

**LAND TENURE AND RESOURCE ACCESS IN WEST AFRICA :
ISSUES AND OPPORTUNITIES FOR THE NEXT TWENTY FIVE
YEARS**

JANUARY 1999

**A working paper prepared for the Department for International Development (DFID),
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ACKNOWLEDGEMENTS

The preparation of this working paper forms part of a broader programme of work being undertaken jointly by the UK and French governments on *Land Tenure and Resource Access in West Africa*. The main objectives of this programme are to:

- consolidate closer working links between the UK Department for International Development and the French Ministère des Affaires Etrangères;
- enhance the research capacity of West African researchers and their institutions;
- foster future collaboration between anglophone and francophone countries of West Africa;
- further the level of knowledge on land tenure and resource access issues in West Africa and their implications for sustainable development;
- make such information accessible at all levels through publications, workshops and policy documents, thereby nourishing debate within the West African region regarding the options and implications of different tenure policies for equity, productivity, sustainable livelihoods and social justice.

The programme is jointly financed by the UK's Department for International Development (DFID) and the French Ministère des Affaires Etrangères. Activities are being led by the Groupe de Recherche et d'Echanges Technologiques (GRET), Paris and the Drylands Programme, International Institute for Environment and Development, London. The preparation of this working paper has been funded by DFID and aims to feed into the broader debate within DFID regarding land rights and tenure in Sub-Saharan Africa.

This paper draws heavily on, and aims to complement, work undertaken during the earlier phase of the joint DFID/French Ministry programme of work. This includes the papers presented at a workshop held in Gorée, Senegal, in November 1996, and a study, coordinated by GRET (forthcoming) *Quelles politiques foncières pour l'Afrique noire rurale?* In the context of terminology, the lexicon, prepared as part of the programme in both French (*Lexique des termes fonciers*) and English (forthcoming), has proved a useful cross-reference document. In addition, the paper has benefited from the on-going process of debate within the Sahel regarding land tenure issues, such as the Regional Conference on Land Tenure and Decentralisation, held in Praia 1994, organised by CILSS and OECD/Club du Sahel, and subsequent workshops such as the Colloque International sur le Foncier, St Louis, Senegal 1997, and the conference on the Observatoire du Tchad, N'Djaména 1998.

The paper has been prepared primarily by Mike Winter and Julian Quan, with valuable inputs from Mike Mortimore and IIED Drylands Programme staff. In addition, it has benefited from a review by several West African experts on tenure issues who provided detailed comments on several sections of the material. Thanks are therefore due to Hubert Ouedraogo, Kojo Amanor, and Aboubacar Mamman. We are also very grateful for professional input made by Felicity Proctor of the West and North Africa Department of DFID and Christian Chéron of the French Ministry. **We thank the following for their** comments on the text: Olivier Dubois (IIED), Melissa Leach (IDS), Philippe Lavigne Delville (GRET), David Pratten (SOAS), **Brigitte Thébaud, Christian Lund and Marie-Thérèse Sarch**. The document draws on an extensive range of literature, details of which are provided in the reference list at the end of the paper. The views expressed, however, remain those of the principal authors.

The document represents ongoing work [..]. We welcome comments, which may be forwarded to Camilla Toulmin/Judy Longbottom at IIED, to be integrated into any follow-up initiative.

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July 1998 **change date??**.

SUMMARY

Policies regarding land tenure and resource access are of great significance for assuring the sustainable management and use of West Africa's natural resources. Despite continued economic growth and diversification, most West African countries still rely heavily on their natural resources to provide incomes, employment, livelihoods and export earnings. The legal and administrative framework dealing with natural resources thus needs to consider how best to enhance their long term productivity, encourage investment, promote equitable access, and ensure management of conflicts.

The last thirty years have witnessed a rapid growth of population, urban centres, and migratory flows throughout the region, although the impact of such processes has been uneven. Urban growth has been particularly marked in the coastal countries along the Gulf of Guinea, while migration has brought substantial numbers of people and cattle from drier to wetter parts of the West African region, raising pressures on higher potential farmland. Such patterns are expected to continue for the foreseeable future, potentially increasing land scarcity and reducing the sizes of holdings. Meanwhile, urban populations are expected to triple in the next thirty years, providing a ready market for foodstuffs from the near and further agricultural hinterland¹.

The West African region provides a very diverse range of ecological settings, from the moist forest zone in the south to the arid lands in the north. The history and socio-economic characteristics of these different areas and peoples have helped create a diverse array of systems by which people gain access to and manage their resources. Given this diversity, the analysis of tenure and resource issues in this report has been carried out in relation to 4 sub-regions²: Gulf of Guinea (Côte d'Ivoire, Ghana, Togo, Benin, southern Nigeria, Cameroon); Atlantic Forest (Guinea Bissau, Guinea, Sierra Leone, Liberia), landlocked Sahel (Mali, Burkina Faso, Niger, northern Nigeria, Chad), and Atlantic Sahel (Senegal, Mauritania, Gambia, Cape Verde). Each of these four sub-regions exhibits distinct characteristics, such as the much higher population densities of the humid coastal areas, the tropical wood resource base of the Atlantic Forest states, and the great importance of seasonal outmigration and pastoral issues for the landlocked and Atlantic Sahelian regions. Within such regional diversity, however, there are a number of issues common to many countries, which are outlined as follows:

COMMON ISSUES

1. Contradictions between customary and statutory tenure systems. Customary tenure remains the most important system through which people manage and gain access to land and other natural resources. Customary systems are based on the values of a particular social group, and it is these values which confer legitimacy on local decision-making. Since patterns of interest within a particular social group continually evolve, due to changing conditions, such as population pressure and the value of resources, so the customs and

¹ This study uses a series of likely projections regarding rates of population growth, urbanisation, and economic growth over the next 25 to 30 years, as developed by the West African Long Term Perspective Study (WALTPS) carried out by the CILSS/Club du Sahel. Such projections are based on assumptions concerning the likely pattern of rainfall, and broader economic development and growth. Thus, for example it is assumed that non-farm employment will continue to grow but not fast enough to provide livelihoods for the majority of the population currently employed in the agricultural sector.

² see map on page 5

practice in relation to how resources are managed will also evolve. This capacity to adapt to new circumstances is important. General characteristics of customary systems include the inalienability of land so that although families have secure and inheritable land holdings, these cannot be freely traded on the market. To date, reliance on customary practices seems to have imposed few barriers to the evolution of a vibrant, productive small farm sector which has been able to respond to changing prices and markets. However, customary systems also suffer a number of drawbacks, such as their vulnerability to abuse by more powerful groups within society who may try and ensure their preferential access to key resources, or who profit from sale of property considered to be owned by the society as a whole. At the same time, many governments do not legally recognise the powers of customary authorities to regulate and administer land. In addition, they do not guarantee that the rights of more socially marginal groups, including women, or certain castes, are adequately taken into account.

Statutory systems, by contrast, are based on the authority of the state, its control over land and its power to attribute titles. Statutory tenure codes are drawn up by central government and reflect the values and interests of the state. As a result, they may lack legitimacy at village level, and must therefore rely on enforcement by government agents. Because of their different origins and the principles upon which they are based, statutory and customary systems will produce differing practice on the ground, and together produce a set of overlapping and often contradictory mechanisms for deciding how access to resources should be allocated. Such contradictions are further accentuated by the impact of development project interventions, and the influence of Islamic law which, in certain areas, further complicates the principles used to clarify rights. As land becomes increasingly scarce and of high value, such conflicting claims are likely to proliferate, and generate increasing insecurity and conflict.

2. **Registration and titling** have been promoted as a means by which to increase security of tenure for land users and thereby promote increased investment in agriculture. Currently less than 5% of land area is held under formally registered title, mainly in urban areas and within irrigated projects, where returns to resources are sufficiently high for it to be worth establishing title. However, experience with titling programmes suggests that there may be serious drawbacks to these programmes, which include:

- * the heavy cost of mapping and registering title to many small plots, and the need to maintain and update the register on a regular basis;
- * the process of titling tends to enable literate and wealthier groups to benefit far more than poorer and illiterate people, and converts land from being a social asset into a commodity that is potentially marketable;
- * the titling process also tends to register primary rights' holders while excluding those with secondary, or derived rights, such as women who gain access to land through marriage, or herders who may be allowed to graze their animals on farmers' crop residues.

Titling programmes are likely to be of value only in certain circumstances, such as where customary practice is absent or very weak, or where resources are of very considerable value and thus subject to substantial competition and dispute, such as in peri-urban areas, or where a project intervention, like an irrigation scheme has reorganised production systems along very different lines from before. Alternatives exist to titling of individual land holdings and these are being tested in a number of West African countries. They include community land use planning projects, such as *gestion de terroir* approaches, and pilot registration schemes in Ivory Coast and Benin.

3. Conflict management. As resources become scarcer and hence more valuable, there is bound to be more competition amongst users for access. It is important that there be a clear set of procedures and mechanisms by which such conflicts may be solved, to avoid long and protracted disputes, which may develop into violence. Areas likely to experience serious competition and potential for conflict include peri-urban areas, wetland areas, and zones into which large numbers of farmers have been immigrating. In addition, relations between farmers and herders are likely to become increasingly tense as village cattle herds expand, grazing areas contract and fodder becomes scarcer. Customary systems for resolving conflict often exist and can be built upon as the first step in dealing with a particular dispute, as when the elders of two herding groups meet to discuss conflicts of interest between their communities.

4. Common property resources remain of very great importance for certain kinds of production system and for certain social groups. Examples include the collection of fuelwood for most rural communities, access to common grazing for pastoral herds, women's use of non-timber forest products from forest areas, fish resources, construction timber and other bush products. Access to many common property resources has become effectively open to all, given nationalisation measures by government and the non-recognition of villagers' rights to control who has access to such resources. Forests have also been demarcated as government reserves, while public bore-holes have opened up many grazing areas to all-comers, and traditional fishing regulations have been over-ridden by new projects and regulations. In sum, common resources are under great pressure, particularly in densely populated areas, where a decline in fallow has reduced the area of bushland available and is leading to increasing individualisation of rights over grazing and other resources.

Two main issues are at stake. First, how can different users agree on management and levels of offtake which will maintain the productivity of the common resource in question, and second, can government devolve the powers needed to enable local community groups to negotiate and enforce controls regarding the terms on which different users can gain access? Recent pilot projects to support co-management provide useful guidance and promising options for continued management of common property resources, from which lessons for broader replication can be derived. These include joint management of forest areas, and the drawing up of local management conventions between villagers and the government.

5. The pastoral livestock sector remains a very important source of activity, incomes, export earnings and form of land use for drier areas within West Africa, particularly since the devaluation of the CFA Franc in 1994. Given the risks from tsetse and other diseases in tropical wetlands, the savannas and Sahel constitute the main source of livestock products for the region. It is now recognised that the continued viability of the pastoral sector in these semi-arid grazing lands depends on herd mobility, and assured access to dry season grazing reserves, since rainfall and associated forage resources are too highly variable for herds to remain in a single place all year round. Currently, most states do not recognise the use of land through grazing as constituting a productive form of land use (*mise en valeur*), and hence conferring rights to the user; this is in contrast to farming, where the marks of the hoe are usually taken as proof of land use and thereby confer user rights. Acknowledgement of pastoral grazing as a valid form of land use which confers rights to users would increase the security felt by herders over the resources on which they depend, and would prevent the conversion of grazing areas into agricultural lands. In addition, the maintenance of a productive mobile livestock system depends on herds having access to grazing and crop residues within village lands during the dry season, and ensuring transhumance routes are

kept clear, so that animals are able to move through areas where cultivation is increasingly taking up all the available space.

WAYS FORWARD

Decentralisation is a major policy option being pursued by many governments. It involves the devolution of powers and responsibilities over a range of subjects from central government to lower levels, such as the region, or district administration, and elected bodies. The arguments in favour of decentralisation are based on the principle of subsidiarity, and include the idea that local peoples' influence will be increased through closer contacts with the administration, and that election of local representatives should ensure a greater responsiveness to local interests and needs. At the same time, it is argued that the high degree of diversity found within any country requires that national strategies will always need to be tailored to local conditions. Moreover, it is acknowledged that the limited financial and administrative resources of most West African states make it inappropriate for government to be heavily involved in managing land at local level. Thus, decentralisation as a set of processes is under way in many countries, and will have many implications for how questions of land and access to resources are handled. Nevertheless, governments retain important functions within such a process, which include provision of the broad framework and principles underlying rules of tenure and access, and ensuring the transparency and accountability of local structures.

Clarification of customary and statutory tenure systems. Current contradictions between customary practice and statutory codes need to be resolved, to mitigate the uncertainty and insecurity which results from such dualism. One means of doing so would be to identify the specific conditions under which statutory codes would apply, such as in well-demarcated zones, like urban and peri-urban areas. Elsewhere, customary rights would apply.

Encouraging debate at local, national and sub-regional levels. Governments across the West African region are currently supporting a number of important initiatives related to land tenure and access to resources. National governments could usefully support ways of learning from these different initiatives and encouraging debate within the country on options for policy in the tenure field. Such public consultation is particularly appropriate during the process of drafting new land tenure codes, for parliamentary debate. Similarly, there is much valuable experience gained from the diverse project approaches under way across the region, such as *gestion de terroir* approach of community based natural resource management programmes. These could be learned from and built upon. Options for co-management of forest and wildlife resources, and improving systems for conflict management constitute two other critically important subjects where lessons could be shared between countries. A variety of sub-regional programmes and fora exist to encourage such debates, such as the CMA-AOC, CILSS, and ECOWAS.

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ABBREVIATIONS

CILSS	Comité Inter-Etats de Lutte contre la Sécheresse au Sahel
CMA-AOC	Conférences des Ministres de l'Agriculture d'Afrique de l'Ouest et du Centre
CPR	Common Property Resource
DFID	Department for International Development
ECOWAS	Economic Community of West African States
GTV	Gestion de Terroirs Villageois
IIED	International Institute for Environment and Development
KCSZ	Kano Close Settled Zone
NRM	Natural Resource Management
PFR	Plan Foncier Rural
WALTPS	West Africa Long Term Perspective Study

1. INTRODUCTION

This working paper, commissioned by the UK Government's Department for International Development (DFID), sets out to examine the main land tenure and resource access issues likely to be important in West Africa over the next twenty five years or so³. It forms part of an ongoing programme of work linking English and French speaking countries in the West African region, with the aim of encouraging a sharing of research findings and practical experience regarding tenure options and their implications within the region⁴.

This paper examines, on a sub-regional basis, the kind of land tenure and resource access policy issues which will need to be addressed if the 'ordinary' people of West Africa are to benefit as much as possible from future opportunities and to minimise adverse effects. The paper explicitly sets out to identify issues with implications for poverty and equity.

