



# Land Governance and Security of Tenure in Developing Countries

## White Paper French Development Cooperation

Land tenure is a social relationship. It refers to the relationships that are established between people regarding access to land and the natural resources it bears. It is therefore a major economic, social and political stake. Because land policies define land rights, how to manage these rights, and the rules on distribution of land among actors, they play a central role in development strategies.

Land policy decisions are the focus of numerous debates: Should one favour the land market? How should local rights be addressed? How can one combine economic growth, equity and environmental protection?

To meet the unprecedented challenges that they are presently facing, developing countries need to set up land governance. This governance must take into account the diversity of social, political and institutional situations unique to each country. The goal is to promote systems that improve the security of land tenure, based on recognition of

the diversity of rights and sources of legitimacy, and that serve fair and sustainable economic development. Such an objective implies a redefinition of the role of government authorities in order to regulate competition between the various stakeholders in access to land.

In compliance with the Paris Declaration and respecting the history of each country, international development cooperation has a duty to support land policies that are—or were—the subject of debate and to support a negotiation process at the national level that includes the various public, private, or associated stakeholders. This support must help promote a democratic and equitable governance of land.

These are the messages that French international cooperation actors, brought together in the Technical Committee on "Land Tenure and Development", propose in the White Paper of which this document is a summary.

*Bringing together experts, researchers and French Cooperation agents, the Technical Committee on "Land Tenure and Development" is an informal think tank. Since 1996, it has provided French International Cooperation support on strategies and activity supervision in the field of land tenure in conjunction with numerous French and international actors. The Technical Committee on "Land Tenure and Development" initiated the website "www.foncier-developpement.org". The White Paper was drafted under the guidance of the Technical Committee and in dialogue with numerous actors in developing and developed countries.*



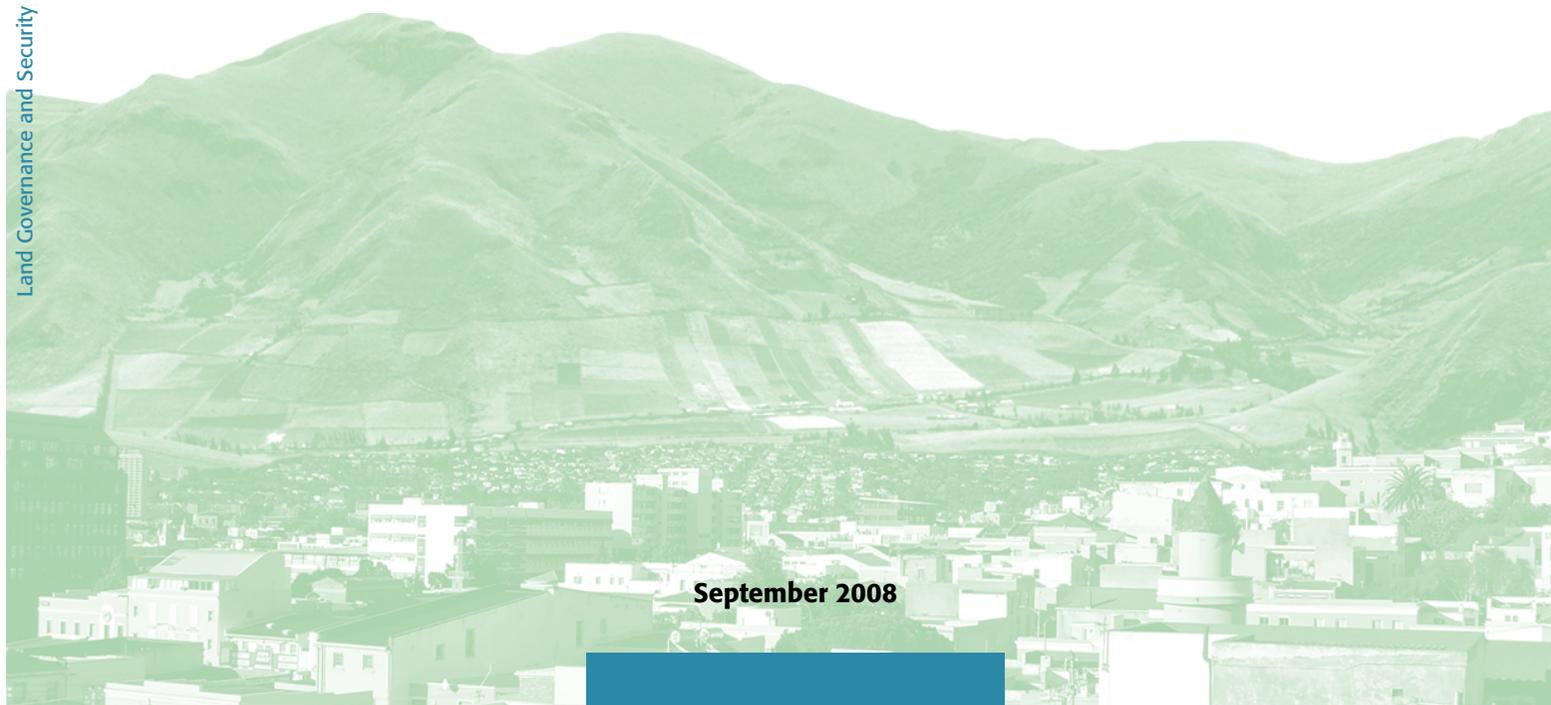
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### SUMMARY

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**White Paper  
French Development Cooperation**

## SUMMARY

## **Notice**

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**T**his White Paper was produced by the Technical Committee on “Land Tenure and Development” (Comité Technique “Foncier et Développement”) co-chaired by a representative of the French Ministry of Foreign and European Affairs (Development Policy Directorate) and by a representative of the French Development Agency (Agence Française de Développement). During the course of its preparation in 2007 and 2008, numerous debates, discussions and consultations were held among French experts working on land issues in developing countries..

This White Paper was written by 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).

The summary of the White Paper presented in this document was approved in a open meeting of the committee on “Land and Tenure Development” held in Paris on September 29, 2008, in the presence of several European and international partners.

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

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## Preface

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**L**and tenure is a major economic and political issue. It is central to agricultural policies, rural development, and urban development and planning. Land policy orientations have a decisive impact on territorial development.

Land tenure is a social relation. The way in which a society defines property rights over land and natural resources, allocates them among the various actors, and guarantees and administers them reveals how a society is organized and governed.

In this respect, the issue of land tenure has a direct impact on governance (defined as the process of governing by articulating management of public affairs at various scales, regulating relationships within society, and coordinating the interventions of a diversity of stakeholders). Land governance, beyond its social dimension, refers to arbitration between the competing economic functions of land. It aims to reconcile, while complying with laws and rules, the interests of the various categories of actors, and to involve citizens in decision-making processes by taking local practices into account. It is all the more important to reflect on the relationships between land tenure and policy decisions since the relationships that form around land are eminently conflictual. The reflections undertaken in this White Paper are therefore a continuation of those undertaken by French Cooperation on the democratic governance strategy that was adopted by the Inter-ministerial Committee on International Cooperation and Development in December 2006.

Land management and administration is a crucial component of local policy. It has a strong influence on the conditions under which political power is exercised. It can give the government authorities the means to meet the expectations of citizens who depend on land for

their existence and to conduct their activities. Accordingly, land policies are a central element in development policies and the reduction of poverty and inequalities, in particular by ensuring land tenure security. They can help prevent conflicts just as they can cause them if the conditions for access to land generate—in rural or in urban areas—massive inequalities and insecurity. Land policies also contribute to resolving tensions linked to demographic growth and population migrations. Encouraging and securing investments improves confidence and economic growth. Finally, land policies are a key element in environmental protection policies, natural resource management policies, and consequently sustainable development policies and strategies.

During the past two decades, the reflections and practices of French actors in the field of land tenure have contributed to enriching the debate on several issues that are at the heart of development cooperation interventions with our partners in both rural and urban areas of developing countries. In particular, they have put emphasis on the relationships and interactions between legal systems, on their impact on security of land tenure, on the place given to customary rights, their legitimacy and their dynamics, the types of institutional support provided to experimental projects, and national land policy reform processes. These approaches deserve to be better known and shared, both among French development cooperation actors and between them and bilateral and multilateral development aid institutions. These approaches and practices have also made it possible to identify the limitations encountered when transferring exogenous institutional land tenure management models in contexts often characterized by legal pluralism, and therefore systematically taking the always-specific national situations into account in our cooperation policies.

