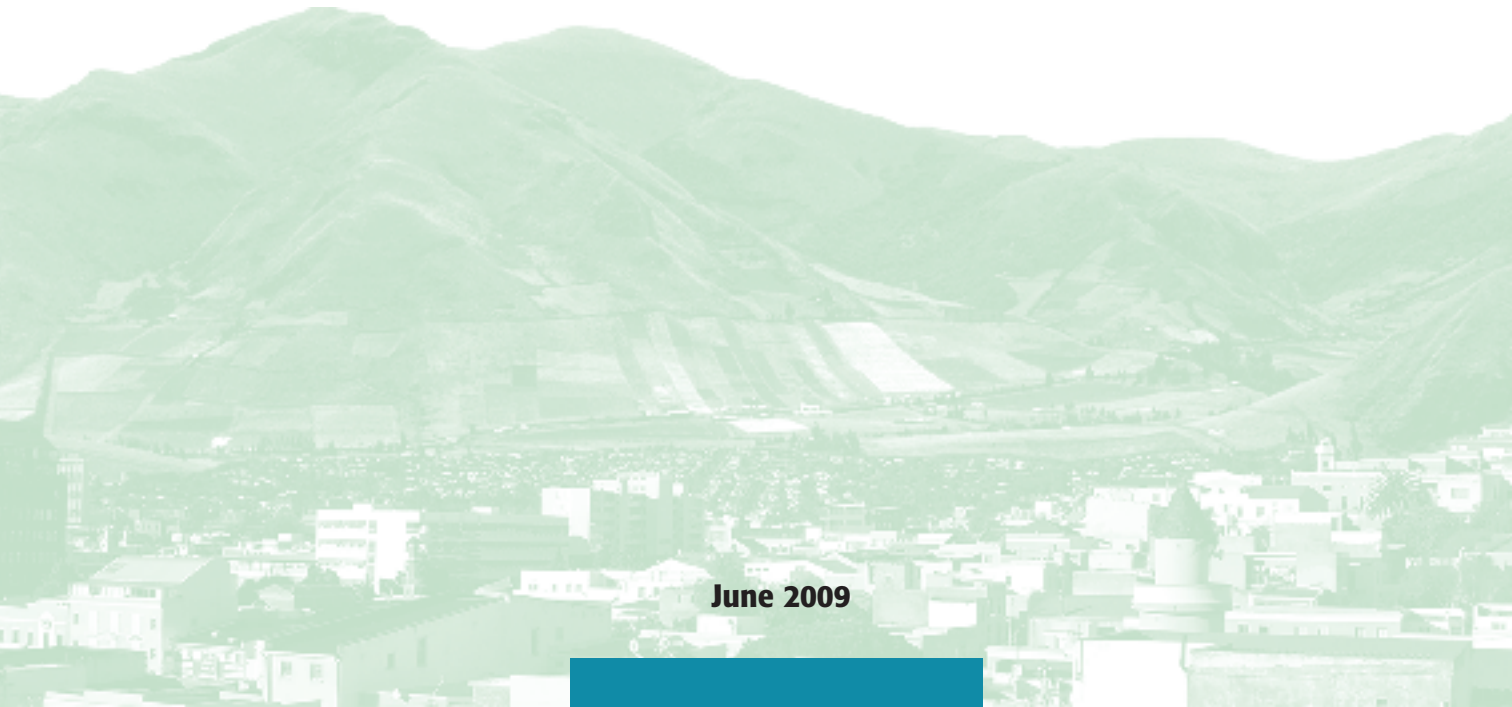
Technical Committee on "Land Tenure and Development"

Land Governance and Security of Tenure in Developing Countries

White Paper

French Development Cooperation



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Notice

This White Paper was produced by the Land Tenure and Development Technical Committee, co-chaired by a representative from the Development Policy Directorate in the French Ministry of Foreign and European Affairs and a representative from the French Development Agency. It is the distillation of numerous debates, discussions and consultations held over the course of 2007 and 2008 between French experts working on land issues in developing countries.

The two lead authors were Mr. Philippe Lavigne Delville, Scientific Director of the Research and Technological Exchange Group (GRET), and Mr. Alain Durand-Lasserve, Senior Research Fellow with the Centre National de Recherche Scientifique (CNRS), Laboratoire Sedet, Université Denis Diderot, Paris.

Written and oral contributions were also provided by Vincent Basserie (Hub rural pour l'Afrique de l'Ouest et du Centre), Jean Benhamou (AFD), Christophe Besacier (MAEE), Jean-Pierre Chauveau (IRD), Gérard Chouquer (CNRS/Fief), Jean-Philippe Colin (IRD), Lorenzo Cotula (IIED), Olivier Delahaye (University of Caracas), Peter Hochet (Laboratoire Citoyennetés, Burkina Faso), Florence Lasbennes (MAEE, DPDév/PEA), Pierre Laye (MAEE, DPDév/GMVL), Pierre-Yves Le Meur (IRD), Sergio Leite (CPDA-UCRRJ, Brazil), Eric Léonard (IRD), Etienne Le Roy (LAJP/Paris 1), Michel Merlet (Agter), Hubert Ouedraogo (UA-CEA-BAD Initiative on land policies in Africa), Jacques Ould Aoudia (Ministry of Finance), Vatché Papazian (AFD), Caroline Plançon (LAJP/Paris I), Alain Rochegude (LAJP/Paris I), Thomas Ruger (CNASEA), Harris Selod (INRA/PSE/World Bank), André Teyssier (CIRAD) and Lionel Vignac (MAEE).

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The opinions expressed in this document are those of the Technical Committee; they do not necessarily reflect the official views of the French Government.

The full White Paper is available in French and English. French, English, Spanish and Portuguese summaries can be downloaded from the 'Land tenure and development' site at http://www.foncier-developpement.org.

Contents

9 Preface
11 Abbreviations
15 Introduction

17 **PART 1. The challenges for land tenure today**
17 **Unprecedented challenges**
17 Unprecedented levels of demographic growth and urbanisation
18 Access to land
20 The role of land in development
21 Critical environmental issues
22 **Conflicts over access to land**
22 Inequalities and exclusion in access to land and housing
23 Land tenure as a factor in social conflicts
24 **Diverse land rights that have evolved over time**
24 The colonial legacy on land tenure systems
24 Land policies after Independences
27 **Liberalisation and the need for land policies**
27 Liberalisation of world trade and redefinition of the role of the State
27 Transitions to democracy
28 New waves of international investment in land
28 Conflicting pressures on public interventions

31 **PART 2. Proposed framework for analysis**
31 **The functions of land tenure**
31 Potentially competing economic functions
34 Social and political functions
36 Regulating competing uses, functions and actors
36 **Conflicting regulatory mechanisms**
36 Diverse reference systems
38 Distinguishing between the legal and the extralegal
40 The issue of so-called 'customary' rights
41 The political issue of recognition for local land rights
43 **Commodification of rights and insecurity of tenure**
43 Transfer and circulation of land rights
45 The *commodification* of land rights
46 Insecurity of land tenure
48 **Institutional responses to land dynamics**

51 **PART 3. Land policy orientations**
51 **Land policies and governance**
51 Land policies, policy objectives and tools
52 Interaction between land policies and sectoral policies
53 Land policies, a question of governance
55 **Should land policies be adapted or reformed?**
55 Review of land policies in the second half of the 20th century
61 Land registries, LIS, registration: the limitations of a technical approach
65 Reforming land legislation and land administration
67 Two types of land tax
68 Land policies that respond to the challenges of the 21st century

69 **PART 4. Position of development aid agencies**
69 **The reappearance of land tenure in cooperation policies**
69 The new socio-political deal and emergence of land tenure as an issue
70 Unification of land markets and social integration
72 Building a consensus
73 **The keys to donors engagement**
73 Principles defined by the European Union
74 Seven complementary principles
75 **France's contribution to land policies**
75 A special contribution on rural West Africa
76 Contributing more to multi-lateral urban land tenure programmes
76 **Proposed positioning for French aid**
76 Future directions
79 Proposal to create a discussion group within the EU
79 Two conditions…

81 **Annex A. Illustrations supporting the White Paper**
81 A.1. Two political conflicts relating to land tenure
82 A.2. Agrarian reform, collectivisation and decollectivisation in Vietnam
83 A.3. Agricultural policies and land concentration in Uruguay
84 A.4. Marked regional specificities
85 A.5. Administrative attribution of land for housing in francophone West Africa
85 A.6. Access to water and control of pastures in Sahelian areas
86 A.7. Conditions for the emergence and continuation of shared management
87 A.8. Private and common lands in Winye country (Burkina Faso)
87 A.9. Customary regulations, markets and demography

87 A.10. The limitations of customary management in African cities
88 A.11. Patronage between migrants and indigenous communities in rural West Africa
89 A.12. The impossibility of codifying *derived rights* in West Africa
89 A.13. Land registry and informal transfers in rural Haiti
90 A.14. Involving residents in the regularisation and development process
90 A.15. Limitations of policies capping ownership
91 A.16. Popular participation and decentralisation in Bolivia
91 A.17. Regulating rural land markets in Europe
93 A.18. Reform of the *ejidos* in Mexico

95 **Annex B. Contributions by the French Cooperation**
95 B.1. Twenty-five years of research and action on land tenure
97 B.2. Four innovative procedures to secure land tenure
99 B.3. References supporting the proposed strategic themes

107 Glossary of terms
117 References

Preface

Land tenure is a major economic and political issue, and an integral element of agricultural, rural and urban development policies. Land policy choices play a key role in shaping territorial development.

Land tenure is built on social relations, and much can be learned about a society from the ways in which it defines, distributes, guarantees and administers rights to land and natural resources among the different actors concerned.

Land and its tenure have a direct impact on governance: on how land is governed, public affairs are managed at various levels, social relations are regulated and interventions by multiple actors are coordinated. In addition to its social dimension, land governance also entails finding a balance between the competing economic functions of land. Its aim is to reconcile the interests of different categories of actor and involve citizens in decision-making processes, in accordance with current laws and regulations and taking account of local practices. Given the potentially conflictual nature of the relationships that develop around land tenure, it is important to consider the interactions between land tenure and policy decisions. The thinking behind this White Paper builds on the rationale for the French Cooperation strategy for democratic governance adopted by the Interministerial Committee for International Cooperation and Development in December 2006.

Land management and administration is a key component of local politics. It shapes the conditions in which political power is exercised, as it can enable government authorities to meet the needs and expectations of citizens whose livelihoods depend upon the land. Thus, land policies are a central element of development policies and policies aimed at reducing poverty and inequality by improving security of tenure. Land policies can help prevent conflict in rural and urban areas, but may also cause it if the conditions for access to land create major inequalities or insecurity. They can also help resolve tensions created by demographic growth and population movement, as well as contributing to economic confidence and

growth by encouraging and securing investment. Finally, as a vital element of environmental protection and natural resource management policies, they are also central to sustainable development policies and strategies.

Over the course of the last two decades, French actors involved in land tenure have helped enrich the debate on several fundamental aspects of rural and urban development interventions undertaken in conjunction with our partners in developing countries. Their thinking and practices have informed discussions about the ways that legal systems interact and relate to security of land tenure; the place, legitimacy and dynamics of local land rights; and forms of institutional support for experimental projects and national processes to reform land policies. These approaches and practices should be promoted and shared, both within the French development community and between French development practitioners and bi- and multi-lateral development institutions. Having shown the limitations of transferring exogenous institutional land management models to contexts of legal pluralism, these approaches highlight the need for cooperation policies that take account of each, country-specific situation.

The objective of this White Paper on "Land Governance and Security of Tenure in Developing Countries" is to provide a tool for exchange and dialogue for everyone involved in projects that are concerned with or have implications for land tenure, especially governments and international development aid partners. In a globalised world, it offers a critical view of past and present interventions by French development practitioners, with an analytical framework to help improve understanding of land issues and their dynamics and develop intervention tools and methods that take account of local, national and global constraints.

This White Paper could not have been produced without the Land Tenure and Development Committee. Over the last fifteen years this multi-disciplinary think tank of researchers, development experts and practitioners has been behind a number of internationally recognised conceptual and methodological advances. We would like to thank all the committee members for their contribution to the writing process, which began in mid-2007 and was sustained through a series of thematic meetings and study and discussion days.

> *Régis Koetschet*
Director of Development Policy
General Directorate of International Cooperation and Development
Ministry of Foreign and European Affairs

> *Jean-Yves Grosclaude*
Director of Technical Operations Department
French International Development Agency

Abbreviations

AFD	*Agence française de développement*, French Development Agency
AGTER	*Association pour la gouvernance de la terre, de l'eau et des ressources naturelles*, Association for the governance of land, water and natural resources
AU-ECA-ADB Initiative	African Union – Economic Commission for Africa – African Development Bank Initiative
CIRAD	*Centre de coopération international en recherche agronomique pour le développement*, Centre for International Cooperation in Agronomic Research for Development
CNASEA	*Centre national pour l'aménagement des structures des exploitations agricoles,* National Centre for the Development of Agricultural Structures
CNCR	*Conseil national de coordination des ruraux*, National Council for Rural Cooperation
CNRS	*Centre National de la recherche scientifique*, National Centre for Scientific Research
CNSFMR	*Comité national pour la sécurisation foncière en milieu rural,* National committee for security of tenure in rural areas
CPDA-UCRRJ	Centro de Pesquisa e de Documentação Agraria-Universidade rural do Rio do Janeiro (Brazil)
DFID	Department for International Development (UK)
DPDév	*Direction des politiques de développement*, Development Policy Directorate (France)
FAO	Food and Agriculture Administration of the United Nations
FIEF	*Fédération internationale pour les études foncières*, International Federation for Land Studies
FIG	*Fédération internationale des géomètres*, International Federation of Surveyors
FPD	Framework partnership documents

GRAF	*Groupe de recherche et d'action sur le foncier*, Land Tenure Research and Action Group
GRET	*Groupe de recherche et d'échanges technologiques*, Research and Technological Exchange Group
GTZ	German Technical Cooperation
ICARRD	International Conference on Agricultural Reform and Rural Development
IIED	International Institute for Environment and Development
IMF	International Monetary Fund
INRA/PSE	National Institute for Agricultural Research/Paris School of Economics
IRC	*Institut des régions chaudes*, University Institute for Tropical Agrifood Industries and Rural Development, Montpellier
IRD	*Institut de recherche pour le développement*, Institute for Development Research (formerly Orstom)
LAJP	*Laboratoire d'anthropologie juridique de Paris*, Department of Legal Anthropology, Université Panthéon, Sorbonne, Paris
LIS	Land Information System
LUP	Land use plan
MAE	*Ministère des Affaires étrangères*, Ministry of Foreign Affairs (France)
MAEE	*Ministère des Affaires étrangères et européennes*, Ministry of Foreign and European Affairs (France)
MCC	Millennium Challenge Corporation
MDP	Municipal Development Programme
NGO	Non-governmental Organisation
NUO	United Nations Organisation
ODA	UK Overseas Development Agency
OECD	Organisation for Economic Cooperation and Development
ORSTOM	*Office de la recherche scientifique et technique outre-mer* (now IRD)
PGTRN	*Projet de gestion des terroirs et des ressources renouvelables*, Land and Renewable Resources Managament Programme
PO	Producer organisation
PNF	*Programme national foncier*, National Land Management Programme
PNSFMR	*Politique nationale de sécurisation foncière en milieu rural,* National Policy to Secure Land Tenure in Rural Areas
PRUD	*Programme de recherche urbaine pour le développement*, Urban Development Research Programme
RLP	Rural Land Plan

ROPPA	*Réseau des organisations paysannes et de producteurs agricoles de l'Afrique de l'Ouest*, Network of West African farmer and producer organisations
SAFER	*Société d'aménagement foncier et d'établissement rural* Land development and rural settlement association
SCAC	*Service de coopération et d'action culturelle*, Cultural service of the French Embassy
SEDET	Developing Societies in Space and Time, University of Paris 7 and CNRS joint research unit
ULCRA	Urban Land (Ceiling and Regulation) Act
ULR	Unified Land Registry
UNCHS	United Nations Centre for Human Settlements
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

Introduction

Land tenure can be defined as the various relationships that people establish in order to access and manage land. As such, it is an integral element of economic, political, social and environmental issues[1]. Land policies play a central role in development strategies as they define land rights, how these rights are managed, and the way that land is distributed among actors. The debate about land policies revolves around several key questions:

- Should land markets be encouraged?
- In order to secure land rights for all stakeholders, how can developing countries move on from the legal dualism that still shapes their land legislation?
- How to combine economic growth with equity?
- How should land management options be discussed?
- How to ensure that land is managed in a reliable and transparent manner?

Building on current knowledge and the international debate on land tenure, the objective of this White Paper is to provide the French Cooperation with an assessment of the situation and propose strategic orientations for its land tenure interventions in developing countries[2].

Although it frequently refers to rural Africa, which is the main focus of interventions by the French Cooperation, this White Paper also looks at broader issues, advocating an approach that focuses on observed global dynamics and the continuum between rural and urban settings.

1. Le Bris *et al*., 1991; Shipton et Goheen, 1992.

2. The issue of land tenure in developed and former socialist countries will only be addressed in terms of their contribution to current global processes.

PART 1

The challenges for land tenure today

Unprecedented challenges

Humankind is currently facing unprecedented challenges. We need to feed an ever-increasing population, deal with the crisis in fossil fuel supplies, manage our ecosystems in a way that preserves biodiversity, prevent irreversible global warming, and manage urban growth while ensuring that everyone has access to housing. We also need to reduce the risk of confrontation and conflict by lowering the number of people who are excluded from access to resources and minimising poverty and inequality. Rising to these challenges will entail harnessing our capacity to innovate and mobilizing the rich cultural diversity and local knowledge that exists around the world.

The problems are most acute in developing countries, which have the highest rates of population growth and urbanisation and have to contend with global competition that marginalizes areas lacking in *comparative advantages*.

Integrating populations in a world where there are no new spaces to accommodate demographic surpluses, ensuring food security and access to housing, reducing inequalities in income, managing urban growth, promoting security of tenure and preserving the balance of our ecosystems are huge tasks. If they are to be accomplished, we need to re-examine the relevance of our policies and take steps to halt the creeping privatisation of natural resources, water and land, which is providing a new source of income for a small minority of national and international groups.

• Unprecedented levels of demographic growth and urbanisation

Sustained demographic growth

The 20th century saw a huge leap in the global population, which rose from 1.65 billion in 1900 to 6 billion in 2000. Although certain projections suggest that it will stabilise at 9 billion towards 2050, some 30% to 50% of the population in developing countries is under 25 years old.

Before economic development created sufficient industrial employment in industrialised countries, demographic growth was accompanied by mass migrations that exported the

population surplus to so-called 'virgin territory' in colonised countries, particularly on the American continent.

Demographic growth in rural areas increases pressure on land, leading to the cultivation of marginal and sometime fragile lands (with the ensuing risk of soil erosion) and reducing farm sizes, often to the point where they are no longer viable. Policies that favour the development of family farming and non-agricultural employment are essential to accommodate the increase in rural population densities, along with land policies that enable young people to access land while maintaining farms of a viable size.

Accelerated urbanisation

Figures show that over half of the world's population has lived in urban areas since 2007; and it is estimated that 95% of the population growth between 2005 and 2030 will be absorbed by cities in developing countries, which will have to accommodate nearly 4 billion people, or 80% of the population, in 2030. Asia will be home to over half of the world's city dwellers, and Africa's urban population will easily exceed the total population of Europe.[3]

Authoritarian initiatives in Indonesia and South Africa in the 1970s and, until more recently and in a completely different context, in China, have shown that policies aimed at limiting urban demographic growth and slowing rural exodus are of limited use, as certain policies led to a concentration of farms and to rural people leaving the land. Strong economic growth and more equitable distribution of wealth are needed to ensure that urbanisation is not accompanied by even greater social instability, but this requires a level of investment, especially in education, health and infrastructures, that is beyond the reach of many countries.

The type of urban planning conceived in developed countries in the 20th century is still applied in most cities in developing countries, although it is ill suited to their needs. In many cities this has led to the widespread use of informal or illegal practices to gain access to land and a rise in the number of people living in irregular neighbourhoods. Therefore, planning needs to focus on two parallel objectives: anticipating the spatial expansion of urban areas, and intervening in areas of spontaneous urban development in order to lay on services and incorporate these areas into the *legal city.* This will require both an appropriate regulatory framework and sufficient financial and human resources.

• Access to land

For food

One of the issues raised by demographic growth is farmers' capacity to feed the population.[4] Some 800 million people currently suffer from malnutrition and 2 billion are undernourished. There will have to be a massive increase in production if we are to feed 9 billion people in 2050; with limited potential to increase the amount of land under agriculture,[5] it is going to take nothing short of an agricultural revolution to make our lands more productive.[6]

3. UN-Habitat, 2006.

4. Griffon, 2006.

5. The emphasis on agrifuels is significantly increasing pressure on land and competition between energy and food production.

6. Griffon and Weber, 1996.

This raises questions about the role of agri-business. Industrial agriculture certainly produces on a massive scale, but it is questionable in terms of energy and environmental effectiveness. The vast amount of land used for industrial export crops is detrimental to local food security and ruinous to small family farms. Industrial agriculture is also more sensitive to changes in the financial climate than family farming. Therefore, while food security policies should not totally exclude agri-business, they need to support family farms that make productive use of ecosystems and labour without being reliant on huge quantities of inputs.

This kind of revolution will entail a certain degree of protectionism, or at the very least the neutralisation of subsidised agriculture in developed countries, which dump their produce on the market and intensify competition between already highly unequally productive forms of agriculture. The priority should be to produce food crops to meet local demand, rather than developing agri-fuels and animal feeds on a massive scale.[7] This will require a reorientation of research, support for farmers to modernise their farms, policies to secure land rights, and sustainable management of eco-systems.

For housing

The second major challenge will be housing the growing population. Current projections show that greater urbanisation will bring increasing poverty and inequality and a proliferation of shantytowns or, more generally, slums.[8] In certain cities these neighbourhoods have been incorporated into the urban fabric through policies to regularise and restructure land; elsewhere, however, irregular neighbourhoods devoid of amenities have become a permanent feature of the city. Some 715 million people lived in slums in 1990, and it is estimated that this figure rose to nearly 1 billion in 2005.[9] Failing a reversal of this trend, which is highly unlikely, the United Nations predicts that it will increase to 1.4 billion people in 2020 (other sources suggest figures of 1.9 billion in 2025 and 2.8 billion in 2030[10]).

Thus, a large proportion of the urban population in developing countries live in a situation of *illegal* or *irregular* land tenure: 40% to 50% in large Indian cities, 30% to 40% in Latin American cities and 20% to 60% in Arab cities. The proportion is even higher in sub-Saharan Africa, where it amounts to 50% to 80% of the population.[11]

Access to land and security of tenure are key questions here, along with access to the urban services that indirectly depend on them. Many people in informal neighbourhoods have no direct access to potable water, and have to use more expensive options to obtain mediocre quality water. In fact, poor people in precarious neighbourhoods pay 3 to 10 times more for their water than residents who are connected to a water system. Massive investment in infrastructure development is absolutely essential.

7. A shift towards more carnivorous food consumption patterns will significantly increase demand for land, as it takes about seven vegetable calories to produce one animal calorie.

8. The term "slum" encompasses the French words for forms of habitat characterised by (i) insecure tenure, (ii) inadequate access to potable water, (iii) lack of sanitation and other basic infrastructures, (iv) poor structure (*bidonvilles*, taudis, *habitat précaire*, *habitat spontané*).

9. Over 50% of these people lived in Asia, 20% in Africa, and 13% in Latin America and the Caribbean (UN-Habitat, 2003).

10. National Academy of Science, 2003.

11. Lopez Moreno, 2003.

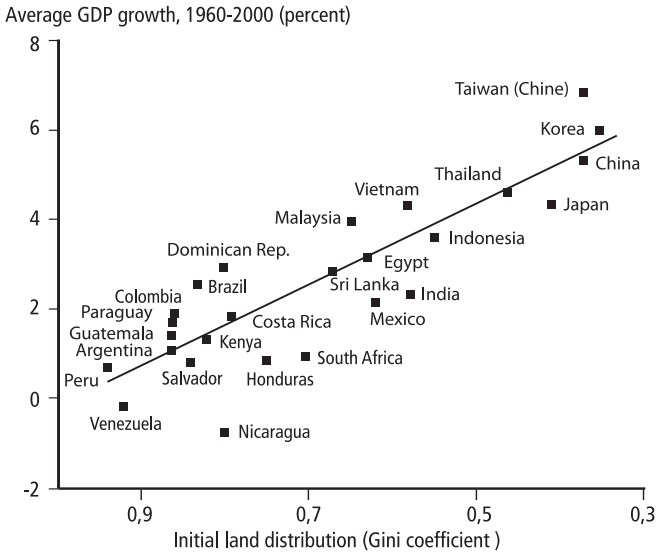
To house the growing population, urban planning needs to anticipate the spatial extension of cities in order to minimise urban sprawl, and provide services for *informal* neighbourhoods that have already developed in order to incorporate them into the *legal* city.

• The role of land in development

Land is one of the cornerstones of economic development. Farmers and herders, agro-industries and logging operations all need land for their activities, while businesses need it for their workshops, offices and factories. The capacity of households to produce, and thus enjoy decent living standards, is conditioned by their security of tenure, which is also crucial in developing systems to fund housing as the absence of recognised, long-term rights to land (title deeds or long leases) precludes access to credit for mortgages. However, this is not to say that insecure rights necessarily equate to lack of investment: studies estimate that poor populations invest staggering sums in precarious or informal neighbourhoods, far in excess of business and local government investments.[12] Land is also a significant component of business assets, playing an important – sometimes central – role in business investment strategies. Thus, making land rights and transactions more secure can have a profound impact on economic development.

Land tenure also lies at the heart of socio-economic inequalities. Unequal access to land is one of the main factors in economic stratification: the status of households in both rural and urban areas is determined by whether or not they own their house or have rented land holdings. Land inequalities can also have negative economic effects. Figure 1 (Deininger K., 2003) shows that in the long term, there is a clear correlation between economic growth and minor land inequalities. By giving numerous households access to land and a sufficient economic basis to live and invest, more equal land distribution encourages consumption and investment among millions of households, with clear impacts on growth.[13]

Figure 1. Initial land distribution and economic growth



12. De Soto, 2000.

13. This is why Latin American governments linked to industry and the urban economy have often favoured agrarian reform, in order to weaken the land oligarchy and create purchasing power in rural areas.

Although millions of people have emerged from extreme poverty in recent decades, the number of poor people is not declining. A large part of the population still has no access to basic services such as potable water, education, sanitation, healthcare, etc. Unequal access to land increases poverty and exclusion in both urban and rural areas, creating suffering and injustice as well as potential social risks. Therefore, land policies should encourage better land distribution in order to promote economic effectiveness and greater equity.

• Critical environmental issues

Developing countries are not immune to environmental issues. A significant proportion of the predicted tens of millions of probable *climate refugees* live in developing countries, in low-lying coastal zones, along the banks of major rivers and in areas of desertification, etc.[14] In rural areas, environmental concerns are primarily addressed through the sustainable management of ecosystems:

- Long-term forestry management to preserve woodlands (particularly in humid tropical areas);
- Adapting growing techniques to prevent erosion on agricultural lands;
- Protecting surface waters from pollution;
- Monitoring the level of water tables to avoid over-exploitation (irrigation);
- Controlling the use of fertilisers and phyto-sanitary products, and monitoring their effects on the environment;
- Monitoring mining waste, etc.

This is being done through a set of regulatory measures, field studies, training programmes and territorial development initiatives. Managing eco-systems in a sustainable manner involves regulating the removal of renewable natural resources and reaching a compromise on contradictory objectives: whether to develop agricultural production or protect forested areas, to prioritise food security or renewable energy, etc.

The urban environment also warrants attention. Most popular neighbourhoods are ill-equipped to control erosion or collect rainwater, and are therefore liable to flooding or even landslides during the rainy season. Very few have sanitation systems, exposing their inhabitants to health risks. Sustainable urban development requires a balance between different land uses, investment in infrastructures and measures to prevent urban sprawl, which carries high environmental costs.

Policies should facilitate access to usable land and develop it in anticipation of future population movements caused by climate change. They should also modify certain practices to reduce greenhouse gas emissions, which will have implications for industrial development (stricter environmental controls) and urban planning (urban planning and building regulations). The risks associated with climate change also make it essential to preserve, or even increase, the flexibility and adaptability of ecosystems and local land use practices.

