PEDAGOGIC FACTSHEETS

*to gain understanding,
ask the right questions, and
take action on land tenure issues
in West Africa*

"Land Tenure and Development" Technical Committee

Land tenure and migration

by Mahamadou Zongo[1], December 2010

Migration is mostly seen through the media exposure of conflicts between natives and migrants. Yet, social relationships between migrants and natives go well beyond conflicts and ethnicity to eventually generate new solidarity and interdependency networks at the local level. This brief analyzes the land tenure dimension of migrations in rural areas, especially accommodation and integration mechanisms, as well as emerging strategies. It highlights the local changes of which both natives and migrants are the main stakeholders.

Land tenure and migration in West Africa

Migration is defined as an individual's moving from his/her usual place of residence for the minimum conventional duration of six months, as estimated by demographers. This concept generally refers to any movement of an individual from an administrative jurisdiction to another one for a stay of a varying duration.

There is a difference between internal and international migrations. Internal migrations are movements that take place within the boundaries of the same country, whereas international or external migrations refer to movements involving the crossing of an internationally recognized border. A specificity of migrations in West Africa, whether internal or external, is that, in most cases, migrants move towards rural areas in order to seize farming opportunities.

Despite their great diversity, traditional land tenure systems share three basic characteristics:

– land belongs to a community (family, lineage, village), rather than to an individual;

– it has a sacred dimension that is part of the production and reproduction of that social group;

– theoretically, land is inalienable, i.e. it cannot be sold.

Despite the sacred linkages between land and community, some traditional mechanisms enable outsiders — people who are not members of the community — to access land. These mechanisms include tutorship.

● **Tutorship, a migrant protection and social integration institution**

In almost all countries, the government is generally not directly involved in the organization of migratory movements. Migrants are accommodated and integrated through local mechanisms called *djatiguiya*, a term used in all the "Dioulaphone" areas by migrants to refer to accommodation mechanisms.

In general, the tutorship system ensures migrants' access to land through a mechanism according to which a native (the migrant's tutor) gives or lends to the migrant, for an indefinite term, a plot belonging to him. Above all, it prescribes social obligations that are a condition of land access consolidation. These obligations, called "social clauses on land conventions", refer to various duties such as compliance with local traditions and customs, assistance to the tutor, refraining from any involvement in local political affairs, etc. Tutorship does not establish any hierarchical relationship between

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migrants and natives; it rather creates the enabling conditions for the sound social or even full integration of migrants into the host community.

● Land tenure dynamics

Population increase and the modernization of production means (which enables the development of larger areas of land) accelerate the expansion of croplands and the tightening of competition for land access, which contribute to the evolution of land transactions. Formerly limited to the donation and lending of land for an indefinite term, land transactions have been diversifying over time. Thus, several types of rights known as "derived" rights have developed. These rights form a body of arrangements governing access to the already allocated farmlands. They are characterized by a revocable transfer of rights (outside the family). Derived rights can be associated to:

– the lending of land for an indefinite term;
– the lending of land for a short term;
– the leasing of land;
– a land-for-services transaction;
– the pledging of land…

Another aspect of the evolution of the migration phenomenon is undeniably the total or partial monetization of land transactions. Whereas land lease is almost not very problematic, land selling often gives rise to conflicts. The issue of land purchase has developed further in recent years, with the entry of urban and political elites, and even international companies, into the "rural land market".

Unlike conventional migrants, this category of actors is motivated by commercial interests and therefore in search for large areas of land.

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● Migrations and land conflicts

Migrations have entailed many land conflicts in West Africa. In forest areas, the most media-exposed conflicts are those between natives and migrants. Yet, intra-family conflicts, although not quite perceptible, are equally significant in number. In the Sahel, in addition to the aforementioned conflicts, farmer-pastoralist conflicts are a major cause for concern.

