

# How collective action can influence the direction of a land reform

Lessons learned from civil society mobilisation in Senegal

Philippe Lavigne Delville, Daouda Diagne  
and Camille Richebourg



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## Acronyms and abbreviations

AJS	Senegalese Association of Women Lawyers
ANSTS	National Academy of Science and Technology of Senegal
CNCR	National Council for Rural Dialogue and Coordination
CNRDT	National Land Law Reform Commission
CNRF	National Land Reform Commission
CONGAD	Council of non-Governmental Organisations for Development Support
CRAFS	Framework for dialogue and action on land in Senegal
CSO	Civil society organisation
GOANA	Great agricultural offensive for food and abundance
IIED	International Institute for Environment and Development
ILC	International Land Coalition
IPAR	Agricultural and Rural Forecasting Initiative
LAP	Land Action Plan
LDN	Law on the national domain
LOA	Framework Law on Agriculture
LOASP	Framework Law on agro-sylvo-pastoral lands
LPD	Land policy document
NGO	Non-governmental organisation
OSIWA	Open Society Initiative for West Africa
PDIDAS	Project to develop inclusive and sustainable agribusiness in Senegal
PES	Plan for an Emerging Senegal
PRACAS	Accelerated Agriculture Programme in Senegal
RDC	Regional development committee
REVA	Back to agriculture
REVES	Network of Green and Ecological Municipalities and Cities in Senegal
SEZ	Special Economic Zones
TC	Technical committee
WLF	World Land Forum

## About the authors

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**Camille Richebourg** is a sociologist and political scientist whose doctoral thesis analysed the 'participatory' mechanisms used in the land reform process in Senegal.

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## Preface

This document is the synthesis of a study conducted by the authors in 2018 at the request of the Framework for dialogue and action on land in Senegal (CRAFS).

CRAFS was created in 2011 by a group of Senegalese farmer and civil society organisations (CSOs) seeking a space for dialogue and action on land issues in Senegal. Their initial focus was tackling land grabbing and organising collective debates on possible options to reduce this phenomenon. Shortly after he took office, President Macky Sall tasked the National Land Reform Commission (CNRF) with leading the land reform process. Stressing the need for a participatory and inclusive preparatory process, CNRF chairman Professor Sourang opened it up to CSOs, and four organisations from CRAFS joined the Commission. CRAFS worked closely with the CNRF from 2014 to 2016, providing critical input and producing a position paper and proposals for land reform based on its consultations with farming and rural communities.

As collective learning and capitalisation has always been one of CRAFS's priorities, it asked a team of researchers and consultants to provide a proposed reading of this experience so that it could reflect on its contribution to the formulation of the land reform. Their study picked up on earlier work on the role of farmer organisations in agricultural policy formulation, which looked at the Framework Law on agro-sylvo-pastoral lands (LOASP) and its land component in 2003 and 2004 (Benkahla *et al.*, 2011; Diouf, 2015), and updated a previous account of CRAFS' history (Hopsort, 2014).

This text is the result of a collective process that was initiated by CRAFS, overseen by the Agricultural and Rural Foresight Initiative (IPAR) with funding from the International Land Coalition (ILC) through the National Engagement Strategy (NES), which involves a number of CRAFS member organisations including IPAR, CICODEV Africa, IED Africa and the CNCR, and Enda Pronat, with funding from the Open Society Initiative for West Africa (OSIWA). The objective of the study was to accurately document and facilitate internal debate on the process. After discussing the terms of reference with CRAFS, the research team conducted independent surveys in February 2018, produced a first version of the report for internal discussion and amendment, and a revised version that was discussed in a workshop at the end of 2018. Work on a synthesis for a wider audience began in 2019 under the aegis of Enda-Pronat on behalf of CRAFS, and involved several rounds of proofreading and comments before publication. Please note that the analyses and interpretations presented in this document ultimately reflect the authors' reading of the experience.

This capitalisation exercise enabled members of CRAFS to reflect collectively on the lessons to be learned from their participation in the land reform process. We hope that publishing this document will also help other organisations and collectives engaged in critical and constructive dialogue on behalf of producers and rural actors in Africa and elsewhere.

*El Hadji Thierno Cissé, executive secretary of CRAFS*

## Introduction

### Building on civil society participation in the Senegalese land reform

Civil society's ability to contribute to public policies has been on the agenda in sub-Saharan Africa since the 2000s. Civil society organisations (CSOs) often debate policy options at some length and depth but spend less time thinking about their strategies for action and influence in this domain, even though the interests promoted by the State do not always correspond with those of most citizens. 'Opportunities to participate' (Gourgues, 2012) offered by the State and donors sometimes come with restrictive conditions. Rather than inviting open debate on the underlying principles of a policy, they often aim to legitimise predefined options that will then be presented as 'consensual' because they came from a 'participatory process' (see, for example, Cissoko *et al.*, 2005). This leaves policy formulation processes open to manipulation, and CSOs facing several dilemmas. Should they engage in the participatory processes proposed by the State? If so, under what conditions? How can they engage in constructive dialogue while being vigilant about the risks of manipulation? How can they influence the process and push for the interests and views of as many people as possible to be taken into account?

This study examines how Senegalese CSOs operating within the Framework for dialogue and action on land in Senegal (CRAFS) mobilised around the formulation of a draft land reform between 2014 and 2016. The process was led by the National Land Reform Commission (CNRF), which the Senegalese government created in 2012 to lead an 'inclusive and participatory' land reform. This paper is an account of how members of CRAFS contributed to the debate on the need for an inclusive land reform. It considers their active and critical contributions to the CNRF process, and analyses the achievements and limitations of their engagement in it. The lessons learned from this experience with land reform in Senegal also apply to civil society participation in other public policies.

Senegal is particularly interesting in this respect because it has a well-established, structured and dynamic civil society that includes farmer organisations with a long history of protest and critical contributions to State policies. Successive attempts at land reform since the liberalisation of the 1980s failed because stakeholders were unable to reach a consensus – or even a satisfactory compromise – on their objectives. After various unsuccessful initiatives, President Macky Sall launched the third attempt at State-led land reform shortly after his inauguration in December 2012, setting up the CNRF to draft a reform on this highly sensitive and controversial issue. To avoid the deadlocks that had blighted previous processes, the CNRF engaged in a 'participatory and inclusive' process that contrasted sharply with earlier efforts. Although it seemed to herald an open approach and a real

opportunity to take account of local people's interests, it should be remembered that successive Senegalese governments had consistently promoted agribusiness since the 2000s.

In previous processes, farmer organisations had managed to block projects they considered unacceptable (such as the Framework agricultural law of 2003 and the National Land Law Reform Commission of 2005, see below), challenging State moves to take control of rural land and prioritise land allocations to investors. The CNRF's stated intention to conduct a participatory and inclusive process seemed to answer CSOs' calls for participatory land reform, but they were concerned about the political significance of the new Commission and the underlying purpose of the initiative. Was the State's real aim to use the 'participatory' process as a front to push through a reform that would ultimately work against family farmers' interests?

CRAFS brings together different farmer organisations, think tanks, consumer organisations and non-governmental organisations (NGOs). Set up to fight land grabbing in the 2010s, it then became actively engaged in demands for a land reform that favoured rural interests. Seeing the launch of the CNRF as both an opportunity and something of a risk, CRAFS called for civil society organisations to be included in the commission, monitored the process steered by the CNRF and tried to influence it and promote both rural and urban interests through critical dialogue and proposals. This required different organisations with different institutional cultures and relationships to land to harmonise their positions. CRAFS was very active throughout the process, combining criticism of the CNRF's framework and methodology with constructive contributions and proposals for reform. This engagement partly contributed to the shift in the CNRF's position and the recommendation in its final report that work on a global political vision should take priority over a short-term legal reform. As we shall see, this report, which was presented at a national validation workshop in October 2016, partly reflected CSOs' demands but remained very general and full of ambiguities.

The CNRF regarded this report as a first step that would be followed by reflection on the legal and institutional reforms needed to implement the land policy. But in May 2017, just one month after the report was officially submitted, the President of the Republic unexpectedly dissolved the CNRF. This was a complete surprise to most of the actors who had participated in the Commission's work, and made CSOs wonder whether – having thought they had partially prevailed on its guidelines – they had in fact lost out on the possibility of reform.

## **Study approach, methodology and limitations**

This is the context in which CRAFS commissioned a capitalisation study to identify and build on the lessons learned from its participation in the CNRF process, which was a completely new experience for CRAFS. It wanted an external view on its individual and collective engagement in the process, to inform internal reflection on the strengths and weaknesses of its participation and the lessons to be learned for

the future. A team of researchers and consultants who were familiar with the actors and context were entrusted with the study, which is based on a review of grey literature and about 40 in-depth interviews with members of CRAFS, associative actors who participated in the decentralised workshops, people who designed and piloted the CNRF process, and observers (ministries, donors, researchers). The interviews were held in Senegal (Dakar and Saint-Louis) in February 2018, and an initial presentation was made at the end of the survey. Members of CRAFS commented on the provisional report and an internal report based on the study, which was reread, amended and provided the basis for collective debate. This present document summarises the study findings and identifies lessons that a wider audience can learn from CRAFS' experience. It is worth noting that its reading of the situation reflects the context in which the survey was conducted, the shock caused by the very recent dissolution of the CNRF, and the changing perceptions and many comments made by members of CRAFS.

The study considers how Senegalese CSOs within CRAFS became involved in the CNRF process and used different strategies to try to influence it, with varying degrees of success. To do this, it examines how the question of 'participation' was raised in the process (which spaces? what kinds of interaction?) and how CRAFS responded, in order to (i) understand whether, why and to what extent CRAFS and its members succeeded in influencing this process and, more broadly, the debate on land reform in Senegal, and (ii) identify the issues and difficulties the process raised for CRAFS. In order to analyse CRAFS' contributions to the process, they need to be put into context, which requires an understanding of the strategies and actions of its different members, and of the CNRF process itself.

The authors made sure that they met all the actors directly involved in the CNRF process, analysed CRAFS' actions, and cross-checked and presented the information in a detached manner. However, they were not able to meet every member of CRAFS, and it should be noted that their understanding of the CNRF process is based on the information made available during the survey and the material that the actors who experienced it from the inside were willing or able to provide. The authors' understanding of the issues and internal debates in the CNRF was undoubtedly limited by their lack of access to internal CNRF reports and its Technical Committee's own internal debates.

The main focus of this study, which draws on the political sociology of participation and the socio-anthropology of development, is the conditions and strategies that enable civil society organisations to influence public policy negotiations and ensure that better account is taken of citizens' views and interests. Civil society participation is supposed to ensure that the public's views are taken into account and thereby foster more relevant and effective policies. In practice, however, it is much more problematic.

Policy choices in both the North and South do not flow from objective analysis of the situation, nor do they necessarily aim to solve problems. They mainly reflect the capacities of certain networks of actors to impose their frameworks (ways of

posing the problem) and priorities for action. Public policies are shaped by the interplay between the different protagonists, how they think about the issues and their possible solutions, and how the formulation process itself is conducted. Controversies, conflicts and ambivalence are an integral part of this process. State actors often see CSO participation as risky because their projects may be contested, so they seek to 'control the political risk of participation' (Blondiaux, 2008) in order to legitimise their priorities and make marginal improvements, rather than proposing open debate where these priorities might be called into question. As a result, the conditions are not always conducive to open debate (see the argument in Lavigne Delville, 2011).

