

Technical Committee



A committee composed of decision-makers, experts and researchers providing international support for land policies in developing countries

Formalising land rights in developing countries

Moving from past controversies to future strategies

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Why do we need a critical analysis of policies aiming at formalising land rights?

- The purpose of policies aiming at formalising rights is to **give written and legal form to land rights**:
 - Standard policies are based on private and/or individual property
 - Alternative policies try to recognise the diversity of existing rights and the plurality of norms for access to land
- Formalising land rights is often presented as **an obvious, almost inevitable step, and sometimes as a panacea** that will:
 - Increase investment and promote economic development
 - Improve poor people's security and integration
 - Prevent conflicts and ensure social peace
- However, **experience has shown that formalisation policies** have had very mixed results in both urban and rural areas

Issues and objectives of this exercise

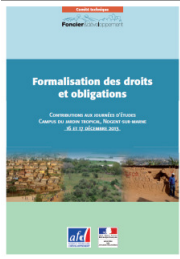
- **This is not about questioning the need for land policies:** they are a key tool in addressing the unprecedented challenges now facing low and middle-income countries. The social cost of inaction on land issues is hard to measure, but nevertheless very real.
- A critical analysis of past and present formalisation policies was needed in order to:
 - **assess the state of knowledge about the impacts** of formalisation
 - understand the **necessary conditions** for effective, inclusive and sustainable policies
 - identify **additional or alternative options** to formalising rights.
- And thus provide **pointers to enable land policy actors and their partners** to look beyond the controversies and develop strategies that are appropriate for each context.
- This work is intended to **continue, complement and enrich** the CFS voluntary guidelines on the responsible governance of land regimes and the African Union guidelines on land policies.

Who and what did this work involve?

- It was a collective reflection process requested by MAEDI and AFD, involving **all members of the Land Tenure and Development Technical Committee and its country networks**


The process began in 2012, and involved a combination of case studies, discussions, debates and syntheses.

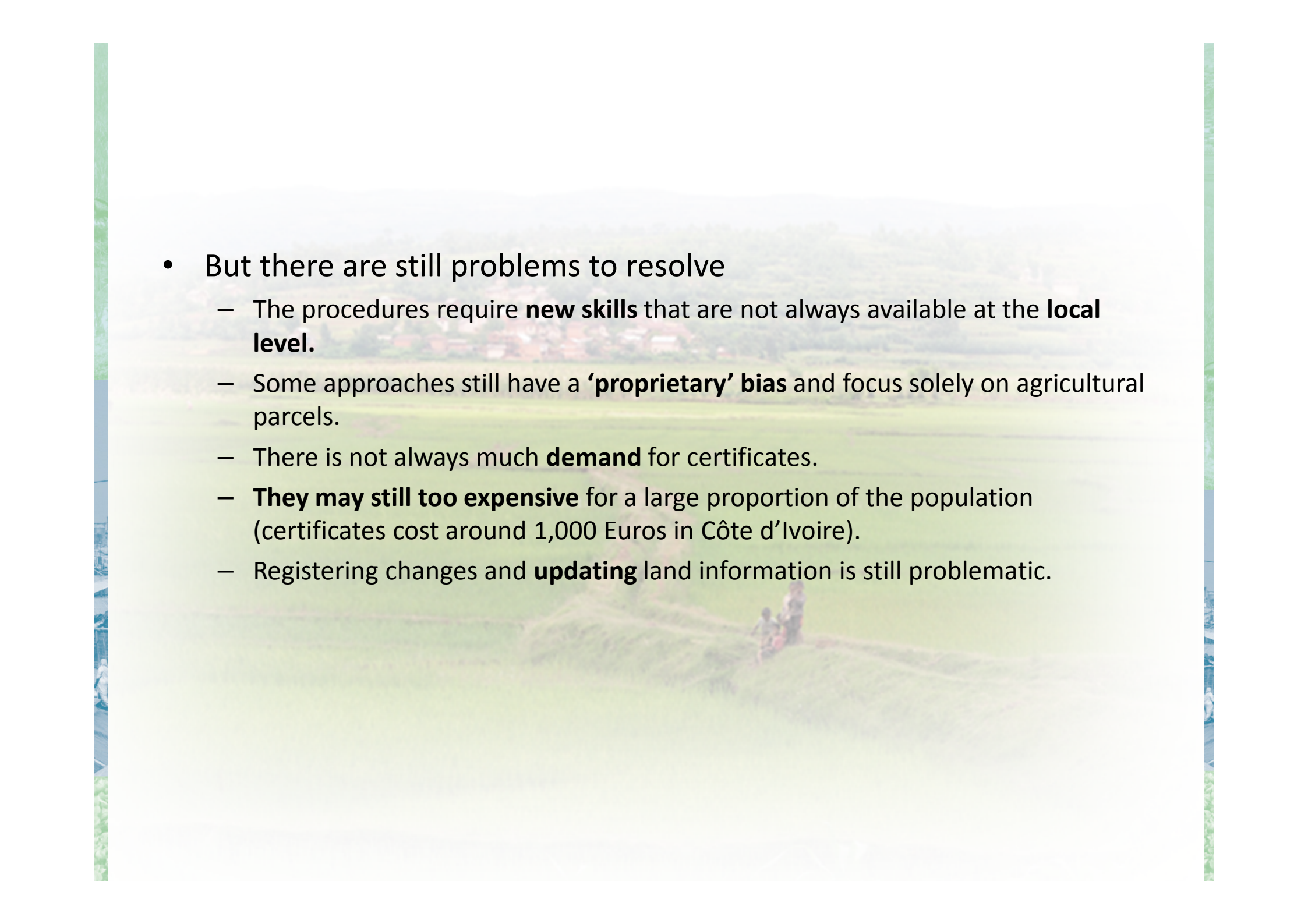
- The field of reflection covered **all so-called ‘developing’ countries and their problems in rural and urban areas**, with a focus on rural and African situations.
- A meeting validated a **final report** on the process on 15th December 2014 in the presence of several international partners, three African delegations (from Madagascar, Mali and Senegal) and private investors and operators.



