

## BRIEFING NOTES

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

“Land Tenure and Development” Technical Committee

# Securing and regulating land tenure: putting the issues before the tools. Some of the obstacles to coherent policies.

by Vincent Basserie<sup>1</sup> and Patrick D’Aquino<sup>2</sup>, January 2011

Many West African countries are currently in the process of reforming their land policies. Discussions tend to focus on the tools and mechanisms for securing and regulating land tenure; but while tools are certainly a vital part of the process, it is important to understand that the same tool can serve very different interests depending on how it is conceived and used. Are we sufficiently aware of the diversity of issues that may be associated with a land policy? And what do we know about the real effects that tools have on all these different issues?

**G**overnments, producer groups, civil society organisations and experts in numerous West African countries are considering new policies, laws and regulations, in order to redefine modes of access to land and natural resources and the way that these resources are managed, exploited and appropriated. Thinking is often focused on finding the ‘perfect’ tool, but the first task should really be to ensure that the guidelines for land matters are clearly defined and then used to identify the most appropriate mechanisms for securing and regulating land tenure.

We will start with a few words on these concepts of securing and regulating land tenure.

## Securing tenure, regulations and land policies

**Securing tenure** involves a set of measures and tools that allow land rights holders to enjoy their rights and protect them from possible challenges. The question is, which holders and which rights? We could try to secure all types of rights (which is important, given the diversity of local rights to land and natural resources in West Af-

rica) or just certain rights, all types of rights holders or only particular rights holders, and certain types of spaces, resources or activities. So the term ‘securing tenure’ has different, and possibly contradictory meanings, depending on the users’ viewpoint.

**Land regulations** are all the measures that are taken to ensure that land systems function, or to control or correct the way that they do so. For example, the rate and scale at which ‘land grabbing’ has developed was not anticipated when current land policies were defined, and many actors think that *this phenomenon should be regulated*, in other words, that new rules should be formulated in order to control it.

These measures cover a wide range of matters in addition to land rights, and other policies also affect land (policies on decentralisation, tax, the environment and natural resource management, territorial development, support for private investment, etc.) and should be taken into account when modifications to the guidelines on land policies are being considered.

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## Start by identifying the various issues at stake

Land-related policies are driven by multiple and sometimes apparently contradictory issues, such as productivity, equity and sustainability. Nevertheless, it is important to build policies that will accommodate all the different existing issues, as well as emerging concerns like facilitating adaptation to climate change.

Unfortunately, these issues are rarely explicitly discussed in debates about land, even though it is vital to bring them out into the open and recognise their diversity. There are two reasons for this. On the one hand, it will improve understanding of the complexity of land matters in a given context, especially the different interests and logics at play, and thus help bring the different parties closer together. On the other hand, it is an essential step in choosing the best tools and measures for dealing with shared priority issues.

This is far from simple, since each of the actors concerned only represents certain aspects of the issues. Thus, an administrative official from one region may be most interested in his region's contribution to national agricultural production and avoiding major violent conflict; the head of a small family farm may want to have the right to rent land in order to increase his holdings and make use of the family workforce, while the head of a large family holding might wish to be able to gain access to credit; a village chief might be most concerned with maintaining social peace in his community and preserving the customary land management system; while the main issue for a local elected official could be improving his local government's tax revenues, and so on.

'Agreeing on the issues' ultimately entails encouraging each actor to acknowledge the issues at stake for other parties, so that they can work together to reconcile them in the process of establishing policy guidelines. There is still time to put this procedure in place in various West African countries today.

## Losing sight of the issues and focusing on the tools

Unfortunately, the issues are rarely debated in discussions on land policies: all too often attention turns to the tools before a clear understanding of the issues has been established. We often hear that "What we need are ownership titles", or "This country's not going to sort out its land problems until it has a land register", or even "Land management needs to be decentralised". But what is the ultimate purpose of all this? Which types of rights, actors and activities are we trying to secure? The same type of measure or tool can be used to obtain very

different results, depending on how it is conceived and used, and the other measures that are taken alongside it.

Conversely, the same result can be obtained with what appear to be very different tools and legal systems.