The paper starts from the assumption that land tenure and resource access regimes are important primarily in that they affect socio-economic outcomes - livelihoods, inequalities, incomes, and productivity. It is important to look at the ways in which tenure and access systems can constrain, inhibit or encourage certain outcomes. Thus, this paper will not be concerned with the fine text and small print of land tenure legislation in West Africa. While it is important to know what current tenure systems are, it is perhaps more important to understand how they can achieve more equitable, efficient and sustainable outcomes.

The geographic area discussed is coastal and Sahelian West Africa - from Mauritania to Chad in the north, and Senegal to Cameroon in the south. Countries of West-Central Africa are beyond the scope of this paper.

The paper takes as its starting point a set of projections about the socio-economic future of different sub-regions of West Africa, largely derived from the West Africa Long Term Perspective Study (WALTPS), carried out by the OECD's Club du Sahel. The first section of the working paper, accordingly, provides an overview of WALTPS, and its projections.

The second section of the paper provides a brief overview of the policy frameworks within which land tenure arrangements currently occur in West Africa [..].

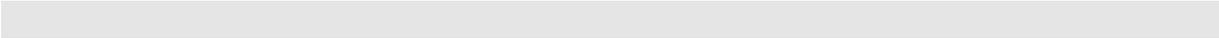
The third section of this paper goes on to examine future socio-economic projections and their implications for land tenure and resource access issues for four sub-regions within West Africa: the Gulf of Guinea (Côte d'Ivoire, Ghana, Togo, Benin, southern Nigeria, Cameroon), the Atlantic forested sub-region (Guinea Bissau, Guinea, Sierra Leone, Liberia), the land-locked arid and semi-arid belt (Mali, Burkina Faso, Niger, northern Nigeria, Chad), and the Atlantic Sahel (Senegal, Mauritania, Gambia, Cape Verde). In all these sub-regions, the paper also tries to identify areas of particular concern, where problems linked to land tenure and resource access are likely to be especially acute.

³ The paper limits itself to issues of access to renewable natural resources including water resources eg. wells, boreholes and irrigated areas. It does not, for example, examine the question of rights to minerals.

⁴ See acknowledgement for further details.

Important issues common to all four geographical blocs are discussed in the fourth part of the paper.

The fifth and final section of this paper examines the major policy options available for dealing with land tenure and resource access issues. Some provisional suggestions are made concerning action for governments and the role that donor agencies might play in helping West Africans address the likely challenges of ensuring equitable and efficient access to land and natural resources in the future.



2. WEST AFRICA IN 2020: PROJECTIONS FROM THE WALTPS STUDY

2.1. Broad trends

Since 1960, West Africa has experienced high rates of *demographic growth* and *rapid urbanisation*. Both of these processes are expected to continue over the next twenty five years.

Between 1960 and 1990, the population of West Africa grew at an annual rate of 2.7%. In 1990, the region's total population was roughly 215 million. By 2020, it is expected that the region's population will double, rising to some 430 million. Although the region will remain relatively under-populated, compared to many other parts of the world, this continued population growth will bring about a significant rise in the overall population: land ratio.

Urbanisation has, in the last few decades, been rapid. In 1960, the urban population of West Africa represented only 13% of the total population; by 1990, towns and cities accounted for 40% of the total population. Although the pace of urbanisation is expected to slow down, by 2020 it is predicted that some 60% or more of the region's population will be living in urban areas. In 1990, there were 90 cities with populations greater than 100,000; by 2020, there are likely to be 300 such cities. Over the next twenty five years, then, West Africa will experience a trebling of its urban population.

Since the beginning of the colonial period, the geographical distribution of West Africa's population has changed considerably. In broad terms, coastal and more southerly populations have grown faster than those in the Sahelian interior, since greater economic opportunities along the coast have resulted in migration from the interior. Between 1930 and 1990, for example, the population of Burkina Faso grew threefold, from 2.8 to 8.7 million; that of Côte d'Ivoire, by contrast, grew eightfold, from 1.4 to 11.4 million, with in-migration making a significant contribution to population growth. There is no reason to suppose that this basic trend will be reversed in the next twenty five years. This does not mean that the populations of the inland or northern areas will decline, simply that those of the southern coastal areas will grow more rapidly.

There are two broad implications of these projections for the region. Firstly, urban growth throughout West Africa will result in the continued development of markets for food - which rural producers will need to supply in order to feed urban populations. Assuming that rural producers respond to demand, agricultural production is thus likely to intensify and become increasingly commercialised. Evidence for the period 1960-90 shows that this has already happened in many areas and this trend is likely to be sustained as West Africa's urban network continues to increase in population density and grow. Increased demand for food, in the vast majority of areas, will be met through local, rather than imported, production. Obviously, the pace and extent of this process will vary depending on such factors as improved infrastructure, the availability of new technologies and favourable crop input to output price ratios. Secondly, the largest urban concentrations and food markets (with a few exceptions) will continue to be in the coastal areas which will continue to attract in-migrants

and will exert a growing demand for agricultural products from both their nearby and more distant hinterlands.

Overall demographic and urban growth, throughout West Africa, will also imply a fundamental change in the relationship between land and labour. In the past, the structure and operation of West African societies and economies have been predicated upon a relative abundance of land and scarcity of labour. Although this still pertains in some areas, there are already signs that land is becoming scarcer and the projections for the next twenty five years clearly point towards a continued change in the relative values of land and labour as factors of production. These changes will obviously have a significant impact upon land tenure systems and their evolution.

By 2020 a majority of West Africans will be employed and live in urban areas. There will be continued growth and diversification in the industrial and service sector; because of the greater income-producing potential of towns and cities, West Africa should become - on aggregate - wealthier, even if there is likely to be an increasing degree of socio-economic stratification. However, West Africa in 2020 will still include a vital and significant agricultural sector, providing employment and livelihoods for over 160 million people.

These projections from the WALTPS study are based on several assumptions about the overall socio-political and physical environment. They assume that climatic conditions (which are particularly important in the drylands) will not undergo major changes. They also presuppose that off-farm employment opportunities (mainly in cities) will continue to grow, but not enough to reduce the rural labour force to a level so low as to adversely affect agricultural production. There are also assumptions made about maintenance of political stability and the reasonable functioning of cross-border markets. While there will always be the possibility that conditions may change, most of these assumptions seem reasonable.

2.2. Sub-regional differences

Each of the four sub-regions in West Africa has particular features which affect land tenure and resource access issues and trends (see Map). It should be noted that these sub-regions do not necessarily coincide with national boundaries. The most obvious example is Nigeria, which is part of both the Gulf of Guinea and the land-locked Sahelian sub-regions. The same is, to a less obvious extent, true of Côte d'Ivoire, Ghana, Togo, and Benin, the northern parts of which merge into the Sahelian drylands. These are examined below.

The four sub-regions of West Africa showing cities >50,000

The coastal and forested areas making up the **Gulf of Guinea sub-region** represent the most economically dynamic part of West Africa's regional economy, largely due to the historical development of export crops, timber exploitation, and oil production. This sub-region includes the densely populated urban system which stretches from Abidjan in the west, through south-eastern Nigeria, to Douala and Yaoundé in the east. The densest part of this network, anchored around Lagos, will - by 2020 - include five cities of over one million inhabitants and a total of 60 million inhabitants. By 2020, this belt will probably contain more than half of the West African cities with populations of 100,000 or more, many of which will be in southern Nigeria. It will also probably remain the main producer of regional exports.

Further to the west, the **Atlantic forest sub-region** - despite a relatively favourable natural resource endowment - has consistently under-performed in economic terms, largely due to poor governance (in the case of Guinea) and endemic conflict (in the cases of Sierra Leone and Liberia). The sub-region has a relatively small population, accounting for only 6% of West Africa's total. The countries of the Atlantic forest zone have relatively low population densities and rates of population growth, and average rates of urbanisation (40-45%). Only small proportions of land are under cultivation, and although extensive fallowing is still practised, large tracts of forest and woodlands remain intact. Populations, urban settlement and markets are projected to expand, centring around the development of the Guinean capital Conakry as the West African region's seventh largest city, expected to have well over 1 million people by 2020. This scenario involves substantial market development and smaller-scale urban growth all along the coastal belt. In demographic terms by 2020 the productive coastal regions are likely to face levels of land pressure, fragmentation, in-migration and urban development comparable to those observed today in the Gulf of Guinea.

Stretching across the northern rim of West Africa, the vast **land-locked Sahelian sub-region**, historically the poorest and least urbanised part of the region (the Sahelian states were only 22% urbanised in 1990), will continue to depend economically upon its access to the labour and urban markets of the Gulf of Guinea. Northern Nigeria, because of its long

history of urbanisation and links to the coast, is somewhat different to the other parts of this sub-region. Although there will be continued urbanisation, particularly concentrated in national capitals, most of the sub-region's population will remain rural in 2020. In marked contrast to the Atlantic Sahel, the land-locked Sahelian sub-region has considerable agropastoral potential, because of its extensive southern savannah (where most cotton production occurs), its important river systems, vast rangelands, and relatively good access to the major markets of the Gulf of Guinea. Despite irregular and relatively low rainfall, many parts of the sub-region have become food self-sufficient in recent years; indeed, some areas have become net exporters of food crops.

Along the Atlantic coast, the **Atlantic Sahel sub-region**, with its very limited agrarian resource base, has traditionally been one of the most urbanised parts of West Africa. The sub-region is likely to remain highly urbanised, although the "spillover" effects in rural areas in terms of incentives for agricultural intensification will probably be limited due to their intrinsically low potential. In addition, because of urban and other non-agrarian opportunities, agriculture is likely to be only one among several economic options and may thus attract little investment. In 1990, this sub-region imported a very high proportion of its food needs, a trend which is likely to continue. This sub-region also differs from that of the land-locked Sahel because of its distance from the relatively prosperous Gulf of Guinea - the Atlantic Sahel's populations cannot easily profit from economic opportunities there and many people migrate overseas to Europe and North America.

3. EXISTING PARADIGMS AND POLICIES FOR LAND TENURE AND RESOURCE ACCESS IN WEST AFRICA

The majority of West African countries currently exhibit two broad systems for administering land tenure and resource access: on the one hand, customary land tenure systems, and, on the other, formal, statutory systems. In most of rural West Africa, farmers, herders, forest users, fishing folk and others gain access to land and other renewable natural resources on the basis of customary rights. For most, control over and access to land and resources derives from their membership in some kind of community, usually defined in terms of kinship or, in the case of secondary or derived rights, through arrangements with those who hold such primary rights. In most cases, use rights in arable land tend to be relatively individualised, are frequently secure, and are generally inheritable. For other resources, such as pasture and forests, common property systems tend to dominate. In addition, various other mechanisms and principles may be used to attribute rights to resources and resolve disputes, such as religious courts, or project interventions, leading to a pluralism in the institutional channels and procedures for administering land.

3.1. Customary tenure systems

Customary tenure systems in West Africa are not timeless and unchanging. As elsewhere in Africa, they have adapted and developed as the wider socio-political and economic context within which they function has evolved, and as groups and individuals have re-negotiated the terms under which they obtain or cede rights in land. This has been particularly so in areas, such as the Gulf of Guinea, where cash cropping developed early on - customary tenure systems rapidly adapted to accommodate, for example, cocoa and coffee, by allowing for a degree of “freehold”, of leasing, and by incorporating share-cropping arrangements. In many cases, community authorities today no longer allocate use rights over farming land since all arable land in some areas has been distributed among smaller social units, who retain *de facto* and effective control over the use of that land. In such contexts, customary rights have become increasingly focused on families or even on individuals rather than lineages. This “individualisation” of tenure has also come about as a result of population growth and the commercialisation of agriculture. Some customary systems in West Africa have even accommodated the emergence of land markets, within which *de facto* freehold has developed.

Nonetheless, the majority of customary tenure systems continue to operate in “traditional” ways and retain two crucial features:

- a generalised tendency to view land and resources as being inalienable. In most systems, full property rights cannot be ceded by those in whom ownership has been vested. To a certain extent this is a consequence of the widespread, and deeply entrenched, cultural system whereby social identity and kin-group membership provide people with access to land and resources; for so long as larger social groups remain functionally important, their members can expect to have access to land. The strength of the linkages between land and society in West Africa is fundamental to customary tenure;

- multiple claims over resources such that the same piece of land can be used in different ways by different people. Outside the farming season, once the crop has been harvested for example, herders can graze their livestock in fields, while women can gather firewood and other tree products in those fields.

Customary tenure regimes demonstrate these features to a varying extent. In general, as population pressure on land increases and as production becomes increasingly commercialised, customary systems become more individualised and rights become more exclusive and alienable.

3.2. Statutory tenure

From the colonial era onwards, these locally dominant customary regimes have co-existed with statutory tenure systems, the latter deriving from the imposition of territorial control, and the allocation of land to private interests by the colonial state. West African land policies, until very recently and with few exceptions, have embraced a paradigm with three particular characteristics:

- a centralised administrative control of land, founded on the principle of eminent domain, whereby all land rights are ultimately vested in the state, with laws being seen as universally applicable throughout the national territory;
- a predisposition towards the emergence of private property through a process of registering title over land predicated upon the prior “nationalisation” of land by government;
- the coexistence in practice of formalised tenure with customary systems, resulting from the state’s lack of capacity, and/or unwillingness, to actually impose administrative control and formalised tenure regimes on rural communities.

Customary systems provide the operational rules in practice, unless the state intervenes. Although some countries acknowledge, to varying degrees, the existence of customary rights, all West African states tend to assume that statutory rights, once invoked or granted, automatically over-ride customary rights. Thus, throughout West Africa, the notion of eminent domain has provided the state with the power to expropriate land and other natural resources in the national interest.

3.3. Historical development of dualistic land tenure systems⁵

While such dualistic systems of tenure are found across the region, there are also some general differences between tenure systems in Anglophone and Francophone countries of

⁵ Although the term “dualism” has been used throughout this paper when discussing customary and formal systems, this may give a false impression to the reader. In practice, several mechanisms can co-exist - including those based on religious laws or those resulting from development projects. This can lead to a situation of pluralism in some circumstances.

