

# LITERATURE REVIEW OF LAND TENURE IN NIGER, BURKINA FASO, AND MALI CONTEXT AND OPPORTUNITIES

August

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*Cover photo: Men and women from the village of Tourbey in western Niger work to build a water catchment basin ahead of the annual rainy season. The villagers are beneficiaries of a CRS Cash-for-Work project, in which land improvements are undertaken for cash payments. 16 April 2014, Tourbey, Ouallam department, Tillaberi region, Niger. Photographer: François Therrien for CRS*

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**August 2014**

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# EXECUTIVE SUMMARY

This paper seeks to lay out options for engaging with the complex issue of land tenure as it relates to broader social, economic, and environmental resilience in the Sahel regions of Niger, Burkina Faso and Mali. Particular focus is given to vulnerable groups such as women and pastoralists and to interventions that would ensure that these groups are not disproportionately impacted by the pressures on land and climactic change that threaten tenure security in the region today.

A review of existing statutory and customary land tenure systems in the three countries reveals broad similarities. Customary tenure systems continue to predominate, especially in rural areas, in spite of statutory efforts to ‘modernize’ the tenure landscape in recent decades. Efforts to devolve land management responsibilities to local institutions have not been wholly effective, as local administrative bodies often lack the resources and capacity to realize the provisions of land legislation. In this context, the clash of traditional and modern systems can cause long-term uncertainty, result in conflicts over resources, and undermine land tenure security for rural communities. Two groups are especially vulnerable to tenure insecurity: women and pastoralists.

Women suffer disproportionately as a result of long-standing practices in which they are routinely disadvantaged in land inheritance. In the few cases where customary practice has allowed for women’s access to land, moreover, increasing pressures on land are combining to erode this access. Pastoralists, meanwhile, are often excluded from local decision-making bodies, leaving them politically disadvantaged in newly devised means for negotiating land use. Decreased land availability is limiting grazing areas available to transhumant and nomadic herders, leading to a rise in resource conflicts and eroding the traditional systems of negotiation that have provided for movement of herds – the critical factor in enabling pastoralist resilience to long-term climate change and weather events such as droughts.

Interventions that have sought to address these challenges have employed a variety of approaches. The lessons they offer are not always intuitive. Efforts to seek full land ownership titles are not common, reflecting the prevailing legal frameworks. Instead, projects have focused on aligning customary and statutory systems through registration of customary rights. Even where this is advocated, prospective projects

are advised to remain flexible in how customary practices are captured, allowing for variety of local conventions and norms rather than trying to ‘fit’ existing practices to modern statutory categories.

Women’s land tenure security has not been successfully transformed in many cases, which reflects deeply rooted social and cultural opposition to the idea of women’s equality in land tenure. Of the many programs that tried to address this problem, Mali’s Alatona Irrigation Project was probably the most successful. This project opened women’s access to limited titling to irrigated plots, promoted joint titling for farming households, and allocated shared lands to women’s organizations.

Another finding is that making water access points open access resources does not necessarily benefit pastoralist mobility, but in fact is more likely to lead to environmental degradation through over-intensive grazing. Pastoralists’ access to land is best conceived of through the lens of water access, negotiated through traditional ‘home area’ grazing privileges between herder groups and sedentary farming communities.

The review suggests that there are few ‘quick wins’ in land tenure for the Sahel region. Instead, progress may better be achieved through process-oriented interventions that focus on fostering local dialogues: implementing conflict resolution mechanisms, developing local land use charters through participatory approaches, and engaging women and men in discussions on the gender dimensions of land ownership and access. These approaches, coupled with capacity building of local decentralized institutions, would lay the groundwork for long-term transformations of the realities of land tenure for the Sahel’s communities.

## LIST OF ACRONYMS

<b>AFD</b>	<i>Agence Française de Développement</i> (French Development Agency)
<b>AFPR</b>	<i>Attestation de Possession Foncière Rurale</i> (Rural Land Certificate)
<b>BRACED</b>	Building Resilience and Adaptation to Climate Extremes and Disasters
<b>CCFV</b>	<i>Commission de Conciliation Foncière Villageoise</i> (Village Land Conciliation Commission)
<b>CFR</b>	<i>Charte Foncière Rurale</i> (Rural Land Charter)
<b>COFOCOM</b>	<i>Commission Foncière Communale</i> (Communal Land Commission)
<b>CRS</b>	Catholic Relief Services
<b>CVD</b>	<i>Conseil Villageois de Développement</i> (Village Development Council)
<b>CVGT</b>	<i>Commission Villageoise de Gestion des Terroirs</i> (Village Land Management Commission)
<b>DFID</b>	Department for International Development
<b>DRR</b>	Disaster risk reduction
<b>ECOWAS</b>	Economic Community of West African States
<b>EWRG</b>	Early warning/response groups
<b>GIZ</b>	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i> (German Society for International Cooperation)
<b>GRAF</b>	<i>Groupe de Recherche et d'action sur le Foncier</i>
<b>IGB</b>	<i>Institut Géographique du Burkina</i> (Burkina Geographic Institute)
<b>IIED</b>	International Institute for Environment and Development
<b>LOA</b>	<i>Loi d'Orientation Agricole</i> (Agricultural Framework Law)
<b>MCA</b>	Millennium Challenge Account
<b>MCC</b>	Millennium Challenge Corporation
<b>NGO</b>	Non-governmental organization
<b>NRM</b>	Natural resource management

<b>PACT</b>	<i>Programme d'Appui aux Collectivités Territoriales</i> (Program to Support Local Government)
<b>PADON</b>	<i>Projet d'appui au développement économique de l'Office du Niger</i> (Project for support to the economic development of the Office of Niger)
<b>PAP</b>	Project-affected person
<b>RLGP</b>	Rural Land Governance Project
<b>SFR</b>	<i>Service Foncier Rural</i> (Rural Land Service)
<b>SILC</b>	Savings and Internal Lending Communities
<b>SNV</b>	<i>Stichting Nederlandse Vrijwilligers</i> (Netherlands Development Organization)
<b>SUR1M</b>	Scaling Up Resilience for Over One Million people in the Niger River Basin of Niger, Burkina Faso, and Mali
<b>TGI</b>	<i>Tribunal de grande instance</i> (Local court, Burkina Faso)
<b>UEMOA</b>	<i>Union économique et monétaire ouest-africaine</i> (West African Economic and Monetary Union)
<b>USAID</b>	United States Agency for International Development



## ASSESSMENT OBJECTIVES

Scaling Up Resilience for Over One Million people in the Niger River Basin of Niger, Burkina Faso, and Mali (SUR1M) is one of 10 projects across the Sahel Region for which a Concept Note and Project Development Grant have been approved by the DFID-funded Building Resilience and Adaptation to Climate Extremes and Disasters (BRACED) Programme. SUR1M is designed to reduce one million people's risk to drought and flood hazards in 30 communes in the Niger River Basin. Project interventions will focus on livelihoods and malnutrition, natural resource management (NRM) and climate adaptation, governance with disaster risk reduction (DRR), women's participation and leadership in community-level decision-making structures and bodies, collective learning, and evidence-based decision-making, positioning communes and villages to make behavioural and institutional changes. This will be evidenced by an uptake in sustainable natural resource management, participation in Savings and Internal Lending Communities (SILC) groups and early warning/response groups (EWRGs), strengthened market linkages, use of climate data for decision making, improved nutrition, diversified and improved revenues, more equitable land usage and ownership, and more secure assets.

In preparation for the full project implementation phase, CRS/SUR1M has commissioned a literature review to inform inclusive approaches to land tenure in the Sahel based on local experiences and successes. The focus is on the most inclusive options for women and pastoralists in particular, while identifying and analysing costs and success factors that can strengthen communes' capacity to manage livestock mobility, customary land rights, and conflict.

## INTRODUCTION

In Niger, Burkina Faso, and Mali, increasing land pressure and insecure land tenure are compromising agro-pastoral production systems as they seek to adapt to climatic variability. These systems, which have proved highly resilient over centuries, have enabled both pastoralist herders and sedentary farmers to mitigate the impacts of long-term climate change and environmental shocks such as drought. Increasingly, however, the socio-economic mechanisms that underpin these systems are coming under threat. Mobile livestock keepers are finding it harder to maintain rights of passage in an agricultural landscape increasingly tightly occupied by fields, whilst land tenure insecurity amongst dryland farmers discourages adaptation efforts aimed at increasing crop productivity. The removal of common lands containing higher-value resources such as wetlands, land close to water sources, and woodlands has further impacted the ability of the Sahel's sedentary and nomadic populations to sustain their dryland livelihoods.

The International Institute for Environment and Development (IIED) Issue Paper, *Managing the Boom and Bust: Supporting Climate Resilient Livelihoods in the Sahel*, pinpoints demographic change, urbanization, greater market integration, and large-scale investment flows as the reasons behind rising land values in the Sahel. Increasing fragmentation of family farms resulting from demographic growth and farm subdivision through inheritance is creating a long-term trend towards ever-smaller plots, as documented in Mali's irrigated *Office du Niger* scheme. The pressure for land has its greatest impact in areas held under customary tenure. In Mali, Burkina Faso, and Niger, these are overwhelmingly in rural areas. This situation persists despite the efforts of decentralization policies, which have sought to devolve management of land tenure systems to the local level. In many cases, efforts to impose modern statutory reforms over customary practices have led to conflict over resources. Women and pastoralists are particularly affected as vulnerable members of society whose access to rights in practice often fall short of those enshrined in law. (Hesse *et al*, 2013.)

In light of these challenges, the IIED authors propose four priority areas for development interventions seeking to address resilience through land tenure:

1. Recognizing and recording local land rights
2. Strengthening capacity for developing effective land management systems
3. Interventions that improve women's land rights, including legislative reform
4. Enabling herders to access grazing resources through locally negotiated resource management agreements

The existing land tenure systems in each of Niger, Burkina Faso, and Mali share similarities, particularly in their recent efforts to protect customary land rights and include them in land records – for instance Niger's Rural Code of 1993, Mali's Land Code of 2000–2002, and Burkina Faso's latest law on rural land tenure (Law No. 034- 2009/AN of 2009). A number of development interventions have engaged with the four priority areas, and offer lessons for the SUR1M proposal.

## METHODOLOGY

This paper comprises a review of recent literature relating to the four potential intervention areas outlined above. Material includes case studies, desk reviews, academic publications, factsheets, and project reports. Additional input has been sought from informed individuals in some cases via personal correspondence.

Section A outlines the current land tenure context in each of the three countries, including both statutory and customary frameworks. Specific attention is given to options for securing customary tenure rights, working with decentralized institutions, and focusing on the gender dimensions of existing systems. Section B proceeds to briefly outline key development interventions in recent years. The focus is on action-oriented, practical examples that could be replicated in the BRACED project. The conclusion uses the four priority intervention areas as a framework for examining cross-cutting opportunities, needs, and experience. This analysis informs recommendations for the SUR1M project development phase.