14. PNUD, 2009.

Conflicts over access to land

• Inequalities and exclusion in access to land and housing

Most societies in developing countries are socially and culturally heterogeneous as a result of their history, level of social and political integration, and social and economic inequalities. They include social groups with differing worldviews or points of reference and different, unequal powers.

National legislations are superimposed onto diverse norms and modes of land regulation, which they change, but only partially. The gaps between legality, legitimacy and practice result in a significant proportion of the population operating outside the legal framework. This is the source of numerous conflicts, along with highly unequal land distribution, which is another frequent cause of poverty and violence.

A large proportion of the rural population does not have access to land

The preferential treatment given to many agri-businesses because of the financial resources at their disposal increases pressure on land and carries considerable economic and social risks in the medium term. Many rural people find themselves in highly irregular situations with regard to land tenure, usually because their land rights are not legally recognised.

Not that holding a legal land title necessarily guarantees security of tenure, however, as the formalities for transferring land are frequently ignored, documents may be lost or destroyed, social pressure can render land use impossible, and dysfunctional administrations often issue several titles for the same piece of land. With no access to the means of making a living, many rural people turn to waged labour or sharecropping on large landholdings, or head to the city in search of work. This can lead to protests or occupations at one level, while at another, large landowners have the power to prevent changes in land tenure and increases in productivity.

The absence of land regulation accentuates competition between different actors and modes of land use. Hunter/gatherers, pastoralists or so-called *indigenous* populations are the groups most vulnerable to agricultural land expansion and intrusive logging and mining activities. Many rural people whose land has been expropriated to increase large landholdings are left with neither compensation nor the means of earning a livelihood, as resources that were previously shared are taken over by private interests. Formerly autonomous farmers then have little option but to take poorly paid, insecure jobs on farms with little need for labour.

One third of the world's urban population lives in poverty

Impoverished rural populations migrating to the city only serve to enlarge already insecure informal neighbourhoods lacking in basic amenities and services. Publicly produced land and low-cost housing only meets a very small part of the need at best, and is often set aside for the middle classes or used to secure votes. The formal private sector is obviously unable to provide housing for households with irregular or non-existent incomes and no access to credit.[15]

15. Cities Alliance, 2003.

Residents of informal neighbourhoods have no documents confirming their right to occupy the land. While they may well stay there indefinitely, they live a precarious situation[16] under the constant threat of eviction. Their vulnerability is highlighted by mass evictions to clear the way for major urban renovation projects in Africa and Asia, which have seen communities removed with little regard for any legal procedures that might be in place.[17]

• Land tenure as a factor in social conflicts

Land tenure is often one aspect of social conflict, if not its primary cause. A large section of the population is excluded from access to land and housing by tenure inequalities that perpetuate their insecurity.

There are several types of land-related conflict. Rural areas are the arena for various forms of local conflict: family quarrels over the distribution and inheritance of cultivation rights; boundary disputes between neighbours; arguments over conflicting uses of the same piece of land (for example, between farmers and herders exercising their rights to common land); conflicts over the appropriation of a plot when old agreements are called into question or sales procedures prove unreliable.

The State can expel rural communities by challenging settlements that are technically illegal, even if they are peaceful and long-standing, as is often the case with irregular neighbourhoods. Occupants without title also run the risk of eviction by private entrepreneurs that have bought rights to the land from the administration.

At the international level, a common source of conflict is control over territories to which certain groups believe they have historic rights, and which contain scarce resources. Examples of this can be seen in the Niger delta, Nigeria (oil) and the Middle East (water). Above and beyond this diversity, four main types of conflict over land and natural resources, or conflicts with a land tenure dimension, can be identified:

- *Conflicts over the distribution of access to land or renewable resources* (forests, water, grazing, etc.), arising from historical inequalities or recent land grabbing;
- *Conflicts over the regulation of different uses of the same space*: between farmers and herders, between extractivism (see Glossary) and agriculture, between extractivism and forest use, and between urban, industrial and agricultural uses of water, etc.;
- *Conflicts over insecure rights and lack of legal recognition* (customary rights, tenants' rights, claims arising from the regularisation of irregular neighbourhoods, etc.);
- *Conflicts over territorial control and identity*. This type of conflict is most prevalent where local communities see businesses encroaching upon their territory in order to exploit a mine or forest, or to clear land. Lack of decision-making power and the negative effects of these types of land use on local ecosystems and communities lead to competing claims for control over the territory, or at least a share of the benefits it provides – often entrenching socio-ethnic claims to real or supposed links with the territory and leading to political conflict.

16. Huchzermeyer and Karam, 2006.
17. UN-Habitat, 2007 a.

These types of conflict may occur in any combination, and many political conflicts have a land dimension or exploit questions of social identity and land tenure.

Diverse land rights that have evolved over time

There are many ways of organising access to land and defining individual and collective rights to land and natural resources. Every community develops its own norms, according to its societal choices, natural environment and the modes and techniques used to exploit this environment. These norms evolve according to the society's relationship with nature and the balance between individual rights and collective regulations. There are very few closed communities nowadays, as local societies have been incorporated into broader political spaces and states and more or less globalised commercial networks. However, this does not mean that differences are disappearing: globalisation may be making the world more uniform, but it is also rekindling the desire for a sense of local identity.

• The colonial legacy on land tenure systems

Colonisation usually involved interventions to allocate land for colonial settlements, and the imposition of a bureaucratic model of territorial and human governance upon existing land tenure systems, if they were not eliminated (as in Australia) or relegated to areas with no economic potential.

Administrative procedures giving the colonisers indisputable land rights were introduced, "*creating private property from the top down*"[18] and challenging previous rights of occupancy. The resulting legal dualism created discrepancies between the areas regulated by written colonial law and those covered by other forms of law, and particularly between actors with legal protection and those excluded from such protection. The colonial authorities also introduced more or less vigorous policies to develop land use, especially in urban centres and certain rural areas (irrigation schemes, classified forests, newly-created nature reserves).

These developments rarely took account of existing rights in rural areas, creating a division between 'useful land' (irrigated plains, forest reserves) and the rest of the country; while urban areas can be divided into *modern cities* covered by town planning schemes and benefiting from services and green spaces, and *indigenous cities* where interventions were minimal. Thus, this duality also extends to the way that space is organised.

The colonial administration often relied on (and thus strengthened) the local authorities to manage spaces that it did not directly control, particularly in rural areas. It also tried to control local communities, either by getting them to settle (village groupings, restricted movement) or through enforced migrations to *productive* areas or *virgin territory*.

• Land policies after Independence

The new national governments that came to power after independence in Latin America in the 19th century and Africa in the 20th century retained much of the colonial institutional framework and used it for their own ends.

18. Comby, 1995.

Contrasting policies in rural areas

Because they conflicted with the economic interests of national agricultural elites and agri-food groups (Guatemala), Latin American attempts at agrarian reform in the second half of the 20th century rarely got very far before they were cut short by coups. Most of these efforts focused on areas of latifundia-minifundia, where the Spanish colonial presence had left its mark on pre-Colombian Amerindian agricultural civilisations. In the meantime, government settlement programmes or spontaneous processes accelerated by road building sent huge pioneer fronts sweeping into forested areas occupied by scattered indigenous populations.

Several countries in Asia (Japan, South Korea, Taiwan) embarked on a series of radical agrarian reforms after the Second World War, supported by the United States. In India, attempts at agrarian reform were implemented with varying degrees of success (Bengal, Kerala) and levels of enthusiasm, often in the face of opposition from landed aristocracies and autonomous states. Some countries (Vietnam, Laos, Algeria) adopted socialist regimes that collectivised land to varying degrees, and then reversed the process more or less effectively in the 1990s. Vietnam is an interesting case in this respect.[19]

Many states with highly unequal demographic densities have used land policies to support their population policies (internal colonisation). Thus, one response to the need for land in Brazil was to colonise the Amazon region, thereby reducing pressure on land and facilitating agrarian reform. Thousands of farmers from every region, and especially the northeast, cleared the forest and set up small family farms; although many then sold the land on to large-scale livestock owners and went on to clear more of the forest, either because they were forced to do so or because they lacked the means to intensify their production.

Conversely, some population policies sought to reorganise the population around villages (Tanzania, Mozambique, Malaysia, Laos[20]) or keep rural communities in place by restricting their movements. As in modern-day China, control over access to land is often linked with population control.

Elsewhere, governments have been happy to maintain the status quo: retaining existing land tenure systems in areas of no major economic interest rather than seeking to apply land legislation that would be incompatible with existing land tenure systems.

Certain agrarian reforms have been rendered toothless by lack of political will, as in East and Southern Africa where governments redistributed settlers' land, often among the political elite. Elsewhere, local communities have retained their customary methods of managing land due to the absence of any State interventions.

Natural resources: administrative management and rural logics

Many public policies relating to the management of renewable resources (forests, pastures, etc.) have maintained or even reinforced existing logics of exclusion,[21] partly in the name of technical rationality (as opposed to supposedly ineffective local practices), but also to allow the State to monopolise the income they generate. Certain governments have encouraged the appropriation of land by minorities or transnational corporations without putting in

19. Bergeret, 2002.
20. Evrard, 2004.
21. Ostrom, 1990.

place any regulatory mechanisms, setting aside huge tracts of land for tourism or game reserves and ruining local communities that previously used these areas, or continuing the culture of colonial forest administrations by banning farmers from using ligneous resources.

Informal development of land for housing

Independent governments have sought to follow town planning and improvement models in their capitals and large cities, adopting more or less pro-active policies to provide housing for the middle classes through public offices, land agencies and development associations.

The aim was to use urban planning documents to create neighbourhoods based on the classic Western model. However, these regulated urban development plans are ill suited to the needs of cities where land occupancy falls outside any legal framework and urban planning schemes are outstripped by the pace of urban development. Urban expansion is therefore largely the result of informal processes. Rather than building residential neighbourhoods on land that has been appropriated, parcelled up, sold off and serviced, the process is reversed: the land is occupied and housing built first, and services only laid on later, during operations to restructure and possibly regularise the neighbourhood.

Until the 1970s, the public response to irregular neighbourhoods oscillated between denial (urban development plans ignored their existence) and eviction. By the end of the 1970s the social risks associated with these policies and interventions by international institutions (UNDP and then the UNCHS) led governments to focus on policies to provide infrastructure and restructure and regularise land tenure in these neighbourhoods, often through supposedly *replicable pilot projects*. However, many of these pilot projects were never followed up, and public land improvements were often used to secure political support.

Urban land redistribution helped favour the emergence of a middle class in Morocco, Tunisia and Egypt (especially the two latter countries); and the provision (formal and informal) of land to house middle-income groups was a main feature of urban land policies in Latin America (particularly Mexico and Brazil), the Maghreb and Egypt, sub-Saharan Africa, Southern Asia (Pakistan, India, Sri Lanka) and South East Asia (Thailand, Malaysia, Indonesia, the Philippines) until the late 1990s at least. Governments with limited resources found that providing and distributing serviced plots or tolerating and then regularising land operations by informal developers was one of the most effective ways of establishing the regime's legitimacy and reinforcing its social base.

When they have not directly contributed to increasing the amount of land available for housing, governments have adopted a laisser-faire policy: tolerating the development of informal land markets operated by irregular developers and then attempting to regularise them. In Africa, attempts to free up access to urban land by reaffirming the State monopoly on land and bypassing the traditional authorities have had mixed results. Customary landowners are now key players in the development of urban suburbs, and seem likely to remain so until market forces and social change erode their power.

Liberalisation and the need for land policies

Although the framework for land policies has changed considerably over the last thirty years, the issues they need to address remain the same. The liberalisation of the economy may have obliged governments to rein in their activities, but there has never been greater need for massive public investment and proactive land policies.

• Liberalisation of world trade and redefinition of the role of the State

In the 1980s the liberalisation of world trade, debt crisis and structural adjustment plans forced governments to limit their land interventions and facilitate private investment. As the economic take off was deemed to be the result of foreign investment, policy incentives were needed to attract investment: state interventions were out, and governments were expected to delegate their powers, *facilitating* rather than *doing*.

However, the close association between territory and land tenure means that the latter is still seen as part of national sovereignty, and thus within the remit of the public authorities. In Africa, land is the only resource to remain in the hands of impoverished and disempowered governments.

Stripped of its refinements, the international institutions' *obsession with the market*[22] has often impoverished the general population and benefited a tiny elite controlling the country's entry into the international market. Conversely, the transitions managed by China and Vietnam facilitated economic integration and poverty reduction, but without democratisation. Thus, change over the last 25 years has been polarised, with some countries benefiting from the new deal and others marginalized by it. Within countries there is a growing divide between useful and marginal areas, which are generally abandoned to their fate or fall prey to armed rebellion.

• Transitions to democracy

Many countries have attempted to make the transition to democracy, with Latin American dictatorships giving way to parliamentary democracies and the end of apartheid bringing South Africa back into the international arena. However, this is not a universal trend: former soviet states in Central Asia have become dictatorships, certain authoritarian regimes have maintained their grip in parts of Asia, and countries with valuable resources are dominated by dictatorships or have descended into civil wars over the control of income from these resources (Congo, Gabon, Nigeria, Sierra Leone, Liberia, Sudan, Zaire…). Those that have not succumbed to *the curse of raw materials* have been better able to manage the transition to democracy, although some have seen authoritarian regimes restored to power.

Where it has not been crushed by authoritarian regimes, civil society now plays a much greater role in public affairs. Farmer, squatter and indigenous groups are forming new organisations and strengthening existing ones to demand recognition of their land rights and equitable access to land, and NGOs are actively involved in land tenure initiatives. But despite the emergence of civil society, recognition of the legitimacy of the claims of long-excluded groups and improvements in local governance, social upheaval and the economic marginalization of

22. Stiglitz, 2006.

whole territories continue to generate protest movements and fuel the development of illicit crops.

• New waves of international investment in land

Industrialised countries have a long history of investing in land in developing countries, for industrial plantations, agri-food operations, logging, etc. The scale of North American agri-food operations has sparked revolts, guerrilla warfare, military interventions and coups in several Latin American countries, and major industries own hundreds of thousands of hectares of land in Brazil, Liberia (rubber) Indonesia (rubber, palm oil) and other countries. Over the last twenty years, liberalisation of the trade in agricultural products and weaker agricultural policies have favoured new investments. As a result, the structure of land tenure in Uruguay changed radically in the space of a few years.

Recent crises (food in 2007 and finance in 2008) have prompted a surge in international investment in land. This is partly due to awareness that land is becoming increasingly scarce, and partly to the need to find somewhere to invest the capital liberated by the financial crises.[23] Thus, Vietnam is investing huge sums in Cambodia and Laos, as is South Korea in Madagascar, and the Gulf States in West Africa. This scramble for land is prompted by fear among food-dependent countries with little agricultural land per inhabitant that they will become increasingly dependent and be unable to cope with a repetition of the spiralling agricultural prices seen in 2007. Buying land in poor countries and controlling its cultivation is a means of safeguarding their food security, albeit at the risk of weakening the countries concerned. It is still difficult to assess the scope of this phenomenon and determine whether it is a flash in the pan or the start of a more substantial trend. Nor is it clear what impact it will have on the development of countries whose national lands are passing into foreign hands or on modes of decision-making, as such transactions tend to be hammered out in secret negotiations in presidential offices.[24]

• Conflicting pressures on public interventions

The land policy environment has changed as a result of economic and political developments since the 1980s. The legitimacy of state interventions in the distribution of land rights has been questioned, and international institutions require development interventions to take account of existing land rights, compensate displaced persons and ensure that they are rehoused under conditions negotiated with local people.[25] Respecting property rights in rural areas precludes the expropriation of large properties without compensation; and since genuine agrarian reforms are difficult to put in place, policies aimed at broadening access to land can only be easily implemented on dwindling reserves of public lands, or through *market-assisted agrarian reform* whose effectiveness is limited.

State interventions are still country-specific. Countries that collectivised land are engaged in a process of restitution or distribution: in Vietnam, redistribution is egalitarian and only affects rights of use since the State retains nominal land ownership, as is the case in China. In sub-Saharan Africa, formal land ownership by the State is contested both by those who

23. Grain, 2008.
24. Cotula *et al*., 2009.
25. World Bank, 2004.

advocate the privatisation and commoditisation of land ownership, and those seeking recognition of customary rights and local autonomy. The financial crisis of 2008 is a reminder that real estate is often the source of financial crises. With land grabbing rife and whole sectors of the population marginalized by the free play of the market between economies at different stages of development, there is a clear need for institutions to regulate the market.

Land policies can restrict or facilitate access to land, and reinforce or break down social divisions. They can encourage small-scale farmers and residents in working-class neighbourhoods to invest, or restrict security of tenure and access to credit to the middle classes or even economic elites. They can help keep farmers on their land or facilitate their departure through the play of the market; and encourage the preservation or exploitation of non-renewable natural resources.

There has been much debate about the dynamics of privatisation and the need for inclusive policies:

- How should possible different land uses in a given area be prioritised: should preference be given to agricultural, pastoral, urban or industrial uses?
- Should households be given formal rights to ensure their security of tenure, or should the focus be on securing investment for businesses?

This debate revolves around the question of what type of development should be promoted for different land uses and different actors:

- Should family farms or large capitalised operations be encouraged?
- Is it better to promote urban growth with low population density in peri-urban areas, or to increase population densities in urban areas?
- Is it better to promote popular methods of producing land for housing, or to focus on the sector promoting private property?

Nor is it simply a matter of economics: the model of society is also up for debate. What degree of social diversity and socio-economic inequality is acceptable to each country? Thus, defining land policies also entails negotiating (or re-negotiating) the social contract that links citizens with each other and engages them with the State.[26]

26. Merlet and Lavigne Delville, 2004.

PART 2

Proposed framework for analysis

The functions of land tenure

Land has different roles and functions for different actors: smallholders, large-scale livestock rearers, civil servants in the land services, elected local officials, entrepreneurs, property developers, financial institutions, etc. Identifying the functions of land tenure for each category of actor is helpful in understanding the complementarities, competition and conflicts between the different functions, and highlighting contradictions and the need for interaction or arbitration between actors.

• Potentially competing economic functions

Land as a means of agricultural production and source of natural products

Land in rural areas is both a means of agricultural production and a place for gathering natural products that play an important, often under-estimated role, in local economies (woodcutting, wild harvesting, grazing, fishing, hunting, etc.). Certain communities live entirely off what they harvest from the ecosystem (hunter-gatherers, pastoralists) and need large territories. Therefore, mobility is central to the exploitation of the natural environment (nomadic pastoralism); its effectiveness in dryland areas has been proven. Quarrying, mining, logging and ranching are just some of the many activities based on exploitation of the natural environment.

For farmers, whatever their economic system, land is primarily a factor of production whose pedological characteristics make it more or less fertile and productive. Agricultural production mobilizes land, labour and capital. The amount of land farmers need to ensure economic production depends on the fertility of the land, the area available and the types of production and price ratios: thus, farm sizes can range from several thousand square metres in areas of high added value (rice fields, vineyards, market gardens) to hundreds or even thousands of hectares. The amount of land that will enable farmers to produce a surplus varies across a given area, according to its agro-economic parameters. Farmers who do not reach this threshold can only survive by getting rid of their capital or relying on income from off-farm activities such as artisanal production or migration, etc.

At a given technical level, agricultural production strategies require more or less labour and capital per unit of space. Weak economies of scale, lack of mechanisation and the cost of

managing labour make small and medium-sized farms more productive per hectare than large-scale farms at the same technical level. These are more productive in certain contexts, such as when heavy mechanisation becomes profitable or it is difficult to access inputs, credit or markets.

Land as an economic and symbolic legacy, and occasionally a capital asset

Farmers' land strategies centre around maintaining and passing on their legacy. Thus, the head of a lineage group will seek to conserve the entire estate, limiting sales in order to transfer it intact to his descendants and ensure that everyone has access to the means of making a livelihood. These patrimonial logics are an important aspect of rural farmers' strategies of allegiance and inheritance.

Many farming communities do not see land as a capital asset to be bought and sold according to the returns it produces. It is not expected to be profitable, and farmers in rural areas accept lower levels of profitability than the owners of agri-businesses, who need to make their land pay in the same way as their financial capital. This is one of the reasons why family farming has survived. In this context, the land market is essentially fed by *distress sales*, although supply could equally be generated by structural changes, such as the gradual replacement of one type of production by another.

In intensively capitalised farms, where the land either costs more per unit of production or growing methods require other investments (glasshouses, mechanisation, irrigation, etc.), farmers become more entrepreneurs than farmers, regarding land as economic capital.

While agri-business may be more productive in certain economic and institutional contexts, it can have negative, and sometimes irreversible, socio-economic and environmental impacts in the medium or long term. Even if they are not buying with an eye to possible future urban development, the urban actors and entrepreneurs purchasing land have liquid assets far in excess of those of rural farmers, giving them a disproportionate weight on the land market that has nothing to do with economic effectiveness.

Land for urban development

Transforming agricultural lands into land that can be used for urban development represents a major shift in its function and value. Urban growth may occur spontaneously, with little or no regulation, as cities extend into poorly or unprotected surrounding farmland. Urban development, however, is often restricted by the constraints of the site, the investment required for infrastructures, water systems, etc., the rising cost of displacing people and any town planning and environmental regulations or rules that may exist to protect agricultural areas.

Land for urban development is provided by a variety of actors following diverse procedures to supply land and property.[27] Studies in various countries (developed, developing and transitional) use two main criteria to identify the major land and property supply chains:

- The different *phases* in the transition from agricultural to urban land use: improvement, servicing, building and occupation by the end user, who may own, rent, sub-let, shelter or squat on the land;

27. Durand-Lasserve, 2004 b.

- The *actors* intervening in each of these phases: land owners, the communities concerned, financial institutions, property developers, public buildings and works companies, professionals, NGOs, administrations, international institutions, etc.

There are three main chains of supply and production:

- Public chains, which are responsible for providing and developing land for housing and shelter. The State or semi-public institutions play a key role in the process, but are not necessarily actively involved in every phase of it;
- Business supply chains, which usually have access to credit and are dominated by actors whose objective is to make a profit by developing land or property, which will be re-invested in this or another sector of activity;
- Popular chains, which are often central to property development, run by actors whose strategies range from simple survival to wealth creation.

The third chain may involve genuine property development operations that only differ from the entrepreneurial chain in terms of their legal standing, having at least one component that does not conform to legal standards (land purchase, compliance with town planning and construction standards, financial set-up, etc.). Squatter neighbourhoods and informal or irregular operations to subdivide, sell and develop land emanate from these chains, which are primarily, but not exclusively, directed at poor people. They meet the needs of low-to-middle or middle-income groups in numerous cities (the *loteamentos* of Sao Paulo, *colonias* of Mexico and *quartiers clandestins* of Morocco).

Any change that affects a phase of land development or one of the actors' modes of intervention has repercussions on the functioning of the other chains. Therefore, we can talk about a system of *land and property development*. Changes affecting one chain will also have an impact on the functioning of the other chains. Thus, a drop in the provision of social housing increases the pressure of demand in irregular neighbourhoods, except in the rare cases where the private sector can act as a substitute for the public sector and provide land and housing that is accessible to low-income groups. This also applies to all the popular sub-chains that supply land and housing.

The last decade has seen an acceleration in government withdrawal from the provision of land and housing. Private developers have focused their activities on providing housing for higher-income groups, and popular supply chains have become increasingly commercialised as chains of free access to land have disappeared.

The role of land in business investment strategies

Businesses primarily need land to pursue their activities, although it can be very difficult to find in densely populated areas. It has a role to play in business investment strategies too, as an asset that can be used to secure credit. More recently, it has become the focus of speculative strategies as demographic and economic dynamics indicate that this non-reproducible resource will be in increasingly short supply. Investment in urban and peri-urban land can be highly profitable in periods of rapid urban growth, and this kind of speculative investment allows businesses to use real estate activities to capture part of the value added by urban development.

Giving companies credit on the basis of their land and property assets is a profitable activity for financial institutions, as is providing households with mortgages. However, investment trends can send land market prices off on a trajectory that is out of step with economic development; the latest financial crisis should serve as a reminder of the relationships that exist between land, investment and access to credit.[28]

Land as a taxable product

Most governments in developing countries have sizeable land and property reserves, on paper at least. However, they are often poorly identified, under-utilised and generate minimal returns. Despite this, and setting aside the regulatory function it can have at the macro-economic level by ensuring that income is taxed, land tax constitutes one of the most stable, albeit not the best exploited, sources of public revenue.

Land as a savings tool

Investing household savings in land is common practice in countries where there is no reliable system for collecting savings. In the absence of any other investment opportunities, households with a certain level of savings buy improved land in urban areas, houses or peripheral farmland some distance away, or even informal plots that they then try to regularise and use for small-scale farming, rent out, or wait for urban growth and build on or resell the land.

Investments in building land can be used as a form of protection against inflation, and resale proceeds can be used to meet future expenses (children's studies and weddings) or cover periods of illness or unemployment in countries with no social security system. This keeps the pressure of demand for urban land abnormally high, has repercussions on agricultural land and inflates prices in the outer suburbs, as well as excluding farmers from the market and contributing to the spatial expansion of cities.

These dynamics affect both formal and informal land markets. Prices are higher on the formal market, but the only risk for buyers is a possible drop in land prices; while the level of risk for purchasers on the informal market depends on its informality. It is often limited, especially if the transaction is recorded in a witnessed bill of sale or the land is located in an area likely to be used for urban development, as most governments have stopped using evictions to clear the way for such operations.

• Social and political functions

Land governance as a means of human governance

In many developing countries, access to land is conditioned by social identity: membership of *indigenous* families originating from or deemed to have originated from the area, and social status within the family. The organisation of space and distribution of land between families is bound up with the history of settlement in the village. Control over land differentiates the first settlers from subsequent arrivals, shaping community affiliations and power divisions. An indigenous person will have different land rights from an *incomer* (to the social space), and similar differences exist between heads of household and young unmarried men, and between men and women.[29]

28. Aveline, 1995.
29. Chauveau, 1998.

The continuity of the lineage group is established by transferring rights to shared land assets inherited from previous generations rather than through individual inheritance, although internal disputes between siblings can lead to fragmentation of the family's land assets. Although the transfer of rights is becoming individualised and monetarised, non-natives can gain access to land through integration into a *local community*, often by establishing a client-patron relationship with indigenous individuals. Maintaining a link with one's place of origin and holding assets there is a way of affirming one's membership of a social group and identity.

The persistence of this rural social order is not an anachronism, but an expression of the desire to maintain rules that establish the group's identity by retaining control over its territory. It is also the outcome of policies that relied on support from the customary authorities to manage these territories, thereby reinforcing their social control. Decentralisation processes and land grabbing by external actors can also result in protective strategies that re-establish territorial control by entrenching local identities and excluding outsiders. In many cases, the return to traditional land management systems is a recent phenomenon, a reaction to economic liberalisation.

Land tenure as a means of remuneration

Many governments see land as a means of remunerating social groups or securing political support, especially in urban areas. This long-standing function is reinforced by the commoditisation of land production and intensification of conflicts over land.

Political authorities seeking to consolidate their social base may also distribute part of the income from land among certain sectors of the population (civil servants and the military) and encourage the emergence of urban middle classes as a means of ensuring social peace.

Depending on the context, there are four main ways in which land is used as a form of remuneration:

- Administrative land allocation or allocating property titles at an administered price;
- Urban developments and amenities intended to add value to land and property development operations;
- Urban development practices designed to create social divisions in urban areas, by freeing up land for certain urban actors, for example;
- Legal or practical (cessation of evictions) recognition of irregular occupation that can lead to the allocation of permits or real rights in certain informal neighbourhoods during politically sensitive periods (as in Brazil or Egypt, for example).

Land tenure as a means of social control

Land tenure is also used as a form of pressure and social control. The authorities can regulate access to land, denying access to certain groups or preventing communities with irregular land tenure from accessing basic urban services.

In South America, land tenure has been used as an instrument for population policies intended to reduce social tensions in rural areas, and as a means of securing votes. On a smaller scale, migrations to areas cleared of onchocerciasis organised by the Burkinabé government also played this dual role. Many *villagisation* policies, organising communities into groups,

were intended to cut off communities from their territorial base in order to control them in war situations (*new villages* in Malaysia, *strategic hamlets* in Vietnam), to restructure society by destroying old social relations built around land management (villagisation in Tanzania) or gain political control over minorities (Laos).