Furthermore, public policy debates are not confined to the formal sequence of successive studies, workshops and seminars. There are always other actors working in parallel arenas, some operating independently and others seeking to influence the formal process (Blatrix, 2007), overtly or covertly. Each mobilises their resources according to their perception of the issues at stake (the risks and potential gains), their previous experience, their networks and their capacities. Finally, the outcome of the formal process is only a partial achievement; even if an agreement is reached, there is no guarantee that it will be translated into concrete measures.

For all these reasons, the term 'participation' is too generic to be really useful for analysis. It also raises the questions of who participates in what, how they do so, and with what effect.

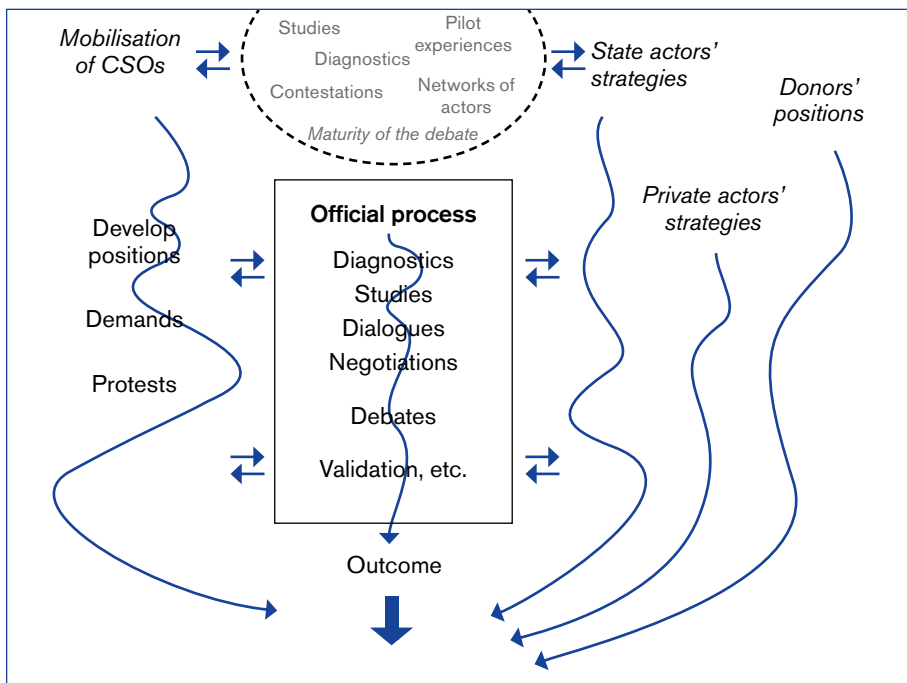
- *Who participates?* Which actors and which types of organisation are included in and excluded from the process? Which ones manage to make their presence felt if they have not been invited to join the process?
- *In what?* At which stage do they participate? In defining the framework, or in discussions about how to implement pre-established options? In steering the process, or in ad hoc meetings?
- *How do they participate?* What space is open in the participation arena? How are people expected to contribute? Do participants follow the rules or seek to subvert them?
- *What effect do they have?* Do these different forms of participation lead to changes in the instigators' initial ideas and plans? Is their influence marginal or can it change the very framework of the process? What influence do they have on final outcomes and decisions? (Fung, 2011 and Richebourg 2019).

These questions allow us to look beyond the general term 'participation' and examine the nature of the exchanges: are we talking about information, consultation (asking people's opinions but not letting them influence decisions), dialogue

(seeking to reconcile different points of view) or deliberation (reasoned debate with a view to taking a collective decision)?<sup>1</sup>

We also need to consider the offer of participation. What is the proposed framework for participation? How open is it to deliberation, negotiation, collective elaboration? Is this framework accepted or contested? What other parallel arenas exist, and how do they interact? And what about the proposed participants' strategies: are they prepared to play an active and productive role in the spaces for participation? If so, how? What is their analysis of the issues and the other actors' positions? Who do they represent, and how? What positions do they defend, and how were they developed? What individual and collective strategies do they use to influence participatory processes, counter possible attempts to manipulate them, and build broad alliances? How do they respond to the multiple dilemmas posed by participation that is both vigilant and constructive?

**Figure 1. Preparing a reform in context: conceptual diagram of the official process**



Philippe Lavigne Delville, 2018

<sup>1</sup> For more information on these questions, see entries in the online dictionary of participation at: <https://www.dicopart.fr>

The diagram of the analytical framework in Figure 1 clearly shows that the formal process of preparing a reform is not conducted in a vacuum. It takes place in a particular context with its own history, studies, research, pilot experiences and conflicts, which will all shape the debate and influence the different protagonists. The preparation process is part of a mechanism that follows a methodology where different stakeholders (public, private, associations, academics, donors, etc.) are involved in different stages and to varying degrees. They all contribute to the process constructively or critically, depending on their positions and the place they are offered, while pursuing other parallel activities that also influence the process and its results, sometimes indirectly. Finally, the story does not end when a reform proposal has been settled on or even adopted: the path from policy document to laws, regulations, mechanisms, etc. can be full of twists and turns and peopled with a changing cast of actors.



## 1. Senegalese CSOs and State land reforms

Rural land tenure in Senegal is governed by the 1964 Law on the national domain (LDN, see Box 1). When the 'New Agricultural Policy' of 1984 paved the way for State disengagement and the liberalisation of the economy, the basic tenets of the LDN seemed unsuitable for a liberal economy and it was put up for reform. Instigated by President Macky Sall in 2012, the CNRF was the third attempt to reform the LDN. Each one met with resistance and counter-proposals from civil society organisations – particularly farmer organisations.

### Box 1. The 1964 Law on the national domain, a distinctively Senegalese initiative

The 1964 law on the national domain (LDN) set Senegal on a different path from other countries. Following the logic of African socialism advocated by Mamadou Dia and Léopold Sédar Senghor, it classified most rural land as being in the 'national domain', which differs from private State lands in that it is held but not owned by the State. The LDN abolished customary rights and restricted land access to members of rural communities, who are allocated non-transferable use rights provided they use the land productively. This law is only partially respected as there are no proper tools to enforce it and the notion of productive use has never been defined. Rural communities responsible for allocating rights were only created in 1972, in the form of elected local authorities that were very different from the 'grassroots communities' envisaged by Mamadou Dia. They allocate rural land to its local holders, except in cases where the political and economic stakes are very high. Despite being prohibited, sales are ratified and legalised by recording land allocations in the name of the buyer, even if they do not live in the commune.

### 1.1 Farmer proposals developed in response to the Land Action Plan

Senegal shifted away from socialism in the early 1980s, as indebtedness and the economic problems that had been brewing since the 1970s forced it to negotiate 'structural adjustment plans' with international institutions. Reforming the LDN first came on the agenda when the 'New Agricultural Policy' was introduced in 1984 (Diop, 2009) as it was difficult to implement and severely limited private appropriation of land.

In 1995 an auditing firm was called in to draw up a 'Land Action Plan' (LAP) that would address State concerns about how to encourage private investment in the agricultural sector. The proposed plan largely ignored the conditions needed to secure family farms and pastoral lands (Benkahla *et al.*, 2011), and presented three possible scenarios: (i) maintaining the *status quo* (leaving the Law of 1964 unchanged); (ii) a *liberal option* that favoured private property; and (iii) a *mixed*

*option* that tried to reconcile the first two options. The plan did not find much favour with the main protagonists:

*“Aware of the risks of political instability that might be caused by adopting a land reform on the eve of a difficult presidential election, the then Socialist President, Abdou Diouf, did not pass judgement on the suggested options. In 1999, the Government sent the LAP to professional organisations for review and comment (particularly umbrella organisations of farmers, local elected representatives, traders and employers)” (IPAR, 2014).*

The National Council for Rural Dialogue and Coordination (CNCR) was created in 1993 to bring together the different farmer organisations and federations in Senegal. In 1996 the State recognised it as the main interlocutor for producer organisations, and asked it to join the steering committee for discussions on the LAP. Due to its concerns about the ongoing reflections, the CNCR launched an ambitious consultation process in rural areas on land issues at the end of the 1990s, to inform its own in-depth internal discussions and proposals for the reform. The consultation process started with local workshops where farmers could gradually build proposals that were then presented to and debated by land management actors, first at the local level (local elected officials, members of the decentralised administration) and then at the national level. This process was still under way when President Abdoulaye Wade was elected, heralding a transition to far more liberal economic policies and the promotion of agribusiness. It culminated in the publication of the farmers’ proposals in 2004 (CNCR, 2004), calling for limited reform of the LDN to strengthen their land rights and facilitate ‘regulated transfers’ of use rights within rural communities.

## 1.2 From the LOA to the LOASP: the State’s failed attempt to regain direct control of land in the national domain

The first stand-off between the government and farmer organisations came with the announcement of the debates on the Framework law on agriculture (LOA) at the end of 2002 and their launch in 2003.

The first draft of the LOA proposed entrusting land in the national domain to a State agency that would allocate it to investors – thereby effectively establishing direct State control over all rural lands. The land reform chapter of the draft LOA<sup>2</sup> was withdrawn in response to donors’ concerns and strong lobbying by farmer organisations within the CNCR, and followed by an extended consultation process (Chaboussou *et al.*, 2006) that culminated in the promulgation of an ambitious framework law on agro-sylvo-pastoral lands (LOASP) in 2004. The LOASP contained provisions for family farms to have legal status, but in the absence of an agreement the land component was reduced to two articles (No. 22 and 23) whose

<sup>2</sup> Which the State never really abandoned, and was given concrete form by the 2017 Law on Special Economic Zones.

principles were to: *“protect the exploitation rights of rural actors and the land rights of rural communities, and regulate land transfers to allow land mobility that encourages the creation of more viable farms, the inheritance of land to encourage sustainable investment in family farms, and land use as a means of securing credit.”* Article 22 envisaged a land reform being defined within two years of the promulgation of the LOASP, in order to *“secure tenure for farmers, individuals and rural communities, and provide incentives for private investment in agriculture.”*

The withdrawal of the land component of the LOA was a victory for the CNCR, which was able to build on what it had achieved with its proposals and demonstrate its capacity to mobilise. But the debate was far from over, as the LOASP merely refers to a future law and only contains a declaration of intent on the land component.<sup>3</sup>

The Ministry of Agriculture started discussions about drafting a rural land law in consultation with farmer organisations, but abandoned the process when President Wade launched a parallel National Land Law Reform Commission (CNRDT) in a further attempt to bring land back under State control. The reports produced by the CNRDT were not made available to the public.

### 1.3 Taking a stand against land grabbing

Senegal’s agricultural policy swung firmly in favour of large-scale agriculture and agribusiness during Abdoulaye Wade’s presidency, which ran from 2000 to 2012 (Diop, 2013a). The State’s failure to take control of land in the national domain through the LOA did not blunt its political will to significantly increase agribusiness in the country, and the government proceeded to put in place a series of agricultural programmes that were presented as instruments of the ‘new Senegalese agricultural revolution’: a biofuel programme in 2005, the ‘Back to Agriculture’ (REVA) plan in 2006, and the Great Agricultural Offensive for Food and Abundance (GOANA) in 2008.