## FINDINGS

### SECTION A. THE CURRENT LAND TENURE CONTEXT – LEGAL FRAMEWORKS AND CUSTOMARY PRACTICE

Land tenure and property rights in Niger, Burkina Faso, and Mali are defined by a complex overlay of customary systems and formal statutory entitlements. Recent attempts to formalize land registration systems have largely failed to displace more traditional and customary land ownership and access practices, particularly in rural areas. In addition, legal reforms have often been contradictory, leading to legal pluralism in all three countries. Further complicating this mix of traditional and modern systems at the local level are the decentralization reforms that have taken place in each country. Many of these have opened the door to *de jure* management of resources such as water, forests, and land by local authorities. The low level of funding and training available to these local institutions means that in practice these rights are often not realized, with customary authorities retaining *de facto* roles in land allocation.

Beneficiaries of CRS' Cash-for-Work project in the village of Tourbey in western Niger work to build a water catchment basin ahead of the annual rainy season. 16 April 2014, Tourbey, Ouallam department, Tillabéri region, Niger

FRANÇOIS THERRIEN FOR CRS

## **NIGER**

Customary tenure law in Niger is based on the notion of the firstcomer, sometimes referred to as the ‘right of the axe’. The first occupants of a piece of land are those who have cleared it, thereby putting a ‘value’ on it. These investments are the basis from which their descendants’ customary ownership rights are derived, being passed down most commonly through a patrilineal system. Newcomers are traditionally accorded use rights only. The result in most villages is three different types of lands: individual lands, family lands, and village common lands also known as chieftaincy lands (*terre de chefferie*). Chieftaincy lands comprise fallow, virgin and cultivated lands. (Gnoumou and Bloch, 2003.)

During the colonial era, there was no policy for the management of natural resources. Development strategies for the rural sector focused mostly on cash crops such as cotton and groundnuts. Traditional *chefferies* owned the land and distributed use rights among the local population. While independence did not radically change the existing system, each post-independent government has challenged the supremacy of traditional *chefferies* over land tenure management in the name of promoting fair access to land for local populations. Legislation in 1961, for instance, set a northern limit for cultivation, defined the pastoral zone, and forbade the practice of rain-fed agriculture north of the 350 mm isohyet. While land tenure reform efforts have continued, land conflicts have increased due to the ambiguity and confusion that have characterized post-colonial policies, laws, decrees, ordinances, and *arrêtés*.

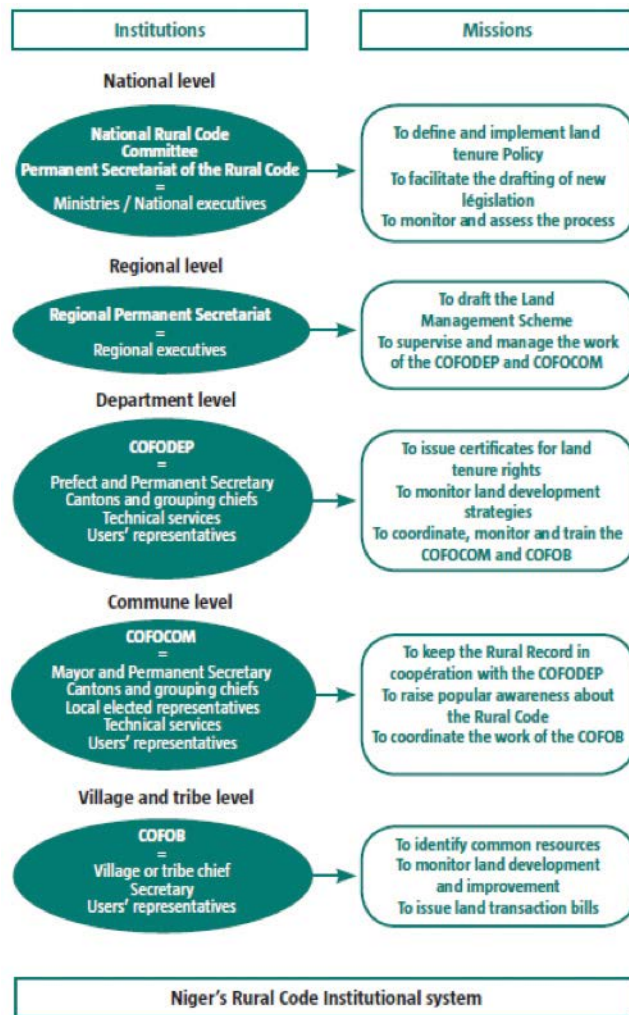
Government-led discussions on land tenure issues were initiated during the 1980s through a number of national-level conferences involving political and administrative authorities, the State’s technical services and their local representatives, customary leaders, and representatives of different categories of farmers. These meetings led to the identification of key issues for the management of land and natural resources, including the degradation of arable land, the reduction of pastoral areas as farmland expanded, land tenure insecurity, and the risk of widespread land disputes. These discussions directly informed the development of the country’s new Rural Code.

## **RURAL CODE**

In the aftermath of the introduction of multi-party democracy in Niger in the early 1990s, USAID funded a \$28.2 million project (1990-98) to assist the Government of Niger in developing sustainable agriculture production and increased rural incomes. The project included a minor focus on land issues. Working with the Land Tenure Center of the University of Wisconsin, the Government of Niger completely revised the laws and institutions related to rural development and natural resource management in Niger through the development of the Rural Code (1993), which devolved registration of rights to land to Land Commissions to be installed across the country in *Arrondissements* and *Communes*.

The Rural Code (*Principes d'Orientation du Code Rural*, Ordinance 93-015 of March 1993) has the following objectives: (1) increase rural tenure security; (2) better organize and manage rural land; (3) promote sustainable natural resource management and conservation; and (4) better plan and manage the country's natural resources. The Code seeks to strengthen tenure security by recognizing the private property rights of groups and individuals if such rights were acquired according to either customary or formal law. To date, however, the Rural Code has not been effectively implemented in much of the country.

Customary land tenure practices continue to govern all types of land, including agricultural land, pastureland, and housing plots. The laws have significant regional variations in subjects such as the right to inherit land, individual and family tenure, and women's land access. Most customary practices reflect the influence of Shari'a law, while rural lands are managed by customary institutions that hold lands according to a variety of indigenous tenure forms. Customary law and traditional practice provide that rural land in Niger can be acquired under the principle of the right of the firstcomer. If a village is established in a previously unoccupied area, the village chief of the first occupants has the power to grant use-rights to newcomers.



**Figure 1: Local and national administrative bodies responsible for land tenure. (Source: Jamart, 2010.)**

At present, the main avenues for acquiring land rights in agricultural communities include: (1) inheritance; (2) borrowing fields in exchange for rent paid in the form of a symbolic payment of produce; (3) pledging, in which the user gives a cash loan in return for cultivation rights for the duration of the loan; and (4) land purchase, which is becoming more common in south-central Niger where the most productive agricultural land is located. Land transactions take place on the informal market and are validated through witnesses or, in the case of land sales, often by written agreements.



With adoption of the Rural Code, demand for tangible, written evidence of rights has increased. An agriculturalist has two options for obtaining written proof of the land right: (1) apply with the Land Register to receive a proper deed; or (2) apply for a *certificat* written and signed by the *Chef de Canton*. Requests for deeds have overwhelmed the institutions charged with creating them, which already suffered from insufficiently educated staff and lack of capacity.

Land Commissions created under the Rural Code are charged with determining land ownership and recording land rights but are hampered by lack of training, capacity, and funding to execute their duties. In areas where Land Commissions are functional, they determine ownership rights through survey and oral testimony. If there are no objections, the rights are recorded in a rural land register and the landowner is given a property-ownership registration certificate that varies depending on whether the land was acquired by inheritance, gift, purchase, or allocation. The Land Commissions have no authority to adjudicate land disputes and competing land interests, however, and can only register undisputed claims.

The Rural Code allows for formal registration of some categories of customary rights to land, although this does not account for the layers of rights and disputes that have arisen as various interests seek to register rights to the same land. Simplification of a complex composite tenure system has tended to create categories of primary right holders and weaker groups of secondary right holders. Those who lose rights tend to be women, pastoralists, and other less powerful groups.

### **WATER CODE AND PASTORALISTS**

Among pastoralists, land-use rights are directly linked to water-use rights. Individuals and groups who control access to a water-point exercise *de facto* control over access to surrounding land (Cotula, 2006). Research has demonstrated that there is value in having water access points remain linked directly to pastoralist groups' customary areas of operation through the recognition of priority access rights rather than making them open-access resources, as this prevents over-intensive grazing in the rangelands surrounding them during the dry season.

The relationship between Niger's Rural Code and the Water Code (*Code de l'Eau*) undermines this, however. The Rural Code governs all resources and socio-economic activities in rural areas, including

rangelands and water points. It states that herders have a right to use rangelands in common, and can obtain recognition of priority rights on their home areas (*terroir d'attache*) – the land area where a group of pastoral households spend most of the year and to which they return after transhumance or migration during drought. This includes both land and water rights. Outsiders may gain access to water and grazing resources on the basis of negotiations with the right holders. Through this innovative legal concept, the Rural Code seeks to build on traditional resource management systems. These provisions imply that the creation of modern wells must be associated with priority rights on water and grazing resources and that open-access wells are possible only in no-man's-land situations or on transhumance routes.

On the other hand, the Water Code makes access to public water points open to all, including outsiders such as transhumant herders. Public water points also require Management Committees (*Comités de Gestion*), numbering around nine persons. These committees are responsible for the general maintenance of the wells and the collection of user fees. The Water Code does not establish a functional link between access to water and access to grazing, however. The role of Management Committees is limited to the surveillance of the water infrastructure, excluding the use of grazing resources or control over the number of livestock using the well. The Code gives almost no recognition to the controlled access systems developed by pastoral communities and there is a lack of recognition of the fact that mobile pastoralist communities are not always in a position to maintain their members around the well throughout the year, and are therefore under-represented in Management Committees.

Continuing decentralization efforts raise important questions over the management of resources including water, as well as the revenues that can be raised from these efforts. Efforts to support these decentralized institutions and secure local land tenure must take into account the tensions between customary practices, previously established local management structures, and newly empowered communes. How pastoralists can be more equitably represented in these decision-making structures is another key challenge for implementing the Rural Code in Niger (Cotula, 2006).

## **GENDER DIMENSIONS**

Women are among the poorest and most vulnerable groups in Niger. Although almost all of Niger's women work in agriculture, they possess

little economic power and have access to land only through male relatives. The Rural Code calls for both men and women to have equal access to land and natural resources: women can own, buy, and sell land. Under customary law, however, women do not own land; their husbands and male relatives own the agricultural land that they cultivate and the small plot near the house that they may use as kitchen gardens. In some instances, organized groups of women are able to access pieces of land during the second cropping season. Because women access land through their husbands and male relatives, they risk losing the land when those relationships end due to death, marriage, or divorce. In some traditional groups, notably the Hausa, women cultivate their own fields and commonly inherit land. Most of Niger's population is Muslim and Islamic Law accords women the right to inherit property (in shares half the size of male relatives), but this practice is rarely followed among Muslims in rural Niger, much like in Mali.

