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At the frontier of land issues:
Social embeddedness of rights and public policy

Les frontières de la question foncière :
Enchâssement social des droits et politiques publiques

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Changes in the economic, political, social and environmental contexts lead to a constant evolution of land issues and impose new challenges on social actors and policy-makers at local, national and international levels. This evolution brings to light various elements that, despite not always being new, take on dimensions that require pushing forward the frontiers of our investigations and of public action: increased land pressure; the increasingly violent nature of the land issue in many regions of the world; the role of land in the construction of territory and identity; the impact of economic liberalization and of decentralization policies on land relations in rural areas; and the emergence of new land policies which waver between a standard neo-liberal approach and attempts to reconcile at once legality with legitimacy, and equity with efficiency.

In this context, land issues have reached the forefront of global debates on economic privatisation, environmental concerns, sustainable development, poverty and inequality reduction, and conflict prevention. Beyond global statements, dealing with land issues requires a thorough understanding of the complex processes involved. This is a challenge for decision-makers as well as for experts and researchers.

This international symposium aims at an in-depth consideration of these issues using the latest empirical research in social science, and to encourage a rigorous dialogue between all those who share a need for empirically-based knowledge. Special consideration will be given to studies keen to explore, in a comprehensive approach (in a Weberian sense), the experiences, practices and representations of the different types of stakeholders. This calls for an examination of land issues as a set of social relations having the land as a base and as a stake, considering that (i) land relations and land rights not only refer to legal categories or economic processes, but remain socially, politically and ideologically embedded; (ii) the norms and rules which sustain land relationships are themselves plural, changing and a matter of competition and conflict; and (iii) that the policies who intend to govern these relationships are nothing more than one element, not always decisive, of an overall dynamic.
The symposium will be organized around six complementary themes, chosen either to revisit "classic" entry points of land-related research in the light of recent developments and advances in knowledge, or to shed light on issues that, albeit not entirely new, have not yet been empirically and systematically analysed:

1. Customs, indigenous rights and land policies: problems of knowledge/acknowledgement of rights.
2. The identity and cognitive dimensions of land issues.
3. The intra-family and inter-generational dimensions of land issues.
5. Farming systems and land tenure dynamics.
6. Globalisation, migration and "de-agrarianization": the land dimensions of rural transformations.

**Customs, indigenous rights, land policies: Problems of knowledge/acknowledgement of rights**

Land tenure has always been a sensitive field of public policy, insofar as it refers to both economic and political aspects of nation-building, citizenship, economic productivity and equity. Following the era of land reforms during the 1950s and 60s, and then after the subsequent wave of privatisation and land registration programmes, new directions have emerged during the last fifteen years, which take into account local modes of land access and control. These have their own approaches and terminology to deal with questions of “customs” and/or “indigenous rights”.

In the African context, three different entry points have been identified: firstly, focusing on customary rights (underlying the rural land plans in French-speaking West African countries); secondly, focusing on local norms and rules (the approach followed in Niger by the Rural Code); finally, focusing on the role of traditional authorities (which is an important issue in Ghana, Madagascar and Namibia). We should add a fourth entry point, namely land observatories (Mali, 1990-95). In other contexts (e.g. Latin America, Oceania), local rights are considered more of a territorial and identity matter than a land one (see the recognition of “ethnic territories” under the Colombian Constitution of 1991).

An analysis of these different entry points must take into account the relationship between customary rights, rules and institutions on the one hand and statutory law (land tenure laws, legislation on decentralisation) on the other, which differs from one country to another, ranging from a situation of legal dualism to the integration (and possibly dilution) of customary law into statutory law (not to mention all the forms of “administrative customs” and informal practices). In other situations, the relationship between the customary and the statutory can lead to the redefinition of territoriality along ethnic lines (thereby changing the very concept of citizenship). We are, therefore, dealing with diverse forms of legal and institutional pluralism.

Whatever the situation, decision makers and politicians must face the pluralist and fluid aspects of local rules and customs, and of the very meaning of “custom”, or “indigenous” rights or identities. These practical difficulties raise a range of empirical research questions, with : researchers and practitioners sharing a common aim- devising tools better to understand and recognise local land tenure practices . This module will address these issues, using empirical evidence and adopting the following indicative and interlinked entry points to structure the discussion:
• **Taking customary law into account.** To what extent efforts are being made to understand and/or recognise customary rights, authorities and principles? What are the resulting difficulties and political/technical debates?