Large-scale land grabbing was already well under way in Senegal when it first emerged as a global phenomenon following a sharp rise in the price of agricultural products in 2007 and the financial crisis of 2008. In fact, it was explicitly promoted by President Abdoulaye Wade,<sup>4</sup> who told attendees at the launch of the GOANA programme that *“Ministers, businessmen, company directors and executives are encouraged to cultivate at least 20 hectares of land, with no upper limit.”*<sup>5</sup> He also publicly urged international investors to set up their companies on national lands,

3 Only a few decrees have been passed so far, and its implementation in the other areas is weak.

4 The academic Momar-Coumba Diop, a specialist on political power in Senegal, wrote that after Abdoulaye Wade came to power in 2000, *“the major concern of the ruling class was to build and reproduce the economic base of its political power,”* and that Wade’s presidency was marked by *“the intensification of personal power, clientelism and the plundering of public resources”* (Diop, 2013b, pp. 31-33).

5 Cited by Faye et al. (2011, p. 11).

encouraged Senegal's political and business elite to 'cultivate' vegetable plots, and was in favour of allocating large amounts of land to religious leaders.

Government programmes and political incentives encouraged international investors and national elites to join the rush for anything from a few dozen hectares to several tens of thousands of hectares of land. Hopes for investment and jobs, coupled with financial incentives and political pressure from the highest level of State led local elected representatives from various rural communities to allocate large tracts of land to investors, with no consideration for the availability of land or for villages in affected areas. Civil society organisations tried to raise public awareness of land grabbing throughout the 2000s, while people in affected areas (mostly farmers and peasants) banded together and called on CSOs to help through their national network. CSOs supported communities in Fanaye threatened by a project to produce 20,000 ha of biofuels on land reserved for livestock, worked on other clear cases of land grabbing in Diokoul, Ndiaël, Kédougou, Wassadou, Dodel, Keur Moussa and the Dolly Ranch, and mobilised behind national and international advocacy campaigns.

#### **1.4 CRAFS' role in the debate on an inclusive land reform**

Between 2005 and 2011, an informal network of researchers and NGOs (national NGOs and national branches of international NGOs) was set up to liaise with grassroots organisations, circulate information and provide material, logistical and legal support for groups that were fighting land grabs. As they did so, they started generating knowledge about the mobilisation, media coverage and legal recourse that resistance movements need to be effective.

CRAFS was created in 2010 as a result of these initiatives (Hopsort, 2014), bringing together not only CSOs but also farmer organisations, consumer groups, citizen advocacy and defence organisations and think tanks (Table 1). Beyond the founding principle of combatting land grabbing, these organisations wanted to build the broadest possible platform for discussion, reflection and action as the basis for analysis and advocacy that would promote better land governance (CRAFS, 2015a).

Table 1. CRAFS' diverse membership<sup>6</sup>

<b>Type of organisation</b>	<b>Members</b>
Umbrella farmer organisations representing rural areas	CNCR, FAPD
Activist organisations engaged in direct interventions in the field, mainly focused on advocacy, social mobilisation and community support	ENDA Pronat, ActionAid, ACCES, CERFLA
Organisations involved in research, study and knowledge production, often NGOs, consultancies or think tanks	IPAR, IED Afrique, GESTES, Gret, ENDA Lead, VECO (now Rikolto)
Organisations intervening through a 'rights-based' approach	ActionAid, Wildaf, AJS, Action Solidaire Internationale, RADI, etc.
Crosscutting organisations working across the whole field of local governance	CONGAD, Forum Social Sénégalais, national network of rural women
Consumer organisations involved in food and nutritional security issues	CICODEV

Land is not only a development issue, but also a component of social protection and governance. Civil society organisations therefore make a huge contribution to land issues through multifaceted actions to defend local people's interests (especially those of family farmers and women), outreach activities on land rights and consultations with local communities, and by using research and scientific tools to develop proposals for land policies.

CRAFS was particularly active during the 2012 presidential elections, when it conducted numerous studies and workshops on land issues and questioned electoral candidates about their vision and proposals for tackling challenges in this sector. The aim of this innovative process was to bring inclusive land reform into the public debate and help determine how the issue was framed.

The open and latent conflicts around land tenure in the 2000s helped mobilize citizens and made civil society organisations increasingly vigilant about land management and its impact on the future of affected societies. With no resources of its own, CRAFS had to rely on member organisations to cover the cost of field visits, meetings and other gatherings, and support from various land outreach and consultation projects undertaken by CSOs working individually or in partnerships.

6 Based on CRAFS strategic plan and Hopsort, *op. cit.*

## 1.5 Macky Sall's accession to power and the creation of the CNRF

Land issues were clearly on the agenda when Macky Sall came to power in May 2012, and the new president released his overall policy paper within months of being elected. The Plan for an Emerging Senegal (PES) set out the main guidelines for future sectoral policies that would “put Senegal on the path to emergence by 2035”. Having identified agriculture as the sector with the most promising, and so far largely untapped economic potential, he regarded the development and modernisation of agriculture as Senegal's main springboard to emergence, and set up a ‘National Land Reform Commission’ tasked with ‘increasing the efficiency of public action and improving the business climate’ (see Box 2 and Republic of Senegal, 2014).

The emphasis on agribusiness in the PES, and the fact that the President cancelled the Senhuile project in Ndiaël and then authorised it in a classified forest in Ngith a month later, raised questions about the new government's priorities.

### Box 2. A clear move in favour of agribusiness?

*“In April 2012, the Prime Minister announced ‘a new agricultural direction that will bring growth and reduce dependence on climatic variations.’ The objective was to achieve a reform that was both attractive to investors and protected local people's interests. The President of the Republic reaffirmed his desire to facilitate investors' access to agricultural land without compromising farmers' interests during a visit to Saint-Louis in February 2014, and more recently during the meeting of the Consultative Group on the Plan for an Emerging Senegal held in Paris in March 2014” (CONGAD, 2014, p.4).*

In 2014, the Accelerated Agriculture Programme in Senegal (PRACAS) explicitly stated that the government had “already designed and validated a land use plan” as part of a World Bank-funded agribusiness development project.<sup>7</sup>

The CNRF was created on 6<sup>th</sup> December 2012 (under Decree No. 2012-1419) to initiate discussions on the conditions, possibilities and options for land reform.

*“Nowadays, land is regarded as an important asset and production tool that should be able to provide security for its occupants and offer attractive opportunities for major investments that are not always within the reach of local populations. The State, which must ensure the improvement of citizens' living conditions, also has an obligation to implement investment and economic and social development programmes across the country for the benefit of the population” (excerpt from the explanatory memorandum).*

<sup>7</sup> See <https://bit.ly/3stYdFX>, pp. 55 and 76.

The explanatory memorandum on the creation of the CNRF provides some insights into the agricultural component of the PES. In talking about *“significant investments that are not always within reach of the population”*, the State presented foreign agribusinesses as actors with a role to play in both commercial agriculture for export and local development. Once again, the land reform implicitly revolved around the conditions of entry for these new actors with special legal status, and raised questions about the inalienability of land.

The CNRF's mission was to: (i) *‘analyse existing legislative and regulatory texts’*; (ii) *‘identify the institutional constraints to optimal land management’*; (iii) and *‘propose appropriate adaptation measures that take account of modern economic realities’* (implying the need for investment and modernisation).

Under Article 2 of Decree 2012-1419, the CNRF was supposed to carry out an occupancy audit of State lands and land in the national domain, *“identify constraints and put in place an attractive legal and institutional framework that provides guarantees for investors and ensures security and social peace, to foster sustainable management of State and national lands ... propose lasting solutions to land conflicts resulting from the occupation of the aforementioned domains... propose implementing measures for the application of Law No. 2011-07 of 30 March 2011 on the land ownership regime, transforming land occupancy permits and authorisations into land titles ... and more generally, carry out all missions entrusted to it by the President of the Republic”*.

Macky Sall appointed a lawyer to chair the Commission. Although he had the opportunity to assemble *“all the skills required to carry out its missions”*, he did not call upon scientists specialising in land matters, rural sociology or agronomy. The only civil society organisation represented in the Commission was the Senegalese Association of Women Lawyers (AJS), as the debate on land reform was regarded as the remit of land professionals and the land administration.

The Commission only agreed to review its position when it was challenged by several CSOs that were supported by international institutions. In May 2013, the Council of Non-Governmental Organisations for Development Support (CONGAD) took the opportunity to hand deliver the report on a recent study of the governance of agro-sylvo-pastoral lands (CONGAD, 2012) to the president of the CNRF during the presentation of a land study commissioned by the World Bank.<sup>8</sup> Days later, the president of the CNRF co-opted CONGAD and the CNCR as consultative members of his Commission's plenary assembly. Although it was never formally acknowledged, this meant that CONGAD (which represents 178 NGOs and associations in Senegal) and the national platform of farmer organisations (bringing together 28 national federations) were included the land reform process. But the president of the CNRF resigned a few months later in September 2013, citing lack of finance and political interference as the grounds for his resignation.

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8 See <http://www.ipar.sn/Validation-technique-de-l-etude-CAGF-LGAF.html>

## 1.6 The second CNRF: a 'participatory and inclusive' procedure

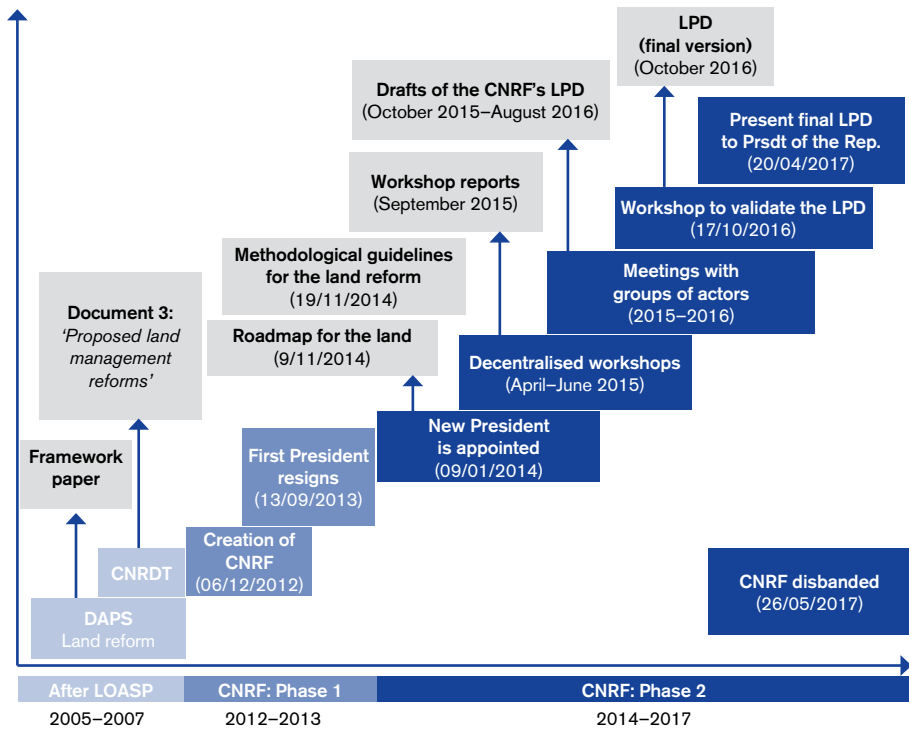
In January 2014, Macky Sall appointed a law professor as the next President of the Commission. Having said that he wanted to conduct a 'participatory and inclusive' reform, the new leader organised individual meetings with the leaders of various CSOs, and held a group meeting for civil society leaders and their representatives at the end of August 2014. The revival of the CNRF also prompted several initiatives by CSOs: in July 2013, the National Network of Rural Women and ENDA Pronat held a national workshop on land reform calling on the authorities to run a more inclusive and participatory process; and in early 2014, the Agricultural and rural forecasting initiative (IPAR) provided the CNRF with a history of the debates (IPAR, 2014) so that it could build on civil society's experience. This account highlighted civil society concerns about the government's real motives and emphasised the need *"to develop joint discussions around the reform and the issues it raises, in order to build a broad consensus among all the actors concerned."* To further highlight the issues associated with a 'participatory and inclusive' approach, on 23 July 2014, CONGAD officially invited the new president of the CNRF to a national workshop to validate a study report on 'the capitalisation of governance research and experiences in Senegal', which contained detailed methodological proposals for a participatory land reform (Ngom, 2014). As he made his thanks, the president of the CNRF said that the report represented *"time saved and augured well for future efforts,"*<sup>9</sup> adding that *"no reform can succeed without close stakeholder compliance."*

