

BURKINA FASO'S AMBITIOUS EXPERIMENT IN PARTICIPATORY LAND TENURE REFORM

Burkina Faso



On June 16, 2009, Burkina Faso adopted one of the most innovative pieces of rural land tenure legislation yet seen in West Africa. (Above) Prime Minister Luc Adolphe Tia meets with the staff of the Millennium Challenge Account-Burkina Faso, which is supporting implementation of several components of the new rural land law including the first generation of local land charters. *Photo: MCA-BF*

By Kent Elbow

INTRODUCTION

On June 16, 2009, Burkina Faso adopted one of the most innovative pieces of rural land tenure legislation yet seen in West Africa. Understanding the lead-up, development, execution—and ultimately the results of this sweeping experiment—offers valuable insights for other African countries in the throes of legislative reform.

By the beginning of the 2000s, the need for an overhaul of rural land tenure legislation in Burkina Faso had become glaringly evident. Demographic, climatic and social factors all contributed to intensifying competition for land and natural resources. Conflicts over land and natural resources were pervasive and increasingly violent. Each of the two land tenure systems in Burkina Faso—the statutory regime of the central government and local customary land tenure managers—seemed powerless to prevent the slide into insecure landholdings and constrained access to land.



MAP



Kent Elbow is a specialist in land tenure and member of the Land Practice Group at the Millennium Challenge Corporation (MCC).



Prior to the new law, customary land systems were not officially recognized, and the State was the sole land proprietor based on the belief that the central government is best-placed to manage development and access to land.



The top-down approach to land governance contributed to a general breakdown of rural land tenure, the erosion of customary authority over land, and the rise of land-based conflicts. By 2002, the need for a new approach to land governance had become glaringly evident. Photo: ©Oxfam International

While statutory management of land tenure is based on national laws, customary land tenure refers to local, usually unwritten practices and rules that collectively govern access and other rights to land and natural resources.

The relationship between statutory and customary land tenure in Burkina Faso has long been an uneasy one. On the one hand, incomplete application of land laws has in most rural areas left ample opportunity for customary practices to remain dominant (Ouédraogo, 2002). On the other hand, statutory non-recognition of land rights derived from tradition and local history has led to “de facto legal insecurity” (Mathieu et al, 2003). An additional challenge to customary systems is that they can be difficult to precisely define as former land rights evolve in the face of economic, social and demographic changes (Ouédraogo, 2006; Brockhaus, 2003). Nevertheless, customary land tenure management remains the norm in Burkina Faso’s rural areas.

In light of these factors, Burkina Faso chose a course of action that was both obvious and challenging: rewrite national legislation to reflect local realities and the collective will of all implicated actors—whether rural

farmers, transhumant herders, women’s producer groups, customary land tenure authorities or government officials.

In an apparent break with the previous state-centric approach to land policy development, the current land reform process featured extended and wide-ranging consultations with all of the actors affected or involved in rural land tenure. It entailed several years of comprehensive study, diagnostics, analysis, planning, drafting and redrafting. As a result, one of the most striking features of this national rural land tenure reform is its commitment to broad participation in policy-making.

BEFORE REFORM: TOP-DOWN POLICIES AND LAND CONFLICTS

Burkina Faso is typical of African countries that have struggled with the seeming contradictions between statutory land tenure systems and local informal land tenure management. Following a revolutionary change of government in 1983—complete with a symbolic name change from Upper Volta—Burkina Faso attempted to eradicate informal land authority systems by adopting an Agricultural and Land Tenure Reform (RAF) law that denied

any recognition of customary systems. The 1984 RAF was constructed on the belief that centrally managed land tenure is a valuable tool for achievement of development goals and social justice (Traoré, 1999), and that the central government is best-placed to manage the development program and therefore access to land.

The RAF upheld the State as the sole land proprietor, and required anyone seeking land to apply for use rights. It seemed little consolation that customary land holders who were cultivating lands at the time of RAF’s enactment were legally permitted to continue their rural production activities, while they were simultaneously forbidden to clear new lands without authorization from the State (Décret 97-054, article 505). In any case, rural actors have generally shown little inclination to adhere to the formal legal requirements applied to clearing of new land established by RAF (Bary et al, 2005).

