

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

What is land tenure security and how can it be strengthened?

by Philippe Lavigne Delville¹, July 2017

Tenure insecurity has been a major theme in land policy debates since the 1990s. However, it is often unclear what the term actually means. Security should not be confused with formalised or legalised rights or private ownership. Secure tenure means that land right holders can rest assured that their land rights (whatever they are) will not be contested, and that they will be confirmed by the authorities if they are challenged. Therefore, this is primarily an institutional matter.

Having secure rights means being protected against forced eviction

Rural actors need secure tenure so that they can exploit their land without the risk of their efforts coming to nothing: they can reap what they have sown without being thrown off their land before it is harvested, cultivate a plot for long enough to see a return on their investments, and not run the risk of having their rights contested by the State or other powerful actors.

- **Secure rights do not require private ownership or even formalised and legalised rights**

Many analyses wrongly equate security with private ownership. But I can hold a land title and be insecure if I cannot exploit my parcel, if the land is already covered by a title in someone else's name, if the purchase was illegitimate or my land is occupied by someone who feels that it has been stolen from them. Or if the judiciary has been corrupted and finds in favour of someone richer or more powerful than me. Conversely, even if my rights to this parcel are "informal", I am secure if everyone knows that I inherited this land from my father or bought it from a neighbour, or if I can rely on the local authorities

or State to uphold my rights if they are contested.

Exploitation rights obtained from other people can also be secured. If someone lends me a plot for a year I am in a precarious situation in the sense that I may not be able to find another plot the following year, but my tenure is not insecure if I can exploit the parcel this year without risk. The security of rights is a different matter from their content or duration. There is often confusion between insecure rights and precarious tenure.

- **Security of tenure is primarily an institutional matter**

Land rights are secure if their holder is assured of being able to exercise them, whatever their content or duration. In other words, having secure tenure means that no-one is seeking to contest your rights, and if they are contested you can defend them and the authorities will find in your favour if the dispute goes to arbitration. Rights that are not legitimate may be upheld by force; but otherwise, secure tenure means that the rights concerned are legitimate, in accordance with socially accepted norms, and that the

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authorities are able to guarantee them effectively. Having confidence in land regulations and institutions creates a sense of security and encourages farmers to cultivate and invest time and capital in a piece of land. Therefore, security of tenure is primarily an institutional issue. It is so even in contexts where rights are linked with social identities and where land institutions are the political authorities.

A sense of secure tenure comes from confidence that the rights one holds over land and natural resources (whatever their nature and duration) will not be groundlessly contested, and that if they are, they will be confirmed by the arbitrating authorities. It is based on knowledge that the institutions that regulate land tenure are effective, make predictable decisions, and that any conflicts that do arise

will be settled in favour of legitimate rights holders.

Tenure security is mainly based on norms and authorities

It is not very helpful to discuss tenure insecurity as a whole, as not everyone is affected by it, and those who are experience it in different ways. As the forms, causes and actors at risk of tenure insecurity vary according to different contexts, it is more useful to try to understand them by empirically examining the various forms, realities and prevalence of tenure insecurity experienced by different types of actor.

● **Varying forms and prevalence of tenure insecurity**

Demographic pressure and market integration do not automatically lead to conflict or insecurity. “Potential” insecurity associated with a lack of legal recognition for land rights only translates into “real” insecurity when local norms are contested or threatened by the State or other actors.

When the mechanisms for land regulations are reasonably effective, local people’s land rights are largely secure even if they are informal. Everyone knows who has which rights. Conflicts can be resolved and illegitimate claims rebutted through mediation or arbitration at various levels. But it may be hard for social dependants and returning migrants to exercise their rights when pressure on land is intense; and when sales, which are subject to little customary regulation and no State regulation, are a common source of conflict.

Certain actors may have structurally insecure tenure in highly conflictual

contexts dominated by violence or power struggles. Conflicts or abuses of power are often concentrated in particular situations (ambiguous or contested territorial boundaries between communities) or specific regions (immigration areas where tensions between migrants and the indigenous population rise when land relations are renegotiated as one generation succeeds another).

● **Competing norms and authorities can be a source of insecurity**

Conflicts are more likely to occur in situations where different norms and local and State regulations co-exist and hybridise. In such contexts, certain actors may use contradicting norms to claim rights under one system of norms that would not be legitimate under another. This is particularly true when State rules are used against local norms, when it is possible to obtain a land title without having corresponding rights at the local level, when migrants use statutory law or the administration to deny customary norms, or when indigenous actors rewrite history to contest sales agreed by their forebears.

The problem lies not so much in the plurality of norms as in the competition between institutions. When the State is unable or unwilling to manage co-existing authorities, establish a hierarchy of powers or specify how the different authorities should proceed, the protagonists in a conflict will seek support from the authorities they regard as most likely to find in their favour, and then the other party is likely to contest the decision through a competing authority. Problems with insecure tenure can often be traced back to competition between the dif-

Shrub making the border between two plots



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ferent authorities responsible for arbitrating conflicts.