When land tenure is controlled by the central government there is often a strong temptation to use it as a means of social control, as in sub-Saharan Africa, where land tenure is the preserve of the State. Allocating land rights is less expensive than other interventions, but it feeds corruption as beneficiaries stand to make substantial gains, especially when they can exploit the price differentials on parallel markets. This explains why the authorities responsible for land are often resistant to decentralisation or efforts to make land administrations more transparent, and especially to recognising land ownership and accepting a free-functioning land market.[30]

• Regulating competing uses, functions and actors

The conflict between different logics is most acute in peri-urban areas, due to the differences in the value of agricultural land and land that can be used for urban development. There is also competition between other *frontier* dynamics where the spread of one activity changes the nature of an area to the detriment of previous modes of occupation and exploitation: new activities in forested areas; mechanised, capitalist agriculture that ruins family farms; and urban sprawl eating into peri-urban areas, with affluent households replacing more modest communities in sought-after neighbourhoods.

The diversity of land functions at the social and economic levels underscores the importance of having institutions and procedures that can arbitrate between contradictory uses and interests. When disputes do arise, they need collective regulation and arbitration. The mechanisms for land governance are extremely important, not just at the national level, but also at the local level,[31] where arbitration is most effective.

Conflicting regulatory mechanisms

The issue of competition between actors and the need for regulation becomes even more complex when the actors concerned operate according to different standards and land uses are based on a wide range of land rights, from private ownership rights to different forms of shared use.

• Diverse reference systems

The historical basis for social and socio-economic diversity

Different social groups within the same country may have different views on land management and appropriation, as well as their own standards and authorities. These concepts and reference points are the product of history, shaped by customary practices, Islamic law, Buddhist principles, national legislation, etc.

30. United Nations Center for Human Settlements, 1999b.
31. Borras and Franco, 2008.

At the local level, land rights represent a complex bundle of individual prerogatives and collective regulations managed by the local authorities. They are an expression of the way that societies view relations between individuals, between individuals and groups, and between groups and the State. At one end of the continuum there is community logic, where access to land depends on social ties rather than economic competition, and at the other is the logic of the market, which prioritises individual rights over collective regulations.

The diverse regulations governing land tenure in rural areas are the product of a wide range of land uses (extractivism, pastoralism, mobile and sedentary agriculture, etc.) and social norms. Hence the logic behind nomadic pastoralists' access to land: mobility is essential when resources are uncertain (grazing in dryland areas). Many rural societies have parallel systems of individual use rights, family or lineage group assets inherited from relatives, and common areas (forests, pastures, etc.). This means that the same piece of land may be subject to various types of authority (family, village, etc.) and rights, making land regulation particularly complex.

Although they may not be acknowledged by all the actors concerned, especially the State, land rights in urban areas fall into clearly identified legal categories. They are the product of a long process of the individualisation of rights. Efforts to standardise land rights in the name of modernisation can contribute to the marginalization and exclusion of the most vulnerable groups, such as women, minorities and the elderly. Economic change and processes of urbanisation are also changing the spatial organisation of urban areas as new forms are superimposed onto old ones without necessarily replacing them, leading to a new social division of urban space determined by income and integration into economic circuits.[32]

Managing renewable natural resources: a specific legal question

Renewable natural resources (aquatic, ligneous, fishing, hunting, pastoral, etc.) are removed from the eco-system rather than being produced. Sustainable exploitation of such resources requires regulation to ensure that people do not remove more than the eco-systems can produce.

During the colonial period, the State appropriated forestry, pastoral and fishing resources and placed them under the control of specialist administrations, which were the only bodies deemed capable of managing them. Paradoxically, this encouraged the over-exploitation of resources as the new rules for use and control weakened local rules and institutions.

Privatisation is not always an economically effective solution when resources are scattered (it is too expensive to use fencing, surveillance, etc. to keep people out), highly mobile (fish in rivers or along coasts, wildlife, etc.) or scarce (pastoral resources in dryland areas, etc.).

Privatising access to and management of certain resources (forests, etc.) also excludes other longstanding rights holders. This often has high social costs, and is no guarantee that resources will be protected in the long term if financial logics prevail: experience in tropical forests clearly shows that when the cost of land is lower than the returns from over-exploitation, it is financially profitable to over-exploit an area and then abandon it and acquire new land elsewhere.

Many renewable resources in rural areas are *common resources*: a group of actors from a defined social group has exclusive rights to them, there are rules regulating their use and

32. Daley and Hobley, 2005.

authorities to sanction offenders who contravene these rules. The status of common resources is a function of both their nature and social choices: the desire for every member of the community to have access to certain means of subsistence. The fact that the rules sometimes have a magical or religious basis (especially in Africa) does not negate their economic interest, as prohibitions are intended to ensure that the resource can reproduce.

'Shared management' of a resource may be determined by the 'community', which could be a given social group that holds exclusive rights to the resource, or a voluntary association whose members are the only people permitted to use it. Certain protected areas benefit from effective natural resource management, but as local communities are the only group with an objective interest in the long-term preservation of renewable natural resources, they need exclusive rights to them and the capacity to enforce the rules regulating access to them. Where local mechanisms exist, it may be enough to recognise and reinforce them, although new institutions sometimes need to be created to protect previously abundant resources not covered by regulations, or to replace local institutions that have been weakened or destroyed. Whatever the case, local control over access to resources cannot be strengthened without defining the group that controls the resource and any associated logics of exclusion.

• Distinguishing between the legal and the extralegal

The colonial logic of *creating private property from the top down* while relying on local authorities to govern rural territories created and institutionalised a distinction between spaces that are regulated by the written law and areas governed by other laws. A certain proportion of national lands (often the vast majority) are regulated by local laws whose legitimacy is often recognised within the community, but which do not necessarily conform to the legal framework defined by the State (civil code, land law). Although the legal framework is supposed to apply in these areas, this is rarely if ever the case in practice. In long-settled rural areas, pioneer fronts and new urban neighbourhoods, these rights are not so much *traditional* land rights as rights *in practice*,[33] the outcome of local social norms, history and state intervention.

There are many types of local land rights. In rural areas, there is a huge difference between spaces where only certain resources are appropriated and spaces that are incorporated into village territories, between common spaces and areas that belong to individuals and family groups, etc. Urban areas are also characterised by a range of situations in a continuum from total informality to different types of legal status (see Table 1 below).

Land administrations have long acted as though the legal standard prevails, regarding *illegal* neighbourhoods as an exception to the rule that is being addressed, when they actually often constitute a substantial part of the country and represent the daily reality for the majority of the population. Furthermore, these *informal* areas are not no-go areas: land tenure there is often regulated more or less effectively according to certain rules and institutions, albeit ones not defined by the State. Therefore, it is more accurate to describe these situations as *extralegal* (since they are governed by rules that are not the law) than *informal*.

33. Hesseling and Le Roy, 1992.

Table 1. Land tenure and level of rights

Land tenure		Level of rights			
		No rights	Legal protection from forced evictions (b)	Access to a limited number of rights (c)	Access to a whole range of rights (d)
Squatters (a)	No protection from evictions	●			
	Temporary protection from evictions		●		
Occupants of lands that has been subdivised and developed without authorisation	On sites likely to be regularised	●	●		
	On sites likely to be regularised		●	●	
Holders of temporary occupancy permits				●	
Holders of long-term or renewable occupancy permits				●	
Tenants	With no lease or formal contract			●	
	With renewable short- and medium-term leases			●	
Tenants with long-term leases or contracts (emphyteutic lease)					●
Landowners (full ownership)					●

(a) This category includes the homeless, squatters and tenants in squatter neighbourhoods.

(b) For example, neighbourhoods classified as slums in certain Indian cities, or included in *areas of special social interest* in Brazil may have some legal protection from evictions.

(c) The land may be used productively, sub-let or inherited.

(d) The land may be used productively, sold, inherited or mortgaged.

Even in *extralegal* situations, local rights are usually recognised in practice, as government agents know that they cannot ignore them. However, they may also be denied (by being ignored or deemed to have been abolished) or reduced to simple rights of use, which are insecure and non-transferable. This fiction encourages abuses of power, arbitrary expulsions and insecurity of tenure, and facilitates expropriation without compensation. Even when local rights are recognised by the law, they are not supported by a coherent administrative mechanism and are therefore weak in the face of potential abuses of power. This situation encourages conflict, especially over land transactions.

This dual legal system has resulted in the involuntary resettlement of a large proportion of the population, who are denied their land rights, exposed to arbitrary events and the risk of eviction, and unable to access formal credit or, in many cases, services and amenities. The way that governments deal with this duality can also be a factor of exclusion. Vagueness about the rules that are supposed to apply in a given area generates conflict, as different actors can use different norms to claim rights to the same space or obtain formal, legally incontestable rights to land that has been legitimately appropriated by someone else. In cases of conflict, the arbitrating authorities do not know what basis they should make their judgement on, and decisions made by one body may be challenged by another. Legal procedures are often complex and are frequently ignored, and it is not easy to determine whether procedures are *formal* or not. Faced

with these legal contradictions, *formal* public actors may validate rights and put in place extralegal local procedures affirming or making judgements on rights.

The gradual disappearance of non-commercial means of accessing land due to the development of the land market has left much of the urban population unable to access urban land through formal land allocation channels. As a result, they settle in rundown neighbourhoods in city centres, where their land tenure is *illegal* or *irregular*. There is often a marked contrast between the *legal city* – whose residents enjoy secure occupancy, decent housing, amenities and services – and the *real city*, which is frequently home to over half the population.[34]

The difficulty of accessing land close to developed areas also encourages urban sprawl and the development of insecure housing. With no recognised rights, residents cannot legally sell the land they occupy, transfer it through inheritance or gain access to urban amenities and services. Insecurity and lack of infrastructures also discourage investment in housing and domestic income-generating activities, perpetuating the miserable situation in urban environments.

• The issue of so-called 'customary' rights

More often than not, especially in rural areas, existing land rights are not so much individual or family 'titles of ownership', but a set of *community*-level prerogatives and regulations.[35] Therefore, land management is closely related to human governance, as it is institutions rooted in local powers which ensure that different land uses co-exist within the territory, and which manage competition for land in order to maintain cohesion within the social group.

These situations are often described in terms of 'customary rights'. However, this is an ambiguous term[36] as there are no 'customary rights' in the sense of unchanging traditional rights: all land tenure is contemporary, insofar as it is the outcome of social and political change and past interventions by the State. Nor does *customary law* exist in the sense of a body of codified rules or a sort of oral land law.

One can talk of *customary management*, however, in situations where local authorities continue to play a significant role in land allocation. While such situations show that local communities have retained a certain degree of autonomy, they also reflect colonial and post-colonial land policies, as colonial governments relied on local authorities to administrate rural areas in return for greater power over their people and land. Independent states have had an ambiguous attitude to such *customary* management, denying it formal recognition, yet tolerating and exploiting it because they lack the power to implement public land management mechanisms across the country.[37] Thus, the issue of so-called '*customary*' rights is a special case, a matter of local land rights and the relationship between legality and extralegality in contexts where the local authorities play an active role in land management.

34. Durand-Lasserve and Tribillon, 2001.
35. *Community* in the sense of a set of norms shared by a social group, not an organic entity. See Le Meur, 2008.
36. Le Roy, 2003.
37. Le Bris, Le Roy, Leimdorfer, 1982.

The incidence of *customary* management in rural areas

Local land management may be called *customary* when land tenure is strongly *embedded*[38] in social relations. Access to land depends upon social identities (with a distinction made between indigenous people and *incomers*); spatial organisation reflects social organisation. Land ownership does not flow from individual or family titles, but from interlocking individual and collective prerogatives. These are overlaid by social rules whose purpose is to harmonise autonomous economic units and community interventions in order to preserve the community and secure the *life chances* of future generations.

Land management is overseen by *customary* authorities whose legitimacy is derived from their status as descendants of the first settlers, possibly their magical or religious alliance with local spirits, and from political change. This type of regulation is socio-political: access to land is guaranteed to community members whose right to use the land is secure, but dependent on their social position and open to renegotiation. Thus, women often find that they are allocated unproductive plots, which may then be withdrawn once they have been put to productive use. When pressure on land increases, access may be challenged and the weaker actors excluded (women, younger family members and members of secondary lineage groups).

Housing for poor people reliant on informal chains

Today, customary landowners are the primary purveyors of land for low-income housing on the outskirts of towns and cities in sub-Saharan Africa. Long-established communities used to have the collective right to use land for agricultural or pastoral purposes, and as customary lands were progressively annexed by urban growth, the communities concerned soon realised that they could turn the situation to their advantage by offering city dwellers undeveloped land at low prices. Most of the land that is used for habitation is obtained through these neo-customary chains (i.e. chains that lay claim to custom while being perfectly *modern).*[39]

• The political issue of recognition for local land rights

Local rights have a history of being denied, first by the colonial authorities and then by independent central governments. However, there has been a shift towards their *de facto* recognition over the last twenty years, even in countries that previously stifled customary land management. This change, which is linked with ongoing land administration reforms, is evidence that governments are becoming more realistic about local practices and that security of tenure is improving; hopefully paving the way for greater articulation between local rights and national legal frameworks, and local land tenure regulations and public mechanisms. It should facilitate a shift from the legal dualism that still exists in many countries, and enable local actors to secure their land rights and transactions through a combination of locally legitimate rights and public mechanisms.

Some of the procedures for recognising and formalising local land rights in rural areas are based on the partial decentralisation of land management to elected municipal authorities or *communities*.[40] Depending on the circumstances, different approaches focus on recognising

38. This expression used by Karl Polanyi (1944, The Great Transformation) underlines the fact that in non-capitalist societies the economy is not an autonomous category, but functions within social relationships.

39. Bertrand, 2000; Durand-Lasserve, 2004a and 2005.

40. Toulmin and Quan, 2000.

the right of communities and their leaders to manage land, incorporating local norms into legislation, devolving responsibilities for land to elected local authorities, and on legal recognition of individual and family land rights.[41]

According to each case, the emphasis varies between recognising local rights, norms or authorities.[42] There are major issues at stake, since recognising customary authorities involves institutionalising powers that are often undemocratic, while formalising individual land rights weakens collective rules. Moreover, formalising local land rights by transcribing them in a land register necessarily changes them and runs the risk of marginalizing the rights of the weakest actors (women, natural resource users, etc.).

Analysis of policies intended to enable poor people to access land in African cities suggests that institutions and procedures need to be put in place to ensure that formal and neo-customary supply chains are compatible with each other.[43] South Africa[44] and Ghana are two examples of this approach: the public authorities in both countries lacked the power to control the informal land market and had to improvise in the face of a resurgence of customary claims to land. One local government launching a project to subdivide, develop and service land subject to customary claims gave some of the plots to customary landowners as compensation, and households buying land from customary owners were given the opportunity to regularise their occupation. In reality, few of them are likely to be able to complete every stage of the long and complex procedure because government officials are clearly trying to obstruct the process – although they claim that they are hampered by technical, town planning and social reasons (lack of human and financial resources in the services responsible for registration; the difficulty of improving informal neighbourhoods and incorporating them into the urban fabric; the risk of encouraging illicit land practices).

The last ten years have also seen a growing number of claims by *indigenous* or *native* populations seeking to renegotiate their position in national society and secure recognition of their identity and territorial control, particularly where mining or industrial operations and migration are concerned. Therefore, there are political aspects to the different dimensions of the issue of local/customary/indigenous rights.

The debate here centres around the relationship between land law (written, state law) and local rights, on whether or not the plurality of norms should be recognised at the national level, the degree of autonomy local actors should be allowed and how this can be institutionalised (through elected public bodies or traditional local authorities). It reveals the shortcomings of a post-colonial model that has not broken with its historical legacy, and raises the question of how it can be replaced in a way that enables the entire population to enjoy the benefits of full citizenship.

The recognition of local rights and so-called 'customary' regulations cannot be reduced to a technical issue (however important the practical and methodological aspects may be). It is primarily a political question about the relationships between local social identities and national citizenship; between the State, communities and citizens; and between States and transnational interest groups. The debate on the relationships between customary, local and public

41. Fitzpatrick, 2005.
42. Le Roy, 1998.
43. UN-Habitat, 2003.
44. Smith, 2008.

authorities also highlights the role that local authorities should play and the importance of their autonomy in land management.

There is no doubt that the current shift towards recognising local rights is of paramount importance. Nevertheless, it does have its limitations. Political will is variable and often weak, measures are partial and procedures complex. Over-prescriptive approaches that take no account of the complexity of rights or their socio-political dimension can have perverse effects and lead to exclusion. Furthermore, the desire to recognise local rights does not sit easily with the economic logics on which governments depend, of which they are victims, and in which they are complicit.

Nor is customary or neo-customary land management a panacea. It maintains the distinction between 'indigenous' and 'incomer' communities in rural areas, while decentralisation processes and the pressure of demand for land tend to harden the rules regulating access to land, reinforce their links with local identity and exclude 'outsiders' from local social spaces. In urban settings, growing demand from middle-income groups is inflating the price of land and making it difficult for low-income groups to access the so-called customary land market in peri-urban areas, as intermediaries and informal property developers progressively marginalize customary landowners.

However, local land management still has a key role to play in the absence of reliable public mechanisms: "*Until the performance of the legal and administrative authorities and state judiciary proves that official mechanisms and formalities are more effective, most actors will continue to use more or less hybrid and customary forms of societal control*".[45] Breaking with legal dualism and its colonial roots and recognising existing land rights and simple, transparent and progressive land management mechanisms is a huge undertaking. It will not necessarily lead to perfect justice, but it should at least dispense with the cumbersome procedures that encourage exclusion and corruption.

Commodification of rights and insecurity of tenure

Much of the debate about land policies has crystallised around ways of improving security of tenure and getting the land market to function:

- Producers need security of tenure, therefore they should have ownership titles;
- The land market encourages optimal land allocation and improves economic efficiency.

Research into land tenure can provide a more nuanced view of the options and more rigorous examination of the issues associated with land tenure.

• Transfer and circulation of land rights

Land rights circulate between actors through different forms of transfer, which evolve according to their particular context, and which may be commercial or non-commercial.

45. Hesseling and Le Roy, 1990.

Different types of transfer and their economic impact

Most commercial land transfers occur when the objective is to gain access to land as a productive resource or build up a holding.[46] These transfers often have a monetary dimension, but this is not always the case as there are places where even land sales are paid in kind. Such commercial transfers for productive or heritage purposes usually involve relationships outside the family and take many forms; they may be permanent (sale-purchase), temporary (such as rental, the main mode of access to housing in urban areas) or joint contracts (sharecropping).

The sale and purchase of land is just one means of transferring land rights, and not always the most important. Most transfers are not commercial, but a matter of distributing land within the family (to young men getting married, for example) or between families (gifts to relatives by marriage, loans to family members or friends). The monetisation of land transactions is not a mechanical response to the monetisation of the economy, for while financial transactions may be becoming much more widespread, the reverse is also happening as sales give way to indirect forms of tenure.

The land market may facilitate the circulation of rights among actors, but it is not always a sign of economic efficiency. Economists recognise that indirect types of tenure, particularly rental, are just as effective if they are of sufficient duration. Conversely, putting land on the market can favour large-scale, better-capitalised farms that are less productive per hectare. Therefore, a dynamic land market is not always synonymous with efficiency, and even less so with equity. It all depends on the economic stakes, levels of inequality between actors, the economic strategies of more affluent actors (agri-businesses, people buying land for speculation or extensive farming) and the investment alternatives at their disposal.

The regulation and circulation of rights in rural areas

Land legislations define the norms and procedures for transferring rights and the actors responsible for registering and validating them, who may be notaries, public land agency officials or religious authorities (such as the *cadis* in the Comoro Islands). There are often few public procedures for transferring rights to land not covered by a title, which can lead to conflict.

Transfers of rights within the family are primarily regulated by that family's social norms and overseen by the family authorities, while transfers outside the family are governed by more or less strict procedures to avoid contestations. Communities may see sales as illegitimate if they compromise the transfer of community resources to future generations, and sales that are deemed acceptable may be subject to certain restrictions.

The use of documentation is increasing with the monetisation of land tenure relations. Witnessed written contracts are used in sales in many parts of West Africa, and although these *petits papiers* have no legal value, they are similar to private contracts and are sometimes validated by the local administrative authorities. The fact that private contracts are still prevalent in countries where land registries have existed for some time, but are not updated (Haiti), is evidence of a demand for procedures to secure land transactions that governments are failing to meet.

46. Colin, 2008.

Eviction, integration and market pressure in urban areas

Land relations in urban areas are also becoming increasingly monetized. The close relationship between the legal status of land, its mode of tenure, the security it provides and its market price have a determining impact on the transmission and circulation of land rights. Land markets are both segmented and interdependent. Segmented because titled and registered land has a different market price from land that is covered by an administrative allocation or located in irregular neighbourhoods. And interdependent because changes affecting one segment of the market have repercussions on other segments, and because a given piece of land can pass from one market to another following a change in its status.

The regularisation of informal neighbourhoods triggers the development of land markets, which in turn often leads to *market-led displacements*. Although data on the number of persons concerned are still fragmentary,[47] they indicate that it exceeds the number of victims of evictions.[48] These displacements may be negotiated with the communities concerned, but the process is frequently skewed by the fact that the parties involved have unequal access to information.

Negotiated displacements are usually the result of an investment or development project on informally occupied land that cannot be used productively while it is occupied. Therefore, the investor's objective is to obtain the land for less than the market price and remove residents by offering them compensation. This type of operation is often more profitable than more conventional procedures on vacant land purchased on the formal market. The in situ regularisation of households in irregular neighbourhoods may also result in displacements, especially when these operations are not accompanied by projects to provide amenities or appropriate social or economic measures.

These forms of displacement, or market-led eviction, are most prevalent in urban areas where there are several overlapping or co-existing systems of rights. They tend to replace more brutal and often illegal forms of eviction, and are less visible and politically risky since they are viewed as a normal or even desirable phenomenon provided some form of negotiation is involved. However, the terms of such negotiations are rarely questioned, and these operations still have a major social impact on the communities concerned.

• The *commodification* of land rights

Land is becoming increasingly commoditised as a result of globalisation processes, changing ways of life and the impoverishment of certain sectors of the population. With no income or social security, the most vulnerable elements of the population may be forced to sell land. However, this is by no means a universal or linear process, as certain parts of a country may have a rapidly developing land market, more strictly formalised contractual procedures and proliferating transactions, while others remain outside the land market despite being densely populated and part of a market economy.

The partial monetisation of land relations should not be taken as automatic proof of the existence of a land market, since one can only talk of a market when sale-purchases become a significant mode of access to land.

47. Durand-Lasserve, 2006.
48. Centre on Housing Rights and Evictions, 2006.

Although the majority of non-market transfers of land or simple use rights occur in rural areas, the structural fall in agricultural prices has contributed to impoverishment and (until recently) fed the market through distress sales. Thus, the commoditisation of land has had the effect of proletarianising families who are relegated to the level of daily labourers and/or forced to move to shantytowns in large cities. Nevertheless, the development of monetary land transactions does not necessarily signify that land has become a marketable good: certain rights can be sold (the right to cultivate), while others cannot (the land itself). There are many situations where *land is not fully commoditised* as the balance between community and market logics evolves. This may reflect a changing transitional situation, or a balance resulting from the desire to open up certain resources and lands to market competition while keeping others out of it.

Access to land in urban areas is no longer free due to the public authorities' increasing withdrawal from land and property production and the commoditisation of popular land management chains. All forms of settlement come at a price: rent, fees, tolls or entry charges have to be paid even if the settlement is completely illegal. The number of citizens living in squatter settlements is declining, but there has been a marked increase in irregular land parcelling and sales, while activity in the formal private development sector is concentrated in higher-income groups.[49]

Cities in sub-Saharan Africa, especially in francophone countries, are characterised by the existence of public systems for allocating land, and multiple land markets. The two main problems here are the state monopoly on land and continued use of customary forms of land management on the outskirts of towns and cities.[50]

Over the last few decades the commoditisation of land has been broadened and accelerated by the process of economic liberalisation, the growing impoverishment of part of the population, the focus on national or international agri-business and international investment in urban areas. As a result, security of tenure has become an increasingly pressing issue.

• Insecurity of land tenure

Insecurity of tenure takes many forms and affects both rural and urban populations: landowners without title and holders of questionable titles, uncertainty about which rights holders purchasers should negotiate with when acquiring land, and the timescale and costs involved in registering an acquisition.

People in urban areas cannot live decently, develop their economic activities or invest in their housing if they are under the permanent threat of eviction, and producers in rural areas need enough security of tenure (rights to land and natural resources that cannot be groundlessly contested) to be able to succeed in their activities, invest and benefit from their efforts. Therefore, security of tenure is a condition for economic development.

Distinguishing between insecurity of tenure and precarious tenure

Precarious tenure can be defined as a lack of short-, medium- or long-term certainty about the rights of access to the land one uses. A farmer cultivating rented land on the basis of annual contracts is in a precarious position, but does not have insecure tenure. Conversely,

49. Freire *et al.*, 2005.
50. Tribillon, 1995, Durand-Lasserve, 2005.

illegal occupants of plots on public land may feel that their tenure is secure if there is little likelihood that they will be thrown off the land.

Precarious tenure may be the result of intense pressure on land, inequitable land distribution or domination of the land market by external actors with substantial financial resources. It is often caused by economic insecurity, accident or illness, or a poor harvest that forces farmers to pledge or sell their land. Security of tenure can be defined as *a situation where the land rights held, whatever they may be, are not challenged without reason, and are reaffirmed if they are contested without due cause*.[51] This definition has no bearing on the nature of the rights or their legal or extralegal character.

Conversely, tenure is insecure when rights that are legitimate in the eyes of one or more sets of standards are contested. Therefore, dysfunctional land administrations and judiciaries, and situations of unregulated legal pluralism are powerful factors in insecurity of tenure. In urban areas, there is a close – but not automatic – relationship between land tenure status and the degree to which tenure is secure.

Insecurity of tenure is all too often used to justify land regularisation operations, without proper analysis of the realities and various forms of tenure insecurity, or consideration of the risks associated with such operations.

Land titles: not the only tool for securing tenure

Security of tenure should not be confused with private ownership. Simple rights of use can provide security of tenure if they are clear, of specific duration and the contract cannot be unilaterally broken. Conversely, it is possible to have a land title but be unable to exercise one's rights if there are competing claims to the plot, or if neighbours view the title as illegitimate and are likely to destroy one's crops.

Security of tenure is not so much derived from the legal status of the rights held, as from social consensus on the legitimacy of these rights and the reliability of mechanisms for arbitration should conflicts arise. Therefore, there is no automatic link between informal land rights and insecurity of tenure. When there are no public mechanisms in place, actors continue to rely on social networks to secure their rights; and if public mechanisms do exist, they seek to secure them through both membership of social networks and recourse to the State.

Therefore, an approach to security of tenure that uses private ownership as its departure point and excludes other forms of rights, or which confuses security with formal rights, will fail to address all the sources of insecurity of tenure. Indeed, it could even aggravate insecurity by selecting the rights that most resemble private ownership and weakening others.

Looking at security of tenure in terms of process

Security of tenure does not exist in a vacuum: its purpose is to ensure that rights are socially validated and confirmed if they are contested. Therefore, it is possible to discuss secure access to land and productive resources without predicting the nature of the rights concerned, and to have rights that are both legitimate and legal. This type of approach focuses on land management mechanisms that are likely to provide security of tenure, and recognises the diverse references for land tenure.

51. Lavigne Delville, 2006a.

These mechanisms may be based on more or less sophisticated land management tools, negotiated modes of conflict settlement, procedures for formalising transactions, and even land information systems. It is important to remember that achieving security of tenure is a long-term process, and that there have been situations where completely secure tenure has become insecure or been blocked, which raises questions about ownership of land rights as the best way of securing tenure.

Achieving security of tenure requires mechanisms for land governance and administration that allow locally agreed rights to be formally recognised. It also needs reliable mechanisms for conflict resolution. Security of tenure takes various forms, depending on the legal and regulatory framework, social norms and value system of each culture and, to a certain extent, individual choices.[52]

Apart from the risk of eviction by the State and internal family conflicts (over inheritance, etc.), land transactions are one of the main causes of tenure insecurity, as plots may be sold illegally, illegitimately or several times over. Tenure can often be made much more secure by formalising land transactions through procedures affirming the legitimacy of the sale; and with substantial popular demand for reliable public mechanisms, it is worth noting that land information systems (LIS) can be useful where there are a lot of land transactions, provided they can be fully updated on a regular basis.

