

## Social and institutional innovation in land reform: local land charters in Burkina Faso

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### I- Introduction

#### 1.1- Context

Burkina Faso is a small land locked country located in the heart West Africa. The 19 million people country (2018) is part of the broader Sahel region and as such is recently suffering deteriorating security conditions resulting from increasing terrorist attacks mainly in the Northern and Eastern regions of the country. This recent degradation of the security situation is aggravating a context of poverty: According to UNDP Human development index, Burkina Faso is classified 185<sup>th</sup> least developed globally over 188<sup>1</sup>. The economy of the country is based on agriculture, including farming and pastoralism. Key contributors to the 7% GDP growth (2018) were food agriculture (14.2%), cotton (8%) and extractive industries (20%)<sup>2</sup>.

Despite different reforms conducted in the last decades the burkinabe land system is de facto pluralistic: on the one side, statutory framework land laws are non-effective on the ground; and the other side a diversity of customary based local land systems govern land relationships in practice. Different factors contribute to creating an environment of uncertainty of the land system and insecurity for land users. Such factors include rapid changes driven among other by population growth and rapid urban development. With a 2.9% annual growth rate<sup>3</sup>, the population of Burkina Faso is set to double in the next 20 years. This leads to anticipated increased pressure on land and natural resources. As the world is undergoing the largest wave of urban growth, Burkina Faso is not an exception in this regard. While the Burkinabe rural population is declining continuously, the urban population is growing rapidly. From 30% today, the percentage of population living in urban areas is expected to reach at least 50% in 2050.

#### 1.2- Selected land issues in public debate

Thanks to very active CSOs, Burkina Faso had a tradition of citizens participation and debate on development policies. Participation in the design and implementation. Some of the themes which fed the public debate around the rural land policy development include the followings:

- State sovereignty over land: For long time, Burkina Faso experienced State sovereignty over land. This principle was stated in most land laws and implemented as a basis for ensuring that public policies have the political authority and legal means to ensure that the huge available land resources are used to increase agricultural production in order to meet the food needs of the population and serve as a basis for economic growth. The principle of State sovereignty over land was strongly debated in the course of the Burkina land reform, as some stakeholders consider that it violates the legitimate land rights of local communities while others consider that only government is in a position as land owner, to allocate it to those able to put the land in a productive use.

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<sup>1</sup> UNDP Human development index, 2016

<sup>2</sup> AfDB: Burkina Faso economic outlook, 2018

<sup>3</sup> UNFPA, Population prospect, 2018

- In urban areas, state sovereignty over land is observed through the power of government to allocate land rights to those in need of a plot and to grant those benefiting land with a property title. While some considered that state sovereignty over land provides strong security to land users benefiting land through the formal system, others thought that state sovereignty over land leads to a distributive approach of land management and ends in clientelism and corruption.
- Securing customary based land rights: Since colonial period, statutory land systems tried to eradicate customary land systems as they were considered difficult to understand, due to their orality and diversity which paves the way for insecurity and conflicts. However recent research findings tended to demonstrate that customary based land rights can provide security of tenure to land users. Others emphasize on the legitimacy of customary based land rights which therefore deserve protection by law. In certain cases, the debate focused on whether the priority is about securing property rights or securing tenure rights. It appeared that securing tenure rights would provide more impact on poverty reduction than securing property rights, as the majority of land users access land through a continuum of land rights beyond property.
- Strengthening the land rights of rural women: one of the burning debate themes relate to women's land rights. While the constitution and land laws provide for equal right for all men and women to access and own land, the reality is far different on the ground. Most cultural beliefs and practices tend to deny women the right to inherit or bequeath land rights and end in marginalizing women from secure access to land. Some insisted that while there is no doubt that customary systems exclude women from land rights, it is important not to ignore that certain traditional societies have land principles which benefit women. Therefore, land reform processes should learn from such societies in order to develop affirmative actions in support of women's land rights. Unfortunately, there is little data to support efficient advocacy campaigns for women's land rights and positively influence land reform processes.
- Rapid urban development and land: Until recently, research on land reforms and land policy dialogues focus on rural land issues, as the majority of the population used to live in rural areas and moreover, as poverty is more severe in rural than urban areas. However, available data show that in the coming years, Africa will become a more urban than rural continent. Therefore, urban land issues need to receive appropriate consideration. One priority issue which fuels debate and controversy relates to informal settlements. While some consider that they are just illegal occupation of state lands, others consider that people in informal settlements deserve protection and security of occupation through urban restructuring programmes. In peri-urban areas, rapid urbanization is converting agricultural lands to other uses through a very active land market. As a result, most smallholder farmers are losing their land heritage and are increasing the number of jobless urban dwellers in informal settlements.
- Increasing intercommunity conflicts. Like many other countries in the region, Burkina is experiencing an aggravation of inter-community conflicts. These often-deadly conflicts oppose in most cases farmer communities and pastoralist communities. If land is not the only cause of all conflicts, it is usually the ingredient which fuels local tensions changing them into unmanageable and sometimes deadly clashes. In the current context of terrorism in the Sahel region, land related conflicts are a dangerous factor of destabilization of fragile states like Burkina Faso. Land related conflicts prevention and settlement through improved land use planning is a basis for contributing to peace and security in the country and region.