In addition, recent research (Diarra and Monimart, 2006) has claimed that Niger is witnessing the 'de-feminisation' of agriculture. The customary practice of borrowing land (fields on the *gamana* – the portion of land allocated by the family patriarch to dependent family members, including women and young men) is still the most common way for women to gain access to land, but this is increasingly coming under threat. As long as land resources are available the tradition is still practiced, but it is no longer seen as a social obligation due to the pressure on land. Since decisions are taken at the family level, women who are not granted fields on the *gamana* have few options for recourse, particularly when a religious justification is cited. Women and their children are increasingly resorting to inheritance to acquire land, claiming their inheritance in the name of religion or according to Koranic law in order to secure their land rights. If there is not enough land to be shared, it will be sold and the women allocated a share of the proceeds.

Some progress has been seen as a result of the new modes of access to land (such as pledges and purchases) enabled by recent legislation, but this has tended to benefit a minority of better-off and better-informed women. These transactions are registered and ratified by certificates issued by the land commissions, constituting formalized and therefore secure access to land ownership under current legislation (statutory law). The authors point out that this, in fact, disadvantages the traditional systems through which women have

traditionally been able to protect the maternal line and has knock-on effects for the ability of young male heirs to inherit land.

Current efforts to tackle this situation through land commissions that facilitate the legalization of land transactions and put land titles acquired by men and women on an equal footing do little to tackle the traditional system for regulating modes of access to land. The non-discerning nature of the statutory system means that both voluntary and enforced transactions can be ratified. As such, the rights of the most vulnerable, including women, are still not protected with sufficient vigilance. Under current legislation the very presence of a man as a witness or actor registering transactions (under customary or Koranic law) can lead to women being dispossessed of their ownership rights because certificates are issued in their husband's name. Diarra and Monimart point out that the representation of women and their mandate in the system of land commissions – and *Commissions Foncières Communales* (COFOCOMs) in particular – needs to be clarified.

## **BURKINA FASO**

After independence in 1960, land management in Burkina Faso was primarily left to customary institutions and governed according to customary law. The government's role was restricted to management of classified or protected land. The basis for the country's modern statutory system is the *Réorganisation Agraire et Foncière*, introduced in 1984 and amended in 1991 and 1996, which helped to develop a private property rights regime for land. The legislation vested all land in the state, regardless of customary tenure status, and outlawed all land sales in an attempt to make a clean break with customary rights. Citizens would henceforth be able to gain access to land through government rules of access, thus ending the power of traditional chiefs. Its interpretation in rural areas was that land belonged to whomever was cultivating it, regardless of customary rules. Amendments allowed the privatization of land, recognized use-rights and long-term leases, and enabled the state to cede land to private operators.

The legislation also created a national village land-use management programme that operates *Commissions Villageoises de Gestion des Terroirs* (CVGTs), village-level representative committees responsible for land management. These bodies were intended to represent the village by bringing together customary leaders and members of

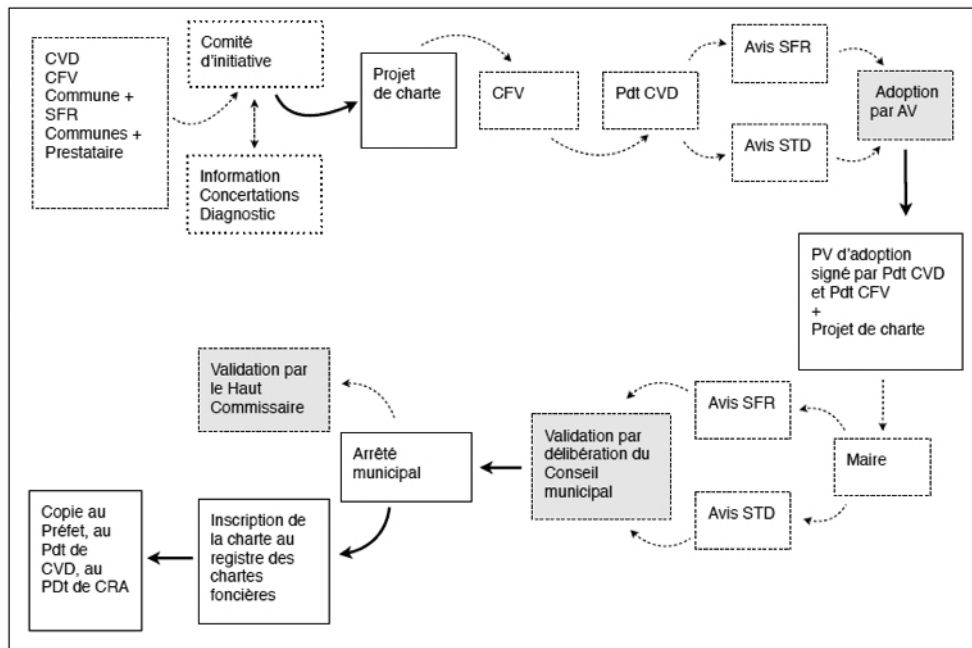
underrepresented groups in committees. In practice, however, CVGTs have not realized their purpose, as the *Réorganisation Agraire et Foncière* is commonly superseded by customary systems at the village level. The commissions are more often associated with donors or viewed as State projects, rather than as belonging to the community (USAID, 2010).

Another local body that plays a role in land management is the *Conseil Villageois de Développement* (CVD), which is tasked with managing and resolving conflicts and ‘finding solutions to land tenure problems’ according to the 2004 *Code Général des Collectivités Territoriales* (2004 Decentralization Code). Both CVGTs and CVDs are evidence of Burkina Faso’s push for decentralization, which has sought to transfer management responsibilities over land to local bodies.

## **RURAL LAND TENURE LAW**

The latest development in this process was the adoption of the new Rural Land Tenure Law (Act. N° 034) in June 2009 following a long, transparent, and inclusive process. The goals of the new law include: (1) ensuring equitable access to rural land; (2) promoting investments in agriculture, forestry and pastoralism in Burkina; (3) reducing poverty in rural areas; and (4) promoting sustainable management of natural resources. In addition, the new law is meant to protect property rights, prevent and manage land conflicts, and build a framework for ensuring rural land tenure security.

The law furthers decentralization in Burkina Faso and codifies principles of customary rights by enabling communities to draft *Chartes Foncière Rurale* (Rural Land Charters), which are local conventions based on customary land uses. These land charters contain rules relating to conservation or shared natural resources, the process of giving and receiving land loans, and land dispute management. The new law provides the governing framework for the land charters, which vary according to local needs and customs to reflect the diversity of Burkina Faso’s people and ecosystems. Local land charters are created at the village level in a participatory manner that includes a representative group of stakeholders (including women, forest users, pastoralists, and youth), and is aided by the state. They are adopted at the village level, validated at the municipal court, and recorded in the register of local land charters.



**Figure 2: How to obtain a Rural Land Charter in Burkina Faso, Source: Hochet et al, 2014.)**

The 2009 law also enables legal recognition of individual and collective land rights, the transfer of certificates of rural land possession through inheritance, oral and written rural land leases, and the creation of local land management institutions. These bodies include:

- *Service Foncier Rural* (Rural Land Service), a national institution represented in each community;
- *Commissions Villageoises Foncière* (Village Land Commissions);
- and ‘local consultative bodies for land-related matters’ in rural municipalities.

The Rural Land Service and Village Land Commissions are designed to work together to maintain public spaces and common areas, secure individual land tenure rights, and prevent disputes. The 2009 law created the *Attestation de Possession Foncière Rurale* (AFPR, or Rural Land Possession Certificate), which can be granted to individuals and associations. This replaces the previous practice of issuing ‘minutes of palaver’ that affirmed rights to land usage. In the new system, certificates can be obtained within 75 days if no objections are raised. Any property owner may request an individual certificate or recognition of possession by submitting an application to the Village Land Commission (these may be made orally). The commission forwards it to the Rural

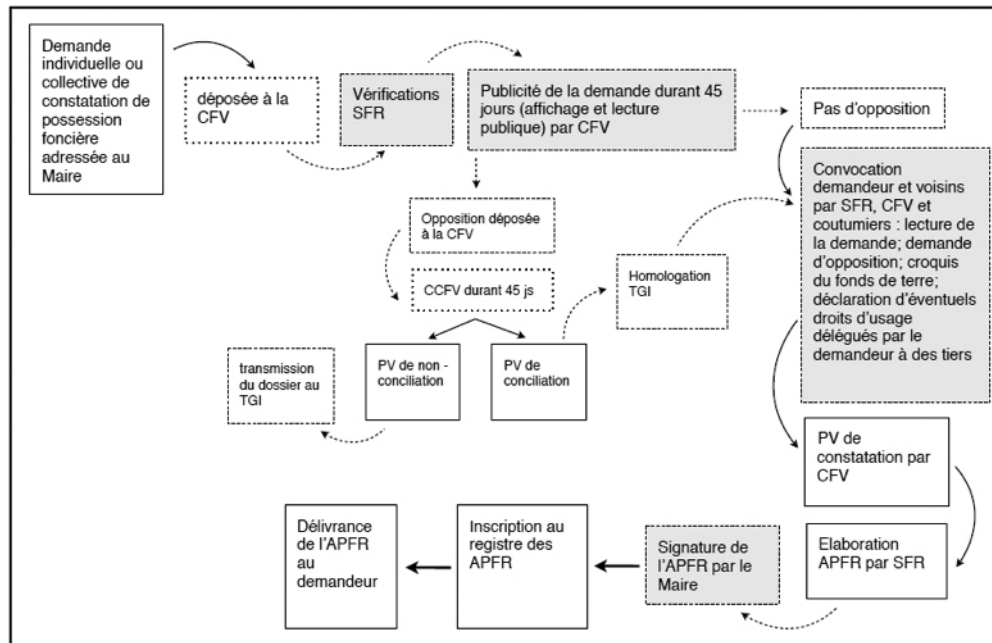
Land Service, which checks that no possession or property title has been previously established on the parcel in consultation with local customary and traditional authorities. The rural land possession certificate is then prepared for the Mayor's signature on behalf of the applicant. In the case that there are competing claims to the land, the case is referred to the *Commission de Conciliation Foncière Villageoise* (CCFV), which reviews it for up to 45 days through local-level consultations. Only if this is unsuccessful is the case referred to the local court, or *tribunal de grande instance* (TGI). AFPRs differ from full land ownership titles in that they confer the right to use undeveloped land; they entail rights of *usufruct* (use and profit), but not *abusus* (alienation<sup>1</sup>). AFPRs may be used to obtain bank loans, depending on individual bank requirements (Davis, personal correspondence) and can be loaned, donated, rented, or passed on to the next generation.