The goal of the White Paper, “Land Governance and Security of Tenure in Developing Countries”, is to be a tool for exchange and dialogue with all those involved in projects that have a land component or an impact on land and tenure, and particularly with governments and international development aid partners. In a globalizing world, it offers a critical view of past and current interventions by French development cooperation actors. It proposes a framework in which to analyze the issue of land tenure so as to understand its dynamics and offer tools and intervention modalities taking into account local, national and global constraints.

The White Paper, a summary of which is presented here, could not have been written without the work done over the past fifteen years by the members of the “Land and Development Committee”, a multidisciplinary think tank composed of researchers, experts and development practitioners. Its work has enabled conceptual and methodological advances that are recognized by the international community. Since mid-2007, during thematic meetings and study and exchange days, the committee members have contributed to the preparation of the White Paper. We extend our thanks to all of them.

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## Introduction

**L**and tenure can be defined as the **full range of relationships between humans in regard to access to and control of land and natural resource management**. It is a key issue from economic, social and political points of view. As they define rights to land and how to manage these rights, and guide the distribution of land among stakeholders, land policies play a central role in development strategies. They are the subject of many debates: Should one favour the land market? How should local rights be addressed? How can one combine economic growth and equity?

Starting with the current knowledge and in reference to the current international debate on land tenure, the purpose of the White Paper is to **offer the French Cooperation a diagnostic of the situation and strategic orientations for its interventions in the field of land and tenure in developing countries**.<sup>1</sup> This White Paper is the result of a collective elaboration process. Despite its frequent references to Africa, in particular when analyzing rural land tenure issues, it aims to be more general in scope and the proposed approach emphasizes the dynamics observed on the global scale and the continuum between rural and urban areas.

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1. Developing countries are not the only countries facing land issues. In this paper however, land tenure in developed countries and former socialist countries transitioning to a market economy will only be addressed to the extent that they contribute to global processes.

# Land Tenure Issues Today: Historically Unprecedented Challenges

**I**n part one, the White Paper makes explicit the land tenure dimensions in the issues that all development policies face: address demographic growth and manage populations, control urban growth, preserve the environment in rural and urban areas, foster access to land and housing for all, reconcile economic growth and the reduction of inequalities. Moreover inequalities in the distribution of land and the competition among actors regarding land are a frequent aspect of both local and national conflicts. Understanding the interactions among these diverse aspects of land tenure throughout the world and the links between land tenure and conflicts requires a historical approach. In many countries, current land issues are rooted in the legacy of the colonial era, in the land policies implemented after independence (that often allowed the gaps between land regulations and states' "administrative" or "informal" practices to persist), and in the limited intervention capacities of public authorities' regarding land tenure in a globalised world.

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## Unprecedented Challenges Around the World

Today, human societies face fundamental challenges worldwide. They must find the means to provide food for a continuously growing world population, withstand the fossil energy supply crisis, manage ecosystems in a sustainable manner while preserving biodiversity as much as possible, and prevent global warming. They must find a way to ensure access to housing for all while controlling urban growth. Last but not least, they must lower the risk of conflicts and confrontations and, accordingly, must limit the exclusion from resources and reduce poverty and inequality. Addressing these challenges will require a strong capacity to innovate that mobilizes the wealth of the world's cultural diversity and knowledge.

In this context, developing countries face specific challenges for which there is no historical precedent. **They must face rapid demographic growth and rapidly increasing rates of urbanization in a global world that places agricultures and territories in competition with one another** and marginalizes areas that do not have "comparative advantages". They are particularly marked by a worldwide trend towards an increased privatization of natural resources, water and land, which leads to the capture of new kinds of rents by a few national or foreign stakeholders. In these conditions, ensuring the integration of populations, food security and access to economic opportunities in a world where there are hardly any "virgin lands" left for settlements and cultivation, while simultaneously taking into account environmental problems raises enormous challenges and challenges the relevance of past policies.

## **Allowing Access to Land for Production, Food and Housing for Everyone: A Crucial Dimension of Sustainable Development**

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Food security policies based on the support of family farming are necessary to feed the world. Widespread and secure access to land is one condition; the sustainable management of ecosystems is another. Demographic growth will increase rural population density and migration, which may generate conflicts.

To ensure housing for all, urban planning must anticipate the spatial expansion of cities. In order to integrate informal settlements into the “legal” city, it also needs to provide them with infrastructures and services. In particular, it is important to keep control over urban sprawl, which is costly for inhabitants and destructive for the environment.

**Inequality in access to land worsens poverty and exclusion**, both in urban and rural areas. In addition to the suffering and injustice it causes, it generates numerous social and political risks. Land policies must foster better distribution of land and ensure both economic efficiency and equity.

To fight climate change and respond to the energy crisis, regional planning policies must now pay environmental issues the attention they deserve.

## **Preventing and Regulating Conflicts Regarding Access to Land and Natural Resources**

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**Because of the inequality in access to land and/or the resources it bears (water, forests, tourism opportunities, etc.), a large share of the rural population cannot satisfy its essential needs.** The preference often granted to agribusiness in economic policies increases the pressure on land and may have high economic, social and environmental risks in the medium and long term. Rural populations are frequently in a situation of land tenure irregularity, usually because they are unable to obtain legal recognition for their land rights. Deficiencies in land regulation accentuate competition among stakeholders and competition concerning resource use. Hunter-gatherer, herder and “indigenous” populations are the most vulnerable to the advance of pioneer fronts and the intrusion of logging or mining. In developing countries, large land estates are often expanded by expropriating rural populations, and the private appropriation of resources that are crucial to their survival and were previously community-owned.

Approximately one-third of the world’s urban population lives in poverty. These populations have no other option than to live in informal settlements, in irregular land tenure situations, exposed to insecurity and often deprived of infrastructures and essential services. Increasingly, exclusion by the state is being followed by exclusion by the market. Those who occupy land in irregular settlements cannot produce documents that can be opposed to third parties to certify the regularity of their occupation, and live in precarious conditions regarding land tenure. The insecurity of land tenure jeopardize most interventions aiming to improve living conditions and housing, and multiplies land conflicts.

**Competition for land, contradictions between systems of norms regarding land tenure, land tenure insecurity, and territorial demands and the defence of identities are four major sources of land-related conflicts that are often subject to political instrumentalization.**

In these conditions, many contemporary regional, national and even international conflicts have important land tenure dimensions.

## **Taking into Account the Diversity of Rights to Land and Renewable Natural Resources**

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The prerogatives and duties linked to the possession, control and exploitation of land and renewable resources are closely related to societal choices. All local communities and societies are, to different degrees, part of larger political entities, states, and commercial networks. Yet, the world is not uniform. While it tends to bring uniformity, globalization re-creates diversity and local identity. In a large number of countries, land tenure is considered and managed differently depending on whether one lives in a regular urban settlement or an informal, irregular settlement, in the plains or the mountains, and in farming, pastoral or hunter-gatherer societies.

In most developing countries, **colonization left deep marks on land tenure systems** and land management and administration procedures, particularly in sub-Saharan Africa where the independent states inherited the land prerogatives of colonial states without substantially modifying them. The bureaucratic model of governing men and administering land was super-imposed on existing land tenure systems or relegated them to areas of little economic interest. To provide European settlers incontestable land rights, colonial regimes set up an administrative procedure of “top-down creation of private ownership”, negating the pre-existing land rights that had been progressively established throughout history. In many regions of the world, this situation created a legal dualism, opposing areas regulated by written law and areas regulated by other rules, and opposing stakeholders whose rights could be legally recognized and those who were excluded from such recognition. This dualism often persisted until the present day.

Throughout the 20<sup>th</sup> century, land policies in rural areas have widely differed. **While implementing various land policies** like agrarian reforms, collectivization, land development schemes and domestic colonization policies, **governments have largely adopted a laissez-faire attitude** to such an extent that land tenure legislation has been little or not at all enforced. Indeed, land legislation often turned out to be unenforceable as it was designed in reference to legal frameworks that were incompatible with existing land tenure systems. These systems were largely maintained under the cover of local administrative practices.

The renewable natural resources exploited by rural populations have been subject to bureaucratic management that clashed with farmers’ logics. In the name of rational management, public policies have continued and sometimes intensified logics of exclusion already at work. **Some states have allowed or encouraged the private appropriation of land by a small political and economic elite or by trans-national corporations** without setting up the necessary regulatory tools and mechanisms. Governments have also set aside large land reserves, within the national territory for tourism or hunting, sometimes to the extent that populations have been impoverished or condemned to starvation.

