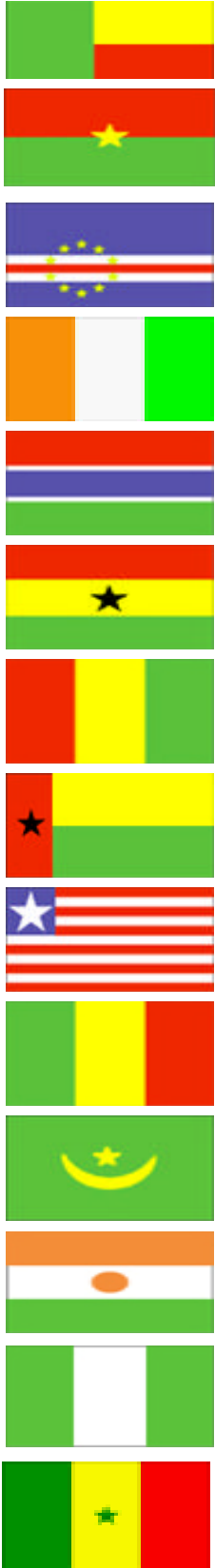


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Contre la Sécheresse dans le Sahel

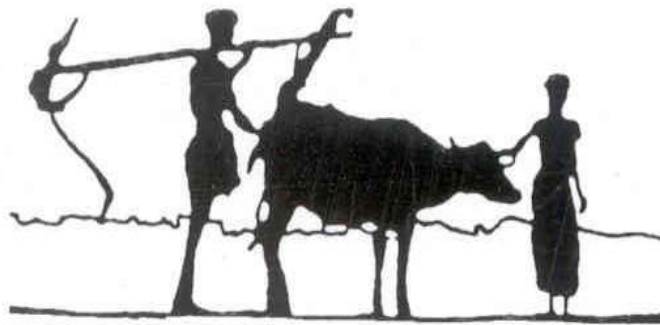


Permanent Interstates Committee for
Drought Control in the Sahel



Regional Forum Praia+9

*Rural Land Tenure and
Sustainable Development
in the Sahel and West Africa*



Regional Summary Report

*Bamako (Republic of Mali)
17 – 21 November 2003*



**RURAL LAND TENURE AND SUSTAINABLE DEVELOPMENT IN THE
SAHEL AND WEST AFRICA**

**SECURE LAND TENURE PROBLEMS IN THE SAHEL AND WEST
AFRICA:**

NINE YEARS AFTER PRAIA

REGIONAL SUMMARY REPORT

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With the cooperation of Pierre BERGERON

November 2003

INTRODUCTION

This regional synopsis aims at informing and opening the debates of the regional forum Praia+9 on “rural land tenure and sustainable development in the Sahel and West Africa”.

It was worked out on the basis of the country review papers on the status of implementation of the orientations of Praia 94 made in the various CILSS member States within the framework of the preparation of the forum as well as the national documents produced to this effect by some countries of Coastal West Africa (Benin, Ghana, Togo).

These national documents were worked out based on terms of reference specifying the following study points:

- *Land policy options adopted;*
- *Status of the legal and institutional framework on land tenure and NRM;*
- *Level of consideration for the needs and interests of specific groups (women, the youth, stockbreeders, migrants, etc.) in land tenure and NRM policies and laws;*
- *Mechanisms for the adoption and dissemination of land tenure and NRM policies and laws;*
- *Level of enforcement of the adopted laws;*
- *Level of consideration for the land tenure dimension in the major national policies and strategies (decentralization, poverty reduction, environment, etc.)*
- *Emerging land tenure issues;*
- *The way forward.*

Concerning the deadline, unfortunately, it was not possible to have in time a document for Cape Verde, a CILSS member country where the national review process was not completed in time; though it was transmitted, the Guinea Bissau paper could not either be taken into account through lack of time for translation from Portuguese into French.

Benin, Ghana and Togo were chosen for this national review process because they are representatives of the “Coastal West Africa” and also because, essentially, of practical working facilities. Of course, the Praia+9 process should be seen as a large scale brainstorming process on rural land tenure in West Africa that encompasses the sub-region’s countries as a whole.

This regional synopsis is also based on the outcome of studies carried out by the Unit in Support of Local Development in the Sahel (UDL, former PADLOS), which is a regional component set up in 1995 by CILSS within its *Programme Majeur* on Natural Resource Management in order to assist the countries and the Sahelian civil society in implementing the orientations defined at Praia. The most significant studies

the Unit has carried out and that are taken into account in this summary report include the following:

- Studies carried out for the International Conference on Land tenure in the Sahel (St-Louis, April 1997);
- Proceedings of the regional workshop on Decentralization and land reform in the Sahel (Djaména, July 1997);
- Studies on the decentralized management of natural resources in various CILSS countries (1996 – 1999);
- Studies on women and NRM in the Sahel (1996-1997);
- Studies on the analytical synthesis of laws and regulations on NRM in various countries (1999 – 2000);
- Proceedings of the regional forum on local governance in NRM held in Bobo-Dioulasso (Burkina Faso) in October 2000 and which was already a first mid-term evaluation of the implementation of the orientations of Praia, centered on decentralization aspects.

This summary report refers also to other major studies carried out the subject matter.

Finally, it is also important to note that in the final phase of the elaboration of the synopsis, and in order to collect some additional information, a very rapid survey was carried out among resource persons (in particular, the *Confederation Paysanne du Faso*, the *Comité National de Sécurisation Foncière au Burkina Faso*, the GRAF, the *Réseau Décentralisation GRN-Niger*, the FRAME contact group) through interviews and questions sent by electronic mails.

This paper is not meant to be exhaustive regarding the issues addressed. It is intended to stimulate the thinking of the participants in the forum in order to fuel the discussions.

This paper is structured around the following main parts:

- The first part sets the background on land tenure problems nine years after the conference of Praia: at that time, the land tenure issue was considered from the decentralization perspective. Today, this issue has not lost its relevance. It has rather taken a stronger regional dimension;
- The second part deals with the main guidelines adopted at the 1994 Conference of Praia on land tenure issues;
- The third part deals with the status of implementation of the orientations of Praia 94 in the CILSS member States in term of progress achieved in setting up an enabling legal and institutional framework for a democratic, participatory and decentralized management of natural resources, the dissemination of and access to legal information, the situation of under-privileged groups and conflict management;
- The fourth point tackles the main difficulties observed in the implementation of the orientations in the countries and the lessons learned;

- The fifth point sums up the land tenure and NRM policies and legislations in some coastal countries of West Africa whilst drawing a parallel with the situation in the Sahel countries;
- The sixth point focuses on emerging land tenure issues, i.e. issues resulting from the latest social and political developments;
- The seventh point briefly outlines the idea of a Regional Rural Land tenure Charter in West Africa and Chad, which could be one of the possible outcomes of the Praia+9 process.

I – BACKGROUND

Issues of land and access to natural resources have always had a crucial importance in the predominantly agricultural and pastoral Sahelian and West African societies. Apart from its economic value, the land is a social and cultural benchmark for the men and women living in these societies.

However, in the Sahel countries, the scarcity of land resulting from the combined effect of human and animal population pressure as well as the successive droughts that affected the Sahel in the late Sixties made the land issue a truly major development challenge in the sub-region. It is even seen as the “Gordian knot of all the sustainable development strategies”.

The regional strategy for desertification control/NRM in the Sahel worked out by the CILSS member States in 1984 in Nouakchott and adopted by the Heads of State at the 7th conference of the Heads of State and Government in January 1986 in Dakar was no exception in that regard. The regional meeting on natural resources management held in May 1989 in Ségou (Mali) under the aegis of CILSS and the Club du Sahel in order to provide operational contents to this strategy had defined eight major orientations:

- Ecological rehabilitation: restoring a degraded asset;
- Decentralization: enhanced efficiency;
- Land tenure: making investments safe at the community level;
- Local credit and savings: increasing local investment;
- Women: developing their participation;
- Information-training: sharing experiences;
- Population and development.

Among these eight orientations, given the context prevailing at the time, the Council of Ministers of CILSS held in Bissau in February 1990 considered that those relating to land tenure and decentralization were top priorities and instructed the Executive Secretariat of CILSS to initiate a forward-looking study on these two topics.

Decentralization: enhanced efficiency

The States will support this process of empowerment of the local communities, if at all the latter demonstrate that they can really take in hand their own development. This transition implies that the administrations will facilitate

the sensitization of the communities and decentralize part of their public service activities in favor of these communities.