Local consultative bodies must include members of development committees, traditional land chiefs, representatives of state and local government, representatives from women's groups, and technical experts. Mayors and prefects also take part in conflict resolution relating to land disputes. However, these groups can only examine and issue reports and suggestions. Most groups with customary claims over land also have a land chief, or *chef de terre*, who has a connection with the ancestors who initially approached the local spirits of the land. The *chef de terre* stands as a symbol of the inalienability of that group's right to land.

The 2009 law sets forth the framework for addressing land disputes, stating that parties should first attempt to resolve the situation with local authorities, per procedures in the local land charter. The law gives local authorities a 45-day period, which may be extended once, in which to reach conciliation between the parties. Addressing the courts and initiating litigation should only be used as a last resort. (GOB, 2009.)

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1 Alienation, or *abusus*, entails the right to sell or otherwise transfer land from one party to another.



**Figure 3: How to obtain a Rural Land Certificate in Burkina Faso (Source: Hochet et al, 2014.)**

### **PASTORAL POLICY ACT**

Pastoralism is governed by the 2002 Pastoral Policy Act, which among other provisions, guarantees pastoralists right to pastoral land, equitable natural resource use, and the movement of their herds, in addition to the 2009 Rural Land Tenure System Law. There are also national orders which govern regulation of disputes between farmers and pastoralists, decrees on national transhumance, and a 1998 agreement by the Economic Community of West African States (ECOWAS) on trans-border transhumance.

### **TENURE TYPES**

Under the *Réorganisation Agraire et Foncière* framework law, the state owns all untitled land. It may cede full ownership of rights of land to private operators upon application and payment. Once land is titled and in private hands, it enters the market and can be freely bought, sold, and leased. The Act allows for a system of private property based on titling and registration. Much rural land remains untitled, however, and so is legally owned by the state but is in practice governed by customary rights. In rural Burkina Faso, most forms of tenure are normally governed on the ground by customary rules, which differ between communities. In general, land tenure types are one of the following:



- Rights of permanent use are granted to members of the corporate group (family clans).
- Rights of permanent use are acquired by claiming unclaimed deforested land.
- Rights of limited use are extended to members of the corporate group who need to borrow land. Depending on the group, these may become rights of permanent use if held for more than one generation.
- Rights of limited use are granted to ‘strangers’ who are borrowing the land. These rights can become permanent after generations of being passed down, particularly if the borrower has improved the land with the permission of the lender.

Under the 1991 amendment, private ownership of irrigated land is not allowed. Local commissions allocate use-rights for 1 to 1.5 hectare plots on condition of paying water fees and putting the land to productive use. Agribusinesses are under a different legal regime and can be granted a 25-year lease by the state on a minimum lot size of 10 hectares, renewable for up to 99 years.

As might be expected, customary practices still trump statutory systems in many rural areas of Burkina Faso. Many communities do not acknowledge that anyone ‘owns’ the land, but rather grant primary rights of use to family groups who first settle a plot of land. In other communities, while a village chief is the formal arbitrator of village land, he does not have authority to control lands other than those belonging to his family. Among the Mossi, an individual can only claim rights to land specifically granted by a land chief (*chef de terre*). Nonetheless, the new legislation has been approved by a representative of the Mossi at the national level.

## **GENDER DIFFERENCES**

Burkina Faso’s Constitution affirms the principle of gender equality in all matters, as does the *Réorganisation Agraire et Foncière*. Widows have legal rights to inherit their husbands’ property, albeit only if their marriage was a recognized civil marriage. Sons and daughters are treated equally under formal inheritance law. Again, however, the statutory right to inherit is generally superseded by the customary practice of a man’s property passing to the male members of his family.

While government policies and NGOs have sought to improve the rights of women in rural areas, development projects have often undermined women's rights by reinforcing traditional tenure institutions and ignoring the existing rights of women. For example, Operation Rice, a water infrastructure project, undertook to improve lowland areas and then allocate the improved plots to household heads. Those lowlands had been controlled by the women to grow rice; when allocated to male household heads, the land was no longer accessible to women. In addition, state improvements generally increase women's labour requirements on the family/male-owned plots.

Throughout Burkina Faso, customary tenure does not provide women with direct access to land. However, women are often able to realize indirect rights of access to land by asking their husbands or husbands' lineages for land. Married women usually have more avenues to access land than unmarried women, who often can only access their mothers' fields. A widow can choose to be 'inherited' by one of her husband's brothers and thus stay on the land, although the practice of levirate marriage is prohibited by law in Burkina Faso.

As borrowing practices change and loans of land become shorter and leases more common, women are finding it easier than men to access loaned or borrowed land. Landholders are more willing to lend to women because women cannot claim permanent rights to land and are also easier to evict. Obstacles remain to increased land ownership by women, however, as verbal contracts still predominate in rural areas. As the land market develops, an increase in the use of written transactions may provide women with more secure avenues to access land ownership.

The new land tenure law offers some opportunities for strengthening women's roles in land decisions at the local level. The drafting of Rural Land Charters, for instance, is an opportunity to state the principle of non-discriminated access to land and natural resources and to identify tools and methods for securing women's access. Article 75 of the law allows for the design and implementation of 'specific programs' that provide tools for issuing land property titles to vulnerable groups including women. One such example would be the drafting of '*cahiers des charges*' (similar to by-laws) for agricultural development zones (large areas of irrigated land). These documents set out the rights and responsibilities of land users in these zones. As an example, a minimum area of developed land could be set aside for use by women's producer associations.

## **OTHER LAND ADMINISTRATION INSTITUTIONS (NATIONAL LEVEL)**

- The Ministry of Agriculture, Water Resources, and Fisheries (*Ministère de l'Agriculture, de l'Hydraulique, et des Ressources Halieutiques*) is responsible for the productivity of land and its related resources.
- The Ministry of Environment (*Ministère de l'Environnement et du Cadre de Vie*) deals with land conservation and planning for land allocation.
- The Ministry of Animal Resources is responsible for the productivity of grazing lands and pastures.
- The Ministry of Territorial Administration and Decentralization is responsible for issues arising from conflicts over access to and control over land assets and for piloting the decentralization effort, which has created autonomous local governmental bodies.
- The Ministry of Economy and Finances (*Ministère de l'Economie et des Finances*) is responsible for land administration, land registration, and taxation related to land. The Ministry includes the *Direction des Affaires Domaniales et Foncières* and the *Direction du Cadastre*, which implement the current revision of the *Réorganisation Agraire et Foncière* law. The latter consists of both *Service des Opérations Cadastreales* and *Service de la Règlementation Cadastreale*.
- The *Direction de la Topographie et des Travaux Fonciers* resides in the *Ministère de l'Habitat et de l'Urbanisme* and is responsible for land surveying.
- Capacity-building for land dispute mediation falls under the Ministry of Justice.
- The Burkina Geographic Institute (*Institut Géographique du Burkina, IGB*) is responsible for cartographic services, including geographical coordinate gathering, analysis, and interpretation. The IGB does contract work for public agencies and private companies.

## MALI

Customary land tenure systems have their origins in the Mandingo Empire of Soudiata Keita and the Kouroukan Fouga agreements of 1235 (USAID, 2010), which vested ultimate authority over land in the hands of the Emperor while devolving use and management to local authorities (the Regional Assembly, the Circle Council, and commune councils). Land rights were passed on through lineage and the principle of the firstcomer. This arrangement, in which married women were excluded from holding land rights, persisted for centuries and is still used today by the Bambara people. Modifications to these land tenure arrangements were made in 1818, when a set of rules based on local practices and Islamic beliefs were introduced by the Macina Fulani Empire. Here, access to resources including pasture lands, lakes, and rivers came under more formal control, whereas forests, wild products, and wildlife were considered open access resources.

The French colonial period (1892-1960) saw the introduction of the '*mise en valeur*' principle, which required registered lands to be put into productive use. Those with ownership rights to registered lands who were not using land productively could lose land access and rights, with the land being transferred to others who promised to put it to productive use. A category of registered lands titled 'vacant lands without owner' was also created, enabling the colonial power to take lands or transfer ownership to meet its needs. This retrenchment of state authority continued after independence in 1960 with the nationalization of all land; while parcels could be used for various purposes, the state reserved the right to take back any lands it needed.

State control over land increased until the 1990s, when the end of military rule was followed by a series of land tenure and property rights reforms, in keeping with reforms in many West African countries at the time. These were based on European concepts of land tenure and property rights and used land titling and registration as tools in an attempt to increase tenure security eroded during the colonial era. A prime motivation in this was to provide greater incentives for farmers to invest in their land, improving agricultural productivity (Cotula, 2007). The critical policies and legislation developed since 1993 include the General Land Policy (*Politique Foncière Générale*), the 2000 Land Tenure Code (*Code Domanial et Foncier*), the Agricultural Framework Law (*Loi d'Orientation Agricole*), and the Pastoralist Charter (*Charte Pastorale*).

## **GENERAL LAND POLICY (POLITIQUE FONCIERE GENERALE)**

The *Politique Fonciere Nationale* (currently being developed) is an attempt to ensure greater coherence between the disparate codes, laws, and regulations governing the use of land and other natural resources in Mali, in line with the African Union's guidance to member countries to develop strategic land policies. The policy is being drafted under the auspices of the Ministry of Housing, Land Issues, and Urban Planning, which launched a national dialogue (*Etats Généraux du Foncier* – see below) to help build consensus for elements of a comprehensive land policy. While the policy theoretically should address all land, it is anticipated that the draft land policy will ultimately focus more on urban and peri-urban land tenure issues. Rural land tenure and land management procedures will still largely be covered by the new Agricultural Framework Law (LOA).

## **2000 LAND TENURE CODE (CODE DOMANIAL ET FONCIER 2000)**

The 2000 *Code Domanial et Foncier* is another key document pertaining to land tenure that is currently under revision. The existing Code (Article 46) recognizes customary practices regulating ownership and access to natural resources and that any transfer of customary land rights to the state can only occur in cases serving the broader national interest, subject to fair and prior compensation (Article 43). Article 48, meanwhile, emphasizes that agreements between individuals or communities based on customary practices and procedures can be formalized in writing and that this documentation serves as proof of land transactions. While these declarations are positive indications of respect for customary rights, these legal precepts have never been translated into decrees or administrative practice, which is perceived as an indication of policymakers' hesitancy to proceed with formalization of customary rights. Without a clear definition of customary rights, in practice it has been difficult to determine which system prevails – the *Code Domanial et Foncier* or customary rights – when conflict arises. And while the Code allows for the devolution of management of land and public properties to the jurisdiction of local governments, the transfer of legal responsibilities over land to decentralized entities has largely not yet occurred.

The *Etats Généraux du Foncier* were launched in 2008 as a means of canvassing the opinions of stakeholders at the *cercle* and regional levels on updating the *Code Domanial et Foncier*. Participants urged the Government of Mali to establish a land tenure observatory; create

a commission charged with identifying state properties; establish a clear and transparent system of management of irrigated lands; clarify the role of by-laws (local conventions) concerning land and natural resource management; and establish an appropriate mechanism for communicating the content of legal texts to the general public. The President also called for the launch of a National Land Management Agency (*Agence Nationale de Gestion Foncière*).

