

#3- 2023 POLICY BRIEFS

Structuring Action: **WAIDMAs** (West African Irrigation Development and Management Agencies)

Project: Irrigation and land tenure management - rules and tools adapted to large public collective schemes in WAIDMA areas

Secure land rights and concerted contractual relations for the peaceful and sustainable development of hydro-agricultural schemes in West Africa

Due to its sensitivity and the reforms or attempted reforms to which it is subject, land tenure is a major concern in the West African countries where COSTEA operates. In the irrigation context, for West African Irrigation Development and Management Agencies (WAIDMAs) and farmers, this general concern results in problems related to recognising a plurality of legal systems and securing land tenure, improving performance, and the sustainability of large public collective hydro-agricultural developments. These considerations, which are common to all of the WAIDMAs, are reflected differently depending on the situations in the different countries and developed areas. This explains the need for comparative analysis and the strong interest of COSTEA and the West African Network of WAIDMAs (ROA-SAGI) in this project.



KEY MESSAGES

Securing land for farmers and irrigated schemes is critical for the peaceful development of irrigation in West Africa, where customary law and modern law still coexist in several countries. The management of irrigated land in large collective public schemes in WAIDMA areas is based on rules (laws, decrees, orders, etc.), which are in principle backed up by tools implemented by the WAIDMAs or external operators for the management of hydro-agricultural schemes and irrigated land. COSTEA has shown that a dissociation between 'rules' and 'tools' is not appropriate in the WAIDMA zone due to the close links between these two concepts, which do not allow them to be clearly distinguished. A classification of these rules and tools into 'families of instruments,' according to

their purpose and objectives, enables a better appreciation of the limits and opportunities that the WAIDMAs' mandates allow in terms of irrigated land management. A comparative analysis of the WAIDMAs based on their existing management methods has made it possible to formulate generic recommendations that can be applied in practice.

In order to guarantee secure land for farmers and hydro-agricultural developments by the State or its representatives, the work carried out by COSTEA highlights the following five key messages:

- 1/ Diversify the methods of securing land and set up a monitoring system;
- 2/ Promote the effective participation of farmers in the management of irrigated land;
- 3/ Develop a participatory, clear and operational contractual approach between farmers and WAIDMAs for the development of schemes;
- 4/ Integrate the development of schemes and the management of irrigated land into a territorial approach;
- 5/ Make ROA-SAGI a tool for implementing the recommendations and stimulating a permanent benchmark on land tenure practices in WAIDMA areas.

ISSUES AT STAKE AND OBJECTIVES OF THE ACTION

The central issue in irrigation development policies is the sustainable use of land and water resources and their optimal allocation in the light of the development objectives set and local socio-economic realities. Hydro-agricultural developments, and irrigated agriculture more generally, greatly increase the value of land and bring about major and irreversible changes in practices of land and water access and use. There are major issues involved in recognising the plurality of legal systems, securing land tenure within developed areas and optimising the terms and conditions of development, particularly of large and medium-sized public schemes that have been built at great expense.

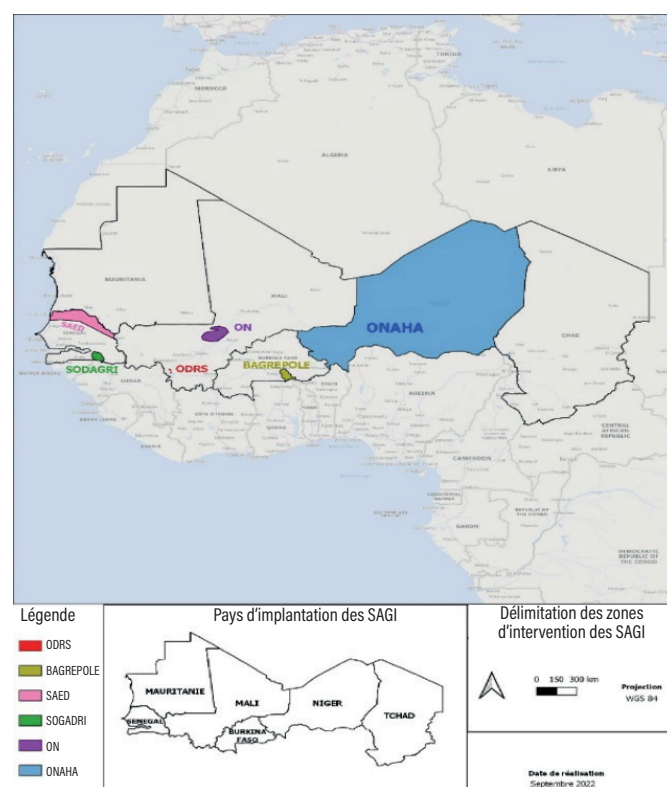
However, depending on the country, there are diverse situations, resulting on the one hand from national land policies and the WAIDMA's responsibilities in land matters, and on the other, from the various methods of managing land, water and the governance of irrigated schemes, based on 'families of instruments' that are formalised and applied to greater or lesser extents. Thus, beyond the adaptation of these families to their context of application, which varies from one country to the next, and even from one developed scheme to another within the same country, the question of their relevance, ownership and adaptability to meet the objectives of the various stakeholders involved in the development of schemes remains crucial.

