



PERFORMANCE OF THE PROJECT
'IRRIGATION AND LAND TENURE MANAGEMENT –
RULES AND TOOLS ADAPTED TO LARGE PUBLIC
COLLECTIVE SCHEMES IN WAIDMA AREAS'

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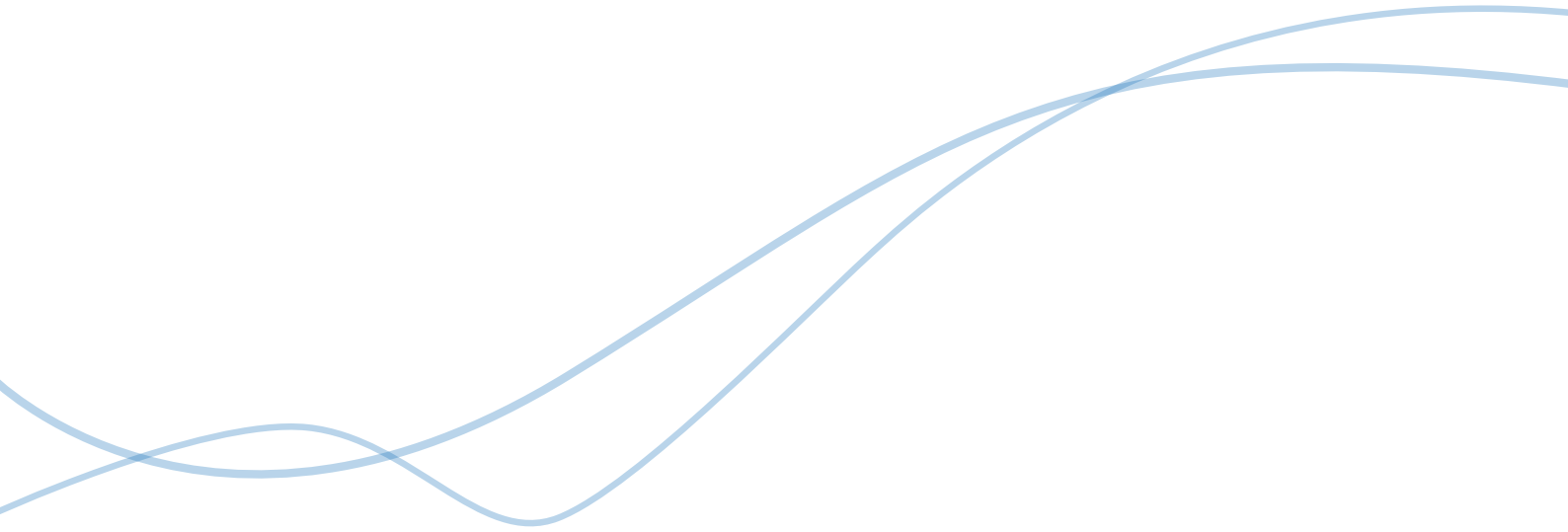
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and all WAIDMA members of ROA-SAGI

IRRIGATION AND LAND TENURE MANAGEMENT – RULES AND TOOLS ADAPTED TO LARGE PUBLIC COLLECTIVE SCHEMES IN WAIDMA AREAS

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LEXICON AND ACRONYMS

AFD	Agence Française de Développement (French Development Agency)
AFEID	Association Française pour l'Eau, l'Irrigation et le Drainage (French Association for Water, Irrigation and Drainage)
BAGREPOLE	Pôle de Croissance de Bagré (Burkina Faso) (Agency for the Integrated Development of the Growth Pole of Bagré, Burkina Faso)
CE	Contributing Expert
COSTEA	Comité Scientifique et Technique de l'Eau Agricole (Scientific and Technical Committee for Agricultural Water)
LIS	Land Information System
ODRS	Office de Développement Rural de Sélingué (Mali) (Rural Development Office of Sélingué, Mali)
ON	Office du Niger (Mali) (Office of Niger, Mali)
ONAHA	Office national des Aménagements Hydro-Agricoles (Niger) (National Office for Hydro-Agricultural Developments, Niger)
ROA SAGI	Réseau Ouest-Africain des Société d'Aménagement et de Gestion d'Irrigation (West-African Network of WAIDMAs)
ROPFA	Network of Farmers Organisations and Agricultural Producers of West Africa
SA	Structuring Action
SAED	(National Agency for the Development and Use of the Senegal River Delta and of the Senegal River and Falémé Valleys, Sénégal)
SODAGRI	Société de Développement Agricole et Industriel du Sénégal (Agricultural and Industrial Development Agency of Senegal)
STP	Permanent Technical Secretariat of COSTEA
TFP	Technical and Financial Partners
ToR	Terms of Reference
WAIDMA	West African Irrigation Development and Management Agency
3PRD	Programme for the promotion of rice production partnership in the delta of the Senegal river

1. THE MAIN STAGES OF THE LAND TENURE PROJECT

1.1 Overview of the project and of its objectives

Presentation of AFEID and COSTEA

This study is supported by the **Association Française pour l'Eau, l'Irrigation et le Drainage (AFEID, Scientific and Technical Committee for Agricultural Water)**. AFEID has been working since 2013 with Agence Française de Développement (AFD, French Development Agency) and a wide range of international partners as the contracting authority of COSTEA, the Scientific and Technical Committee for Agricultural Water.

COSTEA's main missions are to **share knowledge and ensure networking between the various actors** involved in the irrigated water sector.

To this end, its intervention is structured in three components: one functional component and two components to support irrigation operations and policies in several target regions.

Among these target regions, the Sahel is a central focus, which is encouraged in particular by the support to the Sahel Irrigation Initiative (2iS)¹.

COSTEA's Steering Committee has therefore validated the importance of supporting the WAIDMA network through a structuring action (SA) to: (1) provide WAIDMAs with the resources to lead their network and; (2) finance studies that respond to challenges identified together.

COSTEA's **Permanent Technical Secretariat** is the contracting authority for the SA on behalf of AFEID. A Supervisory Committee made up of COSTEA'S Permanent Technical Secretariat, and in particular its Regional Coordinator for West Africa and its Project Manager, is in charge of the orientation and operational monitoring of the SA.

The WAIDMA Steering Committee, composed of all of the legal representatives (the Director of each WAIDMA or his/her representative) as well as the Consultative Group for the WAIDMA action, were contacted remotely or on site in order to orient and accompany the implementation of the SA.

Presentation of the West African irrigation development and management agencies (WAIDMAS)

The WAIDMAs were taken into consideration in COSTEA's overall approach in three stages, with the integration in 2015 of:

- Bagrépôle (Agency for the Integrated Development of the Growth Pole of Bagré, Burkina Faso), in Burkina Faso;
- the Office du Niger (ON, Office of Niger), in Mali;
- the Office national des aménagements hydro-agricoles (ONAHA, National Office for Hydro-Agricultural Developments), in Niger;

- the Société d'aménagement et d'équipement du Delta (SAED, National Agency for Development and Equipment of the Delta), in Senegal;
- the Société de développement agricole et industriel du Sénégal (SODAGRI, Agricultural and Industrial Development Agency), in Senegal;
- the Société nationale pour le développement rural (SONADER, National Rural Development Agency), in Mauritania.

The integration in 2017 of:

- the Autorité de mise en valeur du Sourou (AMVS, Sourou Development Authority), in Burkina Faso;
- the Office de développement rural de Sélingué (ODRS, Rural Development Office of Sélingué), in Mali;
- the Office du périmètre irrigué de Baguinéda (OPIB, Office of the Irrigated Scheme of Baguinéda), in Mali.

The integration in 2019 of:

- the Agence Nationale d'Appui au Développement Rural (ANADER, National Rural Development Support Agency), in Chad, which was subsequently divided into two WAIDMAs in 2021: ANADER and SODELAC, Société de Développement de la région des Poders du Lac-Tchad (Development Agency of the Poders Region of Lake Chad).

Note: WAIDMAs were previously referred to as SAAO, *Sociétés d'Aménagement en Afrique de l'Ouest* (Development Organisations in West Africa).

The overall challenge for the WAIDMAs is to ensure the equitable sharing, use, sustainable management and optimal development of common resources and goods. These are soil and water on the one hand, and collective public hydraulic infrastructures on the other. The aim is to guarantee agricultural production, the development of rural areas and the improvement of their inhabitants' living standards.

During the Saint-Louis meeting, **the WAIDMAs formed a West African 'WAIDMA network' (ROA-SAGI)**. Its purpose is to **share their knowledge, experience and collaborative work** on all the themes directly or indirectly related to the mission of developing and managing the irrigated schemes entrusted to them by the States.

Each WAIDMA has therefore identified a legal representative, the managing director or deputy managing director in most cases, **and a focal point**, a senior manager. The legal representatives have a decision-making role and together form the Steering Committee of the WAIDMA network. The WAIDMA network is coordinated overall by a facilitator who follows the directions given by the WAIDMA Network Steering Committee. In addition, each WAIDMA has designated one or more contributing experts (CEs) to directly participate in the

1. The Sahel Irrigation Initiative (2iS) was launched on 31 October 2013 at the High Level Conference on Irrigation in the Sahel, which resulted in the 'Dakar Declaration'. It reflects the will of six Sahel States (Burkina Faso, Chad, Mali, Mauritania, Niger and Senegal) to combine their efforts to increase the pace and quality of investment in irrigated agriculture, based on a participatory and systemic approach to solving problems and developing adapted solutions.

Table 1: List of participants in the land tenure project

	Surname / first name	Structure	Position in the project	Current e-mail address	Whatsapp telephone number
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production of COSTEA projects. For the implementation of the ‘Irrigation and Land Tenure Management – Rules and Tools Adapted to Large Public Collective Schemes in WAIDMA areas’ project, the CEs appointed by the WAIDMAs are presented in point 1.4 below.

The WAIDMAs have agreed that SAED would ensure the coordination of the network through the intermediary of Mr Khaly Fall for the time being, in a perspective of rotating responsibility.

1.2 Definition of the overall objectives of the land tenure project

The general objective of the land tenure project was initially to carry out a review of the situation and diagnosis of the rules and tools for managing irrigated and land by the WAIDMAs in their areas of intervention by:

- targeting specific situations to be evaluated, compared and discussed in terms of their degree of ownership, application methods, relevance and performance in different contexts;
- analysing their similarities and differences;
- identifying recommendations at regional level to advance land regulation within these areas and from the actors themselves by fostering dialogue.

The expected results of this study were as follows:

- R1: An inventory of land tenure management rules and tools in the form of a catalogue of regulatory mechanisms, including a common analysis grid for the WAIDMAs;

- R2: Diagnostic analyses of tenure land management rules and tools within the scope of the study, including recommendations to define their levels of applicability on a case-by-case basis;
- R3: A comparative analysis of land tenure management rules and tools based on feedback from cases of large-scale rural hydraulics, allowing the development of recommendations on good practices and replicable experiences, and fostering a sustainable framework for discussion and dialogue between actors.

The objectives and results remained the same throughout the project. However, the analysis was adapted to the evolving issues of the project in order to remain as relevant and beneficial as possible for the WAIDMAs.

1.3 Reminder of the components of the project

The land tenure project ‘Rules and Tools Adapted to Large Public Collective Schemes in WAIDMA Areas’ began on 1 September 2020 for a duration of 18 calendar months.

