

BRIEFING NOTES

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

“Land Tenure and Development” Technical Committee

Limitations of the concept of vulnerable groups in the area of land tenure security

by Oussouby Touré¹, December 2010

Some people are vulnerable in terms of land ownership, in other words they are actors who typically experience insecurity as far as their rights to develop land and natural resource are concerned. However, one may wonder whether the concept “vulnerable groups” is not used by development actors in an indiscriminate way. The so called vulnerable groups do not appear as homogenous social categories as they are alleged to be and any group of actors can sink into a situation of land insecurity. This could apply, even to those who are not classified as vulnerable groups.

Acknowledgement of an abusive use of the concept of vulnerability

Since the beginning of the 1980s, several research works have been conducted on the concept of vulnerability, which is at the heart of many analyses on natural disasters, poverty and malnutrition related risks. In its broadest sense, vulnerability is defined as the proneness of a system to suffering from a shock or an external stress caused by the vagaries of the weather, earthquakes or volcanic eruption. This list can be extended to cover technological or socio-economic risk factors.

In rural West Africa, there are people who are vulnerable in terms of land ownership, in other words actors who typically experience insecurity as far as their rights to develop land and natural resource (especially cropping land, pasture and water resources) are concerned. However, one may wonder whether the concept “vulnerable groups” is not used by development actors in an indiscriminate way. A more detailed analysis of the local dynamics reveals that the so called vulnerable groups are not as much homogenous social categories as they are alleged to be. Meanwhile, it is worth

noting that any group of actors can sink into a situation of land insecurity, including those people who are not classified as vulnerable groups. Such observations raise the following crucial question: How can we address the reality of land insecurity and vulnerability situations without lapsing into excessive generalization?

The Declaration adopted at the conclusion of the regional conference on the land tenure issue and decentralization (Praia, Cape-Verde, June 1994) devoted a specific chapter to the “land tenure dropouts”, especially women, pastoralists, sharecroppers, migrants, refugees and displaced people. Such a categorization of groups against the criterion of land insecurity is questionable because it results in short-listing the social actors who would always and in all circumstances suffer from land insecurity.

After all, this list is not exhaustive, as some types of actors which do not appear on it can find themselves in some cases in a situation of land insecurity. This is especially the case of orphan children and households whose homesteads are located near cities

Production coordinated by:



¹ Oussouby Touré, Consultant: oussoubytoure@gmail.com.

and therefore liable to encroachment sudden land allotment operations. In short, one should keep in mind that any attempt to scale-up a typology of “land-insecure groups” results in an excessive generalization. The complexity and diversity of situations in the field make it difficult to take stock of all the cases of land insecurity.

Furthermore, land insecurity must not be seen as specific to some predetermined groups, since it can affect any layer of the rural population.

The ambiguity of the concept “vulnerable group» lies in the term “group”, since it refers to a category of people sharing some characteristics and having a homogenous profile. So, in the classical approach to the gender issue, we consider that women in rural West Africa are particularly vulnerable to the pauperization process, mainly because of the disparities in land access. In fact, land insecurity does not affect all women in the same way. It is noted that, in Niger, land transactions are in favour of a “minority of well-off women who can afford leasing or buying of the farm”.

In Southern Niger, the continuous flow of immigrants and the resulting demographic dynamism increase land

pressure. This sometimes culminates in social conflicts. For these migrants, leasing (i.e. a fixed-term or open-ended oral contract) is the main way of accessing land. In most cases, the lessee is bound to pay a symbolic tithe. Against the regular payment of this levy, the migrant is entitled to develop the plot as long as he can. Thus, many migrants do not suffer from land insecurity.

Furthermore, this levy is the annually renewed token for the status of leased land. Failure to pay it, with no good reason (e.g. harvest failure), is construed as a breach of contractual provisions and may lead to the termination of the lease. The migrant may also lose his right to till the plot, if the owner needs to recover his land.

In Burkina Faso, efforts made to secure land tenure for the so called vulnerable groups in some rural areas have not proved of much interest with respect to local practice. The project that developed these initiatives considered they were justified by the fact that the areas involved had been characterized by:

- the frequency of cases where plots are taken away from women and migrants; and

- the poor access of these two groups of actors to land.

