

## *Making land rights more secure*

*Seminar held in Ouagadougou, 19-21 March 2002*

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### **Conclusions**

The purpose of the seminar “Ensuring security of tenure for rural producers” was to consider the results of recent research and practical experience in the area of land tenure security. Over a three day meeting, some eighty people – researchers, decision-makers, leaders of farmers’ organisations and elected councillors from ten West African countries – have got to grips with the notion of tenure security and debated new approaches which might improve the situation for rural producers. In his speech, the Secretary General of the Ministry of Agriculture of Burkina Faso insisted on the importance of land tenure policy for the sustainable development of agriculture. The initial plenary session showed why the issue of tenure security had come to the fore in the economic and institutional context of the 1990s. Characterised by economic liberalisation, structural adjustment, democratisation and administrative decentralisation, this period marked a clear break with the post-Independence situation. With the advent of globalisation, further wide-ranging changes are appearing on the horizon. It is therefore all the more essential to work out appropriate rules governing competition for land. Negotiations between the State and farmers’ organisations, some examples of which were discussed during the seminar, are leading to more democratic practices involving civil society organisations and experts in the debate on agriculture and land tenure.

Ensuring security for farmers is emerging as a fundamental economic and social issue, and also as a key issue of citizenship. This raises institutional questions, such as the nature of rules and sources of authority, which need to be both legal and legitimate, and able to ensure regulation in rapidly changing social and economic contexts. If this is to be achieved, there needs to be a break with the legal dualism derived from the colonial period, which continued to be the basis of land tenure policy until the 1980s. Whatever the objectives of the State in the long term, it would seem essential to begin by recognising local rights and institutions. What is needed is “local” management of land and resources, giving greater responsibility to rural communities and their representatives (elected councillors or local associations). This is not to deny the role of the State in land tenure regulation, but to challenge a certain mode of government intervention. The State ought not to intervene directly in land tenure issues; its role should be to define the rules of the game and lay down procedures, while allowing a degree of local autonomy in the way they are implemented.

There is no automatic link between land title and security of tenure. The means to achieve security depend on the context and the parties involved. People’s needs may also be in

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conflict: it is not always possible to achieve security for everybody. Although it is often possible to identify “win-win” strategies, hard choices sometimes have to be made.

Over the last ten years, various important developments have been underway in different West African countries: administrative decentralisation, new legislation and innovative pilot initiatives, which have wrought significant changes. Four main approaches to land tenure security can be identified, which are being tried in varying degrees. They begin from different starting points (rights of property and use, regulations, authorities, transactions) and have in many cases taken different directions, but progress is being made. These approaches, and issues common to them all, were discussed by seven working groups during the workshop. Other issues were examined in depth in the course of open sessions. The points these groups came up with provide valuable areas of knowledge and experience to share.

**What general conclusions can we draw?** Firstly, where agricultural policy is concerned, the contribution made by family farms to national food security, urban demand and to exports is fully confirmed, as is their dynamism and ability to adapt. This does not mean there is no place for commercial agriculture, but governments would be depriving themselves of an important engine of production and income distribution if they failed to support family-based agriculture. Tenure security is certainly an indispensable precondition, but it is only one of the elements in the construction of a supportive economic and institutional environment: access to credit, information and markets are also important factors. At the same time, in most cases, recognition of local regulations is sufficient for most farmers to feel secure, provided that ways of getting round them by resort to parallel procedures are prevented.

A number of measures are required to give due recognition to rural producers and ensure their land tenure security:

- First and most importantly, positive recognition should be given to local regulations governing land which is neither part of the national domain, nor registered as being in private ownership. By the same token, arrangements should be avoided which make it possible to register land without its first being acquired in accordance with local procedures; to develop land without prior negotiation with the rights-holders; or to arbitrate conflicts without taking into account local criteria regarding legitimacy. To ignore local values and processes is bound to engender conflict.
- There is a need to clarify the general principles (in terms of fairness, citizenship, etc.) which the State intends to defend. It should reaffirm its intention to delegate effective

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responsibility to rural communities and their representatives, in accordance with the principle of subsidiarity.

- There is a need to clarify the procedures by which land can be transferred from local regulation to private ownership.
- It is important to improve the procedures for arbitrating and settling conflicts, in particular making it clear that recourse to the administration or the courts is allowable only if local arbitration procedures have failed to follow the principles laid down by government.
- There need to be means for giving legal approval to the diverse local arrangements, so long as they are in compliance with the relevant legislation.