He accordingly reorganised the CNRF and enlarged the plenary to include CSOs such as ENDA Pronat, the CNCR and CONGAD as well as the AJS, whose membership had already been mandated by the decree on the composition of the CNRF. The 10 thematic commissions were scrapped, and a technical committee (TC) of about 10 experts was established to manage the procedural and technical aspects of the process and enable the CNRF to fulfil its mission, which remained unchanged. Although the presidential decision formalising their appointment did not explicitly set out their tasks, they were responsible for defining the CNRF's methodology, operating under the auspices of its President and assisted by its Permanent Secretary.

9 <http://www.senepplus.com/article/le-congad-liste-les-maux-du-foncier>, <https://www.senepplus.com/article/des-axes-de-reformes-foncieres-inclusive-et-participative-du-congad>



Figure 2. Key points in different phases of the land reform process



The technical committee was composed of researchers and consultants specialising in land (a lawyer, a geographer and a sociologist), a serving inspector of taxes and estates, an adviser to the president of the CNRF, and various 'resource persons' with proven technical expertise in land matters, namely a public prosecutor who had taken part in land litigation trials, and a retired director of estates.

The new setup marked a clear break from previous commissions in that CSOs were included in the plenary assembly, and a small team that included rural specialists with close ties to farmer organisations was responsible for steering the procedural and technical aspects of the reform. The work lasted from 2014 to 2016.

## 2. CRAFS' critical contributions to the CNRF process

This was the first time that civil society organisations had been recognised as legitimate stakeholders whose claims and proven expertise entitled them to full membership of the plenary on the reform. Nevertheless, doubts about the openness of the process and real purpose of the call for 'participation' remained: did the government want a consensual reform that took rural expectations and needs seriously, or was it trying to push through pre-defined guidelines that favoured agribusiness?

CRAFS therefore approached this second CNRF with a mixture of hope and concern. These feelings were reinforced by the fact that the technical committee now included researchers and consultants who were very close to civil society and the farming community, and even some members of CRAFS. On the one hand, this was an obvious advantage, as these actors were some of the best specialists in rural affairs and it meant that for the first time, preparation of the reform would not be solely in the hands of government agents or lawyers. On the other hand, these allies would not be available to give CSOs intellectual support during the process, and there were concerns about their ability to work in the public interest. Some people couldn't help wondering whether their co-option onto the CNRF was to ensure that the realities on the ground were taken into account, or to neutralise them by getting them to work on State priorities.

CRAFS' member organisations were individually and collectively active throughout the two years of engagement in the CNRF. They worked within and alongside the process, using different strategies to disseminate its arguments and raise public awareness – permanently monitoring ongoing actions, providing constructive criticism of the various notes and documents prepared by the CNRF, organising members' interventions in the plenary, and submitting proposals for reform. CRAFS organised a series of internal meetings and workshops that were also open to resource persons (lawyers, politicians, geographers, sociologists) in order to formulate notes and proposals, clarify its position and strategy and open them up for debate. It also helped with the local consultations organised by CNRF.

Several members of CRAFS also ran parallel activities to support this collective reflection, organising events to inform the debate and share and disseminate their analyses.

The action strategies of members of CRAFS reflect their different positions and their questions about whether the CNRF was a genuinely open process. Some were more contributory and others more combative. The following analysis of the main levels of collective action shows that they more or less correspond to different phases in the process, how they followed each other and attempted to respond to advances in the process, thereby illustrating some of the strategic dilemmas of participation and how CRAFS responded to them.

## **2.1 Inclusion in the CNRF technical committee: the key to a central role in the decision making?**

How and where can the most influence be wielded? From outside or inside the process? After the CNRF was officially launched, one of CRAFS' members asked to join the technical committee so that they could play an integral role in steering the process, promote rural positions and interests, and carry real weight in the negotiations. This request was based on the CNCR's experience of direct participation in the LOASP negotiations, but was not universally supported as some members of CRAFS thought such close involvement could make them unable to oppose the CNRF's proposals if need be, because CRAFS would have stake in them. In the event, the application was turned down on the grounds that participation in the TC required a certain level of expertise, and committee members felt that CSOs should continue to operate as one of several groups of stakeholders.

## **2.2 Influencing the methodology and helping facilitate local consultations**

### **2.2.1 Challenging the registration framework and calls to prioritise policy formulation**

The strategic guidance note presented at the CNRF's first plenary session in November 2014 summarised the legal framework and proposed working methodology for the reform (CNRF, 2015a).

The Commission's response to the political will to facilitate land access for agribusinesses, farmer demands for stronger rights than the simple use rights granted by the LDN, and fears that the development of an unregulated land market would exclude family farmers, was to promote emphyteutic leases. From the outset, it presented two legal options as the only way of reconciling the three main actors' demands for security (family farmers, agro-industrial companies and the State): 1) registering land in the name of local authorities that would then grant these leases; or 2) registering land in the name of the State, which can either (a) transfer full ownership to the local authorities that will grant the leases, or (b) lease the land to these authorities, which can then 'sublet' it to family farmers and investors.

Many observers noted – with approval or concern – that this framework broadly followed the model proposed by the Project for the Inclusive and Sustainable Development of Agribusiness in Senegal (PDIDAS), particularly option 2b. The aim of this World Bank-funded project was to promote agribusiness while seeking socially acceptable arrangements for investors to develop land for farmers. The option of 'sub-leases', which was not yet part of Senegal's legal arsenal, was one way of making registration in the name of the State compatible with continued communal land management. The CNRF also said that leases should be accessible to all farmers, as suggested in the CNCR proposals of 2011. However, it should be noted that the 'PDIDAS model' was itself inspired by a variant of the

'mixed option' of the 1995 Land Action Plan (LAP). Striking continuities in certain lines of thought suggest that the framework established by the LAP 20 years earlier still exerted a strong hold, along with the view that the State should necessarily own land – albeit in a private capacity. These are questionable assumptions in the overall context of a liberal economy on the one hand, and highly politicised and clientelistic land management on the other, especially as the proposal to lease land to farmers amounted to transforming their heritable customary rights (in practice if not in law) into temporary (albeit long-term) rights.

The CNRF's proposed methodology consisted of holding 'decentralised consultation' workshops to discuss the problems experienced by local actors, determine their expectations, present the two hypotheses and ask participants to express their preference for one of them. Only then would a land policy document (LPD) and a draft law be drawn up.

CRAFS held several internal meetings that criticised the option of putting two pre-established legal 'solutions' up for debate before the issues they were supposed to address had been collectively identified. In keeping with its previous positions, it argued that the debate should start by focussing on the aims of the reform, before discussing how to proceed and considering the content of the draft land legislation that would give it concrete form. At the end of the first plenary session, CRAFS set up its own 'technical committee' (Box 3) and asked it to prepare a 'discussion paper' (CRAFS, 2015b) for consideration by the CNRF.

### **Box 3. CRAFS technical committee: a body for internal conciliation and interpellation**

CRAFS technical committee (TC) is a specific internal body that was set up in December 2014 when members of CRAFS agreed on the need to respond to the CNRF's strategic guidance paper. It played two roles from its inception through to the period 2015-2017: (i) organising reactions to documents sent by the CNRF, and (ii), working with specialist consultants to harmonise proposals from different CSOs and establish CRAFS' position on the national land policy.

The technical committee was composed of technicians from CSOs within CRAFS. Each member organisation distinguishes between its 'leaders' and its 'technicians': leaders embody the organisation's political representation and decision-making power, while technicians (lawyers, sociologists, geographers, planners) are seen as 'advisers', 'helping hands' or 'scribes' – actors who understand the content because they have studied it closely and put it into practice. Their main role in the process is to get the leaders and different members of CRAFS to agree on a common position that they then formalise and present for members to deliberate prior to its final correction and dissemination.

### 2.2.2 Demanding and helping lead local consultations

In its 'discussion paper', CRAFS calls for the organisation of inter-communal workshops where local actors could meet without public officials being present. The CNRF's initial proposal was for departmental workshops, bringing together rural actors and administrative executives. It also questioned whether regional workshops were representative, as *"the governors mainly invite elected officials and State technical agents,"* noting that *"beyond the departments, we would have liked to see discussions take place at the communal level in order to bring people closer to this reform."* It wanted a more bottom-up process where, as in the one led by the CNCR in the early 2000s, the first steps only involved rural actors so that they could express themselves freely without possible interference by officials or State actors who might be present.

The CNRF accepted this proposal, and it was agreed that CSOs would make the relevant field workers (many of whom came from and lived in the villages concerned) available to the CNRF from the first half of 2015 onwards. The CNRF needed this support as it lacked the necessary local contacts and backup to rapidly organise workshops on this scale, while CSOs saw involving their field workers in the process as a possible way of monitoring the quality of the debate and content of the conclusions. But it was also something of a double-edged choice, as being recruited by the CNRF could lock the field workers into an executive role and reduce their ability to speak out.

The CNRF selected a group of field workers from a series of applicants proposed by CSOs, and organised a training course in April 2015 to prepare them for the task, define their mission and train them on its facilitation tools. However, it did not agree to CRAFS's suggestion to organise presentations in each agro-ecological zone.

CRAFS contested the CNRF's basic 'hypotheses' but did not succeed in getting it to abandon the idea of presenting participants with the two proposed legal options. To address their concerns that the process was open to manipulation, the CSOs organised a 'national preparatory tour' to prepare local partners for the forthcoming CNRF, present the CSOs' reform proposals and encourage participants to publicly formulate their own proposals too.