### **AGRICULTURAL FRAMEWORK LAW (LOI D'ORIENTATION AGRICOLE)**

The *Loi d'Orientation Agricole* concerns reforms in Malian agriculture and includes provisions specifying how implementing laws and decrees will structure tenure arrangements on agricultural lands. In recognizing the inherent value of both customary and statutory systems, the law commits the government to securing equitable access to land and sustainable management of natural resources for all. Land titling is made available to anyone involved in agricultural activities, while the law also seeks to reduce costs and simplify procedures for acquiring land titles, rural concessions, and long-term leases. Article 83 devotes special attention to access to land for women and youth, according them preference when it comes to allocating land in irrigated areas. Pastoral livelihoods are also recognized as important means of land management in arid zones. The law is participatory in nature, encouraging the involvement of a range of stakeholders in decentralized land management throughout its implementation.

One provision of the law that was introduced by decree in 2009 is the creation of Land Commissions (*Commissions Foncières*). These commissions are tasked with settling land disputes prior to their appearance before courts, compiling and recording customary practices, developing local *cadastres*, and participating in the adoption of land policy. The Lands Commissions exist at regional and commune levels (but not at the *cercle* level) and have a critical role to play in the recognition of customary rights in rural areas.

### **PASTORALIST CHARTER (CHARTÉ PASTORALE)**

The national policy on pastoralism – the *Charte Pastorale* – dates to 2001. It recognizes the importance of livestock mobility and the specific functions of pastoralist activities as a way of maintaining Sahelian ecosystems, the principle of consultation between pastoralist and sedentary communities and the state, the establishment of conflict management committees at the local level, and the role of

government as an arbitrator in the peaceful use of shared natural resources. Implementation of the charter has proven difficult, however, with few legislative measures enacted to transform the broad principles into clear strategies and actions.

### **DECENTRALIZATION LAWS (1996)**

The other body of legislation affecting rural land tenure and property rights concerns decentralization. A key aspect of this policy is to facilitate the progressive transfer of land and natural resource management from the federal level to decentralized entities at the regional, district, and local levels. According to the *Codes des Collectivités Territoriales*, the state may transfer the responsibility of public lands management to local governments while, under *Loi N° 96-050*, local governments are responsible for protecting the environment, managing public lands, formulating land use plans, protecting and developing government land, and organizing agro-forestry production. In turn, communes are charged with land management, including developing land use plans and ratifying leases to land for residential purposes. In principle, decentralized entities now possess the authority to manage three categories of land: 1) land that falls within the private domain of the state (*domaine privée de l'état*) that has been transferred to decentralized entities; 2) unregistered land that falls within the boundaries of the decentralized entity; and 3) land that the decentralized entity has purchased itself or that the state has otherwise allocated to it.

Complete transfer of land from the central state to decentralized entities has not yet occurred; to do this, decentralization must be accompanied by some type of legal recognition of rural populations' current rights to land and other natural resources. The location and extent of state lands need to be registered as a condition for local entities to be able to lease, rent, or otherwise utilize state lands for economic development. Finally, recognition of customary rights in registers or *cadastres* is also a necessary step for generating benefits for local governance and land management.

The decentralization policy therefore offers the opportunity, if not yet the means, to strengthen the administration of land at the local level. If implemented fully, effective local-level land administration could enable improved rural tenure securitization. It also offers communes the opportunity to generate tax revenues from land management to support their operation, although land taxes require careful

implementation to avoid being seen as excessively rent-seeking or undermining local enterprise growth.

## **GENDER DIMENSIONS**

The status of women in the Malian land tenure system is determined by both customary and religious traditions. While women are generally assured access to land through their husbands or other male relatives, they tend to possess fewer rights over land. A woman's rights to a particular plot of land given to her by her family or husband are often temporary, acting as a disincentive to investing in the land on the part of the woman. In some instances, women have been able to access land as groups (such as associations) for collective cultivation, especially for small-scale subsistence gardens, although this is uncommon.

Male farmers typically give their wives one of their fields, which they expect will be returned after the women have harvested their crops to allow rotation. Because women do not remain on fields for long periods of time, they typically plant annual crops and are dissuaded from making more permanent improvements to the land, such as installing irrigation and planting trees. Moreover, custom in West Africa often prohibits women from planting trees because this is interpreted as staking a claim to land. Women are also typically granted greater access to lands that have lain fallow for a while for purposes such as harvesting shea nuts, as these lands are considered less desirable. Trends in agriculture, however, have restricted women's traditional use rights, making them more vulnerable to poverty. Permanent cropping, plow farming, and cash cropping have resulted in land being cultivated for longer periods of time, resulting in shorter fallow periods, which mean women have less opportunity to capitalize on those properties.

Further constraining women's ability to access valuable land resources is the influence of Islamic law in Mali. While Islamic traditions allow women to inherit land, their portions are traditionally smaller than men's. In practice, meanwhile, there is widespread opposition to the idea of liberalizing inheritance laws in favor of women, as seen in the opposition to the redrafting of the country's Family Code in 2007-9. This is seen as a Western imposition and as being in conflict with both customary and religious traditions. In a briefing paper, Landesa cautions that efforts to improve the land tenure situation for women should be extremely sensitive to local norms and take a patient approach to reform:



Advocates for women's rights must be willing to invest time in understanding local norms and their rationales, working with women and their communities to envision the changes that are important to them, and devising workable solutions to achieve those ends. While such an approach may be iterative, slow and fraught with set-backs, it is also less prone to fierce resistance or conflict and is more likely to appropriately serve women's interests. (Landesa, 2011a.)

### **OTHER LAND ADMINISTRATION INSTITUTIONS**

- The Ministry of Housing, Land Affairs and Urbanism is responsible for developing both urban and rural land policy and operating property registration offices. Within this ministry, the National Directorate for Public Property and Cadastre runs the property registration offices. The Ministry established a Land Department Office (*Etats Généraux du Foncier*), which has as its overall objectives the development of a new land policy and the establishment of a fair, equitable, and sustainable system of land management that supports private investment and productive land use.
- The development and management plans for land, community forests, and other natural resources are devolved to municipalities and rural councils, while legislation in 1995 gave local authorities (the Regional Assembly, the Circle Council, and Commune Councils) responsibility for land administration, land-use planning and development, and organizing rural activities, including agro-forestry and pastoral production. The Commune Councils are elected bodies that govern rural districts populated with 200–15,000 people. There is no legal requirement for representation of particular interests, such as pastoralists or women, on the Commune Councils.
- The Pastoral Charter requires local councils to manage natural resources with the participation of pastoralists and other users of natural resources and to collaborate with pastoralist organizations in seasonal land use planning. The Pastoral Charter further suggests that communes form local management committees to help manage the use of natural resources.



## SECTION B. LAND TENURE-RELATED DEVELOPMENT INTERVENTIONS

### NIGER

#### Agence Française de Développement (AFD)

The experience of AFD in Niger and Chad in recent decades offers a number of lessons for interventions designed to tackle the problem of decreased pastoralist mobility. This approach is predicated on the idea that traditional systems used by herders (nomadism and transhumance<sup>2</sup>) are the most appropriate and most effective modes of tenure in the Saharo-Sahelian areas. The *Projet de Sécurisation des Systèmes Pastoraux* (PSSP), for instance, aims at securing pastoral mobility in the Zinder region in light of the progression of cultivation into pastoral grazing areas. This depends on the construction and rehabilitation of pastoral water points, development of livestock corridors, and delimitation of grazing areas. The approach involves a variety of stakeholders in conducting situation analyses, development of decision-making criteria, and decision-making process for the allocation of pastoral resources.

The effects of a changing climate have made traditional techniques for improving land productivity, such as the construction of rainwater catchment basins, more vital than ever. 16 April 2014, Tourbey, Ouallam department, Tillabéri region, Niger

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<sup>2</sup> Transhumance is the seasonal movement of people with their livestock over relatively short distances, typically to higher pastures in summer and to lower valleys in winter. Herders have a permanent home, typically in valleys. Nomadic pastoralism is a form of agriculture where livestock are herded seasonally or continuously in order to find fresh pastures on which to graze.

AFD's approach has included:

- Development of water points in the northern areas of Niger and Chad, thus creating new grazing land for the rainy season;
- Increasing in the number of water points (ponds and wells) and transhumance tracks over the entire route, providing more possibilities for grazing and delays the descent of herds towards the South Sudan region, where they might conflict with sedentary farmers; and
- Creation of consultation mechanisms between the different stakeholders (herders and farmers) to ensure that water points and tracks are effectively installed and managed to handle conflicts.

One important lesson learned was the success of using the strategic placing of water points to improve distribution of livestock away from ecologically-sensitive areas and towards under-exploited areas. The marking of livestock corridors was found to reduce conflict. Stationing areas along corridors were also found to be necessary on sections without sufficient grazing land. The areas are marked off to stop agricultural encroachment and sometimes include a water point to allow animals to rest for several days. The group of measures taken in the context of AFD's pastoral water supply in Niger and Chad contributed to a reduction in animal mortality, helped secure mobility by marking out livestock paths, and increased social dialogue between different resource users. Since beginning its work in Chad in 1990, AFD has invested a total of 50 million euros over a 15-year period through eight projects.

The participatory approach used by the project to locate and manage facilities (such as water points and transhumance tracks) has established contact between herders and farmers who were not talking to each other. The flexibility it offers to pastoralist and agrarian communities is cited as improving resilience. Severe droughts, which destabilize pastoral communities by wiping out a substantial part of their livestock, can disrupt the environment and lead to insecurity. The infrastructure networks that have been established make it easier to withdraw herds to other regions in the event of disasters and thus play an important role in the resilience and stability of pastoral communities.

A focus on herder mobility distinguishes land tenure and property rights interventions in Niger, reflecting the value of the livestock

industry to the country's economy and the clear opportunities provided by the Rural Code. NGO-led projects and government policies have prioritized local level consultation between users and actors on this issue and several local initiatives have succeeded by using consultation to develop management plans and clear visualization techniques to reach a generally-accepted consensus on the boundaries of pastoral areas.

The municipalities will have to identify and implement *Schémas d'Aménagement Foncier* (land tenure development plans) as part of the process of decentralization. At the moment, some projects and associations are responding to local emergencies by trying to set boundaries for pastoral areas in order to prevent them from being cleared for agricultural use. This is sometimes done at the request of herders and their representatives, but is generally a response to the fact that these areas are under threat, and that the potential risk of disputes and serious conflict is increasing rapidly. The aim is not to separate livestock rearing and agricultural activities, but to clarify the area reserved for each activity during the rainy season and to maintain strategic fodder stocks for the dry season. Those in favour of this approach see it as a vital prerequisite to ensure that different users will be on an equal footing in subsequent consultations. It is also sometimes presented as a permanent improvement that will help prevent conflicts in the long term and enable each activity to develop in its own right. Some people therefore hope that by formalizing this process, the law will provide more protection for pastoral areas than it does at present.