It had five components, each with a deliverable, as follows:

- Component 1: Start-up phase;
- Component 2: Development of an inventory of land tenure management rules and tools;
- Component 3: Diagnostic analyses of land tenure management rules and tools;

- Component 4: Comparative analysis of management rules and tools with recommendations;
- Component 5: Drafting of the final synthesis (this report).

The start-up phase ended on 30 September 2020 and mainly consisted in consolidating the methodology, the work approach and the planning, as well as mobilising the CEs by signing contracts with the six WAIDMAs having provided them to the project team. By way of a reminder, the CE of Bagrèpôle was designated as co-leader of the study and representative of the other CEs. His role was to work more closely with the consultant in order to mobilise and give reminders to the WAIDMAs when necessary.

This phase involved formalising the CEs' interventions through the signature of an initial firm tranche contract for components 1 and 2, and the announcement of a variable tranche contract for components 3 and 4.

Deliverable 1, the Inception Report, was approved on 10/11/2020 and officially launched the 2nd component.

The 2nd component of the land tenure project started in November 2020 and consisted of the following subtasks:

- Task 1: Exhaustive documentary collection at the level of the six WAIDMAs concerned and implementation of the ROA-SAGI database;
- Task 2: Compilation of an inventory of the instruments used in land tenure management and their classification into families of rules and tools;
- Task 3: Definition of classification and analysis criteria applicable to each instrument to identify the most interesting ones to be studied in the field;
- Task 4: Drafting of the documentary inventory note and preparation of component 3.

This component was a key stage for the rest of the project. It enabled the knowledge base available at the level of each WAIDMA to be inventoried and ultimately shared with the entire ROA-SAGI network and COSTEA.

Based on the elements resulting from the inventory, several recommendations were discussed with COSTEA's Permanent Technical Secretariat to adjust the following operations as well as possible. These were formalised in the variable tranche contracts signed with the WAIDMAs concerned. This component also made it possible to adapt the CEs' level of involvement in the rest of the project, particularly with regard to the field missions necessary for the diagnostic analysis of the instruments identified.

Deliverable 2, the Documentary Inventory Note, was approved on 31 March 2021 and officially launched Component 3 under the new conditions formalised in the variable tranche contracts.

The third component of the land tenure project started on 1 April 2021. This component, which is the core of the technical analysis of the project for the six WAIDMAs: Bagrèpôle, ODRS, ON, ONAHA, SODAGRI and SAED, consisted in a comparative analysis and in capitalising on the proper application of the instruments at the level of the users and field programmes.

It was based on three main tasks:

- Developing the analysis grid to be applied to all the rules and tools studied (origin of the systems, objectives, implementation methods, actors involved, quantitative and qualitative results achieved, compliance with the evaluation principles, etc.);
- Carrying out field analysis missions by the CEs to obtain qualitative information on the stakeholders' and actors' appreciation of the rules and tools put in place, and to bring out their recommendations to improve the effectiveness of these systems;
- Defining operational recommendations to improve the existing tools and rules, as well as implementation and application modalities to achieve the target objective of securing access to land by producers and their WAIDMAs.

This diagnostic analysis enabled the identification of instruments deemed noteworthy in their specificities and their capacity to respond to the challenges of managing land tenure issues at the level of all of the WAIDMAs.

Deliverable 3, the overview of land tenure management rules and tools, was approved on 20 September 2021.

The fourth component started on 1 November 2021. Its objective was to produce a comparative analysis of land tenure management tools and rules within the different WAIDMAs, thus revealing methodological orientations concerning approaches to the development of systems and their implementation, and which could be conducive to their effective application.

This fourth component was organised around the following tasks:

- Task 1: Definition of the national legal contexts of land governance and of each WAIDMA's land tenure security missions in their respective territories;
- Task 2: Analysis of the similarities and differences of the most noteworthy land management instruments; identification of experiences that could be replicated in other contexts;
- Task 3: Drafting of the provisional comparative review report and submission to COSTEA's Permanent Technical Secretariat;
- Task 4: Presentation of the report at the regional workshop (Saly: 23 to 25 May 2022) and comparison of the recommendations in order to validate them after adjustment.

Deliverable 4, the report on the comparative analysis of land tenure management rules and tools, was approved on 12 May 2022.

The fifth component, the subject of this report, corresponds to the project's finalisation phase and to the development of recommendations to improve land tenure management. It involved the organisation of a regional workshop, which took place from 23 to 25 May in Saly (Senegal), in the presence of all of the CEs, WAIDMAs' legal representatives, partners and members of COSTEA's Permanent Technical Secretariat.

Thematic discussion workshops were organised based on all the study's conclusions concerning the tools and rules applicable to each WAIDMA (whether or not they had benefited from field studies). These workshops made it possible to review the project's conclusions, adjusted by each person's participatory approach, in order to identify the follow-up to be given in the framework of COSTEA, but also as part of the development of the WAIDMAs themselves, which should now concretise and apply the proposals adopted to make them replicable in their own environment.

1.4 Resources mobilised for the study

To carry this project out, Sylvatrop Consulting France set up a complementary team with experience in how WAIDMAs function, a command of land tenure issues and knowledge of the study area. This team was composed as follows:

- **Mr Rémi LEGENDRE**, project director, responsible for the overall coordination of the project, quality control of the deliverables by monitoring compliance with the study's objectives, and providing support in the drafting of the various deliverables as required.
- **Mr Thomas MANTET**, project manager, ensured the overall steering of the project and intervened more specifically in: (i) the 'Tools' component (drafting of deliverables), (ii) ensuring compliance with the expectations of AFEID, COSTEA and the WAIDMAs themselves, (iii) the mobilisation of the WAIDMAs, particularly for data collection, (iv) the general coordination of the missions and interventions of the CEs, and (v) the organisation of the feedback workshops.
- **Mr Hubert OUEDRAOGO**, a jurist and land tenure expert, intervened throughout the project as an expert in the laws and legal aspects of irrigated rural land tenure. He therefore focused more particularly on analysing the rules implemented by the WAIDMAs and their conformity with the texts in force.

In addition and as agreed in the ToR, the service provider relied on the WAIDMAs, in a contractual framework, to carry out planned activities. The WAIDMAs therefore mobilised CEs who were an integral part of the project team. These CEs were the following:

- Bagrépôle, in Burkina Faso, **Mr Etienne KABORE**: with a degree in rural development engineering and a master's degree in rural development sociology, he joined the Ministry of Agriculture where he held various positions before becoming Director of the Organisation of Producers and Support to Rural Institutions. He then joined Bagrépôle in 2012, before becoming both Director of Economic Development and at the same time Head of Social Safeguarding and Land

Management in 2013. **Etienne KABORE, as co-pilot of the project according to the ToR, was the focal point of the CEs throughout the project.**

- ON, in Mali, **Mr Sadio DEMBELE**: with a master's degree in private law, he joined the ON in 2009 as legal advisor, where he is particularly involved in the management of land conflicts between farmers and between farmers and the ON. He also represents the ON in legal proceedings.
- ONAHA, in Niger, **Mr Abdoulaye AMADOU**: with a degree in human geography, he joined ONAHA where he held various positions: training, monitoring-evaluation, hydro-agricultural operational service, before becoming Head of the Land Management Unit within the Directorate-General of ONAHA for the last three years.
- SODAGRI, in Senegal, **Mr Samba Moussa BA**: with a degree in agricultural engineering, he held various positions in NGOs and development projects before joining SODAGRI in 2015, in the Producers' Organisation Department. Here he works in particular on issues of the structuring and professionalisation of organisations, especially with a view to developing value chains.
- SAED, in Senegal, **Mr Mouhamadou DIA**: with a specialist postgraduate studies diploma (DESS) in planning, decentralisation and territorial development from the University of Dakar, he joined SAED in 2009 in the Division of Support to Territorial Authorities (DACT). Here he works in particular on the development and implementation of land use and allocation plans. He also contributes to the national debate on land tenure security.
- ODRS, in Mali, **Mr Hamet KEITA**: with a degree in rural engineering, he started his career in the private sector before joining ODRS in 2008 in operational services (hydro-agricultural development), then since 2014, as Head of the Department of Rural Infrastructure and Equipment.

2. CLASSIFICATION OF LAND TENURE MANAGEMENT INSTRUMENTS

2.1 Debate on the nature of rules and tools

The ToR for this study focused on the analysis of rules and tools without defining them in advance. The consultants were expected to propose this definition. However, throughout the project, many questions arose concerning how to effectively distinguish between rules and tools. It was therefore important to formalise the differences between these two types of instrument by trying to clarify these concepts, the conclusions of which had a direct impact on the implementation of the project.

Rules and customs: legal norms

The notion of 'rule' refers to the field of legality (i.e. what is legal). They are referred to as legal rules or rules of law to distinguish them from other fields of regulation, such as morality, propriety, etc.

The rule of law

The rule of law is a characteristic of all human societies. Indeed, all human societies have a 'vital' need to organise themselves in order to establish and guarantee the reproduction of a societal order, to govern themselves and to ensure peace and security. Legal rules are norms of behaviour established by society and imposed on individuals and groups in order to preserve a determined social order.

The effectiveness of the rule of law largely depends on the effectiveness of the institutions set up to ensure its implementation. Institutions are structures, bodies created by society, to perform specific functions considered essential for society. In western societies, the nature and strength of rules vary. A distinction is thus made between laws and regulations. In democratic systems, laws are the translation of the popular will. They are necessarily formulated in a general manner. In order to be implemented in practice, the law must be specified by regulations, in the form of decrees and orders. Regulations are adopted by the executive power (the government) and are intended to specify the content of the law in detail, to determine the applicable procedures and, finally, to enable the law to be put into practice by the competent state services.

Customs

However, the scope of legality cannot be limited to laws and regulations enacted by the State. This is clearly demonstrated by the context of African societies, which are dominated by the reign of custom. Customs differ from laws and regulations, firstly in that they are not issued by a specific institution or authority. In Africa, customs are considered to be a legacy of the ancestors and are therefore traced back to time immemorial. In reality, customs are the result of ancient practices shaped over generations, which have eventually been assimilated by the collective consciousness to be lived and transmitted as obligatory. It is also important to note that custom is usually oral and therefore not written.

Beyond the above differences, custom shares with law the fundamental normative function: like law, it imposes models of behaviour on individuals that are considered ideal or preferable. Their violation leads to sanctions being imposed on the perpetrators of non-compliant practices. While the force of law rests on its legality, that of custom lies in its legitimacy.

Between laws and customs: usage

The concept of custom is similar to that of usage, but not identical. Like customs, usages are practices that have been repeated over a long period but they are considered to go back less far in time. Sometimes it may even be possible to approximately identify their origin. It should also be emphasised that usages do not apply to society as a whole, but most often to particular categories within society. This is why there are many professional usages or those of particular brotherhoods. Moreover, the obligatory nature of usages may be debated to a certain extent. Rather than mandatory prescriptions, they are practices that have been progressively established and that have gained consensus within a group. As such, these practices are the basis of trust between the members of the group concerned and form the basis of membership of that group.

However, an impermeable barrier should not be established between customs and usages:

- a usage can become a custom over time;
- a usage can also become a law, provided that the legislator so decides;
- a judge can also intervene in the consecration of a usage by establishing case law.

