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Securing land rights in sub-Saharan Africa

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1. Scope and sources

Presentation based mainly on the debates of a recent workshop on “*Formalisation of land rights*”, organized by the *Technical Committee on Land Tenure and Development*” with the support of the French Ministry of Foreign Affairs and of the French Development Agency.

It refers mainly to the security of tenure issues in Francophone Western African countries.

Sub-Saharan Africa population is one billion in 2014. It is expected to be about 2 billions in 2050.

During the next 35 years, African agriculture, mainly based on family farming will have:

- to feed one more billion people;
- to ensure the provision of serviced land to about 500 millions of new urban dwellers.

Ensuring access to land and security of tenure time is running out and responses are urgently needed.

2. Sub-regional context regarding land management and administration

Most Western African countries characterized by comparable tenure situations and by legal and institutional frameworks regulating land management and administration:

- Legal pluralism (customary / statutory);
- Coexistence of customary, formal and informal land delivery channels;
- Land prerogatives of the state: land presumed to be owned State-owned;
- Recent and still limited recognition of customary rights;
- Top-down allocation of ownership rights based on the Torrens system;
- Concept of “ownership” is that of the Civil code;
- Land titles and their transactions are centrally registered;
- Use rights and their transactions are rarely registered at central government levels. They are recorded in registers, usually kept at local levels.

Conjunction of these characteristics has major consequences on land delivery, access to land and security of tenure.

3. Informality and insecurity of tenure

Less than 4% of lands are registered in the sub-region, including, state-owned properties.

Land and tenure informality predominates in both rural and urban areas, with consequences on security of land tenure.

In rural areas, customary use rights provide reasonable level of security of tenure as long as competition to access to land is limited.

However, insecurity of tenure is observed in contexts of scarcity of land resulting from (i) demographic dynamics, (ii) related environmental degradation and (iv) increasing competition for agricultural land involving national and foreign investors.

Tenure insecurity has consequences: (i) on agricultural land use and on production and productivity; (ii) on agricultural policies and food security based on family farming.

In urban areas, 60 per cent to 80 per cent of the population are living in informal settlements:

(i) with **temporary precarious administrative permits** on State or local governments-owned land; (ii) with various kinds **of informal agreements with customary land owners**; (iii) as **squatters** on public, private or customary-owned land.

Informality is an obstacle (i) to the provision of land for housing (ii) to settlements upgrading programmes, (iii) to investment.

In both rural and urban areas, rapid increases in land price, land-related conflicts result in **political and social tensions** and may compromise social peace and urban development.

4. Land governance and obstacles to reform land administration

Market value of an urban or peri-urban land is tightly related to **its tenure status**, which itself depends on **administrative decisions**.

The market price of a land can **increase by 5 to 10 times**, when informal tenure or **precarious titles are converted into ownership titles** (*Titre foncier*).

This opens door to **massive frauds and corruption**. Vested interests in the land sector explain why most attempts to in-depth **reforms within land administration have achieved limited results** over the last decades.

Fighting corruption is made difficult by the pressures of stakeholders who have a preferential access to land through land allocation by the State, or through the conversion of customary or informal land into titled land.

The main **challenge is then to set up effective land governance** based on the adoption of realistic and appropriate legal frameworks, tools, institutions and administrative practices.

5. Limited achievement of tenure formalisation based upon the provision of property titles (*land titling*)

Tenure formalisation based mainly on the provision of individual ownership titles (land titling) has been tentatively attempted in the sub-region during the last three decades. There is **not a single example of cadastre successfully implemented and maintained** in the sub-Region.

Large scale provision of ownership titles (*titres fonciers*) or other real property rights has proved to be difficult to implement.

Reasons are many:

- i. Diversity of **customary rights** in rural areas;
- ii. High percentage of urban households living **in informal settlements**;
- iii. Lack of **human and financial resources** to implement and maintain formalisation programmes and related land information systems;
- iv. Insufficient processing **capacities of government land administrations**;
- v. Weakness of **land governance** institutions at local level;
- vi. Inter-institutional **conflicts** around land;
- vii. Legal and procedural **formalism**;
- viii. **Corruption** within government institutions in charge of land administrations.

6. Land titling: a diversity of objectives

Providing ownership titles has a diversity of objectives:

- i. Ensure **security of tenure** and limit or prevent evictions;
- ii. Open new **economic opportunities** for the urban poor;
- iii. **Secure investments**;
- iv. Stimulate and unify **land markets**;
- v. Improve governments revenues from **land taxation**;
- vi. Prevent **land disputes**.

These objectives can be contradictory or conflicting:

- i. Securing investment **versus** securing occupancy and use;
- ii. Stimulate formal land markets **versus** weaken informal land transaction adapted to the needs of the urban poor;
- iii. Prevent land conflicts **versus** induce land related disputes;
- iv. Alleviate poverty **versus** increase poverty gap (massive land appropriation by the elites).

Provision of ownership rights does not necessarily ensure security of tenure for targeted groups: it can also result in **increased insecurity** for those occupants who cannot comply with formalisation procedures (length, complexity and costs), or who are more directly exposed to market-driven displacements.

7. Emphasis must be put on the provision of secure land rights

This calls for new policy approaches of tenure formalisation taking into account the continuum of land rights.

Tenure formalisation is then understood as (i) the recognition by the State of a diversity of social norms and relationships between individuals, groups or communities with regard to occupancy or use of land, and (ii) on the **recognition of either collective or individual use rights**.

Tenure formalisation policies must be **flexible**, adapted to local situations and constraints, and can provide a **wide range of options, from the recognition of local use right to the delivery of full ownership titles**.

Such approaches pre-require **nationwide consultations and public debates opened to all stakeholders and population concerned**, in order to set up and find a consensus on common policy objectives and implementation tools and procedures.

8. Recent changes and trends can be observed in formalisation of land rights and in tenure security policies

In urban areas, formalisation of land rights can prove difficult in view of the extent of informal tenure and of market pressure on land. Provision of renewable use rights can be a temporary answer to improving security of tenure, but cannot be seen as a long-lasting sustainable solution.

Providing security of tenure can be obtained through:

- i. **Legal protection against evictions;**
- ii. **New policies that recognize the diversity of land rights and their continuum;**
- iii. **Better consideration of local modes of land management and regulation;**
- iv. **Incremental processes in land rights and tenure formalisation;**
- v. **Development of information and registration systems that take into account diversity of tenure;**
- vi. **Procedures of land rights formalisation by local administration (certification);**
- vii. **Reduction of the cost of validation and registration of land transactions by lowering administrative constraints and procedural obligations.**

Tenure formalisation policies must be implemented incrementally.

They can be a **powerful means to securing tenure**, especially in areas submitted to market pressure and rapid increases in land value.

However, they may also **generate social exclusions and conflicts if they are uniformly, compulsorily and too rapidly implemented, especially in areas where access, use and management of agricultural land are already regulated by customary rules and practices.**