In cities (mainly in capital cities and in a few large secondary cities), the conventional model of housing production refers to a process that pretends to be rational. Yet, planning and development tools—in particular, master plans and local development plans—are rarely able to meet housing and infrastructure needs because the public control over land is weak.

Starting in the second half of the 20<sup>th</sup> century, these tools were also often outstripped by the pace of urban growth. **Urban expansion happens mostly through informal processes**, and the production of a large number of urban settlements does not follow the logic and procedures of formal public and private housing production, where land is first subdivided, developed and serviced.

Until the 1970s, the way governments responded to the irregularity of settlements oscillated between negation (most planning documents were unaware of the very existence of these settlements) and repression through evictions. Starting in the late 1970s, the social risks generated by these policies and the intervention of international institutions led states to emphasize policies of infrastructure, restructuring and tenure regularization of irregular settlements. They also tried to prevent the expansion of informal settlements by producing serviced land for residential use and, sometimes, housing.

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## **A Need for Land Policies in a Liberalized World**

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More recently, in the 1980s, the liberalization of world trade, the debt crisis and structural adjustment plans forced states to redefine their role, limit their direct interventions regarding land, and take actions to facilitate private investments.

The economic and political changes over the past twenty-five years have been extremely diverse and contrasted. Some countries have benefited from new opportunities, whereas others have been marginalized. Even within countries, contrasts are increasing between “useful” zones and the margins, abandoned by government authorities or exposed to armed rebellions.

When it has not been inhibited by authoritarian regimes, civil society demands to participate more in public affairs. Farmers’ organizations, organizations of squatters or of the poorly housed, and of “indigenous” people have emerged or become stronger, and demand acknowledgement of their land rights or an equitable access to land and natural resources. International NGOs are also entering the land tenure field.

In this context, the nature of public intervention is changing and subject to contradictory pressures. **The legitimacy of authoritarian interventions in the distribution of land rights by the state is contested. Yet, contemporary changes in the balance of power call for proactive policies by states.**

This need for policy can also be observed at the international level, in relation to new global challenges, and at the local level in relation to the emerging demands for relative autonomy and governance of territories.

# An Analytic Framework for Land Tenure

**P**art two of the White Paper proposes a framework to analyze the land tenure situations found in the rural and urban areas of developing countries. It clarifies the functions land tenure plays on the economic, social, political and environmental levels. As a production factor, support for economic activities, an indispensable component in the production of housing, and a favoured sector for investments, land plays a key role in the economic strategies of the various stakeholders, in the construction of identity, and in the domestic policies of states. The White Paper also endeavours to analyze the diversity of land tenure situations, and addresses changes in systems of rights, and the issue of local land rights and their regulation. Particular attention is given to the ways in which rights are transmitted, rural and urban land markets, and their impact on land tenure security.

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## A Diversity of Roles and Functions of Land

### ● Potentially Competing Economic Functions

In rural areas, land is the basis for agricultural production, and the source from which natural products are taken (logging, gathering, pasturing, fishing, hunting, etc.).

**For farmers**, regardless of their economic orientation, land is above all a production factor: agricultural production is ensured by a variable combination of land, labour and capital, depending on the economic context and the pressure on land. Worldwide, most agricultural and pastoral production is ensured by smallholder farming whose vitality and ability to respond to market incentives have been proven many times.

The threshold for economic viability is highly variable and can range from a few thousand square meters to several hundred hectares. Because of the small economies of scale in farming and the cost of managing labour, at equal technical levels, the productivity of small and medium farms is higher than that of large farms, thereby ensuring better economic efficiency and better income distribution. Large farms are more productive in specific contexts, in particular when there are strong constraints on capital, access to inputs or credit, or in commercialization networks. While corporate farming can claim to be superior in specific economic and institutional contexts, its socioeconomic and environmental impact can be negative over the medium or long term. For all farmers, land is also an economic and symbolic heritage to transmit. For some farmers only, land is considered to be lucrative capital.

Land is indispensable **for the production of housing**. The transition from the status of farmland to lands suitable for urbanization marks a major break in the function and value

of land. In the cities of developing countries, marked by rapid urban expansion, few plots of land are provided with infrastructures and services. Urban stakeholders feel the scarcity of land all the more as the (current or anticipated) pressure of demand for housing land is high, and when strategies widen the gap between the supply of and demand for land. To this growing scarcity of land for housing, one can add the pressure generated by conflicts between the various uses of urban land.

**For industry and services**, land is first a need to settle their activities, and access to developed land can be a major constraint in densely occupied areas. Since land is a scarce, non-replicable resource and since demographic trends and human activities allow one to anticipate a growing imbalance between the demand for land and its availability. Consequently, land is highly attractive for speculative investments. Indeed, land can be a corporate asset that facilitate access to credit. During periods of rising land and real estate prices, it can be very profitable to invest in land (especially urban and periurban land). Accordingly, land can play a central role in their investment strategies. Furthermore, the low land prices in rural areas encourage multinational companies to invest in large land estates to produce agrofuel or agricultural commodities, to serve as carbon sinks or biodiversity reserves, or for tourism.

**For financial institutions**, especially in periods of rising land prices, granting loans is a highly profitable activity. However, when the logic of investing excess liquidity prevails, prices in land markets may follow trends that are not in phase with those of the productive sector. The various financial crises over the past twenty years have clearly stressed the links between land, investment and access to credit. While the nature and scope of these crises are very different, land always seems to be a key element in triggering these crises, with the crises influencing land markets in return.

Urban land, and periurban land to a greater extent, often plays a central role in the savings and wealth-building strategies of the **urban middle class** and the upper segment of lower income groups. Investing in land provides many urban households with some protection against inflation and life risks, especially in societies where social protection systems are little developed.

Depending on their financial resources, households will purchase either serviced urban plots of land or houses, or purchase agricultural land in periurban areas. Taking advantage of low land prices and their greater wealth compared to rural people, they buy land in informal markets, attempt to regularize their ownership, and take up small-scale farming to supplement their urban incomes, rent out the land, or simply wait for urban expansion to build or re-sell.

These strategies help maintain pressure on the demand for urban land and raise land prices. They have an influence on farmland and cause land prices to rise in periurban areas. In this respect, they exclude farmers from access to the land market and contribute to rapid urban spatial expansion.

**For governments**, the economic functions of land are central, and their control is a necessity. Land taxation may be one of the most stable potential sources of public revenue. It makes it possible to promote a relatively homogenous economic development by resorting to differential taxation. It can also enable states to limit the phenomena of accumulation of land with little social use in a few hands, and sometimes to fight speculation. However, unlike developed countries, developing countries levy few taxes on land due to their political histories.

### ● **In All Countries, Land Also Has Social and Political Functions Related to the History of their Institutions**

**In many contemporary peasant societies in developing countries, the management of land and natural resources and the governance of people are inseparable.** Despite the increasing individualization and monetarisation of access to land, ownership, identity and authority often remain intermingled in the regulation of access to land, in the formation of local communities, and in the mobility of social groups. In particular, the rights related to land and its resources (and the corresponding obligations and duties) and the rights and duties related to membership in a local political community are interdependent. This heavy imbrication of rights and identities—which is rooted in history but sometimes intensified by public policies that give local authorities an explicit role in the management of people—helps produce processes of exclusion and feelings of dispossession for non-members of local communities. These processes are easy to exploit in political struggles.

**For governments, land remains a preferred and usually cheap way to remunerate the social groups or political constituencies whose support they seek** both in urban and rural areas. This function of land is ancient but deserves particular attention in the current context marked by the commodification of all land-delivery systems and the intensification of conflicts between stakeholders for access to and use of land in urban and periurban areas. When states exercise a monopoly over land, the temptation is strong to use land as a means of social control, and to strictly regulate or forbid certain groups from obtaining access to land and basic urban services.

### ● **A Need for Coordination and Arbitration Among Conflicting Uses and Interests**

**Therefore, land and natural resources are subject to competition with multiple social, economic and political dimensions.** The conflicts between the various functions of land, and between the different stakeholders require collective regulation that combines coordination among stakeholders and arbitration. One of the roles of land policies is to arbitrate between conflicting uses and interests, and to coordinate these uses according to a vision of the future and a concept of equity and living together.

One of the achievements of recent years is to have emphasized the major importance of **land governance mechanisms in the negotiation of policy orientations between multiple stakeholders, not only on a national scale but also within territories.** Indeed, it is at this level that local stakeholders can be active participants in shaping decisions on land and natural resource management, given their detailed knowledge of ecosystems and stakes, and on the condition that an overall political framework structures and regulates local balances of power.