The State should take new institutional measures in order to guarantee and arbitrate local development. This implies defining and applying holistic regional planning policies in order to ensure balanced investments, and policies favorable to the incomes of the rural communities and the emerging civil society. The partners of the international community: In their collaboration with rural organizations to

improve the effectiveness of their assistance, they could transfer part of their procedures and decision-making powers to their local agencies.

Finally, it is necessary to lay down rules of partnership that are as clear as possible between the three "families": rural organizations, States and donors.

Land tenure: making investments safe at the community level

There are now many and increasingly more acute land tenure problems arising at the local level, as a result of the pressure on the land. This calls for a flexible linkage between the modern law (too often unknown) and the traditional law. One solution could be to consult the producers' organizations to settle disputes.

Among the land problems, the development of a land market in some developed areas conceals hidden dangers. The poorest and

marginalized producers who are forced to sell plots tend to overuse the land and thus participate in ecological degradation. The peasants having lost their lands go to increase the number of the urban unemployed. It will probably be necessary to find appropriate rules to avoid these problems. In the short run, the main problem is insecurity of land investments: no investment can be made by the producers for improving the land if they are not sure to benefit from the fruits of their work. Legal solutions should be found.

In that vein, the regional conference on land tenure and decentralization problems held in Praia (Cape Verde) in June 1994, which brought together States' representatives, peasant-farmers' organizations and development partners, enabled to define the main orientations for a democratic, participatory and decentralized management of natural resources in the Sahel.

Despite remarkable efforts made over the last years by the various stakeholders (States, the civil society, partners) towards adopting the orientations of Praia, there seems to be a long way yet to go. The land is still a topical and thorny issue: the problems of access to lands and resources are becoming increasingly difficult issues to solve, land related conflicts are growing in number and are becoming increasingly severe and, for the majority of the rural populations, it is the same feeling of land insecurity that always prevails.

The land issue has reached, in a number of countries, a critical dimension as a result of the violent conflicts that broke out recently in the region (The Mano River countries, Côte d'Ivoire) with their attendant migration flows. Today, the land tenure issue is a problem of regional dimension.

II – THE PRINCIPAL ORIENTATIONS OF PRAIA

The regional conference on land tenure issues and decentralization in the Sahel adopted a memorandum known as the "**Praia Declaration**".

In this Declaration, a number of constraints to natural resource management are raised:

- ✓ Laws and regulations governing the lands not accessible to the users;

- ✓ The institutions in charge of natural resource management and those in charge of settling disputes are far away from the local communities;
- ✓ The institutions that manage land tenure issues do not know local practices and rules;
- ✓ Lack of recognition of the legitimacy of local institutions in most Sahelian States;
- ✓ Legal texts not adequately accounting for the complexity of land situations;
- ✓ Unequal potentialities of lands and lack of balanced land use planning, which increases competition and conflicts in some areas, thus causing the exploitation of resources not compatible with their capacity to regenerate;
- ✓ The land situation of several social categories becoming increasingly precarious, including women, breeders, minorities, sharecroppers, migrants, refugees, etc.

The Praia Declaration gave guidelines that can help overcome these various constraints, in particular:

- ✓ Defining, as a prerequisite, a clear status for the land tenure and its stakeholders: farmers, breeders, fishermen;
- ✓ The urgent need, for each country, to work out an overall legislation that lays down the general orientations of a land management based on equity and social justice. The local populations would be made responsible for finding, through their institutions, the most appropriate methods of application that take their social and cultural realities into account;
- ✓ The absolute necessity of defining clear and sustainable contractual frameworks which improve the conditions of access to natural resources for the marginalized categories, determine the relationship between landowners and users and bring about the need for releasing the energies of the latter;
- ✓ The increasingly persistent need to consider land use planning for the protection of the environment and livelihoods, while drawing inspiration from positive experiences (local or otherwise attested as reliable elsewhere) while relying on comparative advantages, and on efficient techniques that are accessible and well adapted;
- ✓ The local practices based on traditional rules penalize the women by limiting their access to land property. The real effects of the new and apparently more equitable laws are weakened by very limited information flow from the technical people and the management capacities of the women;
- ✓ The necessary development of information, sensitization and education programs for the users in relation with the objective of the legislation to improve the behaviors and relationships among the various stakeholders.

III - STATUS OF IMPLEMENTATION OF THE PRAIA ORIENTATIONS IN CILSS MEMBER STATES

3.1. SETTING UP AN ENABLING LEGAL AND INSTITUTIONAL FRAMEWORK FOR A PARTICIPATORY AND DECENTRALIZED MANAGEMENT OF NATURAL RESOURCES

Following the failure of the centralized systems which prevailed for more than three decades of independence in the natural resource management in the sub-region, the States of the Sahel strongly committed themselves to implement, as a matter of

priority, legal and institutional reforms based on the participation and empowerment of the populations and their local institutions in the management of their natural resource base. It was recommended that such reforms should be preceded by a dialogue process allowing to take into account the legitimate needs and interests of all the groups of stakeholders involved in land and natural resources management, and that they should lead, downstream, to "the formulation of a comprehensive legislation outlining the general orientations of a management based on equity and social justice. Through their institutions, the local populations should seek methods of application that take their, economic, social and cultural realities into account".

It is important to note that in reality, all the countries did not wait for the Praia meeting to initiate the reforms of their legal and institutional systems of land and natural resources management. In the aftermath of the Ségou encounter and under the pressure of events (democratization process, ecological crisis, structural adjustment policies), a number of countries were already engaged in policy reforms. For instance, Niger with the adoption of the Rural Code in 1993, Mali with the implementation of the process of revisiting the forest texts in 1992; not to mention Senegal which is a pioneer country as regards reforms of the kind. The National Property Act adopted in 1964 and the Rural Community Act adopted in 1972, were aimed at promoting a more democratic and decentralized land management in Senegal.

Overview of the main legal and institutional reforms carried out in the countries.

BURKINA

Land legislation

Land legislation in Burkina Faso is based on the Agricultural and Land Reform (RAF) adopted at the time of the Sankara Revolution. Ordinance n°84-050/CNR/PRS adopted in 1984, the basic text of the RAF stated three guiding principles:

- Creation of a National Land Property (or *Domaine Foncier National* - DFN) covering all the national territory and legally considered as exclusive property of the State;
- Abolition of any previous right over land property;
- Simple user rights given to natural persons or legal entities.

Since then, the RAF was successively revised. The latest revision is Act n°14/96/ADP dated May 23, 1996 that definitely fits the RAF into the scheme of participatory and decentralized management of natural resources, fully in line with the Praia orientations.

Legislation on NRM

Burkina Faso has also reformed in the recent years its main legal texts on natural resource management in line with the decentralization process with a transfer of increased management powers to the local communities and participation of the populations in the management of their resources.

- Forestry Act n°006/97/ADP of January 31, 1997 on forest code lays down the conservation and management principles of natural forest, faunal and halieutic resources. This law states *inter alia* that: "the State shall stand guarantor for the protection of forest, faunal and halieutic resources. It shall perform this duty via the relevant technical departments and in consultation with the stakeholders concerned" (article 5); "public forests shall be the property of the State and of decentralized territorial communities " (article 17); the fauna "shall be managed for the benefit of the populations " (article 89);
- Pastoral Act n°034-2002/AN of November 14, 2002 on pastoralism recognizes "the right for the pastoralists to access pastoral lands, the right for equitable use of natural resources and the movement of the herds" (article 5);
- By putting forward the principles of dialogue, subsidiarity and sustainable management of water resources, the new law on water management is a major positive development in that area.

At the institutional level, the creation of a *Comité National pour la Sécurisation Foncière en Milieu Rural* (National Committee for Secure Land Tenure in the Rural Area) in Burkina shows the political importance the Government of this country attaches to this issue.

THE GAMBIA

LAND LEGISLATION

The State Lands Act adopted in 1990 forms the basis of land legislation in the Gambia.

This Act states that "all land in Banjul and Kombo Saint Mary, excluding such land as is held in fee simple and subject any grant which has been or may hereafter be made, shall vest in the state absolutely ". This Act therefore clearly and unambiguously makes the State the owner of all land in this area excluding fee simple estates and lands subject to grants from the Minister thereby repealing the Lands (Banjul and Kombo Saint Mary's) Act.

The Act further empowers to the Minister to designate any provinces land as State land and where any area is so designated, all such land shall, except for lands held in fee simple, "vest in and be administered by the State for the use and common benefit of the community in which such land is situated, thereby excluding the application of the Lands (Provinces) Act to such areas.

Another significant provision of the State Lands Act is that where customary land is designated under the act, occupiers of such land shall be deemed to be lessees of the land for a renewable term of 99 years subject to payment of rent and to the conditions and covenants stipulated by the Minister.