Institutional responses to land dynamics

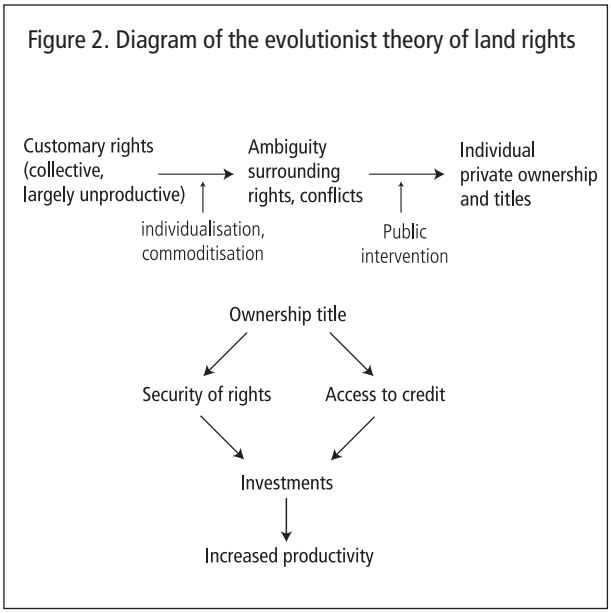
Land tenure can take many different forms and be shaped by a variety of factors:

- *The grounds for appropriating land and natural resources*, which relate to the functions of land, representations of space, local modes of exploitation, social norms and economic and political history;
- *Modes of regulating* the appropriation of land and circulation of rights, with various articulations between local and public regulations;
- *The dynamics observed*, which are the outcome of economic and demographic changes, societal choices and State interventions.

For a long time debates about land policy revolved around a paradigm of *substitution*.[53] According to this view, local land rights originate from the *community* and are rarely productive; the State should take a *top-down* approach, replacing them with *modern* law and private titles. Subsequent recognition of the dynamic nature of land tenure led to a paradigm of *adaptation*, wherein local land rights are seen as evolving, and their adaptability as something to be encouraged. Local land rights function reasonably well when there is little demographic pressure and few economic issues, but tend to become individualised and commercialised with increasing demographic pressure and rising economic stakes. Conflicts are becoming more frequent due to the ambiguous nature of the rules and informality of the rights, so the State needs to intervene to formalise rights, guarantee security of tenure and facilitate access to credit and the market exchange of these rights.

52. Wehrmann, 2008.
53. Bruce and Migot Adholla, 1994.

This is the reasoning behind the evolutionary theory of land rights, which sees State delivery of private ownership titles as an effective response to insecurity of tenure and the main incentive for investment in land (see Figure 2 below, based on Lavigne Delville, 2009). When applied rigidly, this theory is mechanical, viewing pressure on land as the sole cause of conflict and assuming that access to title and credit are necessary and sufficient conditions for security of tenure. In fact, each stage of the argument raises questions,[54] one does not lead automatically to the next, and the theory only functions under specific conditions. Research findings suggest that we need to:



- Broaden the analysis by considering the dynamics of societal choices and state interventions, as well as the market and demographics.[55] This could help us understand the many ways in which land tenure evolves, and assess previous public interventions and their effects on conflicts and insecurity;
- Question the mechanical links between the 'customary' and the 'collective', 'informal' and 'insecure', etc., and better frame the question of tenure insecurity and the relationship between land markets and economic development;
- Question the automatic links between the legal status of land and investment, through more thorough analysis of the constraints to investment;
- Focus on land tenure norms and the effects of legal dualism and deficient arbitration mechanisms on insecurity of tenure.

What we are witnessing is not mechanical progress towards individualisation, but complex changes; processes marked by public interventions that sometimes lead to conflict and land grabbing. Increasingly, the debate about land policies no longer centres around a single model promoting private property, which is supposed to bring both economic efficiency and equity, but on how to respond to current economic and social issues, bearing in mind their context and history, and how to conceive and organise land rights when private property is no longer a possible response.

54. Platteau, 1996 ; Durand-Lasserve and Selod, 2007.
55. Lavigne Delville and Karsenty, 1998.

PART 3

Land policies orientations

Land policies and governance

• Land policies, policy objectives and tools

Land policy objectives

The main purpose of land policies in developing countries is to define legal modes of land occupation, land use and recognised rights, and to authenticate and guarantee rights. In addition to this, they need to designate the structures responsible for land administration and define their attributions, intervene on land distribution, arbitrate between actors when conflicts arise over the appropriation and use of land and, if possible, find sustainable solutions to disagreements.

Land policies need to strike a balance between the different functions and allocations of land, and between different interest groups. Their aim is to encourage land use that is socially desirable;[56] their function to support global economic and social policies and, more broadly, politics in general. Land tenure is a powerful tool for social integration, but it can also be used to further individual interests, and the aspects of social identity associated with land tenure may also be exploited in the battle for power or sources of income.

Land policy tools

Land policies are supported by the powers exercised by the State through land administration. The term *land administration* refers to (i) the regulatory processes relating to land use (productive and otherwise) and conservation; (ii) the collection of revenues from land sales, allocation, rental and taxes (on built and non-built on land); (iii) the resolution of conflicts over land ownership and use;[57] (iv) the collection and dissemination of information relating to land tenure.[58]

56. Deininger, 2003.
57. Dale and McLaughlin, 1999.
58. UNECE, 1996.

Land administration is defined as the set of instruments, rules and institutions that facilitate land management[59] in a given legal, social and environmental context. It plays a central role in the development, recognition and transfer of land rights, and is the responsibility of state services, but is not necessarily limited to public structures charged with registering rights and transactions, as it may involve a variety of bodies at various levels – municipal authorities, communal bodies, local committees, etc. Finally, the application of land administration rules and procedures needs to be flexible in order to avoid blockages and paralysis.

Direct and indirect interventions

We generally distinguish between *forms of direct intervention* and f*orms of indirect intervention*. Land policies combine the two, using specific tools for each form of intervention.[60]

Direct interventions define the types of land rights that are legally recognised, their possible legal status, and mandatory, prohibited and authorised uses. They use particular procedures and tools (development schemes and plans, land management plans, master plans, LUPs, land reorganisation, subdivision and servicing), which are applied across certain areas (within administrative city limits) or in particular spaces (developed areas, irrigation schemes, infrastructure networks). They are based on land tenure procedures (expropriation, pre-emption, the transfer or assignment of public lands, etc.), and are implemented by the administrations responsible for land management or specialist institutions, land agencies, development associations or service providers.

Indirect interventions affect the different types of productive land use by controlling change, intervening on the markets, creating land reserves, using fiscal tools (annual taxation, taxes on change of use or added value) and credit policies, regulating development activities and promoting and regularising land tenure.

• Interaction between land policies and sectoral policies

In terms of the law and land regulation, land tenure policies are an end in themselves. On a broader level, they are also a means of achieving the country's other sectoral policies and overall social and economic policy.

Because of this complex interaction, reflection on land policy reforms should take account of the need for land policies to be consistent with the country's general policy orientations (in economic and social terms, the degree of openness to the market, tolerance of inequality, etc.) and other related policies:

- To which land policies should contribute (town planning, agricultural development, improvements, taxation, etc.);
- Those with a bearing on the success of land policies, or whose effectiveness is a condition for successful land policies (territorial administration, justice, etc.).

59. Land management is defined as the process of managing, using and developing land resources in urban and rural areas. As it may have very different objectives likely to interact with one another and generate conflict, it also needs to arbitrate between different land uses (Land Equity, 2009).

60. Comby and Renard, 1996.

The interdependence between land policies and other sectoral policies (economic, territorial, agricultural and rural, industrial, urban and environmental, social and legal, fiscal) accentuates the difficulties and shortcomings of poorly coordinated public interventions. What holds for France[61] also holds for other countries.

• Land policies, a question of governance

The need for consensual policy formulation

Defining a land policy is primarily a matter of choosing which types and modes of transferring and managing land rights will be legally recognised, and deciding the extent to which local rights will be recognised and land management decentralised. It also involves choosing whether to develop the land market or focus on the distribution of rights, depending on the level of land inequalities that is considered socially unacceptable. Land tenure can be a tool for social integration, but may also be used to serve individual interests by exploiting the aspects of identity associated with land.

Land policies define a framework whose breadth and exclusivity varies according to the diversity of land rights in rural and urban communities. They embody perceptions of citizenship, general interest and governance; thus, policy choices reflect societal choices and power relations. Different actors have different priorities and interests based on the divisions within society. Therefore, a certain degree of social consensus is required to implement a land policy that meets the needs and expectations of the majority of the population.

Although the international community accepts this principle, it is not always possible to reach such a consensus – even if governments have attempted to do so, which is not always the case. With conflicting interests at stake, land policies are all too often defined behind closed ministry doors, in negotiation with a limited number of interest groups, or through consultation but not genuine debate. Reaching a consensus simply may not be possible in the face of authoritarian regimes, in situations of conflict (Rwanda, Mozambique, Cambodia in the 1980s) or when peoples' rights to compensation or restitution are not recognised.

Insofar as they are also instruments of global economic and social policies, and always of 'politics' in the broad sense, land policies cannot be entirely based on technical choices: they need to flow from public debate on the possible options and orientations. Similarly, it is now generally agreed that projects to regularise occupations in urban areas will be unsustainable if the communities concerned are not involved in their design and implementation.

Reconciling often contradictory objectives

Land policies need to reconcile *economic objectives* with *social objectives*: promoting and securing investment in land and housing, improving agricultural productivity while protecting jobs, and providing security of tenure through inclusive procedures. They also need to reconcile the *production objectives* of agricultural, industrial and urban development, while protecting the environment, preventing over-exploitation of land, the destruction of forest cover

61. "*Land policies fall victim to the contradictions between sectoral policies with competing objectives based on different ideas about the aim of land policies. Thus, aspects of land policy are key components of policies on town planning, housing, the environment, transport and agriculture, not to mention fiscal policies. Further down the line, actions taken in the name of each of these policies neutralise each other due to failure to clarify and coordinate priorities*" (Comby and Renard, 1996).

and urban sprawl. And finally, they have to reconcile *public and private* interests while ensuring that public land administration is compatible with the logics and strategies of private investors. This assumes that markets will be regulated to correct changes that are socially unacceptable, economically inefficient and ecologically dangerous.

These objectives can be reconciled through negotiations between the actors concerned. The way that the authorities responsible for enforcing these procedures are established has a lasting influence on stakeholders' practices (landowners, users, businesses, administrative officials, etc.). Actors whose interests are challenged or habits disrupted will exploit poor institutional choices, contradictions and legal loopholes. Furthermore, as policies also require reliable mechanisms for arbitration and conflict management, particular attention should be paid to modes of resolving conflicts over land.

A new approach to relations between governance and land administration

Defining land policies raises the issue of how choices are negotiated at each territorial level; implementing them raises the question of which levels of intervention and modes of coordination will be used, and how to strike a balance between the views and interests of the various actors concerned.

Arbitrating between contradictory objectives requires an understanding of the interactions between land policies, land administration and governance. Governance may be described as "*societies' skill in inventing regulations to secure their harmonious development, long-term survival and cohesion*";[62]… "*public actions to ensure the simultaneous participation of divergent interests, proper social management of public goods and a stable global social contract.*"[63] Land policies are an arena where much can be learned about governance. "*It could even be argued that there is such a close relationship between problems with the law, finance, technical support and market access that land policies are one of the most constant and universal sources of learning about governance*."[64]

Governance and effective land administration reforms have long been the subject of separate analysis, but convergent approaches articulated around three principles are now starting to emerge:

- Recognising the diversity of tenure systems;
- Recognising the central role of land administration;
- Putting in place accessible and responsive institutions that are capable of defining territorial strategies at different levels, enforcing laws and resolving conflicts over land.

62. Calame, 2003.
63. Darbon, 2007.
64. French Ministry of Foreign Affairs, 2007, p. 32.

Should land policies be adapted or reformed?

Land policies are currently the subject of considerable debate, and reform is the order of the day in many countries seeking to put their historical legacies behind them, correct injustices or inequalities, make land administrations more transparent and effective, or adjust to the new economic, political and social context.

• Review of land policies in the second half of the 20th century

Many land policies in the second half of the 20th century focused on direct interventions by the public authorities: increasing State ownership of land, land redistribution, capping land ownership, creating land agencies and development associations, etc. The results of these initiatives rarely lived up to expectation, for various technical and political reasons – lack of tools, financial resources or political will, power relations blocking change or corporatism exploiting the status quo.

Agrarian reform in the 20th century

Redistributing land from large landowners to smallholders and landless farmers was seen as a way of correcting inequalities and redressing historical injustices. This type of redistributive agrarian reform continued into the 1970s, promoted by both governments of the 'left' (following revolutions in Mexico, Cuba, China and Vietnam) and by the United States as part of its Cold War efforts to stop the spread of revolutionary ideas in Latin America and Asia. Taiwan implemented one of the most radical and successful agrarian reforms under American tutelage; and several decades of major land distribution made Mexico the least inegalitarian country in Latin America. However, many of the agrarian reforms promoted by the *Alliance for Progress* demonstrate a certain confusion between *agrarian reform* and *legalising occupations on agricultural front lines*.

The rapid development of certain countries shows that there is a correlation between a reduction in land inequalities and economic growth.[65] This can be seen in several Asian countries, where diverse political regimes pushed through a series of radical agrarian reforms in the 20th century (Taiwan, Japan and South Korea on the one hand, and Vietnam and China on the other), facilitating increased agricultural production and providing the basis for economic development and poverty reduction.

The number of agrarian reforms has declined since then, with the end of the Cold War, changes of ideology, questions about the legitimacy of reforms implemented by authoritarian regimes, and problems with land redistribution under democratic regimes. Reforms were often followed by policies of collectivisation, with the creation of State farms or producer cooperatives and reconstitution of large production units, which cancelled out the expected effects of land redistribution and produced unconvincing economic results. Many of the beneficiaries of land distribution had no agricultural experience and were left to fend for themselves in isolated regions without any technical support; the reforms also failed to provide mechanisms to prevent unregulated markets from creating new land concentrations. Thus, one of the main stumbling blocks to these reforms was the absence of new mechanisms for land governance.

65. Deininger, 2003.

Political support for agrarian reforms dwindled in the second half of the 1980s, as the focus shifted to *market-assisted agrarian reforms*. The objective was to change land distribution by using market mechanisms to encourage large landowners to sell (so they would not need to be compensated for expropriated land) and help small farmers gain access to land ownership. This alternative to authoritarian reforms only had limited results, as sales were voluntary and the pace of change slow. Moreover, the small-scale farmers who were supposed to be buying land at market rates ran the risk of taking on excessive debts and bankrupting themselves, while the public cost of the State buying land would have been exorbitant.

Since small and medium-sized farms are more productive per hectare (except for crops requiring intense capital and/or if market control is a determining factor), agrarian reforms can reduce poverty if they allow agricultural productivity to increase through more intensive labour and lower supervision costs. However, land redistribution is not enough to guarantee the development of dynamic family farming; this requires measures that will provide access to credit, inputs and technical advice by organising supply chains and investment in infrastructures. If no assistance or training is forthcoming, land is resold and becomes concentrated in the hands of certain owners again. Redistributive agrarian reforms are a necessary, but not sufficient, condition for agricultural development.

Thus, while experiences in recent decades confirm the usefulness of land redistribution, they also point to the conditions and requirements for its success: the size of farms to be promoted, investment in amenities and infrastructures, and technical and management support for producers and their organisations. Agrarian reforms favouring small and medium-sized farms only make sense if the agricultural policy is favourable to family farming, and they need to gain a certain momentum if they are to have sustainable effects. The failure of proactive policies, both authoritarian and based on market mechanisms, highlights the need to seek other means of influencing land distribution: by securing leases to help small farmers and avoid expropriation, through fiscal advantages or preferential land allocations, credit subsidies on sales, and farmer organisations managing land reserves and renting them out to farmers, etc.

Land interventions in urban areas

In the 1970s and 1980s, many urban land policies focused on direct intervention by the public authorities. This took three main, often complementary, forms, depending on the country concerned: land nationalisation, measures to cap landownership, and the creation of property development agencies or development associations.

Land nationalisation, which could extend to the abolition of all private ownership, mainly occurred in socialist countries in Asia and under African regimes following the socialist model. These policies showed their limitations due to the excessive centralism of the land administration, ineffective controls and the use of land allocations to secure votes.

Capping ownership aims to limit the amount of land that an individual can own in rural and urban areas. Often employed as an accompaniment to redistributive land reforms, this uses legal arrangements to prevent people from building up private land reserves for speculative purposes, and facilitates the creation of public land reserves with surplus appropriated land. These kinds of reforms were often implemented in Sri Lanka and India, with less than impressive results.

Land agencies and public *development associations* were often created in parallel with land nationalisation initiatives and caps on ownership. The *land agencies*' role was to establish public land reserves that could subsequently be developed, while the *development associations* undertook housing (or industrial or commercial) projects on public land reserves or worked in partnership with private landowners. This intervention tool, which many developing countries used until the early 1990s, theoretically allows the public authorities to influence development choices and produce serviced land by directly feeding the land market. However, it produced disappointing results due to the technical and political limitations of this system.

Its political shortcomings have attracted the most criticism: many argue that these bodies disrupt the land market (due to dual pricing systems and competition with the unsubsidised private sector) and are usually unprofitable as they do not recover their costs. Most land agencies and development associations were dismantled in the 1990s, thanks in part to international financial institutions and certain bi-lateral development agencies.[66]

Although criticism of the mode of public intervention in the 1970s was justified, we should not forget that a model of urban development that was entirely dependent on the play of the market was simply not realistic, and that no such model exists in any of the liberal developed countries.

Combating evictions

Since the early 1990s, more and more countries have adopted measures to formalise irregular occupations in order to protect low-income groups and stem the rising number of evictions. Pressure from squatters' movements, NGOs and civil society led to a shift away from operations to clear irregular neighbourhoods (which were often ineffective) towards policies aimed at regularising and restructuring such areas. There is now growing support for the idea that development operations should negotiate with the communities concerned over compensation (or re-housing), rather than evicting them.

Since its launch in 2000, the *Global Campaign for Secure Tenure* has done much to help reduce the number of evictions in irregular urban areas[67] and revive the debate on alternatives to landownership and land intervention strategies.

Policies on land registration and regularisation of tenure

The absence of legal documents (rental leases, land titles, permits or licences to occupy or use land productively), systems to register certificates or rights, and land information systems (land and title registers) contributes to insecurity in both urban and rural areas. Many residents are unable to produce documents that are enforceable against third parties and which confirm that their occupation is in order; while actors who understand the procedures and have support can obtain legal documents for land that does not belong to them. It is not unusual for

66. A similar pattern emerged in several countries in the 1990s: their capital assets and privileged access to public lands enabled them to undertake large-scale operations at the beginning of the decade, but they quickly found that they were unable to recover their costs and started losing money. Re-capitalisation entailed enforced structural reform and performance standards, and their decline was further hastened by dwindling public land reserves. The audits demanded by donors inevitably led to the agencies' objectives being redefined according to the private company model (realistic pricing, redefined conditions of access to public land reserves and credit), and re-orienting production towards solvent groups while retaining the social character of their activities in order to protect their image and provide some legitimacy.

67. United Nations-Habitat. 2004.

several people to lay claim to the same piece of land, each with bills of sale that may have been witnessed, and possibly even authenticated by the local authorities.[68]

'Formalisation of tenure' is the process whereby previously 'informal' tenure is legally recognised. This process can take three forms:

- The attribution of real rights, usually ownership titles, long-term leases and superficiary rights. These rights, which can be enforced against a third party, may be transferred, assigned through inheritance or mortgaged. Formalisation leads to the attribution of rights authenticated by the State on a case-by-case or group basis (following individual applications, or for all the occupants of a given geographic area). Such operations are limited to restricted areas and are often left incomplete due to the cost and cumbersome nature of the procedures involved, although these have improved recently.
- Administrative recognition of occupants' rights by central or local governments, through the allocation of personal rights to residents in irregular neighbourhoods or rural areas. This generally takes the form of an administrative occupancy permit or short-term lease. These rights are usually attributed for a limited duration (often three to five years) and are renewable and conditional: the land must be used productively in accordance with terms and conditions defined by the public authorities. Finally, there are usually restrictions on land use and conditions for transferring land. Based on revocable rights, these forms of recognition have a limited impact in terms of securing rights, and leave residents vulnerable to arbitrary decisions by the administration.
- *De facto* recognition of irregular occupations as a result of high-level political commitment to end evictions. This generally involves a moratorium on evictions or recognition of the legitimacy of customary forms of tenure, particularly in countries in sub-Saharan Africa, or other practices guaranteeing secure occupancy without assigning real or personal rights.

New, transferable and assignable 'land certificates' are starting to emerge in rural francophone Africa. These are often managed at the community level, and can be used to obtain credit without any recourse to the State. In the long run, these certificates seem set to replace registration procedures, which are only used when the value of the land concerned is sufficient to warrant them.

Incorporating customary norms and practices into the law

A significant proportion of land is covered by local customary regulations, particularly in rural areas. State attitudes to such norms and practices range from refusing to acknowledge them to incorporating them into land policies. The latter approach tends to take one of two forms:

- Through a *logic of absorbing* local practices: the State selects the elements that it considers relevant and incorporates them into the official framework. Procedures for registering local rights are dealt with in this way, with land management seen as part of a public mechanism for managing recognised rights, and customary authorities reduced to a possible consultative role. The risk here is that heads of family who manage the entire family group's landholdings will get themselves recognised as individual landowners, and

68. Clerc and Durand-Lasserve, 1997.

that this can lead to exclusions, rural exodus or the breakdown of informal local arrangements. However, it is possible to adapt the legal framework so that it recognises diverse forms of tenure, both individual and collective. This kind of procedure does not freeze land rights, confine individuals to customary regulations or preclude the individualisation of rights, which keeps pace with social change through inheritance and sales.

- Through a *logic of articulating* modes of land regulation: the State recognises the legitimacy and responsibility of local land management authorities. Here, the emphasis is on formalising local land governance rather than registering the rights of individuals or groups. Either customary authorities are recognised by the State, in which case, if customary rules are contested within the community, there is a high risk of reinforcing the local authorities and using land as a means of securing political support; or the authorities are elected, which raises questions about their legitimacy and ability to act.

Policies to decentralise land management

In the late 1980s, many African and some Latin American countries sought to decentralise the management of land and/or renewable resources in order to address the diverse societies and local land uses within each country, and regulate the different norms within each region or municipality. By giving local actors a degree of autonomy in defining the rules for land use, the objective was to take better account of the real situation with regard to resources (through proximity) and increase control over decisions (elected officials are personally answerable to citizens). This sometimes included local powers to control external actors (loggers, mining concerns, agri-businesses, etc.) and a source of municipal revenues.

The debate about local land and resource management is often muddied by confusion between *deconcentration*, where State services are present at more local levels, and *decentralisation*, where local authorities representing the community have direct decision-making powers in certain areas of responsibility.

Decentralising land governance can help reduce the gap between decision-making and local realities. The degree of proximity and issues at stake vary, depending on whether powers are devolved to local communities or land governance is decentralised in conjunction with the administration. Devolution raises the question of control over local authorities and the participation of the least powerful social groups; decentralisation that of the pertinence of municipal administrative boundaries, as municipalities often include numerous villages with little shared interest in resource management. In either case, particularly the former, delegating control over land in areas of intense pressure can lead to a hardening of local identities, the rejection of 'incomers' and widespread migration.

Sectoral administrations may also resist moves to decentralise land management, as this reduces their powers. This especially true in West Africa, where the municipalities' prerogatives are ill-defined, legislation on renewable resources takes scant account of decentralisation, and little progress has been made in transferring responsibilities, resources or land assets to the municipalities.[69] Operations to subdivide, develop and service land are also a source of conflict between local governments and state services, as both want control of this potentially lucrative process. There can be no genuine decentralisation of land management without consistent policies, resources and administrative action.

69. Rochegude, 2000.

Tropical rainforest management policies

Tropical rainforests have long (wrongly) been considered as 'empty of humankind', and treated as resource pools (timber, wild rubber, etc.) or reserves of land for agricultural development. Forestry policies are built on the principle of publicly controlled, *rational management of forest resources* that excludes local people. This control may be taken by force or established through alliances with the traditional authorities in exchange for rights of use, in which case newly independent States tend to retain these mechanisms as a guaranteed source of income from the forests.

Governments encourage industrial exploitation of forest resources by offering financial incentives to logging companies and negotiating concessions or logging permits. Major development plans are put in place (often with a view to securing votes), combining costly or uncoordinated forestation and reforestation plans with excessive extraction and processing systems. Permits are issued without consulting the local authorities or communities, usually using inefficient and repressive approaches that offer ample opportunity for corruption, lead to overexploitation, impact negatively on local populations (who are sometimes obliged to become timber suppliers themselves) and are of little benefit to the national economy.

In the global context of liberalisation and rising environmental stakes, deforestation came to be seen as proof of the failure of state management in the 1990s. Forestry policies were reformed to restrict rights of use, and economic incentives modified to ensure the sustainability of forest resources and include local populations in their use. This was done through procedures ranging from participation in forest exploitation to the decentralisation of legal controls over the use of forest resources.

Over time, the following key principles of *good forest management* were identified (in theory, at least):

- taking account of the plurality of possible forest uses and, through this, of local practices. This principle was promoted through the concept of multi-functionality;
- the notion of 'subsidiarity' in decision-making centres, empowering local-level bodies to make decisions within a framework defined by a regulatory State;
- formalising international standards for forest exploitation.

However, implementing these principles conflicts with the economic concerns of supply chains and other interests. There is a good deal of legislation incorporating the principle of local control over forests, but few regulatory arrangements have actually been put in place. The new guidelines enabling local people to share the financial benefits of forest use are rarely enforced due to lack of management training in local institutions or decisions to restrict investment to the limited provision of infrastructures.

Nevertheless, there have been promising experiences with local forest management in several regions (Mexico, Brazil, Guatemala, Central Africa, etc.), supported by the growing demand for certified timber among Western consumers. With increasing awareness of global warming and the role that equatorial forests play in capturing carbon, it is high time for a 'fair evaluation' of how they can be protected.[70] The idea that forests could constitute a 'global public good' and of creating an 'international forest regime' is taking hold.

70. See A. Karsteny and R.Pirard, 2007, regarding the instruments for evaluation.

• Land registries, LIS, registration: the limitations of a technical approach

Land policies often involve the creation of land information systems (LIS) and land registries that are supposed to make mechanisms more transparent and provide security of tenure. Considerable resources have been invested in creating or updating these systems over the last twenty years, especially in urban areas,[71] in order to regularise tenure, promote ownership and improve local tax systems. However, numerous experiences have shown the limitations of this technical approach to land tenure.[72]

Many costly failures can be attributed to a narrow technical approach to land tenure and the persistent shortsightedness of Northern development agencies. Establishing land registries is often seen as synonymous with creating ownership rights, despite the fact that land registries have never engendered ownership rights. Land management is not going to be improved by superimposing land registries onto faulty legal systems.

In developing countries, and especially in Africa, land registries are put in place to reinforce land titles and registration procedures that can be traced back to colonial times. Cumbersome and costly procedures are supposed to provide State backing for ownership, even though ownership is not guaranteed by the State in most of these countries, where the land registries' role is purely fiscal.

Another reason why land registry projects fail is because they do not take account of the many different types of land tenure, or the coexistence of tenures based on different legal systems and sources of legitimacy. The centralised management of land registries on which all these projects is predicated is also highly problematic, as is the fact that it is difficult to decentralise information on land tenure without the involvement of local communities, especially in irregular neighbourhoods. In addition to this, land rights are often manipulated during land registration operations to exclude legitimate rights holders in favour of local and national 'elites'.

On top of all this, the laboriously created LISs are often inoperable because they rarely updated, either because there are insufficient resources to do so, or because this task is largely overlooked. A land registry is only relevant if changes (inheritances, sales, gifts, etc.) are recorded on a regular basis; otherwise it will only be a few years before the discrepancy between the actual and the documented situation becomes a new source of insecurity. Land tenure can only be updated in real time under certain conditions:

- when land is sufficiently valuable for local actors to be ready to follow the procedure for registering changes in tenure;
- when land administration mechanisms are accessible to them in both practical and economic terms;
- when they are designed to be reliable and transparent, and to function with low recurring costs.