Rules and tools in the context of waidmas

While the concepts of rules and institutions have a fundamentally legal content, the concept of tool is less legal. As with any common term, it is therefore important to agree on what is meant by a 'tool'. While rules are legal acts prescribing compulsory behavioural patterns, tools could be generally considered as means of action or intervention to translate rules into practical reality on the ground. The Larousse dictionary defines a tool as 'an element of an activity which is in reality only a means'. The distinction between a rule and a tool therefore lies in the function assigned to each. The rule sets the pattern of behaviour whereas the tool provides the means to ensure the effectiveness of the desired behaviour.

In terms of land tenure security, for example, the legal or regulatory requirement that any farmer regularly installed on a developed scheme must be secure in his/her use of the plot falls into the category of rules. In order to translate the obligation of land tenure security into a concrete reality, the State and/or WAIDMA must implement appropriate tools. Depending on the national legislation in force, the tools for securing land tenure may consist of a title deed for the plot of land (known as a 'land title', for example), or a contract for the use of the plot of land (farming or concession contract for example).

What the above example shows is that to be fully effective, tools need to have a legal basis. Without a legal basis (a law or a decree, for example), the land tenure security measure would remain merely potential, and the beneficiary would remain exposed to disputes by third parties without having recourse to the competent jurisdictions to prove and enforce his/her right. It should be emphasised that in addition to the law, the tool can also be based on a contractual mechanism. A general principle of law states that 'the contract is the law of the parties'.

The specific rules applicable to WAIDMAs vary and depend on the legislation in force in the country of the WAIDMA. In a country where land ownership is a state monopoly, the land title is not a conceivable tool for the benefit of the farmer. On the other hand, in a liberal land tenure system, preference will be given to private ownership, with all its attributes of power (power to use, enjoy and dispose of the land).

As for the tools, they are applied directly on the ground and must therefore be sought as closely as possible to the WAIDMA's daily activities. They have most often been developed by or for the WAIDMAs, and are sometimes only applied in the framework of specific projects supported by Technical and Financial Partners (TFPs). Their scope of application may therefore be limited to the area of intervention of a WAIDMA.

It is important to bear in mind that the land tenure rules and tools applicable to WAIDMAs must be inventoried and analysed with particular attention to systems relating to water management facilities (irrigation). Well-established and well-accepted practices should be identified and examined and could serve as a basis for recommendations if they constitute good practices.

Finally, it must be recognised that while the distinction between rules and tools is theoretically conceivable, it sometimes becomes less clear in practice.

Conclusions for the study

These complexities and difficulties lead us to take the distinction between rules and tools for what it is: an attempt to classify based on a definition that is imperfect because it applies to different national legal, institutional and technical contexts. This distinction therefore remains essentially theoretical and potentially debatable. Furthermore, this analysis shows that tools most often have a legal basis (a rule), and that an analysis that separates rules and tools that share the same purpose would not make sense. This is why a classification by family of instruments has been favoured in the context of this project.

2.2 Territorial management based on specificities

National regulations on land tenure security

It is difficult to understand the foundations and logic of the land tenure management rules and tools applicable to WAIDMAs, as well as their similarities and differences, without looking back at the national land legislations that form the mould that shaped and underlie them. These legislations determine the general framework for the management of land used for various economic activities, including land tenure management on large developed schemes.

National legislation based on a common colonial land tenure heritage²

The countries in the study area share a common historical foundation resulting from French colonisation. In the colonial territories of the former French West Africa, the land tenure issue very quickly became a major constraint in the development of the territories. How could colonial companies secure their investments through access to private land ownership? In the search for appropriate answers to this question, it rapidly became apparent that neither the customary land tenure systems that governed the land locally, nor the system in force in the metropolis, offered effective solutions for access to land ownership for the benefit of colonial companies.

The solution was found in the Australian colonial experience. The Australian colonial land administration system of the Torrens Act, better known as a land registration system, was imported and adapted to the context of the colonial territories of French-speaking Africa, notably through a decree of 24 July 1932. The land registration system was ultimately a mechanism for the 'creation' of land ownership by the State, by granting this ownership to the colonial companies that so requested.

Still today, the land registration system designed by the colonial administration is the legal basis of the land administration system in French-speaking Africa. Land registration consists of the implementation of a relatively complex procedure for the physical and legal individualisation of a plot of land whose private ownership is sought.

This reminder of the common foundations of national land tenure legislation provides a better understanding of the major characteristics of the land tenure legislation applicable to WAIDMAs. The first characteristic concerns the pre-eminence of the principle of state ownership of the land (national domain, national land domain, etc.). Almost everywhere (with the exception of Niger), the State considers itself as the sole source of all land legitimacy and legality. The second characteristic stems from the first and leads to mistrust, or even hostility, towards customary land tenure rights, which nevertheless constitute the basis of the legitimacy of local land tenure rights. In cases where the State recognises the legitimacy of local land tenure rights, it makes their ratification conditional on the implementation of a procedure for the joint establishment of these rights on the ground.

National land tenure specificities

A shared colonial land heritage in no way erases the existence of specificities in national land tenure legislation. Although they have all nationalised the land registration system, each country has made more or less profound formal and substantive adjustments, which influence the rules and tools applicable to WAIDMA management.

On the general legal status of land

Discussing the general legal status of land means asking who owns the land in a given country. The first observation relates to the generalisation of the concept of national domain. Everywhere, land is considered as the property of the nation, hence the concept of the nation's domain or national domain. However, the concept of national domain should not be confused with that of State domain. The State, as the representative of the nation, is responsible for the proper management of land under the national domain. In particular, it must ensure the effective optimisation of the land and its sustainable use. As a legal entity under public law, the State is the holder of its own domain, which is subject to a distinction between the public domain and the private domain³. The State's public domain includes all property which, because it is assigned to the collective use of the public, is legally inalienable, imprescriptible and unseizable. The State's property under the private domain includes other property held by the State, which it manages under the same conditions as private individuals: it can rent it out or dispose of it by sale, for example.

On the modalities of access to land

Although colonial land legislation was hostile to local customary land tenure rights, African States, after following the same example, are beginning to recognise the legitimacy and generalisation of local land tenure rights based on customary systems. In particular, with the 1993 Land Ordinance, the Nigerian legislator

2. H. Ouedraogo, 2010: Mythes, impasses de l'immatriculation foncière et nécessité d'approches alternatives. AGTER - Mythes, impasses de l'immatriculation foncière et nécessité d'approches alternatives.

3. In Senegal, the domain of the State is governed by Law 76-66 of 2 July 1966 on the State Domain Code.

paved the way for the recognition of customary land tenure rights with the affirmation of the equality of customary and written law ownership. Senegal has remained in the classic position of not recognising legitimate land tenure rights by providing only for the allocation of land from zones used for agricultural production (*zones de terroirs*) to members of communes in rural areas. The Voluntary Guidelines on the Responsible Governance of Land Tenure adopted by the Committee on World Food Security are a major step forward in land governance. For the first time at the international level, they enshrine the need to respect the legitimate land tenure rights of local actors. They recommend that States 'take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not [...]'. Although all the member countries of this study (Burkina Faso, Mali, Niger, Senegal) took part in the adoption of this international instrument, they are at different stages in translating the Voluntary Guidelines into their national land policies and legislation.

On the recognised land tenure rights of rural actors

Except in the case of Niger, which recognises customary ownership on an equal footing with registered ownership, the land rights recognised in favour of local rural actors are simple rights of enjoyment. Rights of enjoyment are distinct from ownership rights in that they confer the right to exploit the land and derive all possible economic benefits from it, but do not allow for its disposal. The power to dispose remains the exclusive prerogative of the owner. After a public and cross-party enquiry conducted on the ground, the holder of customary land tenure rights is issued with an administrative deed that can serve as proof of his/her right. In Burkina Faso, for example, this is the certificate of land possession (*attestation de possession foncière*) and in Mali, it is the certificate of customary holding (*attestation de détention coutumière*) or the certificate of land possession (*attestation de possession foncière*). In Senegal, recognition of the right of enjoyment results from deliberation to allocate land to a natural or legal person. In Niger, a certificate of registration is established in the rural file. Most often, a recognised right of enjoyment can be transformed into a land ownership title through the registration procedure.

On the condition of putting the land to good use

One of the justifications for using a right of enjoyment is that it is a personal right, conditional on the obligation to put the land to good use. All beneficiaries of a right of enjoyment are obliged to optimise their land within a period of time stipulated in the texts. If the land is not put to good use, the beneficiary of the right of enjoyment may be sanctioned and the plot may even be withdrawn. It should be noted, however, that in Niger, absent or inadequate optimisation does not lead to the loss of ownership rights⁴. This approach of strict respect for ownership rights can be seen in Bagrépôle's land management rules, where the non-payment of water fees is not sanctioned by the loss of ownership rights.

On land planning

Rural land planning is seen everywhere as an essential dimension of the rational and sustainable use of natural resources. In Niger in particular, it is stipulated that each department must have a

land use plan. In Mali, it was decided that land use plans should take into consideration all economic and productive activities, in particular transhumance. Developed land, particularly that with total or partial control of water, falls under the private domain of the State everywhere (except in Senegal). As such, these lands can be the subject of ordinary or long-term leases, and even of definitive cessions according to the objectives of the State's agricultural policies.

Missions assigned to WAIDMAs in terms of land tenure security

WAIDMAs have specific missions in terms of land tenure security, which depend on the national regulations specified in the previous chapter, but also on the choices or priorities determined at the level of each WAIDMA. These elements obviously have a decisive impact on the instruments developed and implemented.

Burkina Faso: Bagrépôle

Bagrépôle is a semi-state body created by Decree 2012-180/PRES/PM of 12 March 2012 by the State and private parties of Burkina Faso. The mission assigned to this body is to make the Bagré growth pole a special economic zone and an exemplary model of inclusive development through the optimal development of its potential.

Bagrépôle ensures the management of land and 'takes all necessary measures to do so efficiently. These measures must contribute in particular to effective land tenure security for actors intervening in the scheme and to the preservation of social peace' (Article 4 of Decree 2014-83). In accordance with this decree, Bagrépôle, through the application of specific specifications for family farms and entrepreneurial farms, has the following responsibilities:

- demarcation/registration/delimitation and issuance of occupancy titles with the collaboration of the State's technical services (domain and topography services);
- managing the process of allocating and withdrawing plots, including to and from agro-investors;
- the process of issuing occupancy titles (land titles for project affected persons who formerly owned land and long-term leases for others who did not);
- regular evaluation that the allocated land is being put to good use, carried out by a commission set up for this purpose by Bagrépôle.

Mali : ON

Initially created in 1932, the ON has been restructured several times, most recently in 1994 through Law 94 004 /AN-RM of 9 March 1994. Its missions are set out in a regulatory text, the latest of which is Decree 2014-896 of 12 December 2014 on the organisation of the management of land and of the water network. Article 2 of this Decree stipulates that the government entrusts the ON with the management of land [...] that is developed and equipped, that is to be developed and equipped, irrigated or capable of being so [...]. Article 4 specifies that '[I]and already developed [...] shall be registered in the name of the State', but this registration has not been carried out to date. Article 9 also

4. Art. 19, Order 93-015 of 2 March 1993 establishing the guiding principles of the rural code.

states that 'the occupancy of managed land shall be under one of the following types of tenure: (i) an annual farming contract, (ii) a farming permit, (iii) an ordinary lease, or (iv) a long-term lease'. The ON is in charge of the contracting process for these types of tenure, including the choice of farmers for ordinary and long-term leases, with the exception of annual farming contracts. The beneficiaries of these latter are chosen by Joint Land Management Committees which include representatives of the ON and farmers.