This approach has detractors, however, who claim that while it could provide a short-term solution to a number of existing problems, activities will be polarised in precise zones, thereby removing the flexibility that different systems need to adapt to future changes in human or climatic conditions.

For example, boundary markers could be perceived as real barriers, and the negative effects of banning further land clearance could compromise access by herds to cultivated areas after the harvest. Different users may have various reasons for wanting to change the areas allocated for agricultural or pastoral use in a given zone, such as population movement, larger herds, land becoming impoverished, etc. There are also fears that local capacity to consult and adapt to changing circumstances would be paralysed by arrangements that are too rigid or formal. (Hammel, 2000.)

Most support to pastoral production comes from international donors. Other examples of projects that specifically aim to support livestock mobility include those supported by the European Union and Switzerland.

### **CARE Niger**

Since 2010, CARE has partnered with HIMMA, a Nigerien civil society organization, to implement the Women and Land Initiative in southern Maradi, working with 3,000 women in 30 communities within six municipalities to tackle the emerging trend of excluding women from agricultural land in Southern Niger. The project has employed a rights-based approach to ensure the inclusion of vulnerable women in community discussions and decision-making processes. Awareness-raising campaigns are organized in all communities where there is a district-level land commission. Dramas are performed on women's inheritance rights to land, followed by discussion, questions and answers. Other methods used are frequent radio broadcasts, sermons by religious leaders, and debates between lawyers, rural women and other local stakeholders. To gain backing from local leaders, meetings are organized during which religious leaders, state officials and other stakeholders announce their commitment to support women's access to land in their area.

As a result of the Women and Land Initiative, some women's groups have been able to lease community land for periods of 3-10 years. In some villages the women's groups have received land for planting crops with high nutritional value through local land leases. More women have started securing access to land through a variety of channels: by buying or leasing land or by exercising their rights to inherited land under Niger's Rural Code. Successes have been seen in increasing women's participation in local institutions: community dialogue and negotiations have allowed women's representation on local land committees to double from 10 to 20 percent. Through local land committees, women have been able to take leadership positions in establishing conventions (local land-use agreements), giving them a greater say in local land management. (Mamadou and Salaou, 2013.)

### **European Union**

The *Projet pilot d'appui à la gestion de la transhumance dans les zones transfrontalières du Niger avec le Mali et le Burkina Faso* was a small-scale project (US \$400,000 over 18 months) that sought to

guarantee the mobility of livestock and herders, peaceful co-existence between sedentary villagers and transhumant pastoralists, and land tenure security in the project zone. The programme had a focus on security and accompanied the peace accords signed between these governments and different rebel factions.

The *Projet de sécurisation de l'économie pastorale* in Tahoua was a three-year project with the objectives of strengthening pastoral associations, supporting the implementation of the Rural Code, improving animal health services, and facilitating the commercialization of livestock and livestock products.

### **Switzerland**

The *Programme d'appui au secteur de l'élevage* aimed to secure livestock mobility and the use of land for pastoral production by facilitating dialogue at the local level on pastoral land use and improving pastoral communities' access to development projects.

## **BURKINA FASO**

### **Millennium Challenge Corporation/Millennium Challenge Account (MCC/MCA)**

Through the Rural Land Governance Project (RLGP, 2009-2014), MCA has focused on strengthening the capacity of local institutions in the creation of improved land tenure and access systems for communities and individuals. Particular attention has been given to the integration of customary rules and avoidance of conflict. The USD 59.9 million project has taken advantage of the country's new rural land law. MCA's approach has involved building the capacities of Rural Land Service (*Service Foncier Rural*) agents, who are the key actors at the municipal level for administering land management services, issuing Rural Land Possession Certificates, conducting participatory land use management exercises concerning public natural resources, and recording and mediating land disputes in connection with the Village Land Commissions. These agents also provide regular updates to the municipal land records registry including recording formalized rural land holdings, communal land transactions, details of local land charters, and dispute resolution decisions from the Village Land Reconciliation Commissions (CCFVs).

Rural Land Possession Certificates (AFPRs) and Rural Land Charters (CFRs) have been promoted in the project's 17 pilot communes

(rising to 47 in its second phase). As of January 31, 2014, the pilot communes had received over 6,300 AFPR requests. While 707 AFPRs had been prepared, just 83 had been issued across the 17 communes, giving an indication of the time involved in this process. One of MCA's signature successes with the AFPR has come in Ganzourgou, where a more intensive approach has resulted in the disbursement of more than 14,000 AFPRs, formalizing more than 42,000 hectares of land. In a separate project under the MCC Compact, MCA has invested heavily in 2,033 hectares of the Di irrigated perimeter – as a result of this investment and concerted lobbying, the Government of Burkina Faso has permitted the issuing of long-term full land titles to farmers within the perimeter.

The promotion of CFRs, meanwhile, provides an opportunity for rural communities to regulate use and access to natural resources and spaces used in common by community members. MCA has worked with its target communes to establish charters. In each case, the charter focuses on one common use resource zone, and sets out rules governing access and use of the resource. Results include those summarized below:

- Five charters address tensions between farmers and herders and attempt to set out rules for use and respect of cattle trails or pasture areas.
- Four charters are centrally focused on sacred sites, while several additional charters highlight preservation and respect of sacred sites as a secondary focus.
- Three charters target sustainable use of village woodlots.
- Two charters uphold municipal management of exploitation of sand or gravel quarries and set out the rules and fees for removal of sand and gravel.
- One charter seeks to save a disappearing lake of cultural and economic interest to the community.
- One charter defines the tax schedule for water use from the local reservoir.
- One charter focuses on the establishment of a framework to manage and promote tourism in the vicinity of a natural landmark and Ramsar site (other charters retain development of tourism as a secondary focus).

The MCA experience in Burkina Faso points to the need for three processes before proceeding to titling or developing communal charters: (i) extensive communication and awareness-raising on the provisions of the 2009 law, (ii) capacity building of Rural Land Service and Village Land Commissions, and (iii) providing for local conciliation processes, for instance through *Commissions de Conciliation Foncière Villageoise*, to mitigate conflicts that arise from the formalization of customary rights or negotiations over communal property.

### **Catholic Relief Services (CRS)**

Through its five-year, USAID-funded Multi-Year Assistance Program, ‘Families Achieving Sustainable Outcomes’ (FASO), CRS has implemented a market gardening project that has benefitted women producers through the allocation of small plots for growing vegetables. One of nine sites created in 2013 comprising a total of 17 hectares, the site at Dakiri, in Gnagna, measures 3.5 hectares and comprises 73 individual land parcels. These have been allocated to residents of Dakiri on the basis of membership of a producer group and participation in group activities, including organizing the production and maintenance of a water pump. Of the 73 recipients, 42 are women. Women are equally represented in the site’s 14-person management committee, the members of which received training from the FASO Program in gardening; production and water management; and group management. The land itself is owned by 30 local men, who secured the necessary minutes of palaver (*procès verbal de palabre*, a document that has been officially replaced by the AFPR) signed by local authorities. Similar projects that have negotiated to set aside of plots of land for women for agriculture or horticulture are common in Burkina Faso. While they do not deal directly with securing full land rights or land leases for women, they are a useful tool for demonstrating the value to a community of assigning developed land for women’s agriculture.

### **Groupe de recherche et d’action sur le foncier (GRAF)**

GRAF’s ‘*Sécurisation foncière des femmes des villages de Panassian et Nessian*’ project, which ran from 2011 to 2013, offers an interesting case study in facilitated local dialogues on women’s land rights under the new land tenure law. The organization employed an intensive approach in employing negotiators to initiate and sustain dialogue between men and women in the villages of Panassian and Nessian in the rural commune of Cassou in the Centre-Ouest region of Burkina Faso. The end result was the permanent transfer of more than



100 hectares by male community members to their wives, sisters, daughters, and daughters-in-law. Initial resistance to the idea was first tackled through awareness-raising: in each case, the community gathered to watch a video on the new law in which a case study was presented through drama. Lectures and debates were also held and key messages on the law were summarized using a flipchart. In spite of this, resistance to the idea of permanent transfers of land persisted, with men only willing to lease land to women (GRAF cited men's fear of women taking land with them if they left their husbands as a critical obstacle). Eventually, aided by the project's commitment to cover the costs of land registration for landowners who agreed to participate, men in both villages agreed to permanent transfers. The relative availability of land in both cases was noted as an enabling factor; nonetheless, the project illustrated an approach that could bridge the gap between customary norms and the equitable provisions of the new law. (Maïga, 2014.)

### **World Bank**

The World Bank has indicated interest in allotting USD 8-10 million during the period 2013-2018 to support the establishment of 150 offices of the Rural Land Service, delivery of land use certificates, and development of up to 50 local land charters.

### **Agence Française de Développement (AFD)**

AFD launched a stocktaking study of implementation of the 2009 Rural Land Law in October 2013 to (i) determine the status and modalities to-date for implementing the Rural Land Law, (ii) assess the pilot experiences implemented under the MCA Rural Land Governance project, and (iii) to identify needs and propose programming options for advancing implementation of the Rural Land Law. The results of this coordinated study are scheduled to be available in early 2014.

AFD has also produced a concept note for a five-year, 8 million euro program that would support the establishment of 15 commune Rural Land Service offices in the Boucle du Mouhoun and Hauts Bassins Regions. Activities in the 15 communes would include training, public education on the Rural Land Law, land use planning and development of local land charters, delivery of land use certificates, and resolution of land disputes. This program would also include complementary activities to support local officials with planning, financial management, and implementation of local economic and

environmental management activities through a 3.5 million euro commune development fund.

### **West African Economic and Monetary Union (UEMOA)**

UEMOA currently has four programs concentrated on land tenure and property rights, including (i) an assessment of land tenure reforms in the region, (ii) establishment of a regional land observatory to capitalize upon experiences in the region, (iii) reinforcement of the capacity of land institutions at the national and regional levels, and (iv) a regional study on the efficacy of tools available to regulate land market activities.

## **MALI**

### **World Bank**

In the 1990s, the World Bank supported a land observatory to understand land tenure issues in Mali and their impact on productivity and economic growth. They also worked to develop models to encourage private investment in irrigated land. From 1998 to 2007, the National Rural Infrastructure Project implemented an irrigation component that piloted efforts to deliver land titles to private investors to encourage the settlement and subsequent development of 1,149 hectares within the Koumouna perimeter. This process facilitated the selection of 130 small-scale producers and supported their dialogue with a local bank, which loaned the producers CFA 200 million (approximately USD 420,000 in 2007 US dollars) to build irrigation canals and procure inputs. It was noted that it took almost four years to adopt the decree for the pilot land tenure program (World Bank, 2008). The project's second phase (2001-2005) promoted titling of smallholder irrigated areas totaling 2,400 hectares within the *Office du Niger* (at a total project cost of USD 11.2 million). The model used was one of 'Lease-Purchase' Arrangements, in which the government financed primary infrastructure development (such as dams and principal canals) and pre-financed the development of secondary infrastructure through cash grants to poor smallholder farmers. This portion had to be fully reimbursed by beneficiaries over several years, with the proceeds used for further irrigation development. Beneficiaries received full land ownership with land titles after full payment.