West Africa worthy of mention. While the French sought to promote conversion of public land to leasehold and freehold, and made legal provision for indigenous people to register land, this had little effect, and customary systems persisted to a high degree, with little direct intervention by the authorities. The British however sought to establish territorial control by forming alliances with senior customary rulers, or paramount chiefs in whom land ownership and authority were vested, as an instrument of colonial power⁶. In practice, however, the powers exercised by customary authorities in parts of anglophone West Africa were often circumscribed by the colonial state, for instance by the gazetting of forest reserves and the establishment of mining concessions. In addition, the British introduced a system of freehold tenure in particular regions (such as Sierra Leone), juxtaposing this directly with entirely distinct systems of land administration based on customary law. Although the French approach to indigenous institutions was generally speaking more *laissez faire*, many customary groups in French-administered West Africa were *de facto* allies of the colonial state, and thus enjoyed many of their traditional rights. Nowhere, however, did the French authorities recognise land ownership by traditional chiefs, as occurred in some of the British colonies. Further differences between the former British and former French colonies stem from differences in land law systems inherited from the colonial power. **Whereas legislation in francophone West Africa followed the French Civil Code and its effects of standardisation and codification, in anglophone countries the influence of British Common Law allowed for different interpretations of a set of general principles leading to a diversity of local solutions. However, throughout the region,** because of the great difficulties in enforcing land law, decisions about land claims have more often reflected the power and influence of the different stakeholders rather than enforcement of the letter of the law.

The co-habitation of customary and statutory systems in West Africa has not been an easy one; nor has it led to satisfactory outcomes. Customary systems have, more often than not, continued to define the operational rules governing control over and access to resources, mainly because of the widespread legitimacy they enjoy in the eyes of most resource users, their capacity to adapt to new situations, pragmatism on the part of state bureaucracies, and the limited capacity of most West African states to impose their own tenure systems. However, recourse to statutory principles has remained an option for some groups (particularly those closely linked with the state) wishing to establish claims to land and resources. The extent to which statutory law is invoked varies, often depending on what is at stake and who is involved. **At times, the statutory rights themselves remain somewhat insecure in the face of customary rights holders (precisely because they are often seen as lacking in local legitimacy). More commonly, however, when recourse is made to statutory tenure principles, this tends to undermine customary rights and to make them less secure. Of concern in many cases, merely the potential threat of statutory claims**

⁶ In these circumstances the legitimacy and practical operation of customary authority became transformed, although this may have had little direct influence on land management, except where the state sought direct territorial control. However the installation of “traditional” chieftaincies, has led to a perception of customary law as a relatively unchanging and consensual ‘code’ of practice. This conception has been challenged by studies which show how the construction of ‘native’ authorities, and rules of practice provided instruments of colonial rule, and others which reveal the dynamic, evolutionary nature of customary tenure in the post-colonial era.

being made is enough to render more fragile customary rights in land, thus leading to a degree of insecurity⁷.

In addition, and particularly in some of the anglophone states, there have been close links between some aspects of customary and statutory laws. In Ghana, for example, there has been a long-standing alliance between the traditional chiefs in whom land is vested and the national political elite. This serves to blur somewhat the distinction between customary and statutory systems, insofar as the latter has bolstered the authority of the former.

The significant dualism of statutory and customary tenure systems should not disguise the fact that customary paradigms themselves have often contained multiple, and sometimes competing claims over land. Competing customary claims - between, for example, the descendants of “firstcomers” and those of “latecomers”, between matrikin and patrikin, between people who have laboured a given piece of land at different times during its history - may be based on different arguments and justification, and thus difficult to adjudicate. In these cases, outcomes have often depended on relations of power.

With regard to renewable natural resources other than land (forests, inland and marine fisheries, pastures, ..) most government policies have, since colonial times, remained decidedly “state-centric”, for instance, imposing centralised control notably over forests, irrespective of established customary use. Unfarmed land, which may actually be fallow, grazing land, or a community agricultural reserve, is generally assumed to be unoccupied land and thus a direct component of the state’s “eminent domain”. Again, nationally enunciated laws, applicable everywhere, govern access to such resources. In the case of some resources, governments have abrogated almost all pre-existing rights by creating reserves or national parks, and allocating private concessions for exploitation.

The notional state monopoly over forests and other renewable resources has often resulted in the creation of *de facto* open-access regimes. The West African state has rarely been able to provide any genuine management of the resources over which it exercises a monopoly, but, its statutory claims have been sufficiently strong to undermine customary common property arrangements. As a result, many commons have, become “open-access” resources, and are no longer subject to any rules whatsoever.

Customary tenure systems in many areas of West Africa (notably parts of Guinea, Guinea Bissau, Chad, Niger, Nigeria, Gambia, and Mauritania) have also been influenced significantly by Islamic (or Shar’ia) law. Shar’ia law recognises universal land rights for all Muslims. Private rights are generally established through ten years of continuous occupation and land use (the principle of *indirass*) and landholders not cultivating their own land are obliged to have it worked by others (tenants, sharecroppers, borrowers), otherwise their ownership lapses. Women may own land, but do not inherit it, leading to conflict with some other customary principles of succession, notably among matrilineal societies. Land exchanges are permitted and land values depend partly on proximity to water sources and associated water rights. Although Islamic customary law has much in common with other West African systems of customary law, some conflicts do arise, associated with the spread of Islam within the sub-region.

⁷ **The definition of what constitutes a legitimate claim can also be open to negotiation; there is some evidence in the land-locked Sahel that people make their own “artisanal” deeds and papers that are not legal but are recognised by local authorities.**

3.4. Other dimensions: decentralisation and *gestion de terroirs*

In those countries, notably Senegal, where decentralisation has been underway for some time, this has led to some rethinking about the nature of statutory tenure systems, and the need to amend them in order to provide more room for local level governance and management of land. Elsewhere, for example in Guinea, decentralisation is at an early stage, and although some local land commissions exist, there has been scant progress in recognising and developing local systems for land management.

In a large number of francophone countries, new thinking on land tenure has also been stimulated by the implementation of a new, dominant, paradigm for rural development - *gestion de terroirs villageois* (GTV). In adopting this approach, within which land use and socio-economic planning are primarily focused on village lands, it has become increasingly obvious that statutory land laws are inadequate for the purposes of community development. Legal recognition of village-level authorities to match their newly acquired responsibilities under the GTV approach has yet to occur, and in most cases, where the problem has been recognised, it has been “resolved” through a variety of *ad hoc* arrangements. Throughout West Africa there is room for considerable progress on decentralised governance, and the introduction of community-based land and natural resource management, through *gestion de terroir*-type approaches. The great challenge for the state is how effectively to link the decentralisation process to village based natural resource management through clear mechanisms which outline the powers of statutory and customary institutions.

4. SUB-REGIONAL LAND TENURE AND RESOURCE ACCESS ISSUES

Land tenure and resource access issues particular to each of West Africa's four sub-regions are identified below, some issues being more important in certain sub-regions than to others. Such issues include: the growing scarcity of land, migration, women's access to land, and management of forest resources.

4.1. The Gulf of Guinea

A distinctive feature of the coastal areas of the Gulf of Guinea sub-region is the intensity with which a series of processes has unfolded - urbanisation, population growth and in-migration and individualisation. It is within this sub-region that the growth of urban markets over the next twenty five years will have the most significant and deeply felt impact on rural areas.

4.1.1. Issues related to the closing of the land frontier

The Gulf of Guinea sub-region already has relatively high levels of population density for the region, particularly in peri-urban areas but also in many rural hinterlands (where population densities in some parts of the coast now exceed 300 persons/km²) and is likely to experience a closing of its land frontier in the next two decades. By 2020 there is unlikely to be any new, unfarmed, land available for agricultural colonisation within the Gulf of Guinea. In this sub-region, commercial tree crops (cocoa, coffee, palm oil) have been important - and although their importance relative to food crops is likely to decline, they will continue to contribute towards the saturation of agricultural land. Food cropping, in response to rising urban demand (which will be generated by over 200 million city dwellers in the sub-region by 2020), will expand considerably in the Gulf of Guinea. This process of agrarian growth is likely to have a number of consequences.

Migrants and locals

The economic opportunities offered by the Gulf of Guinea sub-region have resulted in major inflows of migrants, both national and international. While many migrants have moved to the growing cities of the sub-region, where most have found employment in the informal sector, many have also moved into rural areas. The historical development and expansion of cocoa and coffee, in particular, have been closely linked to the presence of migrant farmers and labourers. As urban food markets in the Gulf of Guinea have grown, so too has the involvement of migrants in food production. A large proportion of these migrants have come from resource-poor areas further north.

Over the next twenty five years, the Gulf of Guinea is likely to continue to attract migrants from the north. In rural areas, these migrants will seek opportunities in both the food and export crop sectors, although it is the former which will become more dominant. The labour provided by migrants will, as in the past, be a determining factor in permitting the further growth and development of agricultural production in the sub-region.

In the past, the relative abundance of land enabled migrants and local landholders to negotiate mutually beneficial arrangements. These included outright “sale” of land to migrants (the proceeds of which then enabled landholders to pay for labour), leasing and rental arrangements, and share-cropping systems (with the share-croppers often ending up effectively owning land), as well as wage labour contracts. As a result, much of the coastal forest zone is today farmed under a bewildering variety of customary land tenure arrangements, by farmers from a range of different areas. This is a legacy of the development of cash crops for export and of food crops for rapidly growing urban markets.

In the future, as density of settlement and land use in the coastal zones reach a critical level, easily negotiated arrangements will become less common. As the stakes are raised, and as land becomes scarce, the “rules of the game” are likely to change. Several possible outcomes can be predicted:

- the multiple nature of rights in customary systems may give rise to increasing confusion about the rights of migrant farmers vis-à-vis indigenous rights holders. Overall, uncertainty and conflict are likely to increase;
- migrants may find that their existing rights become subject to radical renegotiation once rights holders recognise the growing scarcity of land;
- the legitimacy of existing migrant landholdings may be called into question by local farmers who may be tempted to invoke nationality as a means to try and exclude migrants’ access to resources. This is likely in Ghana and Côte d’Ivoire, where foreign migrants are numerous, but potentially less so in southern Nigeria, where many migrant farmers are from nearby areas.

To reduce future conflicts and ensure that migrants enjoy relatively secure tenure, land administration authorities in the Gulf of Guinea will need to clarify the existing panoply of tenure arrangements and, as far as is possible, reduce ambiguities in customary tenure systems. Pilot land registration programmes are currently under way in Côte d’Ivoire and Benin. These are not themselves titling programmes, but are attempts to clarify existing arrangements. Such processes need to take into account the potential costs of such schemes, including both direct costs of administration and potential indirect adverse impacts on certain categories of resource users, who tend to be excluded when lands become registered. These initiatives warrant careful and continued scrutiny and evaluation.

Land markets, subdivision of holdings and rural class structures

The emergence of land markets is associated with the history of cash crop farming (cocoa, coffee, oil palm, rubber, ..), coupled with population growth. Sales and leasing of land - often motivated by a need to gain access to labour through share-cropping, or cash with which to hire labour - are leading to shortages of land for the current generation of farmers. In addition, widespread practices of land division and fragmentation through inheritance are resulting in smaller holdings and growing concern about land poverty and landlessness.

Existing evidence from a variety of settings, shows that outright landlessness is unusual among groups indigenous to that area. The landless category in the Gulf of Guinea tend to comprise in-migrants who have been unable to purchase land. Although many migrants continue to retain rights over land in their areas of origin, there are some who no longer enjoy access to their homelands where, as in parts of north-eastern Ghana, land has become very scarce. It is these farmers whose livelihoods are likely to become particularly vulnerable in the next twenty five years. As land markets become more active and as holdings diminish in size, it is very likely that the incidence of distress sales will increase, resulting in a growing number of landless farmers.

While landlessness is currently not a real problem for most indigenous farmers, that of land shortages is becoming increasingly significant. In many parts of the Gulf of Guinea, farmers (both indigenous and “stranger”) must negotiate leasing arrangements in order for their farms to be viable. This is often because of the need to fallow their land; owners of small farms must sometimes lease or share-crop land in order to continue farming while their own holdings regenerate. Without livestock, farmers have little or no manure with which to maintain soil fertility; in addition, the cost of chemical fertilisers remains prohibitive to most smallholders. Over the next twenty five years this problem may become more acute; on the other hand, growing demand and higher prices for food crops may enable farmers to cover the costs of increasing use of fertiliser, and thus reduce their need to put land into fallow to restore fertility.

The next twenty five years are likely to see the continued fragmentation and subdivision of holdings and thus a continued trend towards tenancy arrangements as farmers (both indigenous and migrant) try to maintain access to viable holdings. As with the issue of migrants’ rights, this increasing complexity may imply the need to clarify negotiated rights.

The fact that not only migrants, but also indigenous farmers are now leasing or share-cropping land does raise the question of to whom the land belongs. Is there evidence of an emerging class of farmers with large holdings or absentee landlords, and, if so, what are the implications for the future? Again, caution is in order when examining this issue. The break up of holdings among members of the same family, coupled with out-migration to the cities, often implies that those who are left behind are share-cropping or leasing land belonging to their immediate kin. This is very different from a classic landlord-tenant relationship. In addition, data from a single period on farm sizes, holdings, and tenancy arrangements may disguise the effect of the developmental cycle of households, whereby “young” families only have small holdings and must rent land, while “mature” families have accumulated and consolidated holdings over time. Patterns of farm size and tenancy arrangements can only be understood over such long stretches of time.

Future developments are likely to result in more “absentee” landlords. This is especially likely in peri-urban areas. As land markets evolve, and “distress” sales of land increase, some

people will be able to accumulate large holdings in rural areas. In addition, there is evidence that urban-based political and economic elites throughout the Gulf of Guinea have been able to gain control over land in rural areas - either through outright “purchase” from indigenous landholders or through using connections to gain access to forest reserves (as in Côte d’Ivoire). The increasing profits to be made from commercial agriculture will only exacerbate this tendency and pressures from powerful interest groups to gain preferential rights over land formally under state control.

Changing terms of tenancy

In many areas of the Gulf of Guinea, increasing land scarcity over the next twenty five years will help redefine the terms under which farmers, both indigenous and migrant, gain access to land. Leases will become more expensive while share-cropping arrangements (which are very common in both Ghana and Côte d’Ivoire) already show signs of becoming increasingly unfavourable to tenants, with a larger share of the crop being appropriated by landowners, and a shortening of the duration of contracts.

For those who have only limited farmland of their own, less favourable share-cropping contracts and lease arrangements will clearly be disadvantageous. They are thus likely to be “squeezed” into more marginal conditions. Shorter tenancy periods will reduce incentives for intensification on leased or share-cropped farmland, hence discouraging further reinvestment in raising productivity.

There are seemingly few solutions to this problem. Changes in tenancy agreements are clearly a reflection of changing market conditions. Legislating limits on land rents or minimum contract lengths would, if the past performance of West African states is anything to go by, be an unworkable option. The problem may, however, find its own solution, since landholders who lease out land under share-cropping arrangements have an incentive to intensify production (since they receive a share of the harvest), and may be encouraged to provide their share-crop tenants with more favourable conditions in return for higher yields.