Provision is also made in the State lands Act for deemed lessees to apply for title deeds.

In addition to the State Lands Act, the Gambia also enacted in 1991 the Physical Planning and Development Control Act, which is intended to introduce a system of

national planning and land use of the country's land resources. The plans are intended to provide guidelines for the spatial development and effective use of land to ensure a well-balanced environment and good living conditions.

LEGISLATION ON NRM

After a long period of State management, the Gambia passed a new forest policy and legislation in 1995 and 1998 respectively based on participatory management of natural resources.

"The Gambia Forest Management Concept" (GFMC) is structured around the following main elements:

1) Forest Park Management

The Government is the proprietor and the manager of the forests through the Department of Forestry.

2) Co-management sometimes called Joint forest Park management

The Government is the proprietor of the gazetted forest parks, but manages on agreement bases for mutual benefits with the adjacent communities.

3) Community forest management

A non-gazetted forested land's ownership and management is stepwise permanently handed over to a community or communities.

4) Community controlled state forest management

A non-gazetted forested land under the mandate of Forestry Department and adjacent to a community forest(s) can be jointly managed the Government and the community(ies).

5) Protected area management

The Government is the proprietor and the manager of the forest through the Department of Parks and Wildlife.

6) Plantation management

7) Private forest management

MALI

Mali has undertaken since the democratic revolution of March 1991 a vast process of legal and institutional reform of all aspects of the country's political, economic and social life. The starting of the process as regards rural development was the *Etats Généraux du Monde Rural* (Estates General of the Rural Area) held in Bamako in December 1991.

LAND LEGISLATION

In line with the guidelines for decentralization, especially the Act n°96-050 on the principles guiding the formation and management of lands of the local communities, Mali adopted in 2002 a new estate and land code.

The Act n° 96-050 of October 16, 1996 stipulates that the estate of the local communities consists of public property and private property. The private property of the local communities include the lands of State property granted by the latter, non gazetted lands situated within their boundaries that are either allocated or given by the State. The Act states that the local communities are responsible for managing, developing, protecting and maintaining the ecological balance. To that end, they must prepare a regional planning scheme that clearly defines the forest, agricultural, pastoral, faunal, fish-farming, mining and housing properties. The Act also provides that the local communities may delegate their powers to the village, fraction or district authorities.

The Act n° 2002-008 of February 13, 2002 on land and property Code is especially characterized - compared to the Code of 1986 - by the fact that it further recognizes the customary rights and institutions and the customary practices and user rights, in particular in the enforcement of the legal texts and regulations on NRM.

LEGISLATION ON NRM

The forest laws of Mali were particularly pinpointed during the events of March 1991. Thus, such texts were revisited as matter of urgency in 1992. This process that was led in a participatory approach, including the organization of a national conference on the matter in July 1993, resulted in the adoption of a series of framework texts based on the participation and empowerment of the local populations and communities in natural resource management:

- Act n° 95-003 of January 18, 1995 on the organization of the exploitation, transport and marketing of wood;
- Act n°95-004 of January 18, 1995 laying down the conditions for forest resource management;
- Act n° 95-031 of March 20, laying down the conditions for the management of the wildlife and their habitat;
- Act n° 95-032 laying down the conditions for the management of fishing and fish farming.

Enforcement texts later completed these laws.

At the institutional level, a Ministry for State Lands and Property Affairs has been created. A technical follow-up commission on land related issues has also been set up within the Ministry of Agriculture, Breeding and Fishing (MABF). This technical follow-up commission includes the various technical departments concerned with land tenure and land ownership issue in Mali.

MAURITANIA

LAND LEGISLATION

The basic law for land management in Mauritania is Ordinance 83- 127 of June 5, 1983 that deals with the land and estate reorganization based on the following principles:

- The land belongs to the State and each citizen is entitled to private land property subject to managing such land in accordance with the Islamic Sharia;
- Land tenure is suspended;
- Individualization of the rights;
- Uncultivated (abandoned) lands become the State's property;
- Ownership right should not prevent the implementation of a national or regional project;
- The State proceeds administratively to protect these entitlements to the lands;
- The courts should declare themselves incompetent whenever the claim relates to a property land;
- The judge limits himself/herself to stating whether the land is a state property or not;
- The vital space of the agglomerations is protected.

The decree n°2000-089 of July 5, 2000 that repeals and replaces the decree n°90-020 of July 31, 1990 on the enforcement of Ordinance 83-127 has fitted the Mauritanian land law into a more participatory and decentralized scheme of land management, especially by recognizing the right for the local authorities to grant land concessions to a certain limit, as well as the possibility of creating land reserves in some instances.

LEGISLATION ON NRM

After the Praia conference, Mauritania also enacted laws for increased participatory and decentralized management of natural resources, including the following:

- ✓ Act n° 97-006 of January 20, 1997 on hunting and nature conservation code;
- ✓ Act n° 97-007 of January 20, 1997 on forest code;
- ✓ Act n° 98-016 of July 19, 1998 on the oasis management;
- ✓ Act n° 99-013 of June 23, 1999 on mining code;
- ✓ Act n° 2000-045 of July 26, 2000 on the environmental framework law;
- ✓ Act n° 2000-044 of July 26, 2000 on pastoral code.

All these laws fit into the scheme of the revised ordinance 83-127, i.e. for a participatory and rather decentralized management.

For example, the law on pastoral code stipulates that "the management of rangelands could be entrusted to pastoral organizations or community development associations with pastoral vocation, provided that this concession does not affect the movement of the livestock in the area"; "the pastoral organizations will be obligatorily associated to the development of any national, regional, departmental, communal or village land use planning, as well as the formulation of any legal text pertaining to the organization of rangelands".

NIGER

LAND LEGISLATION

Niger adopted in 1993 the Rural Code, a unique experience as regards the texts governing an integrated management of land and natural resources in the sub-region.

The Ordinance n° 93-015 of March 2, 1993 outlining the principles of the Rural Code (POCR) abolished colonial tradition of the State's property on all non-gazetted lands . This Code recognizes the customary laws related to land. The legitimacy of the rights to the land is based on the recognition, at the local level, of land tenure laws and their promotion.

Since the Praia conference, the Niger legislator has tried to further improve this reform of the Rural Code for increased participatory and decentralized management of natural resources, especially by setting up land commissions in the districts. A series of enforcement laws were adopted, including the following:

- Decree n° 97-006/PRN/MAG/EL of January 10, 1997 on the regulation of natural resources use;
- Decree n° 97-007/PRN/MAG/EL of January 10, 1997 determining the status of grazing lands;
- Decree n° 97-008/PRN/MAG/EL of January 10, 1997 on the organization, duties and operation of the institutions in charge of the enforcement of the Principles of the Rural Code;
- Decree n° 97-367/PRN/MAG/EL of October 02, 1997 determining the modalities for registering the land laws in the Rural Dossier;

All these laws are based on the fundamental principles that characterize the POCR: legitimating customary land laws, empowerment of the local authorities and participation of the populations.

LEGISLATION ON NRM

In addition to the enforcement laws on NRM initiated within the framework of the Rural Code, Niger also enacted specific laws on NRM, including the following:

- Act n° 98-07 of April 28, 1998 setting the hunting regulations and the protection of wildlife;
- Act n° 98-042 of December 7, on fishing regulations;
- Framework law n° 98-56 of December 29, 1998, relating to environmental management.

At the institutional level, and within the framework of the implementation of the Rural Code, Niger set up an exemplary institutional device in the sub-region. This device includes in particular:

- ***The National Committee on the Rural Code:*** it is the decision-making body as regards the implementation on the Rural Code. Its aim is to develop, disseminate and follow-up the enforcement of the guiding principles of the Rural Code;
- ***The Permanent Secretariat of the Rural Code:*** it is the mainspring of the implementation of the Rural Code principles. Its role is to develop complementary bills to the Rural Code, create a resource center, follow-up and evaluate the land commissions and the impact of the application of the Rural Code;
- ***Land Commissions (COFO):*** They play a key role in rural land management. The land commission is an advisory body as regards land management and rural concessions. It draws up the deeds related to the land and controls land development.

SENEGAL

LAND LEGISLATION

Land legislation in Senegal consists of a set of legal texts and regulations more or less scattered in time but whose basic texts are the Act n° 64-46 of June 17, 1964 on the state land and Act n° 72-25 of April 19, 1972 on the rural communities.