• **The interplay between different normative frameworks.** How do legislation and constitutions take into account customs and indigenous rights? What are the effects on legal structures?

• **Identifying and working with cultural brokers, the bearers of customs and indigenous rights.** Who are the actors and social groups, bearers of the indigenous or customary claims? How are they identified and considered by authorities (state-controlled or not)?

• **Reconstruction of citizenship and communities.** What are the effects and constraints that the recognition of customary or indigenous rights creates for national policy, citizenship, social identity and possibly the ethnicisation of politics and territorialisation?

• **From local to global.** In what arenas are these issues debated? What are the roles of bilateral institutions, international authorities, NGOs and various global forums?

### The identity and cognitive dimensions of land issues

Many studies have shown that land negotiations at different levels (intra- and inter-household-, inter-ethnic, between the central State and the "local") are based on culturally differentiated - rather than universal - perceptions, representations, and cognitive categories. There is no doubt that culture is constantly evolving as a result of history and context. However, the cognitive categories generated by these processes enjoy a degree of stability, and shape the land claims and discourses of the different stakeholders. These categories are often implicit, serving as an ideology or a cultural ideal, and in this way, contribute to the forging of social identities.

These cognitive categories refer to different visions of space, territory, land and related natural resources, as well as of the social relations based on land. The idea of land as a ‘natural’ given, independent from societies and cultures, is a specific cultural construct. Often, these categories are not exclusively cognitive: they aim not only at understanding land relations, but also at influencing them by contributing to their transformation or reproduction, according to strategic interests and social identities. Among the categories for understanding and analysing land tenure systems, legal categories, as well as religious or agrobiologic representations, are very important.

Drawing on empirical research, this module will discuss the set of these cognitive, cultural and identity categories which shape land claims and are in turn influenced by the existing balance of power and by the technical and social mechanisms for resource access and control. The following indicative entry points are proposed:

- **Representations and social theories of land relations.** Land relations (economic, political, religious and social) can be explained and represented through theoretical frameworks which combine in various forms history and myth, religion and technical knowledge, as well as economic and legal categories.

- **Interactions between cognitive categories and belongings.** The cognitive categories have an influence on the construction of identities by providing them with a particular framework for understanding relations to territory and land. They are part and parcel of a politics of belonging, in the form of claims about autochthony, indigenous rights or the ethnicisation of land relations.
- **Perceptions and representations of space.** Space can be seen as homogeneous and continuous, or as discrete and made up of points and strategic places, or as a series of crossroads (and thus as crystallized history); the concept of frontier or border can be linear or fuzzier, indicating a separation or a social bond. What are the effects of these different perceptions on the management of territories and natural resources, and vice versa?

- **Legal categories as cognitive categories.** Law is more than just a body of norms. It is also a representation of reality, a historically determined cultural expression, and a very specific conceptual framework that strongly affects land relations.

- **The State as producer of representations of land.** Land policies are based on specific categories informed by an often over-simplified scientific/technical vision of reality. The implicit basis and implications of this simplification must be examined.

The intra-family and inter-generational dimensions of land issues

Many empirical and theoretical land tenure studies undertaken over the past decades emphasise changes in property rights, the emergence of land sale and rental markets, and the evolution of land policies. The intra-family (including kinship relations beyond the household) and inter-generational dimensions of access to land are seldom considered as a central object of investigation (gender analyses aside), even if kinship represents a central institution with regard to land tenure. Non-market land transfers such as inheritance and gifts continue to play a key role in land access, and land tenure security is heavily affected by intra-family dynamics. In tackling central issues such as the content, security and transferability of land rights, these intra-family and inter-generational dimensions cannot be neglected.

Contributions to this module will explore empirically these issues, taking the following largely interlinked entry points:

- **An ethnography of intra-family land rights and practices.** A rigorous empirical identification and description of land rights and right-holders within family groups, and of the evolution and implementation of land rights, requires an in-depth “ethnography of rights” taking account of ‘emic’ (indigenous) principles underlying actors’ practices.

- **Intra-family and inter-generational relations and the productive use of land resources.** Taking into account the differences in land access within family groups is necessary in order to understand the relationships between the content of rights and the forms of productive land use.

- **Intra-family and inter-generational dimensions of land rights in the implementation and impact of public policies and development projects.** Taking into account intra-family and inter-generational cleavages -particularly with regard to the distribution of land rights - should provide a clearer understanding of the impact of public action, for example regarding land privatisation and titling policies, or poverty reduction policies.