### 1.3- Snapshot of land reform processes in Burkina Faso.

Since early post-independence years, Burkina tried to answer most of the above-mentioned selected land issues. More or less comprehensive land reforms were undertaken in that respect. In most cases, land reforms were top-down processes imposed by government based on set objectives of the development agenda. Only the 2007 rural land reform was conducted in a widely participatory manner.

What could be considered as the first land reform of Burkina Faso results from the 1963 law through which the government decided to incorporate as public lands all rural lands which are not developed or can be considered as under-developed. The concept of non-developed or under-developed land is obviously vague, as local communities use a variety of land development practices, including fallow-lands, pastoral use of land or constitution of reserved lands for future extension of community farms, which are not recognized by statutory law. As a result, most of the lands incorporated in the private domain of the State are the land heritage of local communities. The situation was made even worse as these lands taken by the State were allocated to other communities who were encouraged to migrate and who were allocated land in those areas who benefited funding from different partners.

The second major land reform in Burkina is a more comprehensive one and is associated with the revolutionary regime who governed Burkina Faso in the mid-80's. Through the 1984 agrarian and land reform, radical decisions were taken with regard to land ownership and land use structure. All lands in the country were declared state property, while private property titles were abolished and replaced by use rights and permits. Traditional customary based land rights were tolerated to be used for food production as far as the government does not need to allocate them for major development projects. The state ownership over land provided an opportunity to the elites allied with political power to take land from the hands of local communities mainly for the purpose of speculation as most of the land acquired remained unproductive.

A third land reform was initiated in 2007 with the objective of securing the customary based land rights of local communities. The land reform was designed through a rural land policy, followed by a land law drafted in accordance with the already adopted policy. The development process of the 2007 land policy was judged highly participatory even if criticism was made on the extend of such participation. The 2007 policy recognized different categories of land ownership, including state ownership, ownership of local governments and private ownership which included customary based land ownership. Individual as well as collective customary based land ownership are recognized and protected Through a land certification process. Through local land charters, the land reform also provides room for taking into consideration the diversity of local practices deeply rooted in variety of local culture.

## II- Conceptualizing local land charters

### 2.1- Concept of land reform

Land reform is the mean through which government tries to address the priority land issues which hamper the economic and social development of the nation. Land reform is a comprehensive restructuring of the land system with a view to attaining specific policy objectives. The targeted policy objectives are more important than the technical infrastructure developed to govern land relations. That is why it is so important for governments to initiate the land reform through a land policy process as the latter will allow stakeholders to understand and discuss the policy objectives which are at stake.

Land reform is a major change from previous stakeholder relations around land to a new pattern of relationships. In an ideal world, the land reform should be a win-win scenario. However, the reality is that some stakeholders will win in the land reform process and others will lose in the same land reform process. Usually the winners in the land reform process are powerful land users, those having links with the political power in charge of conducting the land reform. That is why all stakeholders concerned need to take part in the policy dialogue leading around the land reform. The participation of the most vulnerable stakeholders needs to be informed and benefit support from research, CSOs and advocacy groups. What might be lost by certain stakeholders in the course of the land reform is a basis for negotiation and consensus building among stakeholders. That is why the State needs to be the arbitrator of the negotiation process based on consideration of general interest.

As a change where some might lose benefits or privileges, land reform will generate resistance from some stakeholders. The most challenging is that in most cases, the land reform agencies in charge of implementing the land reform are those who will develop most resistance. In some instances, such resistance is fueled by the refusal to change administrative practices which are established since decades. In other instances, the resistance to change is based on alliance between the government agencies and the powerful stakeholder groups who are losing privileges in the land reform process. All these bottlenecks to the successful translation of the land reform in concrete actions on the ground highlight the importance of political will required to spearhead the land reform process. Lack of political will just result in a paralysis of the land reform and desired change to the benefit of the vulnerable groups. In this respect, political will is part of the construction of the rule of law and enhancement of democratic in a country.