It is important to remember that a measure or tool to secure or regulate land tenure is not an end in itself, and may lead to very different outcomes depending on how it is conceived and piloted. The key to formulating effective and equitable land policies is taking time at the very beginning of the process to ensure that all stakeholders agree on the issues concerned, which may in fact simply mean adapting existing policies and tools rather than creating new ones.

## Many different types of measures and tools

This is good news, but raises another problem. The list below shows some of the different areas that can be addressed with various tools, bearing in



mind the following questions: Why do we want to act on this particular issue? What impact might this have on priority land issues? Is the aim to recognise existing rules and practices, or radically change them?

- The levels at which land-related decisions are made and land is managed
- Identifying/surveying land rights or occupancy
- Formalising rights (which ones?)
- Modes of access to land and natural resources
- Modes of transferring land
- Land taxes
- Rules relating to land
- Land allocation between actors
- Land use, development and occupancy
- The structure of agricultural holdings (size, configuration, distances)
- The physical demarcation of spaces or territories
- Modes of managing conflicts over land. Etc.

There are numerous possible measures for each of these areas. For example, in the 'field' of land transactions:

- some measures and tools may relate to the formalisation of land transactions (such as making standard contracts for renting parcels available in rural areas);
- others might limit different types of transaction (by authorising or preventing sharecropping, for example);
- and others may regulate this market (setting standards for land sale prices).

### Decisions are taken at different levels

Many sectoral policies touch on problems relating to land and natural resources. The various ministerial departments in each country are responsible for these policies at the national level, but this responsibility is increasingly shared with other bodies at the international, national, regional and local levels as processes of regional integration and decentralisation unfold.

This multiplicity of decision-making spaces is a considerable constraint to establishing the coherent guidelines needed to move forward constructively; highlighting the importance of consultations between the different territorial levels, and the need for a national vision and reliable and effective cross-sectoral coordination.

### Measures and tools have unpredictable effects

Depending on their nature and the way that they are applied, measures and tools can lead to fundamental changes in socio-economic and environmental balances (the balance and complementarity between activities, environmental impacts, wealth generation and distribution, social peace, and so on). But it is very difficult to predict their effects, especially as they will be the result of a combination of different measures, levels of public acceptance, modes of application and arbitration at different levels of decision-making and management, etc. Furthermore, the same tool can be used to achieve very different or even opposite objectives.

For example, formulating a local convention can broaden the range of possibilities in terms of access to land, but



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may also reduce them. A tool like the rural land use plan can be used to secure family farms or to facilitate the installation of new investors. Formalising land transactions may favour 'customary owners' in some cases, and land users in others. Finally, it is worth bearing in mind that a tool or measure can have an effect on land before it is even implemented, as people may develop anticipatory risk management strategies if they know that a tool is going to be used and are unsure what consequences it will have. This happened on numerous occasions in the context of the project to implement the Rural Land Use Plan in Ivory Coast in the 1990s.

**In conclusion**, recognising that tools are not the miracle solution for land policies serves to underline the difficulty of formulating effective public policies. But there are ways of trying to overcome these difficulties, such

as the ‘multi-level’ participatory procedures that have been developed to help actors reach a clear understanding and more agreement on the issues involved in a land policy. Their objective is to enable each actor to accommodate the issues that other parties bring to the table, so that they can work together to define the operational mechanisms for securing tenure and regulating land matters.

These procedures are based on the understanding that the best way to obtain effective land policies is for the different actors to engage with public policy: land users (taking account of their great diversity), local elected officials, representatives of civil society, customary chiefs, experts, technical services and central and deconcentrated administrations ....

The key is to go far enough in implementing these procedures to facilitate debate that is *inclusive* (so that certain categories of actor are not ex-

cluded), *informed* (so that every group of actors has a minimum level of information on the topic) and *balanced* (so that one group of actors does not prevent the others from participating

fully). The next step is to ensure that the huge progress made in this field in the last ten years is better disseminated and assimilated by those who are responsible for public policies. ●

#### FOR FURTHER INFORMATION

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ORIGINAL VERSION IN FRENCH “Sécurisation et régulation foncières : des enjeux aux outils. Quelques obstacles à la cohérence des politiques”, translated by Lou Leask.

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