Main conclusions and key messages

- **Standard procedures** (systematic, large-scale, solely focused on private/individual property) raise **several major problems**:
 - They **do not take account of collective rights**, and therefore lead to exclusion where land is appropriated through family landholdings or common resources.
 - Formalisation procedures are **often very complex and costly**, and thus beyond the reach of the majority of the population.
 - The land administration often **lacks the capacity to implement procedures in a transparent, effective and sustainable manner, or ensure that land registers are kept up to date.**
 - There is little popular demand for formalisation, **changes are not registered and information systems quickly become out of date**, generating further confusion.

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- The background of the slide is a faded photograph of a rural landscape. It shows a wide river or floodplain in the foreground, with a dirt path or road winding through it. In the distance, there are green hills and some buildings. A few people are visible in the middle ground, possibly walking or working in the field. The overall tone is light and naturalistic.
- **Progress has been made** with so-called ‘alternative’ procedures
 - They promote **new legal categories** that are closer to local practices, especially for **common resources**.
 - They use **changing technologies** that different kinds of actor can deploy to discuss, defend and manage their rights. Some are highly sophisticated and some are simplified (mapping, information systems, etc.).
 - They create **new forms of land governance that encourage cooperation between the central administration, local governments and customary authorities**.
 - They aim to put in place formalisation mechanisms that are **more affordable and accessible** for local people.

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- But there are still problems to resolve
 - The procedures require **new skills** that are not always available at the **local level**.
 - Some approaches still have a '**proprietary**' **bias** and focus solely on agricultural parcels.
 - There is not always much **demand** for certificates.
 - **They may still too expensive** for a large proportion of the population (certificates cost around 1,000 Euros in Côte d'Ivoire).
 - Registering changes and **updating** land information is still problematic.

Formalising rights is not a panacea

- There is **no mechanical link between:**
 - Formalising and securing rights
 - Formalised rights and investment
 - Formalised rights and social peace.
- Formalising rights **should not be regarded as a panacea, or as having any intrinsic virtue:** it may lead to inclusion or exclusion and reduce or exacerbate conflicts. It has often been tools for land grabbing by local/national elites.
- There is **no 'magic formula' or universally reproducible model:** the relevance of policies and their modes of implementation depend on the contexts and on the societal choices concerned.
- Successful and effective formalisation policies require **a certain set of political, institutional, technical and financial conditions** that should ideally be put in place before or at least have to be built during implementation of the policy.