Taking into account the national legal frameworks, the WAIDMAs' prerogatives in terms of land tenure and their relations with other actors in land tenure, the general objective of this project was to advance land tenure regulation and security within irrigated schemes with the aim of improving their performance and ensuring the sustainability of the developments. Its specific objectives were to: i) draw up an inventory and analysis of land management instruments, establish a consolidated documentary database, define land management within the WAIDMAs, and identify the most noteworthy land management instruments; ii) analyse the theoretical and operational functioning of these instruments through field missions and draw up analysis grids, and iii) carry out a comparative analysis of the instruments between WAIDMAs, compare the results, and draw up recommendations to improve land management in irrigated schemes.

PRESENTATION OF THE METHODOLOGY AND SITUATIONAL OVERVIEW

The project on the management of irrigated land in large public collective schemes in WAIDMA zones in West Africa began on 1 September 2020 and lasted 18 months. It covered six WAIDMAs (Map 1): Bagrèpôle in Burkina Faso, the ON (Office du Niger) and ODRS (Office de Développement Rural de Sélingué, Rural Development Office of Sélingué) in Mali, ONAHA (Office

Location of the WAIDMAs covered by the study



National des Aménagements Hydro-Agricoles, National Office for Hydro-Agricultural Developments) in Niger, SAE (Société d'Aménagement et d'Exploitation des terres du Delta et des vallées du Sénégal et de la Falémé, National Agency for the Development and Use of the Senegal River Delta and of the Senegal River and Falémé Valleys) and SODAGRI (Société de Développement Agricole et Industriel, Agricultural and Industrial Development Agency of Senegal) in Senegal. The project was led by three international experts in charge of facilitation, coordination and consolidation, and six contributing experts¹ (CEs), one from each WAIDMA involved, with that of Bagrèpôle acting as co-leader of the project.

The project was carried out as follows:

- documentary collection at the level of the six WAIDMAs, constitution of a database and inventory of the instruments (tools and rules) used in land management, development of a grid for their analysis, and three field missions by the CEs (Bagrèpôle, ONAHA, SODAGRI) to gather the stakeholders' views on the real (and not theoretical) implementation of the instruments;
- analysis of the national legal contexts for land governance and the WAIDMAs' missions in terms of land management and security, selection of the most noteworthy land management instruments with regard to the project's objectives and their classification into relevant families;

1. Contributing expert: a permanent WAIDMA employee contracted by the international service provider to fully integrate the expert assignment, and to share and capitalise on it within his or her organisation.

- analysis of the similarities and differences between the most noteworthy land management instruments and identification of experiences that could be replicated in other contexts, organisation of a regional workshop² to summarise the results and draw up the study's conclusions and recommendations.

Rules and tools: factors in understanding the WAIDMA zone

Rules belong to the legal field. They differ in nature and force, with laws on the one hand, and regulations (decrees and orders) on the other, which specify the laws so that they can be implemented in practice. While rules are legal acts, tools are the means of translating rules into practical reality on the ground. To be fully effective, the WAIDMAs' tools for managing irrigated land need to be based on legal foundations, otherwise there is a risk of insecurity. Furthermore, in WAIDMA areas, land management instruments go beyond 'irrigated land' strictly speaking, and address issues such as land development and the management of hydro-agricultural infrastructures. Due to their interdependence in the field, rules and tools are grouped together in this study under the generic term 'instrument'.