In Senegal, the Act n° 64-46 of June 17, 1964 put an end to the provisions on land property of the colonial decrees of 1932 and 1955, which instituted the registration procedure. In pursuance of this law, and excluding any previous registration or registration in the name of the State, the lands that are not gazetted as public estate make up the state property. The State lands have been classified in four categories:

- The urban areas made up of the lands situated on the territory of the communes and town groupings that should be subject to a special regulation;
- Gazetted areas (classified forests, national parks, etc.) directly managed by the State;
- The areas known as "community land" that are used for rural housing, farming and breeding purposes;
- The pioneer zones correspond to the other lands.
- As for Act n° 72-25 of April 19, 1972 on the rural communities, it instituted a local autonomy system in Senegal.

Both texts were amended as decentralization was being enhanced in Senegal for a greater empowerment of the rural communities in land management.

LEGISLATION ON NRM

At this level too, Senegal is one of the countries that have opted very early to promote a participatory and decentralized management of natural resources.

The first texts in this regard were adopted in the mid-eighties; for instance the Act n° 86-04 of January 24, 1986 and decree 86-844 of July 14, 1986 on the Code of

hunting and wildlife protection. In the same vein, the forest Code was revised for the first time in 1993, and recently in 1998 (Act n° 98-03 of January 8, 1998 and its enforcement text n° 98-164 of February 20, 1998).

Within the framework of decentralization, several texts were also initiated in favor of a participatory and decentralized management of natural resources. For instance, the decree n° 96_1134 of December 27, 1996 on the application of the law transferring powers to the regions, communes and rural communities regarding the environment and natural resource management.

CHAD

LAND LEGISLATION

The legislative framework governing the land tenure has not changed significantly in Chad since the conference of Praia. Three texts that were adopted in the mid-sixties still organize the land tenure system in Chad today, namely: the Acts n° 23, 24 and 25 of July 22, 1967 on the status of social assets, the land ownership and customary laws, limitation of entitlements over the land.

However, within the context of the ongoing decentralization process in Chad, some benchmarks have recently been set up for a participatory and decentralized management of natural resources.

For instance, the adoption of the law n° 007/PR/2002 of June 5, 2002 on the status of the rural communities. This law empowers the rural communities for natural resource management and environmental protection in the rural area.

A bill on the division of powers between the State and the decentralized local communities states that the rural communities should be competent on the following:

- ✓ Creation, management, protection and maintenance of the forests, parks and other protected areas as well as community-oriented natural sites;
- ✓ Participation in the protection of the wildlife and flora;
- ✓ Participation in the protection and management of surface and underground water resources;
- ✓ Development and implementation of the rural community action plan for the environment;
- ✓ Mobilization and management of the volunteer brigades for the control of bush fires, excessive wood cutting, fishing and hunting of protected species as well as poaching;
- ✓ Participation in waste management, sanitation, pollution and nuisance control;
- ✓ Protection, control of trees for a sustainable use.

At the institutional level, the period was characterized by the creation of an *Observatoire National du Foncier* (National Land Observatory) in pursuance of decree n° 215/PR/MES/2001 of April 24, 2001 that sets up the Land Observatory in Chad (OFT).

This decree states that the general objective of the OFT is "to contribute to improve knowledge and understanding of land related problems in order to support the development of relevant land policies and legislations".

The specific objectives of the OFT are:

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

LEGISLATION ON NRM

In the field of NRM and the environment, Chad has adopted a number of texts for a participatory management:

- Act n° 036/PR/94 of December 3, 1994 on the organization of wood transport and marketing;
- Law on the protection of the forests, 1994;
- Act n° 016/PR/99 of August 18, 1999 on the water Code;
- Act n° 014/PR/98 of August 14, 1998 defining the general principles of environmental protection.

3.2. DISSEMINATION OF THE TEXTS AND ACCESS TO LEGAL INFORMATION

The lack of information of actors was seen in Praia as one of the main obstacles to land and natural resources management in the Sahel. Generally speaking, it came into light that, in most cases, the grassroots actors did not know much about the main texts governing land and natural resources management. This is due to the fact these texts are often written in a legal jargon that cannot be easily understood by the ordinary people; moreover, they are seldom disseminated, and they are not translated into the national languages.

To address the situation, the conference of Praia recommended the following:

- "To facilitate access by the populations to the knowledge and understanding of the laws and institutions";
- To simplify the formulation of the legal texts, to translate them into the national languages and to widely disseminate them;
- To develop information, sensitization and education programs of the users, on the legislations with a view to improving behaviors and relations among the various actors".

Nine years after Praia, the following can be reported as regards the efforts made by the various countries.

- **In Niger:** efforts were made both at the level of the Administration (Permanent Secretariat of the Rural Code) and within the NGOs for the popularization of the Rural Code. These efforts particularly consisting in organizing public meetings in the Chief town of the regions and district, implementing radio program covering all the national territory, translating the POCR in six national languages and broadcasting the texts.

- **In the Gambia:** for instance the Law Reform Commission published in 1991 "The Customary Laws and Usages of the Gambia". In addition to writing the principle of customary land laws and usages of the Gambia, this document was translated in Fulfude, Jula and Mandingo and disseminated orally and in writing in order to trigger of debates on norms of customary land system land and the way in which they interact with the State's legislation.

- **In Mali:** public disclosure especially related to forest texts. Just after the promulgation of the aforesaid text in 1995, a significant broadcasting program was implemented, especially with their translation in the main national languages, the organization of information workshop in the various regional capitals, the organization of radio broadcasting both on national channels and on the many radio-private and community channels throughout the country.

- **In Senegal:** for there is a recent development of a CD-ROM of the basic texts of the environment in order to ensure a broad dissemination of the aforesaid texts at the central and decentralized levels.

- **The Mauritanian legislation** constitutes an example where access to legal information is meticulously defined. Article 66 of the decree n° 2000-89 thus lays out " Publicity is ensured under the care diligence of Haken by posting in the Chief town of Wilaya, Moughataa and the broadcasting commune concerned in the national languages ".

These examples are not exhaustive. There are certainly other broadcasting instances of land tenure and NRM texts which are more or less specific in the various countries.

3.3. LAND TENURE SITUATION OF THE UNDERPRIVILEGED GROUPS

Discriminations with regard to some groups concerning the access to and control of the land and natural resources constitute other major causes that hamper natural resource management in the Sahel, and the conference of Praia is particularly centered on this aspect. Among those "*excluded from land tenure* " as put in the Declaration of Praia, there are for instance mainly women, pastoral people, migrants and refugees.

Concerning the land situation of women in Africa, Mwalimu Julius NYERERE, former President of Tanzania said in particular: "*In Africa, women toil all their life on a land they do not own in order to produce what they do not control, and if their marriage ends in divorce or the death of their spouse, they can be sent away empty-hands*".

As for the breeders, the Declaration of Praia emphasizes that *"the pastoral production systems do not have any legitimacy through the legislations in force. Under the demographic pressure, reserved spaces for agricultural production increase and gradually marginalize the pastoral activities. The legal and institutional gap reinforces the exclusion of stockbreeders and multiplication of conflicts between farmers and breeders"*.

Concerning migrants and refugees, the same Declaration states that: *"the repetitive pluviometric crises and persistence of some inter-ethnic conflicts provoke the displacements of populations whose survival calls for urgent solutions"*.

The conference underlined the *"vital need to improve the conditions of access to resources by the marginalized categories"*. Given the prevailing conditions and prejudices, this undoubtedly constituted a challenge.

Among the efforts made to take up this challenge, there are for instance the following:

✓ **THE LAND SITUATION OF WOMEN**

- **In Niger**, a pilot project **"Enforcement of the land Legislation and sustainable management of natural resources"** financed by the Union European and implemented by an NGO and under the supervision of the Permanent Secretariat of the Rural Code made it possible to support in the composition of the land commissions, the active participation of women, as the main condition. Thanks to this project, today, at least one third of COFO members are women. And currently, in the villages, as members COFO, women take an active part in the land allocation procedures, request and definition of the useful activities to improve the village economy. This participation had a beneficial repercussion on the women's rights to the land.

In Chad, thanks to an awareness and communication campaign carried out in the framework of **Participatory Communication Project (PCP)** implemented by CILSS in Chad with the support of CRDI, the woman from the lake area of this country who were traditionally excluded from the land, get organized in female associations and they were able to acquire some plots both in the traditional polders and in the irrigated perimeters of SODELAC, without posing no more problem in the eyes of men who were reached personally by the awareness campaign carried out by PCP.

✓ **LAND SITUATION OF BREEDERS**

Several countries adopted over the past years the legislations enabling to *"to redefine more positively pastoral activity"*. Such is particularly the case of Burkina, Mali and Mauritania.