Formalising rights is not an end in itself

- **Formalising rights is only one dimension of land policies:** regulating private investments in land and tackling inequality are also crucial aspects of these policies, and raise equally pressing economic and social issues.
- **Security of tenure is not the only level for economic development, and often not the first one:** when there are significant imperfections on interlinked markets (labor, credit, products, insurance, etc.), enhancing land market will have few or negative impact on productivity, and negative impacts on equity (Binswanger, Deininger). Many countries need to tackle problems in the economic environment, access to markets, price relations, access to inputs and technologies, etc. before looking at systematically formalize land rights.

Formalising rights is a strong political choice

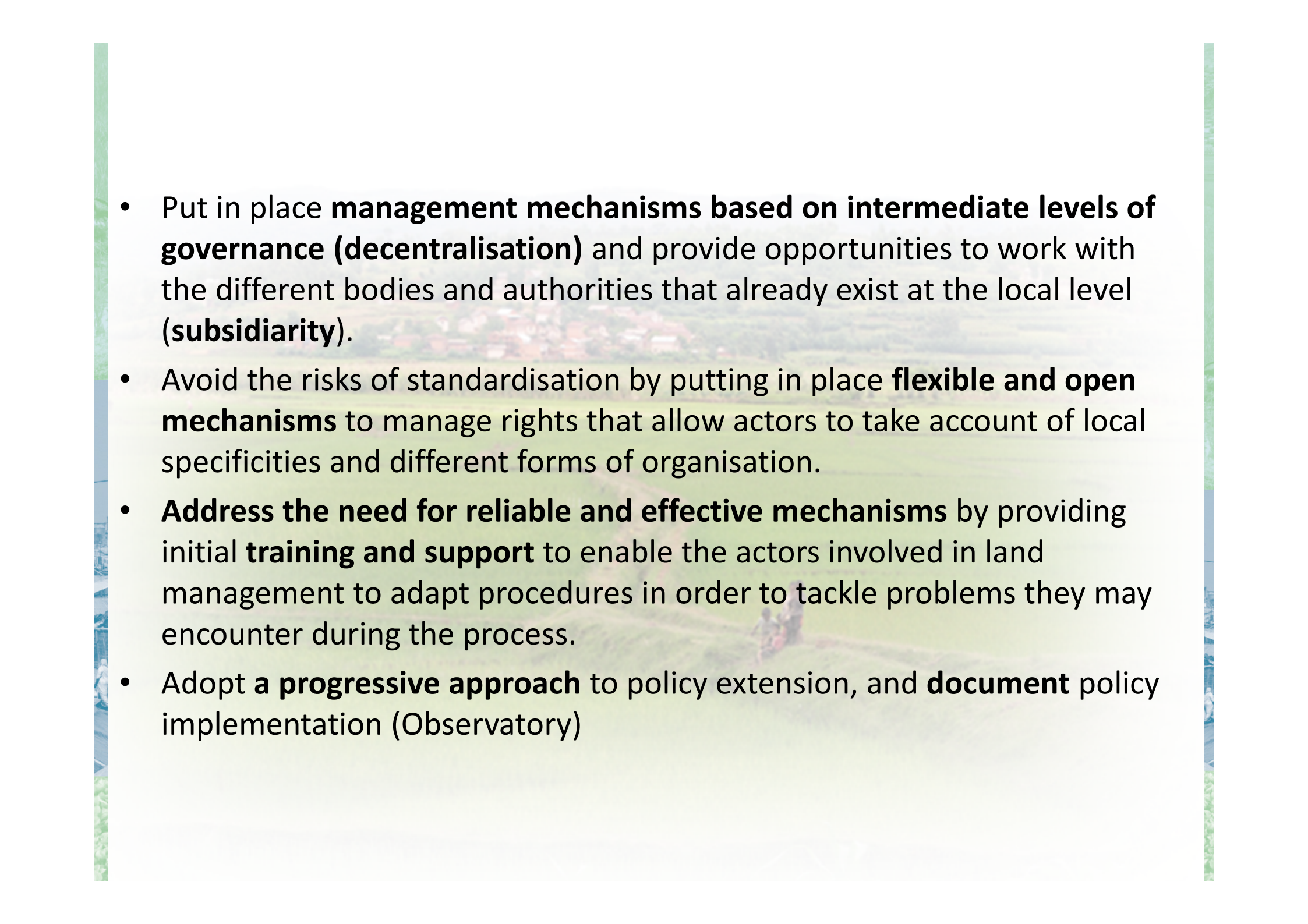
- Formalising land rights **changes relations between the State, local communities and individuals**
 - What is the future for pastoral or extractive societies?
 - How do the State and local authorities interact with each other?
 - What forms of “social protection” will there be for people if land is no longer part of the extended family’s assets?
- Is the **resurgence of standard policies** (despite the doubts raised in the 1990s) linked with the rise in national and international land grabbing?
- Pursuing a policy to formalise land rights and deciding how this will be done is a **weighty decision whose relevance depends on the context and societal choices** and which should be widely and publicly debated.