Forest reserves

The expansion of cocoa farming in the Gulf of Guinea has taken the form of a pioneer front moving steadily into and through the high forest (in Côte d’Ivoire) or replacing the oil palm forest (in some parts of Ghana). In both Ghana and Côte d’Ivoire, where cocoa production remains a major source of export earnings and smallholder income, this pioneer front has unfolded in a east-west trajectory. Today, both the Ghanaian and Ivorian pioneer fronts have come to the westerly limits of their respective high forest zones. In the future, cocoa production will be maintained in one of three ways - through an intensification of activities on existing plantations; through a recolonisation of abandoned cocoa lands where secondary forest has regenerated; or through a colonisation of remaining high forest cover, much of it concentrated in state-controlled reserves.

It is highly likely that farmers will seek to expand cocoa production into forest reserves, where the initial “nutrient flush” obtained from clearing of new land has proved crucial to cocoa farming. It is also probable that food crop farmers will try to expand into forest reserves close to urban markets, where considerable pressure is already being exerted. Such forest reserves, however, are important sources of non-timber forest products (for both

women and men, and of often vital importance to poorer people) and, to a lesser extent, of valuable timber exports. Some means must be found of reducing forest clearance for cocoa if the remaining high forest of the Gulf of Guinea is to be managed in a sustainable and equitable way.

Past experience has shown that stringent protective measures by state services are unlikely to prove effective. Gazetted forests and *forêts classées* have often been the object of clearance by farmers. What seems necessary is to alter the way in which local populations relate to forest reserves and their management. Ensuring that they become significant stakeholders in the high forest (i.e. by changing the tenurial relationship between them and forest reserves) is probably the only way of creating an incentive structure for sustainable forest use and providing effective, on-the-ground management. There are pilot initiatives in forest “co-management” in the sub-region, in both Côte d’Ivoire and Ghana - from which lessons need to be learnt.

4.1.2. Women and land

In discussing the ways in which future trends will affect women’s access to land in the Gulf of Guinea sub-region, it is clear that there are important differences depending on ethnicity. Certain women in this sub-region (particularly among Akan peoples in Ghana and Côte d’Ivoire and among some Yoruba groups in south-western Nigeria) seem to enjoy a significant degree of direct access to land. This may be the result of the relatively low level of Islam, the early impact of Christianity, greater individualisation, or spillover effects associated with matrilineal or cognatic descent systems. Thus some rural women in the Gulf of Guinea are able to inherit, lease, or share-crop land in ways very different to women elsewhere in West Africa. They are also able to obtain access to land from their husbands.

Nonetheless, it is generally true that women’s farm holdings are smaller than men’s. Whether this is due to customary land tenure systems *per se*, or for other reasons is not entirely clear. But, over time, their already limited holdings will get progressively smaller, and women are likely to find themselves under even more pressure than most male farmers.

In places where women have direct access to land, rather than uniquely through their husbands, the impact of registration schemes such as the Plan Foncier Rural (PFR) in Côte d’Ivoire may not prove as detrimental to them as might be expected. However, evidence from elsewhere in Africa strongly suggests that women, because they usually gain access to land in an indirect way, often find their rights eroded as and when official registration is established. At the same time the increasingly commercialised nature of farming in the sub-region will provide men with greater incentives to assert control over the land currently used by their female kin - and registration might exacerbate this “natural” dispossession of women. It will be useful to assess the effects of pilot registration schemes in the sub-region, such as PFR, on women’s rights in land.

4.1.3. Agri-business and international capital

The Gulf of Guinea has historically been the sub-region of West Africa most exposed to international capital. Export crop production (cocoa, palm oil, coffee, rubber) is most

developed in the sub-region, partly due to climatic reasons but also because of the maritime nature of colonial and post-colonial economic expansion.

For most of the twentieth century, these cash crops have been predominantly produced by smallholder farmers, operating within customary tenure systems. Over time, however, there has been an increasing involvement of agri-business - the development of large, foreign-owned, palm oil plantations being the most obvious example. Increasingly “liberal” policies with regard to inward investment, closely linked to national policies on export-led growth and to structural adjustment measures, will probably result in continued expansion of agri-business units. It is also likely that large enterprises will expand into food production.

This increased involvement of international capital in the Gulf of Guinea’s agricultural sector is certain to contribute to rising land values and to some degree of speculation in land. Agri-businesses are unlikely to invest capital unless they can obtain a high degree of tenure security - and they will seek to “protect” their investments by securing statutory or “freehold” rights. Both tendencies - rising land values and greater recourse to non-customary title - clearly have implications for smallholder farmers in the Gulf of Guinea.

Whilst globalisation and liberalisation will further expose the Gulf of Guinea to the world economy, investors will only invest in large, capital intensive type farming in the sub-region if these represent good returns on investment compared to elsewhere and other investment options. The economic history of the Gulf of Guinea has, for the most part, demonstrated the difficulty large farming units have experienced compared with competition from flexible and highly innovative smallholder farmers.

4.2. The Atlantic forest sub-region

Land administration in this sub-region is characterised by the colonial establishment of dual tenure regimes, in which private rights were established by colonial and (in the case of Liberia and Sierra Leone), Creole settler elites, for purposes of cash crop production, primarily in coastal areas. Throughout the hinterlands, customary tenure was accepted. In Sierra Leone, and Guinea Bissau, colonial administrations vested relatively secure usufruct rights in customary village institutions, while maintaining eminent domain, and the prerogative to allocate private land concessions on customarily managed land.

The position in Sierra Leone and Liberia is very uncertain as a result of protracted civil wars; ultimately they may look eastwards to economic linkages with the Gulf of Guinea, rather than to Guinea. For the time being, development in the Atlantic forest sub-region largely depends on Guinea, but here new market opportunities are difficult to identify, and prospects remain uncertain as a result of a chequered political history following independence, in which little development has taken place. However, liberalisation and economic reforms, which began in the 1980s, may result in better prospects for growth and development. Indeed, recent urban and peri-urban growth in and around Conakry has been rapid.

Abundance of land and easy access to resources in the customary sector could decline in future as a consequence of gradual population growth and private land allocation which has been actively pursued by all four Atlantic forest states. Consequently, measures to protect the operation of customary tenure systems and curb the encroachment of private estates are likely to be needed over the next two decades in order to pre-empt highly inequitable patterns of land holding developing, and the growth of landlessness, factors which risk fostering further conflict within the region.

4.2.1. Private rights and the risks of land conflict

During the 1990s competition and rival claims over arable and forest land are emerging as features of rural life in parts of Guinea and Guinea Bissau, as a direct result of their dual systems of tenure, and economic liberalisation packages which have involved a push for land privatisation.

In Guinea, land was nationalised at independence in 1959, removing private rights established during the colonial period and abolishing chieftaincy with its associated privileges of land ownership by indigenous elites. Although this limited the rights of “nobles” and extended those of former “captives” in the markedly hierarchical society of the Fouta Djallon region, generally land management still proceeded on broadly customary lines of kinship and village-based landholdings. Private rights were re-established in the 1992 Land Code, in order to promote market development and private investment, and this has restored

an active dualism in land rights. The new Code is, in fact, unclear as regards the former rights of the nobility and the status of customary tenure in general, because earlier land legislation has not been explicitly repealed. The resulting situation risks undermining land security and fostering the emergence of land conflict, notably in urban and peri-urban areas, and in the high population density Fouta Djallon. There is currently no policy in favour of customary systems of land management, and there are fears that, private land claims will proliferate at the expense of the customary sector, as markets and populations grow, especially in coastal areas.

Private land allocation is more active in Guinea Bissau where government appears to favour the replacement of customary tenure with formal private rights, despite the fact that customary systems have proved highly resilient and adaptable, in many cases providing households and individuals with secure and heritable usufruct, a foundation for farm production. There is no evidence that privatised “ponta” farms are more productive; only an estimated 3% of land is titled, and many are acquired for speculation rather than production. Whilst there may be a legitimate role for some private commercial estates, failure to recognise the dynamism and productive capacity of the customary sector may impede Guinea Bissau’s agrarian development and its contribution to regional markets in the 21st century. Despite the strength of customary institutions, there is, as yet, no formal recognition of the role they can play in land and natural resource management, and there are, as yet, no government structures within which customary authorities are represented. At the end of 1997, however, a new land bill was drafted which aims to recognise and incorporate customary rights in national land law by, for example, giving local communities rights of veto over the granting of private concessions.

4.2.2. Civil war and resource conflict

Dualism in land policy has underpinned a history of conflict in land relations throughout the sub-region. Conflict has been most marked in Sierra Leone and Liberia, characterised historically by resource extraction and accumulation by Creole dominated settler classes, based on control of coastal estates or timber and mining concessions in the interior. Political domination of indigenous peoples, loss of traditional landholdings, tenure insecurity and lack of farming and employment opportunities led to the emergence of armed resistance and of warlords seeking control over natural resources as a basis for their own accumulation of wealth. As a result the 1990s have been marked by intractable civil wars, which are only now approaching an uncertain resolution.

In both countries, there has also been a long history of competition among various users over access to vital wetlands, dating from before the outbreak of serious armed conflict. Wetlands have been subjected to pressure from rice farmers, women vegetable gardeners, cocoa and coffee growers, forest users, and in some cases, alluvial diamond miners. The high value of these wetlands has made them a source of growing conflict and competing claims. Elsewhere, in both countries, there have been long-standing conflicts between “firstcomers” and “latecomers” over farmland.

In both countries, maintenance of the present uneasy peace will require extended processes of reconciliation and conflict resolution at national and local levels. Widespread consultation and negotiation on land and resource control issues, involving former landowners and returnees, and remaining or emergent indigenous institutions in the forested interior (prior to

the civil wars, so-called “secret societies” played very important roles in land and natural resource management) will probably be an essential element of lasting political settlements. While it is difficult to imagine that political, military and business elites will not insist on the maintenance of private land holdings, it will be essential to secure real benefits for forest communities from timber and mineral exploitation and prevent the resumption of arbitrary, coercive expropriation of customary lands. Effective reconciliation will involve adjudication of land claims following population displacement and land seizures.

4.2.3. People and forests

As throughout West Africa, the Atlantic forest states have sought to maintain absolute authority over forest reserves while regulating rural people’s access to tree resources. In Guinea, farmers have no incentives to conserve timber trees on their farm land, since they are the property of the state. In Guinea Bissau common pool resources, including forest and grazing land, are regarded as unoccupied and have been subject to the allocation of private concessions by the state, without the sanction of village authorities. This process is thought to be leading to growing inter-group pressures on remaining commons.

In Sierra Leone and Liberia, from colonial times and continuing throughout the recent wars, village communities in the interior have endured large scales losses of customary forest lands, as a result of intensive logging and the annexation of forest land for mining and plantation crops, by the state, private interests, and lately by the warlords of rival military factions.

In all the forest zone countries, moves towards co-management of forest resources by the state and village communities involving greater recognition of customary rights are likely to be required to create incentives for sustainable forest use and to mitigate conflict with the state. This is particularly true in the many cases where colonial authorities established forest reserves on land that had previously been populated and farmed, and over which surrounding populations retain ancestral land claims. Improvements in local governance and popular participation in decentralised institutions will be needed for such an approach to occur on a wide scale.

In Guinea, there have been moves towards decentralisation, including the constitution of local land commissions. These, however, are largely inactive and staffed by government appointees with no provision for participation of local stakeholder groups. In Guinea Bissau, despite the strength of customary institutions, there are currently no mechanisms for involving them formally in the management of natural resources, which remains the prerogative of the state. In Sierra Leone and Liberia, both formal and indigenous institutions have been substantially dismantled during the conflicts, governance is consequently very weak, and will take time to restore. Meanwhile there is a serious risk that unsustainable mining of natural resources by those wielding power will simply continue, provoking further conflict between the state, national elites, local warlords and forest dwellers.

4.2.4. Migration

Internal migration has always been a feature of the Atlantic forest zone. More recently, Guinea has been a recipient of many refugees from successive waves of conflict in Liberia and Sierra Leone, increasing land pressure in parts of the forest zone. The Guinean forest is also subject to increasing use by other migrant and transhumant pastoralist groups, some of whom are only now re-entering Guinea after having spent many years in Sierra Leone in order to avoid expropriation by Sekou Touré's regime. Such movement is increasing the incidence and complexity of resource competition with indigenous groups in circumstances where customary rights and the state's own formal rights over tree resources already conflict.

4.3. The land-locked Sahel

This sub-region includes some of the least as well as the most densely populated parts of West Africa. Large parts of Mali, Niger and Chad, for example, are sparsely populated, while northern Nigeria, southern Niger and central Burkina have become increasingly densely settled. Continued demographic growth will obviously result in higher population densities throughout the sub-region. With the singular exception of northern Nigeria, the land-locked Sahel is the least urbanised sub-region of West Africa - in 1990, the francophone states of the Sahel were only 22% urbanised. While urban growth is likely to continue, it is clear that this sub-region will remain more rural than the rest of West Africa.

Over the next twenty five years, a variety of land tenure and resource access issues are likely to emerge in the land-locked drylands of West Africa.

4.3.1. Issues related to migration

The relative proximity of the Gulf of Guinea sub-region and the intrinsically limited economic potential of the Sahelian drylands imply that out-migration to coastal areas from the Sahel will continue. Burkinabé, Malians, and Nigeriens will continue to be attracted to Côte d'Ivoire, where they currently number almost 3 million, representing the vast majority of Côte d'Ivoire's foreign-born population (estimated at roughly a quarter of the country's total population). It is also likely that Malians and Burkinabé will begin migrating in large numbers, once again, to Ghana. Chad and much of central-eastern Niger are also sources of migration to Nigeria and Cameroon - and this is likely to continue. Assuming that past patterns of migration hold true in the next twenty five years, most of these out-migrants will be seasonal or short-term (a few years), although some (perhaps as much as 20%) will eventually take up permanent residence in the Gulf of Guinea. It is estimated that by 2020, some 14 million francophone Sahelians (roughly 15-20% of their countries' total projected populations) will not be in their countries of origin. Although a proportion of total Sahelian out-migrants will seek work in Europe or elsewhere in the North, the vast majority will do so

in the Gulf of Guinea. And, within Ghana and Côte d'Ivoire (and probably Nigeria as well), there will be continued out-migration from the northern savannahs to coastal areas and cities.