## 2.2- Concept of innovation

While we all are familiar with technological innovation, we are less comfortable with social and institutional innovation, specifically when it is discussed in the context of land reform

In the context of land reform, innovation is based on an attempt to meet existing challenges in the structure of land ownership, land service delivery or other fields. As such at the foundation of innovation is new ideas, creative thinking and new paradigm of land reform. In most African countries, the difficulty to implement even good land reform is caused by the difficulty of government agencies to move away from inherited colonial perception of land reform and tenure security practices. While France introduced the Torrens system in its former colonies as the most reliable way to secure land rights, it is not implementing it in its own land system. Long after the end of colonization, it is difficult to bring change in the land tenure pattern due to the unwavering adherence of government agencies to the colonial system. Clearly, this is an indication of how important it is to accompany land reform processes with a change in the curricula related to land governance, particularly in land training institutions targeting land professionals. Such change might take generations, but it is still timely to act for sustainable change as land reform is a long-term change process.

Innovation in land reform is not just new ideas. To be implemented, new ideas need to be translated into tools which are made simple and easy to use by those in charge of implementing the land reform. The challenge is huge because in the field of social and institutional innovation, it is difficult, if not impossible to do it right first time. Continuous monitoring of innovations associated with lesson learning and periodic adjustments are a prerequisite to successful innovation in land reform. This dimension of land reform is extremely important as most African countries are moving toward decentralization in land administration

while local governments are lacking capacity in land administration related matters. Lack of capacity leads to the paralysis of the land reform, as observed in most countries who yet invested tremendous amount of human and financial resources and time in developing their land policy. Lack of concrete results just push to the “before was better” attitude.

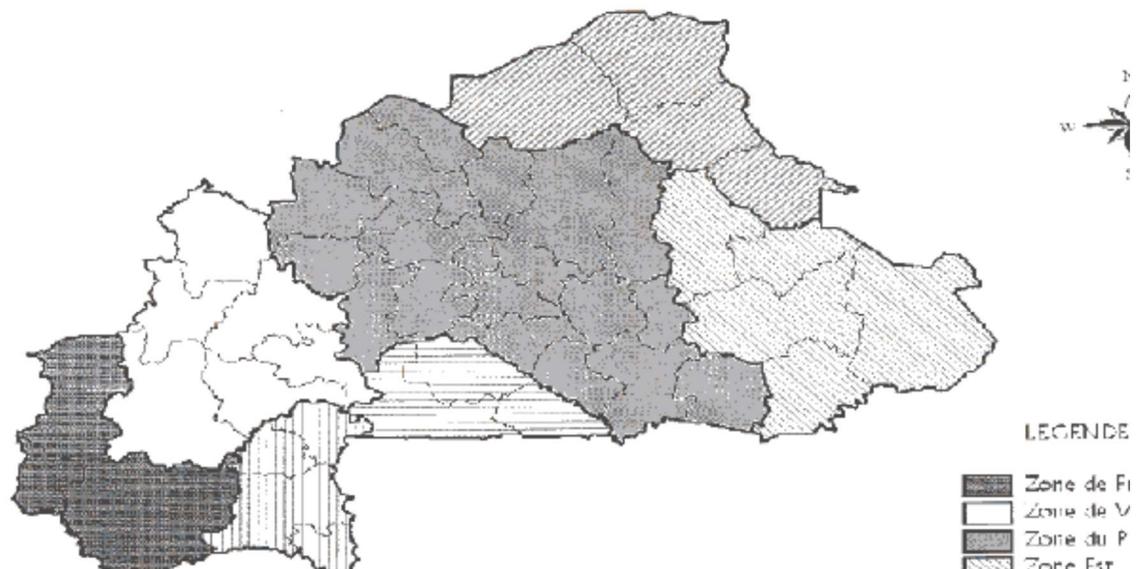
Finally, it is important to insist that innovation worth the effort only it brings value to the land system. Simplifying procedures, reducing costs, minimizing areas of vulnerabilities to corruption or adjusting the implementation modalities of the framework law to local peculiar needs of local communities are obviously ways of adding value to the land administration systems in the context of land reform in Africa.

III- From local conventions to local land charters: innovating to address the diversity of local practices

### 3.1- a reality of diversity of land related local practices

It is well known that land in Africa is not perceived as just an economic resource. It is a community heritage and has spiritual values as well. Therefore, the cultural perception of land influences a diversity of beliefs, religious rituals and normative practices which are still vibrant despite rapid changes occurring in the land arena. In a study conducted in the process of establishing a land diagnostic in support of the land policy development, 7 regional land characteristic areas were identified for Burkina, reflecting common key challenges in each identified area. For example, the northern part of the country was identified as an area where pastoral issues and water related matters need specific consideration. The western part of the country is focusing on cotton production and is affected by a progressive individualization of land tenure... The different regional specificities need to be taken into consideration in the national land policy and law order to reflect the country needs as a whole.