The CNRF consultation process was a huge exercise involving 14 regional development committees (RDCs), 45 departmental workshops and 45 inter-communal workshops, making a total of 108 meetings attended by 38,000 people.<sup>10</sup> All the decentralised workshops (inter-communal workshops and departmental synthesis workshops) took place between 15<sup>th</sup> May and 18<sup>th</sup> June 2015. Each was organised in three stages: (i) analysis of the current land system and justification for the reform; (ii) stakeholder analysis of local land practices, constraints and solutions; and (iii) presentation and discussion of the guidelines

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<sup>10</sup> CRAFS draft declaration, 3 November 2017.

and hypotheses for the reform, and the accompanying measures to be planned. Participants were told to choose between the two predefined options at the end of the debate. However one can wonder whether it was possible for participants to make an informed choice between two questionable options they had been unable to consider in any depth, having first heard of them when the workshop started that morning. It was an impossible choice anyway, since giving a central or local public authority private ownership of all the land would put rural actors in a very precarious position.

Although the CNRF's summary report states that most local consultations validated the option of registering land in the name of the State, the testimonies gathered at these workshops show that views varied greatly, even within the same area. Participants in the decentralised workshops questioned both the politicisation of land management by elected municipal officials and the abuse of power by the State. In some of the cases we were able to examine, they opted for what they saw as the lesser evil, registering land in the name of local authorities, while calling for rural communities to set up village committees to counteract or approve decisions taken by the community. The CNRF report identifies specific land issues in different agro-ecological zones and includes a number of proposals from the workshops, but its discussion of the options is limited to a table summarising the options that gained the most support in each region (CNRF, 2015b). It makes no mention of the debates and discussions about conditions and safeguards during these workshops.

### 2.2.3 Informing reflection and trying to open up dialogue through action in other arenas

Members of CRAFS engaged in an impressive series of individual and coordinated initiatives to create alternative frameworks for the land debate, build broad alliances, and open up spaces for dialogue and exchange with State institutions and the CNRF itself. They used longstanding but topical national agenda items and opportunities created by the actions of diverse technical and financial partners to present their positions in the public arena, organise debates on land issues and publicly question the CNRF. Projects and programmes funded by their partners also provided opportunities to encourage meetings and feed the debate through studies and exchanges.

For example, a series of studies conducted in 2014 was swiftly followed by *Policy Briefs* (IPAR, 2015) that reaffirmed the need to set policy objectives and explore the issue of collective rights before embarking on a legal reform; while a study by IIED and IPAR on the LOASP consultation process also underlined the importance of farmer consultations (IIED and IPAR, 2015). The 'Land Reform' project led by ActionAid was used as an opportunity to help influence the process, as were the 'Voluntary guidelines for responsible governance of land tenure systems' prepared by the FAO and the Committee on World Food Security. Following their adoption in 2012, they provided an entry point to inform a wider range of actors about land issues and the ongoing land reform, and to generate debate on the reform process.

In 2014, ENDA Pronat and CIRAD organised a series of workshops around the game 'TerriStories', which simulates decision-making on access to land and resources and shows the principles of justice mobilised by rural actors. These were formalised and shared within CRAFS in 2015. In April 2015, ENDA Pronat published a book summarising its positions, setting out farming principles to guide the reform, and questioning the CNRF process (ENDA Pronat, 2015). The ceremony to launch the book was chaired by the president of the CNRF.

Gret and the CNCR published case studies on models for start-up agribusiness enterprises, a study on forest and pastoral lands, and a series of briefing notes on experiences in neighbouring countries that helped the CNCR look beyond Senegal and broaden its thinking (see for example Mamalo, 2015).

The President of the CNRF was strategically invited to chair the organising committee for the 7th World Land Forum (WLF) in Dakar organised by CICODEV, and the International Land Coalition (ILC) meeting on 'Fair and Equitable Land Governance for Sustainable Development: Time for Action' in May 2015. He also chaired a one-day event on experiences with land in Africa.

In August 2014, CONGAD organised regional dialogue forums that enabled the CNRF to share its missions, operating methods and methodological approach for the land reform process with local stakeholders.

Finally, in June 2015 members of the CNRF technical committee visiting France to study land policies attended a specific meeting on 'Land reform in Senegal' organised by the 'Land Tenure and Development' Technical Committee. Several officials from CRAFS member organisations, four members of the CNRF technical committee and its permanent secretary attended this meeting in Paris, where CSOs expressed their concerns about the overly restrictive framework of the debates proposed by the CNRF and the lack of dialogue with the technical committee.

## 2.3 Developing common positions and proposals

### 2.3.1 A shift in the CNRF's position

It seems that the local workshops alerted participating members of the CNRF to the impasse over the initial framing of the reform and the impossibility of reaching a consensus on their initial options. These workshops and other events where its options were robustly challenged led the CNRF to question its assumptions, and in mid-2015 it decided to focus on reaching agreement on the reform objectives and formulating a policy document before moving on to a second stage of legislative reform. The CNRF technical committee accordingly consulted the different interest groups and tried to gather the analyses needed to prepare such a document. After nearly a year, the initial contradiction between an approach that was open to options (a pre-requisite for negotiating consensus) and a legal framework that pre-empted choices was finally resolved.

### 2.3.2 The challenges of preparing collective proposals

After the 'decentralised consultation' phase, CRAFS worked on harmonising its members' proposals so that it would have a common position when the CNRF technical committee was ready to draft a land policy document. Several members of CRAFS had already established their own positions or proposals (see Box 4 below) and they needed to be harmonised for CRAFS to present a united front.

#### Box 4. Position papers produced by members of CRAFS

- CNCR (submitted to CRAFS in 2015): Farmer proposals for a Senegalese land reform that ensures sustainable agricultural and rural development in Senegal, April 2012. Financed by the Rosa Luxembourg Foundation under the direction of IPAR.
- CONGAD (submitted to CRAFS in 2015): Citizens' position paper on land reform, Caritas-Oxfam, March 2015.
- ENDA Pronat (submitted to CRAFS in February 2015): Farmers' land governance principles.
- AJS (submitted to CRAFS 30<sup>th</sup> April 2015): AJS proposals to the CNRF on gender equality and equity in the reform.
- CERFLA (submitted late: November 2017): Pastoralists' proposals prepared in response to local consultations on pastoralism and ongoing reforms of land tenure and the Pastoral Code (report written by Djibril Gueye, consultant, June 2017).
- ActionAid and partners: Proposals for land reform with a human rights-based approach developed using ActionAid Reflection Tools.

These position papers show that members' positions diverged on several points. This meant that CRAFS could not simply compile their different views, and needed to embark on in-depth discussions that had not been required in its earlier work on land grabbing.

The process of harmonising members' proposals proceeded in several stages under the guidance of the technical committee. The first step was for each organisation that had prepared proposals to table them with CRAFS. CONGAD, which had not circulated its proposals at this point, decided against doing so to avoid publicising the differences between CSOs, and submitted them to CRAFS as a contribution to the internal debate.

CRAFS decided to appoint two independent specialists in land law to oversee the harmonisation process. The aim was to enable civil society to speak with one voice based on consensual proposals, principled positions, sectoral objectives, land governance, the vision for secure land tenure and the CNRF technical committee's land tenure reform option. The results of the work were shared with external resource persons in December 2015, but were not unanimously supported as CRAFS still needed to reach a clear position on issues such as land markets, and especially on 'real rights' (Box 5). Farmer organisations tended to focus



on productive aspects of the issue, demanding more secure rights and the right to exchange land – even through the market, under certain conditions – while organisations such as ENDA Pronat, which focused on territorial governance, vigorously opposed any idea of a land market, even a regulated one. After the CNCR (which had proposed 'local markets for use rights' in rural communities back in 2004 and adopted the term 'real rights' in 2011) agreed to start a debate on this issue, CRAFS held meetings to discuss sticking points while its technical committee worked on drafting positions with various resource persons.

#### Box 5. The issue of 'real rights'

At the workshop for 'Multi-stakeholder dialogue on land reform in Senegal' held in September 2015 as part of the ActionAid 'Land Reform' project, major differences over the recognition of family farmers' 'real rights', which the CNCR had been calling for since 2004, opened up a complex political, technical and legal debate that CRAFS spent several months trying to clarify.

This demand helped legitimise the two land registration options proposed by the CNRF: in legal terms, 'real rights' are rights that relate to things, i.e., private ownership or dismemberments of private ownership, such as emphyteutic leases. But most CSOs don't want a land market that risks marginalising farmers, nor do they want land to be registered in the name of a public authority that would completely dispossess farmers of their land. So should the CNCR continue to support this demand or drop it?

Its position since 2004 had been that farmers regarded "granting real land rights and defining mechanisms to protect against land speculation as essential for the modernisation of small-scale farming" (CNCR, 2004). But the meaning given to 'real rights' in 2004 was clear: 'real' rights were stronger than those currently recognised by the LDN, and were not land titles or leases granted by the State. The demand was for "everyone currently holding a right of assignment to have a recognised, negotiable right of use" that is transmissible, transferable within the rural community to avoid speculation, and granted to individuals or family groups as seen fit (*ibid.*, p.13).

The CNCR reformulated this demand when the proposals were updated in 2012 (CNCR, 2012). Regarding use rights as too weak, the new text called for "all current holders of use rights to be recognised as holders of real land rights" (in practice this meant all rural households) and no longer restricting this recognition to "holders of allocation rights". The demand to be able, if necessary and under very strict conditions, to transform this use right into a title or lease (CNCR 2004 p.15) became the norm. The idea of restricted transferability (in the sense that rural land rights could only be exchanged within rural communities) was regarded as unconstitutional because it would contravene the principle of equality before the law. It was replaced with the idea of granting leases, but this was only mentioned in the report as a possible legal translation of farmers' demands, apparently without their organisations fully understanding the implications of such a shift. This had serious consequences when the CNRF adopted and systematised the idea, believing its assumptions were consistent with farmers' demands, which ultimately led the CNCR to reopen the issue and reposition itself.

### 2.3.3 Civil society proposals to update and upgrade the law on the national domain

At the end of this process, CRAFS decided to defend the LDN and propose adjustments that would help address the different interest groups' concerns, including the State's wish to favour land access for agribusinesses (CRAFS, 2016b). Although it was open to abuse, CRAFS felt that a contemporary interpretation of the LDN could allow multiple forms of agriculture to coexist and enable the State to implement general interest projects on land in the national domain without harming other land users, such as smallholders and farmers. It reaffirmed its rejection of a market for buying and selling land in favour of a vision where assignees have secure rights and benefit from individual or collective 'occupancy titles' whose legal value is recognised, particularly by financial institutions. In the event of an assignee's death, the heirs have priority rights to the assignment provided they apply to the local authority and can prove they are able to use the land productively. Investors can negotiate with local authorities over land allocations from the national domain, but this should not be done informally – there should be inclusive, participatory local governance mechanisms (extended State commissions, joint village committees, etc.) that involve local people in such negotiations and all land operations, and agreements between local authorities and investors should be certified by contract. CRAFS officially submitted its position paper on land reform to the president of the CNRF in January 2016.