In addition, there is likely to be a continued movement of people within the land-locked Sahelian areas, from the northern into the southern savannahs, where agricultural potential is much greater. Between 1960 and 1990, for example, large numbers of Mossi farmers have migrated out of the central plateau of Burkina and settled in the less densely populated, and more humid south-western parts of the country. **Similarly, as much as half the current population of Lake Chad migrated there since the 1970s, particularly from northern Nigeria.**

Access to land and resources elsewhere

What are the tenurial implications of these sustained and large-scale migratory flows? The scale of out-migration from the land-locked Sahelian countries and the northern savannahs of Côte d'Ivoire and Cameroon cannot be ignored in any thinking about appropriate social and economic policies for these areas. For these regions, circular migration will remain a crucial source of income to families left in the home area.

The ability of Sahelians to migrate is clearly of crucial economic importance to the livelihoods of their families. The wages and incomes earned by migrants in the coastal areas represent a vital source of revenue to many rural communities in the Sahel and in the northern savannah. Ensuring that this out-migration can continue and that it provides a maximum of benefits is thus an important issue for national governments in the Sahel, as well as for those countries which straddle both the drylands and the coastal regions. At one level, this will mean working towards the free circulation of labour⁸, especially between West African countries.

At another level, however, there are direct implications for land tenure. Historically, many Sahelian out-migrants have moved into rural areas further south, and not just urban centres. Indeed, the development of cocoa production in Ghana and Côte d'Ivoire was, in many ways, made possible only by the existence of migrant labour from the north. Even today, it is estimated that some 65% of Burkinabé migrants in Côte d'Ivoire live and work in rural areas, as labourers and as farmers in their own right. The ability of migrants from the Sahelian drylands - through a variety of arrangements, from share-cropping to outright purchase of land - to participate actively in the rural economies of the Gulf of Guinea sub-region has enabled some of them to profit substantially from economic opportunities.

The flow of migrants into rural areas is likely to continue in the future. Sahelians and northerners will almost certainly continue to constitute a large proportion of the agricultural labour force in the Gulf of Guinea, especially given that better education levels among local coastal populations will predispose them towards rural-urban migration. For in-migrants to benefit as much as possible from agrarian opportunities towards the coast, however, they will need to secure access to land. Given the increasing pressure on farm lands in the Gulf of Guinea sub-region, and nationalistic tendencies, migrants are likely to face a problematic future. For the Sahelian states and the populations of the West African drylands, then, one of the significant land tenure issues of the future is extra-territorial. This extra-territorial

⁸ Already provided for, in theory, by the ECOWAS treaty, but in practice often subject to political and bureaucratic vicissitudes.

dimension to land tenure issues for the land-locked Sahelian countries needs to be recognised by them and integrated into national thinking about land.

Out-migration and women

Historically, out-migration from the Sahelian countries and from the drier areas of the Gulf of Guinea countries has been dominated by young, adult males. Although there is evidence that women are becoming increasingly involved in out-migration from the Sahel, it remains the case that men are more likely to migrate (on both a seasonal and a long term basis) than are women. Given that out-migration from the West African drylands is likely to be sustained in the future, the implications of this gender-biased pattern of migration need to be examined.

In the drylands, out-migration by men implies a “feminisation” of agriculture, particularly when migrants are away for a year or more. Women have and will become increasingly important in terms of agricultural production and will take on greater responsibilities for household management in the absence of men (as has happened over many generations in southern Africa). As opportunities for production of food for urban markets within the Sahel increase, there is every likelihood that women farmers will be expected to meet this demand. They will therefore need to gain better and more secure access to agricultural land.

Existing tenurial arrangements, while by no means ideal for women farmers in the drylands, do seem to provide them with reasonable access to land (although it is often of low quality) through their families or husbands. Under customary systems, women have rights to use land on a long term basis, even if these rights are derived from their status as a married woman in a particular household. More modern tenurial systems, on the other hand, often lead to an erosion of women’s use rights to land, particularly when their customary rights are, as in the land-locked Sahel, largely derived from their status as wives, or daughters. Sahelian countries will need to consider carefully the implications of titling and/or registration schemes on a large scale, at an individual holding level, since experience elsewhere in Africa has shown that such systems usually lead to a decline in women’s rights to land.

Returnees and land

Out-migration from the land-locked Sahel has historically been circular: most migrants have usually left their home communities for a period of time (varying from a single season to several decades), and have eventually returned home. Over time, this process of circular migration has, inevitably, evolved with some migrants remaining in the areas to which they have moved, and others moving on again. Nonetheless, many migrants, at some stage or other, return to where they come from.

Returnee migrants, however long they may have been away, usually settle back into farming. Their ability to do so, in large part, has been derived from their customary rights in land and in the inalienable nature of property in most rural areas of the drylands. Dogon farmers from central Mali, for example, have been able to migrate to Côte d’Ivoire safe in the knowledge that on their return they will be able to farm their family lands by virtue of community membership. It might be argued that this customary security of tenure has been a further incentive to out-migration from the Sahel.

If out-migration is to remain a key economic strategy for substantial numbers of Sahelians, land tenure arrangements within the drylands will need to ensure that returnees can gain access to land in their home communities. Whatever might be the failings of customary tenure, one of its enduring virtues is its general resistance to outright land alienation. Any moves towards titling or registration of land tenure in the Sahel would need to take into account the implications to migrants and their communities who engage in circular migration.

4.3.2. Pastoral resources

Continued urbanisation over the next twenty five years will offer important economic opportunities to rural West Africans. This is particularly true for those agrarian populations living in proximity to major urban food markets. Urban growth also implies a rising demand for livestock products, particularly meat.

Increasing demand for meat in the urban systems of the Gulf of Guinea (as well as in the Sahel) will represent a significant opportunity for livestock producers in the drylands of the interior. Livestock production is unlikely to develop to any significant extent in the coastal areas, for epidemiological reasons. The northern drylands, on the other hand, are particularly well-suited to pastoralism: large parts of the Sahel, in fact, can only be used by pastoralists⁹. Livestock exports from the land-locked Sahelian countries, which have received a welcome boost from the devaluation of the CFA franc in early 1994, already account for a significant proportion of total exports (representing the second most importance source of export earnings in Mali, Chad and Niger). The “pastoral opportunity” afforded by sustained urban growth has important implications for land tenure in the drylands.

At the moment, pastoralists in the West African drylands have little in the way of legally recognised tenure security. They can do little to resist the steady encroachment of farms onto the arid rangelands or into northern wetlands (such as the Inner Niger Delta in Mali) which are so vital to Sahelian pastoralism. In the southern Sahel, where land is becoming scarce, herders face increasing problems in gaining access to remaining pastures. If pastoralists are to profit from the opportunities offered by growing urban markets for meat, the issue of pastoral land tenure will have to be addressed. In doing so, tenure systems must be tailored to the specific demands of dryland pastoralism, taking into account the need for flexibility, mobility and access to water as vital principles of pastoral production.

Providing pastoralists with tenure security, and thus enabling them to respond to future opportunities, will not be easy. A first step would be for national and local authorities to recognise the importance of pastoralism, both as a way of life for a large minority and as a strategically significant economic activity. In many respects, this is a question of identifying pastoralism as a legitimate development option **and recognising that grazing is a productive use of land (*mise en valeur*)**. Efforts will also need to be made in order to protect the rights of access by herders to wetlands, as well as to provide them secure rights in water points, such as wells and boreholes.

⁹ In the Sahelian zone, 20% (78 m. ha) of total area is best suited to pastoral production, and only 7% (13 m. ha) to arable farming. For the savannah areas (Sahelo-Soudanien-Guinean), the trend is even more marked - 54% of the area is best suited to pastoralism, and 37% for arable farming (see Rochette 1998).

Livestock are also, and will continue to be, vitally important to farmers in the land-locked Sahel, where the opportunities for agricultural intensification are often predicated upon the use of animal traction and manure. For Sahelian farmers, acquiring livestock is also the most important way of saving surpluses and thus being able to make up production shortfalls in years of drought. There has been a consistent increase in the numbers of livestock owned by farming groups in the Sahel, particularly among those who grow cotton. Given that many of the livestock herds which have been built up by peasant farmers in the Sahel continue to rely upon access to grazing commons and wetlands (particularly during the farming season), **farmers also have a strong interest in securing these areas for pastoral use. Accordingly, the formal recognition granted to grazing and other forms of pastoral resource management in agricultural areas will be important in assuring the future of pastoralism and livestock production in these regions.**

However, the increasing importance of livestock holdings among farmers in the Sahel will reduce the degree to which they depend on traditional pastoral groups for obtaining manure and other livestock products. This implies that sedentary farming communities in the Sahel will seek to reduce the access of more mobile pastoralists to “village” lands, thus increasing the likelihood of conflicts between them.

4.3.3. Fuelwood and access to natural forests

Although the Sahelian sub-region (excluding northern Nigeria) will remain one of the least urbanised parts of West Africa, it is nonetheless expected that, by 2020, some 40% of the area’s total population will be living in towns of 5,000 or more. National capitals, in particular, are expected to at least double in size over the next twenty five years. For the foreseeable future, these urban centres will continue to rely on fuelwood for most of their domestic energy needs - and will therefore depend on increased forest exploitation.

Given the relatively fragile ecology of the area, this poses particular problems. Natural forest cover in the Sahel, although more productive than was once thought to be the case, clearly has a limited capacity. Badly hit by the last 25 years of low rainfall, the immediate environs of major cities in the Sahel have been largely depleted of their commercial fuelwood supplies - woodcutters supplying, for example, Niamey and N’Djaména (both of which are comparatively small cities) already operate at a distance of over 100 km. This has obvious implications, both for ecological sustainability and for the continued availability of domestic energy supplies for rural communities.

In addressing this issue, there is a clear need to consider the promotion of local rules or by-laws, which would enable rural communities to manage forest resources in ways they see fit and establish binding rules for their exploitation. It is rural communities which have the greatest incentives to ensure sustainable resource use and who should be able to profit from it. This implies a radical devolution of control over forest resources, from the State (which, in most countries, continues to exercise a notional monopoly over forest tenure) to local communities. Reforms under way in Niger since the early 1990s and replicated elsewhere in the Sahel, provide a valuable starting point in this respect. There has also been considerable local-level experimentation in Mali (based on the use of “local conventions” for community management of forest resources), which could provide valuable insights for the future. An example of this from the Siwaa villages near Koutiala, Mali, demonstrates some of the

potential benefits but also the considerable difficulties of getting joint agreement by villagers regarding their respective rights and interests.

4.3.4. Irrigation and flood recession farming

While the most important component of food production in the Sahel currently derives from rainfed farming, the continued growth of urban markets within the sub-region will provide increasing incentives for the development of irrigated agriculture. Irrigated rice production - an urban staple par excellence - is especially likely to grow in response to demand. In addition, due to irregular and often inadequate rainfall, there are considerable incentives for dryland populations to adopt flood recession farming techniques - the recent, rapid expansion of flood retreat sorghum cultivation in Chad is one clear demonstration of this.

The land-locked Sahel has considerable potential for irrigated agriculture, as well as for flood recession farming. The valleys of the Senegal and Niger rivers, numerous low-lying and marshy patches, and the Chari-Logone riverine system all represent areas where irrigated farming can expand and where flood retreat farming can be developed further. In Mali, in particular, the Office du Niger irrigation scheme - developed during the colonial era and institutionally redynamised in recent years - is likely to expand.

Several land tenure and resource access issues are likely to emerge in areas appropriate to irrigation and/or flood retreat farming. Firstly, it will become increasingly more complicated for livestock herders to gain access to these areas - which contain not only crucial water resources, but also vital dry season pasture. Secondly, the relatively high value of such land, coupled with its uneven distribution among Sahelian communities, is likely to result in complex tenure arrangements as the landless seek to profit from irrigation and flood retreat farming by negotiating access with those who hold rights in the land. Thirdly, and this applies to intensive irrigation (increasingly common in the Niger and Senegal valleys), the need for substantial capital investments (plus the potentially good returns from rice production) will often imply public (state/donor) or private sector involvement. **Fourthly, there are likely to be increasing tensions, similar to those already experienced in northern Nigeria, due to the detrimental impact of large irrigation schemes on flood recession farming. In all these cases,** there will be issues related to expropriation/appropriation of land and trade-offs related to equity. All of this leads to the inescapable conclusion that the river valleys and wetlands of the Sahel are going to be potential arenas for conflict related to resource access and the principal ecological zones within which new land tenure arrangements will evolve in this sub-region.

4.3.5. Developments in the rainfed farming areas

In a few areas of the land-locked drylands, where for historical reasons population densities are exceptionally high, continued demographic and urban growth will result in very great pressures on the land. In areas such as southern Niger, northern Nigeria, and central Burkina, land tenure and resource access issues (intensive land transactions, some landlessness, fragmentation of holdings) similar to those identified for the coastal lands of the Gulf of Guinea might be expected to arise.

In northern Nigeria, in the Kano close-settled zone (KCSZ), population densities have reached extraordinarily high levels (300 persons/km²) - elsewhere, although uncharacteristically high for the drylands¹⁰, they do not exceed 150 persons/km². As has been shown for the KCSZ, heavy pressures on agricultural land have not translated into significant levels of land alienation, landlessness, or inadequate farm size. Customary tenure has allowed a high degree of agricultural intensification in association with a diverse range of off-farm incomes. Assuming that similar processes are likely to happen around other growing urban centres in the drylands, customary tenure systems are likely to cope with the resulting pressures and changes. In many of these areas, the continued close integration of livestock and crops offers real possibilities of sustainable intensification, unlike in the coastal zone.

In other areas of the southern Sahel, such as the cotton-growing zones of Mali, Burkina and Chad, agricultural intensification is also taking place within the framework of customary tenure systems. Up until recently, partly because land has been relatively abundant in these areas, few problems have arisen. Today, however, population growth, in-migration and the expansion of farmland (in response to market opportunities) have resulted in increasing saturation, which will be sustained in the next two decades. Customary tenure systems should be able to cope with such pressures, although they are likely to become increasingly "exclusive" and less willing to allow "strangers" to settle.

In all these areas, livestock raising is, and will remain, a significant economic activity. Any movement towards a formalisation of individual property rights would increase the extent to which farmers seek to exclude livestock from local areas. There will also be a tendency for farmers to reduce access to their land by herders claiming secondary rights and more cases of enclosure - but facilitating this through formal procedures for registration may not be appropriate given the agro-pastoral nature of the economy.

As land becomes increasingly scarce in some parts of the Sahel, one response will be for farmers to migrate into other areas. Large parts of southern Mali and Burkina, where river blindness has been eradicated, will continue to experience in-migration of farmers from regions where land has become scarce. This will reduce tenorial pressures in some high density zones.