In general, land conflicts are triggered by a whole array of factors. Although the depletion of land resources comes first among the reliable reasons, there are other factors, such as:

– **diverging interpretations of the nature of former transactions.** Some of the former transactions are considered as irrevocable donations by migrants while natives consider them as lending transactions, which means the rights associated with them are quite revocable;

– **generation change.** The descendants of migrants tend to free themselves from former obligations associated with tutorship, whereas those of natives tend to question land transactions concluded by their parents;

– **emergence of monetization.** Monetized land transactions are usually ambiguous. This gives rise to diverging interpretations of the very nature of transactions: on the part of native "sellers", the transaction is construed as a simple monetized long term lending that never exempts the purchaser from his/her customary obligations under tutorship. For the migrant "purchasers", on the other hand, the transaction confers on them irrevocable ownership of the land and, therefore, exempts them from any social obligation towards the seller;

– **institutional diversity.** Rural areas are characterized by the coexistence of competing institutions depending on the public administration, the customary system or development projects. Decisions taken in the resolution of conflicts are seldom conclusive, as several institu-

tions are involved and there is no mediation or arbitration mechanism;

– **controversial interpretation of state land laws.** National land laws are construed by each category of stakeholders according to their own interests. In Burkina Faso, for example, pastoral communities strongly put forward state ownership of land in the hope of gaining better access to land. On the other hand, migrants believe that if land belongs to the government, then it belongs to every citizen. As for native farmers, they have always contested state monopoly on land, asserting the legitimacy of their customary land titles.

Migrant land tenure securing strategies: from registration in social networks to contract formalization

Migrant land tenure securing strategies are evolving and diversified. Formerly based on the quality of social relationships and the spontaneous re-cognition of the "customary owner's" authority, they are progressively involving the use of writing.

● Sustainability of social safety mechanisms

In addition to compliance with social constraints set out during the land transaction, the first step of the land tenure securing process is the actual development of allocated plots by the migrant. In some cases, the transaction is subjected to the annual payment of a symbolic in-kind royalty such as a portion (e.g. a basketful) of crop to the "customary owner"; any failure to meet this obligation rightfully giving rise to the termination of the transaction.

Finally, keeping good social relationships with the customary right holders effectively contributes to securing a migrant's land entitlement. Indeed, according to local conceptions, the allocation of a land establishes strong social links between both parties under which the recipient pays courtesy calls to the "landowner", pays him respect and is bound to offer him assistance whenever he is in need. These social safety networks clearly show that, under the customary system, land tenure is first a matter of social relationship.

● Expanding the "informal formalization"

The frequent controversies around land rights or the questioning of the nature of land transactions have prompted many people in rural areas to issue "small documents" that clarify the nature of land transactions and evidence the existence of the transaction. These documents are characterized by the extreme diversity of their forms and contents. They are written in "local French" (Côte d'Ivoire, Burkina Faso), Arabic (Niger) or in an impeccable administrative style. The documents are written locally, either by literate farmers or by civil servant on duty in the area. Some of them are certified by administrative authorities (*préfet*, police, municipality, etc.).

In terms of contents, some documents remain totally loose about the nature of the transaction or use ambiguous formulations such as cession, allocation, picketing and so on. The lack of precision also concerns the location of plots ("in the bush of…", "at some distance South of the village"; sometimes there is even no indication). This is also true of the delimitation that is either not mentioned or very approximate; where there is a somewhat precise delimitation, it is generally not accompanied by a plan. These inaccuracies do not seem to be a problem for sellers and purchasers.

Yet, whatever the formula used, in all cases, the signing of the documents is attended by witnesses for both the seller and the purchaser. The purchasers tend to demand that the witness and the sel-

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ler be of the same ethnic group, since as the saying goes: "If a frog comes out of the pond to say that the caiman has red eyes, only another frog can confirm or deny that". Fingerprints sometimes replace signatures on the document.

Finally, irrespective of the contents of the document, it is the status of the seller and that of his/her witness that gives force to the document.

Prospects

Land issues in the migration areas are particularly complex, as access to land is generally achieved outside a legal framework. Therefore, the resulting conflicts are beyond the powers of legal institutions responsible for these issues. It would be wrong and counterproductive to try to combat migrations, as they foster, in several ways, not only new economic and institutional dynamics, but also national consolidation and regional integration. It is the government's responsibility to set up, as smoothly as possible at the local level, the appropriate regulatory mechanisms that will enable migration to play its nationally and regionally advantageous socio-economic role. ●

FOR FURTHER INFORMATION

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