### 2.3.4 Setting out CSO positions on the finalisation of the LPD

Over the course of 2016 the CNRF met with different interest groups (State actors, investors, CSOs, etc.) and started developing what would become the LPD. Successive versions were submitted to different protagonists (including civil society representatives) for their opinions and contributions, and the CNRF planned to hold a national workshop to validate the final version on 17<sup>th</sup> October 2016, before submitting it to the President of the Republic.<sup>11</sup> CRAFS acted on two fronts to prepare for this workshop and ensure that the final document took account of its positions, by: (i) having the document reviewed by experts to identify any discrepancies with civil society proposals and comments or the content of the draft prepared by the CNRF; and (ii) holding a national forum before the validation workshop, where farmer organisations and CSOs from all over the country would be represented.<sup>12</sup>

The 'Farmer and civil society organisations forum on Land Reform in Senegal' was held in Dakar on 14<sup>th</sup> October 2016. It was attended by over 500 members of farmer organisations from the 14 regions of Senegal, CRAFS members and member entities, financial partners, academics and policy makers. The event was an opportunity to review the land tenure reform process, share civil society

11 <https://www.facebook.com/pg/CNRF.Senegal/posts/>

12 <http://www.hubrural.org/Senegal-tenue-de-l-atelier.html>

contributions and CRAFS' analysis of the draft land policy (which reflected its concerns and proposals), and finally, to formulate and disseminate a declaration of civil society's position.

In its statement, CRAFS welcomed the establishment of the CNRF and the "unprecedented dynamic" it had generated, but noted that *"the policy document suggests that 'actors had reached a consensus to retain the fundamental option of recognising real rights', when civil society in fact advocates for the law on the national domain to be maintained and for case-by-case registration."* It strongly recommended *"taking the necessary time to finalise a land policy that is accepted by the different stakeholders in land reform – disconnecting land reform from the political agenda"* (CRAFS, 2016a).

The CSOs' statement ultimately had a limited impact on the land policy document. One reason for this is that CRAFS had not finished clarifying its own internal positions. Furthermore, CSOs tried to express their criticisms and concerns at the CNRF's national workshop to validate the final version of the LPD, but were unable to present a common front, instead exposing their differences. Notably, the person who had been mandated to read the declaration agreed at the Forum a few days before actually made a speech in his own name, giving the impression that he was disassociating himself from CRAFS' positions. This process shows how hard it is to consolidate common positions within a collective of organisations. Despite these criticisms, the LDP was validated by the workshop.

### 3. CRAFS' involvement in the CNRF process: a partial victory despite recognition of its key role in the process

Having been set up as body to challenge land grabbing, CRAFS later shifted its focus to bringing land reform into the public debate and onto the political agenda. It mainly did this by engaging with candidates for the 2012 presidential election and then became actively engaged in defining and formulating proposals for the reform during the CNRF process. In the first phase (2012-2014) it asked for and obtained a place on the Commission, and organised various workshops and studies to help structure its internal debates and try to influence the CNRF process upstream. This involved: (i) reviewing previous attempted land reforms and related initiatives; (ii) articulating the concrete problems posed by land governance; (iii) repeatedly stressing the need for the reform to be inclusive, consensual and based on rural actors' concerns.

Participation was by now a public policy watchword, and the Government of Senegal had already initiated several 'participatory' processes for institutional and other reforms. The commitment of the experts on the CNRF technical committee and the legitimacy CRAFS gained through its work helped cement the 'participatory' direction taken by the CNRF after it was relaunched in 2014.

#### 3.1 The authorities' rejection of a relatively consensual land policy document

##### 3.1.1 The CNRF, more of a consultative process than a space for negotiation

The relaunch of the CNRF under the leadership of a new president marked a clear change in its way of thinking about and steering preparations for the land reform. While previous attempts had tried to force through reforms in forums reserved for State agents, this new CNRF was much more open – advocating an inclusive approach, meeting with civil society actors and inviting experts with close links to civil society and the farmers' movement onto its technical committee. Moreover, it has situated its work in the continuity of the LOASP and the farmers' demands. But these remarkable signs of openness went hand in hand with what looked like predefined proposals (even if certain members of the technical committee insisted they were only hypotheses).

The LOASP highlighted the need to think about 'why' a reform is needed before considering 'how' it is conducted. The advocacy work and studies undertaken by farmer organisations and NGOs all emphasised the need for a negotiated and inclusive reform. Starting the process with a legal solution was antithetical to an approach that prioritised debate about the aims of the reform, and was particularly worrying given previous experiences with land grabbing and the State's own role in

this phenomenon. It also conflicted with the convictions of experts close to CRAFS who had joined the CNRF, and whose commitment to the process was in no doubt. The CNRF's assertion that the two options were 'hypotheses' seemed inconsistent with its constant bringing them up and insisting that one of them be chosen at the local workshops. There seemed to be a fundamental contradiction between the CNRF's claim to be following an open approach and the pre-established legal framework it put forward.

Including CSOs in the plenary without ever officially recognising their presence, co-opting experts close to civil society, and imposing a 'fixed' framework on a 'participatory' discourse that addressed CSOs' demands could be seen as part of a strategy by the CNRF to neutralise civil society and reduce its capacity to block or challenge the process. The fact that longstanding allies joined the technical committee and seemed to endorse – and even defend – a controversial framework they had previously criticised also raised questions, and even fears that they had been 'turned'. Although they proved to be unfounded, these fears seemed legitimate in the light of previous reform processes and the CNRF's initial fixation on its two 'hypotheses'. They were certainly strongly expressed during the study.

The way that the CNRF thought about and organised the participatory process is also worth considering. As we have seen, the scope of the consultations and the number of people who 'participated' in the process are impressive. Current analyses of participation clearly differentiate between consultation, dialogue and deliberation.<sup>13</sup> Although the terms are not completely stabilised, dialogue can be defined as *"a process of collectively constructing visions, objectives and common projects, with a view to acting or deciding together based on cooperative dialogue between several stakeholders, and aiming to build new forms of coordination around one or more problematic issues"* (Beuret, 2013). According to the authors of this definition, this term should only apply to *"discussions where the cooperative approach predominates, where the shared intention is to build together"*... *"It is above all the existence or absence of collective construction that allows a clear distinction to be made between consultation and dialogue. This distinction seems important in order to avoid the frustration felt by actors who are invited to join a dialogue and expect to be involved in a process of collective construction, but are only invited to express an opinion, often in a very ad hoc manner."*

The CNRF's framework and approach were both proposed by a group of experts. Looking beyond the issues raised by the two options, the approach was more of an expert-based consultation than a process of dialogue, let alone negotiation. Due to its size, the plenary was a place to express views and record proposals rather than a space for substantive debate. The different groups of actors were widely consulted on their opinions and their views on the options, but it was the technical committee who selected their contributions. The process was undoubtedly one of the best in terms of public participation in Senegal as the local dialogues and

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13 See the online dictionary of participation: <https://www.dicopart.fr/>

consultations allowed for broad expression, but the intermunicipal workshops were the first time certain participants had heard about the options, and some found it hard to understand their implications despite the pointers provided in CRAFS' preparatory tour before the workshops. This meant that they could only react on the spot and were not always able to defend a well thought-out and well-argued position. There were meetings with different groups of actors when the document was drawn up, but it was the technical committee that decided what was relevant and what was admissible or not. The approach chosen for this process was not conducive to negotiated compromises based on direct dialogue between different stakeholders.<sup>14</sup>

Knowing that the plenary was not the only place where it could exercise some influence, CRAFS produced written proposals that were tabled directly with the president of the CNRF.<sup>15</sup> While they may not have always answered his questions, they undoubtedly contributed to the changes between the first and final versions of the CNRF land policy document.

### **3.1.2 Recognition of CRAFS' key role in the process**

The various individual and collective actions around land governance and reform that CRAFS member organisations have undertaken upstream and parallel to the CNRF process since 2010 are an impressive testament to the vibrancy of Senegalese civil society and its engagement with these issues.

All the actors that we met welcomed CRAFS' involvement in the CNRF, even those unrelated to civil society, and most believe that it played a key role in the process. It is recognised as the group of actors that was most active in and had the greatest influence on the CNRF process.

### **3.1.3 A final document that reflected some civil society positions but remained very general**

Having started with a problematic predefined legal alternative, the CNRF eventually produced a relatively consensual land policy document that addressed many of civil society's demands and proposals. It was partly thanks to the actions taken by civil society organisations that the option of systematic registration in the name of the State or local authorities was dropped, the importance of the law on the national domain was recognised, the principle of secure rights for both entrepreneurs and family farmers was enshrined, the importance of livestock farming recognised, and the possibility of a range of legal solutions mentioned. The land policy document proposed by the CNRF can therefore be seen as a victory for civil society, and was hailed as such by the main leaders of CRAFS who endorsed it and participated in the official presentation of the report to the President of the Republic.

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<sup>14</sup> For an example of such an approach, see the case of Burkina Faso (Lavigne Delville and Thieba, 2015).

<sup>15</sup> <https://web.facebook.com/CNRF.Senegal/posts/1036763106344736>

Nevertheless, the LPD was not a total victory as it did not explicitly state the need for a balance between family farming and agribusiness, and it left the prospect of rolling out 'real rights' on the table.<sup>16</sup> The idea of a set of solutions to secure tenure represents a major improvement on previous frameworks, but it is only mentioned and is not developed enough to really constitute a central option. Crucially, the document proposes a broad and consensual vision but offers no clear choices or options. It covers everything without establishing or prioritising anything. Furthermore, the LPD was supposed to be consensual but was presented as “a strategic lever for building consensus on the issues raised by the land reform” (p. 9), leaving the matter of trade-offs, how these major principles would be put into practice, and the political meaning of the reform open to debate.

The CNRF saw this land policy document as the first stage in a process where political principles would be laid down before the participatory drafting of a bill in the second stage. Responses to some of the questions CRAFS raised during the debates with the CNRF were postponed until this second stage, but how could the process proceed when decisions were still to be made? The analysis of the LOASP made a few years earlier could also apply to this land policy document: “We have reached compromises that are sometimes shaky ... I think people worked hard to build compromises, perhaps thinking that more could be achieved when it came to the implementing tools. But you don't move forward in situations like that because things are confused. We cannot develop implementing tools that will help clarify the options presented in the basic document if these options are unclear.”<sup>17</sup>

It was hard to choose between the options on offer when the CNRF was unable to make any real progress developing clear proposals and determining how they would be implemented. Some CRAFS members were concerned that the document did not reject 'real rights' and thus the land market, and their fears were reinforced when the LPD was 'validated' without – in their opinion – being properly debated at the workshop in November 2016. Although a national policy document can never reflect the views of a single group of actors, civil society therefore only won a partial victory.

As it stands, the LPD satisfied CRAFS' leaders and some of its technicians, who felt that the political principles it set out were an acceptable starting point and that the next challenge was to make them workable as the legislation was drafted. However, their acceptance of the land policy document was disapproved by other technicians who supported a more radical analysis of the document.

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16 With the ambiguities noted by CRAFS technicians, as the strategic objective of “promoting the attribution of real rights” quickly became “attributing real rights”. The choice between systematic and demand-led formalisation is a key issue in the debate on formalisation (Lavigne Delville and Mansion, 2015).