As a whole, these new legislations are articulated around the following major orientations: recognition of the economic importance of pastoralism because this activity is constitutes a form of development, protection of pastoral mobility, access of stockbreeders to the vital resources for the development of their activities, consideration of customary methods of natural resource management.

✓ LAND SITUATION OF MIGRANTS

Through force of circumstance, efforts are also made on the matter in the various countries concerned.

Burkina –Land and the return of the repatriates from Côte d'Ivoire

This phenomenon started with the events of Tabou in 1999 and were accelerated with the 2002 Ivorian crisis.

A meeting held in Banfora on May 31, 2003, organized by OXFAM Intermon and facilitated by GRAF on the topic "the reintegration of the repatriated Burkinabe from Côte d'Ivoire and their access to land in the communities of reception" enabled to identify the following major issues:

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

Source: Document : National review of Burkina Faso, 2003

3.4. MANAGEMENT OF LAND CONFLICTS

Contradictions between groups of actors for the occupation of the lands and access to the natural resources have always existed in the sub-region, but they were circumscribed and more or less efficient management mechanisms allowed to suppress them. As from the eighties, with the rarefaction of the lands and degradation of the natural resources resulting from the combined effects of successive drought and demographic pressure that land conflicts took worrying proportion and reached their present gravity thresholds.

In the Declaration of Praia, it is indicated that land conflicts in the Sahel are in especially worsened by:

- "the lack of specialized agencies in the management of these conflicts and poor operation of these institutions;
- the maladjustment of the existing jurisdictions and inadequacy of training;
- ignorance of the institutional dynamics of NGOs, groupings and associations;
- ignorance of the major reasons of conflicts, their internal logic and the factors that worsen or alleviate them".

It is therefore necessary to find out viable solutions at several levels:

- "on the one hand, in the fight against biases by fostering exchanges, developing relation, understanding and mutual knowledge of the history, culture, beliefs and values of one another;
- in addition, in the information and training of the administrators and magistrates. Thus, for instance the revision of the training schemes of Sahelian lawyers and administrators should integrate the assimilation of the rules, practices and local institutions of the Sahel, particularly in the field of natural resource management".

Although on the agenda, the reforms for the establishment of a suitable device of land conflicts resolution were not conclusive anywhere. In reality, the matter exceeds goes beyond land issue to include more general aspects of good governance policies and legal reform already initiated in many countries of the sub-region.

However, considering the debates and study carried out in many countries and even some adopted texts, a heavy tendency comes out, which is articulated around these elements:

- ? a great importance must be given to conflicts prevention;
- ? recognition of the poles of traditional authorities for the settlement of traditional conflicts and/or local conflicts to the first degree;
- ? setting up of decentralized or deconcentrated institutions for local conflicts settlement at an intermediate level;
- ? Improvement of the judiciary settlement (developing proximity courts for the justiciable, creation of specialized courts in land and NRM area, better training of magistrates in this regard) within the framework of the ongoing legal reform programs in the countries.

IV – IMPLEMENTATION DIFFICULTIES AND LESSONS LEARNED

4.1. DIFFICULTIES / SHORTCOMINGS

Despite the significant achievements recorded, it should be recognized that the implementation of the orientations of Praia remains below expectations. The creation of a conducive legislative and institutional environment to a democratic, participatory and decentralized management of natural resources is still blocked by many difficulties:

- *concerning the elaboration of the texts*, the participatory approach recommended by the conference as an excellence method for the development of conducive legislations to a democratic, participatory and decentralized management of the land and natural resources was not fully applied, either for the lack of political good-will, or for the lack of financial means. The participation of the populations in the elaboration of the texts was often done rigidly, far from any strategy favoring a full, total and efficient participation. Moreover, the organizations of the civil society often called are not necessarily the most representative or the most legitimate.

- *Contents of the adopted texts*, one of the main recommendations adopted in Praia relates to the drafting of framework texts laying out the general principles at the national level, while leaving the definition of enforcement measures to the local level. The logic underlying this recommendation is to ensure a real decentralized management allowing the consideration local diversities and specificities.

However, it appears that in most cases, the general texts adopted remain rigid and enough overscrupulous for an effective skill transfer to the decentralized structures. The principle of subsidiarity is not often taken into account, in such a way that in some countries where the texts are already adopted, one always sees the State's services intervening as in the past.

Another particularly significant aspect underlined by the Declaration of Praia is the consideration of the needs and legitimate interests of the underprivileged groups (women, stockbreeders, the youth, migrants, refugees) in new policies and land legislations. There too, especially with regard to women, it generally appears that one always prefers hides behind the principle of equality of citizens in the eyes of the law instead of implementing positive innovations.

- *Implementation of the texts*, the lack of information of actors is probably the main the main difficulty. This situation is felt at all the levels.

As an example, it is stated in **the National Report of Niger** that "the orientation principles of the Rural Code and their complementary texts are not known to delegated judges and yet they are responsible for their enforcement. These magistrates did not benefit from any training to know the above mentioned texts and are often unaware of their existence. The ignorance of the orientation principles of the Rural Code and their complementary texts is also observed among the administrative authorities and traditional authorities. Even the sub-prefects who are yet the chairperson of the district COFO only a shallow knowledge of the texts above mentioned".

In Burkina Faso, the RAF was still not translated into the national languages. Very recently, at the oral session, a Member of Parliament at the National Assembly challenged the Government on the subject. The Minister of the Economy and Development responsible for the RAF recognized the existence of the problem and indicated that a national information seminar on RAF would be held soon. This instance of the RAF is far from being the only case. Such is a little the same situation in many countries of the sub-region.

In Mali's review, it is stated that only 2 to 5 % of the actors know the land codes or pastoral charter.

Another difficulty at this level is the issue of the enforcement texts. In many instances, framework texts were adopted without being accompanied by the necessary enforcement texts; which very often absolutely sets a limit to the range of reforms undertaken.

One can also note that in many instances all the institutional infrastructure necessary for the enforcement of the new legislations does not yet exist on the field because of

red tapes related to decentralization process in the countries, which often slows down the applicability of the texts.

4.2. LESSONS LEARNED

One of the main lessons to be learnt from this implementation status of the orientations of Praia in the Sahel countries is that the only adoption of framework texts is not enough to ensure a democratic, participatory and decentralized management of the land and natural resources. Admittedly, this is a significant act but it should be underlain by a set of preliminary measures and support measures as well.

It is significant that the design of the frameworks texts proceeds from a political vision and emanate from a meticulous participatory process. Except Guinea and Ghana, the other countries did not formulate yet a land policy as such, so that the texts are often suddenly adopted to cope with such or such problem, even sometimes to meet donors requirements.

It is also important take care of the populations' participation in the elaboration of these texts; this participation should not be only an alibi which consists in inviting organizations of the civil society to attend for the sake of attending workshops. It is necessary that their participation be active and informed and they are representative and legitimate organizations capable of defending the concerns of the populations.

In the same vein, it is also important to underscore that the initiative of laws should not only be in the hands of Governments; if there is any field where the members of Parliament of the sub-region should elaborate bills, this field should be that of land and natural resource management.

Concerning the support measures, information appears to be the keystone for an implementation of the policies and legislations land and NRM. It is necessary to reinforce the public disclosure and the actors' access to legal information.

The development of local institutions capacities for an effective accountability of the competencies devolved to them is also essential to ensure good local governance in land and natural resources management in the countries of the sub-region.

- ❖ Considerable effort has been made as regards the legislation, especially in terms of adoption of framework laws; yet the impact of these legal reforms is limited in the field through, very often, lack of enforcement texts, inadequate dissemination and failure by the local stakeholders to take ownership of such reforms;
- ❖ There is a crucial need to promote information and popularization, to train actors and share experience in order to ensure local good governance in land tenure and natural resources management in the countries of the sub-region;
- ❖ The countries need to take more daring measures to improve the land tenure conditions for the underprivileged and vulnerable groups (the women, pastoralists, the youth, the migrants, the refugees) in order to fight against marginalization and rural poverty;
- ❖ In the same vein, the land conflict management needs to be addressed in a more effective way and with much determination in order to develop mechanisms of prevention and settlement of conflicts that are more efficient and geared to the local conditions.

V - OVERVIEW OF THE LAND TENURE SITUATION IN SOME COASTAL WEST AFRICAN COUNTRIES

BENIN

LAND LEGISLATION

Since 1999, Benin engaged a development process of a new rural land legislation to replace the law n° 65-25 on land property reform in Benin. Based on a participatory approach, this process made it possible to develop a preliminary draft of rural land law advocating a participatory and decentralized land management. It is articulated around the main following points:

- recognition for the grass-root communities the right to define the specific management rules of rural lands in accordance with the general interest, laws and regulations;
- creation of new land management structures whose composition and attributions shall be laid out by subsequent decrees.

