

**Rethinking emerging markets in rapidly growing southern African cities
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Urban LandMark

**URBAN LAND MARKETS IN SUB-SAHARAN
FRANCOPHONE AFRICAN COUNTRIES**

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1. In all Francophone Western and Central African countries similar reference to Civil code and similar broad land categories

- Land administration: the eminent domain principles (principles and presumption of “domaniality”)

- Land registration and titling based on Torrens systems:
 - * Registration is a condition for the creation of rights (not only contracts/ deeds)
 - * Transactions and rights holders registered in the Land book (*Livre foncier*)
 - * Registration under the joint responsibility under the joint responsibility of the *Direction des Domaines* and the *Direction du Cadastre*.
 - * Land registrar is always a government body.

- Land allocated by the State: creation of property rights “from the top”, as opposed access to rights through adverse possession

- Similar legal and institutional framework with regard to land administration
 - Similar broad categories of land
 - * Public domain of the State (and local authorities). Cannot be alienated
 - * Private domain of the State (and local authorities)
 - * Land privately appropriated (freehold title & long-term leasehold)
 - * Customary land
 - * Idle and unclaimed land (*terres vacantes et sans maîtres*) : a debatable concept
 - Some countries (Senegal, Mali) have added a new category: National domain land. Increases prerogatives of the State on lands that are not part of public or private domain of the State and non-titled land. Including customary land.
 - Centralist tradition in land management and administration
- Re-appropriation & re-interpretation of the colonial legacy: the land belongs to the state

2. Main types of tenure status: coexistence of statutory & customary forms of tenure

-Private ownership: freehold & long-term leasehold

- * Still limited, including in urban areas
- * Reasons: land administration and allocation system (procedures), land registration, access price/poverty, transaction costs, lack of housing finance

Current trend: accelerated private appropriation of land in prime urban areas

- Administrative permits, permits to occupy (PTO)

- * Most common statutory form of access to land
- * Allocated by the State of local authorities
- * PTO are (i) temporary, (ii) conditional, (iii) revocable
- * PTO recorded but is not registered in the “Land book” (*Livre foncier*).
- * In principles, can be upgraded (permanent permit, freehold)

Current trend: declining number of plots allocated

- Customary tenure: the most common type of tenure in peri-urban areas

- * Customary tenure is not recognised or strictly limited to rural areas. (Senegal, DR of Congo, Congo)
- * Formal recognition limited to rural areas, but tolerated in suburban areas (Benin, Cameroon)
- * Customary « ownership » is formally recognised by government but limited to particular types of land and/or to particular areas/regions (Guinea-Conakry, Niger, Burkina Faso, Mali)

Current trend: recognition of customary tenure

3. Five main land delivery systems

- Land sold out by governments to individuals or to private developers (Ivory Coast, Senegal, Burkina Faso, Mali).
 - * Target populations from lower middle to high-income groups.
 - * Buyer receives the full ownership of the land.
 - * Land usually sold out below market price.

- Land allocated to individuals through administrative permits.
 - * Access cost lower than that of titled land.
 - * Active informal market of PTO

- Private formal land markets
 - * Titled land originally supplied to present landowners by government land allocation processes.
 - * Land sold out at market price.

- Customary land market
 - * Main providers of land for housing the poor in West and Central African cities (60% to 90% of the urban population).
 - * Works through individuals who have received their land rights from a customary system, but who treat these rights as market commodities

- Illegal forms of access to land through “squatting”
 - * Not predominant in Francophone sub-Saharan African cities...
 - * ... but increasing over the last 10 years.