Information on land tenure is a public good. It has several functions (to secure goods, provide information for purchasers and developers, etc., for taxation and to reduce conflicts); therefore, its costs cannot be charged solely to rights holders. More thought needs to be given to land administration mechanisms and their procedures, costs and accessibility, and any invest-

71. Not forgetting rural land registry projects in Cambodia and various Latin American countries.
72. Durand-Lasserve, 1993.

ment in establishing a LIS should be dependent upon the system being viable. This is rarely the case, however, due to lobbying by groups that produce land management software, computer equipment and training sessions, and land surveyors in developing countries who see LIS as an opportunity to gain access to new technologies.

Another approach taking shape at the international level aims to better articulate land policies and development projects by linking efforts to improve security of tenure with development operations. In urban areas, this approach links the provision of local infrastructures with securing tenure in order to limit the risk of the poorest people being evicted by market forces. In rural areas, it begins by recognising the diversity of existing rights and formalising only the main rights through inexpensive procedures adapted for this purpose.

What is needed is a wide range of legal tenure options, with alternatives to individual ownership where it is not justified. Thus, *community land trusts* (collective titles) have been established in Kenya to ensure the security of existing tenures. Another example is the policy that has been in place since 1984 in irregular urban neighbourhoods in several States of the Indian Union, whereby occupants settled on public lands are allocated renewable, long-term occupancy permits (10 to 20 years).[73] Although these are not transferable in principle, they may be passed on through inheritance, thus securing tenure without exposing beneficiaries to market pressures.

Finally, this approach encourages the registration of land rights – including rights of use – at the local level, by involving the communities concerned in registration while ensuring that local registration systems are compatible with the national system.[74] This requires deconcentrated land administrations, or even decentralised mechanisms, and a focus on the continuum of land rights and processes to improve and formalise tenure through the rehabilitation of prescriptive rights (as in Brazil).[75]

The justifications for rights registration policies

Many occupants of agricultural and urban lands are in an insecure position because they do not have recognised rights, particularly when public interventions (development or construction works) combine with market pressure, as informal land markets do not allow actors to secure transactions that have not been registered.

Empirical observation of the consequences of not having land rights (administrative occupancy or housing permits) or land titles (real rights, such as ownership rights)[76] has often led to the assumption that formal recognition of ownership rights is necessary to secure occupation, give access to credit, allow investments, and encourage land markets in order to ensure that land is transferred to the most productive actors.[77] It is argued that individual land ownership leads to more rational management of urban lands, increased local tax revenues, access to mortgages and the provision of basic services and utilities in irregular neighbourhoods, by ensuring that costs will be recovered and improving security of tenure.[78]

73. Banerjee, 2002.
74. Christensen *et al.*, 1999.
75. Fernandes, 2006 and 2007.
76. Deininger et Feder, 2008.
77. Tax systems are rarely put forward as the main argument.

According to this line of thought, formal recognition could therefore constitute one of the preferred means of poverty reduction.[79]

This debate was revived by the publication of Hernando de Soto's book in 2000. De Soto establishes a correlation between private ownership and prosperity in Western countries, and attributes the chronic poverty in developing countries to the shortcomings of their prevalent ownership regimes. He maintains that poor people do have assets, but that lack of legal recognition reduces them to *unproductive capital*: without title of ownership, people cannot gain access to credit or invest. Therefore, the debate focuses on the impact of land ownership on development. A number of international financial institutions and development agencies have supported De Soto's theses, despite their ideological nature and the conceptual and methodological criticisms levelled at them by numerous observers.[80]

Systematic attribution of individual property titles would entail reform of the legal framework for land management, the simplification of procedures for recognising tenure, and policy reforms that combine decentralisation and democratisation.[81] These conditions are rarely present in urban areas of developing countries, which are characterised by diverse local situations, lack of resources, poor administrative management capacity, and corruption.

Furthermore, as with land registration, titling programmes only make sense if changes in tenure are registered, which assumes that the protagonists have an objective interest in such programmes and that the State has put in place a simple, reliable, inexpensive and accessible mechanism for registration.

There are a number of technical, administrative, political, economic and cultural reasons why implementing this kind of policy on a large scale is rarely possible, and not always desirable.[82] Administrations in developing countries lack the financial and human resources required to implement policies using existing procedures to systematically allocate title deeds. If they wanted to regularise existing neighbourhoods in a city of 6 million inhabitants, the administrations (Land and Land Registry) would have to issue 400 land titles every working day for 10 years; 600 titles if these neighbourhoods grew at a rate of 4% per annum. Issuing each title involves a series of complex operations to identify rights holders, settle disputes and carry out land surveys and demarcation, as well as administrative operations to issue, allocate and register titles.

Moreover, using current procedures to provide widespread access to ownership and regularise tenure on a national scale would be well beyond the reach of government budgets; and even supposing that corruption was no longer an issue, the financial contribution required from beneficiaries would be way beyond the means of the households concerned. It is also unclear how the tenancies of a large proportion of the households in irregular neighbourhoods could be regularised.

78. Payne *et al*., 2007; Durand-Lasserve and Selod, 2007; Du Plesse and Leckie, 2006: this usually involves issuing individual ownership titles, although there are policies to register rights of use but not rights of ownership, as in Vietnam (Kim, 2007) or currently in Ethiopia.

79. Brother *et al.*, 2007.

80. Mitchell, 2006; Lincoln Institute of Land Policy, 2008.

81. World Bank, 2001.

82. Durand-Lasserve, 2004 b.

Criticism of de Soto's analysis has stimulated debate about the impact increased ownership would have on development. The World Bank recently adopted a less ideological stance than its traditional one, noting that "*It would be dangerous to promote programmes to allocate ownership titles as the only response to poor people's problems. They would not be able to free up the capital on their own*".[83] Titling programmes do not necessarily increase the value of poor people's assets because practical problems reduce the potential gains of such initiatives. In any case, the process would be expensive and rarely suited to the diverse forms of land rights and tenure. Furthermore, it is difficult to see how two of the objectives of World Bank support for titling programmes could be reconciled: securing tenure for households living in irregular neighbourhoods on the one hand, and securing investments on the other.

Limited results of policies to regulate tenure

Titling programmes have generally produced disappointing results, despite support from financial institutions and several bilateral development agencies. The titling programmes promoted in rural areas in the 1970s were usually accompanied by even bigger privatisation reforms, except in Thailand in the 1980s and Cambodia today. In urban areas, the programme launched in Peru is the only one that seems to have achieved its quantitative objectives, but even there changes in tenure are not registered and the informal system has taken over again…

Therefore, titling policies seem to have had little impact on security of tenure:[84]

- informal land tenure is often less insecure than it is thought to be;
- although allocating ownership titles provides some protection against eviction, attribution processes are biased, and the market pressure created by the regularisation of neighbourhoods often makes the poorest households vulnerable to eviction.

Examples from Lima,[85] Buenos Aires[86] and Mexico[87] also show that they have little impact on access to credit when there is no effective mechanism for financing mortgages, especially in rural areas where the banking system is not very developed.

There are similar problems with access to credit in the agricultural sector. In fact, policies favouring investment may even have a negative social impact by further marginalizing social categories that do not benefit from either the regularisation of tenure or access to credit. They often have a limited effect on the land market, even if it is informal, and the greater incidence of transactions tends to benefit more affluent households.Where these policies have been evaluated, it appears that they can have a measurable impact on improving housing and amenities in urban areas.[88] The observed improvements are linked to households' perception of the security provided by land titles, and to changes in the social composition of neighbourhoods that usually accompany regularisation. Impact assessments show that regularisation stimulates the market[89] and increases the price of land, excluding groups with the lowest incomes. Elsewhere (in Vietnam), it can be seen that titling is not a necessary condition for the development of a land and property market.[90]

83. Buckley and Kalarickal, 2006, p.
84. Platteau, 2005, Payne *et al.*, 2007.
85. Field and Torero, 2006.
86. Galiani and Schargrodsky, 2005.
87. Varley, 2002.
88. Angel *et al.*, 2006.
89. Lanjow and Levy, 2002 ; Deininger and Feder, 2008.

Insecurity in rural areas[91] is often overestimated, and titling initiatives have to contend with multiple local concepts of land tenure and the collective aspects of land management. Therefore, the enforced individualisation of rights can lead to conflict and social exclusion. Insecurity of tenure is rarely the main factor limiting productivity: the organisation of supply chains and markets, and access to inputs, credit and advice often prove to be greater constraints to production.

The interactions between land markets and other markets (agricultural and industrial products, labour, credit, etc.) ultimately limit the scope of policies to regularise tenure through access to ownership.[92] It may even be counter-productive to liberalise land markets when other markets are functioning poorly, as this serves to concentrate land in certain hands to the detriment of small farmers. Titling is seen as a necessary condition for investment, but it is certainly not a sufficient condition for it, as supportive credit and tax measures are also vital for investment. Therefore, such policies are neither the most effective nor the cheapest way of improving security of tenure.

Seeking alternatives to classic regularisation

It is rarely possible to promote security of tenure through large-scale initiatives to issue individual ownership titles, which are neither desirable nor always possible. Local actors are certainly seeking recognition of their rights, and greater security of tenure is a central objective of land policies,[93] but it is important to consider other responses to the problem.

The first step could be to reduce the legal causes of insecurity by focusing on recognition for local rights and instituting simple procedures to register changes in tenure.[94] This could be accompanied by more global policies to address the question of credit where the individualisation and productive use of land justifies titling. The final element of this response would be to legalise other forms of tenure than titled ownership by recognising the diverse systems of rights regulating access to land (rural land plans in West Africa) and the legal status of productive land use, using simple methods to identify and map rights.

• Reforming land legislation and land administration

Legal and administrative measures are required to reform land policies. However, the institutions in charge of land are often resistant to land legislation reforms (land laws and codes, etc.), which may be further undermined by economic liberalisation and State disengagement.

Land legislation reforms

There have been numerous reforms over the last twenty years, usually prompted by the failure of state land management policies, and accelerated by economic globalisation, the need to encourage investment and pressure from international financial institutions and Northern

90. Kim, 2007.

91. Atwood, 1990 ; Bruce and Migot-Adholla, 1994 ; Platteau *et al.*, 2001.

92. "*If the problems of incentive and risk are not resolved satisfactorily on one market, they have repercussions that spill over onto other markets. Similarly, the issues of power, collusions of interest and distortions in the markets for labour, credit and agricultural products result in a lack of competition and anomalies on the markets selling and renting land. Existing analysis of land markets is often flawed because insufficient account is taken of these two sets of relations between markets*" (Binswanger *et al.*, 1993).

93. Fourie, 1999 ; UN-Habitat, 2000.

94. Payne, 2002 ; UN-Habitat, 2003 ; Millennium Project, 2003.

development agencies. The aim of these reforms has been to liberalise land markets through constitutional recognition of ownership and by removing the obstacles to market development in a context of economic liberalisation, State disengagement and the devolution of responsibilities for land management and administration to local governments.

Many of the problems associated with moves to reform land legislation[95] can be attributed to the enduring legacy of the colonial system, whereby the administration creates ownership in order to remove indigenous populations from their lands and clear the way for human settlement (the Torrens Title Act of 1858 in Australia).[96]

Another obstacle has been the difficulty of enforcing legislative reforms in the face of plural norms, resistance from the populations concerned, and opposition from land administration officials who not only see their usual work methods disrupted by these reforms, but also stand to lose the economic benefits of working at the heart of the land allocation system.

Reforming and 'modernising' land administration

One of the conditions for effective land policies is a strong land administration. Since administrations in developing countries are usually characterised by their lack of resources and patchy or unreliable information on large parts of the country, policies to modernise the system by registering rights and updating information on land are hampered by a number of human and financial constraints (skills and administrative resources).

Nor is it simply a problem of resources. The cumbersome and complex procedures and economic stakes associated with land tenure are also a source of corruption and abuses of power. Land administration is a prime arena for vote-seeking in many countries, and this is something that reform processes need to take very seriously if they are to succeed.

There are several possible approaches to improving land administrations:

- Make the administration effective. This can be done in several ways: by simplifying procedures, deconcentrating the administration, creating simplified land information systems, computerising registries and improving transparency. However, it is difficult to change the way that administrations function without changing the law;
- Introduce new local mechanisms to register previously unrecognised rights (such as the land kiosks in Madagascar, and community land management in rural Benin);
- Radical reform of the land administration, institutions (land affairs and registry), legislation (land codes and laws) and procedures for allocating and registering rights and changes in tenure (ongoing World Bank programmes, the regularisation programme in Peru and, according to H. de Soto, attempts to implement such programmes in Peru, Egypt and Tanzania).

Therefore, certain choices need to be made before the land administration can be reformed: decisions about the types of rights that will be recognised and how they will be managed, modes of land governance, and the role of the institutions charged with participating in land administration in the broad sense, including the registration of rights and changes.

95. Renard, 2003.

96. Comby and Gerber (2007) summarise it as follows: (1) the conquered territory is considered as vacant land; (2) the colonial administration marks out the land according to a pre-established parcelling plan; (3) parcels are allocated to settlers for cultivation or building; (4) certified productive use confers the right to ownership title; (5) the titles issued are registered by the administration, which guarantees their validity.

Particular attention then needs to be paid to the reform process itself, to ensure that it is not blocked or subverted by different logics, interests or established patterns of behaviour.

• Two types of land tax

There are two main categories of land tax:[96] annual levies on ownership, use or occupation of a piece of land (or building), and periodic taxes on changes of tenure (when land is assigned or inherited, leases signed, deeds registered, etc.). These two types of tax have diametrically opposite effects, especially in poor countries.

The first type, *annual taxation*, encourages landowners to make full use of, assign or rent their land, and discourages them from land hoarding or claiming rights to land that they do not use productively. This form of taxation has always existed, or has certainly been around since farming began; and was always paid in kind before financial settlements were introduced. The first land registers were intended to spread the load more equitably: charges were initially shared between villages, then between neighbourhoods in the same village and then tenants in the neighbourhood, whose names and approximate landholdings were recorded. For many years these taxes accounted for a large proportion of public resources. In countries where land rights are still ambiguous, annual land tax offers a considerable collateral advantage in that proof of payment also constitutes proof of land ownership. In civic terms, it introduces the idea that ownership is a (fiscal) responsibility before a privilege; in economic terms, it is beneficial in that it socialises income.

The second type, *tax on changes*, is a more recent form of taxation based on the existence of a compulsory system for registering changes in land tenure. It is more difficult to collect, but also less onerous as it is those who are liable for the tax or their lawyer who engage in the registration process. In poor countries where tax rates are high and the rule of law still fragile this kind of tax soon becomes a strong incentive not to formalise changes in tenure: formalisation is postponed, usually indefinitely. In most developing countries the tax on changes serves to deregulate the land tenure system without being particularly beneficial, as it is rarely paid.

Therefore, the most supportive fiscal strategy for development is to keep taxes on changes in tenure to a minimum: ideally, they should simply correspond to the overall cost of administering registration, which can be reduced by simplifying the registration procedure (but not economising on the physical conservation of documents). Conversely, the fiscal administration should focus its efforts on annual tax recovery wherever land has the potential to generate significant revenues, especially in urban areas.

This strategy requires basic RFU-type procedures – with the emphasis on basic: no matter what land surveyors say, a precise list of parcels is not needed to recover taxes effectively; a rough sketch is sufficient. So it is reasonable to set a simple rule that the technical and administrative costs of raising land tax should never exceed 10% of the final tax product (it is 4%-8% in developed countries).

It could be established on a flat rate basis according to geographic zone (and type of building), set at 1% of the market value, which is already high, and applied wherever a significant market exists, including in irregular neighbourhoods. In rural areas, the feasibility of the

97. Comby and Renard, 1985.

system should be examined on a case-by-case basis according to the degree to which agriculture is monetarised. It could also be made progressive, by introducing a threshold corresponding to the value of a family farm operating at subsistence level, as it is important to ensure that land tax does not become a mechanism for dispossessing the poorest people.

• Land policies that respond to the challenges of the 21st century

Tackling the challenges of diversity, scarcity and sustainable development calls for proactive land policies that can reconcile economic growth with equity, ensure the economic and social integration of rural and urban populations, build a framework that secures economic activities, safeguard the environment, and break with historical legacies that perpetuate exclusion and poverty.

Given the 'shortcomings' of the State, the markets and communities, this is clearly not the time to seek miracle solutions that are entirely State- or market-oriented. Concrete solutions are needed, centred around social actors who are carriers of change in a productive interaction between market-based, public and associative regulations deployed for social and political objectives. The need for regulation at different levels – global, national and local – is becoming increasingly obvious, particularly the regulation of market mechanisms. This is important both in terms of economic effectiveness[98] and equity, as market-led land allocation minimises vote-catching and nepotism. Developing countries have little experience of the widespread market regulation seen in industrialised countries.

This type of change is primarily driven by political will. Shifts or changes in land policy are often intended to reduce the social tensions caused by unequal land distribution, and remove obstacles to investment and production by adapting interventions to land systems and dominant forms of tenure. Although foreign institutions (aid and development agencies and financial institutions) have mobilized considerable resources behind such initiatives, many run into difficulties when the support ends and they are taken over by national actors.

Great vigilance is required when formulating and implementing land reforms. These reforms are not applied to a blank canvas: they challenge established positions, disrupt habits, redistribute the cards, and have to contend with the active interests of certain actors and inertia of others. Setting out guidelines in a document does not constitute a policy. Policies are deeds, the outcome of the practices effected by everyone involved in their implementation. Given the differences in actors' understanding of policies, their interests, sectoral or disciplinary visions, the institutional logics of the various organisations and institutions concerned, and the contradictions and grey areas in operational mechanisms, etc., there are bound to be discrepancies between the intention and the practice.

There is no universal recipe for 'good policies'. The definition of 'a good policy' is the outcome of democratic debate in each country, according to its history, the issues at stake and its institutions. Creating new forms of territorial governance is a crucial step in constructing land policies; not by simply *modernising* the land administration, but through a process of revision that takes account of new rights and, little by little, helps build new institutions that are equipped to deliver effective and accessible services.

98. Merlet *et al*., 2006.

PART 4

Position of development aid agencies

The reappearance of land tenure in cooperation policies

• The new socio-political deal and emergence of land tenure as an issue

Land tenure only became a major concern among development aid agencies in the mid-1980s, when several factors pushed it up the international agenda:

- Policies of economic liberalisation challenging state ownership and authoritarian state interventions, and encouraging the development of a land market;
- Worsening land-related tensions in several parts of the world due to demographic growth and increasing scarcity of land;
- Processes of democratisation encouraging local populations to claim their land rights and highlighting the land tenure aspect of social questions (Brazil, South Africa, etc.).

Economic liberalisation and rising tensions over land

Worldwide, the end of the 20th century was marked by policies of economic liberalisation and dwindling opportunities for free access to land and natural resources. Demographic pressure, economic growth, the emergence of new power relations between nations and regions, democratisation and the affirmation of individual and collective land rights led to a redefinition of the rules regulating rights of access to land and accelerated the appropriation of land.

The phenomenon of social exclusion is becoming more acute in urban areas due to the multiple systems of rights and legitimacy in land administration and the proliferation of irregular neighbourhoods characterised by poverty and precarious occupancy.

Agrarian reforms are on the rise again in rural Latin America, with the emergence of civil society groups and democratisation processes set against massive agro-industrial land expansion. Meanwhile, many of the growing number of conflicts in sub-Saharan Africa are associated with access to land and politicised claims to local identity that overshadow the economic and social issues at stake.

The growing power of civil society

In the last decade farmer organisations and residents associations in precarious neighbourhoods (who often live under the constant threat of expulsion) have become increasingly determined in claiming their land rights. The emergence of organised grassroots land management systems has been an important factor in changing land policies, securing recognition for indigenous territories in Latin America, for example. Numerous bodies are supporting these initiatives, although their socio-economic impact on territorial development has yet to be evaluated.

These movements are using forums and networks to establish their presence and extend their influence. Thus, the International Conference on Agricultural Reform and Rural Development (ICARRD) would not have been possible without the efforts invested by international farmer movements (*Via Campesina*, etc.) and ROPPA, the network of West African farmer and producer organisations.

NGOs intervening on land tenure and housing in urban areas tend to form federations, which are supported by NGOs working on particular themes or development and environmental issues.[99] University institutions (especially Anglo-Saxon institutions with links to aid and cooperation agencies) and bi-lateral development agencies (particularly Scandinavian agencies) are increasingly supporting these initiatives, which are also attracting the attention of international financial institutions.

Reformulated objectives for land policies

Many recently formulated land management objectives reflect these changes in context, prioritising integration by combating evictions[100] and attempting to respond to the diversity of local situations by offering a range of tenure options, focusing on recognition for occupants' rights, regardless of their legal status, and involving all actors (even informal ones) and community organisations in decision-making. Above all, they emphasise the need to decentralise responsibilities for land management. [101]

The new approach that is emerging promotes the consolidation of land rights *from the bottom up*: formal rights are acquired through actual and continued land use, rather than being created *from the top down* (attribution of ownership by the State). The principle of acquisitive prescription is being rehabilitated in a growing number of countries: thus, peaceful, unchallenged occupation of a piece of land for 15, 20 or 30 years gives the occupant the right to be recognised as its owner.

• Unification of land markets and social integration

In the 1990s the World Bank, organisations from the United Nations system and civil society groups played a key role in intense national and international debates about how to adapt land policies to the economic, demographic and environmental situation. Two main approaches were identified, which are both contradictory and complementary.

99. Mitlin and Satterthwaite, 2004.
100. Kombe and Kreibich, 2000.
101. International Land Coalition, 2007.

Unifying markets and integrating systems of individual ownership

The first approach focuses on incorporating different legal systems into a single system based on private property guaranteed by the State, and on unifying land markets by registering rights and regularising tenure through access to ownership. This stems from the idea that the difficulties encountered in attempts to reform land policies are due to the survival of traditional land management practices and problems in the land markets. The unification of markets is posited either as a prerequisite, a measure to support infrastructure projects or, finally, as a medium- or long-term objective.

This approach is promoted by financial institutions, particularly the World Bank, which argued the case for it in various documents throughout the 1990s. The objective is to develop a system of property rights that can be sold on the market, which entails registering rights and regularising tenure. In informal neighbourhoods in rural areas, the emphasis is placed on attributing ownership rights to facilitate land transactions and give occupants some legal protection, in the hope that this will allow households to acquire housing suited to their needs and income,[102] and encourage investment and greater agricultural productivity. This approach was subsequently amended.[103]

Various authors have argued that there is an economic justification for securing occupancy through property rights and establishing standardised legal systems, and that this also has social benefits.[104] However, the effectiveness of this approach as a means of tackling poverty and integrating the poor into the economy is now being challenged, as it has neither facilitated or limited the growth of irregular neighbourhoods, nor ensured that they have basic infrastructures. It is in the process of being redefined while the role of the State is reconsidered.

Recognising the diversity of rights: the preferred means of social integration

The second approach focuses on recognising the diversity of rights held by individuals and family groups, on local land management mechanisms, and socio-economic integration of the population. Emphasising the fact that the difficulties in implementing land policies are largely due to unsuitable tools and procedures, the diversity of situations and unequal distribution of wealth, this approach promotes formal recognition of the various legal systems regulating land tenure.[105] This is the approach most commonly adopted by organisations linked to the United Nations, particularly the FAO, UNDP and the UN-Habitat Programme. It is set out in the *Habitat Agenda* adopted by all member states at the end of the United Nations *Conference on Human Settlements HABITAT II* in 1996, and has subsequently been regularly reaffirmed in United Nations declarations and resolutions and the *Objectives of the Millennium Development Goals*.

102. World Bank, 1993.
103. Buckley and Kalarickal, 2003b; Deininger 2003; Deininger and Feder, 2008.
104. De Soto, 2000 ; Feder and Nishio, 1999.
105. United Nations Development Programme, 2006.

• Building a consensus

The last nine years have seen a progressive convergence between the objectives of international financial institutions, which take more account of the political and social dimensions of urban development when defining their land strategies, and the objectives of organisations within the United Nations system, which have become more aware of the constraints of the market and globalisation. The World Bank is redefining its approach to the issue of urban land by distancing itself from rigid policies of systematic titling.

In the urban sector, this change is reflected in the *Cities without slums* programme, coordinated by the *Cities Alliance* composed of the World Bank, the *UN-Habitat* programme and several bilateral development agencies. In rural areas, the 2003 *Policy Research Report*[106] marked a significant shift in recognising the economic efficiency of indirect modes of productive use and the legitimacy and effectiveness of customary regulations. As part of the effort to increase security of tenure, professional organisations such as the International Federation of Surveyors (IFS) are engaged in detailed analysis of the instruments and reform of the legal framework.[107]

Aid and bilateral cooperation agencies apply these two approaches unequally, depending on the country concerned. For example, agencies from Scandinavian countries tend to focus on the social objectives of urban land policies (universal access to land, services and infrastructures, social integration of neighbourhoods, etc.), while American agencies (USAID and MCC) favour reform of the legal framework to allow the market to develop freely and integrate the informal sector into the formal market. German (GTZ), English (DFID) and French agencies stand somewhere between these two approaches, as does the European Union.

The current changes reflect a new process of recognising and rehabilitating the role of the State following its disengagement from land management and the liberalisation of land markets in the 1990s. The World Bank devotes a chapter of its land policy report to this, stating that "*land rights and land markets cannot function without State support in the form of public goods and a favourable policy environment. When the markets for other factors of production do not function well, it is unlikely that unfettered land markets will lead to the best social outcome.*" Therefore, it is the responsibility of the State to "*put in place the institutional framework that allows markets to function, but to go beyond the markets so that concerns about social issues and equity can be addressed, or to regulate markets so that externalities and other market shortcomings can be properly taken into account*".[108]

A consensus is being built around the following political objectives:

- To use policies to promote sustainable economic development through efficient use of land and natural resources, by allocating land to those best able to put it to productive use, providing access to credit and securing investments;
- To encourage peaceful social relations by combating inequality and exclusion, which generate tension and conflict, and by coordinating and regulating different land uses among different groups of actors.[109]

106. Deininger, World Bank 2003.
107. IFS Commission 7, 2004 et 2005.
108. Deininger, World Bank 2003.
109. Land Equity, 2009.

The keys to donor engagement

Development partners are often hesitant about getting involved in land tenure because it is a sensitive political issue. It is also a complex one, with the potential to generate conflict. External interventions may be of questionable legitimacy, and numerous interventions on land tenure have had negative effects on local populations, leading to certain actors or women being excluded from developments, land grabbing and heightened political tensions, etc. Therefore, caution and vigilance about the social impacts are required at all times.

Having reflected on the issue, the international community has defined certain conditions and modes of engagement for cooperative interventions on land tenure. In its *Land Policy Guidelines*, the European Union suggests that land interventions should take account of:

- Modes of access to land (unequal access to land, distribution of rights and extent to which they are formalised, modes of conflict resolution, links between land tenure and income distribution);
- The political, legal and institutional framework for land management (policy origins and situation, reforms of governance, policy formulation and implementation);
- Opportunities for change (ongoing or nascent reforms, interventions by each category of actor, including donors, progress of research);
- The relevance and viability of the course of the reform or intervention (social and environmental impact, economic and institutional viability).

• Principles defined by the European Union

The principles defined by the European Union[110] constitute an overarching framework of reference for the member states and commission that adopted them:

- All land policy reforms are specific. Donors should avoid predetermined plans and provide tailored support for these processes, appropriate to the social and institutional contexts concerned.
- Land policy reforms are complex processes that require State engagement and support from all sectors of society. Donor support should be neither dogmatic nor intrusive, and should be based on sound information about local contexts.
- Donor support should be accompanied by dialogue at the highest level with the State to encourage debate and coordination between ministries.
- Reforms are long-term processes that merit an iterative approach. Therefore, donors should support them over a long period. Coordinated approaches help reduce the risk of early donor withdrawal.
- Legal reforms that take account of gender are essential, although not sufficient, to secure access to land for both women and men.
- Donors should contribute to better understanding of opposing interests and strategies in order to encourage efforts to seek consensual solutions.

110. European Union, 2004.

- Donors should support the design and implementation of reforms by mobilising research and encouraging debate about recurrent experiences and emerging issues.
- Support for programmes should be preceded by evaluation of the risks of increasing the exclusion of women and the poor, or dispossessing ethnic minorities or indigenous peoples.