The World Bank-financed Private Irrigation Promotion Project, meanwhile, supported individual investors to acquire land titles,

develop investment plans, and prepare loan applications for possible financing by local banks. This model targeted higher income beneficiaries, typically living in urban or peri-urban areas. This was expanded under the National Rural Infrastructure Project to the *Office du Niger*. (World Bank, 2000.)

Under the current Growth Support Project that began in 2005, the World Bank conducted a review of the *Code Domaniale et Foncier* and is encouraging the Government of Mali to facilitate the transformation of customary land rights to statutory law by reducing formalization fees and streamlining the administrative systems involved. The Bank continues to promote land tenure securitization within Mali, developing a project to support rural development and agricultural productivity that will include a component focusing specifically on access to rural lands for agribusiness activities and small-scale farming.

## **USAID**

Prior to the US withdrawing much of its aid from Mali in the wake of the 2012 coup, the *Programme de Gouvernance Partagée II* (PGP II), implemented by Management Systems International, supported the Government of Mali's decentralization initiative by building the capacity of local collectivities (and particularly communes) in areas such as financial management, communal planning, budget development and administration. The project was funded at USD 8,787,233 for three initial years (USAID, 2006). Another aspect of the project involved working with the *Commission Domaniale et Foncière* to ensure effective collaboration with the new *Commissions Foncières*.

## **Millennium Challenge Corporation/Millennium Challenge Account (MCC/MCA)**

From 2007 to 2012, the Government of Mali implemented the Alatona Irrigation Project, which converted almost 5,000 hectares of Sahel scrubland into high-value irrigated farmland. The project, an integrated agricultural development effort to reduce poverty in the Alatona area and increase the country's food supply, was financed by the U.S. Government's Millennium Challenge Corporation (MCC). One of the project's key components was its land allocation activity, through which the irrigated land was transferred from the state to beneficiary families.

The USD 1.5 million land tenure component was implemented in a remote area of the Ségou region of central Mali, in an area adjacent to

a large administrative zone of villages and roughly 90,000 hectares of irrigated lands known as the *Office du Niger*, which is controlled by a parastatal agency of the same name. Despite a period of reform in the 1980s and 1990s that improved the land tenure security of farmers using these lands, farmers continued to complain about the heavy-handed manner in which their land use rights were managed by the *Office*. The Alatona project's land allocation activities were designed with these experiences in mind.

The land allocation activity was largely implemented as intended: the project laid out, surveyed and prepared legal descriptions for almost 3,000 individual land parcels, which were then grouped into 954 farms of five hectares in size, with each farm containing one hectare of land that was irrigated year-round and four hectares of land that were irrigated only during the rainy season. Project beneficiaries received 801 of these farms totaling 4,000 hectares and the remaining 153 farms (765 hectares) were awarded by lottery to pre-qualified farmers from the *Office du Niger*. Direct beneficiaries from the project's intervention zone paid for three of their five hectares, while those from the *Office* paid for all five. An additional 55 hectares were provided to women's associations for market garden activities, with the remaining 113 hectares sold to farmers adjacent to these plots to supplement their existing holdings.

The project included a specific focus on women, with the aim of promoting women's rights to land that gave them control over land as well as access and providing long-term rights for women in light of local inheritance traditions that called for transfer of a woman's land to her son, in order to avoid the sustainability challenge of women's titling lasting only one generation. In light of the strong objections that could have resulted from a heavy-handed approach to these challenges, the project designed a three-part intervention focused on women: (i) titling women's market gardens on irrigated land, (ii) promoting allocation of five-hectare farms to women, and (iii) designing a gender-responsive outreach program to encourage joint titling.

- 1. Market gardening:** this built on an existing tradition of women growing fruits, vegetables, herbs and spices on small plots of land for consumption and sale in local markets. The project aimed to ensure that women did not lose access to these plots due to local inheritance traditions. The project selected 500 m<sup>2</sup> as an appropriate size for market garden plots and these parcels were provided free-of-charge to the women of each family that received a five-hectare plot. To ensure

that the land did not revert back to male control after one generation (which would be the case if the land were simply made the legal property of the woman recipient), the project created women's associations whose primary purpose was to own and manage market garden land. These were legal entities established under Malian law. Individual women would join an association and one benefit of membership would be access to a 500 m<sup>2</sup> parcel of market garden land. The project drafted three documents to establish the associations:

- a. Model articles of incorporation (*statuts*) for the associations. This document established an association upon the vote of its members, set forth the rights and responsibilities of its members and the association, and described how the association would be governed;
- b. Model by-laws (*règlements d'ordre intérieur*) for the associations. These by-laws provided additional detail on an association's work and decision-making processes as well as the rights and responsibilities of association members; and
- c. A model 'permit for the exploitation and use of a market garden.' This permit was an agreement between each association and the woman of a household that made her a member of the association and granted her legal access to her individual market garden parcel. In families with more than one adult woman, multiple women could choose to become members of the association and obtain rights to the family's market garden.

Associations were kept relatively small (roughly 20 beneficiary households per association) so that individual women would be sure to have an effective voice in the management of the association. As a result, 54 associations were established, with each association receiving ownership of roughly one hectare of irrigated land. After informational meetings with the women and general assemblies for each of the 54 associations to vote them into existence, the land was transferred into their ownership through the issuance of titles.

**2. Encouraging allocation of five-hectare farms to women farmers:**

this was seen as a main priority for the project – helping women gain rights to the roughly 4,800 hectares of land that were assembled into small family farm plots. These would be used primarily for commercial production, and so would have a significant economic impact on traditional families.

The project pursued this goal via the lottery system for the 153 farms being allocated to pre-qualified *Office du Niger* farmers. A points system was developed in which farmers had to reach 60 points on a 100-point scale on the basis of their experience, agricultural resources, and need for land. Women farmers received an extra 10 points, which increased the number eligible to enter the lottery. Women were also represented on the land allocation committees that oversaw the lottery – an inclusive model similar to land allocation committees in other countries with MCC-funded projects, including Burkina Faso and Senegal. As a result, 16% of the five-hectare farms awarded through the random drawing went to women, exceeding the project’s minimum target of 10%.

- 3. Joint titling:** the project encouraged husbands and wives to request joint title to the five-hectare farms they received from the project. To achieve this (again, the project employed a ‘light touch’ approach to avoid cultural backlash), the project’s specialists prepared model land transfer contracts for land received free and land purchased. Each model contract included specific references to co-ownership of the land, a blank space to insert each co-owner’s name, and space on the signature page for each co-owner’s signature. The project then translated the contracts and related documents into the three local languages used by the land recipients, and conducted a robust outreach effort leading up to contract signing that included joint titling. Each beneficiary was to designate two people to participate – the head of the *concession* and the *concession’s* ‘responsible woman.’ Implementation of joint titling was a great success, especially in the socio-cultural context of Peul households. About 40 percent of the beneficiaries decided to title their farmland in the names of the husband and wife, a figure that far exceeded project expectations of 10 to 20 percent. Both parties signed the land transfer contract and both parties were registered as owners at the local property registration office.

**Table 1: Irrigated land allocated to women through the Alatona Irrigation Project (PAPs = Project-affected people). (Source: Rolfes and Seitz, 2013)**

TYPE OF LAND ALLOCATED	AMOUNT OF LAND TITLED IN TOTAL (HA)	AMOUNT OF LAND TITLED TO WOMEN (HA)	
		Titled jointly to husbands and wives	Titled to women only
Market gardens	54	0	54
Five-hectare farms allocated to PAPs	4,121 <sup>9</sup>	1,648	0
Five-hectare farms allocated through the lottery	765	0	120
		1,648	174
<b>Total</b>	4,940	1,822	

While the long-term impacts of the Alatona Irrigation Project are yet to be assessed and MCC support was eventually curtailed as a result of the coup, the intervention’s innovative efforts to improve women’s land tenure securitization offer a number of lessons for future projects along these lines.

### **Agence Française de Développement (AFD)**

The AFD has worked with the Government of Mali on a number of initiatives designed to reform land tenure at the institutional level: the agency worked with the World Bank in the 1990s to support the Mali Land Observatory; supported development of the *Loi d’Orientation Agricole*; and assisted Mali in developing an action plan for the development of an Agricultural Lands Policy and, subsequently, the development and adoption of an Agricultural Land Law. The AFD also implemented an Economic Development Project within the *Office du Niger (Projet d’appui au développement économique de l’Office du Niger, or PADON)* that aims ‘to improve water service and waterworks management to enable extension of services; improve conditions for development by securing technical and economic aspects of agriculture; and strengthen oversight for the development of the Office of Niger area.’ The 10 million euro project works in collaboration with the Chamber of Agriculture in Ségou to ensure that smallholders’ concerns and demands are taken into account when decisions about land allocation and use are made.

### **Germany/GIZ**

Recent German support to Mali in the area of land tenure and property rights has focused on natural resource management and capacity building of decentralized government services. The Communal Land Asset Management Project implemented from 2003-2008 was designed to develop a reliable land information system, assisting six targeted communes in efficient and sustainable management of their land resources. The project was, in general, successful and led the way to the development of the Program to Support Local Government (PACT), which operated in Koulikoro, Ségou and Mopti. Funded by GIZ, PACT focuses on local capacity building, natural resource management, and land management at the local level (primarily for communes). Under the land management component, PACT has developed simple tools to be used by commune-level administrators to increase land tenure security. This work has included a specific focus on harmonizing customary and statutory land tenure, including proposing ways in which customary land rights could be secured within a statutory rights system. A 2009 study based on the project's work calls for the simplification of systems for registering customary land rights. The same study recommends that for marginalized rural areas, integration of customary rights within modern systems ought not to be a priority for development, and that this can cause more problems than it solves. (Durand-Lasserve, 2009.)