17 Speaker cited in Diouf, 2015, p. 14.

### 3.1.4 The end of the road for the reform? Uncertainty after the unexpected dissolution of the CNRF

The CSOs' partial victory became all the more uncertain when the President of the Republic unexpectedly dissolved the CNRF about 10 days after the official submission of the report, a clear sign of its repudiation. With no advance warning that it would be disbanded, the move came as a complete surprise to CNRF officials who had made sure the President was regularly informed about the progress of their work. This looked like a complete rejection of the document.

The President had already questioned the legitimacy of the process on two occasions. On 24<sup>th</sup> March 2016, during the yearly "session solennelle" held by the Senegalese National Academy of Science and Technology (ANSTS), which focused that year on agricultural land, he openly spoke out against registering land in the name of local authorities: *"I would not be at all in favour of land being registered in the name of local communities. That's not an option."* He then added: *"We cannot engage in a dynamic where we are going to register land that belongs to the national domain, which in essence belongs to the Nation, in the name of local communities. How can we give these lands to local communities where officials are elected for a single term? People would sell it, and within a year Senegal would end up like Zimbabwe, with no land because everything will have been sold."*<sup>18</sup> He repeated this view at the 13<sup>th</sup> Presidential Investment Council in Diamniadio on 20<sup>th</sup> November 2017, and directed the Minister of Finance to modernise the land register.<sup>19</sup> The actors involved in the reform were particularly shocked by this statement because the CNRF had abandoned its initial framework and their report had not included this proposal.

Without attempting to determine the underlying motivations for this decision or predict the future of the CNRF's work, we should ask whether we can talk about even a partial victory when getting a land policy document that broadly mentioned family farming and securing community spaces led to the dissolution of the commission that produced it and halted the reform process. Many observers regarded this fourth attempt as the last chance for reform, and this latest setback could be seen as proof of the impossibility of central government and rural actors reaching a consensus on land issues in Senegal. If the process is relaunched, will it still be 'participatory'? And how will it initially be framed?

These questions are particularly pressing because other measures were being put in place while the CNRF was working on the land reform. The 2011 law on the conversion of residence permits into land titles (which had been under consideration for some time) and Law no. 2017-06 of 6<sup>th</sup> January 2017 on special economic zones (SEZs) were directly derived from proposals made by the CNRDT in 2005, which themselves drew on the draft opening of the LOA. So it could be

18 [https://www.leral.net/Reforme-Gestion-du-foncier-Macky-Sall-ecarte-les-collectivites-locales\\_a168218.html](https://www.leral.net/Reforme-Gestion-du-foncier-Macky-Sall-ecarte-les-collectivites-locales_a168218.html)

19 [https://www.pressafrik.com/Reforme-fonciere-Pourquoi-Macky-Sall-a-refuse-d-accepter-les-conclusions-du-Pr-Sourang\\_a173572.html](https://www.pressafrik.com/Reforme-fonciere-Pourquoi-Macky-Sall-a-refuse-d-accepter-les-conclusions-du-Pr-Sourang_a173572.html)



thought that while the CNRF was mobilising minds and working on the LDP, the government was pushing ahead with its own priorities for the PES. It no longer needed the land reform because it could use the law on special economic zones as a tool to control land tenure in areas where it wanted to act.

## 3.2 Learning to engage in policy formulation

CRAFS put a huge amount of effort into the CNRF and learned a lot in the process. Moving from studies and reflection to involvement in policy formulation, this group of diverse organisations with different histories, social roots, types of partnerships and funding learned to act as a unit, and managed to clarify and harmonise positions on complex issues despite the different sensitivities and experiences involved. None of this is easy. Despite the inevitable divergences and tensions that arose over the two-year process, the experience had a marked effect on CRAFS – increasing cohesion as it mobilised its own funding and conducted its own joint activities, gradually building cooperative relations between different civil society actors, acquiring legitimacy in the eyes of other actors, and developing the capacity for collective analysis and the ability to formulate alternative proposals.

In 2014, IPAR identified one of the main lessons learned from the NGOs' involvement in land reform in Senegal as the fact that *“political decision-makers are not inclined to instigate a real dynamic of negotiation with civil society organisations on the issues and orientations of land reform.”* Furthermore, *“these organisations remain on the margins of the land reform process because they are dispersed and struggle to define a shared vision underpinned by common positions and proposals”* (IPAR, 2014).

The CNRF process was both an opportunity and a risk for CRAFS. On the one hand, it enabled it to move from questioning the authorities and demanding an inclusive reform to engaging in constructive dialogue with the State and formulating its own proposals. On the other hand, CRAFS went into the CNRF process before it had the collective capacity to make proposals, and accordingly ran the risk of creating internal divisions or weakening its positions at time when some of the intellectual support it could usually rely on was unavailable because of its involvement in the CNRF.<sup>20</sup> CRAFS made real progress in terms of its coordination and shared vision as a result of its intense collective mobilisation in the CNRF, but perhaps as yet insufficiently to exercise any real influence, and was lagging behind the CNRF process itself. This makes the scale of its work, the coherence of its approach, and the changes it helped make in the CNRF's positions all the more remarkable.

### 3.2.1 The strengths and weaknesses of internal diversity

CRAFS has chosen to remain an informal group of organisations that work on land issues. Its member organisations come from diverse backgrounds and have

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20 This finally allowed CRAFS to broaden its alliances and its 'young' companions to assert themselves.

different positions, sources of legitimacy, internal operating methods, history of involvement in and understanding of land issues. On top of this, the organisational attributes specific to each entity create differences between the federations that bring together numerous local organisations and NGOs, and between leaders and salaried technicians.

This diversity is a huge asset in terms of members' complementary experiences and backgrounds. The fact that each member prefers a different range of actions means that CRAFS as a whole has a wide range of tools at its disposal. But it can also be a weakness, as it makes agreements more complex, delays reactions and lengthens the time taken to formulate positions. There have also been occasions when differences have not been resolved and willingness to speak with a common voice has been derailed by individual statements that contradict the long-debated consensus.

### 3.2.2 The limitations of technical arguments

Various members of CRAFS tried to influence the CNRF framework and methodology when it was first created and then again when it was relaunched. But CRAFS' inability to make sufficient upstream progress in formulating harmonised positions and concrete proposals for land governance left it in a reactive position right up to the point where common positions were finalised at the end of 2015. This, and its problematic dialogue with the CNRF technical committee probably limited its capacity to wield influence.

The pace imposed by the CNRF mobilised a good part of CRAFS' forces. One can wonder whether the shift from opposition (to land grabbing) to contribution (to the CNRF) in the space of a few years happened at the detriment of maintaining its capacity for collective mobilisation and shows of strength, demonstrating the farmers' determination to see the reform succeed. Analysis of the role that advocacy plays in social movements and its effects on mobilisation shows that further reflection is needed on this issue (Ollion *et al.*, 2015).

### 3.2.3 Learning about issues and concepts along the way

The issue of whether 'real rights' were needed was not on the agenda in 2004, when the focus was on promoting a global vision and claiming more secure rights; nor in 2010-2011, when the emphasis was on tackling land grabbing. In 2012, attention was focused on pushing for inclusive reform, not yet on formulating specific proposals. When the CNRF was relaunched, members of CRAFS did not really need to consider their positions or the legal and institutional questions raised by their aspirations in any detail. It was the framework imposed by the CNRF, and the link it made between 'real rights' and registration that forced them to debate their explicit or implicit visions and proposals and question pre-established positions (some, like the CNCR, had established their positions over the last decade, while others, like CICODEV were new to rural land issues).

This meant that CRAFS had to tackle delicate subjects as they arose, under the pressure of events. Matters were further complicated by the highly legal framework proposed by the CNRF, as it is difficult for non-specialists to contribute to technical debates where their positions are easily delegitimised. The debate on the notion of 'real rights' gradually opened up from mid-2015 onwards, and informed contributions from Senegalese and French lawyers with an open vision of the law led the CNCR to reconsider its position. The time needed to gather information and redefine its positions meant that CRAFS came to meetings on the first versions of the land policy document without a precise position to defend beyond its founding principles, and could therefore only be reactive for most of the CNRF process.

### 3.3 Possible pathways for CRAFS

The sudden dissolution of the CNRF surprised and unsettled everyone who had been involved in the process. This undoubtedly created uncertainty about the future, but it should not be seen as the end of the line for an inclusive land reform. On the contrary, CRAFS should not only continue to monitor, contest, propose and inform public debate on land, but also use this moment to reclaim the initiative by formulating clear, specific proposals. The suggested pathways outlined below were proposed in mid-2018 at the end of the capitalisation process launched by CRAFS, which has already started to act on some of them.

#### 3.3.1 Stay united and build broad alliances

Despite the unsettling silence from the Presidency, members of CRAFS continued their efforts to produce legal arguments and call on the authorities to account for their positions. In November 2017, CRAFS established a 'roadmap' to guide its future actions in three key strategic areas: (i) lobbying to relaunch a well-run land reform process; (ii) developing positions and proposals on land legislation; and (iii) mobilising all stakeholders and the general public around land reform and maintaining its watch and warning function to ensure an inclusive and successful land policy. Other themes such as agro-ecology have emerged since then, but the actions envisaged in the roadmap are progressing slowly as some members of CRAFS have been busy with their own activities. It is important for CRAFS to maintain its institutional activities and visibility in fighting for land reform that promotes efficient and sustainable family farming. It can take advantage of this time to strengthen its lobbying and advocacy capacities, and above all, to try to broaden its alliances.

Although it was part of their action plans, members of CRAFS made little or no attempt to build broader alliances with actors such as local elected officials and entrepreneurs, or to lobby the State and other influential actors during the CNRF process. They need to do so, as a joint proposal by CSOs and investors' associations on legitimate ways of transferring land to investors would surely carry considerable political weight.

CRAFS should also engage in further dialogue with platforms in neighbouring countries that have made progress in implementing reforms to secure local land rights, in order to understand their achievements and limitations and, if necessary, draw inspiration from them.

### **3.3.2 Extend its monitoring and mobilisation capacity**

The CNRF process shows that the State is moving forward with parallel projects developed in other arenas, pursuing a double agenda that does not prioritise formal forums for debate. CRAFS should extend its monitoring work to cover all initiatives by the State and other operators that carry potential risks for rural actors and, more broadly for Senegalese citizens. It should keep a particularly close eye on Special Economic Zones (SEZs) as the law on SEZs carries significant risks; while member organisations involved in ongoing actions against land grabbing should be ready to mobilise against unacceptable projects, or at least negotiate how they are implemented.

### **3.3.3 Collective work on field activities to develop operational tools that can influence future reform**

One of the reasons why the land policy document stayed very general is that it was not based on concrete proposals that had already been tested and evaluated. CRAFS member organisations are running field activities with partner grassroots organisations in order to build community capacities and test different approaches and options. These include working with local elected officials to put in place inclusive, participatory tools and mechanisms for local land governance (land use and allocation plans, local conventions, joint village committees, local charters, negotiation procedures with investors, land registers, etc.), and supporting communities affected by land grabbing. These actions have generated other dynamics, such as the Network of Green and Ecological Municipalities and Cities of Senegal (REVES), a group of about 50 mayors who are committed to sustainable natural resource management. It would be useful if CRAFS focused more on supporting member organisations' experimental projects, and collective capitalisation of their experiences (and those of other projects or NGOs) through monitoring and crosscutting evaluations, in order to stabilise their approaches and identify areas of validity, the conditions for success and the limitations of these projects. These initiatives should also take account of investors, explore socially legitimate ways of setting up agro-entrepreneurs, examine the bases for equitable agreements, and find ways to help local organisations and local elected officials anticipate the possible effects of future projects and negotiate their design and implementation.