• Seven complementary principles

Interventions should also respect the seven following principles, which complement the EU principles summarised above:

- Avoid the 'logic of supply' driven by donors' ideas and skills rather than by national needs. There is ample evidence that initiatives with the dual aim of supporting land policies and promoting techniques, materials and know-how from the donor country tend to be inappropriate and ineffective.
- Support national procedures and projects that are accepted by the populations concerned. Without consensus on their orientations, even the most relevant projects will get bogged down, meet widespread resistance and have their objectives subverted.
- Define interventions according to the maturity of the debate on land tenure, the problems that need to be addressed and solutions that need to be adopted, which may or may not be identified and shared. Some interventions may support certain actors who are seeking to get a problem recognised or encourage public information. These can also accompany reflection on a reform or a management tool.
- Ensure that the intervention and its outcomes have a sound institutional footing. The public bodies responsible for land often interpret problems according to their mandate, discipline and institutional logic. As there is not always a consensual framework to work within, one of the functions of cooperation may be to facilitate the emergence of such a framework.
- Avoid promoting technology transfers (land registries, LIS), legal reforms (land laws, taxation), institutional reforms (modernisation of administrations) or procedural reforms (attribution or registration of rights, regularisation of tenure) without taking account of local legal traditions and institutional capacity to accompany change in the long term. Avoiding implicit models involves an understanding of a whole range of international references and sound knowledge of the country.
- Take schedules, progressiveness, the conduct of reform processes and training needs seriously as conditions for success.
- Beware of contradictory procedures that compromise national institutions' ability to steer reforms. Every donor has their own policy, instruments and equipment to deal with different issues (modes of preparing and funding actions, reaction speed, etc.).

France's contribution to land policies

Although the French Cooperation has more limited financial resources than many multi-lateral institutions and certain bi-lateral cooperation institutions, it does have certain advantages in the countries with which it is most familiar:

The history of land tenure in France and Europe: France has experienced more varied modes of land management than the civil law suggests, having built on the basis of peasant production and created institutions to regulate land tenure (structural policies, social housing and planning policies) and involve agricultural organisations in policy implementation.

It can draw on its long experience working in various regions around the world, and the research and expertise of French institutes, consultancy firms and research centres based in a variety of countries.[111]

The French Cooperation is recognised for its considerable efforts in the field of land tenure over the last twenty years, the institutional support it has provided in several countries, and its contribution to several major innovations: addressing, urban land registers, rural land plans and rural fuelwood markets.

However, the French Cooperation does need to contribute more to the international debate on land tenure. So far, it has focused on bilateral interventions requiring concerted donor actions, and has only recently started working in a small way with civil society organisations intervening on land issues.

• A special contribution on rural West Africa

The *Land Tenure and Development* technical committee began contributing to reflection on land policies in 1996, first in rural Africa, and then extending into urban areas and other countries in 2005. Bringing together experts, researchers from different disciplines and French aid agents, the committee has progressively built a shared perception of land issues rooted in current knowledge and practical experience. It has coordinated several syntheses and pieces of research on land tenure, steers crosscutting actions on land tenure by the French Cooperation, and recently set up the *Land tenure and development* website (www.foncier.developpement.org) to make this knowledge available to all actors in this arena.

The results of these initiatives, particularly research findings on local land practices, have enriched the policy debate, provided the basis for a new analytical framework and training exercises, and are stimulating francophone research into land tenure.[112]

The French Cooperation was involved in formulating the World Bank Policy Research Report, in conjunction with the German and British development agencies, and has helped gain recognition for the question of local rights. France was also a driving force behind the European Union Guidelines, along with Britain; and has established ongoing relations with the *Millennium Challenge Corporation* (MCC) around interventions in Burkina Faso, Benin and Madagascar.

111. French research institutes under the joint auspices of the Ministry for Foreign Affairs and the ministry responsible for research.

112. Cf. the international symposium *At the frontier of land issues*, held in Montpellier in May 2006.

• Contributing more to multi-lateral urban land tenure programmes

French cooperation in town planning and development has long been limited to institutions (redefining legal and regulatory frameworks, reforming land laws) and land administrations (putting in place land registries or other LIS) in francophone sub-Saharan Africa. However, at the beginning of this decade it joined other bilateral cooperations supporting City Alliance activities instigated by the World Bank and United Nations, whose two main programmes focus on land tenure: the *Urban Development Strategy* and *Cities without slums*.

It also has ongoing working relations with the UN-Habitat programme, especially in research, participating in reflection on security of tenure since the mid-1990s, the *Global Reports on Human Settlements*, and organising the first three global Urban Forums. French researchers are also involved in World Bank reflections on land policies, management and administration. In addition to this, long-established individual relations between researchers participating in symposiums and seminars, and specialists meeting on urban research and land issues have recently been consolidated at the institutional level.

Proposed positioning for French aid

The underlying themes running through the support provided by the French Cooperation constitute a particularly 'French approach': recognising the diversity of land tenure situations and norms, adapting actions to each country's socio-economic context, encouraging inclusive procedures to help develop policy choices without interfering, and working in coordination with other donors.

While these themes are certainly relevant, they need to be applied more effectively. Therefore, the strategy for cooperation on land tenure should be built around making these themes more explicit and systematic, and better incorporating them into the consensus emerging at the global level.

• Future directions

Donors are broadly agreed on the need to respect three principles when formulating and implementing programmes, to:

- Secure economic development and growth;
- Ensure that as many people as possible have equitable access to land and secure land rights;
- Protect the environment in order to support sustainable development.

In accordance with these principles and with the *Paris Declaration* (OECD, 2005), the White Paper proposes that the objective of French aid should be to promote democratic land governance. Good governance and greater security of tenure are complementary aims: local actors' tenure cannot be secured without taking account of the plurality of existing norms, and this plurality cannot be managed without recourse to the mechanisms of land governance. Therefore, efforts should focus on securing land tenure, supporting national procedures for public debate, and formulating and implementing inclusive and efficient land management policies in rural and urban areas.

These two main themes are consistent with current knowledge and the growing international consensus on land issues. Provided there is sufficient political will and agreement on the aims, they can build on ongoing actions and support public debate through concerted processes to formulate and help implement land policies. This kind of procedure will benefit from not fitting exclusively within an intergovernmental framework, as civil society organisations involved in land initiatives need assistance to counterbalance the weight of lobby groups.

This kind of support for State and civil society initiatives will need to harmonise with the social and political dynamics of the countries concerned, through processes that build the capacities of the various actors involved. This will require planning instruments and financial tools, continuity and responsiveness.

This White Paper proposes that the French Cooperation articulates its interventions with those of other donors, in order to incorporate land issues into national assessments and *Framework partnership agreements* (FPAs) with other countries. In each country the French Cooperation should focus on three priority themes negotiated with the central government, and channel most of its resources into ensuring that the issue of land and extent to which it is prioritised are discussed during negotiations on partnership strategies. While it is logical that land should only be a priority theme if the central government requests this, it is also important that the land tenure dimensions of sectoral entry points (rural development, improvements and town planning, decentralisation, etc.) and the inherently political aspects of land policies are systematically taken into account and dealt with appropriately. It is particularly important that no development scheme should be funded without considering its land tenure component.

The White Paper proposes that interventions in each country pay particular attention to themes and programmes that prioritise the following objectives:

- Capacity building to enable public actors, local government and association officials (especially from farmer and residents' organisations) to participate in public debates and land management. They need to be able to access information, and make and defend their own assessments and proposals.
- Strengthen national research capacities and public and independent expertise likely to contribute to knowledge of the issues at stake and policy formulation and monitoring. Designing and implementing land policies requires knowledge of local situations and the capacity to evaluate them; since it is important for civil society groups to be able to mobilize independent expertise, this could be the focus of a multi-annual training programme for officials and experts. Networks moderating the debate on land tenure should also be given institutional support.
- Support initiatives to debate land tenure policies in each country, using inclusive approaches to do so. Shared policy assumes that there is sufficient agreement on the diagnosis and main thrusts of the action, which is not necessarily the case. The objective is for (rural and urban) populations that are often excluded from the debate to be involved in participatory processes, something that requires long-term investment of the kind made by the French Cooperation in Mali between 1991 and 2005.
- Support the joint formulation of land policies. Such processes need time, method and resources. All too often the term '*participation*' is a cover for slapdash or subverted processes. Designing and implementing genuinely participatory processes requires

rigour, political will and a sound institutional framework, as well as resources and know-how.

- Provide operational support and expertise for land policy formulation, encourage skill transfers, especially in the area of governance, and support innovative approaches to securing land tenure. Revising land tenure policies calls for legal, institutional and methodological innovations, which need to be designed, tested, adapted and then implemented on a large scale.
- Support innovative approaches to land and territorial governance and the regulation of land rights markets, etc. by the population or the State. Appropriate intervention tools and procedures are needed to help resolve the key question of security of tenure and improve land administration. Experimental projects can be useful in refining such tools, identifying the conditions for their viability and developing the operational capacities needed for a change in scale.
- Improve the links between research and policy support to further debate on defining and implementing land policies, and help develop the synergies between research and practice essential for initial diagnostics and project design.
- Encourage impact assessments of the proposed reforms. These are complex operations, with multiple issues at stake. Their hypotheses may be refuted by practice or have perverse effects for certain categories of actor. Therefore, provision should be made for independent teams to assess the socio-economic and socio-political impacts of proposed reforms. International cooperation has a particular responsibility in this respect. In order to promote impact assessment, its principles need to be specified, indicators identified,[113] and the necessary resources mobilized. Much needs to be done to develop a culture of evaluation and ensure a more systematic contribution to international debates.[113] Such initiatives will be more effective if they are based on regional-level actions.
- Improve access to information and encourage exchanges of experience to support land policy formulation (policy briefs, regional workshops, sharing experiences). All actors need a range of information to enrich their analysis and frame their position, but it is often hard for both professionals and the communities concerned to access information.
- Offer actors opportunities to discuss their experiences at the regional level. Regional seminars and workshops help develop regional-level exchanges and knowledge about processes and innovations that enriches thinking and debate at the national level. The objective is not to publicise actions supported by France, but to get people to share their thoughts and experiences by breaking down the barriers between approaches, countries and actions supported by different cooperations, French- and English-speakers, etc.
- Develop knowledge by initiating thematic and comparative research on questions requiring further study. Analysis of situations and dynamics is very important in enriching the debate on land policies, and thematic research at the regional or sub-regional level can be helpful in clarifying the issues and evaluating their political implications.

113. Quan, 2006 ; World Bank, 2007.

114. International Fund for Agriculture and Development, 2007.

- Promote crosscutting legal, town planning, socio-economic and technical approaches (land registry and land information systems). Francophone countries in particular are characterised by continuing divisions between different approaches, which weaken the capacity to implement innovative procedures on a large scale.
- Reinforce the French pool of expertise on land tenure. The French contribution to analysis tends to come from individuals working in different institutions rather than a network with a sustainable base. Actions taken by the French Cooperation should be seen as an opportunity to enlarge this pool of skills.

Implementing all these guidelines assumes that the French Cooperation has the capacity to act in the long-term, and that it is not dependent on short-term projects whose renewal is contingent upon numerous unknown factors or changes of priority.

• Proposal to create a discussion group within the EU

During preparations for the World Bank *Policy Research Report*, GTZ, DFID and the French Cooperation made joint contributions to preparatory regional workshops, and a working group overseen by the European Commission commissioned work on the land policy *Guidelines*. These experiences confirmed the value of regular collaboration between European development practitioners working on land tenure, although despite being well received, the Guidelines have not been widely disseminated and are currently only available in English.

Therefore, this White Paper suggests that the European Union creates an institutional space for dialogue on land issues in developing countries, by setting up an informal discussion group to establish regular links between institutions intervening in the field of land tenure. Its function would be to observe and reflect; its objective would be to harmonise donor interventions at both the European level and between cooperation agencies and financial institutions.

This would allow members to engage with other donors reflecting on the obstacles encountered during past and present interventions, and to propose appropriate responses. It would also reinforce the French contribution to international debates, research and actions led by international institutions. All this would entail a more active presence in multi-lateral institutions, and a renewed European focus on implementing the EU *Guidelines* on land tenure.

• Two conditions: reinforcing the pool of French expertise on land tenure, and maintaining the *Land tenure and development* technical committee

The French contribution to analysis tends to come from individuals working in different institutions rather than a genuine network with a sustainable base. This objective calls for a larger pool of French expertise on land tenure, supplemented by training activities for technical assistants and agents in the French Embassy Cultural services (SCAC) and French Development Agency.

The *Land tenure and development* technical committee still has much to do in promoting more effective coordination between French actors, helping break down the divisions between research and action, encouraging better articulation between field operations and strategic analysis, and supporting greater involvement in international debates. Therefore, the technical committee should be maintained and supported in the coming years.

ANNEX A

Illustrations supporting the White Paper

A.1. Two political conflicts relating to land tenure

Example 1: Ivory Coast

Although the deep divisions that virtually partitioned Ivory Coast for several years were largely the result of a political power struggle over the succession to Houphouët-Boigny, this conflict also had its roots in the profound economic crises affecting the country's rural and urban populations.

In rural areas, the agricultural development model deployed since the 1940s entailed the constant extension of plantations and massive use of migrant labour (from Ivory Coast and Sahelian countries). This was no longer sustainable, due to land shortages and falling exchange rates. Land saturation strained relations between migrants and indigenous populations, raising questions about the way that these migrants had been settled through a kind of 'patronage' system (*tutorat*) with indigenous families. In urban areas, structural adjustment caused an economic crisis and undermined strategies to settle young men from rural areas, who then returned to their villages and attempted to turn the migrants that had settled there off their lands.

The politicisation of these tensions led to a polarisation between indigenous communities in forested areas and migrants from the savannah or Sahelian countries; a division that was exploited in the battle for political leadership, even though this had little direct bearing on rural issues (Malian or Burkinabé migrants are sometimes regarded more highly than their Ivorian counterparts). The combination of economic crises and political exploitation culminated in the violent expulsion of 'incomers' and challenges to migrants' modes of access to land, which previously been promoted by the administration. The 1998 Land law reflected this hardening stance on identity by restricting access to ownership solely to Ivorians; thereby ignoring the reality of land transactions (migrants frequently purchase land) and opening up opportunities for indigenous people to legitimise the withdrawal of land from migrants. The land law was revised as part of the Marcoussis agreement in order to help resolve the conflict, and is still used as a reference point by some actors.

Example 2: Guatemala

A violent civil war in Guatemala left over 200,000 dead and displaced a million people between 1960 and 1996. This former Spanish colony had regained its independence in 1821 under the direction of a land oligarchy, which controlled most of the land by expropriating it from the indigenous population and marginalizing Indian communities, both economically and politically. By the end of the 19th century American companies had gained control of a significant share of the economy and agriculture, and foreign investment was encouraged to such an extent in the 1930s that the United Fruit Company came to own 40% of the best land, the railways, telephones, telegraphs and ports. Some 70% of the land was controlled by just 2% of the population.

Following the inauguration of the first democratic regime in 1944, an agrarian reform was promulgated in 1951 challenging the interests of major landowners and American multinationals. In 1953, the government expropriated 947km? of uncultivated land held by United Fruit (about 40% of its land), redistributing the land among 100,000 families and compensating the company on the basis of the value declared on the tax registers. In 1954, a coup organised by the United States and neighbouring countries as part of their efforts to suppress communism put a dictatorship in the saddle, which survived a series of coups and remained in power until 1984.

In the 1960s a group of soldiers launched a guerrilla war following the failure of an attempted putsch, and gathered growing support on the back of land tenure and indigenous issues, and savage repression by the army and paramilitary groups. The conflict was slowly resolved and the country gradually returned to democracy after 1984. Peace agreements signed in 1996 prescribed, among other things, recognition of the multi-ethnic and multi-cultural character of the country, modes of resettling displaced persons, and agrarian and tax reforms. These peace agreements acknowledge the fact that regulating land issues is a condition for peace; anticipating the creation of land reserves, distribution of agricultural lands to poor farmers, confiscation of land that is unused or illegally obtained; and the introduction of a land tax. The most significant measure adopted by the Guatemalan government was the creation of the Fontierras land reserve.

Farmers wishing to buy land were given subsidised loans in accordance with a model of market-assisted agrarian reform. Ten years on, however, the results are less than impressive: the financial assistance provided by the State is meagre; more importantly the little land there is on offer is mediocre. Low land taxes give landowners scant incentive to sell, leaving the issue of land unresolved and weakening the peace agreements.

A.2. Agrarian reform, collectivisation and decollectivisation in Vietnam

In 1945, at the beginning of the war of independence, the Vietnamese Socialist Party embarked on an agrarian reform in order to address unequal access to land and strengthen its social base in the country. North Vietnam went through a full agrarian reform in the late 1960s, with irrigation works to make double rice cropping in the Red River delta more productive, and

land collectivisation intended to "advance progress towards socialism" and facilitate technical progress (large-scale gravitational irrigation, large plots, etc.).

Work brigades in village cooperatives were responsible for agricultural production. However, this remained low. Families retained the use of the gardens and ponds attached to their houses, and this was where farmers focused their efforts. By the time the war ended in 1973 it became clear that collectivisation was not having the desired effect, as the low yields and virtual food shortages could no longer be attributed to the war effort.

The government's initial, remarkably egalitarian, experiments with land redistribution in 1986 were applied on a wider scale in 1993, in the form of transferable and assignable rights of use lasting 20 to 50 years. These reforms prompted an immediate boom in agricultural production and the subsequent consolidation of intensive and dynamic family farming.

Collectivisation was less radical and land distribution more unequal in the hills and mountains (the so-called 'minority areas'). Furthermore, the policy of privatising lands that had been so effective in the rice fields of the valleys proved problematic in wooded and sloping areas. In South Vietnam, the policy of collectivisation was not adopted until after re-unification, and then in a very limited manner. Peasant farming remains the dominant form of agriculture there.

A.3. Agricultural policies and land concentration in Uruguay

The opening up of trade and creation of Mercosur in the 1990s had a major impact on small countries like Paraguay and Uruguay. Over 95% of Mercosur's agricultural GDP is produced by Brazil and Argentina. Small family farms cannot compete on equal terms and there is no harmonisation of public agricultural and trade policies. Large tracts of land have been bought up by foreign investors: first by Argentineans purchasing land on the coast for soya and wheat, then by North American and European forestry enterprises further inland. In the last five years, one in three farmers have sold their land: 4.5 million of the 16 million hectares of cultivable land (over 25%) have changed hands, much of it going to foreign investors as some 200,000 hectares was bought with pension funds!

The combination of liberal trade policies, lack of agricultural policy and foreign investments has contributed to an intense process of land concentration and the disappearance of 40% of farmers in the last 40 years, most of them family farmers. The severe economic crisis in southern Latin America in the 1990s and between 2000 and 2003 triggered widespread rural migrations to urban areas, and then the United States and Europe from 2000 onwards.[115]

115. Interview with Ferdinando Lopez, secretary general of Uruguay's national Commission for Rural Development, Inter-réseaux (http://www.inter-reseaux.org).

A.4. Marked regional specificities

Although certain aspects of land issues differ according to context, the questions facing each continent are broadly similar.

Land inequalities exist to varying degrees in South-east Asian countries with market economies; thus, agrarian reform is a key issue in the Philippines, for example. Several countries (Vietnam, Cambodia, Laos) are in transition towards a market economy: liberal in Cambodia and more controlled in Vietnam, where households have been allocated long-term rights of use. Laos is offering its population rights of use in rural areas and private ownership in urban areas.

China has also opted to offer rural people rights of use. The speed of economic development has accentuated the marked differences between the industrialised Pacific coastal fringe, which is characterised by galloping urbanisation, and the interior of the country. The property boom has resulted in the complete restructuring of existing neighbourhoods, while the collapse of former rural industries and drop in the price of agricultural products has triggered a massive rural exodus, sending several hundred million landless rural migrants into cities where they work illegally.

The situation in sub-Saharan Africa varies according to the country's colonial history. In Southern Africa (and, to a lesser extent, East Africa), major agricultural settlements led to a dual agricultural system with large modernised 'white' farms on the one hand and small black farms relegated to marginal lands on the other. This duality still exists, as Independence and the black elite's access to power saw the white farms either taken over by the black elite or continuing as before. Agrarian reform is still an issue, but simple redistribution is not really an option, given the different technological levels of these two types of farming. Furthermore, most agricultural production is generated by family farms, which are modernised to varying degrees on the basis of on local land rights that the law does not recognise. Current reforms are working towards recognition of these rights. In the Sahel, competition from agricultural land use is marginalizing pastoralists and making it difficult to maintain access to water points and transhumance routes in pastoral areas. Most of the growth in urban areas occurs in irregular neighbourhoods, where parcelling and infrastructure provision is patchy, and housing produced through 'neo-customary' channels.

Islamic law plays an important role in land legislation in the Maghreb and the Middle East. Urban growth is controlled in strong states, although this has not prevented the development of shantytowns and irregular neighbourhoods in urban areas. In rural areas, plantations (citrus, dates, etc.) co-exist with market-oriented family farms, and local modes of management persist in pastoral areas.

Colonisation in Latin America resulted in dual land tenure structures, with a lati-minifundia system on the plains, community peasant farming in Indian areas and extractive populations in the forested regions. There are marked land inequalities, except where revolutions at the beginning of the 20th century led to agrarian reform. The issue of land tenure and the 'Indian question' played an important role in the revolutionary movements of 1979-1989 (Peru, Guatemala), and the last decade has seen the emergence of strong indigenous movements in countries like Bolivia, Ecuador and Colombia, mobilised around issues of identity and claims to land and natural resources.

The situation in Oceania differs greatly between countries that were colonised by European settlers, where Melanesian communities were relegated to reserves, and other areas. A land distribution policy was adopted in New Caledonia in the framework of the Nouméa agreements. In independent states where the local authorities have a lot of power over the people (Fiji, Vanuatu, etc.), customary power plays an important role and is recognised by the constitution, and the customary authorities are responsible for land management.

A.5. Administrative attribution of land for housing in francophone West Africa

After decolonisation, the new independent states assumed many of the prerogatives of the colonial governments, including that of land ownership. Households applying for land may not buy it: instead, in the name of 'social justice' or to 'deter speculation', they are allocated a plot and granted 'occupancy permits', an insecure, revocable form of administrative authorisation. 'Assignees' will see their rights confirmed – or even transformed into ownership title – if they use the land 'productively' in accordance with the terms and conditions set out by the administration, and pay the charges, taxes and various expenses representing the 'price' of the land. This administered price is 5-20 times less than the price on the land market, which continues to function, even in countries where it is or has been forbidden or suppressed.

City dwellers with privileged access to the administration therefore try to obtain land at the administered price so that they can resell it at the market price, even if such transactions are not permitted, require prior authorisation or are subject to certain conditions (productive use, retention for a certain period after allocation). Any profits are shared between the assignee and the administrative agents responsible for land management (surveyors from the administration, land registry officials), who are the first beneficiaries of the corruption endemic in land administration.[116]

The solution would be for the State to give up its monopoly over land, although this rarely happens as the stakes involved are so high. A survey undertaken in 1999[117] in ten francophone sub-Saharan African countries revealed that despite pressure from international financial institutions, Mali was the only country then going down this route.

A.6. Access to water and control of pastures in Sahelian areas

In Sahelian pastures, the appropriation of wells by those who have dug them leads to indirect control of adjoining pastures (which cannot be used during the dry season). Well water cannot be taken without authorisation, although this is never refused as everyone needs access to resources controlled by other people, and the availability of fodder varies considerably over time and space from one year to the next. Conversely, the head of a grouping will authorise a

116. Durand-Lasserve, 1993.
117. UNCHS b, 1999.

herd to stay for more or less time depending on its size and the availability of water and fodder in the areas under his control.

Thus, the combination of direct control over water, indirect control of grazing and logics of mobility and reciprocity facilitate optimal productive use of scarce resources. These traditional modes of regulation are often weakened by State interventions.

A.7. Conditions for the emergence and continuation of shared management

These conditions[118] depend on the nature of the resource, the social characteristics of the groups concerned and their internal rules and relations with the State. None are necessary, they are all favourable conditions. Setting aside differences in presentation between one author and the next, the main conditions for shared management are:

- Relatively rare resources that are important or essential to the actors concerned, and situations where individual responses are expensive or ineffective;
- Exclusive rights to a clearly defined space for identified rights holders;
- A system of rules that is legitimate, flexible and underpinned by a system of authority;
- Rights holders sharing common social principles;
- Indifference or explicit support from central government.

This applies to similar social groups with shared social principles,[119] where:

- There is consensus over shared use (otherwise the most powerful groups usually have the capacity to impose privatisation);
- The group accepts the distribution of income and expenditure associated with this resource (it may not necessarily be egalitarian, but is not challenged).

Two contradictory situations can create favourable conditions for good relations with the State:

- Indifference, when the State is unable or unwilling to weaken local authorities and/or establish other systems of rules, and local communities are fairly free to pursue their own modes of resource management;
- State recognition and support for local systems.

118. Lavigne Delville *et al.*, 2001.
119. Mathieu and Freudenberger, 1998.

A.8. Private and common lands in Winye country (Burkina Faso)

Land tenure structures in Winye country in central western Burkina Faso[120] can only be understood in terms of the history of its human settlement. Rights are determined by the effort invested in a space. Founding families arriving in virgin territory determine the rights to the bush, allocating full individual rights (except the right to sell) to those who clear the land. If land is available for the next generation it is shared between the sons. Common fields are fields that have been inherited and are therefore shared between descendants. In addition to this, individuals can develop new fields, either on fallow lands belonging to their lineage group or on new parts of the bush that they clear and to which they have more exclusive rights. The structure of land tenure stabilises when all the cultivable land is cleared, and loans between lineage groups allow each group to adjust the amount of land it cultivates according to its needs and capacities. Thus, there is a mosaic of cultivation rights to fields shared by a lineage group and fields controlled by groups of its descendants.

A.9. Customary regulations, markets and demography

Massive expansions in the cotton-growing areas of southern Mali have resulted in a threefold increase in yields since the 1950s. Animal traction and fertilisers are widely used, and most farmers have access to credit. Access to land is still regulated by customary systems, except in peri-urban fringes.

Although the densely populated Sine Saloum in Senegal has been producing cash crops for over a century, agrarian cults and lineage groups still exercise considerable authority there, land is not sold, and the heads of lineage groups continue to adjust the amount of land allocated to households according to their needs. Migrations to 'new lands' in eastern Senegal have led to the creation of new lineage group territories, with land allocated according to the comings and goings of family members. The land market has spread in Hausa areas, however, apparently due to the combination of an aristocratic society long since converted to Islam, groundnut cultivation and drought-related crises.[121]

A.10.The limitations of customary management in African cities

The main drawback of customary forms of land production is the fact that bills of sale are not registered.[122] However, even where they are not recognised, customary chains of access to urban land often provide better security of tenure than other informal chains. From this point of view, recognition by the community or neighbourhood is often considered more important than recognition by the public authorities, although this is not to say that security of tenure is

120. Jacob, 2007.
121. Raynaut, 1997.
122. Durand-Lasserve, 1993.

guaranteed if several customary landholders exercise the same right to a particular piece of land, members of a customary community contest the legitimacy of a sale made in their name, or a piece of land is sold to several different purchasers. Customary owners may also come into open conflict with the public authorities over the status of the land, its use or the legitimacy of their claim.

One of the greatest weaknesses of the customary system is the difficulty it has in producing land with even the most basic services. Conversely, security of tenure improves the quality of both housing and urban services. Plans for neo-customary parcelling operations near urban developments destined for middle-income residents include the subsequent installation of amenities (roads networks, land reserves), while far-flung parcels destined for the poorest clientele rarely make such provisions. The objective of neo-customary developers is to operate as quickly and as cheaply as possible.

The prevalent model of land occupancy and use in customary parcels is often incompatible with long-term planning objectives, and the proliferation of unplanned and unimproved parcelling operations in city outskirts is compromising urban development projects. The combined lack of amenities and poor services is at least partly responsible for the under-occupancy of many neighbourhoods on the outskirts of towns and cities, indicating that the customary market is contributing to urban sprawl. The rising price of land in areas close to urban centres, and absence of any restrictive regulations outside the administrative limits of agglomerations are encouraging the spatial expansion of sparsely populated neighbourhoods.

Customary chains supplying land for housing still meet most of the demand from low-income groups. However, they are becoming less accessible to sections of the lowest income groups, whether they are formally recognised (Ghana and Uganda), have de facto recognition and are controlled by the administration (Benin) or not recognised (Cameroon, Senegal). In political terms, there are two fundamental contradictions inherent in all policies to improve the functioning of neo-customary chains:

- If chains are formally recognised rather than simply tolerated, they are likely to lose their main advantages for low income groups (speed, simplicity and low cost);
- If they are not recognised, the public authorities lose the opportunity to influence their development and correct their shortcomings.