Mali : ODRS

Created by Law 96-042/AN-RM of 7 August 1996 and organised by Decree 96-221/P-RM of 21 August 1996, the ODRS is a Public Administrative Establishment (**Établissement Public à caractère Administratif, EPA**) with legal personality and financial autonomy. Its main mission is to help achieve Mali's food security in its area of intervention, particularly through the development of hydro-agricultural facilities, the integrated development of animal, plant and fish production, and the preservation of the environment. With regard to irrigated land tenure management, the powers conferred on it are not specified in the texts in force. ODRS has started a process of registering land in the name of the State. This process should make it possible to begin the administrative formalisation of a management system by securing land in the area, and to legally confer legitimate land tenure powers on ODRS. Within this framework, the 1 605 ha of the Sélingué scheme have been fully registered. The same procedure remains to be implemented for the Maninkoura scheme.

ODRS allocates and manages all developed land (land withdrawn and reallocated) through the joint committee for land management and a fee-based maintenance fund. This committee was set up by decision of ODRS in 2009. Its missions relate in particular to the allocation and withdrawal of plots. The developed land is temporarily entrusted (for one agricultural season) to farmers for its optimisation and this is tacitly renewed each year if the specifications are met. This joint committee, chaired by ODRS, is made up of ODRS officers and farmers' representatives.

Niger : ONAHA

ONAHA was created by Order 78-39 of 28 December 1978, amended by Order 2014-01 of 3 January 2014. Its missions and operating procedures were specified and defined by Decree 2015-354/PRN/MAG of 10 July 2015 supplementing Decree 2015-218 of 15 April 2015. Its mandate is to ensure the development and sustainable management of hydro-agricultural facilities and the promotion of irrigated agriculture in Niger. In the field of land tenure management on both old and new developed schemes, ONAHA's missions are as follows:

- To conduct, within the framework of a multi-actor committee, the process of distributing plots (administrative and customary authorities, technical services, etc.);
- To control the management of plots in order to prevent acts of transfer or disposal (sale, mortgage, pledge) except in cases authorised by the State.

On this last point, ONAHA can authorise subletting, loans for use or ad litem succession, under conditions authorised by law or agreements duly signed with the State (cooperatives). The land tenure status of the schemes on which hydraulic developments have been created is a subject that remains potentially conflictual due to a legal framework that presents shortcomings. These are linked on the one hand, to the scattering of applicable rules through a multitude of texts and, on the other, to the lack of coherence between the provisions of the different texts. Logically, the land concerned by a hydro-agricultural development must be subject to a procedure of expropriation for public utility, giving the right to compensation. It must then be reallocated, taking into account, if necessary, the previous customary occupants. This land thus becomes part of the State's public domain. These procedures have not always been clearly completed. In order to clarify this land situation, since 2014, ONAHA has undertaken a process of registering developed schemes in the name of the State, and then registering occupancy contracts in the land titles. At this stage, the schemes of 14 hydro-agricultural developments have been titled for a total of 5 000 ha. It is planned to continue this activity on the 71 other existing hydro-agricultural developments and on new ones.

Senegal : SAED

SAED was created by law 65-001 of 20 January 1965 with the status of a public establishment of an industrial and commercial nature (*Établissement public à caractère industriel et commercial*). It subsequently became a national company (*Société nationale*) on 1 December 1981. From that date, SAED's mission has been to carry out a number of activities that contribute to the achievement of the objectives set by the public authority and set out in the three-year Letters of Mission (LM) binding both parties.

In terms of land tenure, SAED does not have any sovereign missions as irrigated land is part of the national domain, whose management is entrusted to local authorities (rural communities that became communes in 2013). Nevertheless, since its 5th Mission Letter (1996-1998) in which the State mandated it, and in addition to its mission involving the delegated project ownership of hydro-agricultural infrastructures and providing advisory services to actors along the agricultural value chains in the Senegal River Valley, SAED has undertaken to support rural communities – then communes, in the management of rural areas. It does so by helping them to better assume their responsibilities as managers of land under the national domain corresponding to zones used for agricultural production (*zones de terroirs*). This firstly took concrete form through the implementation of land use and allocation plans, and then through the Irrigated Domain Charter of the Senegal River Valley promulgated by ministerial order in 2007.

Senegal : SODAGRI

SODAGRI has the legal status of a public limited company with majority public participation (*Société anonyme à participation publique majoritaire*), whose capital is held by the State and SNR (*Société Nationale de Recouvrement*, the national debt recovery company). The State has entrusted SODAGRI with a general mission of delegated project ownership which is subdivided into three specific missions. First, SODAGRI has a mission as a local development agency (steering integrated rural development,

project management of hydro-agricultural developments and infrastructures). It also has a mission as a hydro-agricultural development and rural organisation support agency (maintenance of structural and collective facilities, water management). Finally, it has a mission as an agricultural development agency (advisory support and training for producers, monitoring and evaluation).

As with SAED, SODAGRI's role in land tenure management is limited by the legal framework in force, which entrusts the allocation and withdrawal of land to the communes. Irrigated land is part of the national domain and therefore does not benefit from a special status. In addition, and in accordance with its mission as a local development agency and in support of the organisation of rural areas, SODAGRI supports the communes in the implementation of land use and allocation plans.

2.3 Selection of noteworthy instruments and classification by family

In view of the previous analysis, it seemed more relevant to classify the instruments by thematic family in order to facilitate their comparison on similar themes. Indeed, the interest of the current project initiated by COSTEA is to highlight the most effective instruments for addressing specific problems that are more or less common to all WAIDMAs. The establishment of thematic families therefore emerged as a fundamental issue, with the distinction between rules and tools constituting a backdrop. In this sense, the following families of instruments were identified as being the most coherent and relevant in terms of this project's objectives:

- **Arrangements for allocating (or withdrawing) developed land:** the WAIDMAs have set up processes for allocating developed plots (with the exception of Senegal, given the specific legal context), with varying degrees of parity and effectiveness. The fairness and transparency of such allocation procedures are fundamental to ensure that the populations adhere to the WAIDMA's operating mode, respect contractual commitments, and ultimately, achieve the objectives set in terms of the growth of agricultural production.
- **Land tenure security for farmers:** this remains an important issue for the efficient, peaceful and sustainable use of developed schemes. However, it is not very effective in most of the WAIDMAs. Generally speaking, the issue of land tenure security in the WAIDMAs should be examined at two levels. Firstly, the security of the size of the schemes; secondly, the security of the farmers at plot level. With the exception of Senegal, the national legal frameworks in force provide that developed areas come under the State domain and prescribe their registration. But this legal measure is rarely applied in practice. As for the land tenure security of farmers, it is reflected in the recognition of farming rights according to various modalities, with one exceptional case (Bagrèpôle) of recognition of full private ownership of plots for the benefit of farmers.
- **Contracting methods between the WAIDMAs and farmers:** in theory, relations between the WAIDMAs and farmers who have been allocated developed land should

be under contract. However, in reality, contracting methods vary greatly from one WAIDMA to another, and sometimes even within the same WAIDMA⁵⁵ due to the influence of the various projects therein. This is particularly the case with ONAHA, where the technical and financial partners intervene on different sites, adopting different approaches and specific intervention principles. This contracting can also be concomitant with the process of securing land as mentioned in the previous paragraph. In any case, the clarity of the contractual modalities, the adherence of the stakeholders to their respective commitments and the monitoring thereof, are crucial for the management of irrigated schemes.

- **Spatial development and planned land management:** the implementation of large hydro-agricultural projects contributes to territorial planning and development policies. The WAIDMAs are therefore important actors in local development, and their activities have impacts that go beyond the simple framework of agricultural production, to become part of a broader vision that integrates issues of infrastructure, public services, etc. This perception implies the development of planned land tenure management tools, which are still relatively underdeveloped at this stage and/or the WAIDMAs are not fully taking on their roles.

This classification made it possible to highlight noteworthy instruments. In the light of this new classification and the comparison methods identified, these have been grouped in the table below, organised within these thematic families.

Table 2: Distribution of the instruments by family

Families	Instruments	WAIDMA primarily concerned
Arrangements for allocating (or withdrawing) developed land	Land allocation committee	ONAHA
	Plot distribution committee	ONAHA
	Joint land management committee	ON
	Joint committees	ODRS
Land tenure security for farmers	Principle of 'land-for-land' compensation	Bagrèpôle
	Land registration of the area of the developed scheme and securing farmers' rights	Bagrèpôle
	Joint committee for the management of developed plots	ONAHA
WAIDMA/farmer contractualisation	Land registration	ODRS
	Three-party 3PRD contract	SAED
	Irrigated Domain Charter	SAED / SODAGRI
	Distinct terms of reference for family-type farms	Bagrèpôle
Spatial planning and development/planned land management	Principle of separating sanctions for non-payment of water fees from land security	Bagrèpôle
	Land use and allocation plan	SAED / SODAGRI
	Land information system	SAED

55. For example in the case of ONAHA, see Deliverable 3, Compiled reviews on land management rules and tools, page 41.

3. COMPARATIVE ANALYSIS OF NOTEWORTHY INSTRUMENTS

3.1 Noteworthy instruments for securing land tenure

Following the inventory of noteworthy instruments, it seems relevant, as already underlined above⁶, to distinguish between two dimensions of the problem of securing land tenure on irrigated schemes. On the one hand, there is securing the content of the scheme and on the other, is securing the farmers installed on the scheme.

Instruments for securing the land of the schemes

First of all, it should be recalled that most of the national texts in force give the land of large developed schemes a state-owned status. In other words, the land that forms the basis of the developed schemes is generally under the domain of the State. Although they are part of the State's land assets, these lands need to be protected against various potential risks such as encroachment on the scheme's right of way, community claims on the developed areas, etc. In addition, it is in the State's interest to guarantee the infrastructures and other costly investments that it plans to make on the scheme.

The preferred instrument for securing the land of the scheme is **land registration**. In a nutshell, registration is an administrative procedure for securing rights to land, which consists of recording them in special registers, the land books. Registration in the land books takes place by assigning a unique number to the property being registered following a series of operations including the purging of previous rights and documentation of the various data necessary to efficiently manage the asset (location, surface area, delimitation, etc.). The end result of the registration procedure is the establishment of a land title or property title in the name of the State, kept in the land books. This title is also known as the 'mother title' because it is from this title that all other titles issued on the land within the registered scheme will be derived.

In Niger, based on the texts in force and a guide to securing hydro-agricultural developments, several developed schemes have been registered (the Gabou, Famalé and Kandadji schemes). In Burkina Faso, all the developed schemes of Bagrépôle, representing a surface area of 7 774 ha, have been registered.

Instruments for securing land tenure for farmers installed on the scheme

The rights of the farmers installed on the irrigated schemes are relatively uncertain. The de facto preponderance of the principle of state ownership of the land of large irrigated schemes influences the type of rights that the State agrees to grant to the farmers installed thereon. In most cases, the latter are granted rights of use either through an official deed of installation on the scheme or through a procedure of allocation by the competent local authority.

However, the new land tenure policies tend to promote the recognition of more solid rights for local farmers on rural land, including developed land.