## **Regulation Mechanisms Bring Contradicting Land Rights into Play**

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**The various functions and uses of land refer to a wide range of land rights,** ranging from simple withdrawal rights to private ownership and including various forms of common property. These rights are managed by a public system or by local institutions. This diversity

of rights raises the issue of coordinating and regulating uses, activities and functions, and thereby the issue of regulation mechanisms between stakeholders.

### ● A Diversity in Systems of Reference

**Because of their political and economic histories, developing countries frequently face a wide diversity of social and economic situations.** Within the national territory, the various social groups have their own specific ways of defining norms and values about land, land authorities, and land appropriation and management. Depending on the area—forest lands with “indigenous” populations, state-developed areas, “traditional” agricultural lands, agricultural areas heavily integrated into the market economy, developed urban centres, periurban areas, etc.—the references of stakeholders will differ and may borrow in varying proportions from customary principles, religious principles, national laws, etc.

On the local scale, **rights to land and natural resources represent a complex set of individual prerogatives and collective regulations.** They crystallize the ideas that societies have about relationships between individuals, between individuals and groups, and between groups and state institutions. In the “community” rationale, access to land and resources depends on social belonging and land, a means of subsistence, may be excluded from social competition. A market rationale, on the contrary, places individual rights above collective regulations and the market may exclude people from access to land and subsistence. In rural areas, land tenure rules are very diverse and anchored in human ecology and rural production systems. In peasant societies, individual exploitation rights often coexist with family estates or lineage estates inherited from one’s parents and commons (forests, pastures, etc.). The concrete forms of land regulation can be more complex, organizing the coexistence of different rights to the same plots, mobilizing diverse authorities (family authorities, village authorities, etc.) to manage the land and social reproduction, and by combining market and community rationales in varying degrees.

In urban areas, land tenure rights are frequently individual; they pertain to legal categories that are clearly identified if not recognized and acknowledged by all stakeholders, the state in particular. In both urban and rural areas, securing land tenure and in particular that of the poorest, depends—and frequently relies—on the possibility of mobilizing a plurality of rights. Each stakeholder has a bundle of rights and prerogatives and seeks to optimize it for the best, given his or her own situation. **Standardizing land tenure rights in the name of their “rationalization” can lead to the marginalization and exclusion of the most vulnerable groups** (social and ethnic minorities, women, young people, the elderly, etc.).

In all countries of the world, renewable natural resources (water, timber, fishing, hunting, pastoral, non-wood forest products, etc. that are taken from the ecosystem and not produced) raise specific issues in terms of rights and regulation. They can only be exploited in a sustainable manner if off-take is less than natural growth. This requires rules shared by heterogeneous groups of stakeholders to be implemented to govern access to these resources, their exploitation, and the enforcement of compliance with these rules. **It is not always economically efficient to privatize renewable resources.** In fact, in rural areas, numerous renewable resources are “common resources”: an identified set of stakeholders has exclusive rights to exploit the resource; rules regulate the exploitation of the resource; and certain bodies are responsible for and capable of guaranteeing and enforcing these rules. These modes of management are frequently weakened by public interventions based on a supposed “technical” rationality, and by market pressure.

### ● “Legality” versus “Extra-Legality”

The logic of private ownership creation by colonial states, and the fact that they relied on local powers to govern rural territories has produced **a legal dualism between areas governed by written law and other areas**. Certain rights are consistent with the legal framework defined and guaranteed by states: the actors that hold them have a land title, lease agreement, housing permit, etc. **An often very large share of the national territory falls under other rights** whose legitimacy is recognized at local level but that are not necessarily in compliance with the legal framework defined by the state (civil law, land law). The legal framework more or less takes these customary rights into account, sometimes acknowledging but often denying them. Land tenure legislation introduces norms and legal procedures that sometimes dovetail with local land standards and in this way builds effective and coherent regulations; but it can also overlay them and create situations of conflict or insecurity.

Independently of the law, local rights are generally acknowledged in practice as state agents know that they cannot ignore them. But they can also be denied (whether ignored or viewed as having been abolished) or reduced to simple use rights that are precarious and cannot be transmitted or transferred. This attitude thus allows the state, to expropriate without payment, (e.g. when it wants to create infrastructures) and fosters abuse of power, arbitrary expulsions and land tenure insecurity. When customary rights are recognized in law, they are not always implemented by a coherent administrative system and are, then, weak in the face of risks of exaction.

**Legal dualism is a major cause of the relegation of a large share of the population.** Since its land tenure rights are denied, it is subject to arbitrariness and the risk of eviction, cannot obtain access to formal credit and, in many cases, services and infrastructures. This legal dualism creates exclusion and conflict: different stakeholders can claim rights to the same area by referring to different norms and values; some can use administrative procedures to obtain legally irrefutable rights to land appropriated by others. When there is a conflict, arbitration bodies do not know what to base their judgments on. In practice, since legal procedures are very often complex and poorly implemented, “formal” public stakeholders can validate local and “extra-legal” rights and set up arbitration procedures which may be in contradiction with one another. This situation generates conflicts, in particular regarding land transactions.

### ● The Issue of “Customary” Rights

**In many situations, especially in rural areas, current land tenure rights are not a matter of private “ownership” by individuals or households. They consist on a set of prerogatives and regulations at the scale of the “community”.** Managing land and natural resources and managing people go hand in hand *via* specific institutions anchored in local powers that seek to ensure the co-existence of different land uses and to manage competition for land in order to maintain the long-term cohesion of the social group beyond conflicts and rivalries. These institutions are dynamic and change with the demographic, social, technical and political context.

These situations are the result of the degree of autonomy that local societies have managed to preserve but also of colonial and post-colonial policies that often relied on local powers to administer rural areas in exchange for extended rights over people and land granted to the customary authorities. As did the colonial powers, the new independent states had an

ambiguous attitude regarding this “customary” management. Without formally recognizing it, they tolerated it and did so all the more as they benefited from it or were not really able to implement public land tenure management systems throughout the national territory. **One can speak of “customary” management in places where the local powers continue to play an important role in allocating land or in land tenure regulation in the name of historical political legitimacy.** These contemporary customary regulations are never the simple reproduction of “tradition”, but also the result of history and state intervention.

“Customary” land management in rural areas is frequent in Africa. It is also frequent in certain regions of Latin America (the Andes, the Amazon) and in the mountains of Southeast Asia and Oceania. Neo-customary approaches to land tenure can frequently be observed in urban areas, especially in Africa, where they fulfil a function that neither the state nor the formal sector can fulfil: housing the poor. Recourse to the public administrative system often remains very incomplete and leaves room for arbitration by formal or semi-formal local authorities. **Customary and neo-customary practices are of variable legitimacy (sometimes very strong, sometimes disputed).** They are not a panacea: in rural areas, pressure on land and decentralization tend to rigidify rules on access to land, strengthen their identity-building dimension, and exclude “outsiders” from the local social arena. In urban areas, rising demand from middle-income groups causes land prices to rise. It then becomes increasingly difficult for the low-income groups to have access to the neo-customary land market in periurban areas, particularly as the customary land reserves near urban agglomerations tend to dwindle away, and neo-customary owners are progressively marginalized by intermediaries and informal developers. But in practice they nevertheless play a crucial role.

**The question of the relationships between customary powers, local governments and the state illustrates the debate on local governance bodies and their autonomy regarding the management of land and natural resources.** With this, it raises the very question of subsidiarity and the relationships between levels of power.

### ● **Recognising Customary Rights: Both a Political and Policy Issue**

**During the past two decades in both urban and rural areas, a shift towards the de facto recognition of local rights and practices has been observed,** even in countries that have traditionally had a repressive attitude to customary and neo-customary land management. This change is linked to the reforms underway regarding land tenure administration. It reveals a greater realism by government authorities about local practices and, therefore, an improvement in the land tenure security they guarantee.

In rural areas, one can see a trend towards the recognition and formalization of customary land rights, accompanied by initiatives that aim to decentralize part of the land and/or natural resource management, to the benefit of elected local governments or “communities”. In the context of sub-Saharan African cities, one can also see a greater flexibility by the government authorities in their relationships with the neo-customary land delivery channels, and the latter’s increasingly frequent compliance with or adaptation to development norms and standards.

The past decade has also seen the emergence of “indigenous” or “native” populations’ claims, demanding a renegotiation of their position in the national society, an acknowledgement of their identity, and control over their lands, in particular when mining, industry and migration are at stake.

