land governance is a key aspect of land policies, it remains a loosely defined concept. This paper identifies the main characteristics of governance in central and decentralised land management systems, with a particular focus on the practical issues and questions it raises in West Africa, and suggests how land governance can be strengthened in this particular context.

What is land governance?

Governance is defined in various ways and therefore tends to be regarded as something of a ‘catch-all’ concept. This paper uses the UNDP definition of governance as “the system of values, policies and institutions a society uses to manage its economic, political and social affairs through interactions within and between the State, civil society and the private sector.” As such, land governance is the set of processes through which decisions about land are made and implemented, can be legitimately contested, and whereby conflicting land interests are resolved.

While the mechanisms for land governance are defined by the legal, political, technical and administrative frameworks for the land sector, it is the practices used by different land management actors that give it its concrete form.

In order to build solid land governance, the conditions have to be created for public land resources to be governed in a transparent, participatory, equitable (to best meet citizens’ expectations) and sustainable manner.

This entails adjusting different public and private power structures, reviewing the concept of decision making, reconsidering the roles and responsibilities of different types of actors, ensuring that decision-making processes are

transparent and information is accessible, monitoring the legality of decisions, securing rights to recourse, and making decision-makers accountable to the public (obliging them to present and justify their actions and accounts).

Land governance can then help regulate competition over land and limit the ways in which land management can be used to serve other, darker purposes (corruption, speculation, illegitimate challenges, arbitrary expropriations, etc.).

Current challenges for land governance in West Africa

Land governance systems need to adapt to the complexities of today’s world. Intense pressure on West African land resources has been exacerbated by the recent arrival of national and foreign investors seeking to acquire vast tracts of land for the public and private sectors, and countries with centralised and decentralised land management systems have been equally sharply criticised for failing to consult local communities before allocating land to external actors. This situation is reigniting old conflicts, creating new ones, and highlighting shortcomings in existing land governance instruments and mechanisms.

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Major discrepancies between positive law and customary rights, between official texts and local practices that are often ignored or tolerated by the State create another set of challenges. Land governance has to contend with several interlinked sets of local and official norms, and the development of informal or even illegal land practices in a sector where corruption is often rife.

New forms of governance whose outcomes are still uncertain

● Participatory formulation of land policy documents

Action by civil society groups and farmer organisations has led to significant progress in recent years, prompting the public authorities and their partners in several countries to start using participatory processes to produce land policy documents, rather

than basing their land reforms on new laws. This participatory approach has encouraged several States to promote more appropriate governance mechanisms in their strategies and policies.

● Simplified procedures

Easy access for all to the land services, simplified procedures, and costs that are determined in accordance with rural realities are paving the way for more effective land management and limiting the role of intermediaries and the risks of corruption. In Niger and Burkina Faso, for example, quicker, cheaper and more flexible procedures have been developed for obtaining documents to secure rural land tenure.

● Decentralisation as a conduit for greater citizen participation

Civil society and producer organisations in several countries are driving calls for more decentralised local land

management, with local government land services and village land committees (whose names vary from one country to the next). This shift will involve a redistribution of power that could upset certain public and private actors, and will also require more intense social demand and lobbying.

Citizen participation can be envisaged at two levels: in land management operations, and in defining the rules for land management.

> Participation in land management.

Local affairs run by elected bodies and village authorities should encourage more transparent management of public affairs and foster the democratic participation needed to establish more equitable local governance. Several countries in the region have taken measures to strengthen citizen participation by creating local land authorities that are actively involved in processes to secure land tenure and manage conflicts (Niger, Burkina Faso, Mali, Benin, Côte d'Ivoire...).

> Participation in defining land management rules.

A number of countries are also encouraging their citizens to play a role in formulating land management rules, using tools for decentralised territorial and land governance that draw on local ideas and expertise.

In Senegal, participatory LUPs identify a set of rules that allow different activities to coexist in the space covered by a territorial authority. LUPs are a tool for regulating access to natural resources, preventing conflicts and facilitating dialogue between populations and institutions. This can enrich development operations and influence the way in which they take account of the constraints to and possible repercussions on land use.



In some countries these tools include land use and allocation plans (LUPs), local conventions, land charters, etc.