These structures are envisaged at two levels:

- ? at the level of the commune, the land management board chaired by the Mayor who has a general competence for land management on the communal territory;

? at the level of the villages, the land management board chaired by the Head of village or notable appointed by the village community whose responsibility will be the management of the current business of rural lands of his village land.

- the village committees have the power to control the final or temporary transfers which should be in written contracts.
- Adoption of regulations by the Mayor to authorize on his territory the registration in a simplified cadastral form (PFR) of customary land laws, also adoption by the same authority of laws for closing the operations.
- Delivery by the Mayor of land certificates which are administrative acts to which is attached a presumption of truth being taken until proof of the opposite in front of the judge. The land certificates are issued with the people of which the rights are recorded to the PFR according to a contradictory procedure.
- Observation by the Mayor of the amicable settlements of the rural dispute by the formula of assertion and transmission by its care of the verbal lawsuits of payment to the court of jurisdiction for ratification.

LEGISLATION ON NRM

In this chapter, it can be noted that Benin adopted in 1993 a new forest law (law 93-009 of July 2, 1993 on mode of the forests) for a participatory management. With this law and its enforcement decree "forests must, as much as possible, be managed following participatory methods involving the neighboring populations. The sustainable and participatory management of the forests should be done in an integrated manner to enable at the same time – to satisfy the current and future socio-economic needs of the country, in the interest and with the assistance of the population; - to ensure the protection of the environment and conservation of biological diversity in the long run " (article 26 of decree 96-271 of July 2, 1996).

The management plan can envision the implementation, particularly in the village, structures taking part in the utilization operations, protection, monitoring and development of the resources of managed forest.

Among the constraints and shortcomings indicated concerning the legislative and institutional framework as regards land and natural resources management in Benin, one notes;

- a slow development of the processes and adoption of the legislative and legal texts;
- Sometimes the non consideration of enforcement texts;
- lack of public disclosure texts;
- non-devolution of some State departments;
- encroachment of competencies and lack of coordination among some government institutions.

GHANA

The land legislation in Ghana still remains deeply marked by the touch of the British colonial rule.

The British colonial system was attached great respect to pre-colonial habits in the field of lands enjoyment and transmission. Thus, with "the indirect rule" which was widely applied in Ghana, it came out that all the "native lands", must be distributed and managed for the common use and benefit of the natives of the land, though they were, to this effect, put at "disposal" of the Government, no occupation or utilization title was valid without the consent of the Governor.

The latter was to respect the local customs; one of the major objectives being the prevention of the alienation of the indigenous lands for the benefit of foreigners through uncontrolled transfers.

Generally, beyond the amendments were carried out after independence, the Ghanaian land legislation continued in that logic.

And implementation of decentralization policy in Ghana could but reinforce this trend towards the development of local and customary competencies.

It should also be underscored that with the "National Land Commission", Ghana has one of the oldest and most solid land institutional infrastructures in whole West African sub-region.

TOGO

The land legislation of Togo is based on the ordinance n° 12 of February 6, 1974 on the agricultural and land tenure reforms in Togo.

This ordinance was designed as a tool to carry out an economic and social objective for equity purposes. It aimed at clarifying the confused situation of land system which prevailed before its adoption and at operating a true agricultural reform by constituting a national land inheritance for the achievement of rural, urban and industrial development programs.

Thus, the ordinance n° 12 distinguished three categories of lands;

- lands held by the communities and individuals;
- lands constituting public and private properties of the State and the local authorities;
- national land property made up of all the lands that have been developed for 10 years.

On the field, the agricultural and land reform of Togo underwent many constraints.

Also, the Government of Togo engaged for a some time a legislative reforms process in order to read again the main texts of land and natural resources management for an increased participatory and decentralized approach. This process should particularly lead to the adoption of a new Land and Agrarian Code, a new framework law on management and environmental protection which will take into account all the aspects of the environment including the land, a new Code of forest resources as well as a new mining Code.

ANALYSIS OF THE SITUATION

Generally, this overview of the land situation in three countries " of Coastal West Africa " and the information collected concerning other countries of the aforementioned zone, reveal a great similarity compared to the Sahelian countries as for the political, legislative and institutional evolutions in land tenure and natural resource management. Having also experienced in the past centralized political systems which seriously mortgaged natural resource management, these countries, though they were not so affected by the successive droughts and the ecological crisis which prevailed in the Sahel, remain however confronted to today to the same land problems: exacerbation of competition for access to the lands and natural resources, multiplication of conflicts, peri-urban pressure, exclusion of disadvantaged groups, peasant land insecurity, rural poverty.

And today in these countries, there are the same requirements for more democracy, more participation and more decentralization in land and natural resources management.

In addition, following violent conflicts which shook the sub-region over the past years, there is an amplification of interconnection of land problem between the Sahelian zone and coastal zone (destabilization of land situation of foreign migrants, return of migrant in their country of origin, cross-border transhumance) which require today to resolutely address the land issue in a logic of regional approach, with the risk jeopardizing political and economic stability of the State and regional integration in West Africa.

VI – EMERGING LAND ISSUES

6.1 – EFFECTIVE TRANSFER OF COMPETENCIES OF LAND AND NATURAL RESOURCES MANAGEMENT TO THE LOCAL COMMUNITIES

Since Praia, and even before Praia for some, most countries of the sub-region formally adopted the principle of decentralization as a fundamental option of their economic and social development policy. To this end, they engaged consequent reforms of their legislative and institutional system, including land and natural resources management where that should particularly be translated into the transfer of management skills to the local communities.

In a number of countries, while the new local authorities were set up and that the main legal texts related to decentralized management of natural resources were adopted, the transfer of management skills is still not effective.

Such is for instance the case of Mali. Mali included the principle of decentralization in its constitution of 1992 and adopted in 1993 the orientation texts of decentralization.

- Law n° 93-008 of February 11, 1993 determining the conditions for the free administration of the local authorities;
- Law n° 95-034 of April 12, 1995 on local authorities code in Mali;
- law 96-050 of October 16, 1996 on the constitution and management principles of the property of the local authorities.

As indicated above, the main legislative and legal texts governing the land and natural resources were concomitantly revised for the accountability of the local authorities in the management of their resources. And at the end of local elections held in 1999, the new local authorities (communes, circles, regions) set up their management structures.

In a nutshell, all the legal and institutional conditions are currently in place in Mali for an effective accountability by the local authorities for management of their property. However, this is not completely the case yet on the field. During a study carried out last year in Mali ⁽¹⁾, an official responsible for the local department of Nature Conservation said this: "We do not want in the near future to transfer skills to the Commune because we think that it is very likely that people would selling off the resources; the mayors only think of the incomes that they can get from the management of these forests".

If these are not groundless allegations, it clear that legally one cannot rely on such arguments to hamper the enforcement of duly adopted texts.

This Malian example is certainly not an isolated case; one could easily find the same situation in many other countries. In some other countries, the adoption of consequent texts is quite simply delayed.

In any event, the question of effective transfer of land and natural resources management skills is today a topical issue in many countries, which should be addressed through a respect for the law, field realities and sustainable development requirements.

6.2 – IMPROVEMENT OF LAND CONDITION OF THE UNDERPRIVILEGED AND VULNERABLE GROUPS

The improvement of the land condition of the underprivileged and vulnerable groups (women, stockbreeders, the youth, migrants, refugees) remains an extremely alarming issue; the progress achieved in this field over the past decade were rather shy. Several tracks appear to accelerate this situation including positive discrimination method.

The positive discrimination method was often used such situations with more or less success. For instance, its use in the USA to improve the social condition of Blacks.

¹ CILSS/USAID Study 2002 " Trees and Forests Management in West Africa "

In this specific case, the use of the method could particularly include legal measure (for example institution of quotas in favor of women in land allocations) and financial measures as well (opening of credit lines in favor of the associations of groups concerned by the land acquisition and their capacities development).

6.3 – CONSIDERATION OF LAND DIMENSION IN THE POVERTY REDUCTION STRATEGIES

Poverty reduction is currently at the heart of economic and social development policies in the countries of West Africa, most of which adopted the Poverty Reduction Strategic Paper (PRSP).

These PRSPs are generally articulated around the main following points:

- Acceleration of the economic growth and income opportunities for the poor;
- Development and equitable access to basic services;
- Improvement of governance and development of institutional and human capacities.