Breaking with the legal dualism on land tenure, which excludes the vast majority of citizens from access to the law, the acknowledgement of local rights promotes governance and land tenure administration that are plural in nature, and dynamically combine different ways of securing land tenure that suit the needs of different types of stakeholders. **It can enable better coordination between customary rights and the national legal framework, and between local land tenure regulations and public systems. It allows one to reconcile legality and legitimacy.** This also meets the demands of local stakeholders who seek to combine the local legitimacy of rights and resort to the public system to secure their rights and transactions.

The recognition of local or “customary” land rights can address either individual and family land rights or the rights of “communities” to their land, and their authorities’ power to manage land tenure. It can involve the devolution of land and territorial management power either in “traditional” authorities, or in new elected institutions (local governments). Depending on local and national situations, what is at stake at the economic, social and political levels is very different.

The recognition of customary rights and local regulations cannot be reduced in this way to a technical question. **It is a key issue both in terms of policy and politics:** the type of rights that are recognized and the type of land governance that is promoted reflects the relationships between local social identities and national citizenship, between the state, communities and citizens, and between states and national or transnational private interest groups.

Indeed, the observed shifts towards a recognition of customary rights run up against economic logics, and states are sometimes dependent upon, victims of and complicit in these logics. For example, mining in forests, or the exponential development of extensive pastures and speculative crops, has often led to the rapid destruction over recent decades of natural spaces and lands in tropical and equatorial zones and the pauperization (or even disappearance) of their inhabitants, especially in Latin America and Southeast Asia.

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## **Commodification of Land Rights and Tenure Security: Two Key and Interrelated Issues**

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### **● Commodification of Land Rights and Land Markets**

**Today, the commodification of land transaction accompanies economic globalization, changes in ways of life, and rising poverty** resulting from a lack of sufficient income and social protection. However, this global trend is not a universal and linear process. Within a given country, some areas can undergo rapid commodification of land markets, an increase in the number of transactions and the progressive formalization of contractual procedures while other areas remain outside the sphere of land market, even when the population is dense or the area has long been involved in commercial agricultural production.

In rural areas, the transfer of land use rights is often dominant in quantitative terms, but the structural fall of agricultural prices has (until recently) contributed to pauperization in rural areas and fuelled land transactions via distress sales. Commercialization of land in this case results in the relegation of the new landless population to the status of day-workers or/and their departure to slums and other informal settlement in towns and cities. Nevertheless, there is no automatic link between population density, inclusion in a commercial economy, and the

development of transactions on the formal land market. In addition, the increased number of monetary transfers does not necessarily mean that land has become a commodity: **one can sell some rights but not others**; situations of “imperfect commodification of land” can frequently be observed. They usually correspond to changes in the balance between the community rationale and the market rationale for certain lands or resources and not for others.

In urban areas, land for housing is produced by different actors according to various procedures that one can call land and housing delivery channels. In all cities worldwide, one can identify three typical land and housing delivery channels: state-controlled channels (dominated by the state or parastatal institutions); capitalist channels (dominated by investors whose objectives are to turn a profit from investments in land and in housing development); and popular-informal channels in which neither the state nor formal private sector investors play a leading role. In most developing cities these land and housing delivery channels respond to the bulk of the demand.

During the past two decades, the withdrawal of government authorities from land and housing production has been accompanied by a concentration of formal private developers’ activities on production for the highest income groups. It has also been accompanied by a growing commodification of informal land delivery systems: free access to land does not exist anymore. Settling anywhere requires one to pay a price, a rent, a tribute an entry fee, or some other fee. While the number of city-dwellers living in squatters’ settlements is tending to fall, the number of irregular commercial developments targeted to low and low-middle income groups is tending to increase. State disengagement takes place in an overall context of rapid **financialization** of formal land and housing markets. Commodification processes have sped up over the past ten years. They tend to increase the land tenure insecurity of the poorest groups.

Land tenure regularization provides better protection against the risk of eviction, as it guarantees the regularity of land transfers. However, if they are implemented without precautions, they can reduce the tenure security of communities that occupied lands informally but were, so far, *de facto* protected from eviction. The development of land markets that accompanies the regularization of informal settlements can, in this way, be at the origin of various forms of market evictions or “market-driven displacements”.

The monetarisation of land relations is not, therefore, an automatic process. It is partly the result of socioeconomic changes and partly the result of public policies. It can focus selectively on certain rights, certain resources, and not on others, which societies want to keep outside the market as common property, at the scale of a community, a small region, a nation (or even worldwide). In such case, market mechanisms can be articulated with community or public regulation mechanisms.

**The strong link between the legal status of land, its type of tenure, the security it provides and its market price has a decisive impact on the transmission and circulation of land rights.** Land markets form a system. They are both segmented and interdependent. They are segmented because the market price of titled land is different from that of land that has been administratively allocated or of plots sold informally in irregular settlements. They are interdependent because any change affecting one segment of the market has repercussions on other segments, and because a given plot of land can shift from one market to another if its legal status changes (i.e. in case of formal tenure regularization).

## ● Insecurity of Tenure and Strategies for Improving Security of Tenure

Tenure insecurity is a crucial issue. In urban areas, populations cannot live decently, develop their economic activities and invest in their homes if they are exposed to a constant risk of eviction. In rural areas, farmers need sufficient security of tenure to ensure that they can reap the benefits of the investments they make. Land tenure insecurity is different from precarious tenure, a situation in which a household or business is unable to anticipate access rights to the land held in the short, medium or long term. A farmer with a yearly lease contract is in a precarious situation but is not in a situation of land tenure insecurity (unless his contract is cancelled during the year). An occupant of a plot of land in an informal urban settlement (commercial irregular land subdivision, squatter settlements on public land, etc.) may have the perception that he or she is in a situation of tenure insecurity even though the probability that he or she will be evicted is low. A tenant is in a precarious tenure situation if he or she does not have a rental contract or lease and or can only obtain short-term rental contracts.

**Security of tenure first derives from a social agreement that allows an individual or a group to occupy land in rural or urban areas.** Security derives from the fact that bundles of rights on land that are supported by a known and legitimate set of rules cannot be challenged without reason and that, if they are challenged, local conflict resolution mechanisms and/or courts will uphold them. In exceptional circumstances, evictions can take place but only by means of a known and agreed legal procedure, which must be objective, applied equally to all, contestable, and independent.

**Allocating formal rights such as ownership rights is not the only way to guarantee the security of tenure.** Security of tenure can be provided by use rights as long as rental/share-cropping contracts are clear, of sufficient duration, and cannot be broken unilaterally. Conversely, one can hold a ownership title on a land and be unable to exert any rights if the land is the subject of competing claims, if the title is deemed illegitimate, or if (in rural areas) crops are systematically destroyed by neighbours.

An approach to security of tenure that focuses only on private ownership titles and excludes other types of rights does not address all sources of insecurity. Security of tenure does not result so much from the legal status of the rights held as from the social consensus on these rights, their legitimacy, and the reliability of arbitration mechanisms in the case of conflict. Accordingly, in both urban and rural areas, there is no strong link between the informal nature of land rights and actual tenure insecurity.

Faced with the deficiencies of public protection against tenure insecurity, people continue to rely on social networks to secure their rights. Whenever they can, they seek to secure their own tenure by combining insertion in social networks and protection by the state. **Security of tenure issues must be addressed in terms of improvement processes. The objective is to achieve both a social and legal validation of land rights and their confirmation if contested.** Such an approach makes it possible to analyze tenure security issues in access to land and productive resources without assuming *a priori* which type of rights this would require. Emphasis is thus put on institutions more than tools: which land governance/management institutions and procedures can provide or improve security of tenure? Such institutions can rely on more or less sophisticated tools to improve negotiation, resolve conflicts, formalize transactions, and implement land tenure information systems whenever required.

In the case of contradictory claims, the stakeholders whose tenure should be made more secure in priority are those who are most able to face current challenges (see part 1). Moreover, while private ownership can ensure security of tenure in the short term, non registered land transactions and transfers can result, one or two generations later, in unmanageable tenure situations and, consequently, in serious problems in access to land for certain social groups. Hence, land ownership must itself be regulated (by planning regulation, agricultural policy and environment legislation, etc.).

In this way, land tenure security policies aim to set up land governance and administration systems based on a medium- to long-term vision and that allow legal recognition of those rights on which there is a local consensus, and which are compatible with the law. They also aim to design and enforce reliable dispute resolution mechanisms. Security of tenure takes various forms depending on the legal and constitutional framework, the social norms and values specific to each culture and, to a certain degree, individual choices. In this perspective, tenure security is an issue that is simultaneously legal, political, social, cultural and economic.