### **The Netherlands/SNV**

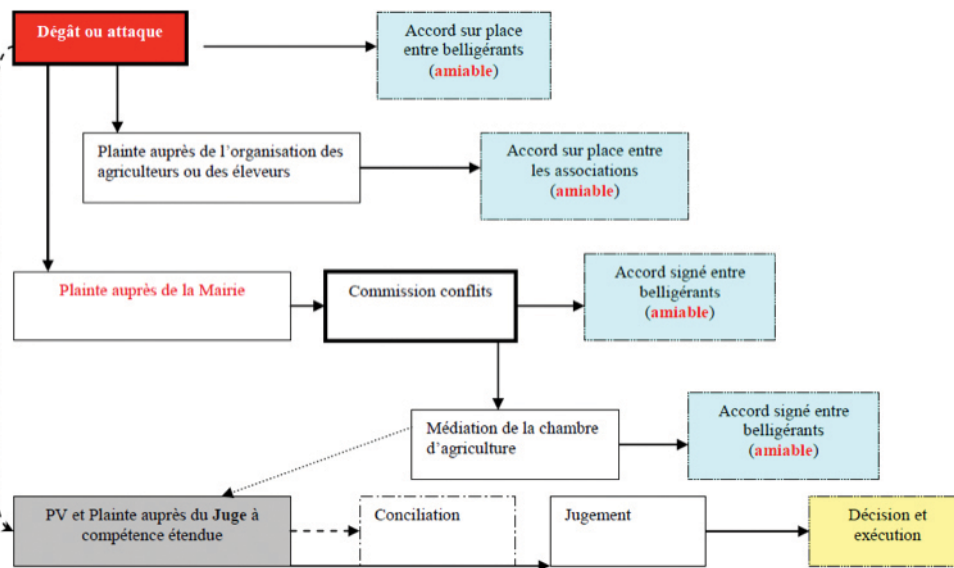
The Netherlands Development Organization (SNV) was active in supporting producer organizations to help them mobilize their members to prepare for and engage in the process of the 2008-2009 meetings on the *Etats Généraux du Foncier* and to ensure that their concerns and recommendations would be taken into account in the elaboration of the Agricultural Land Policy and Law.

### **Switzerland**

*La Coopération Suisse* has addressed pastoral issues in the Sikasso region through assistance to stakeholders in the adoption of local bylaws (*schéma d'aménagement pastoral*) that will regulate the mobility of cattle while avoiding negative impact on farming activities. These bylaws, which fall under the mandate of the *Charte Pastorale*, offer an opportunity to develop locally generated usage and access systems that help to avoid conflict between sedentary agrarians and transhumant pastoralists. Work in this area by NGOs (including



Helvetas, Sahel Eco, and SOS Sahel) offers both encouragement and caveats for its widespread adoption. Helvetas's Jèkasy program has worked in Sikasso to strengthen pastoralist and agro-pastoralist organizations. Results included the development and implementation of four *schémas pastoraux* organizing agricultural and pastoral activities in negotiated areas in the *cercles* of Kadiolo, Sikasso, Koutiala, and Yorosso. Sahel Eco, meanwhile, developed the following conflict resolution system in its work in Bankass, Mopti:



**Figure 4: Conflict resolution mechanism for farmer-herder disputes (Source: Dembélé, 2008)**

While the Pastoral Charter tasks *Collectivités Territoriales* with creating and managing local pastoralist routes in partnership with herders, Sangaré, Cornu, and Chapon (2010) caution that power imbalances between agrarians and pastoralists mean that the implementation of these by-laws is still likely to disadvantage the latter. Until pastoralist organizations are supported to achieve greater political cohesion and to speak with one voice in these local negotiations, by-laws may further undermine pastoralist mobility and lead to greater resource conflicts.

## CONCLUSION: OPPORTUNITIES FOR INTERVENTION

The review of existing customary and statutory land tenure systems in Mali, Burkina Faso, and Niger, coupled with the experiences of recent development interventions in these areas, helps to delineate some of the critical opportunities and lessons learned for the proposed SUR1M project. This section summarizes potential intervention opportunities under four priority areas:

1. Recognizing and recording local land rights,
2. Strengthening capacity for developing effective land management systems,
3. Improving women's land rights, including through legislative reform, and
4. Enabling herders to access grazing resources through locally negotiated resource management agreements

### **Recognizing and recording local land rights**

The evidence makes it clear that in all three countries, customary (including Shari'a) law and statutory land tenure systems continue to exist alongside one another. In rural areas such as those in which SUR1M will work, customary systems still take precedence in spite of land tenure reforms and decentralization efforts. In Niger, for instance, the Rural Code is being only marginally implemented, two decades after its introduction. Where it is implemented, it has uncovered latent conflicts without providing an accessible and effective dispute-resolution forum, thus reducing tenure security. In this context, reconciling the two systems through the **formalization of local customary rules** surrounding resource ownership and use (through AFPRs and Rural Land Charters in Burkina Faso, for instance) is a clear priority for development interventions. While this should **recognize the wide diversity of different forms of customary tenure** rather than simply seeking the rapid absorption of local rights into a framework of private ownership (Delville, 2010) and be made as **simple and accessible as possible**, registration of customary systems should be careful not to formalize discriminatory practices that disadvantage vulnerable groups, including women and pastoralists.

In cases of new legislation regarding means of registering customary rights, such as Burkina Faso's new Rural Land Tenure law, there is a need to raise **awareness on legislative provisions** and to **support local institutions** in implementation. Support is also needed to **strengthening local conflict resolution systems**, a necessary precursor to negotiations over customary land and resource access.

### **Strengthening capacity to develop effective land management systems**

Decentralization efforts in all three countries have created opportunities, if not always the means, for effective local resource management. There is a critical need to **build the capacity of relevant institutions** – including those at the national, local, village, and community levels – **to resolve conflicts, register customary rights, issue land titles, and manage local resources**. Support to local government offices in **realizing revenues from land management** could strengthen their ability to sustain their work and improve public services. Strong **community-based natural resource management** can play an important role in disaster risk reduction and climate change adaptation. The intersection of new land tenure laws and policies, coupled with increasingly decentralized land management, have created institutional frameworks whereby shifting land uses can be more effectively planned or managed.

### **Interventions that improve women's land rights, including legislative reform**

The experiences of women-focused land tenure interventions in the Sahel illustrate both the pressing need for change and the imperative for patient, well-designed development projects that take into account deep-rooted cultural sensitivities. The Alatona project in Mali offers the clearest example of how this balance can be struck, using innovative measures to improve the chances of women securing land tenure. The project looked for ways to allocate land rights to women that would be readily acceptable in the society; sought to develop approaches to allocating land that would encourage, but not force, inclusion of women; and looked for multiple avenues for allocating land rights to women so that if one failed, others would be available. The GRAF case from Burkina Faso, meanwhile, demonstrates the importance of local dialogues on women's rights. Similarly, a Landesa study of CRS gender approaches to agriculture in Burkina Faso highlighted the

need to clarify women's rights to land at the community level through participatory dialogues (Jones-Casey, 2011). These types of dialogue-driven approaches should guide any proposed intervention in the Sahel Region, where the strong influence of culture and tradition makes this especially challenging. **Allocating plots to women's associations** for small-scale livelihood projects, **building awareness of the importance of improving women's rights to land through local dialogues**, **encouraging joint titling of household land**, and **strengthening systems for securing land titles for women** are good examples of these approaches. Advocating for **greater involvement of women in village and commune-level institutions** would also be a way of ensuring that legally enshrined commitments to improving conditions for women are realized at the grassroots level.

### **Enabling herders to access grazing resources through locally-negotiated resource management agreements**

Examples from both Mali and Niger illustrate the potential to **develop locally negotiated by-laws that regulate herder and farmer access to and use of natural resources**; Burkina Faso's Rural Land Charters offer a similar opportunity. Given the critical importance of pastoralism to the Sahel regions of the three countries and the broadly-recognized importance of pastoralist mobility to social, economic, and environmental resilience, this stands out as a priority for the SUR1M proposal. **Water access is a critical entry point to securing livestock mobility**, with lessons learned from previous state-led attempts to make water points open-access resources. There is a need to **strengthen pastoralist organizations' capacities** and to **ensure their representation in local management committees** to redress political imbalances that prevent the full realization of legislation such as Mali's Pastoral Charter.

## OPPORTUNITIES MATRIX

	NIGER	BURKINA FASO	MALI
<b>Recognize and recording local land rights</b>	Reconcile customary rights with statutory land tenure system (avoid simple formalization of existing customary rules that disenfranchise vulnerable groups)	Develop Rural Land Charters to specify local access and usage systems for common property; build local capacity for issuing Rural Land Possession Certificates (implementation of the 2009 Rural Land Tenure law) <i>MCC/MCA RLGP</i>	Work with <i>Commissions Foncières</i> to resolve tensions between customary and statutory rights; support recognition of customary rights in registers or <i>cadastres</i>
<b>Strengthen capacity for developing effective land management systems</b>	Support Land Commissions; support implementation of <i>Schémas d'Aménagement Foncier</i>	Support newly established Rural Land Service and Village Land Commissions; build capacity for village-based conflict resolution bodies <i>MCC/MCA RLGP; World Bank; AFD; UEMOA</i>	Support <i>Collectivités Territoriales</i> , development of revenues for local Government from land rents, and full implementation of the <i>Politique Foncière Nationale</i>
<b>Improve women's land rights, including through legislative reform</b>	Address the 'de-feminization' of agriculture; ensure representation of women in land commissions, including COFOCOMS <i>CARE Niger</i>	Raise awareness on Rural Land Possession Certificates for women; allocate plots for market gardening/horticulture to women's associations <i>CRS Burkina Faso, GRAF</i>	Improve women's access to land and sustainable inheritance <i>MCC/MCA Alatona Irrigation Project: market gardens, lottery system, and joint titling</i>
<b>Enable herders to access grazing resources through locally negotiated resource management agreements</b>	Ensure livestock mobility through dialogue between stakeholders on location of water points; help resolve tensions between Rural Code and Water Code <i>AFD (Projet de sécurisation des systèmes pastoraux, etc.), EU, Switzerland</i>	Use Rural Land Charters to provide for local grazing areas between herders and farmers	Support the full implementation of the Pastoral Charter; develop <i>schéma d'aménagement pastoral</i> <i>Swiss-funded work in conflict resolution between agrarians and pastoralists (see Helvetas, Sahel Eco, and SOS Sahel)</i>

## RECOMMENDATIONS

In light of these conclusions, the following recommendations are suggested for the integration of a land tenure component into the SUR1M proposal:

- Carefully review the potential intervention opportunities described above, subject to the project's financial and time constraints. Prioritize the areas that will best support the overall objectives of the SUR1M proposal, acknowledging that it will not be possible to achieve all of them within a three-year period.
- Seek linkages with other program components, especially with regard to institutional capacity building at the commune level. For example, mainstream awareness-raising on land tenure legislation into training modules developed for commune staff.
- Focus on short-term aims that could lay the groundwork for the achievement of longer-term goals in the case the project is approved for a second round of BRACED funding<sup>3</sup>. For instance, capacity building of local institutions and awareness-raising on land titling could precede the actual titling process.
- Look for areas in which SUR1M could complement parallel initiatives, including various donor-funded projects strengthening commune-level land tenure bodies and Rural Land Services offices.
- While ensuring coherence across programming in the three countries is important, flexibility may be required in engaging with the similar but subtly different legal environments in Mali, Burkina Faso, and Niger; what is relevant in one may not necessarily be the most appropriate intervention in another.

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<sup>3</sup> As a comparison, MCC/MCA Rural Land Governance Project covers 47 communes in Burkina Faso and implements a \$60 million USD program over a 5-year period (2009-2014).

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