4. Main characteristics at regional level

- Legal pluralism
- Importance of informal and customary tenure and land markets
- Diversity of land markets with:
 - * Different mode of access
 - * Different access prices
 - * Different levels of security of tenure
- Diversity of government responses to informal and customary tenure

5. Continuum between formal and informal land delivery / land markets.

- Land markets not to be considered as segmented
- Interactions between formal and informal land markets

6. Tight relationship between:

- Market price of land
- Tenure status of the land and
- Security of tenure it provides

Land prices within each land sub-market (formal and customary or informal) are anticipating increases expected from tenure upgrading and regularisation

7. A systemic approach to land markets

- Land markets form a system
- Analysis of the dynamics of land markets requires a systemic approach: any change affecting one segment of the land market impact on other segments (ex. Dakar and Ouagadougou)

8. Dynamics observed in urban land markets over the last decade

- Liberalisation of land markets

- * Changes in the legal and regulatory framework governing land management and administration have accelerated liberalisation of land market.
- * Land reforms and new land laws and codes have introduced the right to private ownership, even in national contexts where land has for long been exclusively considered as a State matter.

- Commodification and structural changes in informal land markets

- * Commodification of all land delivery systems, including the most informal ones (customary land delivery or access to squatted land).
- * Customary land delivery is being progressively eroded by market pressures.

- Tenure regularisation policies

- * Trends towards recognition of customary rights and practices.
- * More emphasis being put on tenure upgrading and regularisation policies, despite the resistance of many government institutions and agencies in charge of land administration.
- * Yet, implementation of urban tenure regularisation policies at national level has achieved, so far, limited results in Western African countries (ex. Senegal)

9. Land markets practices and corruption

- Profitable practice.

* To buy or be allocated land in a segment of the market where it is cheap but still insecure (customary or informal land markets, including PTO)

* To obtain some form of tenure upgrading or regularisation

* To sell back at market price.

Access to political and administrative power is a key condition of success.

10. Example 1: allocation of PTO

-Have access to Land

- Obtain tenure upgrading

11. Example 2: customary land markets

Illustration: Dialakorodji, Bamako

In Dialakorodji, a suburban village at 15 km from the centre of Bamako Bamako, in Mali, the market price of a plot of land of 400 m² sold by a customary owner is of 150 000 FCFA.

The deed of sale is authenticated by the village-head and two members of the municipal council. If the land sale is legalised by the mayors and after the payment of development fee of 50 000 FCFA, the market value of the plot increases to 500 000 FCFA. If the owner can obtain a freehold title, the price of the plot will be in the range of 2,5 millions FCFA.

12. Limitations of conventional urban land administration: an obstacle to the development of land markets

- Cumbersome procedures for land allocation and land rights registration
- Constraining land use planning regulations are discouraging the development of formal land and housing markets.
- Deficiencies of the housing finance system hinders the development of formal land markets
 - * Provision of finance for housing by financial system extremely limited. Overall volume of housing loans outstanding amounted to only 0.5% GDP in 2004 in Burkina Faso and Senegal)
 - * Share of the informal sector in the national economies
 - * Level of incomes
 - * Insecure titles: the limits of land titling policies
- Transaction costs are excessively high in the formal sector. Corruption-related costs, which can be very high in tenure formalisation procedures, are contributing to increase transaction costs.

13. Are informal and customary land markets a viable alternative in providing access to urban land for the poor

Informal land markets are a response to formal land market deficiencies.

However, The viability of customary or neo-customary land delivery systems and practices can be questioned based on the following points:

- Supply of land
- Security of tenure and land conflicts
- Accessibility for the urban poor
- Compliance with planning prescriptions
- Urban social segregation

14. In Western and Central African countries, two converging dynamics that narrow the gap between formal practices and informal/customary practices can be observed.

- Dynamics of government institutions

More flexible government policies regarding existing informal settlements, a corresponding sharp decrease in the number of forced evictions during the last five years

- Dynamics of customary land developers

They are increasingly agreeing to comply with a minimum set of rules and formal procedures, especially regarding registration of land rights and transactions, planning rules and delivery of some basic services.