Sectors considered as priorities in poverty reduction include: *health, education, access to drinking water, nutrition, sanitation.*

With some exceptions (Guinea, Ghana) land dimension is not really taken into account in the PRSP.

However, in mainly agro-sylvo-pastoral countries like those of West Africa, it would be unrealistic to seek to reduce poverty while ignoring the land issue. The land is the main production factor in the countries of the sub-region and any fight against poverty in such a context necessarily goes through the access of the poor to the land and natural resources. There are an undeniable link between land issue, agriculture development and poverty reduction.

Today, it is essential to re-examine the PRSP in this sense and that consequent provisions be initiated to support the access of the poor to the land and to the other natural resources not only in legal terms but also in terms of capacities development: the poor must be informed on their rights, to know how to claim them and have the capacities to defend them against more powerful actors.

6.4 – DEVELOPMENT OF THE CROSS-BORDER APPROACH OF NATURAL RESOURCES MANAGEMENT

In a context increasingly marked by the intra and inter-States conflicts development, the majority of which find their roots in land related conflicts or access to natural resources, the cross-border management approach of natural resources seems to be an increasingly interesting approach to overcome the dangers and promote a sustainable economic and social development.

The cross-border management of the natural resources can be defined as "*any cross-border collaboration process whose effect is to increase the effectiveness in the pursuit of the objectives of natural resource management and the conservation of biodiversity*". It is important to note that the countries, having common resources and who are candidates for a cross-border management are not necessarily neighbors. The GTRN approach (cross-border management of the natural resources approach) covers a broad continuum of initiatives and activities including the community cross-border management of the natural resources and cross-border protected surfaces, the large scale natural resource management, or integrated into regional development.

Many experiences of cross-border natural resource management were carried out or underway in the sub-region. For instance:

- **GEPRENAF Project:** pilot project for a participatory management of natural resources jointly carried out in Burkina Faso and in Côte d'Ivoire;
- **The Park of W:** cross-border management project of protected surfaces between Burkina Faso, Niger and Benin;
- **The Organization for the Development of the Senegal River (OMVS)** which includes Mali, Mauritania and Senegal for the development of the basin of the Senegal river. The OMVS is an example which enabled to overcome dangers (Senegal-Mauritania conflict) to constitute a viable economic and social development pole today.

The cross-border management of the natural resources is undoubtedly an interesting approach to promote regional integration and sustainable development in West Africa.

VII - TOWARDS REGIONAL CHARTER ON RURAL LAND IN THE SAHEL AND WEST AFRICA

The idea of a regional Charter on rural land in the Sahel and West Africa was the subject of many interrogations on the occasion of the national launching workshops of the reviews of Praia+9 in the countries. Many questions were raised as for the real contents, interest and value of such a Charter.

7.1 – CONCEPT OF CHARTER

Generally, in law, the concept of charter refers to a founding act. In public international law, it theoretically indicates the statutory acts of an international organization, while in constitutional law it rather refers to a fundamental act relating to some crucial matters as public freedoms, social rights (for example the Canadian Charter of rights and liberties).

Over time, the concept of charter gradually extended to other matters taking into account their contextual importance.

For instance, a charter on the environment was recently adopted in France.

7.2 – ELEMENTS FOR A CHARTER ON RURAL LAND IN THE SAHEL AND IN WEST AFRICA

The elaboration of a Charter on the rural land in the Sahel and West Africa is related to the crucial nature of rural land rural issue today in terms of social peace, promotion of investments, rural poverty reduction and regional integration.

Such a Charter should translate into operational and practical terms in land property the principles of freedom of movement of the people and goods and settlement right contained in ECOWAS Charter as well as WAEMU.

A Charter seems an essential tool to avert the current dangers and to lay out the founding elements of a secured, shared and sustainable management of land and natural resources in the sub-region.

A little like **the Charter on Peasants** adopted in 1979 under the aegis of FAO at the end of the world conference on the land reform and rural development held in Rome in July 1979, such a Charter could include a Statement of Principles and an Action Plan.

The Statement of principles will to be articulated around theoretical and morals orientations that the various countries shall respect in the development and implementation of their policies, legislations and land and natural resources management.

The Action plan will have particularly include support actions which could be implemented by the main sub-regional IGO (ECOWAS, WAEMU, CILSS) with the support of international cooperation partners in order to assist the countries in this initiative.

7.3 – INTEREST AND VALUE OF THE CHARTER

The Charter should lay down the founding principles of an integrated and secured management of the land and natural resources in the sub-region. It could constitute the base for the elaboration of a community land legislation in the sub-region, especially within the framework of the WAEMU and ECOWAS.

The Charter will have both a strong moral and legal value. Solemnly adopted in principle, it will constitute a strong moral engagement that the various States should respect.

Legally speaking, it will constitute a reference for the citizens both at the national and community levels.

Appendix 1

SUMMARY TABLE OF THE POLICIES, LEGISLATIONS AND REGULATIONS ON LAND AND NRM IN WEST AFRICA Current situation

Country	Relevant texts	Explanations
Benin	Letter of declaration of rural development policy, 2001	Present the great actions and strategic choices for the years to come; many objectives for the natural resource management and land securing.
	Letter of Declaration of the National Policy of Regional Planning, 2002	Three principles: coherence of the policies, actions from appropriate decision-making centers, aspirations of the grass-root populations.
	Forest law (law n° 93-009 of July 2, 1993 on forests systems)	Participatory and sustainable management of forests
	Framework law on the environment, 1999	General principles and fundamental rules governing the management of the environment.
Burkina Faso	Letter of sustainable human development policy, 1995-2005	Aims at improving natural resource management and a better land securing.
	Letter of decentralized rural development policy (2002)	Participatory and decentralized management of the land and natural resources
	Orientation texts on decentralization 1998-2001	Programming of the implementation of decentralization
	Law relating to the Agrarian and land Reform (RAF), 1996 and enforcement decree, 1997.	General principles of regional planning and management of natural resources
	Forest Code	Principles of participatory and decentralized management of forest, faunal and halieutic resources
	Code water	Principles of shared water management
	Law of orientation relating to pastoralism, 2001	Recognizes the right of access to pastoral spaces and equitable use of the natural resources

	Application program of the RAF: National Program of Area Land Management	The objective is to make the populations accountable at the village level for better managing the resources.
Gambia	National land law (1990)	State-owned property on the lands
	Law on physical planning and the control of development (1991)	National use and lands planning system
	GFMC and forest law (1995, 1998)	State-owned property on the forests participatory management
Ghana	Constitutional provision (1992) on the recognition of common laws	
	National Land Policy, 1999	The general objective is to promote a judicious land use. The policy comprises 12 objectives aiming at a better management of the territory.
	More than 86 legal texts and instruments concerning the land	
	Lands Management Program, 2004-2019	Program in four steps to improve land securing and lands management. Step one: Harmonization of the policies and regulations, Step two: institutional reform, Step three: Land titles, Step four: Evaluation and management of the project
Mali	Basic texts of decentralization (law 93-008, law 96-050)	Orientation principles relating to the free administration of the communities, distribution of the national property between the State, Communities and private individuals, accountability of the communities in the management of their property.
	Property and land code, 2002 Pastoral charter	More increased recognition of the customary land laws.
	Schedule and decrees on regional planning, 2000-2002	Define an institutional framework.
	Texts governing forest, faunal and halieutic resources and enforcement decrees	Orientation principles and methods of participatory and decentralized management of natural resources
Mauritania	Decree on the land reorganization, 2000	Specify the methods of allocations of land concessions.
	1984-1993: 11 circulars specifying the land regulation	
	Framework law on the environment, 2000	General principles and management tools of the resources.
	Forest Code, 1997	Protection of the fauna and flora.