As part of the solution to this problem, the project supported the development of land securing instruments including “verbal agreements and farmer contracts”.

The assessment of the impact of these actions led to the conclusion that they have no real value added. Most of the migrants involved had been living in the area for a long time and maintained excellent social relationships with natives, a reality that entitles them to almost permanent farms, unlike recently established migrants who are not covered by land securing instruments.

As far as women are concerned, they till the plots made available to them by their husbands. In these areas, “no major issue is associated with” women’s access to land.

As for pastoralists, we note that they face problems in accessing water resources and pasture, especially in areas where pastoralism coexists with agriculture. Indeed, the unclearly defined status of pastures tends to favor land clearing for agriculture to the detriment of pastoralism. In these regions, pastoralism is rather more tolerated than accepted. It can be contested at any time by public authorities (creation of ranches) or by native farmers (encroachment on rangelands).

From the perspective of land legislations in force in many West African countries, unlike agriculture, regular maintenance and use of a rangeland is not considered as a land development activity that can afford a pastoralist legally recognized and protected land entitlements. However, it seems more reasonable to infer that pastoralism is a less and less secured activi-





Senegal © Emmanuel Duron

ty in terms of land tenure, than to extrapolate by asserting that pastoralists are vulnerable, which would be an excessive generalization.

Linkages between the concept of vulnerable groups, land legislations and land tenure securing instruments

The adoption of new land legislations by West African countries resulted in land insecurity for some categories of rural populations due to factors related to:

- the tightening of competition for access to land and natural resources; and
- the diversity of rules governing access to natural resources, particularly land (modern legislation, customary law and Islamic law).

The vagueness of land legislation enforcement modalities, the insufficien-

cy of efficient instruments for the enforcement of these legislations and the lack of appropriate follow-up mechanisms have resulted in angled interpretations of land-related laws and regulations.

Indeed, we note that each category of actors only considers the provisions of the land legislation that contribute to the safeguard of their specific interests. This situation favours the better informed elites and further penalizes the rural poor who are increasingly marginalized both in terms of access to land and of securing their land entitlements.

Today, in Senegal, following the acquisition of land titles by private investors on vast areas, some social categories not considered vulnerable in principle are increasingly subject to exclusion, as they are denied access to the plots they have been exploiting so far.

Furthermore, it is worth noting that land legislations do not adequately

take into account the concern about fair access to land and natural resources. In most sub-regional countries, the law enforcement system has strengthened the process of land pre-emption by locally prominent groups and contributed to the marginalization of some activities not considered as land development activities (e.g. pastoralism).

Such a situation results in the exacerbation of tensions and conflicts for the control of natural resources. It is largely associated with the fact that, more often than not, law formulation modalities rely on non-participatory approaches aimed at confining vulnerable groups to a marginal position.

Besides decentralization, other processes with significant implications for land tenure in rural areas are ongoing in West Africa. They include, especially, the experimentation of land securing instruments (land occupation and allocation plans, rural land planning, rangeland management plans, etc.), as well the implementation of innovative NRM approaches (local conventions, legislations specific to pastoralism², etc.).

Theoretically, these new approaches open up interesting prospects as they are expected to foster the inclusion of all the users of the same resource in

² *These new legislations are designed not only to reconcile the diverse uses of the same agro-pastoral land by several users, but also to ensure pastoralists more security in terms of access to natural resources. They have limitations related to the fact that they rely sometimes on conflicting guiding principles. While some pastoral codes seek to safeguard livestock mobility, others rather focus on the need to secure pastoral rights through the delimitation of closed and improved pastures; this tends to hamper mobility. Focusing on pastoral land securing overshadows the critical issue of equitable access to natural resources.*

decision-making processes. For example, local conventions that are being tested in the field could ensure more equity and inclusivity in access to natural resources.

But, some research works highlight the risks of exclusion associated with the decentralization process due to the threats of introverted assertion identity. Experiences so far also raise questions relating, among others, to the conditions that must be fulfilled to prevent the elites from monopolizing institutions and the advantages of local conventions. ●

FOR FURTHER INFORMATION

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ORIGINAL VERSION IN FRENCH "Les limites du concept de groupe vulnérable en matière de sécurité foncière", translated by Lara Colo.

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