Determinants of land tenure security and disparities in instruments for land tenure security and the contractualisation of the development of hydro-agricultural infrastructures in WAIDMA areas

National land legislation and the WAIDMAs' statutes and missions determine the nature of the instruments used to manage and secure land tenure in hydro-agricultural developments in WAIDMA zones, and are the basis for their differences and similarities. In terms of land legislation, the countries studied (Burkina Faso, Mali, Niger and Senegal) share a heritage from French colonisation, based on land registration and organised around the principle of state ownership. Nevertheless, this common heritage in no way erases the existence of specific features in national land legislation, with each country having progressively made more or less profound formal and substantive adjustments, in particular by legitimising customary rights (Niger, Burkina Faso) or not (Mali, Senegal). These adjustments have an impact on the instruments used to secure land for development projects. With the exception of Senegal (national domain), where land management is entrusted to local authorities, in all of the other countries, hydro-agricultural developments are incorporated into the domain of the State.

The different legal statuses of the WAIDMAs (EPIC, EPA, SEM, SN³) have an impact on their relations with the State and on their degree of autonomy. The powers entrusted to them in the area of land, in conjunction with the national legislation, influence their ability to intervene to secure land tenure.

Significant disparities between the WAIDMAs

The more or less extensive powers the WAIDMAs are granted by governments determine the leeway they have in managing land and contractualising their relations with farmers for the development and maintenance of schemes. The greater their supervisory responsibilities (Office du Niger, Bagrèpôle), the more precise and demanding the contractual commitments of the farmers. The six WAIDMAs thus have a variety of instruments for managing and securing land subject to hydro-agricultural development on the one hand, and for the farming of plots, maintenance of structures and networks, and payments on the other (registration, land titles, leases, assignment, contracts, charters, specifications, joint committees, commissions, etc.). The operational procedures for these sometimes overlap within a WAIDMA. The study shows that there is a wide disparity between all of the WAIDMAs in terms of the consideration given to land issues and the degree of control exercised over them. The levels of implementation of the instruments vary, and therefore so does the control over land allocation, land development, the organisation of management committees, etc.

In terms of the diversity and application of land management instruments, a comparison of the WAIDMAs shows Bagrèpôle, ONAHA, ON and SAED on the one hand, even if the approaches chosen and the targets of each instrument differ, and ODRS and SODAGRI on the other. Bagrèpôle has focused its land tenure activities on making farmers more secure, by registering land and issuing occupancy or ownership titles. The ON, which implements its strong prerogatives in land management through various instruments, prioritises the structuring and efficiency of scheme management and land allocation committees by involving farmers through joint committees. ONAHA is seeking to control the land issue by starting to register hydro-agricultural developments on the one hand, and setting up joint committees to allocate plots on the other. However, on a national scale, the approaches vary depending on the place, but also on external operators (Technical and Financial Partners) which influence the land management to be applied specifically to the projects they finance, and which would be worth harmonising. In Senegal, where land management is entrusted to local authorities, SAED has focused its support in the land sector on large-scale knowledge tools, making it possible to control the distribution of plots and thus avoid conflicts of use. ODRS still has little control over land management, undoubtedly because its main mission is to preserve water resources and develop the Sankarani/Wassoulou-Ballé catchment area, whereby it helps joint committees in terms of their organisation and in taking responsibility for water and land management. SODAGRI is seeking to draw largely on the instruments applied by SAED, but is encountering difficulties in terms of the communes' understanding of these tools and customary law, which is still prevalent.

Of the instruments implemented in the six WAIDMAs, 20 were selected and grouped into four families: i) securing land tenure for schemes and farmers; ii) procedures for the allocation (or withdrawal) of developed land; iii) contractualisation between WAIDMA and farmer; and iv) spatial development/planned

2. This workshop took place from 23 to 25 May 2022 in Saly, Senegal, and was attended by all of the CEs, high-level WAIDMA officials, COSTEA partners and members of COSTEA's Permanent Technical Secretariat.

3. EPIC: établissement public à caractère industriel et commercial (public industrial and commercial entity); EPEA: établissement public à caractère administratif (public administrative entity); SEM: Société d'Economie Mixte (semi-public company); SN: société nationale (national agency), etc.

land management. The study provides a detailed descriptive analysis of these families, their similarities and differences, and their strengths and weaknesses. The lessons learned from these analyses and the study's recommendations were discussed and consolidated at a regional workshop attended by the experts coordinating the study, the CEs from the WAIDMAs studied, and representatives of the other WAIDMAs.