The main instruments implemented by the WAIDMAs to secure land tenure for farmers are, among others:

- **The Land Title**

Burkina Faso has an exceptional approach whereby it allocates land in the developed areas of Bagré to farmers and issues them **land ownership titles by dividing up the mother title**. Some 1 666 land titles have already been issued in this way. The delivery of ownership titles for the allocated plots of land consists in the State definitively transferring a part of the land under its domain to the farmers.

- **The Annual Farming Contract and the Farming Permit**

The other countries have a more cautious approach consisting of simple farming rights or rights of use. The decree on the organisation of the management of land allocated to the ON thus provides for various methods of securing farmers, including the **Annual Farming Contract and the Farming Permit**. In particular, the Farming Permit is granted by the ON to holders of an Annual Farming Contract who have proven their capacity to meet the standards of production intensification and to comply with all the other contractual clauses. The Farming Permit confers on its holder a sufficiently solid right of use given that its duration is indefinite and that the rights enjoyed by the permit holder are transmissible (in particular to a spouse, descendant or collateral recognised according to the customs and practices and having participated in the farm.

- **Formalisation of occupancy rights**

At ONAHA, experiments in securing land tenure for farmers are undertaken through land regularisation projects that carry out **operations to formalise occupancy rights** (Gabou, Famalé and Kandadji areas).

- **The 3PRD three-party contract**

In Senegal, the 3PRD three-party contract at SAED, which is based on the Irrigated Domain Charter, defines the conditions and commitments of the different parties and establishes a timetable to be respected in order to achieve management objectives, ensure that the allocated area is being put to good use and, in general, contribute to improving the governance of the land and natural resources.

- **Long-term lease**

The long-term lease is generally preferred in most of the countries, in particular to secure private investors on large irrigated schemes.

The table below provides an overview of the current instruments and mechanisms for securing land tenure for farmers in the WAIDMAs.

Table 3: Summary of the WAIDMAs' land tenure security mechanisms for farmers

BAGREPOLE	ODRS	ON	ONAHA	SAED / SODAGRI
Former owners: land title Others: long-term lease	Letter of allocation of plot	Annual farming contract Farming permit Ordinary lease Long-term lease	Plot allocation contract	Allocation process managed at communal level Irrigated Domain Charter 3PRD three-party contract

6. See 2.3, Selection of noteworthy instruments.

The strengths of the land tenure security instruments

With regard to securing land tenure in developed schemes, there is a convergence of principle on the need to secure the State's land rights over developed land. Firstly, such security allows the State to maintain the substantial investments made with public funds for the development of irrigated schemes. It also makes it possible to prevent the numerous conflicts linked to the land claims of local populations or land grabbing by urban elites. Finally, by securing the schemes in the name of the State, the latter can exercise control over access to irrigated land and its rational development.

Most of the national land laws unambiguously prescribe such a measure. Land registration protects the State by permanently purging the customary land rights that were previously exercised over the land. The security conferred by land registration is particularly strong due to the intangible nature of the resulting land title. By way of example, this is what Burkinabe legislation provides for in the following terms: 'The ownership title is definitive and unassailable. It forms the starting point for the real rights and land charges existing on the property at the time of registration, to the exclusion of all other non-registered rights'⁷.

Concerning land tenure security for farmers installed on the schemes, with Bagrepôle, land tenure security through the registration of allocated plots and the delivery of property titles to farmers can be considered as a pilot experience, as much in Burkina Faso as in West Africa. To date with Bagrepôle, 1 666 land titles have been effectively delivered to farmers. This experience should be followed up in order to draw lessons from the point of view of the possible benefits for the farmers on the one hand, and the potential social and political risks to the scheme on the other.

Notwithstanding the *de jure* or *de facto* predominance of the State's monopoly on developed land in most of the countries, the principle of recognising better land tenure security for farmers on developed schemes is making progress. Increasingly, the improved security of tenure for farmers in irrigated areas is seen as a vital condition for engaging farmers in the intensified cultivation of their developed plots. Land tenure security is also increasingly recognised as a prerequisite for achieving national and global food security and poverty reduction objectives. However, land tenure security should not be reduced to land registration and private ownership.

In practice, alternative land tenure security measures being experimented with in various irrigation schemes offer relatively sufficient stability to farmers.

The weaknesses of the land tenure security instruments

With regard to securing the land of the schemes, apart from the cases of Bagrepôle and ONAHA mentioned above, the principle of registering the land of developed schemes in the name of the State has not been implemented in the field. As a result, the State itself is in a situation of land tenure insecurity on

areas where it has committed highly substantial funding with the support of its development partners. In particular, it is exposed to the risk of reoccupation of land by former customary owners before development, or to land grabbing operations by well-informed urban elites.

CASE STUDY: NIGER

'In two major cases where a dispute was brought to court, it was noted that customary chiefs in their capacity as landowners were claiming land on a scheme. In the other cases examined, it was mainly inhabitants of villages bordering the hydro-agricultural development. Only one case of a disputing purchaser was identified. It should be pointed out that, for the latter case, the purchaser produced a deed of sale issued by a Land Commission for a plot of land located on the developed area. There are also cases of conflicting cohabitation between land for the hydro-agricultural development and urban land (the extension of towns), whose legal management prerogatives are the responsibility of two separate ministries, namely the Ministry of Agriculture and the Ministry of Urban Development. This problem is common to all urban and peri-urban areas. In the majority of cases, the people in dispute claim ownership of the area. Two or three cases had not expressly requested ownership, but simply refuse to pay the fee to the cooperative, arguing that the area was the property of their fathers or grandfathers. Unjustly dispossessed customary ownership is the main reason for claiming these rights'⁸.

The causes of not registering developed land in the name of the State are not clearly established. Causes related to the inadequacy of legislative or regulatory mechanisms can be ruled out as all of the States have had texts on land registration since the colonial period; they have just been adapted to the different specific national contexts. On the other hand, the complexity, length and costs, in short the unsuitability of the procedures which make them dissuasive even for the land administration, could be pinpointed.

Securing farmers on the schemes through registration currently shows weaknesses due to the inherent cumbersome nature of the process. Due to its limited human and technical capacities, the land administration struggles to adopt an appropriate pace for establishing land titles. It should also be noted that there is currently insufficient hindsight to examine both the expected benefits of issuing land titles and the potential risks of such an approach. With the ON (Mali), maintaining the status quo of alternative land tenure security measures is considered preferable by family farmers' organisations. For them, promoting private ownership of plots could in fact be conducive to the eventual monopolisation of developed land by powerful private economic operators seeking opportunities to access developed land.

7. Art. 250, law 034-2012/ AN on agrarian and land reorganisation in Burkina Faso.

8. Aladoua Saadou; Riguima Bassirou: Définition des mesures de sécurisation foncière des périmètres irrigués au Niger. Niamey, ONAHA- IIED- UICN, November 2014.

3.2 Instruments for land allocation

At the end of the inventory of noteworthy instruments, four instruments related to land allocation procedures were selected and analysed in detail⁹:

- the plot allocation committee specifically set up by ONAHA for new developed schemes: the main objectives of the joint committee are to carry out an inventory of the plots of land (including geo-referencing), determine the allocation criteria, and proceed with the distribution of plots (allocation report);
- the joint management committee for developed plots;
- the joint management committee for the ON's land;
- the 'land-for-land' compensation principle implemented by Bagrêpôle: this principle consists of giving preference to compensating for local populations' loss of rainfed land by the priority allocation of plots of land enhanced by irrigation, the size of which depends on the status of the farmer (customary owner or not).

The comparative analysis highlighted a number of characteristics which are described below.

Strengths

The pre-eminent position of the State

Almost everywhere, except in Senegal where the communes have exclusive powers to allocate and withdraw land from the national domain, the State maintains a pre-eminent position in the allocation of land to farmers. Most of the land tenure management bodies are chaired by a representative of the State's public services. Indeed, the States generally consider themselves on the one hand as the best guarantors of the rational use of land, and on the other, as the best actors to ensure compliance with the principles of equity and justice in access to irrigated land and in the security of the farmers installed on irrigated schemes.

Mainstreaming the principle of participation of all actors concerned

The unequivocal affirmation of the State's sovereign role in land tenure matters is, however, relatively attenuated by the promotion of the principle of participation in land tenure management. Adherence to the principle of participation in land tenure management theoretically allows for the involvement of farmers and other actors in the process of decision-making on land tenure. The participation of farmers and other actors is mainly organised through joint land tenure management committees or allocation commissions.

Taking into account local customary land rights

In some cases, customary land tenure principles have been well identified and judiciously used to develop appropriate responses to certain local land tenure management challenges. This is illustrated in particular by the conceptualisation of the principle of land-for-land compensation with Bagrêpôle, which has led to a pragmatic distinction between rights recognised to indigenous landholders and rights granted to non-indigenous farmers: land

ownership and land titles are only granted to indigenous people, while non-indigenous people or migrants (who do not own land according to customary principles) can only benefit from rights to use (long-term leases), in accordance with the customary principles observed in the area.

Weaknesses

As a counterpoint to the previous chapter, there is a recurring discrepancy between the principle of the participation claimed and the reality of this participation on the ground. In some cases, committees are not in place. This is the case, for example, for the monitoring committees for the implementation of land tenure tools that some projects have unsuccessfully attempted to set up at the level of SODAGRI and SAED, due to a lack of resources and commitment from the communes. Where these committees are in place, they are not truly operational. It is also the case for the joint management committees of ONAHA's developed plots, which are not yet operational as the relevant texts have only just been adopted. One reason why the allocation committees do not function is the lack of funding, except when projects are underway on the scheme. It should be noted, however, that the joint committees of ODRS are financed from its own funds.

In the same vein, the insufficient consideration of customary land rights has generated difficulties. This is illustrated by the situation in some ONAHA schemes where the distribution committees did not take account of the distinction between customary land ownership rights and the right to use land under a customary pledge¹⁰.

Local specificities

In Senegal, the local executive is the main actor in rural land tenure management. Article 195 of Law 96-06 of 22 March 1996 on the local authority code states that 'the rural council deliberates on any matter for which it is competent by law, and in particular on [...] the allocation and withdrawal of land from the national domain'. As a result, the allocation of land on developed schemes is essentially the responsibility of the local authority through the procedure of allocating land by deliberation. In practice, however, the role of the local authority must be nuanced. For example, in the case of the 3PRD scheme, the local authority makes the required land available to the project after having cleared the rights. After development, the land is made available to the authority for allocation, in accordance with specifications or a contract in which the State is a stakeholder through its representative, the *Société d'Aménagement et d'Exploitation* (SAE, Development and Operating Agency).

3.3 WAIDMA/farmer contracting instruments

Upon completion of the inventory of noteworthy instruments, four instruments related to procedures for land allocation were selected and analysed in detail:

- the specific specifications for family farms implemented by Bagrêpôle;

9. See deliverable 4 report: *Analyse comparée des règles et des outils de gestion foncière* (Comparative analysis of land management rules and tools, in French).

10. In the Kandadi schemes, the rights of customary owners are taken into account. They will benefit from lease contracts instead of occupancy contracts.

- the principle of separating sanctions for non-payment of water charges from land tenure security, also used by Bagrêpôle;
- SAED's Irrigated Domain Charter;
- SAED's 3PRD three-party contract.

The comparative analysis highlighted a number of characteristics which are described below.