**Very often, formalizing land transactions with procedures that authenticate the legitimacy of the sale is enough to overcome most problems related to land tenure insecurity.** When land transactions are numerous, a land information system (LIS) can be a useful tool as long as the conditions are in place for exhaustive maintenance and updating. When these conditions are not met, **an LIS can turn out to be ineffective and may even worsen tenure insecurity** inasmuch as it does not reflect the prevailing tenure situation of a given place.

# What Land Policies to Meet the Challenges of Diversity and Durability?

**I**n part three, the White Paper specifies the content of land policies and the relationship between development policies and land governance in the context of developing countries. Starting from an observation of current land policies, the factors that lead to their definition, and their limitations, it proposes to define the content of land policies whose goal is to meet the contemporary challenges of diversity, rarity and sustainable development. Based on empirical observations, it identifies the conditions that must usually be met in order for effective land policies to be implemented.

## Land Policies and Land Governance

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The purpose of land policies is primarily to define the choices regarding the access to land, its occupancy status and its use. It aims to authenticate, guarantee, and secure property rights, use rights and access to natural resources, and to define the principles, rules and procedures of land administration, in particular land allocation and management procedures. It is also to designate which structures are responsible for land administration and define their competences with regard to land distribution, arbitration in the case of land-related conflicts and as far as possible resolve disputes in a sustainable manner. Land policies express choices and arbitrations between various functions and uses of land and between the various interest groups.

**Land policies are tools for economic and social policies, and more generally for politics.** Land can be a powerful means for social integration. But it is also frequently used to serve individual interests: in many cases, an oligarchy controls most land. This can be an obstacle to the country's development. In addition, the links between cultural identity and land can be easily exploited in the struggle for power and the capture of rents.

**Land policies are closely articulated with other sectoral policies:** economic policies, territorial policies, administration policies, agricultural and rural development policies, industrial policies, regional planning and infrastructure policies, urban and environmental policies, social policies, legal and judicial policies. The interdependent nature of land policies and other sectoral policies underscores the difficulties and limits of public interventions when they are not sufficiently coordinated: land policies are often weakened by the heterogeneity or even the contradictions that exist between sectoral policies that pursue competing objectives.

In particular, land taxation is expected to play a much larger role in developing countries in the future. National and/or local land taxes allow greater equity by (at least partially) redis-

tributing rents, wealth that does not depend on people's efforts and labour, and by providing an incentive to use land more efficiently in economic and ecological terms.

In rural and urban areas, land policies must manage to reconcile contradictory economic, political and social objectives, and *public interests and private interests*. They must arbitrate between decisions on the various uses of land, harmonize production objectives (farming, housing development) and ensure the protection of the environment. Reconciling these interests and meeting the challenges of sustainable development requires the regulation of land markets so as to correct what could lead to socially unacceptable, economically inefficient and ecologically dangerous changes. Beyond its economic dimensions, **land policies carry concepts of citizenship, of the general interest and of governance**. They define a more or less excluding framework regarding the diversity of populations' land rights and the most fragile segments of rural and urban populations.

In this respect, land policy decisions reflect societal choices and balances of power. They respond to economic, political and social objectives in a given place at a given time. Priorities and interests are not the same depending on the stakeholders. They pertain to cleavages that divide societies. Because of the diversity of these interests, consensus-building is seen as a prerequisite to the implementation of a land policy that meets the needs and expectations of the majority of the population, but such a consensus is not always possible and not always sought by states.

This question raises the issue of the relationships between land policies, land administration, and governance. The diversity of norms, land authorities and principles of legitimacy, equity and effectiveness to which the dominant discourse on public action refers requires negotiation and regulation procedures. These procedures refer to the issue of governance, understood "as the practice of public action that simultaneously ensures the participation of diverging interests, proper social management of public goods and the stability of the social contract that unites human groups." "We could even say that the legal, financial, technical support and market issues are so tightly interlinked that land policies are one of the most constant and most universal areas for learning governance."<sup>2</sup> Questions pertaining to governance and the effectiveness of land administration reforms have long been dealt with separately. Today, they give rise to converging approaches that are built around the following three principles: recognition of the diversity of land rights and tenure systems; recognition of the central role of the land administration, which must be accessible, provide reliable services and operate transparently; and the establishment of accessible and reactive institutions capable of enforcing laws and resolving land disputes.

The normative and universalist nature of the concept of "good governance"—which is closely linked to the notion of democracy—is generally presented as the subject of a wide international consensus. This approach is restrictive, and the universality of "good governance" principles does not always withstand the test of diversity. The assessment of the quality of state action is unique to each society in light of its history, level of development and political choices. In particular, a "good" governance of land is based on the full range of traditions and institutions through which authority is exercised in a given country. It requires authorities to have the capacity to formulate land policies, in negotiation with populations, and ensure their implementation in compliance with the interest of all the stakeholders. This usually requires significant changes in the legal and institutional framework.

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2. Ministry of Foreign Affairs, 2007, *Stratégie Gouvernance de la coopération française*, pg. 32.

Land policy implementation raises the question of scales of intervention coordination, regulation and arbitration between different interest groups. Here, land administration plays a central role through the functions that it fulfils, especially regarding land development, and the recognition and transfer of land rights. Depending on land governance decisions, diverse bodies can be given responsibility or made part of a public land administration system that is thereby not limited to specialized state services but can include community institutions, local committees, etc. In any cases, flexibility is required in the implementation of land administration rules and procedures.

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## **Adapting or Reforming Land Policies?**

### **● A Short Assessment of Land Policies at the End of the 20<sup>th</sup> Century**

During the second half of the 20<sup>th</sup> century, many land policies emphasized **direct intervention by government authorities** in both rural and urban areas. This took different forms in different countries: nationalization of land, redistributive land reforms, ceilings on property measures, creation of public and para-governmental land agencies and state or parastatal land development companies. The results did not live up to expectations. The limitations were both technical and political in nature.

Various studies show a **strong correlation between economic growth and a low level of inequality in the distribution of land**. Among the countries that have undergone a rapid process of economic development, several Asian countries have conducted radical land reforms during the 20<sup>th</sup> century under diverse political regimes (Taiwan, Japan and South Korea on the one hand, and Vietnam and China on the other). These reforms made it possible to increase agricultural production and served as the basis for economic development and poverty alleviation. In rural areas, the need for a more equitable distribution of land is stronger than ever: by keeping a large share of the rural population in poverty, an unequal distribution of land can be an obstacle to growth and development. Yet, political support for land reforms is waning and the principle of respect for private ownership is making it impossible to expropriate large tracts of land without compensation.

Under these conditions, public land is distributed or a “market-assisted agrarian reform” is promoted in which the state purchases land at market prices and either gives it to landless farmers or sells the land and helps buyers by granting them soft loans. Thus, redistribution cannot have a real impact because of its very high cost, for farmers or the state. The redistributive land reforms, which were encouraged by international institutions during the mid-20<sup>th</sup> century, often remain a necessary (but not sufficient) condition for agricultural development. Their implementation requires a national political consensus and a large support system.

In cities, the weakening (or even withdrawal) of government authorities in the housing sector does not make it possible to either limit the expansion of irregular settlements or ensure they are provided with infrastructures and services. Because of a lack of land control or resources, states can rarely meet the demand for land and infrastructures. The past two decades have been marked by the implementation of land policies that aimed to foster private investment and enable land markets to work. Simultaneously, measures aiming to formalize irregular occupation and protect the lowest income groups from eviction were sometimes adopted. Under the pressure of squatters’ movements, NGOs and civil society, and faced

with their observed ineffectiveness, strategies of eviction from irregular settlements on public property are losing ground to settlement tenure regularization, and physical restructuring and upgrading policies. Progressively, the idea that any eviction resulting from development projects must give rise to fair compensation or resettlement according to conditions negotiated with populations is gaining ground.

In rural and urban areas, land titling (regularization of land tenure by the allocation and registration of ownership rights) has often been seen as necessary to ensure the security of occupation, protect from eviction, foster investments by allowing access to credit, stimulate the land market, and facilitate the transfer of land to the most productive actors. Yet, despite considerable support from international financial institutions, very few registration programmes are brought to completion. Promoting access to security of tenure through massive allocation of individual property deeds is rarely possible and not always desirable for technical, administrative, economic and cultural reasons. **Today, the relevance and impact of land titling on poverty alleviation are under question.**

The search for alternatives to land titling focuses on: measures aiming to reduce the causes of land tenure insecurity; the establishment and implementation of support policies, credit in particular, in areas where individualization of land ownership and its growing value justify land titling; and the search for alternative options that ensure the security of land tenure.