This showed that there is a **strong issue of security of tenure for hydro-agricultural developments and farmers for the State or its representatives**. The heavy investments made in large and medium-sized public schemes are based on land that needs to be made secure by the State so that solid land rights can be granted to farmers. As the legal adage '*nemo plus juris [...]⁴*' says, 'no one can transfer to another person more rights than they have themselves.' In the different countries, the developments can be protected and the investments can be guaranteed by implementing the land tenure security measures provided for by the relevant texts. Many national texts provide for the land registration of developed schemes, depending on the case, in the name of the State or a local authority. However, experience (Bagrépôle, ONAHA and ODRS) shows that the high implementation costs remain a real challenge. The lack of land tenure security for schemes developed by the State also makes it difficult to secure land tenure for farmers, who may be placed in a situation of great land vulnerability. Yet guaranteeing their land security is an essential requirement if we are to achieve the WAIDMAs' objectives of boosting the economy through sustainable irrigated agriculture.

RESULTS OF THE STUDY, KEY MESSAGES AND LIMITS OF THE APPROACH

Implementing the recommendations arising from this COSTEA study will help to meet two of COSTEA's four challenges, namely: i) the economic and social development of territories and ii) technical, social and institutional innovation. The table below details the study's recommendations and the actions recommended to achieve them. Recommendations 1, 3 and 8 relate to the first challenge, and the others to the second.

RECOMMENDATION

1. Secure the land tenure of developed schemes in the name of the State or local authority.

ACTIONS

- Require the registration of developed schemes by the competent services.
- Ensure the fair and prior compensation of former occupants.
- Include the costs of securing the land tenure of the schemes in the development budget.

RECOMMENDATION

2. Secure the land tenure of developed plots for the benefit of the farmers.

ACTIONS

- Formalise the types of rights (use or ownership) adapted to the context and local practices.
- Deliver an official individual deed to each farmer certifying that his/her installation is in order.
- Ensure the computerisation of land management procedures.
- Increase access to texts on land tenure security, including in national languages.

RECOMMENDATION :

3. Take account of good local land tenure practices in the procedures for allocating land.

ACTIONS :

- Develop criteria for the allocation of land to farmers in a concerted manner.
- Carry out information and awareness-raising campaigns on allocation criteria.

RECOMMENDATION :

4. Ensure that the allocation committees are effective, efficient and representative.

ACTIONS :

- Define criteria to ensure the representativeness of actors within the committees.
- Strengthen the capacities of committee members with reference to their missions and good governance principles.
- Ensure the coordination and funding of the committees so that they function properly.

RECOMMENDATION :

5. Design commitment contracts between the WAIDMAs and users.

ACTIONS :

- Ensure an inclusive and participatory drafting process.
- Specify the field of application of the contract (land development, infrastructure maintenance, water management).
- Simplify the content of the contracts by clearly and concisely formulating the commitments.
- Translate the contracts into local languages.
- Standardise the contractual terms and conditions within each WAIDMA.

4. 'Nemo plus juris ad alium transferre potest quam ipse habet'

RECOMMENDATION :

6. Ensure that the contracts are operational.

ACTIONS :

- Set up a joint committee to monitor the implementation of the contracts at WAIDMA level.
- Provide information to the beneficiaries and make the contracts and their annexes available to them.
- Apply the contractual clauses in the management of relations between WAIDMAs and users.

RECOMMENDATION :

7. Effectively apply the sanctions provided for in the contractual documents.

ACTIONS :

- Propose clear, realistic and scaled sanctions according to the infringement of contractual commitments by the farmers or the WAIDMAs.
- Make the joint committee responsible in the application of sanctions.

RECOMMENDATION :

8. Involve the WAIDMAs in territorial planning and development policies to foster the sustainable management of natural resources.

ACTIONS :

- Implement consultation between the WAIDMAs and local actors to ensure that territorial development actions are consistent.
- Ensure that the WAIDMAs contribute to the arrangements for the implementation of territorial planning documents in their areas of intervention.

RECOMMENDATION :

9. Set up a Land Information System (LIS) at WAIDMA level

ACTIONS :

- Institutionalise a service dedicated to the management of the LIS.
- Use the LIS as a tool for territorial knowledge and decision-making.
- Decentralise the LIS at the level of territorial units.
- Make LIS data available to planning bodies and users.

RECOMMENDATION :

10. Make the WAIDMAs and ROA-SAGI responsible in the new participatory management methods.

ACTIONS :

- Give impetus to the ROA-SAGI exchange platform to share knowledge and know-how between partner organisations (ROPPA, etc.).
- Make each WAIDMA responsible for taking forward recommendations related to a family of instruments.
- Broaden the WAIDMAs' missions to include consideration of land tenure security in other developed areas (valleys, lowlands, etc.).