Strengths

Contractual commitments

The WAIDMAs' commitments systematically concern the supply of water resources and the maintenance of the main networks and facilities serving plots. The supervision of producers (advisory support) and the supply of seeds or of specific inputs are not mentioned in all the contracts, and in various ways when they are. The farmers are also always obliged to make good use of the plots. However, the type of crops grown and the degree of cropping intensity are not uniformly specified. These characteristics correlate with the degree of WAIDMA involvement in the farmer support process mentioned in the previous paragraph. The greater the level of supervision, the more precise and demanding the contractual commitments of the farmers.

The maintenance of the structures and networks within the plots (known as tertiary or even quaternary networks) and the payment of fees are also systematically indicated in the contracts, as non-payment of these fees is likely to call into question the allocation of the plot to the farmer, with the notable exception of Bagrêpôle where the farmers' land rights are more secure.

The role of intermediary bodies

Intermediary bodies have been set up in all of the WAIDMAs, with clearly defined roles relating to the allocation and withdrawal of plots of land (all WAIDMAs except those in Senegal, see Chapter 5), the management of water infrastructure, advisory support to farmers, the supply of inputs and seeds, and even the marketing of agricultural produce. The existence and role of these bodies obviously has an impact on the level and demands of the contractual relations between the WAIDMAs and the farmers. Indeed, the latter may have specific contractual commitments with certain intermediary bodies that are superimposed on or added to those towards the WAIDMAs (for example, in the case of ONAHA, farmers undertake to forward any surpluses produced to the cooperative to which they must belong).

Weaknesses

The weaknesses are generally related to defective monitoring of contractual commitments:

- the payment of water charges is generally low (less than 20 % **at Bagrêpôle**);
- the plots are generally under-exploited in relation to the contractual commitments;
- the system of sanctions is not applied;
- the support measures for farmers are not always fully effective;
- monitoring bodies are not in place (Irrigated Domain Charter);

- the farmers do not have hard copies of their contracts (Bagrêpôle).

Local specificities

The case of the three-party 3PRD contract implemented by SAED deserves to be developed, as it takes into account the lessons of the Irrigated Domain Charter. From the outset, the issues of security and profitability of investments called for a clear definition of the objectives and, above all, for commitments to be made by the main actors involved in the management and/or operation of the scheme, particularly the commune of Diama, SAED and the plot holders (in total, the project supported the setting up of 147 farms of varying sizes: 5 ha, 10 ha, 25 ha, 50 ha). The purpose of the three-party contract drawn up in this way is to define the conditions and commitments of the various parties and a timetable to be respected in order to achieve management, maintenance and development objectives for the allocated area that correspond to the standards of the Irrigated Domain Charter and those sought within the framework of the 3PRD project. The main additions in relation to the Irrigated Domain Charter are the higher cropping intensity (1.7 vs. 1) and the duration of the commitment (5 years for the 3PRD contract and without limitation for the Irrigated Domain Charter).

The contract also includes specifications, initialled by the allottee, which define the terms and conditions of the management of the farm, and which are an integral part of the contract. The actors directly concerned are specifically involved in the following points:

- the municipal council to pronounce withdrawal (for reallocation to an applicant meeting the criteria) in the event that the plot is not put to good use in accordance with the provisions of the contract, of death or through voluntary withdrawal of an allottee;
- the 3PRD scheme monitoring committee (whose board members are chosen from among the allottees) to ensure that the commitments in the specifications (annexed to the three-party contract) are respected and to take all decisions relating thereto;
- SAED for the selection of allottees, in support of the commune, based on the defined criteria and standards.

Thus, within the specific framework of this scheme, the rules for allocating plots have been adapted in relation to Senegal's legal framework, by reinforcing SAED's role in the choice of allottees, through the development of more refined selection criteria (beyond the Law on National Domain, in conformity with the requirements of the Irrigated Domain Charter and responding to a need for crop intensification). However, the prerogatives of the commune of Diama have nevertheless remained, by being associated in the entire preparation process and continuing to play its role in the formal allocation process. These contractual and land-related innovations make the 3PRD contract unique, alongside concession and other contracts.

Table 4: Summary of contractual arrangements with the WAIDMAs

BAGREPOLE	ODRS	ON	ONAHA	SAED / SODAGRI
Specific specifications for family farms	Specifications	Annual farming contract	Plot occupancy contract	Irrigated Domain Charter
Specific specifications for agri-investors		Farming contract Ordinary lease (on non-developed land) Long-term lease (on non-developed land)		3PRD contract

3.4 Instruments for the planning and development of agricultural areas / planned land tenure management

Upon completion of the inventory of noteworthy instruments, two instruments relating to land allocation methods were selected and analysed in detail:

- the Land Use and Allocation Plan developed by SAED;
- the Land Information System also developed by SAED.

The comparative analysis highlighted a number of characteristics which are described below.

Strengths

With regard to the Land Use and Allocation Plan

The Land Use and Allocation Plan is a spatial planning tool which aims, by setting up a permanent dialogue between elected representatives and the various actors and users of the area, to establish a management of the area which integrates the various production systems and types of land use in a logic of sustainable development. Its legal framework is not strictly defined but it echoes the General Code of Local Authorities, which requires local authorities to draw up a general land use plan. Its preparation therefore consists of establishing a consensus between the local actors in a territory on the distribution of space between uses recognised as priorities and the rules for their cohabitation. The objectives of the Land Use and Allocation Plan are as follows:

- to clarify the land situation in the communes;
- to integrate the various activities linked to the land;
- to strengthen local democracy by involving the population in the choice, adoption and monitoring of grassroots development actions.

From its 6th Mission Letter (1999-2001), SAED was assigned the objective of supporting the implementation of land use and allocation plans throughout its area of intervention. To do so, it set up an operational team in each of its delegations, with agents introduced to the approach and able to lead operations for the communes in the zone. To this end, SAED received support from AFD for the implementation of land use and allocation plans in 43 communes as part of the Support Programme for Rural Communities in the Senegal River Valley (PACR-VFS). With the extension of SAED's intervention zone to the Lake Guiers area,

46 communes now have a land use and allocation plan, some of which have already been updated with the support of new partners (Millennium Challenge Account, World Bank, etc.).

SAED's long experience is based in particular on the fact that the mission of supporting rural development is included in its statutes, allowing the development of demonstrated internal skills. The link thus created between land tenure management, natural resource management and land use planning through the development and implementation of land use and allocation plans, is an undeniable strength of this instrument, which can also rely on a process of progressive and unchallenged decentralisation.

With regard to the Land Information System (LIS)

The LIS is designed to record, store and disseminate information on land tenure and the land base, as well as other information (quantitative, qualitative, alphanumeric, geographical) that can be functionally linked and referenced in relation to the land parcel and/or the communal territory. Its main objective is thus the efficient, effective and transparent management of land information. In the case of SAED, the LIS integrates data from the land use and allocation plans and also that related to land allocations managed at communal level. It includes the following essential functionalities:

- management (at communal level): creation, follow-up of applications for allocation, withdrawal, regularisation, formalisation, etc. ;
- consultation of existing documents, searches for references by type (assignee, use, deliberation date, plot identification number, statistics, history, etc.);
- visualisation of spatial and/or territorial data (plots, locations, infrastructures, administrative contours);
- mapping or spatial analysis (discrimination of graphic objects according to defined parameters or variables);
- saving and updating of information on the division into plots, attribute data, etc.

An undeniable strength of the LIS is its institutionalisation within SAED. Its operating capacity is high thanks to the level and competence of the agents involved, which is based on a long tradition in GIS (mapping of hydro-agricultural facilities). The establishment of the LIS in 16 communes also provides SAED with land information relays via trained agents and equipped offices. The continued presence of numerous TFP projects in the Senegal River Valley, which mobilise funding for mapping aspects, is obviously a major opportunity for the sustainability of SAED's LIS.

Weaknesses

With regard to the land use and allocation plans

The following weaknesses were identified:

- the legal basis for land use and allocation plans remains imprecise at this stage;
- actors are not fully mobilised, and the will of some local authority officials sometimes seems insufficient;

- conflicts arise with regard to competence, particularly between village chiefs and the local authority council, due to the difficulty of abandoning practices and customs;
- there are still deliberations relating to land allocation without reference to the land use and allocation plan;
- the involvement of technical services other than SAED (Water and Forests, Livestock, etc.) in the monitoring and implementation of land use and allocation plans is random;
- the marking of land use zones remains difficult in the field (e.g. herding corridors), while conflicts over the use of natural resources are persistent;
- political interference in priority choices, the conflictual atmosphere within certain municipal teams, and the logic of 'systematic rupture' in the event of a change of team at the head of local authorities, risk undermining the achievements.

With regard to the LIS

The following weaknesses were identified:

- land data remains incomplete in some communes, and updates to the LIS are insufficient;
- a lack of updating of LIS data at SAED level;
- no institutionalised system for monitoring the LIS at the level of the local partners involved;
- no harmonisation of the projects' interventions in terms of land information;
- a lack of financial and human resources at the communal level resulting in problems of technical command of the LIS and maintenance of equipment;
- more generally, no local strategies for sustainability.

Table 5: Summary of land planning instruments

BAGREPOLE	ODRS	ON	ONAHA	SAED / SODAGRI
Consultation for the preparation of Communal Development Plans	No intervention	No intervention	No intervention	Support for the development of land use and allocation plans

Table 6: Summary of LISs

BAGREPOLE	ODRS	ON	ONAHA	SAED / SODAGRI
Development of an LIS underway (call for tenders launched, proposals received, but funding to be mobilised as insufficient)	No GIS / LIS	Development of an LIS (SIGON) underway (supported by KfW)	LIS developed and operational	SAED: LIS SODAGRI: no mapping tool

4. RECOMMENDATIONS

These recommendations stem from the deliverable 4 report 'Comparative analysis of land tenure management rules and tools', and were discussed and reformulated at the regional workshop held in Saly from 23 to 25 May 2022.

Ten recommendations emerged from this workshop. The first nine recommendations fall within the four families of instruments described in the previous chapter, while the tenth and last recommendation is more cross-cutting.

4.1 Instruments for securing land for farmers

Recommendation 1: secure the land of developed schemes in the name of the state or local authority

Observations:

- The development of irrigated schemes necessitates very substantial funding which requires the intervention of the State, with the support of its development partners.
 - Investments of such magnitude must be protected against various risks, in particular: conflicts over land claims by communities that traditionally hold exploitation rights; anarchic occupation and degradation of developed land by uncontrolled internal migratory movements; or the development of land speculation by urban elites to the detriment of the smallholders initially targeted as the main beneficiaries of the developments.
 - In most cases, however, the irrigated schemes are not covered by appropriate land tenure security measures. This situation exposes them to many actual and potential dangers.
 - The lack of land tenure security in the schemes developed by the State also makes it difficult to secure land for farmers. As the legal adage 'nemo plus juris'¹¹ puts it so well, no one can transfer to another person more rights than they have themselves;
 - The developments can be protected and the investments can be guaranteed by implementing the land tenure security measures provided for by the texts. In particular, many national laws provide for the registration of developed schemes, depending on the case, in the name of the State or the local authority. However, the high costs of implementing the registration procedure for very large developed schemes remain a real challenge for the national domain and land registry services in charge of doing so.
- Activities to be implemented**
- Systematically require the registration of the land of developed schemes by the competent services where national texts explicitly prescribe this.
 - From the formulation phase of a development project, integrate the costs of securing the land tenure of the scheme into the project implementation budget, in particular the costs relating to: information and awareness-raising operations for the populations; the necessary reinforcement of human

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

resources and equipment for the competent services; the mobilisation of private expertise (surveyors, land experts, etc.) as well as compensation for the local populations affected by the project.