The workshop discussions were an opportunity to make an initial assessment of the different approaches being followed within West Africa, their strengths and limitations. A few points have emerged very clearly:

- Though tried since the early 1990s, Rural Land Tenure Plans (*Plans fonciers ruraux*) raise a number of fundamental questions, in particular their capacity to take into account diverse farming systems based on different ways of using land, and the problems of establishing and maintaining registers and other land information systems. Finally, nowhere have they progressed as far as actually issuing certificates, so their effectiveness in providing tenure security is not yet proven.
- The transaction-based approach is a response to changes in land tenure and the increasing prevalence of informal written contracts. Helping to encourage such arrangements, while insisting on including clauses to avoid ambiguity, seems a promising way forward, but there are as yet few concrete examples to go by. The degree of formalisation that should be encouraged is a matter of debate.
- In the case of common property resources which different social groups use on a shared basis, it is essential to lay down rules governing access and use, with effective supervision and monitoring systems. Rather than trying to codify everything, generally it is sufficient to establish a few crucial principles, for example access to water points and livestock grazing routes. There are some good examples of local agreements where local people and the administration have defined and negotiated suitable rules. State recognition of such agreements is essential if they are to be effective.
- In all these respects, administrative decentralisation offers a valuable opportunity – not just because the rural *commune* may often be the most appropriate level at which to

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manage resources, but also because rural councils, in Mali in particular, have explicitly been delegated powers by the State to define the rules in such cases. The fact that the people's elected representatives can draw up local agreements, recognised by the State and having the force of "local law", provided they comply with the relevant legislation, gives enormous scope for the public validation of appropriate and generally acknowledged rules.

There is one point which is vitally important: it is essential to get away from "dualist" thinking, which sets modern State law against customary law. The function of law in a society is to reflect the state of society and social relations, and to define norms for the future. Today, there is a plurality of forms of agriculture; land tenure regulations are essentially local, reflecting hybrid rules and practices. This should be the starting point for constructing locally-tailored, adaptable modes of land tenure regulation which combine local principles with those of the public legal and institutional system, thereby bringing concrete answers to the problems experienced by the rural population.

The approaches discussed in the course of the seminar clearly fit in with this way of thinking. They are not mutually exclusive, and it is probable that an effective system will borrow from each in different proportions. Although there is now a consensus on the need to begin with the local realities of land tenure, there is still a great deal of argument as to which of two basic options is preferable:

- The first, which we might term the "incorporation" option, begins with the recognition of local rights, then seeks to incorporate them into a public system by the issuing of land tenure certificates.
- The second, which could be described as the "linking" option, believes that systematic codification or registration is neither possible nor desirable, preferring greater autonomy in the definition of the rules. The issue in this case is primarily one of finding ways of linking together different methods of land tenure regulation.

Behind these two options are different political views as to the most appropriate relationship between central government, rural communities and local authorities. As well as these differences of principle, there are also questions of relevance (given the diversity of agrarian and land tenure situations), and questions of priority and duration (between what is desirable in the long term and what is needed here and now – the first steps in the process). There are also questions as to practical feasibility: the supporters of the first approach believe that a contractual approach can only be a stopgap, while others question the ability of governments to ensure reliable, on-going maintenance of land tenure registers and the associated systems needed to cover the whole country.

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It is not for us to decide these issues. These are matters of political choice in each country, depending on its own political and institutional pathway. In countries undergoing democratisation, local people need to be involved in the taking of such decisions, as is borne out by the experiments in the participatory formulation of policy discussed during this meeting. These experiments, taken together, mark out the current area of debate on land tenure policy, within which there remains a wide range of choice. Moreover, the new approaches we have discussed here are still very much in process, and it is too early to judge them definitively. It is vital that we have the means to monitor and analyse current experiments, to carry out in-depth evaluations, and find opportunities for sharing and comparing notes.

Removing the barriers between countries and disciplines, applied research, learning from experience, sharing and debate: these are the steps that have produced the results shared at this meeting, and this is the way to go forward, in dialogue with governments, elected representatives and the leaders of farmers' organisations. Formalising the know-how gained in developing these new approaches to land-tenure security, and disseminating it, is another objective to be pursued.

The organisers hope that this seminar represents an important step forward; that each participant will go away with a clearer vision of the issues involved and the progress that has been made, with contacts to follow up and useful working knowledge, as we continue our task of ensuring greater security for all the rural producers of West Africa.

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