1/ Diversify the methods of securing land tenure and set up a monitoring system. In a context of multiple legal systems, where securing land tenure on irrigated schemes is a particularly socially sensitive process due to the persistence of customary land tenure practices, the question of the confrontation between legitimacy and legality arises. An approach to diversifying the methods of securing land tenure should be envisaged through the issuance, depending on the national context, of ownership titles, ordinary leases, long-term leases, operating contracts, etc. The desire to have a tool for controlling land information is observed everywhere, but rarely implemented, with the exception of SAED and, to a lesser extent, ONAHA. All of the WAIDMAs recognise that a land information system is an essential tool for good land management. Its institutionalisation in a dedicated service within the WAIDMA, its sustainability, and the updating and use of data for decision-making purposes in land management are challenges to be met within each WAIDMA.

2/ Promote the effective participation of farmers in the management of irrigated land. The participation of farmers promoted by the WAIDMAs in key areas, such as the allocation or withdrawal of land, the agricultural management of plots and water management methods, is an important step forward that needs to be consolidated by ensuring the capacity building, effectiveness, representativeness and resources of the committees set up for this purpose. With the exception of Senegal, the State is the major actor in land management on developed schemes. However, this predominance of the State is attenuated by the WAIDMAs' implementation of the principle of inclusive farmer participation. Joint committees have been set up for the allocation/withdrawal of plots (ONAHA, ON, ODRS), the agricultural management of plots (ONAHA) and the management of maintenance funds (ON, ODRS). So that they can fully play their role, it is important to strengthen the still weak capacities of the farmers' representatives on the committees, as well as their understanding of their tasks and responsibilities. Efforts are also needed in terms of the coordination and mobilisation of the actors, as well as to foster the good governance of the committees, with efficient consultation of the operators who have mandated them and accountability for their activities, as well as a limitation of the terms of office of their representatives.

3/ Develop a participatory, clear and operational contractual approach between farmers and WAIDMAs for the development of schemes. Contracts defining the objectives and conditions of use of plots of land are the cornerstone of WAIDMA/user contractual relations for the development of schemes, and particular attention should be given to the way in which they are drawn up and their content. WAIDMA contracts are extremely diverse in terms of format, scope and implementation procedures. Many of them are considered complex and restrictive in terms of content. If they are to be effective and appropriate for all actors, they should be drawn up with the involvement of all stakeholders, and the commitments should be clearly and concisely formulated,

In order to respond to the issue of security of tenure for irrigated land in West Africa, the COSTEA study, in addition to the recommendations presented above, also made it possible to formulate a number of key messages:

specifying their areas of application and providing each party concerned with a copy of the contract. Furthermore, it has been observed that the 'project logic' often imposes different contractual terms on the WAIDMAs, depending on the focus of the Technical and Financial Partners. This diversity of practices is detrimental to overall consistency and to the institutionalisation of a global, coherent contractual modality on the scale of the hydro-agricultural development. Nevertheless, this desirable homogeneity should also leave users a certain leeway so as not to obstruct the dynamics of evolution and innovation. However, the most satisfactory contracts will only have an effect if they are rigorously applied. Yet the failure to apply contractual penalties to users is a fairly general observation, whether for non-payment of water charges, for example, or for insufficient development of plots of land, even though these shortcomings are very frequent. On the other hand, these shortcomings are also partly linked to the fact that users do not always have access to the secure water supply to which they are entitled under these same contracts, due to management difficulties at the WAIDMA level. An important key to success is for the WAIDMAs to work with the stakeholders to ensure that the sanctions defined during the participatory and inclusive drafting of contracts are realistic and scaled according to the extent to which contractual commitments are breached, so that their application does not give rise to rejection. The WAIDMAs also need to honour their side of the contract, first and foremost a secure water supply. As failure by a farmer or a WAIDMA to honour its contractual commitments would be likely to have a collective impact, it would seem desirable for sanctions to be implemented by a joint development monitoring committee.