- **Intra-family and inter-generational dimensions of land markets.** To what extent are land sale and rental markets shaped by intra-family and inter-generational relations?

- **Intra-family tensions and extra-family conflicts.** In some contexts, an understanding of familial tensions can help to understand extra-household and inter-community land conflicts.
Market and non-market access to land: Institutions, networks, processes

Market-based land transfers, whether permanent (purchases/sales) or temporary (rentals), have become key issues for economic development. However, empirical research on the development of land markets remains embryonic, especially in developing countries. The social aspects of markets - the role of networks, patronage, "social capital", brokers and middlemen - remain insufficiently understood. Moreover, market processes (how land transactions actually occur) and possible differences in the interpretation of the transaction (e.g. with regard to the type of rights transferred with a "sale", or to the irreversibility of the transaction) tend to be largely neglected. Furthermore, relations concerning land tenure are often not confined to land, but include broader social aspects which play a key role both in the reproduction of these relationships and in resource access dynamics. These social relations constitute not only a neglected element of market transfers, but also a factor shaping other resource access mechanisms. An analysis of the interweaving nature of market and non-market mechanisms for accessing land calls into question several reductionist assertions such as the assumed "customary" aversion to the commoditisation of land, the necessarily exogenous nature of the monetarisation of land relations, or a monetarisation represented as resulting in purely “economic” relations. This requires an empirical, in-depth analysis of the social embeddedness of land markets and more generally of land access mechanisms.

We suggest some indicative and interlinked entry points and questions:

- **Social networks, brokerage, clientelism, social capital and land access mechanisms.** This entry point calls for an empirical examination of these forms of social mediation and of the stakeholders' representations on which they are based: dyadic relationships between individuals or groups; individual or collective actors (NGOs, migrants’ associations, unions, farmers’ organizations, political parties) operating as intermediaries; the involvement of government officials; networks linked to migration and diasporas; ritual mediations (earth shrine and priesthood). Upon what justifying repertoires and uses of the past are these intermediary relationships based? How do they ensure their continuation, reproduction or transformation in the long-term?

- **The social embeddedness of land markets.** In many contexts, abstract concepts such as “land transactions” and “land markets” need to be questioned. Does the monetarisation of land transfers always result in the emergence of land markets? Are permanent or temporary transfers of land rights purely economic transactions, or do they represent one aspect of broader economic and social relationships? Are land transactions (purchases, rentals) “complete” (the buyer being completely free from all obligations towards the landowner, after the transaction)? Are there non-market elements in monetarised land transfers? When the “economic” aspect of the transfer is clear, what are the social conditions governing the emergence of land demand and supply (interplay of intra-family and inter-generational relations, patron-client relations, ideas of belonging…)?

- **Institutional environments and land market transfers.** It is frequently considered that the development of land markets presupposes a formal institutional environment (legal framework, title deeds, judicial devices). Does the lack of such an environment really hinder the development of land markets? Are “customary” institutional environments and land markets really incompatible? Does the development of land markets outside a legal framework systematically result in conflicts related to contractual enforcement problems and to the infringements of property rights?
Farming systems and land tenure dynamics

Increased pressure on land (of endogenous origin and/or due to the arrival of outsiders), the opening of markets and changes in public policies have resulted in a transformation of both the technical and social aspects of production systems in many regions of the world.

Transformations in land management rules have given rise to various theoretical interpretations. This module will go beyond highlighting the close relationship between farming systems and land tenure dynamics, and will examine empirically, in a range of different land tenure contexts, the embeddedness of land tenure in the technical and social aspects of production systems.

On the one hand, the rules and practices for natural resource management are dependent on history, on how rural societies are organised, on the articulation with their economic, social political contexts, and on the technical systems adopted to make the most of the natural environment. On the other hand, the forms of social organisation and of resources access have an influence on the technical aspects of production systems. Understanding the interactions between land access and agricultural land use in different contexts would enable us to avoid the pitfall of merely assuming correlations between agricultural intensification and land appropriation, and to grasp the diversity of land rights and of resource management systems. An analysis of these issues can provide useful tools for the joint management of a resource presenting multiple and often conflicting uses.

Contributions to this module will set out to examine empirically the interactions between these agricultural practices and land tenure. We suggest the following indicative and interlinked entry points:

- **Biophysical environments, farming systems and land tenure.** Land tenure systems may vary considerably as a result of differences in the biophysical environments and in the farming systems responding to these environments. An analysis of the context-specific technical aspects of production systems will enable us better to understand the diversity of land access and management systems.