Although largely unimplemented in rural zones, land law between 1984 and 2009 was not without impact. By virtue of its top-down, bureaucratic and state-centric approach, Burkinabé land law probably contributed to ongoing erosion of customary land tenure management systems. However, independent of RAF



The land law of 2009 was developed with the participation of all affected—whether farmers, herders, women's producer groups, customary authorities or government officials. It recognizes customary practices and authority systems as a starting point for land tenure systems.



The law's new Rural Land Certificate of Possession (APFR) provides recognition and protection for existing informal land rights, subject to having been rigorously vetted and approved by the local community. The holder of an APFR may apply for a full land title. *Photo: Ollivier Girard/CIFOR*

legislation other factors were also at play: customary land tenure systems were having difficulties maintaining authority and credibility in the face of advancing market forces and the demographic transformation unfolding in many rural areas (Bary et al, 2005). The most visible sign of a general rural land tenure management breakdown was the proliferation of land-based conflicts—a seemingly increasing number of which were becoming violent (Zongo, 2009).

CONFLICT TRIGGERS

As perceived in the early 2000s, conflict over land rights was pervasive and intensifying in Burkina Faso. Common causes of such conflict included tension between customary land tenure systems and state laws, and increasing demand for land and natural resources relative to supply. Clashes between settled farmers and transhumant herders were rising in number and intensity (Zongho, 2009; GOBF, 2006; Brockhaus, 2003; Maiga, n.d.) and accounts of conflict began to appear regularly in national newspapers.

Additional conflict triggers arose from population movements that varied depending on location. Past and present catalysts of massive relocation of land-seeking populations include: livestock

producers fleeing several years of drought and resource degradation in the north; mass return of former emigrants to neighboring Côte d'Ivoire as a result of violent conflict in that country (violence for which land conflict was been a primary motor); out-migration from the densely populated central plateau; pursuit of opportunities in the established as well as the "pioneer" zones of cotton production; eradication of river blindness and resettlement in the southern, western and eastern parts of the country; government-sponsored rural development projects in some areas; and investment in rural production by a new class of entrepreneurs based in cities (Elbow et al, 2012).

Some observers believe that the RAF was a primary cause of land conflicts, particularly between indigenous and migrant communities, as newcomers attempted to reinforce their position by diminishing the customary claims of residents (Paré, 2001:23). Such flaws in the RAF were gaining the attention of lawmakers, and successive revisions (1991 and 1996) of the revolutionary-era national land tenure framework seemed to modestly soften the original intention to limit the power of customary authorities and to cautiously re-introduce traditional chiefs into a partial

decision-making role (Brockhaus et al, 2003; Thieba, 2010:14). Parallel to such revisions of the RAF, some government authorities became convinced of the need for a radically new approach to rural land tenure policy making.

NEW OPENNESS IN POLICY MAKING

On September 30, 2002, Burkina Faso established the National Committee for Secure Rural Land Tenure (CNSFMR). It was housed in the Ministry of Agriculture and endowed with a mandate to coordinate rural land policy reform. Establishment of the CNSFMR signaled the launch of a massive effort to achieve a managed, rational and non-conflictual approach to rural land tenure. Two characteristics of this reform effort stand out: policy development that incorporated the field results of piloted innovations in land tenure management, and creation of forums designed to collect meaningful and usable input from all major actors affected or involved in rural land tenure.

By the time the government had established the CNSFMR, Burkina Faso had amassed experiences from a dozen internationally sponsored projects featuring development of local land and

natural resource charters or village-level agreements (Thieba, 2010:15). The approaches and lessons from these projects served to directly inspire tools and procedures eventually integrated into the 2009 rural land law. Another important category of land tenure management at the local level is best represented by the Rural Land Planning (PFR) project at Ganzourgou (Thieba, 2010). This project pioneered tools for formalization of customary land rights that served as models for some of the innovations of subsequent rural land policy and legislation.