The question of integrating customary norms and practices into law is addressed both from the standpoint of integrating local practices and that of articulating land regulation processes. In this perspective, the state acknowledges or recognizes the legitimacy of local land management bodies (“traditional” bodies or elected territorial authorities) and their responsibilities in terms of land and natural resource management, and supervises these prerogatives more or less closely. Here, emphasis is placed on local land governance rather than on the registration of rights.

Land policy reform requires legal and administrative accompanying measures. The question raised is primarily that of land legislation reform, the limits encountered in the transfer of exogenous models into contexts often characterized by legal pluralism, and how acceptable they are to stakeholders. Reforming the legal framework (land law, land and state domain codes, etc.) often runs up against the resistance of the institutions in charge of land administration. Its effective application is, among other things, weakened by the liberalization of the economy and the withdrawal or disengagement of the state.

Land administration reforms and “modernization” raise another series of issues regarding administrations’ limitations, skills and financial resources and their capacity to cope with the demand (registration of land rights, updating of land information). Depending on local situations, **corruption, vested interests, lack of transparency and unequal access to information add to the difficulties.**

Much attention is now being given to land taxation in relation to the implementation of decentralization policies and the establishment of municipal fiscal registers in several Latin American countries. In this way, it was possible to begin to do locally what the nationally dominant interest groups had often managed to prevent at the national level by controlling legislative power. Nevertheless, a great deal remains to be done. Establishing a land taxation system requires a comprehensive inventory of properties, an assessment of the value of the land, and the updating of land-related information. Particular attention must therefore be paid to transfer registration while avoiding the taxation of transfers.

The growing acknowledgement of the importance of inhabitants managing their territories is another important aspect of changes in land policies. The recognition of indigenous territories in Latin America is one illustration of this. Civil society organizations and numerous development aid organizations now support such initiatives.

### ● Land Policies to Meet 21<sup>st</sup> Century Challenges

**Meeting the challenges of diversity, scarcity and sustainability requires proactive land policies.** They must reconcile economic growth and equity, ensure the economic and social integration of rural and urban populations, build a safe framework for economic activities, and protect the environment. This implies important changes in the orientation of land policies and major innovations in the legal and institutional tools and procedures needed to implement these policies.

Such changes in land policies are above all the result of a political will, generally expressed at the highest level of the state and motivated by social and economic objectives. They also are the result of the struggles of farmers' or landless farmers' organizations, and inhabitants' organizations in the poor or precarious settlements of large cities. In both rural and urban areas, changes in land policy often aim to lessen social tensions caused by the unequal distribution of land resources. They also aim to remove obstacles to investment and production by adapting interventions to land tenure systems and to the dominant forms of tenure. They frequently originate in the interventions of foreign institutions such as aid and cooperation agencies, and international financial institutions.

Despite the mobilization of considerable means, these interventions can encounter resistance or obstacles if they are not the subject of sufficiently broad social consensus and are not backed by sufficient political will. **Beyond political statements and declarations, an effective land policy is above all the result of the practices of the actors in charge of implementing it.** The tools of a land policy, and its implementation in the field, are raising crucial questions—all the more so as it calls into question bureaucratic interests, and work habits and routines. **Preparing and implementing reforms, and experimenting procedures and tools must be given close attention as a condition of their success.**

The development of new modalities for territorial governance will occupy a central role in the elaboration of these new land policies. The aim is indeed to re-build the social contract by taking into account new rights and by contributing, step by step, to the construction of new "government authorities" at the local level that are not autonomous but connected through subsidiarity to higher levels.



# Proposals for the French Development Aid Position on Land Issues

**I**n part four, the White Paper presents the recent changes in how the question of land tenure is addressed. It identifies the main sectors and lines of intervention around which a large international consensus has been built over the past decade and suggests to the French government authorities (and more generally to all development partners) orientations that could guide development aid regarding land issues. Emphasis is placed on three priority objectives that flow from the Paris Declaration: ensure economic development and guarantee growth; ensure equitable access to land for the greatest number and secure rights to land; and preserve the environment with an aim to sustainable development.

*The White Paper also proposes the creation of an informal discussion group within the EU whose function would be to observe, monitor and discuss land policies and intervention strategies.*

## **A Renewed Interest for Land Issues in Cooperation Policies**

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Until recently, land tenure was not a major area of interest for development cooperation systems. The issue of land tenure imposed itself in the international agenda from the mid-1980s onwards. Demographic pressure, economic growth, and the emergence of new balances of power between nations and regions, but also democracy-building processes and the affirmation of the rights of individuals and groups over land have led to a redefinition of land access rules and an acceleration in the appropriation of land, a non-renewable resource. Indeed, there has been a marked reduction worldwide in opportunities for free access to land and natural resources.

**In urban areas**, all observers note:

- > the magnitude and worsening of a phenomena of social exclusion in the cities of developing countries which is manifest in the rapid expansion of irregular settlements, among other things;
- > the close link between poverty, tenure irregularity and precariousness of occupation; and
- > the persistence of plurality in legal systems and legitimacies when it comes to land management and administration.

**In rural areas**, the issue of land and agrarian reform is coming back to the forefront with the emergence of civil society and the democratic transition processes underway in Latin America, in contradiction with the growth of agribusiness acquiring considerable tracts of land. In sub-Saharan Africa, the regional instability and the rise of conflicts are often associated with conflicts over access to forest resources and the politicization of these conflicts, exploited in identity-based logics that frequently hide economic conflicts.

### ● **The New Socio-Political Deal of the 1990s**

Over the past decade, states and development aid agencies have formulated new objectives for land management in similar terms for the rural and urban worlds. They give priority to integration, particularly through the fight against evictions. They aim to respond to the diversity of local situations by offering a wide range of options regarding land tenure. They emphasize the recognition of inhabitants' rights regardless of the legal status of their tenure; involving all stakeholders in decision-making, including informal actors and grassroots organizations; and decentralizing the responsibility for land management and administration.

These objectives take into account a new concept that favours the "bottom-up" consolidation of land rights (land use and local regulations are what gives access to formal land rights and protects these rights) rather than the "top-down" creation or consolidation of land rights (i.e. the state allocation of ownership irrespective of local rights). The principle of access to ownership through adverse possession processes currently tends to be rehabilitated in a growing number of states or cities as a means towards the legal recognition of rights.

### ● **Two Major Approaches: Unification of Land Markets and Social Integration**

Potential responses were, in the 1990s, the subject of intense debates both internationally and within states. The *World Bank*, *United Nations organizations*, and civil society organizations played a driving role in these debates. Two major approaches can be identified.

**The first approach emphasizes the integration of different rights systems in a single system based on state-guaranteed private land ownership, and the unification of land markets** by registration of land rights and/or tenure regularization. Securing occupation through individual private ownership of land was, at least until the beginning of the 2000s, one of the major objectives of international financial institutions (especially the operational divisions at the World Bank) out of an aim for economic growth. The effectiveness of this approach as a means to alleviate poverty and achieve the economic inclusion of the poor is now being questioned.

**The second approach emphasizes social and economic inclusion**, especially that of the irregular/informal settlements of cities, and puts more emphasis on the question of land tenure security than on access to land ownership. In rural areas, this second approach emphasizes the recognition of the land rights of individuals and family groups, and/or local land and natural resource management mechanisms. It implies the formal recognition of legal pluralism regarding land tenure.

To a large extent, this is the approach put forward by the organizations of the United Nations system, in particular *UNDP* and the *UN-Habitat Programme*, or *Cities Alliance*. It is also

the approach that civil society organizations, despite their diversity, have emphasized over the past decade in national and international arenas and through considerable networking. The International Conference on Agrarian Reform and Rural Development (ICARRD) would not have been possible without the mobilization of farmers' movements and NGO networks. The same holds for land tenure and housing issues in urban areas, with the creation of regional federations and the support of international NGOs.

### ● **A Growing Consensus**

Beyond the still lively debates between these two major approaches, **a certain consensus is now taking shape around a few priority lines of intervention:**

- > ensure land tenure security and protect people from eviction;
- > guarantee equitable access to land, or/and offer a wide range of legal options that fit the diversity of national and local situations;
- > promote governance and land administration decisions that ensure equity and reliability in the implementation of land policies, taking into account the diversity in the types of rights encountered in urban and rural areas;
- > strengthen conflict arbitration mechanisms at all levels;
- > design spatial planning tools that suit the new challenges;
- > set up non-exclusive systems to record rights and deeds that suit local situations and are compatible with each other; and finally
- > reform land taxation / establish taxes on land and housing, which is necessary to increase the financial resources of local authorities and an important way to consolidate land tenure rights and optimize land use and its resources.