Strategies to secure tenure, proactive responses to potential insecurity

Rural actors take pro-active measures to tackle the risks associated with insecure tenure and dysfunctional land regulations. They use diverse strategies to secure their rights and reduce perceived risks: demarcating boundaries, putting in plants or cement markers, practising magic, strengthening their position in local social networks (especially for migrants), supporting powerful players so that they can call on them for help, obtaining written or administrative documents (whatever their legal status) and using whatever State mechanisms are available to them, etc.

These strategies are designed to make the holder's rights visible and tangible through signs of appropriation or labour, legitimise the way that they have been obtained in the eyes of local and administrative actors, and enable holders to mobilize institutions and powerful actors if their rights are contested. They aim to reduce uncertainty in a context of uncertain norms and dysfunctional land regulations, often by securing rights through a combination of social recognition (according to local norms), via the State and through documents (according to government norms).

Crafting institutions to improve security of tenure

If they are to succeed, policies to secure land tenure need to address the problems experienced by local actors. They also need effective institutions in contexts where several sets of norms

Official and unofficial documents can contribute to tenure security as well as insecurity

Written documents can significantly increase security of tenure by testifying to the existence of rights or the transaction through which they were acquired. This security comes not from the document itself, but the fact that it is recognised as a proof (or an element of proof) by the local and State land authorities and the judicial system, and that this recognition can be used to uphold a contested claim. To play such a role, these documents must be reliable, legitimate and accurately reflect the rights concerned and social consensus around them, the land administration has to be accessible, reliable and regularly update land information, and the administration and judiciary must examine and judge the case objectively.

These conditions are rarely or partially fulfilled. Documentation may only add to the confusion and tenure insecurity when legal opportunities for formalisation are inappropriate or inaccessible, when land titles can be obtained by depriving local actors of their rights, when fraud is common, when educated actors abuse illiterate local people, when the land administration is corrupt, and when files are not updated and written documents are not in the name of the current parcel holder (registering changes in tenure is one of the main problems with land rights registration).

Many market land transactions are recorded in written documents that are witnessed and signed by the village authorities or local administration (sub-prefecture, mayor). These contracts attest the existence of the transaction but do not always prevent conflicts – the fact that the authorities signed the contract shows that the interested parties brought it to them, but does not mean the sale is legitimate or that its contents are unambiguous. They can only provide a partial solution because the State's refusal to explicitly recognise these procedures and give them a legal framework means that their shortcomings cannot be addressed.

co-exist. The most effective and relevant way of tackling this issue is to start with the problems associated with insecurity, in order to understand the causes of insecurity, the strengths and weaknesses of people's strategies to secure their tenure, and to identify realistic strategies to reduce risks (upstream) and increase the effectiveness of arbitration mechanisms (downstream).

Three priorities here are:

- legal reforms to remove provisions that allow actors to obtain land titles by depriving legitimate holders of their rights (such as registration procedures that do not use real local information);

- dealing with the plurality of norms through mechanisms that ensure coordination between the different authorities and only allow disputes to be taken to the administrative authorities or judiciary once they have been dealt with at the local level; and
- formalising land transactions. It is the State's responsibility to put in place reliable and accessible mechanisms to address the sources of conflicts over sales.

It is important to encourage the systematic use of contracts for land transactions, attestations of rights

upheld by the arbitrating authorities, land ownership certificates issued on request, and written minutes of family meetings about inheritance. Over time this would help constitute a body of documents certifying rights to a growing number of parcels, starting with those that are most problematic or at risk.

The systematic formalisation of land rights is not a condition for secure tenure. It is a tool for more effective land management institutions that can only contribute to tenure security if these institutions are reliable. And this option can only be justified in certain conditions: when land values are high, land transactions frequent, and when it is possible to put in place reliable and sustainable land information systems. ●

FOR FURTHER INFORMATION SEE:

>> Arnot C.D., Luckert M.K. and Boxall P.C., 2014, "What is tenure security? Conceptual implications for empirical analysis", *Land Economics*, vol. 87 n° 2, p. 297-311.

>> Colin J.-P., Léonard E. and Le Meur P.-Y., 2009, "Identifier les droits et dicter le droit. La politique des programmes de formalisation des droits fonciers", in Colin J.-P., Le Meur P.-Y. et Léonard E., ed., *Les politiques d'enregistrement des droits fonciers. Du cadre légal aux pratiques locales*, Paris, Karthala: 5-67.

>> Lavigne Delville P., 2006, "Sécurité, insécurité et sécurisation foncières : un cadre conceptuel", *Réforme agraire et coopératives*, (2006/2): 18-25. <http://www.pole-foncier.fr/documents/themes/concepts-methodes/item/securite-insecurites-et-securisation-foncieres-un-cadre-conceptuel.html>

>> Lavigne Delville P., 2007, "Insécurité foncières et trajectoires de sécurisation : illustrations ouest-africaines", *Réforme agraire et coopératives*, (2007/1): 7-17. <http://www.pole-foncier.fr/documents/themes/concepts-methodes/item/insecurites-foncieres-et-trajectoires-de-securisation-illustrations-ouest-africaines.html>

>> Le Roy E., Karsenty A. and Bertrand A., 1996, "La sécurisation foncière en Afrique : pour une gestion viable des ressources renouvelables", Paris, Karthala.

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