A.11. Patronage between migrants and indigenous communities in rural West Africa

Land ownership in rural West Africa is derived from indigenous lineage groups that first settled in the area and cleared the forest. 'Incomers' (in local terms this refers to families that arrived after bushlands were cleared and distributed) are received by an indigenous host (tuteur) who 'settles them in' by giving them somewhere to build a house and land to cultivate: "We won't refuse people the land they need to feed themselves". The cultivation rights granted on the host's land last for an indeterminate period (for as long as the 'incomer' remains there and respects village norms) and can be transferred to his descendants in return for a ceremony. It is a kind of 'open-ended loan' or 'limited gift' in the sense that the land returns to the host's holding if the incomer leaves, and the host can, theoretically, take the land back if need be. Each

year the host receives symbolic compensation in the form of several ears of corn to mark the fact that he has granted the incomer the right to cultivate his land.

This patronage underpins the relations between migrants and indigenous communities. Over time, it may evolve into a gift (at which point the gifts of corn start to dwindle, the land can be passed to the incomer's children without a ceremony, and the incomer no longer needs to ask for the loan to be renewed) or a rental agreement if pressure on land increases, in which case the symbolic gifts become more substantial and normalised.

A.12. The impossibility of codifying *derived rights* in West Africa

The 'settlement' associated with patronage is just one of many forms of tenure relations. A study on derived rights in West Africa[123] shows that there are between four and twelve ways to temporarily transfer cultivation rights, depending on the site. Some are commercial, others are not. This range of progressive arrangements responds to different situations, interpersonal relations and the types of land and crop concerned. Short-term loans and inheritance become dominant when access to new land to clear is scarce and monetarisation of the economy spills over into land relations. Specific contracts may also appear for new crops. This diversity makes it difficult to standardise agrarian contracts.

A. 13. Land registry and informal transfers in rural Haiti[124]

Some of the land in Haiti has been covered by cadastral plans and titles for the last 200 years. The administrative mechanism for land management involves land surveyors and lawyers, and legal procedures for land transactions include the parcel being marked out by a land surveyor, title being drawn up by a lawyer, and registration at the *Tax Office*.

Although they keep a close guard on all their official documents (registration papers, title deeds, etc.), most rural people have little legal security, whether they are occupants without title, occupants with tattered, old or false titles, or have private contracts. It is not uncommon for several sets of deeds to exist for the same piece of land, and land remains jointly owned even when it has been shared out among the heirs.

Only the wealthiest families are able to follow the legal procedure. The rest have to rely on minutes of meetings with surveyors or a private contract for proof of ownership, as the initial deed ('head title') cannot be transferred when the parcel is shared. Therefore, despite the existence of a formal mechanism for registering land transfers in rural areas, there is a considerable gap between what is recorded on the titles (legality) and the reality on the ground.

123. Lavigne Delville *et al*, 2001.
124. Dorner, 1999.

A.14. Involving residents in the regularisation and development process

The best example of this kind of practice is the land sharing seen in Thailand in the 1980s and, more recently, in India. This works on the principle that illegal occupants negotiate with the landowner and agree to give back part of the land in return for the right to remain on the rest of it. The owner recuperates the portion with the highest commercial value (street frontage, for example) and avoids a dispute with the community occupying the land or a long and costly court action.

Occupants regroup on the portion of land that has not been returned to the owner, accepting that it will be more densely populated, but that they are gaining access to land ownership. Even if the price of assigning the land is lower than the market price, the land sharing operation will still represent a significant increase in their expenditure on housing.

This kind of initiative requires coordinated action by five groups of actors: the communities concerned (which need to be cohesive and well organised), the landowner, a developer, a financial institution, and often an NGO that acts as an intermediary coordinating negotiations between these actors. It also requires an effective administration with sufficient financial and human resources. Few countries have embarked on such projects, and those that have are still experimental, even in Thailand where significant efforts have been invested in this type of initiative.[125] Nevertheless, under certain conditions, it is an interesting alternative means of securing land tenure.

A.15. Limitations of policies capping ownership

In 1976 almost all the States of the Indian Union adopted a law capping ownership. The *Urban Land (Ceiling and Regulation) Act* (ULCRA) set a maximum amount of land that an individual had the right to own, which varied according to the city concerned. Owners exceeding this limit had their lands expropriated by the State, which were then allocated to housing projects for low-income groups and/or used to put in place essential urban services.

With a few exceptions (Visakhapatnam and Vijayanda), the law did not achieve its objective due to a lack of appropriate institutional support mechanisms.[126] Indeed, it often proved counterproductive, by removing land that was suitable for urban development from the market while waiting for disputes between the State and landowners to be settled. The law was eventually abolished in 1998 as part of the liberalisation policy implemented in the second half of the 1990s to revive activities in the private development sector.

Sri Lanka attempted to put in place an even more radical reform in the early 1970s, with a combination of land reform (*Land Reform Act*), rental control (*Rent Act*, 1972) and a law capping ownership (*Ceiling on Housing Property Law*, 1973). This limited individual private ownership of land and housing in urban areas, compensating land and property owners who exceeded the limit with Treasury bills. These measures had little effect due to the difficulty the public

125. Boonyabancha, 2006.
126. Banerjee, 2002.

authorities had in managing the recovered lands and housing stock and influencing developers' investment strategies, and this train of reforms was abandoned when the liberal right returned to power in 1978.

A.16. Popular participation and decentralisation in Bolivia[127]

In the context of structural adjustment imposed by the IMF, Bolivia adopted two laws that have had a significant and unexpected impact on the social and political development of the country: the *Popular participation law* (1994) and the *Law on administrative decentralisation* (1995).

These laws gave the municipalities greater responsibilities by transferring significant fiscal resources to them, especially to rural municipalities. Resources from 'co-participation' doubled to account for 20% of fiscal resources.

The laws recognise the existence of *community-based territorial organisations* (farming communities, indigenous peoples, etc.) organised according to their customs or statutes. Legal personality enables them to hold rights and become key actors in popular participation. Through vigilance committees, they verify that the income from popular participation is invested equitably for the benefit of urban and rural populations.

While the Bolivian State established itself by turning its back on its indigenous peoples, these laws did allow the rights of the Indian populations to be recognised, and encouraged the growing popular participation of their representatives. This culminated in the election of Evo Morales as president of the Republic, something that would have been inconceivable several decades before.

However, these decentralisation processes rarely filter down to rural communities, and have given rise to few productive initiatives. They have not been accompanied by mechanisms facilitating the elaboration of governance new tools and procedures, led to the emergence of territorial projects, or helped build the requisite local capacities. This is one of the key problems the current government's community-led agrarian reform and land and forestry policies has to deal with.

Since then territorial claims made on the basis of identity have led to very serious and worrying political and ethnic tensions.

A.17. Regulating rural land markets in Europe[128]

Over the years, Europe has gained a huge amount of experience in policies regulating farm sizes, through efforts to conserve family production systems while modernising and equipping them to fulfil their potential to contribute significantly to economic development and/or food self-sufficiency. Overall, these policies have worked well. They have been many, varied and

127. Merlet, 2002.
128. Merlet, 2002 ; Berloco, 1997 ; Merlet and Levesque, 2007.

spread over several centuries in different economic and social contexts: beginning in the 18th century in Denmark and lasting until the end of the 20th century in France. In certain cases they have been genuine public policies put in place by central government; in others, policies have been more implicit, such as when they are based on changes in the legal framework or fiscal policy rather than direct interventions by the State apparatus. These interventions have never been part of common European policies, remaining strictly national.

A certain number of them directly relate to the regulation of land markets, as seen in the examples below:

- Denmark was one of the first countries to put in place interventions to avoid excessive land fragmentation or concentration. A law on tenant farming was adopted, while giving priority to direct productive use.
- After the Second World War Italy introduced an agrarian reform to reduce the large estates in the south, and took measures to make land markets work better for small farmers. The Cassa per la formazione della piccola proprietà contadina (Fund for the creation of smallholder landownership) bought land, divided it up if necessary and provided low-interest loans so that individual farmers or farmer cooperatives could purchase land.
- In France, policies to regulate rural land markets were designed to deal with both rental markets, through the promulgation of a Law on tenant farming in 1945, and land markets, with measures to control structures and the introduction of SAFER (land development and rural settlement companies) in 1960.
- The law on tenant farming made it possible to limit landowners' powers over tenant farmers and establish mechanisms to regulate ground rents. Tenant farmers have guaranteed access to the land for the duration of the tenancy (a minimum of 9 years), and the right to renew the lease. If the landowners wish to sell the land, the tenants have first option to buy, provided they have been farming for at least three years and have used the land in question on their own account. In recent decades this law has played an important role in agricultural development, as many farmers prefer to rent rather than buy their land. The amount of rented land has increased.
- SAFER are non-profit making companies whose aim is to "improve agricultural structures, increase the size of certain farms and facilitate farming operations and farm settlements". They can acquire land, which must be resold or exchanged within five years. In order to do this, they can act on behalf of the acquirer during a sale (right of pre-emption). The notary is supposed to inform the SAFER of all prospective land sales, and the SAFER can ask the court to reduce the asking price if it considers it to be too high in relation to the general market. The vendor can accept or refuse by withdrawing the land from sale. This pre-emptive right is only exercised over about 1% to 2% of agricultural land that is put up for sale. The effectiveness of the mechanism also depends on the conditions for access to credit by prospective buyers. Overall, the system has proved effective, despite certain shortcomings due to the lack of plural unionism before 1981.

A. 18. Reform of the *ejidos* in Mexico

Mexico went through a cycle of reforms and counter-reforms from the mid-19th century onwards. The reform of 1992 aimed to consolidate farmers' rights, distribute individual ownership titles and promote a land market in order to increase agricultural productivity. An agrarian reform was introduced after the Zapatista revolution to address the rapid escalation in land concentration prompted by the policy to privatise lands at the end of the 19th century. Expropriated lands were reassigned to *ejidos* (local communities created by the reform) or indigenous communities, and farmers given transferable rights of use but not the right to sell.

The 1992 reform made it possible to allocate land rights to *ejidatarios* who wished to have them. Its aim was to broaden the land market, but with restrictions on sales outside the *ejido*. However, impact analysis reveals that this policy had several unexpected effects: even if they weren't registered, farmers' rights of use were usually already secure because they belonged to the *ejido*. The policy did not appear to have any impact on investment strategies and barely affected the already dynamic rental market; and several land sales were registered as reallocations with the *ejido* in order to give them legal form. Sales did increase, but farmers distrusted them because they were worried about a resurgence in land inequalities. Paradoxically, they were also less secure as the procedures were unclear.

This was a well-thought out reform that incorporated mechanisms for conflict resolution. It has been relatively successful, especially the component distributing individual titles, although this has had less impact than anticipated.

ANNEX B

Contributions by the French Cooperation

B.1. Twenty-five years of research and action on land tenure

The French Cooperation has a long history of involvement in land tenure, which was originally dealt with in terms of its impact on intervention strategies for economic and development initiatives (irrigation schemes, town planning, etc.).[129] The interest in land tenure as a specific topic dates back to research commissioned in the early 1980s and the first French scientific symposia dedicated to the issue, particularly the Saint-Riquier symposium in 1980. This led to the work *Enjeux fonciers en Afrique noire* (Land Issues in Black Africa),[130] which aroused some interest but did not produce any direct results.

Several field operations did incorporate land tenure components, however: interventions to regularise urban land tenure and introduce innovations in urban management (addressing, urban land registers, etc.), and 'land use management' initiatives in rural areas that touched on tenure without necessarily addressing it. It is also an issue in hydro-agricultural developments such as the restructuring of the *Office du Niger*, a large-scale irrigation scheme in Mali where, following the transition to democracy, the AFD has supported a series of studies on land tenure and the creation of an Observatory.

Land tenure in Africa became an increasingly significant issue in the mid-1990s as a knock-on effect of structural adjustment and economic liberalisation policies, and the land privatisation policies associated with them. This revived the debate about privatising and registering land one the one hand, while on the other, 'land use management' projects have shown how local land regulations and other approaches can be used to secure local land rights. *Rural land plans* (RLPs) have been tried out in Ivory Coast and Benin, and the Ministry for Foreign Affairs (MAE) also supports a land registration project in the tense socio-political context of Mauritania.

In 1996 the Ministry for Cooperation created a steering committee on *Rural Land Tenure* to work on several approaches to the question. Composed of cooperation agents, experts and

129. French research on land issues in urban and rural contexts dates back many years. There are numerous monographs by Orstom dealing with land questions, which have contributed to the body of knowledge on this issue.

130. Le Bris E, Le Roy, E. and Leimdorfer F. éds, 1982, *Enjeux fonciers en Afrique noire*, Paris, Orstom-Karthala.

researchers from different fields, its task was to produce and present a 'comparative analysis of the different approaches' for the ministry. This was done in several stages, working with the ODA and then DFID and IIED as part of the Franco-British initiative: starting with assessment (a synthesis report on Rural land tenure, renewable resources and development, and three joint publications[131]), followed by more in-depth research (*Derived rights of access to land and natural resources*[132]) and debate (regional seminar, *Securing land tenure for rural producers*[133]) and contributions to multi-lateral policies (contribution to the European Union Guidelines) … Ten years later, the committee became the *Land Tenure and Development technical committee*, with its remit broadened to include urban issues. The focus is shifting from an economic entry point (securing tenure to reduce conflicts and encourage investments) towards questions of governance (securing tenure as an aspect of the rule of law; land management as a dimension of decentralisation and democratic governance).

In the meantime, the French Cooperation has been closely involved in three lines of intervention:

- *Testing innovative approaches: Rural land plans* (Ivory Coast, Benin, Burkina Faso), negotiated natural resource management procedures (Gelose in Madagascar, negotiated management in Sahelian countries) and rural fuelwood markets (Mali);
- *Institutional support for reform processes*, particularly in Niger (rural code), Madagascar (Gelose National environmental office and then the National land programme) and Burkina Faso (National committee to secure land tenure in rural areas);
- *Producing references and strategies contributing to the debate on land policies* and natural resource management policies (various actions by the technical committee).

The existence of a mechanism maintaining its presence in various countries, and the knowledge of francophone countries accumulated by French Cooperation agents and French researchers and experts have led to various long-term initiatives and support for research on land tenure. Such initiatives include the *National workshop on land tenure and decentralisation* held in Mali in November 1992, followed by a *National conference on rural land tenure* in early 1993 and AFD funding for the creation of a land tenure observatory mobilising the best Malian researchers on the topic. This led to a series of regional workshops and much fruitful debate encouraging actors in the administration to take account of local situations, a *National workshop* in 2001 and finally, an *Agricultural framework law* promulgated in 2006 clearly identifying land tenure as an important issue.

131. MAE, 1998, *Foncier rural, resources renouvelables et développement en Afrique*, Coll. Study reports, French Ministry of Foreign Affairs – Cooperation and French-speaking communities, Paris, 139 p. ; Lavigne Delville Ph. Ed. 1998, *Quelles politiques foncières en Afrique noire rurale ? réconcilier pratiques, légitimité et légalité*, Paris, Ministry for Cooperation/Karthala, 744 p.; Lavigne Delville Ph., Toulmin C., Traore S. eds., 2000, *Gérer le foncier rural en Afrique de l'0uest, interventions publiques et dynamiques locales*, Karthala URED, 357 p. ; Cubrilo M. and Goislard C., 1998, *Bibliographie et lexique du foncier en Afrique noire*, Ministry for Cooperation/Karthala.

132. Lavigne Delville Ph., Toulmin C., Colin J.Ph., Chauveau J.P., 2001, *L'accès à la terre par les procédures de délégation foncière (Afrique de l'Ouest rurale) : modalités, dynamiques et enjeux* ; GRET/IRD/IIED, 207 p.

133. Lavigne Delville Ph., Ouedraogo H., Toulmin C., Le Meur P.Y., coord., 2003, *Pour une sécurisation foncière des producteurs ruraux, Actes du séminaire international d'échanges entre chercheurs et développeurs*, GRAF/GRET/IIED, 172 p.

B.2 Four innovative procedures to secure land tenure

• Establishing street addresses (Addressing): an alternative to fiscal cadastres

Establishing land registries has long been seen as a pre-requisite for introducing land taxes, despite the fact that such taxes pre-date land registers by quite a long margin in most developed countries. Furthermore, many efforts to establish land registers as part of large-scale operations to regularise land tenure in developing countries are hampered by the complexity of the procedures involved, which tend to be carried out by agents of the administration.

The first addressing system was introduced by public utilities services (water, electricity) seeking to identify their consumers, and was finalised in the early 1980s with support from the French Cooperation. This made it possible to locate households in both formal and informal neighbourhoods by systematically identifying streets and doorways (codifying streets and entrances, updated mapping of the 'real' city, erecting street signs, numbering entrances, electronic indexing).

Addressing simplifies the work of the administration and urban services by simply locating residents, setting aside the issue of their legal status and rights. Land and other taxes are charged and collected on the basis of occupancy, which can also be used to determine the need for and location of infrastructures. As a land management tool, addressing helps build up a picture of the real city that can be used immediately for tax purposes without having to wait for any land tenure issues to be settled.

In the medium term, paying taxes also helps crystallise occupants' land rights as the receipts given to residents constitute *de facto* proof of their longstanding occupancy, creating ownership 'from the bottom up' and opening the way for operations to regularise land tenure. Cities in 15 African countries have completed or are undertaking addressing operations as part of a World Bank initiative supported by other donors, and other operations are planned or under way in Latin America, the Middle East, North Africa and Asia.[134]

• Large-scale infrastructure grids, a new development procedure

Between 1980 and 1990 the French Cooperation promoted a 'large-scale infrastructure grid' approach in response to the limitations of classic urban planning based on master plans, and insufficient supply of improved land due to the cities' lack of resources and households' inability to pay. The aim of this innovative approach, which anticipated current thinking on strategic planning, is to identify a network of roads defining spaces that can be used for urban development and basic infrastructure provision in areas of high urban pressure in city outskirts.

The land within each large grid is then put to productive use by private or semi-public actors (semi-public companies). As the terms and conditions for this use are not restrictive, it makes affordable land available to low-income households that usually go through informal operators. Some of the land may be used for private developments, and it may also include so-called *customary* parcelling initiated by rural communities living in peri-urban areas, in which

134. Farvacque-Viktovic *et alii*, 2005.

case the customary authorities benefit from the right to sell parcels in the space covered by the grid.

This procedure has been implemented in Cameroon, Guinea and Ivory Coast, and the World Bank is now promoting an approach directly inspired by the French experience.

• Urban land registers as the basis for local land taxes

Local governments have weak tax bases, as a large proportion of their residents cannot be taxed because they are not registered and recovery of existing taxes is poor. As a result, they are desperately short of the money they need to fulfil their obligations and meet local people's expectations. *Urban land registers* (ULRs) can improve municipal tax receipts when used as a tool to identify all local land assets and create a broad but moderately priced tax base, thereby generating significant tax revenues that cost relatively little to collect.

The ULR consists of a register and a basic map, which allow the municipality to determine how much tax each occupant should pay and to issue tax demands. As it is based on occupancy, the ULR avoids any problems associated with the parcels' legal status; in fact, receipt of payment constitutes proof of occupation that residents can use to secure their occupancy rights with third parties, the municipality or the State. Therefore, taxpayers benefit by gaining recognition of their occupancy. Although this has no legal value, it helps consolidate their status as occupants, and an annual tax also encourages the productive use or assignment of unused lands. Therefore, land tax can be used a tool to consolidate land rights 'from the bottom up'.[135]

Finalised in Benin, and disseminated in most large cities, ULRs have led to a significant growth in tax receipts and municipal revenues. However, their implementation to date has been over-dependent on external agencies and insufficiently appropriated by municipal teams.

• Identifying rights with rural land plans (RLPs)

It can be useful to formalise local land rights when their security is compromised by the existence of more than one legal system or large numbers of external actors operating in local land markets. Classic cadastral procedures that focus on boundary setting and identifying ownership are of little use in these situations, because many of these rights are not based on individual ownership, and conflicts tend to revolve around the nature of the rights held rather than plot boundaries. Therefore, appropriate procedures that take account of the diverse forms of tenure and rights are needed to register local land rights.

Rural land plans (RLP) were first developed in Ivory Coast and then tested in Benin, Burkina Faso and, to a lesser extent, Guinea. These pragmatic procedures use a systematic approach to identify and map locally agreed land rights, with contributions from plot holders and their immediate neighbours. The retained survey methods include:

135. "*The development of urban land registers (ULRs) in Benin seems promising, as it not only raises taxes, but also helps clarify the appropriation of urban spaces. If occupants of urban parcels have been paying land tax for several years, it becomes hard to claim that they have no recognised rights as owners, even if they have no title to the land. A simple legislative reform would suffice, and would not involve significant administrative costs: it would be enough to decide that tax receipts constitute sufficient presumption of ownership in the absence of proof to the contrary*" (Comby and Gerber, 2007).

- Boundary demarcation involving all the parties concerned;
- A plot survey;
- A socio-land survey;
- Written minutes of meetings with the interested parties.

The survey starts with a topographic approach and then progressively focuses on socio-economic aspects of the land in order to record the land rights in accordance with local views and avoid the risk of reinforcing certain rights to the detriment of others.

The rights identified in this way can be legally recognised once the relevant legislation is in place. One way of doing this is to use transferable and assignable 'land certificates' as proof of rights until proved otherwise in court; while the graphic and written documentation (parcel plan and register of parcel holders) serves as the basis for land management at the municipal level (sometimes with grassroots management at the village level, as in Benin). *Rural land plans* are more than a simplified land register, as they take account of and restore rights as they are lived.

The Ivorian land legislation of 1998 drew on this process by incorporating the principle of issuing individual and group certificates for customary land rights. However, it then negated the whole ethos of the RLP approach by insisting that rights had to be registered within three years of the certificates being issued. Benin has fully incorporated the approach into its rural land law, by deciding that rural lands "subject to rights established or acquired according to local custom or practice" are recognised as private lands.

B.3. References supporting the proposed strategic themes

Some of the actions supported by the French Cooperation in recent years are consistent with the strategic themes proposed in Part 4 of this White Paper, and are a good illustration of the themes that could be included in programmes of action.

• Encouraging access to information, exchanges and learning

Promoting access to sound, accessible and varied information

Everyone associated with land tenure policies needs access to a wide range of information on which to base their analysis, be they government agents, experts, consultants, representatives of farmer organisations or residents' associations, etc. However, it is often difficult to access information, and 'grey' literature on the procedures, successes and failures associated with land is not easily obtainable.

Legal and institutional frameworks for land management in Africa (1998-2000 and 2008)

Although the different countries in francophone black Africa share the same legal tradition, each has made specific choices about how it manages its land and natural resources. Due to the difficulty of obtaining a complete synthesis of the mechanisms concerned, between 1999 and 2000 the MAE funded the production of a series of country files (mainly focused on

francophone Africa) and an analytical synthesis of the legal and regulatory framework, which were published by the *Municipal Development Programme* (MDP). These files, which are several pages long, present a synthesis of the legal and regulatory framework for land tenure, natural resource management and decentralisation, and the institutional mechanism for land management and renewable natural resources management. They are currently being updated and are available online on the *Land tenure and development* website.

Land tenure and development website

Funded by the AFD, the '*Land tenure and development*' portal (www.foncier-developpement.org) is the francophone reference site for land tenure in developing countries. It was launched in April 2007 to help enrich reflection on land policies through various sub-sites, some of which are more analytical and fed by scientific studies, and others more operational (tools, databases, experiences). The site, which is jointly run by land tenure specialists, offers online resources, monitors news and provides links to many other sites, helping fill the gap in French language resources on land tenure and encouraging access to resources in English.

Disseminating concepts: educational notes for actors (2008-2009)

The debate on land tenure is often muddied by problems with terminology and lack of knowledge about up-to-date information. This is a particular issue for grassroots actors and farmer organisations, who have a key role to play in the debate.

With this in mind, the Hub rural in Dakar, *Land net West Africa* and Agter launched an initiative in partnership with Roppa (Network of West African farmer and producer organisations) and with funding from the AFD, producing educational notes to make the terminology and debates about land policies in West Africa more accessible to land actors (PO officials, elected local officials, field workers, political decision-makers, administrative officials, etc.). These notes will be available online on the *Land tenure and development* and *Hub rural* websites, and hard copies will be published in French and other major national languages.

Offering opportunities for crosscutting regional exchanges between actors

Although the issues and dynamics of the debate on land tenure vary from country to country, they share several common themes. Therefore, regional-level knowledge about processes and innovations can be helpful in enriching thinking and debate at the national level.

Securing tenure for rural producers: seminar in Ouagadougou

Understanding of land tenure issues in Africa improved greatly in the 1990s through efforts to use field experiences to bridge the gaps between the law and practice, secure tenure for rural producers and manage conflicts more effectively. Several West African countries are currently engaged in the process of reforming their land legislation. In 2002 a seminar in Ouagadougou co-funded by the French Cooperation brought together 80 land policy-makers, representatives of farmer organisations, researchers, elected local officials and NGOs from francophone and anglophone West and East Africa to examine recent research findings and the results of concrete experiences, discuss security of tenure and define approaches likely to provide practical responses to the issues involved.

Workshop on securing land tenure in West Africa and Madagascar

In recent years Niger, Benin and Madagascar have pursued innovative policies based on local land management to secure land tenure in rural areas, making municipalities responsible

for issuing legal documents affirming locally agreed rights. With certain variations, these countries are engaged in a radical reform of their systems of land governance. In 2008, in order to allow the actors involved in these policies (decision-makers, implementing teams, elected local officials) to discuss their practices and learn from their neighbours' experiences, the French Cooperation instigated a regional workshop focusing on the experiences in Niger, Benin and Madagascar, but also extending into neighbouring countries.

Initiating fields of thematic research and building on experience

Research has a key role to play in informing the debate on land policies through analysis of land dynamics, policies and their impacts. Although a good deal of progress has been made in the field of research over the last 15 years, certain issues need to be addressed in greater depth. Thematic fields extending across several countries would be helpful in this respect and in tackling new questions.

Practitioners have amassed a wealth of experience that is all too rarely exploited, but which could be used to deal with the practical challenges of adapting land management, testing hypotheses and systematising procedures and methodologies. Therefore, research findings and results should be made easily accessible to actors in terms of language, format, dissemination, etc.

Regularising spontaneous neighbourhoods: the experience of Sokoura (Ivory Coast)

The regularisation of spontaneous neighbourhoods is an important issue. In 1992, the *Association française des volontaires du progrès* provided methodological support for a project in Abosso, near Abidjan, to open up and regularise the neighbourhood of Sokoura, which had been created by families expelled during operations to parcel up and sell off public lands in the 1970s. During preparations for the second phase, MAE support in consolidating the procedure led to a publication[136] contributing to the debate on regularisation procedures in Ivory Coast and elsewhere in Africa.

Comparative research on procedures for assigning rights

Debates about securing land tenure generally focus on rights of appropriation, ownership and title, even though a large proportion of land is used by farmers with cultivation rights that are negotiated with the 'owner' of the plot. Security of tenure is also an issue for these 'derived' rights.

Noting the lack of research on this topic, the Land tenure and development technical committee initiated comparative research on the issue in ten francophone and anglophone West African countries in 1999-2000. Undertaken by ten national researchers, funded by the MAE and DFID, coordinated by GRET and IIED and with scientific support from IRD, this research focused on the qualitative and quantitative aspects and dynamics of these derived rights, established a matrix identifying and describing institutional arrangements, and identified the key points in securing these rights.

136. *Sécurité foncière et développement urbain*, *le projet Sokoura*, *Abidjan, Côte d'Ivoire*, Neighbourhood Projects Collection, Ministère de la Coopération /Association française des volontaires du progrès, 1992.

Call for research into the roles of actors in land transactions, and social movements in land policies (2007-2009)

The project Support to the Development of Land Policies includes a' Research operations' component designed to encourage research on land policy issues requiring further examination. Two main themes were proposed:

- *The dynamics of land transactions in rural and peri-urban areas, and the role of urban actors*. Several pieces of empirical research have contributed to a major shift in understanding of the processes of commodification of land and the dynamics of land transactions in Africa. They show that many sales are prompted by the need for money, which strengthens the hand of urban actors. However, this question has not been addressed systematically, and more work needs to be done on peri-urban areas.
- *The production of land policies and role of social movements*. There are numerous works analysing the effects of current policies and proposing alternative policies, but little is known about policy formulation processes or the roles played by the actors involved. What are the logics underlying the different interests? What role do ideas play? Do external actors have any real influence on the process? Little has been done to assess the influence of social movements, such as farmer organisations or other associations.