- Where national land tenure laws so prescribe, before any development, effectively implement the land tenure security procedure, facilitate the security procedure by using new technological tools for delimitation/boundary marking operations, and computerise the registration process.
- Ensure the fair and prior compensation of former legitimate occupants through the use of texts relating to expropriation in the public interest and the prescriptions of the FAO Voluntary Guidelines when the States have subscribed to them.

Good practices observed

Some States (Burkina Faso, Niger) explicitly stipulate the obligation to register land in the name of the State:

NIGER: Law 60-28 fixing the modalities for the development and management of agricultural developments carried out by the public authorities. Article 1: Land situated in the Republic of Niger which has been or will be developed by the public authorities shall be registered in the name of the Republic of Niger, if the public authorities consider this procedure necessary.

BURKINA FASO: Law 034-2009/AN ON RURAL LAND TENURE

Article 26: All land constituting the State's rural land domain shall be inventoried, demarcated and registered in the name of the State. It shall be managed in a rational and sustainable manner by the competent State services or by any specialised public body created for this purpose. In order to secure farmers, Article 65 specifies: The State or local authorities shall grant, as a matter of priority, long-term leases on rural land that has been developed or is to be developed in their own domain in rural areas, to the benefit of individuals, natural persons or legal entities under private law, wishing to make productive investments for profit in rural areas. Article 66 makes registration compulsory in the context of securing farmers and stipulates: the long-term lease of rural land is a lease concluded between, on the one hand, the lessor of the land, and on the other, the lessee or tenant of the land, for a period of between 18 and 99 years at the most, and giving rise to the payment of periodic rent. A long-term lease can only be granted on registered land. It constitutes a real property right and may be mortgaged. A long-term lease must be published in the land registers in accordance with the texts in force. On the basis of these provisions, all of the Bagrèpôle schemes, covering a surface area of 7 774 ha, are registered in the name of the State; more than 1 282 land titles have been issued to farmers who were the former owners of expropriated land and long-term leases are in progress.

Registration of the Bagrèpôle schemes in the name of the State: the main stages in the process of registering the schemes and securing the farmers are:

- purge of land rights: fair and prior compensation to persons whose land has been expropriated;
- demarcation/registration of the scheme;
- parcelling and allocation of land to farmers;
- Establishment of titles and issuance to the beneficiaries.

In Niger, drafting of a manual on land tenure security on developed schemes: content of the manual:

- Justification;
- Commentary on the main steps;
- Recommendations for implementation.

Recommendation 2: secure the land rights of the farmers on developed plots

Observations:

- The vast majority of farmers installed on developed schemes are in fact placed in a situation of great vulnerability in terms of land tenure. Firstly, they generally do not have an individual administrative title that can serve as proof of the regularity of their installation. Secondly, they do not have valid titles to act as a means of mobilising credit for investment purposes. Finally, they are permanently exposed to the risk of their plot of land being withdrawn, particularly if they do not pay the water fee.
- Guaranteeing land tenure security for farmers is essential to achieve the WAIDMAs' objectives, particularly those related to increasing agricultural productivity and production, reducing rural poverty and achieving food sovereignty.
- The frustration of family farmers on developed schemes can be exacerbated since while they generally have no land tenure security titles, they see large private investors, especially foreign ones, benefiting from diligent action by the State to issue them with land tenure security titles.

Activities to be implemented:

- Adopt an approach to diversify land tenure security modalities through the issuance of ownership titles, ordinary leases, long-term leases, farming contracts, etc., depending on the national context.
- Adapt the land tenure security approach to local realities and practices in compliance with the provisions of national legislation in order to encourage the population's adherence to the land tenure security process.
- Establish and deliver an official individual document to all farmers installed on the scheme attesting to the regularity of their installation on the developed scheme and enabling them to mobilise credit from financing institutions to improve their farm.
- Computerise land management systems and procedures for establishing land titles in order to deliver titles to farmers faster and facilitate the archiving of land documentation.

- Make texts on the rights and obligations of farmers on developed schemes more accessible, including in national languages, conduct information and awareness campaigns on the modalities and processes of land tenure security, and set up single points of contact for land tenure security for farmers within the schemes.

Good practices observed:

- Delimitation and demarcation of all farm plots with Bagrèpôle;
- With Bagrèpôle, issuance of individual property titles or long-term leases to farmers according to the case: to date, 1 282 land titles have been issued;
- Issuance of farming permits by the ON;
- The 3PRD three-party contract with SAED.

BURKINA FASO: Law 034-2009/AN on rural land tenure:

Article 65: 'The State or local authorities shall grant, as a matter of priority, long-term leases on rural land that has been developed or is to be developed in their own domain in rural areas, to the benefit of individuals, natural persons or legal entities under private law, wishing to make productive investments for profit in rural areas.'

4.2 Instruments for allocating or withdrawing land

Recommendation 3: draw on good local land tenure practices

Observations:

- Securing land tenure on irrigated schemes is a particularly sensitive process from a social point of view. The persistence of local land tenure concepts and practices inspired by local land tenure customs raises the question of the confrontation between land legitimacy and land legality.
- There are recurrent risks of serious conflicts between local actors holding customary land rights and so-called 'migrant' populations (in fact non-indigenous people), particularly when the populations' support for the land allocation process is not assured.

Activities to be implemented

- Develop criteria and modalities for the allocation of land to farmers in a concerted manner.
- Design information and awareness-raising tools on land allocation criteria and modalities to ensure that messages to the population are consistent.
- Conduct information and awareness campaigns in national languages by mobilising local champions such as local traditional leaders.

Good practices observed:

- Setting up of land allocation commissions on the new ONAHA schemes based on the participation of representatives of all the socio-professional actors concerned.

- Conducting of land regularisation operations on the older ONAHA schemes.
- Implementation of the principle of land-for-land compensation with Bagrèpôle.
- Implementation by the 3PRD project of a three-party contract (project-commune-allottee) referring to the Irrigated Domain Charter, whose purpose is to define the conditions and commitments of the different parties and a schedule to be respected in order to achieve the objectives of the management, maintenance and optimisation of the allocated area.

With Bagrèpôle, the principle of land-for-land compensation consists of giving preference to compensating for the loss of rain-fed land suffered by local populations, by giving them priority allocation of plots of land enhanced by irrigation for use under total water control. Furthermore, the titles delivered are differentiated on the basis of customary principles: land ownership titles only for customary landholders affected by the development project; long-term leases for project affected persons who do not have customary land rights.

Recommendation 4: ensure that allocation committees are effective, efficient and representative

Observations:

With a few exceptions (Senegal), it can be observed that the State is the major actor in land tenure management on developed schemes. However, this preponderance of the State in land tenure management in developed areas is mitigated by the implementation of the principle of farmers' participation in key areas such as land allocation, plot management, water management or the management of certain funds. This is why joint committees are in place for the allocation of plots.

However, despite the importance of joint committees for the sustainable management of land tenure and infrastructure on developed schemes, many deficiencies have been noted in the operationalisation of these participatory organisations. In particular, the following can be highlighted:

- The multiplicity of participatory organisations on some schemes (ON).
- The irregular functioning of joint committees, or even in some cases, the non-implementation of certain committees provided for by texts or projects (e.g. the monitoring committees for the implementation of land tenure tools that some projects have tried to set up in vain at SODAGRI).
- The weak capacities of farmers' representatives in the committees, particularly with regard to a good understanding of their mission and responsibilities.
- Governance problems in the functioning of the committees. This is evidenced by the absence of consultation of farmers by the committees on the land tenure issues of the scheme, the

absence of accountability on the activities and deliberations of joint committees, or the lack of limits on the mandates of farmers' representatives.

- The absence of a sustainable funding system for the operation of the joint committees, making them dependent on project funding from development partners.

Activities to be implemented:

- Define clear criteria to ensure that the actors in the committees are representative.
- Ensure that the joint committees are effective and efficient by defining criteria for their selection and strengthening their capacity to understand their mission and the need to comply with the principles of good land tenure governance at local level.
- Ensure the coordination and funding of the committees for their proper functioning.
- Ensure sustainable financing of the joint committees by budgeting from the WAIDMAs' own funds and mobilising farmers' contributions.

Good practice observed:

- The financing of the joint committees of ODRS from its own funds for the current year.

4.3 WAIDMA/farmer contracting instruments

Recommendation 5: design commitment contracts between the WAIDMAs and users

Observations:

The content of WAIDMA contracts is extremely diverse in terms of their scope, implementation methods and format. As they are intended to be the cornerstone of relations between the WAIDMAs and the users, they must be paid special attention.

Activities to be implemented:

- Guarantee an inclusive and participatory drafting process: in order to be appropriate for all the actors, the content of the contracts should be drawn up by involving all stakeholders.
- Specify the field of application of the contract: it seems essential that the field of application should be as exhaustive as possible and cover all issues relating to relations between the WAIDMAs and the users, and, where applicable, intermediary entities: land development, infrastructure maintenance, water management, etc.
- Simplify the content of the contracts: the wording of some contracts still appears too complex or includes non-fundamental elements (legal texts, contextual elements, etc.). To be effective, it seems important to favour a clear and concise formulation of the commitments.
- Standardise the contractual terms and conditions within each WAIDMA: it is too often observed that the 'project logic' imposes different contractual terms and conditions depending on the focus of the TFPs. This diversity of practices is detrimental to overall consistency and to the institutionalisation of a global

and coherent contractual modality. Nevertheless, this desired homogeneity should not prevent innovative efforts, such as the 3PRD contract at SAED, provided that this innovation is then evaluated and, where appropriate, extended to new schemes of the WAIDMA concerned.

- Translate the contracts into local languages: locally, the insufficient command of French may make it necessary to translate the contracts into local languages.

Good practice observed

The 3PRD contract drawn up by SAED appears to be the most complete and precise document in terms of the respective commitments of the signatories. The distinct specifications for family farming implemented by Bagrèpôle are also an interesting tool to develop.

Recommendation 6: ensure that the contracts are operational

Observations:

It has been too often observed that once signed, contracts are ignored because their content is too general or imprecise, and/or no one refers to them anymore, and/or users do not have part or all of a paper copy.

Activities to be implemented:

- Set up a joint committee to monitor the implementation of contracts at WAIDMA level: the joint nature of the allocation process must be a priority objective in setting up decision-making committees, whose mission is intended to be permanent, unlike the allocation committees. Alongside the services of the State, local authorities and WAIDMAs, the users must be represented in a balanced manner. It is also important to ensure that the latter representatives are periodically renewed so that they do not become entrenched in this mission without being accountable to the populations they represent.
- Ensure that beneficiaries are informed and that the contracts and their annexes are made available to them: users must obviously be made aware of the content of the contracts and, above all, of their commitments. In this respect, it is essential that they have a paper copy of their contract and, where applicable, its annexes.
- Apply the contractual clauses in the management of relations between the WAIDMAs and the users: these contracts must constitute a tool for the 'day-to-day' management of relations between the WAIDMAs and the users.