Particular cases, however, such as wetlands within dryland areas, where land markets continue to develop, may merit some institutional innovations (such as limited registration schemes) in order to avoid land tenure problems in the future. But it is very important not to allow these cases to become a pretext for nation-wide changes. Large parts of the Sahel (much of Chad, central and northern Mali, for example) remain relatively under-populated and will probably be able to accommodate further population growth without undue stress

4.4. The Atlantic Sahel

The Atlantic Sahel region has much in common with the landlocked Sahel, and is

¹⁰ The heart of Senegal's Groundnut Basin has average population densities of 141 people/km²; northern Ghana and Togo have densities reaching about 120 persons/km²; and the central plateau of Burkina has an average population density of 55 people/km².

subject to similar trends influencing the development of land relations. These include: out-migration from less productive areas in search of agricultural and urban opportunities elsewhere; growing pressure on fuelwood sources; population growth and farm intensification in the higher rainfall areas and irrigable river basins; and diminishing land and resource access for pastoralists.

The Atlantic region also presents a number of peculiar features, however, which merit separate consideration. Agricultural potential is limited since usable land areas are relatively small as a result of aridity; the sub-region is more active than others in terms of international trade with distant countries, and it receives higher per-capita aid flows than any other grouping of countries in West Africa (in 1990, the four countries of the sub-region received between US\$ 108 to US\$ 328 per capita in aid, roughly twice as much as the next most aided countries in West Africa). With urban populations accounting for between 32% (in Gambia) and 43% (in Senegal) of total populations, the sub-region is also much more urbanised than the land-locked Sahel. The sub-region also enjoys per capita incomes which are considerably higher than those of the landlocked Sahel (in 1990, roughly US\$ 500 per capita as opposed to less than US\$ 250 per capita).

4.4.1. Dualism and its consequences

Throughout the Atlantic Sahel, as elsewhere in West Africa, from the colonial period onwards the state established its eminent domain over national territories, so that today land rights originate from parallel systems of customary and formal law. The resulting dualism underpins the competition for land between the state and rural people, especially in areas where the state exerts its authority to allocate land to public schemes and private investors.

Broadly speaking, formalised and customary systems of tenure co-exist in both Senegal and Gambia, although Senegal's legislation extinguished the legitimacy of customary systems of land management. Customary tenure persists to some extent, however, for lands which although formally controlled by local councils (*Communautés Rurales*) remain unregistered. Colonial settlement and external investment in land have not been significant, and arbitrary private land allocation by the state is not a general problem. As a result, restrictions on customary land holdings and rights are confined to peri-urban areas and project development sites; in these cases, however, the allocation of private land rights to farmers has led to conflicts with herders. In addition, there are problems of arbitrary taxation by local authorities on inheritance, in Senegal, where succession of land rights is not automatic and requires re-registration

The state has not up to now recognised the authority of village level institutions over extensive natural resources other than land, such as forests and pasture, and customary rights to grazing forage and bush products are not effectively protected in law, weakening the resource security of livestock keepers. However, the most recent revision (1997) of the

Senegalese forestry code does allow for a greater degree of community control over forest resources.

4.4.2. Demographic change

Urban growth

The Senegalese capital Dakar and Banjul in the Gambia with their large peripheral settlements are the major centres of urban growth in the sub-region. In response to increasing urban demand, farmers have been diversifying into a range of market garden crops, and over the next 20 years or so agricultural markets can be expected to grow and become more integrated across the western Senegambian region, even extending north into irrigable land in southern Mauritania and south into Guinea Bissau. However the growth of market production and ensuing changes to patterns of land occupancy and tenure will very much depend upon buoyant demand for farm produce amongst urban and returning international migrants. This is by no means assured, and will depend in turn on growth in manufacturing, international trade, and opportunities abroad. Given the relative scarcity of land, not all farmers in the western Atlantic fringe will be able to become entrepreneurs supplying urban markets, and this may lead to growing socio-economic differentiation in rural areas and growing demand for off-farm employment.

Migration

Owing to lack of domestic opportunities and its relative distance from the Gulf of Guinea coast, international emigration outside West Africa is higher for the Atlantic Sahel. For Senegal in particular, urban in-migration from impoverished rural areas (particularly the groundnut basin) is important and likely to grow, creating demands for creation and diversification of employment of national income.

Migration *between rural areas* is also growing, notably in eastern Senegal where farmers from the crowded and ecologically degraded groundnut basin have continued to settle. Until the region can secure new economic opportunities for its people at home or abroad, conflicts deriving from resource competition and parallel sets of rights are liable to grow, exacerbating the difficulties faced by the poor and less-empowered, such as pastoralist groups.

For decades, the Cape Verde islands have witnessed high levels of out-migration mainly to Portugal, elsewhere in Europe, and the USA, rather than within West Africa. Owing to extreme aridity and low levels of economic development, today more Cape Verdeans live beyond national boundaries than within them.¹¹

4.4.3. Irrigation and riverine land

¹¹ Land holding in Cape Verde is entirely distinct from the Sahelian mainland, in that there was no pre-existing system of indigenous tenure since the archipelago was uninhabited prior to occupation by the Portuguese and the settlement of slaves. A system of titles for large landholders was established, and land was worked by peasant farmers under sharecropping arrangements. Most land holdings today derive from inheritance and sale of freehold and leasehold titles. Successful arable production relies on access to terraced hillsides, or valley bottom land, and irrigation water, generally harvested or pumped at relatively high costs, supported by external aid.

Low rainfall and poor water retaining capacities of local soils have brought a strong dependence on irrigation to boost farm productivity, supply urban markets and to provide farming opportunities for surplus rural labour. Accordingly the Senegal, Gambia and in future, Casamance, river basins will continue to be important centres for land development, settlement and enterprise development for Mauritania, Senegal and Gambia. However the combination of complex sets of pre-existing customary riverine rights, and the development of modern irrigation, has led to an increasing incidence of disputes, especially where the tensions between alternate sources of legitimacy (customary, Islamic and modern law) remain unresolved. In Mauritania, in particular, where the question of access to land in the Senegal river valley has become highly politicised, tensions will continue to be especially severe. The river basins will thus be a focus of concern for tenure relations, and they are likely to require sustained, well-informed state intervention over the years to come.

There is further potential for irrigation development in the Casamance Basin but this is also problematic. Casamance has already been subject to military conflict arising from the regional secessionist response to rule by northerners imposed from Dakar. One aspect of the problem has been the in-migration of northern farmers, claiming statutory rights to plots of land on state-sponsored irrigation schemes, such rights coming into conflict with indigenous claims. In more general terms, the administration in Casamance has been dominated by northerners who have also benefited from privileged access to services and opportunities, including formal land allocation.

4.4.4. Pastoral resources

Agro-pastoralists, including settled farmers from a variety of ethnic groups, and transhumant pastoralists, (predominantly the Fulani) predominate amongst rural populations of the Atlantic Sahel mainland.

In Senegal, despite official recognition of customary tenure and a high degree of administrative decentralisation, pastoralism is not widely recognised as a productive form of land use, and herders' resource rights to pasture, forage and water sources are not effectively protected in law. Resource competition between farming and herding, an established feature of the rural scene in Senegal, also occurs in Gambia and Mauritania, and can be expected to increase across the sub-region as rural land pressure and urban growth continue. This is particularly detrimental for pastoralists as a result of tighter control by farmers over access to grazing, fodder, and crop residues as their own livestock holdings have expanded.

The principal areas of resource competition for transhumant pastoralists are:

- riverine lands: notably the Senegalese and Mauritanian portions of the Senegal river valley, and the associated Lac de Guiers, where irrigated agriculture has colonised floodplain pastures and obstructs herders' former access to watering points. Similar difficulties are associated with irrigation development along the Gambia, and Casamance rivers
- the coastal Niayes area of Senegal subject to expanding urban settlements and both private and public development of commercial horticulture to supply the growing markets of Dakar and Saint Louis

- the “peanut basin” in which the power and influence of Mouride religious leaders and local elites have allowed them to exclude pastoralists and organise large scale clearance of forests and rangelands for the lucrative, but environmentally degrading groundnut monoculture
- eastern Senegal, where the state encourages agricultural re-settlement from the now overcrowded and degraded peanut basin
- the Ferlo area of northern Senegal where livestock populations have become tightly confined, dependent on borehole water, following the development and settlement of coastal Niayes, the Senegal valley and eastern Senegal.

Reversals of these trends depend upon pastoral and agro-pastoral groups securing adequate representation in regional and village level planning processes through rural councils, and other local decision making bodies, coupled with legal safeguards protecting pastoral access to key range resources such as fallback grazing areas and strategic dry-season water points.

4.4.5. Forests, fuelwood and common property resources

Remaining woodlands in the Atlantic Sahel are under increasing strain as a result of growing urban fuelwood and charcoal demands, increasing agricultural clearance, and continuing pastoral use. In the Gambia, growing competition exists between local communities, on the one hand, and the state and private developers, on the other. Forest and wetland conservation, as well as land allocation to private developers, are important for the growing tourist industry, which now earns more revenue than agriculture. The Casamance region of Senegal will come under similar pressures if political and security problems cannot be resolved. However, further tourist development in Casamance could create further grounds for conflict unless the local Djolla people are given a clear stake in decision-making processes and concrete opportunities to benefit from the new opportunities generated by tourism.

5. CONCLUSIONS

5.1. Common Issues

Over the next twenty five years, West Africa will experience continued population growth, migration and a sustained process of urbanisation, occurring at varying degrees of intensity, depending on the sub-region. West Africa will need to increase agricultural productivity and production if it is to be able to feed its growing population and to satisfy urban demand for food. There will be major economic incentives to do this in areas which are close to markets; in addition, in many areas there are technical opportunities for intensification.

In most areas, customary tenure systems have not been an obstacle to increased agricultural production. They have demonstrated themselves to be robust and adaptable and it is likely this will remain so. As commercial opportunities have emerged, most customary tenure systems have evolved towards greater individualisation of rights, thereby providing farmers with the incentives to invest in agriculture. This does not mean that customary systems will become entirely individualised or privatised. For most West Africans, customary tenure

regimes have provided farmers with the security they need without having developed into private property systems.

Where land comes under increasing pressure and becomes more valuable, however, the stakes are rising, and claims over it will proliferate. The contradictions between customary and statutory tenure arrangements have already increased insecurity and are likely to exacerbate it in the future. Claims made on the basis of statutory laws, contesting the legitimacy of customary rights, will make the latter less secure, **and may discourage investment by customary land holders in improvements for fear of losing their land. It is important to note, however, that some people may make investments in order to strengthen their claims.**

Insecurity of tenure for traditional landholders will translate into even more uncertain rights for traditional land-borrowers. The former may seek to constrain derived rights granted to “strangers”, in order to minimise the likelihood of their own primary rights being eroded away by outsiders. Migration of rural people in search of land and grazing has been of great significance throughout the West African region, as a mechanism for assuring access to livelihoods on a seasonal or longer term basis. Processes which discourage this flexibility of access to resources will have adverse consequences for many West Africans, particularly from the poorer drought-prone Sahelian countries for whom migration has been of vital importance for balancing household and national budgets.

Sub-regional differences and local specificities

The importance of certain land questions will vary from one sub-region to the other, or even from one zone to another. Issues associated with migrants, for example, would be most evident in the coastal areas of the Gulf of Guinea and in those areas that have experienced significant out-migration, including implications of circular migration, e.g. in the drylands. Those related to pastoralism and pastoralists, on the other hand, will primarily concern the drylands. Issues linked to subdivision of holdings, land markets, landlessness and temporary transfers of land will be most apparent in peri-urban areas throughout the region, in a few major historical concentrations of people, and in the Gulf of Guinea as a whole. Issues related to irrigation will, for the most part, affect the drylands.

Many of these concerns are rooted in particular historical paths and certain kinds of agro-ecology which points to the importance of searching for locally specific “solutions” and strategies. Likely problems in the Gulf of Guinea sub-region will not be the same as in the land-locked Sahel. The issues at stake in peri-urban areas may not be found elsewhere.

5.1.1. Marginalisation and poverty

As has been shown, current tenurial arrangements may have adverse consequences for certain groups. Pastoralists, in particular, have uncertain access to key resources on which they depend. In the Gulf of Guinea, migrants may also encounter increasing insecurity as the pressure on the land grows and as indigenous groups renegotiate the terms under which “strangers” can settle and farm. As land becomes scarce, the terms under which it is lent or rented out to others may well become increasingly unfavourable to the tenant. Women will also find that their access to land becomes increasingly tenuous. Low status or “caste”

groups, whose rights are already fragile, will become increasingly vulnerable. These cases pose problems of equity, as well as of productivity. As a result, there is the real risk of growing socio-economic differentiation, greater structural inequality, and a steady deepening of poverty in the region linked to exclusion from land.

Such tendencies, towards greater “exclusion” of certain groups through customary tenure regimes, will be exacerbated by land tenure policies (such as registration and titling schemes) which do not resolve the contradictions between statutory and customary rights. Sustained, or more marked, dualism in tenure arrangements will further weaken the rights and security of those who face progressive marginalisation.

5.1.2. Land competition and risks of land conflict

Throughout West Africa, the next twenty five years are certain to see more intense competition and more frequent conflicts over land and natural resources, due to growing population pressures and the increasing value of land and resources. The pluralistic nature of tenure often underpins resource-related conflicts as competitors for the same land or resources can appeal to entirely different, and irreconcilable tenure systems.

Arenas of competition and conflict are likely to be several, and include those:

- between herders and farmers, over access to pastoral resources and over damage to crops. This kind of conflict is likely to be concentrated in the Sahelian wetlands and in the rainfed farming areas of the drylands where farm densities are rising or where fodder resources have become increasingly valuable to farmers;
- **between different groups of herders, notably over grazing areas and their associated water points. These are occurring in parts of the Sahel and in some cases result in armed conflict;**
- between neighbouring communities, as their members progressively occupy the whole of their respective territories and thus raise issues related to the boundaries between traditional tenure jurisdictions. This is most likely in the more densely populated areas, especially in the Gulf of Guinea, where the boundaries between the customary territories of villages and lineages are often poorly defined;
- between indigenous and migrant farmers, as the former seek to circumscribe their existing rights to land and as the latter seek to gain access to land or defend their interests. Because of historical and future opportunities, this kind of conflict will be most apparent in the Gulf of Guinea sub-region, although it will clearly affect all areas into which in-migration occurs;
- between urban elites and peri-urban populations, as cities expand and as the incentives for speculative land acquisitions and sales grow. The continued growth of cities in the Atlantic Sahel and the Gulf of Guinea is likely to generate many such conflicts;
- between and within generations as land becomes scarcer and holdings smaller. This is already occurring in the Gulf of Guinea, particularly where senior customary landholders have already alienated land to migrants, thus reducing the land available to their own juniors;
- between the state and customary landholders, particularly in areas of gazetted forests where competition for agricultural land or non-timber forest products

arises, or in areas which have the potential to support development projects, such as large-scale irrigation schemes. The latter will be localised, above all, in the drier parts of the region.