4/ Extend the WAIDMAs' missions to integrate the development of schemes and the management of irrigated land into a territorial approach. In view of the issues at stake in territorial development, it is necessary for the WAIDMAs, over and above their missions of promoting irrigation, to be equipped with institutional skills that strongly involve them in local territorial development policies. Hydro-agricultural investments can, in fact, create islands of development within territories, which create a pull effect on the populations of non-developed areas, thus creating disparities in territorial development. The WAIDMAs' involvement in territories varies in geometrical terms, depending on national policies on the one hand, and their mandates on the other. The WAIDMAs usually implement a sector-based and vertical approach focused specifically on hydro-agricultural developments, which makes it difficult for them to grasp the many issues involved in agricultural water development (in the broad sense of the term, including livestock farming, forestry, etc.) and to link their actions to other sectoral public policies and development initiatives of local authorities and/or other State structures. To overcome these obstacles, institutionalised consultation between the WAIDMAs and local actors would enable hydro-agricultural investments to be better integrated into a territorial project in which agricultural water is linked to other local development

priorities to ensure the synergy and consistency of actions for the benefit of the sustainable development of the territory, with the support of operational tools such as land use and development plans.

5/ Make ROA-SAGI a tool for implementing the recommendations and stimulating a permanent benchmark on land tenure practices in WAIDMA areas. It is important for ROA-SAGI to be strongly involved in implementing the recommendations after they have been shared and an in-depth analysis of their relevance and possible adaptation to the legal, institutional and operational contexts of each WAIDMA has been carried out. For each family of instruments, at least one WAIDMA identifies itself as a leader, because it is ahead in its implementation, and could act as a driving force for reflection on their implementation in other contexts and thus enable other WAIDMAs to avoid the same difficulties. ROA-SAGI should also act as a catalyst to encourage a dynamic improvement in the WAIDMAs' land responsibilities within their schemes, thereby guaranteeing the link between land allocation, development, contractualisation and land use planning. A genuine revitalisation of the ROA-WAIDMA exchange platform should encourage the sharing of knowledge and know-how between the WAIDMAs, but also between the WAIDMAs and their partner organisations (producers' organisations, professional organisations at local, national and sub-regional level). Structuring ROA-SAGI within a more formal framework with clear statutes would strengthen it in its mission of coordination, capitalisation and benchmarking.

The study's findings and proposed recommendations should be widely communicated, both within the WAIDMAs themselves and to potential beneficiaries, thus enabling their opinions to be collected, or even to the competent national authorities (supervisory ministries, for example) as spokespersons in favour of the WAIDMAs.

To increase the added value of its support to WAIDMAs, it would be beneficial for COSTEA to encourage the process of strengthening land management proposed by this study. Indeed, it would be possible, through the extension of already existing instruments that are mastered by certain WAIDMAs, to strengthen land management on irrigated schemes and thus to integrate this component in a structured and homogenous manner into all future developments. This could help avoid 'projects within projects,' which can be a direct obstacle to implementation and development in the long term.

Limits of the approach

Particular attention was paid to analysing the relevance of the distinction between rules and tools as a reference basis for this project. To this end, an analysis of legal standards was carried out, covering rules of law, customs and usage. This analysis was then transposed to the specific contexts of the WAIDMAs, **leading to the conclusion that this complex distinction remains essentially theoretical and potentially debatable.** Furthermore, the analysis revealed that the tools most often have a legal basis



(a rule), and that an analysis that separated rules and tools sharing the same purpose would be meaningless. This is why a classification by family of instruments (securing irrigated land tenure/ definition of land allocation and withdrawal procedures / contractualisation between WAIDMAs and farmers / land management and planning in the territories) has been favoured in this project.

- Comparative diagnosis of 11 West African Irrigation Development and Management Agencies (AMVS, ANADER, BAGRÉPÔLE, ODRS, ON, ONAHA, OPIB, ORS, SAED, SODAGRI, SONADER) www.comite-costea.fr/production/diagnostic-compare-de-11-societes-damenagement-et-de-gestion-de-lirrigation-en-afrique-de-louest-amvs-anader-bagrepole-odrs-on-onaha-opib-ors-saed-sodagri-sonader
- Documentary database (www.comite-costea.fr/base-documentaire-eau-et-agriculture)

COSTEA OUTPUTS IN RELATION WITH THE STUDY

- Inception report (www.comite-costea.fr/actions/sagi)
- Documentary inventory of tools and rules (www.comite-costea.fr/actions/sagi)
- Diagnostic reports on tools and rules (www.comite-costea.fr/actions/sagi)
- Comparative analysis of tools and rules (www.comite-costea.fr/actions/sagi)
- Final synthesis and recommendations (www.comite-costea.fr/actions/sagi)
- Comparative analysis of large-scale irrigation management structures in West Africa, Morocco and France (www.comite-costea.fr/actions/sagi)