

What Prospects for a New Land Policy in DRC?

Land in the DRC is a key constraint on investment and development initiatives. Throughout the country, there are many public or private development projects facing more or less complex tenure issues. Worse still, conflicts over control of land have played a large part in the instability of the last few years, particularly in the East of the country. Well aware of the major challenges involved in bringing about a significant improvement in land management, the government of the DRC knows that it cannot avoid making major changes in the land sector and it launched in 2013 the creation of CONAREF, an institution dedicated to reforming the land sector and programming the reform process. A Land Sector Review sponsored by the World Bank intended to establish the analytical basis for the design of new land policy orientations. Based on a snapshot of the various aspects of the Congolese land sector in urban and rural areas, the review focused on current constraints related to the existence of various social land rights management practices alongside the formal administrative system and on an inventory of innovative experiences that helped to put together recommendations concerning land policy orientations.

Key features and limitations of the DRC's land legal framework – Contrary to the situation in many African countries where land law distinguishes State-owned land from privately-owned land, the Congolese land system has maintained since 1973 that "*the land is the exclusive, inalienable and indefeasible property of the State*", including land held by local communities formerly described as "indigenous". Arrangements for the administration of customary land have yet to be formalized. The legal framework of the Congolese tenure system is characterized by a legal vacuum as regards the fate of land rights held by local communities on a customary basis. The ordinance which was to determine arrangements for the administration of this land has been awaited for more than 40 years.

A poor land rights management service – All land is State-owned but the low capacities of the public land administration units are not able to provide a reliable service. The staffing structure and levels of training further undermine the weak capacity of the land administration. As the divisions are having to handle an increasing number of applications with fewer staff, they turn systematically to staff not recognized by the central administration who are trained on-the-job and whose pay comes from diverse methods of self-remuneration. As a result, there are almost as many "volunteers" as regular staff. The erosion of the human resources of the administrative apparatus has a heavy impact on the ability of the divisions to provide with a reliable tenure security service. Some divisions in urban areas may generate fairly significant revenue, but they do not receive the needed resources for their operation in return. Staff adopt practices that provide them with income. The land services only carry out field activities in response to requests from the elites or public authorities to deal with a few land registrations. The credibility of the public land services is undermined by these stopgap mechanisms which also encourage the maintenance of complex procedures, because each stage constitutes a potential source of income. The procedure for initial registration comprises three major phases: (i) obtaining the lease agreement; (ii) obtaining the concession agreement; and (iii) obtaining the certificate of registration. There are no less than 27 stages involved in obtaining a "*certificat d'enregistrement*" and 16 stages must be gone through

for a simple transaction. An assessment of the processing time in a urban land division in Kinshasa has shown that it would take 95 years to issue concession agreements for all plots covered by this land division and 350 years to achieve the final establishment of the respective “*certificats d’enregistrement*”. The costs of issuing certificates are just as variable as the time taken. In some cases, the value of the registration procedure can exceed the value of the land. As a result, users make do with "papers" drawn up locally.

Local land rights management practices – Forty-three years after adoption of the 1973 law, considerable uncertainty continues to surround the State's ability to secure land rights. Local practices have come into being to compensate for the lack of a public land management service. These have generated new rules – both customary and administrative – to which the majority of urban and rural Congolese defer. Pending a reform of land governance, an assessment of these arrangements and practices is needed to establish their potential for improving tenure security. Practices in respect of formalization of land rights have taken hold, despite having no legal basis, and gained social and administrative recognition. They have given rise to various kinds of "titles", which are not legally recognized but are accepted by the population and indeed the land administration, and to a de facto procedure not set out in any legal text. The customary authorities and the municipal and district local government authorities play a key role in formalization of urban land rights. Customary chiefs have real power to allocate urban land, upstream of the intervention of the registration divisions and municipalities, especially at sites where there has been no prior decision on subdivision into lots for development. District chiefs and burgomasters take no action until they have proof of prior agreement with the customary chief. District chiefs also play a vital role, as they are responsible for issuing "*fiches parcellaires*" (plot cards) and "certificates of plot occupancy", which formalize land occupancy and may sometimes be seen by users as an "*ownership title*". These formalization procedures are implemented following a short, locally managed administrative process, at an affordable cost of around \$250 per plot. It is quite clear that the vast majority of urban plots are registered according to this procedure. The following observations may be made about the extensive activity of the local government and customary authorities with regard to land and the diversity of tenure documents. (i) A land market clearly exists, even though land rights are not legally documented, creating an obvious need to put the land right in writing. (ii) The local government authorities offer a land rights management service which meets this need, but their action has no legal recognition. (iii) Local tenure documents still have uncertain legal value. (iv) Local land practices are nevertheless very widespread because they allow tenure documents to be issued within a reasonable timeframe and at modest cost. (v) Local land practices should not be seen as an alternative to the “*certificat d’enregistrement*”, but rather as a first level of formalization which is sometimes recognized by the registration divisions. (vi) Local land practices can be greatly improved in terms of archiving and mapping. Digitization could be envisaged. Attributing legal value to the documents arising from these practices would help to shorten and simplify the tenure security process. The collection of land-related revenue should also be improved. All these avenues could be explored in order to set policy guidelines for land reform.

The Land Sector Review also identified concrete initiatives in the field which could guide the establishment of more efficient tools to achieve tenure security and resolve land disputes, providing food for thought as regards land reform policy guidelines.

Policy recommendations – Based on the analysis of the key constraints and on recent local initiatives to improve the land management service, the Land Sector Review provided the Government with a set of recommendations, namely:

- *Revise the legal framework* (i) to confirm local land management powers so as to confer legal value on land management practices currently without legal recognition that are applied everywhere and to make sure that the legal framework does recognize these land management patterns legitimized by practice; (ii) to decentralize land management as the systematic presumption of State ownership should be challenged, confirming the local government and customary authorities' power to grant rights to land, subject to certain conditions; (iii) to develop land management around a process of local formalization of rights using local tenure documents based to register land rights so long as these were issued in a transparent manner through public procedures, standardized and codified by new legislation; (iv) to guarantee women's rights of access to land and to protect the land rights of vulnerable social groups.
- *Bring the administrative framework into line with a process of local formalization of rights* by (i) empowering local land management authorities to develop local land services; (ii) enhancing the formalization of land rights by supporting local land management authorities; (iii) developing mechanisms to manage land-related conflicts and (iv) promoting a right to land information.
- *Involve local communities in agricultural and forestry investments* by (i) supplying land suitable for agribusiness investment through empowering local communities
- *Develop training in the new land-related disciplines.*