Competition for land and resources is part of everyday life. Of importance to policy is the extent to which such competition gives rise to serious and enduring conflict, and the ways in which such conflicts are settled.

5.1.3. Urban development and peri-urban pressures

Throughout West Africa, as cities continue to grow, peri-urban issues will become increasingly significant. In many respects, the kinds of land tenure issue in peri-urban areas are similar to those elsewhere - but will, however, be felt more intensely.

In these peri-urban areas rural groups are most likely to lose control over land. As land values rise, farmers for whatever reason (distress, fragmented holdings), may wish to sell their land and will find ready takers, particularly among speculators. Where land is still largely under the control of customary authorities, the latter may be tempted to accrue short term benefits by selling off land for housing and other urban developments. Alternatively, governments will expropriate rural land for urban development. Either way, villagers are likely to find themselves deprived of the lands they farm under customary arrangements.

Further from urban centres, beyond the area suitable for housing and other urban forms of land use, small farmers will face increasing competition from agri-business interests, keen to satisfy the urban demand for food. It is here, at the outer peripheries of West Africa's growing cities, that large-scale, mechanised, and capital intensive farming is most likely to develop, with serious implications for the security of tenure of smallholder producers. Although this more "modern" type of farming may be no more efficient in terms of yield/ha than smallholder agriculture, returns to investment can be substantial. The growing trend of urban elites developing such interests is certain to continue, and will probably lead to greater dispossession of land among indigenous groups.

The extent to which urban and commercial encroachment will result in landlessness depends on how far the original landholders manage to gain compensation, with which they will subsequently be able to purchase new land for themselves. West African states, however, do not have a good record on this; in addition, customary elites (as in Ghana) have not always ensured that their traditional "subjects" receive their "share" of the proceeds of land sales. It is therefore probable that landlessness here will be a key issue - unless measures are identified and implemented for ensuring that land alienation is accompanied by equitable compensation. But even if compensation is paid - as is often the case when private buyers purchase peri-urban land - it is by no means certain that people will be able to acquire land elsewhere and/or identify alternative non-farm means of employment.

5.1.4. Gender issues

With a few exceptions in the Gulf of Guinea, women in West Africa have generally not exercised direct control over land, although many women have been *de facto* land managers

working on behalf of their husbands and kin. This is unlikely to change over the next twenty five years. Their role in agricultural production, on the other hand, is likely to become increasingly important throughout the region, as they respond to market opportunities (as in southern Nigeria), and as out-migration takes men away from the farms (as in the Sahelian areas). They will also become more important as processors and retailers of food products.

Interventions aimed directly at improving women's rights of access to farmland face several difficulties such as the entrenched cultural and religious norms in place in much of West Africa. At the same time, state legislation in favour of greater rights for women would probably be inoperable. It is clear however, that customary tenure systems usually provide women with a degree of access to land, even if it is only indirect, whereas titling schemes tend to deprive them of these limited rights. Even within customary tenure systems, and as competition for land throughout West Africa increases, women are likely to find their limited rights to land under increasing pressure. Many of their rights are also of a derived or secondary nature (access to tree products in fields, seasonal access to gardens, etc.), which further exacerbates the problem. Because women are so often the most weak politically, they will have great difficulty in defending their claims to land and resources.

There would seem to be two main ways forward. On the one hand, much more could be done to enable women to profit more effectively from their limited access to land and other resources. Providing women with easier access to agricultural credit, marketing facilities and food transformation technologies, would go some way towards compensating them for their intrinsic insecurity of tenure. On the other hand, women's relative powerlessness within tenure systems is a reflection of their overall political marginalisation in West Africa - and providing support to institutions (such as savings and credit groups, neighbourhood associations, etc.) which represent their concerns would contribute to a process of their gradual empowerment.

5.1.5. Common property resource management

Throughout West Africa, common property resources (CPRs) will come under increasing pressure. Not only will the expansion of farmland result in encroachment on forested and "bush" areas, but increased population numbers (urban and rural) will imply a growing offtake from a diminishing resource base. In densely populated areas, communally owned forests and land may entirely disappear. This will be particularly acute in the drylands, but even parts of the coastal forest sub-regions will experience similar problems. In the drylands, common property water resources will also come under pressure.

Where many tree, "bush", and CPR products are currently harvested from fallows or fields, as in many parts of the forested areas and in the more densely settled drylands, there are likely to be increased problems associated with access. Firstly, as agriculture intensifies, fallow will decline, thus reducing the overall availability of CPR products; secondly, as farm tenure becomes increasingly individualised, multiple use rights (which provide people with access to tree and "bush" products) will become more contested and difficult to uphold.

Access to CPRs has always been important to poorer, less successful farmers. Women, in particular, tend to depend upon CPRs to a greater extent than do men. They furnish rural people with a range of vital products - fuelwood, construction materials, fruits, wild grains,

pasture, water, fish, without which their livelihoods would be much poorer and more vulnerable. For pastoralists, the importance of these resources cannot be over-estimated, and their maintenance is crucial to the continuance of the West African livestock economy.

For many CPR systems, the current incentives for sustainable management are inadequate. Almost all of West Africa's forestry services, initially established and profoundly shaped by colonial policies, retain both a particularly interventionist mindset and theoretically a very powerful control over many CPRs. This has made it very difficult for local resource users to control resource exploitation or to invest in their reproduction. There are, as has been noted for the land-locked Sahel, signs that changes are taking place, but reforms are needed on a much larger scale.

It is worth noting that forest resources in the high forest zones of the Atlantic and Gulf of Guinea sub-regions pose a special problem here. The timber from these forests has a high commercial value; they are, and will remain, the objects of exploitation by large timber companies, which generate significant royalties for the states and foreign currency for the countries in question. At the same time, they provide local users with important quantities of non-timber forest products. Reconciling these different uses and needs will not be easy. In some areas, high forest resources have been rapidly depleted; in others, particularly in Cameroon, they remain significant. The issues and options available, then, will vary from country to country.

5.2. Implications and policy issues

The complexity and diversity of situations within each country in West and Central Africa are such that no single solution will fit all circumstances. It will be necessary, therefore to construct legal and institutional systems which are tailored to meet national and local needs. There are, however, certain key issues which will require attention.

5.2.1. Clarifying customary and statutory tenure

State and donor intervention in land tenure in West Africa could usefully help to clarify tenure rules and the processes whereby land rights are allocated and competing claims resolved, to mitigate the uncertainty and insecurity which results from dualistic land policies. Clarification involves defining the circumstances within which customary law, or formal tenure arrangements should operate. Clarification does not involve the exhaustive specification of such rights in detail, since it is precisely the negotiability and flexibility of such systems which constitute central principles of customary systems. In the absence of a clear, transparent articulation between the two types of system, promotion of land registration will most likely increase confusion and undermine security for both farmers and herders, exacerbating land disputes, poverty, and poor land management.

For better or worse, customary tenure arrangements constitute the operational rules in most places. Thus, a continued commitment to broad-based statutory laws will only sustain the ambiguities, tensions, and conflicts engendered by the dualism of customary and formal laws. Customary tenure systems are profoundly anchored in West African societies and their values. By contrast, national codes frequently reflect the interests of national political elites,

and may often not act in the interests of rural groups. It is also quite clear that West African states, with their limited financial resources, are limited in their capacity to implement their land and resource management legislation and this is unlikely to change in the foreseeable future. Finally, no laws can be omniscient - the diversity of contexts and situations in West African countries is considerable, and it is highly improbable that national land tenure codes can take this into account.

There is therefore a strong need for West African states to recognise customary tenure systems in the short term and clarify the circumstances under which customary and statutory rules apply.

One way forward would be to limit the scope of statutory rights. For example, the opportunity for registration of title to specific areas could be restricted to certain areas where land is coming under very heavy pressure, such as urban and peri-urban areas, along main trunk roads, and within development scheme areas. If registration were no longer possible outside these areas, customary rights would be secured by default. Equally, states should circumscribe the extent to which they are able to expropriate land, by more clearly defining the conditions under which this could happen and by legally enacting a process of prior consultation and adequate compensation.

To suggest that customary tenure systems need to receive increasing recognition, is not to assume that customary institutions are necessarily optimal. In some cases, customary institutions and laws are of declining influence - under such circumstances, defining what is customary would be difficult. In others, it is clear that customary institutions have lost a good deal of their authority, especially in relation to their capacity to resolve conflicts between different categories of resource user. There are also grounds for arguing that some customary authorities no longer operate in the interests of their traditional constituencies, particularly in peri-urban areas and in some rural areas where land has attained a high value. In addition, although many customary systems do allow for a degree of equity, there are cases where they do not provide all social categories with equitable access to land and resources - this is often the case for women, as well as for traditionally low status groups (such as former servile groups).

5.2.2. Approaches to land registration

Security of tenure and registration

The primary purpose of land registration is to enhance security of tenure, to safeguard farmers against eviction and poverty, and to promote agricultural production. Because land registration is often linked to state intervention in favour of private enterprise and the emergence of a land market, the usual model of land registration has been private titling. Although land registration is frequently associated with the introduction of individual leasehold or freehold title, it is not the same thing.

The rationale for land registration, and titling, is founded on the widespread misunderstanding that customary tenure systems are insecure, whereas in fact they have provided considerable security not only to land holding individuals and families, but also to secondary right holders and land borrowers such as women and sharecroppers. It is also

argued that registration of private title is necessary to facilitate investment and formal credit from the banking system. However, indigenous forms of credit are common in West Africa, and registration has not led to significant increases in the supply of formal credit. Where there are markets for surplus farm produce, farmers in West Africa appear to have adequate land security and production incentives within customary systems.

Finally, it is worth noting the disadvantages of land registration drawn from experience throughout Africa, and commonly cited in the literature:

- widespread land registration is highly costly for the state, requiring the maintenance of a centralised system for land survey and administration;
- in practice widespread land registration is very time consuming and almost impossible to effect; legislation permitting or requiring registration is widely ignored;
- once land is registered, informal, unregistered land transactions invariably continue, along customary lines, and registers rapidly become out of date;
- local elites and outside investors generally have privileged access to formal registration systems and can exploit these for their own ends, often to the detriment of customary right holders;
- conversely, survey and registration fees, illiteracy and bureaucratic processes create strong disincentives for poorer rural people to register land;
- registration campaigns are unable to take account of the full range of customary rights and they frequently undermine the security of women, other subsidiary right holders, and whole communities' claims over common resources, leading to increasing disputes and insecurity.

Land registration under some circumstances

There are however some *circumstances in which land registration would appear to be indicated*:

- where indigenous tenure arrangements are absent or extinct;
- where there are frequent disputes amongst competing claims, e.g. as a result of high levels of in-migration, or inter-group conflict, not amenable to resolution by indigenous institutions;
- where project interventions such as intensive irrigation reorganise productive relations and create needs for resettlement.

Such circumstances do arise in West Africa, notably in peri-urban areas, irrigation schemes, and in other zones subject to in-migration and land competition.

In assessing the relevance of registration in West Africa, there are some important issues to keep in mind:

- disputes can often be resolved by indigenous institutions; these in fact are commonplace, but in some circumstances their legitimacy may not be recognised by the state;

- project interventions, (e.g. irrigation in the Senegal valley) have usually been conceived without regard for customary land management in the area, but in practice projects do not necessarily require their complete replacement;
- in some areas, such as southern Ghana, customary tenure arrangements may be gravitating towards individual tenure. Here, land is densely populated and commodity markets are influential, with land held securely by heads of household and buoyant indigenous land markets. These features alone, however, do not necessarily imply a need for registration by the state. Customary arrangements for inheritance, leasing, tenancy, land-borrowing and even sale may be quite adequate, and in some cases registers may even be operated by customary institutions themselves (e.g. the Asantahene's land office in Kumasi, Ghana);
- in some cases land allocations and transactions may be subject to abuse by land holders and customary authorities who instead of acting in the interests of their kinsfolk, practise land speculation, accumulation, and / or sale for private gain. This tends to occur where demands for urban settlement or rural development projects are raising land values. If the interests and rights of less powerful community members and secondary right holders, are damaged by the behaviour of traditional leaders and the breakdown of custom, there is a case for state registration of land and the regulation of land transactions.

Relevant approaches for West Africa

In those cases where land registration may be necessary in West Africa, how should it proceed? The evidence concerning existing experiences of registration in Africa, suggests the following:

- registration need not introduce title (assuming the state maintains radical title, or eminent domain) but rather seek to ratify and document secure, and less secure, customary rights;
- registration can be conducted on an individual, household or a community basis. Where village communities have viable customary institutions for land management, and rights are not highly individualised, a community approach is preferable;
- simple, transparent decentralised administrative systems are required, which build on and link with functional customary institutions, where these exist;
- full prior consultation with the different social groups affected by a registration process and arrangements for their representatives to participate in management of the process are required.

5.2.3. Mechanisms for conflict resolution

Increased competition for and conflict over resources in the next two decades is inevitable and underlines the need to find mechanisms for acceptable adjudication of disputes. Earlier it was suggested that the scope of statutory rights be limited to very specific circumstances (such as urban and peri-urban areas). This should reduce some of the potential for conflict, by making clear the principles which will guide decision-making in a given context.

However, there will certainly be plenty of room for disagreement among land users in other areas.

Role of customary mechanisms

A first step in the right direction would entail the state recognising and upholding the initial “primacy” of customary authorities, such as village, *canton* or paramount chiefs, in settlement of disputes. This would imply that litigants would, in the first place, have to take their disputes to customary authorities, rather than being able to turn immediately to the administration or state judiciary. Only in the event that conflicts cannot be resolved at the customary level should they be allowed to be taken any further. This is a far from perfect solution, but would prove positive in many cases.

The way in which conflicts are resolved by customary authorities is sometimes problematic and likely to become increasingly so. On the one hand, social change has often resulted in customary authorities enjoying rather less power and authority than was once the case; on the other hand, they are no longer the sole sources of authority, insofar as people can also appeal to state bureaucracies and judiciaries. There are also, in some areas, fears that customary authorities have become part of the problem itself by their involvement in land sales, and are thus perceived less and less as legitimate agents of arbitration. These, and other problems, highlight the need to ensure mechanisms for accountability.