MILESTONES IN DEVELOPMENT

The first major milestone toward development of a new rural land tenure policy was conducted by a team of experts recruited by CNSFMR. They carried out a comprehensive diagnostic study of rural land tenure in Burkina Faso (Bary et al, 2005). It included analysis of local land tenure systems, examination of land conflict management, and identification of lessons from on-going projects that included a land tenure component. The draft study was completed in April 2005 and provided a basis for meetings

and debates with a wide variety of actors organized between May and October. During this period, workshops to discuss the study were held in the various regions of Burkina Faso with rural producers, herders, customary chiefs, religious leaders, women, youth, cotton producers, government administrators and technicians, and urban-based investors in agricultural production (Traoré and Zonou, 2005). A draft rural land tenure policy was prepared to integrate the findings. Over 500 participants in an inclusive national workshop debated the draft document in May 2007 (Thieba, 2010:38). Further revisions followed and led to adoption by the central government of a new rural land policy in October 2007.

Development of national policy based on a participatory approach is not an easy task and some observers believe the process leading to the 2007 rural land policy fell somewhat short in achieving true participation in policy-making (Ouattara, 2008). Nevertheless, the new approach to policymaking proved to be much more than an empty exercise: a forward-looking land law ultimately addressed many of the stakeholder concerns expressed during the participatory process.

INNOVATIONS OF THE NEW RURAL LAND LAW

The 2007 rural land tenure policy preceded the landmark rural land law by two years and provided it with a detailed framework. Article 1 of the 2009 law identifies four objectives that echo the original motivation for rural land tenure reform: achievement of fair

+ FACT

Innovative community land charters formalize community rights to common property, such as pastures, village woodlots, lakes, quarries, and sacred sites. They are land and natural resource tenure agreements based on local customs, uses and tenure practices.



Much of Burkina Faso's natural resources exist as common property, to be used and shared by the community. Equitable and sustainable use is a goal of the new land law. Photo: Ollivier Girard/CIFOR



and equitable access to land; enhanced productive investment; sustainable resource management; and social harmony.

Strategies introduced in the law to achieve these sometimes-competing goals present a strong contrast to the tradition of centralized land management in Burkina Faso:

- Rather than alienate informal land practices and rights through their non-recognition, the new law introduces mechanisms for their formalization and protection.
- Rather than monopolize management of land rights at the level of the central government, the new law assigns important land management authority to local governments, and even establishes technical support services to help local governments assume their land management responsibilities.
- Rather than claim all land as State property, the new law establishes three legal land domains of equal status: the State domain, the domain of local governments, and the private domain.
- Rather than maintain an over-riding emphasis on technologically driven economic development, the new law provides safeguards to secure and enhance access to land on the part of women and vulnerable groups.
- Rather than limit land conflict resolution options to reliance on an over-burdened court system, the new law provides for management of land conflicts at the village level.

FORMALIZATION OF CUSTOMARY LAND RIGHTS

The 2009 rural land law, in common with preceding land legislation in Burkina Faso, remains firmly committed to managing land and land tenure in a way that advances development goals. The difference between the 2009 law and previous land legislation is the new law's clear recognition of a land tenure starting point defined by customary practices and authority systems.

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The land charter experience to date seems to confirm and reconcile local tendencies for maintaining historical authority systems along with a commitment to achieve local development.

Formalization of existing practices and rules is a way to make them more compatible with modern economies and production systems. Writing down previously unwritten land rights stabilizes them and, if all goes well, affords new possibilities for more transparent and targeted management of land and natural resources.

However, formalization of informal land tenure and management practices that vary by locality requires ingenuity and new ways of thinking. The law's provision for a new Rural Land Certificate of Possession (APFR) is an example of such ingenuity. The APFR provides recognition and protection for existing informal individual and corporate land rights subject to the condition that they have been rigorously vetted and approved by the local community. The holder of an APFR may take the further step of applying for a full land title.

It is easy to envision that widespread adoption of the APFR concept by rural populations would eventually lead to a predominantly formal land tenure system and gradual disintegration of customary land tenure. Whether or not this takes place depends on the extent to which rural populations choose to formalize their land rights under the new law. At present, the 2009 law remains in a very early stage of implementation.