Six key conditions for success

1. **Reconcile legality and legitimacy** through clear legal recognition of existing acknowledged rights, whatever their origin (customary or statutory) or nature (individual or collective, temporary or permanent).
2. **Initiate widespread debate** on the choice of society that the land policies will serve (and target), the opportunities for formalisation, how it will be implemented and its possible alternatives.
3. Build **consensus between all the actors concerned** (central and local governments, local people, the land administration, professionals in the sector), and sustain the political will needed to implement formalisation procedures.
4. Define a **realistic implementation strategy** which recognises the vital importance of establishing effective and transparent governance and/or administration of land rights.
5. **Progressive implementation** that leaves room for learning, experimentation and adjustment.
6. Ensure from the outset that the **land services will be financially viable**, and put in place mechanisms to fund them.

How they can be achieved

- **Reduce legal inconsistencies** and procedures that result in insecure tenure.
- **Promote in-depth debates** on the opportunities for formalisation, inform these discussions with solid empirical analysis and mobilize **different groups of stakeholders**.
- **Enable civil society** actors to formulate their position and participate meaningfully in the debates, and support **platforms** that promote crosscutting debate between different actors.
- **Broaden the options for securing tenure** so that they meet the needs of different users and territories: formalise transactions and assigned rights (informal documents), formalise land uses and management rules, use land tax as a means of funding the process and securing tenure.
- Establish **relevant legal statuses and articulate** them in a coherent legal and administrative framework.

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- The background of the slide features a soft-focus photograph of a rural landscape. In the foreground, a river flows through a green field. In the middle ground, a group of people, including children, are visible near the water's edge. The background shows a line of trees and a small cluster of buildings under a hazy sky. The entire slide is framed by vertical green and blue decorative bars on the left and right sides.
- Put in place **management mechanisms based on intermediate levels of governance (decentralisation)** and provide opportunities to work with the different bodies and authorities that already exist at the local level (**subsidiarity**).
 - Avoid the risks of standardisation by putting in place **flexible and open mechanisms** to manage rights that allow actors to take account of local specificities and different forms of organisation.
 - **Address the need for reliable and effective mechanisms** by providing initial **training and support** to enable the actors involved in land management to adapt procedures in order to tackle problems they may encounter during the process.
 - Adopt a **progressive approach** to policy extension, and **document** policy implementation (Observatory)

Further steps

- The final report is available in english and french and will be widely disseminated
- The “Land Tenure and Development Technical Committee” plans to :
 - Conduct further studies to:
 - Identify specific responses for **particular settings** (post-conflict situations, urban and peri-urban areas, etc.)
 - Specify the **possible content of alternative and complementary approaches to formalising rights in the strict sense** (land taxes, securing collective rights and common goods, etc.)
 - Produce **briefing notes** to make the conclusions of this exercise accessible to a wide public

Technical Committee on "Land Tenure and Development"

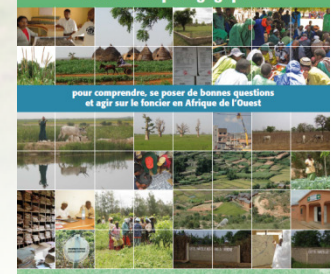
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Comité technique « Foncier et Développement »

Des fiches pédagogiques



A scenic view of a rural landscape. In the foreground, there is a large, green, flat field, possibly a rice paddy. A dirt path or road runs through the field. In the middle ground, there is a small village with several houses and trees. The background shows rolling hills and mountains under a hazy sky. The text "Thank you for your attention" is overlaid on the image in a large, bold, black font.

Thank you for your attention