15. The political economy of urban land markets

- Misuses of eminent domain right

- * The principle of *domanialité*, gives to land administrations a discretionary power: they can arbitrary allocate at administrative cost land rights that can be later sold out at market price.

- * This situation is fuelling corruption

- * It limits the formal regularisation of informal and customary rights

- Tenure formalisation policies and integration of customary land markets: a diversity of objectives

- * In Western African countries: broad consensus about the need to clarify, regulate and sometimes regularise customary tenure.

- * Depending on actors, justifications of this new approach, reflect various complementary and sometime contradictory objectives:

- * Formalisation of customary tenure is mainly motivated by the need of formal land markets

- Obstacles to tenure regularization, which is usually justified by technical reasons (lack of capacity in the administrations, illegality of settlements) is also a manifestation of the attempts made by group of interest within the State apparatus to maintain scarcity on land markets

16. Corruption in land administration and governance

- Corruption deeply rooted in the post-colonial administrative tradition, when the land prerogatives of the colonial power taken over by newly independent States, without procedures and qualified institutions able to ensuring land management and administration.
- Corruption in land management and administration is closely related to the principle of « *domanialité* » and with the coexistence of several land markets – formal and informal ones – that operate in parallel with different pricing systems.
- As agents in land administration are aware of the profits beneficiaries of land tenure regularisation are expected to yield, they will inevitably ask for a share of the anticipated profit.
- This situation can be observed at various degrees but, with nearly no exceptions, in all Francophone Western and Central African cities.
- It impacts on allocation of public land processes, and tenure regularisation.
- Over-complicated and time consuming tenure regularisation procedures are tightly linked with corruption and vested interests in land
- The main resistance and obstacles to improving land management and administration and the legal ad institutional framework of land markets usually come from central government land administrations.

17. Some policy orientations to improving urban land markets

Policy recommendations made by international development agencies to improving urban land markets in Western and Central Francophone African countries are usually based on the following sets of actions.

- Integrating customary and informal practices
- Improving land registration and titling systems
- Diversifying land supply and accessibility
- Converting administrative permits to occupy into secure land titles.
- Allocating of public land to release the pressure on land markets
- Simplifying land allocation, transfer and registration procedures
- Rehabilitate adverse possession procedures in tenure regularisation
- Political limitations of policy interventions

Enabling urban land market to work is not only a technical or policy matter. It requires political pre-conditions and it has strong political implications.

In the context of sub-Saharan Francophone African cities, it requires that three political conditions are met: (i) putting an end to the State monopoly on land, (ii) ensuring transparency in land administration, and (iii) ensuring a better coordination between land management and administration institutions.

We must however be aware that, over the last three decades, the need to meet these political conditions have been repeatedly proposed, with no or very limited impacts on land policies.