**A second consensus is also emerging around key principles for the involvement of donors in land policies.** In this perspective, the EU Guidelines form a framework of reference:

- > land policy reforms must be rooted in the social and institutional contexts of the countries;
- > they require a strong political commitment from the state and the support from society as a whole;
- > the support of donors must be accompanied by an in-depth dialogue with the state at the highest level;
- > land policy reforms are long-term processes that require an iterative approach and the search for consensus;
- > the collaboration of several donors in the processes can provide some guarantee against the risk of withdrawal by one or another of the donors;
- > research can be a powerful tool to understand national land policy reform processes and support policy debate;
- > land policy reforms must never result in the exclusion of vulnerable groups (women, the poor) from access to and control of land, nor in the dispossession or expulsion of minorities.

**Four principles that are complementary to those set by the EU for cooperation interventions** could be promoted:

- > Interventions in cooperation must avoid favouring a “supply logic”, which is based more on donors’ concepts, skills and interests, than on national priorities and demands.
- > They must act in support of national processes and accompany them through targeted actions according to the state of progress in the national debate on land reforms, and how acceptable projects are to governments and populations.
- > They must take into account the capacity of administrations to implement and monitor land policy programmes over the long term, and include capacity-building actions.
- > Finally, they must avoid transferring “ready-made” institutional land management models and land administration tools designed in reference to national situations that may differ from those of the country at stake.

Coordination among donors allows one to capitalize on complementary elements of cooperation systems and to attain coherent support. It is a condition in order to avoid taking contradictory approaches that could complicate the steering of reforms within national institutions. For several years, French Cooperation has sought to promote the coordination of donors in their land-related interventions with the aim of providing a support that is consistent with national priorities and demands.

### **France’s Assets for its Contribution to Defining and Implementing Land Policies: A Pool of Experience, Internationally-Acknowledged Thought**

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Compared to multilateral institutions and some bilateral aid institutions, French Cooperation has limited financial resources. It does, however, have several advantages in the countries it knows best.

- > It can rely more heavily than it has so far on the French and European historical experience. As do other European countries, France has a long history of land management (much more pluralistic than the Civil Code would seem to indicate). It chose to maintain and modernize family farming, and developed land regulation institutions that serve development policies (social housing, rural structure policy).
- > It has considerable experience working in several regions of the world, West Africa in particular, and can mobilize a strong pool of research and expertise through its institutes, research and training centres, and consultancy firms. It also has a permanent, formal presence in many countries.

However, French Cooperation did not always sufficiently contribute to the international debate on the issue of land tenure, and sometimes put too much emphasis on interventions in a bilateral framework when concerted action among donors was indispensable.

**For just over ten years, the Technical Committee on “Land and Development” has contributed to French and international debate on land policies, primarily in rural Africa.** French Cooperation’s involvement, in coordination with German and British aid, in the process of elaborating the World Bank’s *Policy Research Report* contributed to the acknowledgement

of the issue of customary rights. France, along with British aid, has played a driving role in initiating the preparation of the European Union Guidelines on Land Policies. Finally, a close, continuing relationship has been established with the *Millennium Challenge Corporation* around interventions in Burkina Faso, Benin and Madagascar.

France's experience in urban land tenure in developing countries was long restricted to interventions in French-speaking sub-Saharan Africa. It has become more diverse with France's participation in the activities of *Cities Alliance*.

Extended working relationships exist, particularly in the field of research, with the UN-Habitat Programme on issues related to the security of land tenure and housing policies for low-income groups. French research has long been involved in the World Bank's reflections on land policy, management and administration. Long established by individuals, these links were recently consolidated on the institutional level.

## **Governance and Land Tenure Security: Proposals to French Aid for its Land-Related Interventions**

One can identify a certain number of guidelines in the actions supported by French Cooperation. They provide the outlines of a "French approach": acknowledge the diversity of situations and of land-related norms; conduct actions suited to the country's socioeconomic context; support the maturation of policy decisions without undue interference but by fostering inclusive approaches; and work in coordination with other donors. They are relevant, but not sufficiently explicit and effective. Making them explicit and systematic, and better including them in the emerging global consensus are, thus, the essential lines around which a French strategy on land tenure cooperation could be set up.

### **● Lines of Work to Develop**

The aim of the present White Paper is to suggest objectives and orientations for a French Aid strategy on land issues. In compliance with the principles of the Paris Declaration, France's aid objectives regarding land tenure should be the promotion of democratic land governance and the improvement of the tenure security of land (and natural resources), both in urban and rural areas. With two main focuses :

- > providing support to national public debate processes; and
- > contributing to the elaboration and implementation of land governance and management policies, which are both inclusive and effective.

Such a strategy would benefit from implementation at the inter-governmental level. But it should also provide support to representative civil society organizations and French and international NGOs involved in setting up and monitoring land-related actions in developing countries.

Consistent with the three principles on which there is an international consensus, and coordinating its intervention with those of other donors, the White Paper proposes that French Cooperation should:

**① Integrate land issues in country diagnostics and in the elaboration of partnership agreement papers (Documents Cadres de Partenariat) with countries.** It is important that the

land-related aspects of sectoral approaches (rural development, urban and regional planning, decentralization, etc.), as well as the political dimension inherent in land policies be systematically taken into account and adequately addressed.

**2 Define its land-related interventions in each country based on an analysis of current policies, on reforms under preparation, on the advancement of land-related debates, and on the context and the country's priorities**, in order to:

- > improve access to information and foster the exchange of experience for the elaboration of land policies, with an emphasis on policy-makers, farmers' and people's organizations, civil society, and practitioners (policy briefs, regional debates and experience sharing workshops, etc.);
- > build the capacities of public actors, local governments and associations, and especially those of farmers' organizations and grassroots organizations regarding the elaboration of their diagnostics and proposals, and their capacity to participate in public debates and land management;
- > provide support and operational expertise for the implementation of land policy, and facilitate the transfers of experience, in particular with respect to land governance;
- > strengthen both public and independent national research and expertise capacities;
- > provide support for experiments with innovative approaches to governance and improved land tenure security, carried out by the state or civil society organizations;
- > improve coordination between institutional support and experimental projects in the promotion of land policy reform processes, and support reform processes when a consensus exists;
- > improve the links between research and expertise in contributions to debates on land policy design and implementation, and develop synergies between research and practice, which is indispensable for the formulation of initial diagnostics and the design of projects;
- > contribute to breaking down the barriers between the legal, urbanistic and socioeconomic approaches and the approaches of land information technicians (operators specialized in cadastres, registration and land information systems); and
- > assess the socioeconomic and political impact of proposed reforms. This implies both specifying on what bases assessment principles are defined and selected, and proposing indicators to evaluate the impact of reforms. This means developing a culture of assessment and public discussion of the impact of policies both *ex ante* and *ex post*.

**3 Generate and support, on a regional or international scale, opportunities to exchange experiences, build capacities and hold public discussions** that supplement the processes underway in countries.

This requires long-term efforts, carried out within the social and political dynamics of the countries, to accompany both the state and civil society in the building of land policy negotiation capacities and the setting up of land governance.

### ● **Proposal to Create an Informal Exchange Group Within the EU**

Its role would be to establish and maintain regular contact with institutions internationally involved in land issues. Its function would be to observe, monitor and analyze land policies and intervention strategies.

Its objective would be to harmonize and coordinate the interventions of donors, both within Europe (supporting initiatives that aim to improve the coordination between various interventions) and in collaboration with development agencies and international financial institutions that are active regionally and worldwide.

It would make it possible to launch discussions with other donors on the limits encountered in land-related interventions and to propose appropriate responses.

It would strengthen France's contribution to international debates and would contribute more effectively and more lastingly to the thought and actions of international institutions. A more active presence in multilateral institutions would be necessary, alongside a revitalization of European thought on implementing the recommendations of the EU Guidelines on Land Policies.

### ● **Two Pre-Conditions**

France's contribution to land-related thought and actions is more the work of individuals occupying diverse institutional positions than the work of an effective network with a lasting institutional foundation. Reaching such an objective would require strengthening the French pool of land experts.

More efficient coordination among French actors, the breaking down of barriers between research and action, better connections between field interventions and strategic thought, and greater involvement in international debates justifies the continued existence of the Technical Committee on "Land Tenure and Development" on a multi-annual basis.