Rather than giving up on legal reform, developing and building on experimentation signals a refusal to allow the current dynamics to continue and a determination to increase the capacity to influence future reforms.

## 4. Lessons learned about civil society participation in land policy formulation processes

### 4.1 Instigating and informing public debate upstream of official processes

CRAFS was able to engage in the Senegalese land debate on various fronts. The fact that its members had produced numerous studies and framework notes before the State launched (or in this case relaunched) a reform process pushed the issue of inclusive and participatory land reform to centre stage, and undoubtedly contributed to the CNRF subscribing to this objective. This kind of action is important as it enables civil society organisations to refine their analyses and priorities, share them, and try to convince more actors of their arguments. Feedback, workshops and meetings are not only opportunities to exchange ideas and strengthen and broaden networks of alliances, but also to anticipate political decisions, start preparing for forthcoming reforms and try to influence the ideas that will shape them.

In order to make a critical contribution to the process, CRAFS secured a place as a stakeholder in the CNRF so that it could question the framework and proposed procedures and help them evolve. It also used other spaces to continue to inform the debate through analyses and proposals, and to try to bring the commission round to its way of thinking. CRAFS and its members engaged in the process through a whole range of actions on every front, and succeeded in mobilising huge numbers of rural actors – although it was perhaps rather late in the proceedings for this to have any real effect.

CRAFS clearly played a relevant part in the process and carried out an impressive number of strikingly coherent actions. In terms of lessons learned, it should be noted that these actions were not part of an explicit strategy to influence public policies, and the fact that they were sometimes launched in response to, rather than in anticipation of, the CNRF's actions may have reduced their impact. Even if it was not possible in this instance, CRAFS would have been in a stronger position if it had been able to properly prepare the options and priorities to be defended, identify possible courses of action, and develop strategies to influence and contribute to the official process before it was launched.

### 4.2 Determining what kind of participation is on offer

Civil society can promote rural interests most effectively by participating in land policy formulation processes. The fact that 'participation' has become – on paper at least – an inescapable element of policy formulation is an opportunity that civil society must seize. But 'participation' is a very broad concept that covers a wide

range of procedures, from open processes where basic political principles are collectively formulated and their implementation is negotiated, to predefined projects that are pushed through under the guise of being 'participatory'. Participation therefore brings both opportunities and risks.

If a 'public offer of participation' seems to be too open to manipulation, the best strategy for dealing with it may be a refusal to participate. But 'empty chairing' is a double-edged policy that could backfire on civil society if it fails to make the reasons for its refusal to participate heard in the public arena, thereby delegitimising the process and its outcomes. CSOs also lose out if the State can mobilise other, less vigilant organisations to say that it has played the participation game. The best strategy for influencing the process, procedure and outcomes is usually active but critical and vigilant participation that seeks to seize and expand open spaces or create new ones to counter potential pitfalls.

Being able to determine the content of an 'offer to participate', and discuss and possibly challenge the proposed terms and conditions enables stakeholders to identify certain risks, do their best to limit them, and specify their strategy for participation. Key points to consider in this respect are the type of potential participants and how they are selected, the types of discussion forums involved, and the clarity of the procedures and independence of the facilitation and summaries. A good understanding of the differences between consultation, dialogue and deliberation will enable stakeholders to deconstruct an overly manipulative proposal and determine whether the discussion forums are genuinely open or not.

How the offer of participation is framed and who will lead it give some indication of the direction the process will take and the underlying purpose of the participation, which can be clarified in discussions with the promoters of the initiative. This kind of analysis enables stakeholders to reflect on their strategy, their willingness to engage, their critical contribution, etc., but will not help them understand the underlying political objectives or possible hidden agendas behind the offer. The same applies to those who are promoting participation, who are often not the final decision-makers. It is also worth noting that some actors may only become aware of – and even be forced to take account of – rural realities and farmers' and herders' interests during the process.

### **4.3 Knowing what is wanted and why, not just what the fight is against**

Actors who know where they want to go and why have a stronger hand in negotiations and participatory processes. The more civil society organisations are able to frame problems in their own way, determine the policy objectives they want for the reform and make specific, shared proposals on how to achieve them, the better equipped they will be to identify opportunities and risks, know which trade-offs are possible and which are not, and identify possible risks or pitfalls in the proposals that are made to them.

Agreeing on an analysis of the issues and strategic guideline is far from easy. Land issues are complex and can be read in contradictory ways, and each CSO will focus on different aspects according to their position, history and experience. They therefore need to work together to analyse the issues and experiences in the field, in order to learn from them and better understand how they can contribute to the process, where their limitations lie and the conditions of validity. If they are at the stage where the issue is not reaching the point of getting their proposals translated into law, stakeholders need to know how to go beyond general principles, which are too easily manipulated, and at least try to get to the intermediate level of establishing the broad outlines of the desired measures and the necessary conditions for them to be effective.

At this stage it is useful to share detailed knowledge of field experience in both the country concerned and other countries that have tried similar initiatives. Civil society proposals will be much more solid and relevant if they are based on field experiences and critical analysis of their results, since options that look good on paper do not necessarily work in practice (village land management committees, for example, often have problems operating effectively).

As we have seen with CRAFS, it takes time to develop such positions. Civil society organisations do not control the political agenda and need to be able to get involved as soon as the opportunity to contribute arises. Therefore, the better able they are to anticipate joint formulation processes, the more ready they will be when the government opens a debate.

#### 4.4 Trying to frame the debate before and as it unfolds

CRAFS did not wait for the launch of the CNRF to raise public awareness of the importance of an inclusive and participatory land reform. It could even be thought that the fact it had hammered home this point might have influenced the option chosen by the president of the CNRF. The many individual and collective initiatives by members of CRAFS helped highlight land issues in the public arena, focus media attention on their analyses and demands, and force political leaders to clarify their positions. While such initiatives are no guarantee that these ways of posing the problem will be taken into account, they do raise awareness and help actors less familiar with the subject to better understand the real issues at stake, change their position and broaden networks of declared and potential allies. Studies are also useful as they set out the arguments on which CSOs' positions are based and show that they have been thought through and are rooted in rural realities.

It is very important to be able to influence the framing of the debate – how problems are posed and solutions sought – because it is relatively easy to discuss and adjust the details of proposals, but much harder to challenge its basic options. It took a year of pressure to get the CNRF to abandon its initial framework (generalised registration), time that could have been spent making collective progress towards concrete solutions.

The way that the authorities formulate a problem will differ from the way it is articulated by those it directly affects. So this is also a battle of ideas. If the frameworks proposed by the State are unacceptable, stakeholders need to be able to challenge them, show that the problems have not been properly framed, will not be resolved by the proposed solutions – and why – and that the proposed frameworks risk making the situation worse. The more precisely civil society can identify the problems that citizens face, the more media coverage it will be able to get and the better equipped it will be to challenge problematic or overly general frameworks.

In this case, the idea that land titles (or emphyteotic leases) are needed to secure family farming tenure is strongly rooted in the collective imagination. Many professionals are convinced of it, others use it as a rhetorical argument to serve their interests, and non-specialists may uphold it in good faith because they are unfamiliar with the realities on the ground. To avoid potential pitfalls it is important to make a clear distinction between *security of tenure* (the fact that rights, whatever they may be, are not threatened by the State or third parties), *the formal nature of these rights* ('informal' rights can be secure) and *private ownership* (see Lavigne Delville, 2017). Private ownership is neither a necessary nor sufficient condition for investment or increased productivity, and depending on the circumstances, formalising rights can lead to security or insecurity.

This kind of work is essential upstream of a reform, but should also continue throughout the process in order to link internal endeavours to make critical contributions with external efforts to inform the public.

#### 4.5 Building and broadening alliances

Civil society organisations need to present a broad front and build alliances in order to make a difference, but this raises a dilemma as it means they have to take account of diverse and potentially contradictory positions and interests. This is already an internal issue for CSOs, especially when they are trying to broaden alliances in order to strengthen their proposals. Who are their possible allies? Where are the points of convergence? For example, when considering the conditions for temporary or permanent land transfers to entrepreneurs and how they are negotiated, contractualised and legally secured, is it possible to negotiate common positions with certain networks of entrepreneurs, genuine investors who are interested in developing good relations with neighbouring farming communities? Are there alliances to be forged with associations that fight against speculation and dispossession in cities, and demand greater security of tenure for the working classes? Which experts can help dissect the arguments put forward by the State, clarify civil society positions, and build discourses and proposals? What kind of international support, international organisations and donors are available? And what kind of contributions can they make in terms of argumentation and political or financial support?



More individualised approaches will be needed when seeking alliances with different ministries and political actors who are aware of the problem, share civil society positions and are in a position to play some kind of bridging or lobbying role.

Here too, it takes time to build such alliances. While bilateral contacts, public debates and position papers are all ways of identifying potential support, CSOs may need to shift their boundaries or red lines in order to broaden alliances, and therefore need to decide how far they are prepared to go in this respect.

#### **4.6 Harnessing advocacy and the balance of power**

Advocacy is currently one of the preferred forms of mobilization. CSOs can use technical expertise and debating skills to make themselves heard in arenas that are dominated by professionals and technicians, but this has its limitations when the interests involved are too divergent and the offer to participate is not motivated by a genuine desire to develop relevant and sustainable proposals that will serve the general interest. Advocacy can even be a trap if it makes the debate too technical, makes people forget the political issues, and creates divisions within civil society between grassroots activists and specialists in the sector. It also runs the risk of making people forget other courses of action if it takes up most of the available energy and human and financial resources.

Civil society organisations should remember that there are other forms of pressure as well as advocacy. Strategies for mobilisation and collective action invariably include demonstrations and shows of strength, as gathering thousands of farmers in the street, stadium or theatre is an effective way of showing the strength of popular support for civil society positions, and the political (and electoral!) risk the government faces if it tries to force things through.

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# Research Report

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**Law, Investments and  
Land Rights**

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Civil society's ability to contribute to public policies has been on the agenda in sub-Saharan Africa since the 2000s. Civil society organisations (CSOs) often debate policy options at some length and depth but spend less time thinking about their strategies for action and influence in this domain, even though the interests promoted by the State do not always correspond to those of most citizens, and policy formulation processes are often open to manipulation.

CSOs therefore face several dilemmas. Should they engage in the participatory processes proposed by the State? If so, under what conditions? How can they engage in constructive dialogue while being vigilant about the risks of manipulation? How can they influence the process and push for the interests and views of as many people as possible to be taken into account?

This study examines how Senegalese CSOs operating within the Framework for dialogue and action on land in Senegal (CRAFS) mobilised around the process of formulating a draft land reform between 2014 and 2016. The process was led by the National Land Reform Commission (CNRF), which the Senegalese government created in 2012 to lead an 'inclusive and participatory' land reform. After describing how members of CRAFS contributed to the debate on the need for an inclusive land reform and their active and critical contributions to the CNRF process, this paper analyses the achievements and limitations of their engagement in the process and the lessons learned from it.

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