Mauritania (continuation)	Pastoral code, 2000	Protected pastoral spaces, safeguarding pastoral mobility, access guarantee to pastoral resources and consideration of pastoral interests in the adjustment of pastoral space.
	Rural land plan, 1996	Cartographic representation of the rural concessions.
	Decree creating the National Council of the Environment and Development	Main trends to ensure the conservation, use and development of the natural resources.
	Strategy of the rural sector 2015, elaborated in 1998	Worked out by the Ministry for rural Development and the Environment. It relates to food security, the improvement of farmers' incomes and the protection of the natural resources.
Niger	Economic Revival Program, 1997	The revival of the rural sector must be used as the driving force of the economy. Empowerment of the rural world.
	National regional planning policy, 2001.	National integration, economic and social development and preservation/valorization of the natural resources.
	Series of laws in 2001-2002 defining decentralization	
	Strategy of Rural Development, 2003	To improve land legislation (rural code), management of pasture lands, protection of the fauna and flora, and trainer of farmers.
	POCR and texts of application	Decrees of 1997 on natural resources development, the status of the lands used by stockbreeders and the work of the institutions (National Committee of the Rural Code)
	Framework Law on the Management of the environment, 1998	Legal framework and fundamental principles.
Senegal	Law on regionalization (law 96-07 of April 22, 1996)	Reinforcement of decentralization including in the NRM
	Law 98-03 on Forest Code	Reinforcement of the accountability of the communities in the management of the forests
	Law n° 200-01 on the Environment Code	Reinforcement of the accountability of the local communities in the management of the environment

Chad	Laws on decentralization, 2000-2002	Accountability of the local communities in the management of land and natural resources
	Creation of the Land Observatory in Chad, 2001.	It is an instrument of reflection and capitalization of experiences in land tenure.
	Law on Forests Protection, 1994	Participatory management of the forests
	Mining code, 1995	Participation of the populations
	Law on the environment, 1998	Participatory management of the environment
	Water Code, 1999	
	National Action Program on natural resources	Defined objectives on the securing and improvement of productivity.
Togo	Ordinance n° 12 of February 6, 1974	Agricultural and land reform based on the constitution of a national land inheritance

Appendix 2

GLOSSARY

<i>Regional planning (land use planning)</i>	Economic development approach of French origin; combines economic analysis and planning in order to start or reinforce the development of a given geographical area.
<i>Local [or territorial] communities (Divisions)</i>	Administrative institution with the legal personality and an autonomy of management; it is determined by the constitution and the laws and decrees of the State. They have their elected representatives, responsible for the management of their business under the monitoring (and not the authority) of the representatives of the State. They have personnel, services and goods which belong to them as well as their own budget. Each has a name, territory and a population.
<i>Commune</i>	Institution created by the constitutional, legislative requirements and application. In the majority of CILSS countries, the commune is the smallest authority of <i>the local authority</i> .
<i>Community</i>	local structure made up of people living more or less together on the same territory and supposed to share rather common values and orientations.
<i>Decentralization</i>	➤ In the French administrative tradition, decentralization is the process through which "the State transfers its powers" exerted so far by its central and representative territorial bodies to some institutions (territorial or not) juridically distinct from the State and benefiting, under its monitoring, from a certain autonomy of management.

	<p>➤ In the Anglo-Saxon design, decentralization covers the recognition of competencies to all those that are not the concern the central government (basic organizations and non governmental organizations). In this case, the concept of decentralization refers to the level of decision-making, and includes devolution, capacity of the local councilors and operation of the basic communities.</p>
<i>Deconcentration</i>	Non definite transfer of decision and execution authority inside an administrative or technical system (for example, ministry of the Interior to Governor, or national directorate of a service to the regional directorates).
<i>Delegation</i>	Non definite transfer of authority of an administrative hierarchy to an external organization, for example, an administrative department to a public or mixed company.
<i>Democratization</i>	evolution of a political authoritative system, where the participation in decision-making and its implementation are reserve to elites only, towards the systems open to participation by a larger unit of actors concerned (women, the youth, peasants, stockbreeders, the poor, etc).
<i>Disempowerment</i>	The fact of taking away from the citizens the authority to manage by themselves their business.
<i>Accountability</i>	The situation of a person (often, an elected official) who must justify his administration and the use of his budget in front of his representatives; implies that the person is no free to decide neither on the policy of his community nor the spending of the collective funds as he wants, but the person should rather behave according to policy and rule established so as to move forward the common interest of those mandated him.
<i>State</i>	Set of people (elected, administrators, civil servants and technicians) under the supervision of the national government and who are supposed to implement the policies and regulations established by the national government.
<i>Sustainable management</i>	To manage the renewable natural resources so as to ensure their sustainability and not to exhaust them, for the benefit of future generations.
<i>Governance</i>	Include traditions, institutions and processes which define how capacity is exerted, how citizens have a say, and how decisions are made.
<i>Local authority</i>	Institution whose size does not cover the whole national territory; for example: regions and departments, rural and urban communes, inter-commune districts, jurisdictions, circles, districts, cantons, fractions, villages, tribes, camps and hamlets.

<i>Institution and structure</i>	Set of rules, respectively of formal and non formal nature, channeling human behaviors in a given field.
<i>Inter-communality</i>	Form of collective organization often used in France to allow the communes concerned with a common problem to collaborate in settling the matter.
<i>Free administration (self-management, self-governance)</i>	Competence formally recognized by a territorial unit higher than a lower unit to legislate in specified fields; to ensure the application of the rules which result from it, settle conflicts which possibly emerge and mobilize the resources (in labor, materials and kinds) to ensure the operation of the local institutions. Synonyms: <i>self-governance, self-management, political and technical management</i>
<i>Law</i>	Rule adopted by the legislative body (national assembly) and promulgated by the president of the republic.
<i>Non governmental organization</i>	Organization created by one or more people not belonging to the State
<i>Partnership</i>	Collaboration between two institutions or structures.
<i>Civil society</i>	Set of organizations independent from the State and whose objective is not the conquest or the exercise of political power. It is in this regard that one opposes the "civil society" to the "State" or to the "political community". In French, the term includes the trade unions, private companies as well as non governmental organizations and the community organizations.
<i>Accountability</i>	The fact of transferring to the citizens the authority and competencies necessary so that they can manage their own businesses.
<i>Natural resources</i>	Set of natural products, ecosystems, abiotic elements which make the land as well as the various forms of natural energies.
<i>Non renewable natural resources</i>	Raw mineral materials: metals, metalloids, minerals of varied use, fossil fuel, etc
<i>Renewable natural resources</i>	Resources renewing themselves permanently. They include water, lands (cultivable lands) and the resources known as biological, because they are consisted living communities exploited by man: forests, pastures, fisheries, biodiversity (animal and vegetable species) in which agronomists include the genetic resources, i.e. all the varieties of plants farmed and races of domestic animals.
<i>Subsidiarity</i>	The principle which wants that: (1) the smallest unit of collective action able to face a given problem, that it is a local authority or another local structure, should be authorized to do so; (2) such units should be entitled to receive from larger

	territorial communities the assistance they need to control some aspects of a problem; and (3) the fact of requiring such a help should not be used as a justification for a re-centralization of the governance and management of the problem.
<i>Public services</i>	Activity of general interest, ensured by a public or private organization; examples: Community schools, primary health centers, literacy centers, sanitation, etc
<i>Transparency</i>	The situation where the decisions on public affairs are made openly and the details of their implementation are easily available to the citizens. The public disclosure of status of the budget of local authorities is an example among others.
<i>Supervision</i>	The control of the actions of a local authority by the persons in charge of a larger community. The supervision is carried out in two distinct ways: initially <i>a priori</i> , the most constraining of two because it conditions action by its prior approval by the Official Authority; and then, <i>a posteriori</i> , which supposes that the Official Authority only gives his approval after an action taken, which extends the fields of initiative of the authorities of the community under supervision.
<i>Political will</i>	Intention or determination to be engaged in a given direction; this is expressed through speech and concrete actions.
<i>Sustainable development</i>	More than a form of growth, sustainable development advocates a rational use of the natural resources by guaranteeing a quality standard of living without mortgaging the conditions of existence of the future generations. The concept aims at a double initially horizontal solidarity for the poorest, and vertical between the various generations. Its finality is to meet present needs without compromising the capacity of the future generations to satisfy their needs.
<i>Political and technical management</i>	See <i>Free administration</i>
<i>Governance</i>	Include traditions, institutions and processes which define how capacity is exerted, how citizens have a say, and how decisions are made.
<i>Land legislation</i>	Indicates within the framework of this study the legislation on land

<i>Framework Law/ Orientation law</i>	Law which is restricted to laying out general principles and leaves to the Government the care to develop them by using the legal capacity .
<i>Ordinance</i>	Act done by the Government, with the authorization of Parliament, in the matters related to the law. Before its ratification by the Parliament, the ordinance has the value of a regulation; after its ratification, it becomes a law.
<i>Enforcement regulation (text)</i>	Regulation to ensure the implementation of the law. It is based on a law and cannot be violated.
<i>Land security</i>	The concept of land security refers to a situation to enjoy land under the guarantee of optimum legal and social conditions "The type of security an actor needs depends on the one hand, on his position social and his insertion in social local relations, on the other hand, on some type of production, investment that it requires. The demand in terms of security is thus various, calling for various answers. The private property is only one type of securing". (Source document: GRET/IIED/GRAF, 2002 .
<i>Secure land tenure</i>	Refers "to the process through which rights are recognized and guaranteed".

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