Role of government authorities

The state has an important role in upholding and legitimating any local level or customary mechanisms for the management of land-related conflicts. By contrast, direct state intervention in land and resource related conflicts may be more problematic for several reasons. Firstly, judicial or administrative procedures are based on values and principles that local land users may not understand or respect. Secondly, the legislative process may not always work in a sufficiently transparent way to ensure a judgement which is considered fair by all parties. Thirdly, in some cases, the state itself may be one of the parties to the conflict such as when it expropriates land for development or other purposes; in such cases, fair (and thus acceptable) adjudication is an unlikely prospect.

Accountability and consultation in conflict resolution

Where conflicts go beyond the immediate customary institutions, and are transferred to government authorities, there will be a need to adjudicate “fairly”, in as transparent and accountable a way as possible. As long as local officials and the judiciary remain largely unaccountable to local groups, this option will remain unsatisfactory. In some highly contested areas, where land-related conflicts are particularly frequent or intense, it would be worth piloting new approaches with locally-constituted consultative bodies, which could provide officials with advice and guidance. Recent experience in Niger, where such institutions have been established, may provide lessons for the region as a whole.

The issue of accountability in conflict resolution also raises questions about the need for West African states to examine opportunities for undertaking broader based reform of their judicial systems. Many of the current debates about governance in general and judicial reform are relevant to conflict-related problems in land tenure.

5.2.4. Decentralisation and good governance

This regional perspective indicates that the long term policy framework within which land tenure and resource access issues are situated needs to provide for the decentralisation of decision-making. Local problems require, in most cases, local solutions, which build on existing arrangements for providing access to resources and resolving disputes. What may be needed is legislation which empowers local authorities (such as districts and *communes*) to regulate land tenure and resource access, within a broad-based national framework.

Risks associated with decentralisation: local responsiveness, transparency, and participation

While decentralisation may seem to be the most logical way forward in dealing with land tenure issues in West Africa - and many of the region's states have already made significant moves towards implementing decentralisation policies - the process requires care and reflection if its benefits are to be achieved.

Governance issues are central to the decentralisation process. The potential advantages of decentralisation - increased participation, greater pragmatism, finding local solutions to genuine problems, resolving conflicts - are largely predicated on local government being both accountable and transparent. A local government within which an unelected executive holds most of the power is unlikely to be as effective as one where elected assemblies, tied to their constituencies, make the key decisions. There are also legitimate concerns that local elites will "capture" local government to serve their private interests. The process of local government must also be transparent, and allow a maximum of people to understand issues under debate. A lack of accountability and transparency would inhibit meaningful participation. Thus, if decentralisation is seen to be the best option for the future, significant investments will need to be made in designing accountable and transparent institutions at the local level. Needless to say, this is a long term process, which will require a good deal of patience and some genuine commitment from all concerned, donors included.

Decentralising land administration in West Africa offers several potential advantages over existing arrangements, whether statutory or customary. By bringing the officially-sanctioned institutions for land and resource management closer to those who depend on those resources, decision-making should become more responsive to local needs and problems. Decentralisation offers the possibility of genuine participation for the majority of resource users. In areas, for example, where pastoralism is an important type of livelihood, and where these groups can ensure their representation within newly elected *communes*, local authorities are more likely to ensure that adequate tenure arrangements exist for pastoralists.

Decentralisation is also likely to foster a greater degree of pragmatism. Districts and *communes*, even more so than state-appointed administrators, are pre-disposed to recognising what is practical and strengthening it. Customary tenure, where it is seen to work effectively, could become the most frequent paradigm for land and resource management in West Africa if decentralised authorities were empowered to establish locally acceptable systems. At the same time, where local resource users judge that customary institutions do not operate in

their interests, act arbitrarily, or have lost their legitimacy, decentralisation would allow for them to “craft” new institutions.

Regional land use planning: building on decentralised resource management

As has been seen, there will be increasing pressures on land in many parts of West Africa. Several kinds of pressure are already apparent: in riverine areas for irrigated agriculture; in currently “under-populated” areas, there will be colonisation by farmers and herders from densely settled regions; in pastoral zones, agriculturalists will seek to establish farms. All of this indicates a growing need for land use planning and resource management at a level above the village itself, and in some circumstances above the district/*commune* level.

Such regional planning mechanisms will also be necessary if and when West African states move towards policy options which provide more room for customary tenure arrangements and local jurisdictions for natural resource management. A coherent regional planning perspective would bring together district-level concerns to consider broader strategic planning issues, infra-structural investment, movement of people and herds, and management of common resources. Such a mechanism would also compensate for the relative parochialism inherent in customary and local systems.

This kind of supra-local planning is, at present, largely absent. The challenge will be to develop it in a “bottom-up”, rather than “top-down”, way. Local level authorities will need to be involved in regional land use planning so as to encourage well-informed, consensus based decision-making.

5.2.5. Supporting local institutions for land and resource management

Subsidiarity

In recognising decentralisation as a valid policy framework for land tenure and resource access, it is important to take the argument to its limits. At its heart is the principle of subsidiarity which stresses that functions should be ascribed to the lowest possible level of management with higher levels only taking on what lower levels are manifestly unable to handle. This means, for example, that if land tenure arrangements can be managed at the village level, then local authorities would be best advised to devolve responsibilities to this level.

In many of the francophone parts of West Africa, the *gestion de terroirs villageois* (GTV) approach, sponsored by both national services and NGOs since the 1980s, has sought to locate decision-making about land use and natural resource management at the village level. While the *gestion de terroir villageois* strategy has proved innovative and frequently empowering, it does have a number of drawbacks as outlined below:

- local, land management authorities will need to take account of the needs and rights of “strangers”, especially those who are not permanently resident in the area. In some cases, it has become clear that GTV has been an opportunity for rural communities to assert largely exclusive rights over their territories, to the detriment of “strangers” and mobile resource users;

- there may be resources (such as wetlands) on which users from several jurisdictions rely, but which are situated in only one. There may be a need for several decentralised units to work together in managing such resources;
- because GTV and other community-based approaches to natural resource management have often been externally stimulated initiatives, there has been a tendency for them not to survive the withdrawal of support by the funder. Local committees have been established which have frequently proved to be ephemeral, operational only for so long as the rural development projects which fostered them have been funded. There is, then, a clear need for such approaches to take into account the need for enduring institutions at the local level.

5.2.6. Non-agricultural opportunities

Inevitably, there will be localised land shortages, particularly in some of the more densely populated rural areas and in peri-urban areas, as a result of saturation and alienation. Some people are likely to become landless; others will find themselves less and less able to sustain their livelihoods from their landholdings. There will, then, be a need to ensure that other opportunities are available - off-farm income, diversified rural employment, urban incomes and migration to other areas. Such strategies of diversification are already pursued vigorously by rural people in many areas, particularly the land-locked Sahel where mixing of farm and off-farm activities is common.

Over recent decades, many millions of rural West Africans have entered the urban economy, mainly in the informal sector. With cash incomes often two or three times those gained in farming, the urban centres will continue to attract migrants on a seasonal and longer term basis. One factor constraining this shift has been the very low growth in output and employment in the public and private formal sector, over the last decade. Thus, for example, while the non-farm modern work force grew by 6% a year in the 1960s, and by 5% a year in the 1970s, it fell to 1% a year in the 1980s, with little improvement in the 1990s. Without such investment in business and public works, the growth in the informal sector will also slow down, bringing with this a slowing of income growth, and demand for food crops, pressures to intensify agricultural production and the value of land.

5.3. A regional vision for 2020?

Several components are essential in trying to draw up a vision for land tenure and resource access arrangements for West Africa in 2020.

The role of the state

Developing coherent land policies

Firstly, land and natural resource policies will need to be both open and flexible and, at the same time, consistent with broader regional and national development strategies. Part of this will consist in ensuring as much coherence as possible between policies as they relate to agricultural land, forests, water, and grazing. This implies the need for a framework within which different stakeholders and different types of resource user, at a variety of levels, are

able to participate in the process of policy formulation. The state, itself one of the stakeholders, will therefore need to act as a facilitator for this process of policy dialogue.

Eminent domain and the state

Governments could usefully recognise two distinct elements of eminent domain, the first of which relates to the state's powers to regulate and arbitrate over land, and the second of which involves ownership. It will be more important for the state to retain effective powers in the first field than to try to maintain a notional monopoly in the second. At the same time, West African states need to find ways of devolving their various prerogatives in land, as appropriate, by specifying and distributing different tasks to institutions better suited to exercising them.

The state clearly has the right to eminent domain, and the duty to act, when necessary, in the national interest. There are issues of sovereignty here, but also more practical questions related to public investments and fiscality. But in asserting a "residual" eminent domain, West African states should seek to be as explicit as possible in determining the conditions under which they can assert their rights. Related to this is the issue of being clear about the processes by which central government expropriates land and the need to provide appropriate and adequate compensation to those whose rights are abrogated.

Appropriate legal frameworks

West African states should also specify the broad principles underlying land tenure and resource access arrangements. These principles, which would derive from national policy options, need to be sufficiently "open" so as to allow for flexibility in dealing with a multiplicity of situations and issues. National land tenure "charters" may be one way of doing this; *lois-cadre* (or framework laws) might be another. International commitments, to which West African states are signed up, will also need to be taken into account by land tenure and resource management arrangements.

Supporting decentralised and local level capacity for land management and conflict resolution

In addition, West African states have a vital and necessary role to play in empowering sub-national or non-state institutions to manage land tenure and resources. This implies not only an explicit recognition of their authority in matters related to land tenure and resource access, but also a commitment to endorse and uphold their decisions.

An appropriate vision of land and resource management for 2020 should also include an active commitment, on the part of the state, to decentralised mechanisms for conflict resolution. Local authorities will need support in this. In supporting such conflict resolution mechanisms, however, the state should seek to promote transparent processes of adjudication. The state should also act as adjudicator in the last resort, as well as the ultimate enforcer of arbitration in the event of unresolved conflict.

In much the same way, West African states have an important role to play in empowering village level and community-based institutions for land and resource management. Promoting and encouraging subsidiarity, as an operational principle, needs to be part of any vision of

land tenure and resource access in the future. Policy should seek to generalise this principle and provide the conditions under which village and community-based management can become institutionalised.

Technical support and skills development

Finally, the state needs to develop its capacity to provide or to broker technical support to land tenure institutions. There is expertise in land tenure (in universities, in research institutes, within NGOs) and it should be made available to those who are faced with the practical problems of developing suitable arrangements. If, for example, it is judged necessary to develop registration schemes in some areas, the state could usefully provide or facilitate the provision of technical assistance.

5.4. Action for governments and donors

As West African governments continue the process of a policy debate on land tenure and resource access issues, there is a need for them to be supported by the donor community, and to ensure information sharing between countries. There is much that is already taking place in the region in the field of land tenure and natural resource management, and existing experience can provide governments with useful lessons from which to draw up new policies and initiatives. National governments should be supported in the process of profiting from experience elsewhere; in particular, continued exchange of information and views between English and French-speaking countries needs to be fostered. This process of learning and exchanging experiences could usefully focus on the following issues.

National processes of policy debate and legislative change

At national level, organising a framework for inter-ministerial consultation and discussion, to bring together the main structures in government responsible for land-related issues would be a good way to seek consensus on different sectoral issues. At local and provincial levels, a forum for the various land users along with their customary and elected representatives could be established, to facilitate a parallel process of dialogue.

In a number of countries in the region there have been innovative processes of engaging in policy debate. In Niger, for example, the process involved in drawing up the new *Code Rural* could provide others with valuable lessons on processes of consultation. In several countries there have also been experiments in popular consultation concerning reforms to forestry codes and policies. West African states could learn a great deal from each other about such processes of policy debate.

Village land management and administration

Several of the francophone countries of West Africa have been particularly active in promoting village land management and administration. Their experience with *gestion de terroirs villageois* should be learnt from and built upon. Special attention could be paid to issues concerning how GTV can lead to exclusionary practices, how it links with extensive pastoral systems, and the extent to which village level institutions have proved enduring.

Progress and results of land registration programmes

Given the need for caution in proposing land titling policies, there are certain to be valuable lessons to learn from recent pilot activities in land registration in Côte d'Ivoire and Benin. In both cases, there has been a policy of registering established rights, both customary and statutory, as a way of providing farmers with security of tenure in areas of persistent litigation and conflict, as a result of either massive in-migration or high degrees of land saturation.

Co-management of common property resources

Given the increasing pressures being placed on CPRs, and their importance to local populations, West African governments need to consider further options for co-management, whether it be for reserves, gazetted forests, or supposedly "unoccupied" bush lands. Providing local resource users with the incentives to engage in sustainable management and to reap at least a share of the benefits from resource exploitation is the only way in which many CPRs will survive over the next twenty five years. In the absence of such incentives, most CPRs will continue to be subjected to open access and unregulated exploitation. There is today a wealth of local-level experience in this field in West Africa - collaborative forest management in Ghana, reforms to fuelwood supply systems in much of the Sahel, etc. The lessons learnt from these different experiences need to be absorbed and built into future policies.

Improving conflict management

Land-related conflicts are likely to increase in the future. Within the region, there have been some interesting and innovative attempts to improve mechanisms for managing and resolving such conflicts - stakeholder platforms bringing together farmers and herders in Burkina Faso, attempts to involve all resource users in participatory land management projects in Niger, etc. Again, there is much to be learnt from these often localised experiments. In addition, in some areas (such as northern Nigeria) there has been a long-standing tradition of relying on *alkali* local courts for settling land conflicts, from which valuable lessons might be learnt.

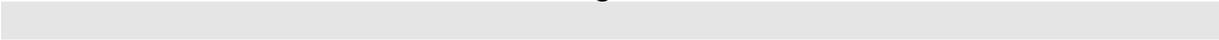
Pastoral and livestock development

As has been seen, pastoralists and livestock owners throughout the drylands are under increasing pressure. In the future, as farmland expands and as certain key resources become targeted for agrarian development, the pastoral economy, and the livelihoods of several million pastoralists and agro-pastoralists, will become even more vulnerable. If pastoralism is to be able to make a contribution to the economic development of the drylands (which it will be able to, given the continued growth of urban demand for meat) and if pastoralists are to avoid destitution, then their value needs to be recognised.

Reconciling pastoralists and pastoral land use with agriculture is a major issue in much of dryland West Africa. Any localised experiments and processes which can shed light on how this might be done need to be learnt from and integrated into national policies.

Decentralisation processes

Several West African states are in the process of decentralising their administrative systems. Learning about the difficulties involved in as well as the benefits of decentralisation will be important for further reforms. The lessons from countries such as Mali, where the state is in the process of creating tenorial “domains” for its constituent rural *communes* and the implications for customary village authorities, will be particularly valuable for land tenure and resource access issues elsewhere in the region.



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