Following a call for proposals, fifteen projects were selected and are being implemented. Their results will be published online.

• Promoting national-level debate on land policies

Because land policies are multi-dimensional, they require public debate based on sound knowledge of the situation concerned. Depending on the maturity of the debate, the priority could be studying emerging or little known questions, supporting consultation processes or strengthening the institutions behind them. It is also worth noting that the scope of these debates varies, as they are often based on studies undertaken in the context of institutional support, but may also be taking place among civil society groups.

Securing land transactions in Burkina Faso (1999-2000)

In the late 1990s concern about conflicts related to land transactions in Burkina Faso sparked vigorous debate between those hoping for a rapid development of market transactions and those wishing to maintain customary regulations. In order to clarify the matter, the Ministry for Agriculture launched a comparative study of land transactions in three different areas in the context of institutional support funded by the MAE. This study showed how commercial land transactions are developing, and identified the conditions for securing these transactions. It was discussed at a national workshop and a synthesis has been published.

Land transactions in rural Cambodia (2006-2007)

Rural land tenure in Cambodia has been profoundly disrupted, first by the Khmer Rouge and then by the Vietnamese occupation. Opportunities for possession and private ownership were legally recognised in 1989 (then in the 1992 Land law and Article 44 of the 1993 Constitution). Although the land redistribution of the 1980s was relatively egalitarian, a surge of urban and/or State-related purchasers making massive, unregulated land transactions led to

huge inequalities and the emergence of a new category of landless farmer representing some 12% to 20% of farmers.

The land law of 2001 introduced private ownership, and a massive titling programme was implemented with funding from the World Bank and technical assistance from GTZ. However, little is known about the reality of 'land markets'. The Ministry of Agriculture commissioned a study based on in-depth empirical analysis of four regions in the context of an *Agricultural policy support project*. This study describes the reality of these markets and helped use the lessons learned to address the lack of transparency in transactions, interventions by dealers, widespread use of threats and corruption; it found that sales were driven more by these pressures than by market mechanisms, and were therefore not primarily driven by poverty.

Helping farmer organisations become more autonomous: the CNCR (2002-2005)

The cultural service of the French Embassy in Dakar supported the process led by the national farmers' council (CNCR) of Senegal to define the position of rural actors on land tenure and open up public debate on the suggested proposals. It was generally agreed that the National land law of 1964 was inappropriate (or deficient, as some of its planned tools had never been put in place). The 1996 *Land tenure action plan* provided a starting point for the debate by identifying three scenarios: the status quo, privatisation and a rather vague middle ground. The CNCR hoped to organise a broad process of formulating proposals and mobilising farmer organisations and rural municipalities in order to further the debate and focus on farmers' proposals in a context of pressure to privatise land. In a remarkable process supported by national consultants, innovative proposals were formulated and discussed at regional and then national level, and a seminar was held in Dakar in January 2004.

• Institutional support for reform processes

Reflection on land tenure policies requires the kind of continuity that cannot be provided by a succession of short missions by different experts. Therefore, in the last ten years the French Cooperation has supported reform processes in several countries by supplementing periodic missions with long-term technical assistance.

The aim of this institutional support is to reinforce the capacities of host structures. On questions of land tenure, the approach has been to involve a range of actors, starting from a place recognised as a legitimate departure point, rather than supporting a single organisation. This is justified by the crosscutting nature of land tenure issues and the need for inclusive, participatory reforms that seek the best possible balance between the levels to which different actors are involved.

Whether it comes during the design, implementation or monitoring and evaluation of land reforms, institutional support should be understood as technical support that combines different forms of technical assistance: designing methodology (support formulating procedures), thematic expertise (assistance designing technical products), facilitating the process (facilitating relations between actors and synergy between actions) and catalytic support (strong proposals). By mobilising thematic skills and know-how, technical assistance helps develop strategies based on knowledge and experience of the issues, and encourages links between field experience and decision-making bodies. Since land reforms are long-term measures, this type of support is intended to limit the perpetuation of flaws in the system and lay the foundations for continued sound reform processes 'post-support'.

Encouraging 'joined up' thinking on security of tenure in rural Burkina Faso

In the context of its support for the Ministry of Agriculture, the MAE made a technical assistant available to work on land tenure between 2000 and 2006. At the time those outside the circle of land policy decision-makers were deeply critical of the 1984 *Agrarian and land reform* (despite the fact that it had been 'reviewed' twice, in 1991 and 1996), but unable to reach a consensus on possible alternatives. There was no interaction between the numerous initiatives in the field, between these initiatives and policy formulation or between the different administrations concerned with land, and the Ministry of Agriculture was having problems fulfilling its function overseeing projects.

The technical assistant's work was structured around three main axes:

- Opening up a debate on policy guidelines before discussing legal questions;
- Promoting spaces for informed, crosscutting and continued debate (both within and between administrations, experts and social actors (as part of a long-term process of shared learning);
- Establishing interaction between innovative projects and political thinking.

An informal think tank, bringing together representatives from the different administrations and chaired by the Ministry of Agriculture, was established to reflect on the issues involved in securing land tenure in rural areas, analyse research findings, discuss experimental projects and make policy and operational choices regarding such projects. A shared vision of the issues was gradually established over the course of regular meetings.

In 2003 this working group became a National committee for security of tenure in rural areas (CNSFMR) composed of representatives from seven ministries, farmer organisations, two associations working on land tenure and pilot project officials. Progress on the question of securing tenure facilitated the launch of an ambitious consultation process, overseen by a team of Burkinabé experts, to formulate new, pragmatic and consensual policy guidelines for securing land tenure in rural areas.

This process piloted by the CNSFMR was innovative in both content (diverse forms of consultation) and scope (some 20 workshops involving 2,000 people). It led to the adoption of a *National Policy to Secure Land Tenure in Rural Areas* (PNSFMR) by the Government of Burkina Faso in 2007, and the consultative dynamic continues with the formulation of a draft law to secure land tenure in rural areas, based on the orientations of the PNSFMR.

• Testing and institutionalising innovative approaches

Tools and instruments are the key to translating intention into practice. Innovation is required to meet the challenge of securing land tenure, and experimental field projects articulated around ongoing or projected reforms can play an important role in helping finalise such tools. By identifying the conditions for their viability and developing the operational capacities needed for a change in scale, they help define the modalities for implementing the reforms that will condition their success.

Securing land tenure for local actors

From rural land plans to the rural land law in Benin (1992-2005)

Rural land plans were first tested in Benin soon after democratisation, in the context of the *Natural resource management project* (PGRN) co-financed by the AFD, the World Bank and GTZ. The procedure was tried out in various regions and its relevance to securing land tenure verified during the first phase of the project.

During negotiations for the second phase of the project, the principle of supporting the formulation of a law legalising RLPs was retained. While the RLP procedure was being extended and improved, the government set up a national committee of national experts to prepare a draft law. The committee initiated the *Land and renewable resources management programme* (the PGTRN, which followed on from the PGRN) and completed the first version of the draft law in 2001. This marked a break with the presumption that customary lands belong to the State: with rural land plans, "*lands that are subject to rights established or acquired according to custom or local practices*" become private lands protected by the law, and may be covered by a land certificate. With funding from the AFD, the PGTRN mobilised international expertise to facilitate the swift implementation of the law through an '*Action plan for implementation of the law*'.

After the vote on law was carried in January 2007, the AFD also funded a feasibility study on the mechanism to help municipalities implement the new law.

Governance of renewable natural resources

Rural fuelwood markets (Niger and Mali, since 1985)

Wood is still an important source of domestic energy in Sahelian Africa. In the mid-1980s Niger drew up a *Domestic energy strategy* to prevent the fuelwood supply chains feeding its cities from contributing to deforestation, and enable the country to manage its wood resources sustainably. The strategy was based on setting up fuelwood markets: villages wishing to sign up to the process had their resources identified and recorded, a simplified management plan was drawn up with local people and a *rural market* put in place. The village holds exclusive cutting rights to a defined area and determines how residents use the wood in the locality. The only place where wood can be sold legally is in self-managed markets, and a tax differential (with repayments to the State) was introduced to encourage traders to buy their wood from these markets.

This strategy gives actors with an interest in the long-term preservation of this resource a means of controlling it and the revenues it generates. The Domestic energy strategy receives funding from the World Bank and technical assistance from CIRAD; and the procedure has been extended into Mali with funding from the AFD.

• Strengthening national research capacities and expertise

Support for GRAF (Group for research and action on land tenure), Burkina Faso

In the context of institutional support for the Ministry of Agriculture, the technical assistant also provided institutional support for GRAF, an association of land tenure specialists (administrative officials, researchers, private experts, etc.). GRAF is the main civil society organ-

isation working on land tenure, acting as a hub for exchange by organising annual discussion days, making available information, running working groups, etc.

The 'Land tenure' module delivered by the Institut des régions chaudes (IRC, Supagro, Montpellier)

Each year, the French Embassy cultural service funds scholarships to enable African officials working on land tenure to follow the professional development training module delivered by the IRC in Montpellier. This module is an opportunity for participants to review land policies in Africa and observe the realities of local land management in the south of France.

Training through research

Ten teams of researchers have been engaged in research on Derived rights to land and resources in ten francophone and anglophone countries in West Africa. Exploration of this new theme and methodological support from IRD has helped build national research capacities on these subjects. Knowledge about neo-customary housing supply chains is also growing as a result of numerous land tenure research initiatives involving French and African researchers, funded in the context of the *Urban research development programme* (PRUD).

Glossary of terms

The aim of this glossary is to clarify the meaning given to the main terms relating to land tenure in this White Paper. Please note that the meaning of certain terms differs from their usual meaning in the French institutional context.

Acquisitive prescription

Acquisitive prescription is the principle whereby ownership rights are acquired through continuous, peaceful possession of a piece of land, provided it is not contested for a certain number of years. Rights previously, but no longer, exercised by a third party cannot be claimed after this time, whose duration is determined by law (30 years in France). It is often not applicable to certain spaces (such as public lands), and does not exist in countries under the Torrens system.

Commoditisation of land rights

The process whereby land rights become the object of commercial transactions. This supposes that these rights can be appropriated and have a monetary value, which is not always the case. Land may have a value other than pecuniary, and its alienation may be controlled, limited or even impossible. As a general rule, land is only partially commoditised. The existence of monetarised transactions does not necessarily signify that full ownership of the land changes hands, as the commoditisation may only pertain to certain rights. It is also worth noting that the price is not necessarily a market price.

Continuum of land rights

Many developing countries have several different systems of rights and forms of ownership. This leads to a great diversity of tenure situations, moving in a continuum from the most informal forms of ownership to full ownership. The level of rights that can be accessed with each type of tenure can evolve, thereby shifting the boundaries between the formal and informal, the legal and illegal …

Customary ownership

Customary land ownership refers to community ownership of the rights to use land. A single individual, such as the land chief (or customary or traditional chief) is often responsible for allocating land in the name of the group; therefore, his decisions must conform to the cultural traditions of the community concerned. The scope of the use rights that are assigned depends on what is agreed between the community's representative and the assignor. These rights are guaranteed by each group's own institutions

Extractivism

This refers to modes of exploiting the natural environment that involve removing natural resources from the eco-system: hunting, fishing, wild harvesting, etc. Hunter-gatherer societies in tropical rainforests or dryland areas practice 'extractivism'.

Formalisation of land tenure

Land tenure can be formalised in two ways, depending on whether the public authorities prioritise administrative recognition of occupancy or access to ownership. The former involves allocating an administrative permit – a personal right – (occupancy or housing permit) or short or medium-term lease; the latter, issuing title deeds. Many see formalisation as a means of securing tenure, while others believe that customary management provides sufficient security of tenure, and that registration programmes inevitably lead to eviction.

Informality, illegality, irregularity and extralegality

It is as difficult to define the term informality in relation to land tenure as it is to determine its economic sense. In many situations, the boundary between the formal and the informal is ambiguous: neighbourhoods with the same characteristics in terms of land tenure, urban development and habitat may be considered formal or informal, depending on how the public authorities interpret the situation.

The term *irregular* is synonymous with *informal*, although here the emphasis is on conformity with the law or regulations. *Informal* or *irregular* neighbourhoods are merely tolerated. Their residents are rarely threatened with eviction, but as they live outside the system they have no claim to the amenities, services and improvements enjoyed by the *official* sector.

The term *illegality* has a more repressive connotation, suggesting that the public authorities will try to suppress such neighbourhoods, which are therefore precarious. To avoid these negative connotations, we use the term *extralegal* to describe land management practices associated with rules that are not legally official.

There are three types of irregular land tenure in urban areas:

– Squatters – in the strict sense of the term – who occupy land or housing without the owners' consent and usually against their will;

– Illegal commercial land subdivisions. This category includes customary commercial subdivisions, which have increased significantly over the last two decades, in parallel with a general decline in squatter occupancy. Illegal commercial land subdivisions are development operations undertaken by actors who are not authorised to do so and/or follow dubious procedures.

– Occupation of dilapidated and overcrowded housing in rundown urban areas constitutes the third main chain of access to housing for low-income groups.

Insecurity of tenure

Insecurity of tenure is the risk of seeing legitimate land rights challenged, either by the State (eviction, expropriation) or by third parties (conflicting claims over the same land).

Insecurity is aggravated by the shortcomings of the regulatory mechanisms for land tenure and conflict management (unfair arbitration or lack of arbitration). However, informality does not equate to insecurity when there is social consensus regarding the rights held and functioning arbitration systems are in place.

Occupancy of a plot on public lands and recourse to extralegal customary rights will create insecurity, but does not necessarily lead to loss of tenure (potential risk). Several types of factor make this risk real:

– Legal (contradictions between positive law and locally legitimate principles);

– Normative (uncertainty about the norms governing a given situation);

– Institutional (competition between the bodies regulating land tenure);

– Contractual (vague or uncertain agreement between the parties concerned).

Land administration

Land administration refers to the set of instruments, rules and institutions that facilitate land management in a given legal, social and environmental context.

More specifically, the term refers to the processes designed to regulate productive use, land use and conservation; the collection, allocation and taxation of revenues from the sale of land; and the resolution of conflicts over its appropriation. Thus, land administration includes the collection and processing of information relating to the tenure, value and use of land, as well as the tasks of registering changes in status and producing cadastral documents.

Land administration may be undertaken by the State services and/or other public, territorial, customary and associative institutions.

Land and property register (cadastre)

An updated system of information on land, giving the physical and economic characteristics of individual plots, the registered rights pertaining to each plot and its actual or authorised use. A land and property register consists of two types of documents: written information (files on owners and plots) and cartographic information (cadastral plans showing plot boundaries).

The French-type cadastre is a document used for tax purposes. This classifies plots according to a typology corresponding to the flat base rate of assessment and contains the taxpayers' (presumed owner) contact information.

Conversely, the colonial-type cadastre could be defined as a land inventory. It should provide the information needed to locate the asset, determine its boundaries and legal status, and identify its owner or occupant.

Therefore, land registers can have one or more aims:

– *Fiscal cadastre*, whose aim is to identify the taxable product and taxpayer

– *Legal cadastre*, to map out land ownership

– *Technical or urban cadastres* are often incorporated into geographic information systems and used in urban development projects.

Land and property supply chains

Land for housing is produced according to various procedures involving different actors, which are known as supply chains. When it is difficult to separate land development and construction, one also talks of *land and property supply chains*. There are three main supply chains:

– *State supply chains*, where the provision of land for settlement and housing is dominated by the State or parastatal organisations;

– *Capitalist supply chains*, dominated by actors whose objective is to make a profit from operations to develop land or property;

– *Popular supply chains*, which can only be defined negatively, as emanating from neither the State nor capital. Popular supply chains reflect the great diversity of actors and situations, and are the basis for most informal neighbourhoods.

Recent decades have seen the development of *customary supply chains* in the second and third type of chain, and the emergence of 'neo-customary practices' in urban areas and the outskirts of cities in francophone and anglophone sub-Saharan Africa. These are a combination of reinterpreted customary practices and informal financial transactions that have little to do with customary tradition, driven by individuals who claim to be following tradition but are selling rights that the traditional customary system does not recognise as theirs.

Land governance

Land governance refers to the set of rules, procedures and structures that define and organise access to land, its use and transfer, and the settlement of land-related conflicts

Land information system

A land information system (LIS) refers to all the information relating to land (parcels) on a database, and the procedures, techniques and equipment that facilitate information gathering and processing and make it possible to update, present and correlate all the data. An LIS can have different aims. In terms of land tenure, it only works when it is constantly updated by registering changes in tenure (inheritances, sales, long-term leases, etc.).

Land law

Land law consists of all the rules relating to land, its use and appropriation. It is representative of the power balances that exist within society, and can be both a reflection of society and a normative project that aims to influence the way its members behave. Therefore, land law may be 'progressive' or 'regressive', depending on the context, the state of the society at a given moment and the way it is evolving.

Local land rights often flow from customary logics in the sense that they are based on unwritten consensus. They should not be confused with the type of 'customary law' that colonial administrators sought to codify, or with the 'customary rights' defined by certain legislations.

Land policy

This term has a much broader sense in developing countries than in developed countries, as it includes the rules and administrative practices regulating rights of ownership, forms of access and land use and the transfer of these rights – in other words, it refers to public interventions on private rights.

Land reform

Land reform is the generic term for modifications to the legal and institutional framework in which land policies are implemented. Its aim is to put in place new land policies that respond to changes affecting the political, economic and social environment. The most common type of land reform relates to the redistribution of land and allocation of property rights.

Land registration

This refers to the first time that the appropriation of a piece of land is registered – usually in the name of the State – following a demarcation procedure and possibly compensation of its occupants. Each registered good is given a numbered entry in the land register, accompanied by a map, and the owner receives a land title in their name. Registration invalidates all prior real rights, is permanent, enforceable against third parties, and is not prescriptible. This procedure is based on the Torrens system, imposed by the English in Australia as part of a move to negate local peoples' land rights.

Land rights

Many kinds of individual and group rights to land may be recognised: the right to access a plot, the right to cultivate land or remove particular natural products from it, the right to let or sell a plot, etc. Therefore, we talk of a 'bundle' of rights to characterise what each rights holder is authorised to do.

The different basic rights that an individual or group holds over a given plot or natural resource include:

– 'operational rights' directly relating to the use of the parcel (rights of access, the right to remove natural resources, to cultivate, develop, make productive use of plantations, build on the plot, etc.);

– 'administrative rights' relating to the management of operational rights: the right to allocate operational rights to different family members, grant operational rights to third parties, sell or give away the parcel, etc.).

These rights are either based on the existence of a social consensus that makes them legitimate, or on legislation defining the legal forms of ownership and possession. The consistencies or contradictions between these norms are a key point in debates surrounding land policy. The legal frameworks in developing countries, and sub-Saharan Africa in particular, still reflect a colonial logic that excludes most local rights, rendering them 'informal' or 'extralegal', and creating a legal dualism where two contradictory systems co-exist (and interact to varying degrees).

We talk of 'customary rights' when land rights are derived from collective social norms (at the level of the 'community' or extended family groups) and when access to land and

natural resources is linked to social identities and involves local authorities. 'Local land rights' managed outside public mechanisms may be individualised or not; they generally have little to do with 'tradition', and there is sometimes an active market for such rights.

Land tenure regime

A land tenure regime is the set of rights that a private or public individual or legal entity may hold over land. There are four main types of land tenure regime:

– Regimes where the State has the right to appropriate land and controls its appropriation and management. Rules of appropriation are formal, codified and universally applicable;

– Private ownership regimes: the individuals or groups that hold land rights can prevent others from using the land concerned. Rights of ownership are exclusive and transferable;

– 'Common' or shared ownership regimes: rights of access to land come from the community; rights to and control over the use of resources are held by an identifiable group whose members have specific rights. Institutions within the community are responsible for enforcing land management through more or less formalised means;

– Open access regime: everyone has access to land, with no restrictions or limitations; there is no authority with recognised rights of appropriation or exclusion.

Land tenure status

Land tenure status relates to the particular legal situation of the occupant of a piece of land or building: owner, tenant, squatter, etc. The occupant's status may be regular or irregular in the eyes of the law, while the plot or building in question may be public or private. Particular rights are associated with each type of status.

Land tenure system

A 'land tenure system' refers to all the existing land tenure regimes in a given place, and includes all the rules regulating access to land and its use and management by different groups and individuals. The term 'system' conveys the multiple elements involved.

At the international level, a distinction is usually made between four main systems of land rights:

– Systems regulated by *Roman law* or its 'modernised' version, the Napoleonic code, which centres around private ownership;

– Systems regulated by *Common law*. These are the result of the progressive codification over time of customary rights regulating land use and management;

– *Islamic law,* which is *usually* superimposed onto customary local rights, without necessarily suppressing them. Here the emphasis is on the rules and procedures for alienating and transferring land, and productive use as a condition of possession;

– *Customary rights*, which are rights that a group or community exercises over a piece of land. The group distributes rights of use between its members or to persons outside

the group, and these rights are defended and guaranteed by the institutions associated with each group.

Legal pluralism

This refers to the co-existence of different systems of land rights, which may or may not be recognised by the State. Legal pluralism is found in many developing countries, where land tenure norms of various origins (customary, Islamic, colonial law, etc.) co-exist, are super-imposed and hybridise. Situations of unaccepted legal pluralism encourage conflict over the rules regulating land tenure as different protagonists claim rights emanating from different systems, and are also often characterised by multiple, competing land management authorities.

Primary and secondary rights

A distinction is sometimes made between 'primary' and 'secondary' (or derived) land rights.

In a system of written law, *primary land rights* ('ownership' in the sense of the Napoleonic code or Anglo-Saxon freehold) give the beneficiary the opportunity to deny or limit others access to the good concerned, and to dispose of it. *Secondary land rights* are rights of use that are allocated for a given period, in the form of rental, sharecropping, long-term leases, etc., at the end of which the land is returned to the primary rights holder.

In traditional systems, primary rights or rights of appropriation stem from first occupancy, clearance or any other form of appropriation of the site. They include a set of basic rights, including administrative rights.

Private ownership

Private ownership is the legal status given to an individual or legal entity, the owner, who holds all or some of the existing rights to a piece of land or other good. The owner is free to exercise or assign his or her rights. The substance of existing rights to a piece of land may be modified by laws or regulations, especially with regard to clearance, cropping modes and, in particular, improvement and construction.

Several owners may hold different rights to the same piece of land (rights of way, hunting rights, seasonal grazing rights, separate ownership rights to the land and buildings, mineral rights, etc.). The right to lease is also an ownership right if it can be assigned by the taker. However, overlapping land rights are less common in the legal culture of Roman law than in the tradition of Common Law, which is based on customary concepts. The trend now is towards a convergence of the two regimes.

While the English distinguish between *property rights* (the set of possible laws covering a piece of land or resource) and ownership (private ownership, which is just one possible mode), the French only have one term for this, which causes considerable confusion. In francophone circles, the term '*droits de propriété*' (in the sense of *property rights*) is all too often seen as simply referring to *private ownership*, which makes it difficult to understand local land rights and French to English translations of the term.

Public domaniality

In legislations influenced by France, land assets that are used to provide a public service (roads, markets, schools, etc.) are deemed to be part of the 'public domain' and are therefore inalienable and imprescriptible. The remaining public lands constitute the central government's 'private domain', and are transferable. During the colonial period, the State often formally incorporated vast tracts of land into its private domain by registering them in its name, usually in order to parcel them up and reassign them to rights holders or new owners. Other spaces deemed to be ownerless (such as forests) could also be incorporated into the public domain without going through the formalities of boundary demarcation and registration.

Occupied territories with no recognised owner that have been placed under the guardianship of the State are sometimes known as the 'national domain'. In such situations the status of local rights tends to be ambiguous and insecure, and abuses of power by the State common. This colonial approach to domaniality is constantly challenged by users' practices, as well as contemporary reforms aimed at recognising local land rights and giving them legal status.

Real rights

The term 'real rights' is used to designate a right that has a direct bearing on something (res in Latin), such as ownership rights (the real right *par excellence*), superficiary rights and leasehold rights. They are transferred with the good and may be sold, transferred through inheritance or mortgaged, unlike personal rights, which remain with the person and relate to a form of obligation between two parties (short-term leases and administrative occupancy or productive use permits).

Registration

In developed countries (such as France since 1771) changes in land tenure (sales, inheritance, etc.) are registered to give them a definite date. The conservation of deeds may be centralised and overseen by the State (in France, this is done by the *Conservation des hypothèques*). Depending on the legislation, registration may also involve the transcription of existing land rights into a land register (entry in the register constituting proof of ownership).

Regulation of land tenure

In situations of legal pluralism, land management involves much more than the simple application of a set of rules defined and imposed from above. Land governance is the outcome of a continuous process of negotiation between different sources of legitimacy, of defining and stabilising rules in order to ensure social peace and compliance with the rules and anticipate the issues associated with land tenure.

Renewable natural resources

Natural resources (aquatic, timber, fishing, game, pastoral, non-timber forest products, etc.) are known as renewable if they reconstitute naturally after being removed. When over-exploitation is likely to compromise the renewal process, it becomes necessary to control removal. This may involve a system to appropriate the resource (which excludes other users), different modes of 'shared' management, or regulations.

Security of tenure

Security of tenure primarily consists of protection against the threat of eviction. If evictions do take place, they must be justified by exceptional circumstances and carried out in accordance with known, objective and universally applicable legal procedures, possibly controlled by the court. Security of tenure takes various forms depending on the legal framework, social norms and value systems of each culture. Therefore, this concept has a legal, political, social, cultural and economic sense.

Sustainable development

Development can be said to be 'sustainable' when it meets the needs of the current generation without compromising the ability of future generations to satisfy their needs.

Tenure

The term *tenure* designates the body of rights (or 'bundle of rights') that individuals and communities have over land or other natural resources, and which are recognised by the State or by local communities. Thus, *tenure* can be seen as a social relationship.

A given resource (water, land) may have several users, each with specific rights of use (type of use, duration, seasonality). Some have access to all rights (the right to use, sell and transfer land), while others have limited access to the resource (temporary and conditional rights of use). Beneficiaries' confidence that these rights will be respected plays a central role in the way in which resources will be used.

We talk of common tenure when a community controls and allocates land use. The community (a village, clan or lineage group) is then considered as the owner of the land whose use is shared between its members. This right of use may sometimes be transferred through inheritance, but may not be sold, and the community retains the right to reallocate the land to other beneficiaries. Some of the land may be put to shared use. Customary tenure is one form of common tenure – the dominant form in sub-Saharan Africa.

Titling

Titling refers to the process of allocating and registering land titles: full ownership, superficiary rights and long-term leases. Allocating titles has two objectives: to regularise irregular occupancy and to secure investment. However, the allocation and registration of ownership titles in the name of new actors is often detrimental to former occupants or landowners who are not in a position to exercise their rights. Titling may be done on a case-by-case basis (individual applications) or as part of systematic programmes covering a neighbourhood, town or city.

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Land Governance and Security of Tenure in Developing Countries

White Paper

French Development Cooperation

Land tenure is a social construct, based on the relationships people establish in order to gain access to land and natural resources. As such, it has major economic, social and political implications.

Land policies play a key role in development strategies because they define land rights and their management, and the rules governing land allocation. The debate about policy options raises numerous questions: Should the development of land markets be encouraged? How should local land rights be dealt with? Can economic growth be combined with equitable access to land and environmental protection?

Developing countries need forms of land governance that take account of their diverse social, political and institutional situations in order to enable them to deal with the unprecedented challenges now facing them.

Mechanisms for securing land tenure that recognise the wide range of rights and sources of legitimacy can provide the basis for equitable and sustainable economic development. Promoting such mechanisms often involves redefining the role of the public authorities in order to regulate competition between different actors over access to land.

International development agencies need to support the land policies being debated at the national level by actors from the public and private sectors and civil society. This should be done in accordance with the Paris declaration, and bearing in mind the history of each country, thereby helping to promote democratic land governance.

This is the message from the development practitioners that have been working on land tenure in association with the Land tenure and development committee, and their proposed strategy for the French Cooperation.

The "Land tenure and development technical committee" is an informal think tank composed of experts and officials from the French Cooperation. It was set up in 1996 to provide strategic support to the French Cooperation and supervise land tenure initiatives through a network of French and international actors. The committee is also responsible for setting up the www.foncier-développement.org website.

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