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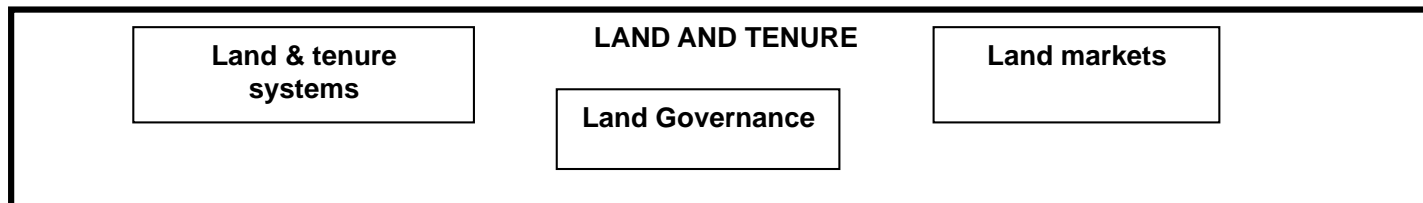
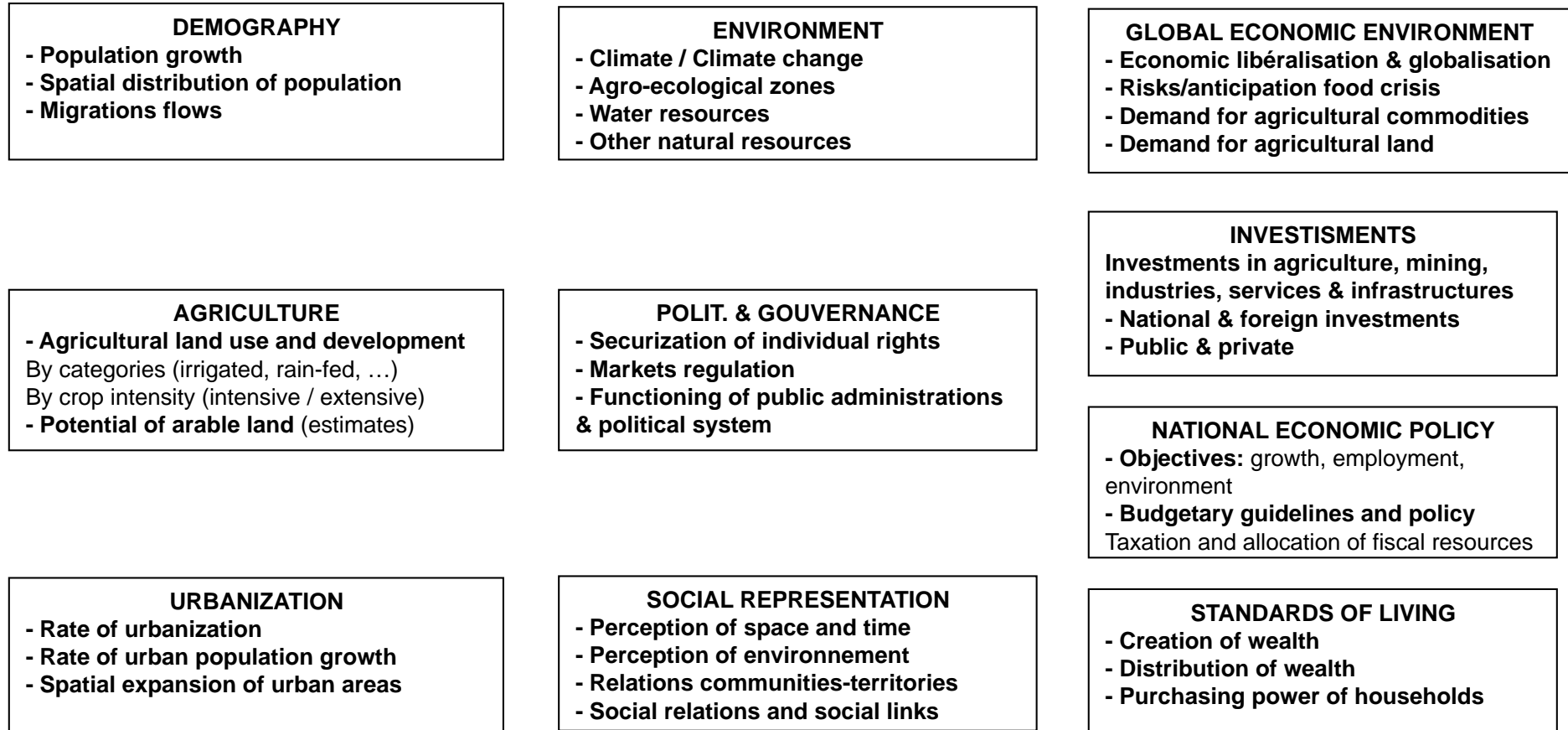
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FACTORS THAT IMPACT ON LAND AND TENURE DYNAMICS



DYNAMICS AND INTERACTIONS

FIGURE 2. INTERACTIONS BETWEEN FACTORS THAT IMPACT ON LAND & TENURE