LAND CHARTER FOR RURAL COMMUNITY RIGHTS

The APFR, designed for individualized holdings, is not the only tool provided by the 2009 rural land law for formalizing customary land rights. Among the most innovative features of the new law

is introduction of a tool to formalize community rights to common property land and natural resources. Examples of common property natural resources in Burkina Faso include village woodlots, pastures, lakes and waterways, sand and gravel quarries, and sacred sites. In the past, customary authorities often actively managed common property land and natural resources and were recognized as possessing the necessary authority to do so. Today, in most cases, customary authority over common property resources has eroded. To restore local management authority the 2009 law introduces the concept of a local rural land charter.

A series of application decrees of the 2009 land law were signed into law on July 29, 2010, including one that transforms the land charter from a concept to a practical tool. Article 2 of the application decree defines the charter as: *Local land charters are land [and natural resource] tenure agreements based on local customs, uses and tenure practices. The agreements are developed locally and take into consideration the diversity of contexts that co-exist in the rural milieu, including those described as ecological, economic, social and cultural.*

With the support of the Millennium Challenge Corporation a first round of 17 land charters was completed in the 17 pilot rural municipalities in July 2011 (Elbow et al, 2012). The charters were subsequently adopted via municipal arrêtés (ordinances). Most of the charters also establish a management system consisting of a new management committee or an existing village development committee. Each charter sets out the use, access and management rules for a natural resource

zone such as pasture areas, sacred sites, village woodlots, lakes and reservoirs, sand and gravel quarries and sites targeted for tourism.

UNCONVENTIONAL MARRIAGE

An especially striking feature shared by most of the 17 new land charters is a marriage of customary authority and economic entrepreneurialism. Nearly all the charters target maintenance, even reinforcement, of customary authority. But the charters also often seek to refashion customary rules into profit-seeking enterprises based, for example, on sustainable management and production of wood, forage or gravel, or on promotion of local tourism. Moreover, as many of the rural land charters were being developed, customary common property management systems were being re-examined and in some cases redesigned into more modern management committees. Similar to the APFR, if rural land charters come to be adopted on a wide scale they could enhance planned, sustainable and local management of land and natural resources, while at the same time gradually transforming the customary systems upon which the charters were originally based.

The land charter experience to date seems to confirm and reconcile local tendencies for maintaining

historical authority systems along with a commitment to achieve local development. While existing customary rights are the starting point, local development is the target.

CONCLUSION

Prior to adoption of the 2009 rural land tenure law, competition between national (formal) and local (informal) rules regulating access to land led to several negative outcomes: lost or reduced access to land on the part of vulnerable populations as better placed actors consolidated their holdings, less-than-optimal use of land and other productive resources, and the increasing menace of violent conflict. Such outcomes are obvious deterrents to productive investment and achievement of rural development goals.

The 2009 rural land law is to some extent an admission that the central government does not on its own have the capacity to manage rural land tenure from national and provincial offices. The adopted solution - inviting participation of all categories of actors in development of new policy and law - appears in the short term to tip the balance in favor of local rules and institutions. At the same time, the 2009 land law maintains the decisive role of the central government, and expands the role of local governments, in management of land property rights.

If the law succeeds land management systems and rights will increasingly be written down and recognized by local and national laws, and therefore, will no longer be "customary." This suggests that the balance between customary and statutory land tenure systems is dynamic and likely to shift over time in favor of formal rules and laws. If the law is successful, the shift will occur on the basis of locally legitimized practices and authority systems, which would encourage a peaceful and constructive transition toward land rights formalization. But one shouldn't lose sight of the scale of the law's ambition and the complexity of its goals and content. At present, the law is probably best viewed as a bold experiment whose ultimate outcome remains difficult to predict. However, as the institutional foundations for application of the new law are nearing completion in rural communes, indications of the law's successes and challenges will be forthcoming in the near future.

The new land law is a well-intentioned and heroic effort to strike a balance between respect for the integrity of local practices, the limits of central authority and capacity, and ambitions for removing land tenure insecurity as a constraint to development. Now that the law is in place, the challenge lies in its flexible implementation, and in adapting its varied tools and mechanisms to account for real people and their many evolving needs for land and natural resources.



Rural development has given Odette Traore the opportunity to move from her old house, into a new one. *Photo: MCA-BF*



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