## Les zones socio-foncières du Burkina F



### 3.2- responding to specific needs at local level: the emergence of local conventions

Most land laws drafted at national level through a top down approach are not meeting the needs of local communities. Therefore, the land laws tend to be ignored and preference is given to continuing to observe customary based practices, sometimes with some adjustments are required by the change trends which affect the community. Many projects engaged in assisting local communities to develop local norms in a consensual manner, with a view to better governing common resources they rely on for their livelihoods. These community driven negotiated local norms were named local conventions

The experience of local community of Koumbia (west of Burkina Faso) is a good example of how local conventions can help the people address their specific needs in the context of existing laws and bring creative solutions to their local problems.

The community members observed that more and more, they were not able to harvest nere fruits<sup>4</sup> in the forest nor buy good nere beans at the local market place. After investigating, they happened to know that some members of the community harvest the nere fruits before they reach maturation stage in order to commercialize the beans in nearby bigger cities. The concern about lack of nere beans lies in the fact that it is a resource which is according to local customs, used in wedding ceremonies as part of the dowry. Nere fruits in the forest is part of the local common resources and is accessible to any member of the community. However, letting few members of the community harvest the nere without limitation leads to denying the majority of community member access to the same common resource.

The community members met in a community assembly to discuss this situation which threaten the cohesion of the community and disturbs a central local institution such as marriage! The decision made after discussion was that from the day of the community assembly, it was forbidden to harvest nere fruits before it reaches maturation stage. In order to implement this decision, the youth of the community was tasked to monitor activities in the forest and the day before market days, the youth was authorized to make controls in houses and seize any nere fruits which is not at maturation stage.

This local convention addresses an issue that no civil servant would think of. The concern is based on local customs related to marriage; however, it impacts on natural resource management and empower the local community in the management of the local resources which the people rely on for their livelihoods.

### 3.2- Limitations of the experience of local conventions

With support of NGOs working at community level, Local conventions became popular around the mid-nineties in the Sahel, specifically in Burkina, Mali and Senegal. The experience was of interest, but showed limitations. Most local conventions were initiated by local communities, but were not documented in writing which make them difficult to monitor. When some are documented in writing, they are drafted in French, while the majority of the population is speaking local languages only.

The major limitation of local convention is legal in nature on the one hand it relates to the legal foundation of such processes which are not recognized by law; in the other hand it relates to the enforcement of the convention vis-a-vis external members of the community who were not party to the consensus building

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<sup>4</sup> Parkia Biglobosa

process. Learning from the experience of local conventions, the Burkina land reform tried to innovate through establishing local land charters by the law.

### 3.3- Local land charters for empowering local communities in natural resource management

The Burkina land reform adopted a specific development approach in order to address key land issues adopted. It was a bottom- top approach instead of a top down approach. While the top down approach is preferred by government agencies and consist in imposing technically sound solutions, the bottom up approach consist in learning from local experiences on the ground (from local communities, as well as from pilot projects). In this perspective the local land charters were designed in the land law with a view to improve what was considered a valuable experience but with clearly identified limitations. In particular, the local land conventions aim at providing a legal foundation to practices of empowering local communities in the management of their natural resources. It also creates an opportunity for better adherence of local communities to the land law, as their customary based local land practices are acknowledged and recognized under certain conditions.

The move toward legalizing the experience of local conventions was made possible as the Constitution of Burkina Faso provided an opportunity window through a unique provision on customary based land rights. Under the chapter of the Constitution governing the respective domains of laws and regulations, article 101 decides that the law determines the fundamental principles “of the integration of national cultural values”. The legislator then decided to integrate national cultural values in the land reform through “local land charters”.

### 3.4- Scope and conditionalities of local land charters

The land law decided that local land charters can be developed in a variety of domains including: access and use of land; protection of specific vegetal or wild life species, based on local cultural traditions; identification and protection of common resources<sup>5</sup>; positive local practices which recognize women’s land rights; local institutions in charge of conflict prevention and land dispute settlement.

However, the law sets a double limitation to what local communities can do through local land charters

- No local land charter can edict a local norm which violate the provision of the national framework law;
- Developed local land charters are to be in accordance with principles of human rights, including gender equality for example.

The local land charter is initiated and negotiated by the local community, with technical assistance of partners. One endorsed at local level through a community assembly, the local land charter is then validated by a deliberation of the relevant rural commune. The validated local land charter is recorded in the local registry of local land charters.

## IV- Conclusion

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<sup>5</sup> This could be village forests; grazing areas; local natural ponds...

Local land charters are an innovative tool with a potential to facilitate the implementation of land reform. Through this tool the Burkinabe legislator pursues the objective of integrating the cultural values in the land reform while empowering local communities in managing the natural resources they rely on.

To date, very limited local land charters were developed and validated. Available information indicates that around 40 local land charters were developed. Lessons are to be learnt even from limited experience in order to adjust those charters and make them useful to the local communities they are designed for.

Any social or institutional innovation in land reform is risky. Therefore, such processes need to be conducted softly through learning by doing approach