Good practice observed

In order to facilitate a good understanding of contractual commitments, SAED has translated the Irrigation Domain Charter into local languages (Soninké, Pulaar and Wolof).

Recommendation 7: effectively apply the sanctions provided for in the contractual documents

Observations:

The lack of application of sanctions is a fairly general observation, whether for non-payment of water charges or for not making sufficiently good use of the plots, even though these failures are

very frequent. The effectiveness of the logic of the sustainable development of the irrigated areas is thus entirely called into question.

Activities to be implemented:

- Propose clear, realistic and scaled sanctions according to the infringement of the contractual commitments: for sanctions to be applied, they must also be enforceable. It is therefore important to draw up sanctions that are the result of a concerted process so that their application does not lead to rejection.
- Provide for responsibility of the joint committee in the application of sanctions: it seems desirable that sanctions should be implemented at the level of the joint management committee, which should ideally be the same as that in charge of allocations. Indeed, pressure from the community is undoubtedly more effective than that which can be applied by a WAIDMA. Furthermore, the failure of an individual to comply with his/her contractual commitments is likely to have a collective impact, hence the interest in making this collective responsible for sanctions, which would also be more likely to be accepted.

Good practice observed

No good practice was found in the application of the sanctions stipulated. This shortcoming is generally detrimental to the respect of contractual commitments and, beyond that, to the effectiveness of the WAIDMAs' actions in terms of agricultural production and food security.

4.4 Instruments for the planning and development of agricultural areas / planned land management

Recommendation 8: involve the WAIDMAs in territorial planning and development policies to foster the sustainable management of natural resources

Observations:

The WAIDMAs' involvement in territorial planning and development policy is variable, depending on existing national policies on the one hand, and the WAIDMAs' specific missions in this area on the other.

Activities to be implemented:

- Implement consultation between the WAIDMAs and local stakeholders to ensure that territorial development actions are coherent: the WAIDMAs, through their interventions in a specific territory, are in fact indisputable actors in its development. It therefore seems appropriate to translate this action into a more global approach of local development, by enhancing the value of the activities carried out and by involving local actors in a consultation process (for example, the development of agricultural production value chains could be accompanied by discussions on the production of inputs at local level, downstream processing, etc.).

- Ensure that the WAIDMAs contribute to arrangements for the implementation of territorial planning documents in their areas of intervention: as mentioned above, the WAIDMAs are key local players that must be able to participate in the preparation and implementation of local planning tools.

Good practice observed

SAED is the most involved in the development of local planning documents (land use and allocation plans), providing support to communes in this respect. Its mission to contribute to rural development, which is enshrined in its statutes, legitimises its intervention in this area.

Recommendation 9: set up an LIS at WAIDMA level

Observations:

The desire to have a tool to control land tenure information is observed everywhere but is poorly implemented, with the exception of SAED and, to a lesser degree, ONAHA. However, the use of an LIS seems to be an essential tool for good land tenure management.

Activities to be implemented:

- Institutionalise a service dedicated to LIS management: the LIS function must be institutionalised within the WAIDMAs as a permanent tool, in principle within a service responsible for land tenure issues and/or studies.
- Use the LIS as a tool for territorial knowledge and decision-making: the LIS should not simply be a database of land use, but a real decision-making tool on development issues (including hydro-agricultural).
- Decentralise the LIS at the level of territorial units: to be really useful, the LIS should not simply be centralised and confined to a service of mapping specialists who would have limited use for it, but should be accessible at the level of decentralised units where these exist.
- Make LIS data available to planning bodies and users: LIS data should be public, with the exception of nominative data. It should therefore be possible to communicate it to the various actors involved in development issues in the same territory.

Good practice observed

At this stage, SAED's LIS is by far the most developed tool compared to the other WAIDMAs. Its deployment in the communes is also an asset due to the culture of information exchange created, even if this needs to be improved.

4.5 ROA-SAGI dynamic

Recommendation 10: make the WAIDMAs and ROA-SAGI responsible in the implementation of the recommendations of the land tenure project

Observations:

The land tenure project resulted in strong recommendations, with the objective that they be at least partially implemented, obviously after a more in-depth analysis of their relevance and possible adaptation to the local legal, institutional and

operational contexts. The question of support for the achievement of this objective is fundamental, and is therefore the subject of this recommendation.

Activities to be implemented:

- Revitalise the ROA-SAGI exchange platform to share knowledge and know-how between partner organisations (local producers' organisations, ROPPA, etc.): the objective is to strengthen ROA-SAGI in its mandate of coordination and capitalisation, by giving it a clear mission in the implementation of the recommendations of the 'Irrigated land tenure' project. This recommendation could also be extended to the three other COSTEA projects. Structuring ROA-SAGI within a more formal framework, as mentioned during the workshop, would be conducive to the implementation of this activity, while at the same time constituting one of its justifying elements.
- Make each WAIDMA responsible for carrying out recommendations related to a family of instruments: here it is proposed that a WAIDMA whose management of a family of instruments can be considered more effective than that of the other WAIDMAs, should coordinate the actions for the discussion, exchange and operationalisation of the recommendations on behalf of and in cooperation with ROA-SAGI. For example, Bagrêpôle could ensure the coordination of the 'land tenure security' family of instruments, SAED could do so for the 'development of agricultural areas/planned land tenure management', and ONAHA for contracting between the WAIDMAs and farmers.
- Extend the WAIDMAs' missions to include consideration of land tenure security for other developed areas (valleys, lowlands, etc.): this activity, the idea for which emerged during the Saly workshop, aims to take better account of the agricultural potential of non-irrigated developed areas by analysing the extent to which their integration into the WAIDMAs' areas of activity could contribute to their enhancement and food security in the countries concerned.

Good practice observed

Organisation of seminars for sharing between the WAIDMAs and during international events: COSTEA's structuring action projects in the WAIDMAs' areas of intervention (SA-WAIDMA) in 2022, Niamey meeting in 2018, Ouaga training in 2017, Saint-Louis seminar in 2016, International Commission on Irrigation and Drainage in Montpellier in 2015, etc.

4.6 Summary of the recommendations

The table 3 summarises the recommendations to facilitate overall understanding.

5. GENERAL CONCLUSIONS OF THE STUDY

At the end of the 18 months devoted to the study on the rules and tools of land tenure management in WAIDMAs, several salient points stand out, making it possible to promote the continuation of this project in the COSTEA dynamic:

- A classification between rule and tool is not appropriate in West Africa. Indeed, we observed that the links between the instruments, whether rules or tools, do not allow for a clear distinction. A classification by family, distinguishing the category of intervention or action targeted by the instrument is instead recommended. It would be interesting to compare this approach with that used in the land tenure projects of the other territories covered by COSTEA.
- For each family of instruments, at least one WAIDMA identifies itself as a leader and is ahead of the others in its implementation. This WAIDMA could (should) therefore serve as a driving force for the extension of the instruments applied, thus enabling the other beneficiaries not to fall victim to the same difficulties. The WAIDMAs should affirm their roles as planners and models for sub-regional agricultural development.
- The deployment of new land tenure management instruments within each WAIDMA is entirely dependent on the latter's capacity to take on this responsibility, but also on the national situation through the texts that authorise it. It is therefore imperative that each WAIDMA formalise the place it wishes to (should) take in the tenure management of irrigated land, or other land for which it is responsible (e.g. valleys, lowlands). This responsibility borne by the WAIDMA, depending on the level it reaches, should therefore be accompanied, where necessary, by advocacy with the competent authorities in order to acquire full legitimacy through the texts and application decrees, and thus clarify the roles and responsibilities of each party.
- ROA-SAGI should act as a catalyst to foster a dynamic to improve the WAIDMAs' land tenure responsibilities within their schemes, thus guaranteeing the link between land tenure allocation, valorisation, contractualisation and land development. The results of the study and the proposed recommendations should therefore be widely shared, both within the WAIDMAs themselves and with potential beneficiaries, thus enabling their opinions to be collected, or even with the competent national authorities as spokespersons for the WAIDMAs.
- Finally, COSTEA should encourage the dynamic to strengthen land tenure management proposed by the study. This latter shows that through the extension of already existing instruments mastered by certain WAIDMAs, it is possible to strengthen land tenure management on irrigated schemes, and thus to integrate this component in a structured and homogeneous manner into all future developments. This would avoid 'projects within projects', which can be a direct hindrance to implementation and valorisation in the long term.

Table 3: Summary of the recommendations

Family of instruments	Recommendations	Actions
Land tenure security	1. Secure the land tenure of developed schemes in the name of the State or local authority	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.
	2. Secure the farmers on developed plots	Formalise the types of rights (use or ownership) adapted to the context and local practices.
		Deliver an official individual document to each farmer certifying the regularity of his/her installation.
		Ensure the computerisation of land tenure management procedures.
Increase access to texts on land tenure security, including in national languages.		
Allocation/ withdrawal of land	3. Draw on good local land tenure practices	Develop criteria for the allocation of land to farmers in a concerted manner.
		Carry out information and awareness-raising campaigns on allocation criteria.
	4. Ensure that allocation committees are effective, efficient and representative	Define criteria to ensure the representativeness of actors within the committees and ensure good governance of these committees.
		Strengthen the capacities of committee members with reference to their missions and the principles of good governance.
		Ensure the coordination and funding of the committees so that they function properly.
WAIDMA/farmer contractualisation	5. Design commitment contracts between the WAIDMAs and users	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.
		Standardise the contractual terms and conditions within each WAIDMA.
		Translate contracts into local languages.
	6. Ensure that the contracts are operational	Set up a joint committee to monitor the implementation of contracts at WAIDMA level.
		Provide information to beneficiaries and make contracts and their annexes available to them.
		Apply the contractual clauses in the management of relations between WAIDMAs and users.
	7. Effectively apply the sanctions provided for in contractual documents	Propose clear, realistic and scaled sanctions according to the infringement of contractual commitments.
		Make the joint committee responsible in the application of sanctions.
Spatial management	8. Involve the WAIDMAs in territorial planning and development policies to foster the sustainable management of natural resources	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.
	9. Set up an LIS at WAIDMA level	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.
ROA-SAGI dynamic	10. Make the WAIDMAs and ROA-SAGI responsible in the implementation of the recommendations	Revitalise the ROA-SAGI exchange platform to share knowledge and know-how between partner organisations (ROPPA, etc.).
		Make each WAIDMA responsible for carrying out 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.).

More generally, all of the recommendations proposed are in line with COSTEA's work and would help to meet its main challenges, of which two in particular:

- Challenge 1: Contribute to the economic and social development of irrigated areas;

- Challenge 4: Support change through technical and institutional innovation.

Each recommendation has been classified to facilitate and encourage its use in the short term in future projects:

Economic and social development of territories	Technical, social and institutional innovation
I. Secure the land tenure of developed schemes in the name of the State or local authority.	II. Secure the land tenure of developed plots for the benefit of the users.
III. Take account of good local land tenure practices in arrangements for allocating land.	IV. Ensure that allocation committees are effective, efficient and representative.
	V. Design commitment contracts between the WAIDMAs and users.
	VI. Ensure that the contracts are operational.
	VII. Effectively apply the sanctions provided for in contractual documents.
VIII. Involve the WAIDMAs in territorial development policies to foster the sustainable management of natural resources.	IX. Set up an LIS at the level of each WAIDMA.
	X. Make the WAIDMAs and ROA-SAGI responsible in the new modes of participatory management.

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