- **From land tenure to technical practices.** Conversely, social practices and rules governing land allocation may play an important role in determining how land is developed and used. Differences in production systems may thus result from actors’ logic or social differentiation rather than from the characteristics of the “land” (in the agronomic sense of the word).

- **Technical change and land dynamics.** Lastly, processes of technical change contribute to the emergence of new land access rules and, through these rules, of new forms of social differentiation.

Globalisation, migration and "de-agrarianization": the land dimensions of rural transformation

Economic “globalisation” and changes in the forms of public action have led rural households to become more specialised in terms of their agricultural activities, which usually goes hand in hand with the diversification of household economic activities. Indeed, the deregulation of agricultural markets poses two conflicting challenges for family farms: to produce competitively for an ever larger market on the one hand, and/or to secure household livelihoods through a diversified portfolio of economic activities, both on- and off-farm, on the other. In order to adapt to this changing context, households resort to a range of strategies based on mobility (long-distance and long-term migration; restructuring
of rural settlements around communication and services centres). In some areas, donor or government supported development projects (poverty reduction strategies, infrastructure provision, and promotion of small, informal businesses) aim at strengthening migrants’ ties to their home areas.

The increasing role that formal and informal service-sector activities play in household livelihoods strategies is likely to call into question the “agrarian” nature of rural societies: new economic challenges and increasing migration call for a re-examination of the relationship between rural populations and land and natural resources, as well as for a redefinition of the functions and values associated with land rights and property. Below are some entry points for the analysis of the land tenure dimension of globalisation, mobility and changes in agriculture.

- **Land dynamics related to the reconfiguration of production systems.** Beyond moving out of agriculture, some actors are able to use the new market-based framework to their advantage and to promote new forms of productive land use: commercial farmers and herders, urban dwellers looking for investment opportunities, and migrants looking for outlets for their savings. This requires an analysis of changes in land tenure as they relate to transformations in productive systems, by identifying the relevant actors as well as the relationships between them.

- **The new economic functions of land.** This entry point focusses on the non-agricultural economic functions of land, within a context of de-agrarianization: mobilizing land resources in order to support the development of off-farm activities; "urbanisation" of rural land; agro-environmental concerns; emergence of land-related incomes which are dissociated from production.

- **The new political aspects of property.** The widespread adoption of new sectoral policies emphasising the "local", raises issues about the coordination of such policies as they are implemented in rural areas by different governmental and non-governmental agencies: what role can land institutions play in the coordination of sectoral policies within their jurisdiction? How do land issues affect ongoing processes of "local re-appropriation" of public policies? These processes of re-appropriation, coupled with the growing importance of NGOs in the delivery of social services, also raise questions about the role of land rights - and of their distribution - in the patron-client relations that shape access to such services: What are the linkages between land tenure and access to these intermediary institutions in the context of these new policies?

- **Emergence of new categories of actors and redistribution of land rights.** Both the implementation of social policies based on decentralisation and the increasing incidence of migration contribute to the emergence and identification of new categories of stakeholders: women, young people, migrants. The political and economic weight that some of these actors have within local arenas have an impact on land tenure dynamics (in terms of content and distribution of rights and of the nature of local regulatory institutions). We should particularly assess the role of these new categories of stakeholders within the context of land titling and registration programmes, and land conflicts.
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Languages: English and French (with simultaneous translation for plenary sessions)

Timeline

20 September 2005: deadline for abstracts (in English and French);
1st February 2006: deadline for the submission of papers (in English or French), which will be disseminated through a CD-ROM and the web site of the workshop.
Abstracts should be sent by e-mail to the coordinator of the relevant module, with copy to the workshop secretariat.

before 20 september 2005

- Customs, indigenous rights, land policies: Problems of knowledge/acknowledgement of rights: Pierre-Yves Le Meur, GRET, lemeur@gret.org
- The identity and cognitive dimensions of land issues: Nikolaus Schareika, U. Mayence, schareik@mail.uni-mainz.de
- The intra-family and inter-generational dimensions of land issues: Jean-Pierre Chauveau, IRD, chauveau@ensam.inra.fr
- Market and non-market access to land: Institutions, networks, processes: Jean-Philippe Colin, IRD, colin@ensam.inra.fr
- Farming systems and land tenure dynamics: Pascale Maizi, CNEARC, maizi@cnearc.fr
- Globalisation, migration and "de-agrarianization": the land dimensions of rural transformation: Anne-Marie Jouve, CIHEAM/IAMM, jouve@iamm.fr

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