> **Problems with the legal standing and effective application of land governance systems.** Land governance can be improved by designing and implementing instruments to define and monitor land management rules that protect marginalised groups (particularly agro-pastoralists) and collective resource use, and by setting up mechanisms for prior consultation on agricultural projects locally promoted by the administrative authorities, NGOs or private operators. Although these instruments and mechanisms provide opportunities to improve land governance, institutionalising them to ensure that they are legally recognised and effectively enforced remains a challenge.

In Senegal for example, an evaluation identified various shortcomings in the decentralisation process that are hindering sustainable land management and encouraging abuses of the system:

- institutional and organisational weaknesses and lack of human and financial resources at the local government level;
- lack of clear procedures for implementing the national land law;
- poor local governance, exacerbated by cronyism and the politicisation of local government operations, and;
- lack of accountability and citizen oversight.

> **Links between decentralised and local authorities.** The local governments that play a key role in decentralisation processes need to establish their legitimacy as land actors, and

interact with village structures that are already regarded as legitimate agencies in this field. One of the main challenges at this level is determining how the roles and responsibilities of elected local officials tie in with pre-existing or newly created village authorities. The place that customary authorities should occupy in village authorities is also under discussion.

The place of customary chiefdoms has proved particularly contentious in stakeholder discussions about the new rural land policy in Burkina Faso: customary chiefs want to play a central role in local land management, while producer organisations think they should have a consultative role.

> **Land governance systems should include means of recourse.** West African societies have traditional mechanisms for dealing with land disputes through processes of negotiation, mediation and reconciliation that often involve the customary authorities. If the matter cannot be resolved at the local level, it is taken to the administrative authority and ultimately the competent judicial authority. In certain countries, such as Niger, these local mechanisms are reinforced by legislation that requires the customary authorities to attempt to settle disputes before the parties resort to legal procedures.

Most rural people in West Africa have little knowledge or understanding of legal texts. They need recourse to accessible mechanisms that will enable them to appeal against decisions (taken by the customary authorities, the administration or the judiciary) that adversely affect their interests.

Improving access to means of recourse is particularly important given the current lack of control over decision-making, poor accountability and difficulties in accessing information. It is worth investigating the role that paralegals and legal caravans could play in helping local people in this respect.

Summary

One of the cornerstones of effective land governance is a holistic approach that takes account of the strong cultural dimension of land issues, and recognises that these issues change over time in response to various demographic, political, economic, social and environmental factors. The main challenge is identifying land management systems that can contribute to a development dynamic that pays due attention to the different dimensions of sustainability: poverty reduction, economic growth, environmental protection and greater social cohesion.

This will require more intensive efforts to build on what has already been accomplished in West Africa to promote:

- more transparent management of land resources;
- participation and inclusion in order to generate decisions that are socially validated by local communities and different actors with diverse and sometimes divergent interests;
- accurate and accessible information that is widely shared, in order to build trust and ensure that land policies and decisions are appropriated;
- consultation to enrich representative democracy;

- justice that promotes the need for publicly accountable decision making, legal and citizen controls and means of recourse that are accessible to local people;
- equity as a principle of distributive justice and the bedrock for stability and balanced economic and social development. ●

FOR FURTHER INFORMATION SEE:

>> *D'Aquino P., Seck S. M., Koffi M., Camara S., 2014, "A support procedure for decentralised land management (DLM)", Briefing note, CTFD, ADF, MAE, Paris: http://www.foncier-developpement.fr/wp-content/uploads/2014_Fiche-Foncier_Aquino-Seck-Koffi-Camara_GTFD1.pdf*

>> *Polack E., Cotula L. and Côte M., 2013, "Accountability in Africa's land rush: What role for legal empowerment?", IIED/CRDI, London/Ottawa: <http://pubs.iied.org/12572FIED.html>*

>> *Granier L., 2012, "Are local conventions effective tools for the joint management of natural resources?", Briefing note, CTFD, ADF, MAE, Paris: <http://www.foncier-developpement.fr/wp-content/uploads/les-conventions-locales-des-outils-efficaces-de-gestion-decentralisee-des-ressources-naturelles-par-laurent-granier.pdf>*

>> *PACR-VFS, 2011, "POAS et enregistrement de droits fonciers : dans quelles conditions ces deux démarches peuvent-elles contribuer et conforter la sécurisation foncière en Afrique de l'Ouest?", Summary of joint analysis: <http://hubrural.org/Publication-POAS-et-enregistrement,8572.html?lang=fr>*

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