

Reforming land tenure's legal frameworks in developing countries

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This study examines the design and implementation processes of new legal frameworks for land tenure in developing countries, with a particular focus on rural areas.

Drawing on three case studies from distinct legal, historical, and cultural contexts – namely Niger, Haiti and South Africa – the research reveals that these countries face similar legal and implementation challenges when undertaking such reforms. It demonstrates that the land governance models observed in these case studies result from a combination of external and internal influences.

Regarding external influences, the research demonstrates the limitations of classical and technical land tenure governance models as well as the weaknesses of the international framework and the influence of international assistance on this subject. Regarding internal influences, it emphasizes the importance of considering the multiple social practices related to land access and use, which go far beyond the traditional notion of ownership.

Building on this assessment, the study argues that recognizing legal pluralism is a key element in rethinking legal frameworks for land governance. However, this step alone is insufficient to create an efficient land governance system. It is therefore essential to organize these legal pluralities within a genuinely structured pluralist system. Drawing on the progress and shortcomings identified in the three case studies, the analysis outlines concrete elements for implementing this concept at national scales.

In conclusion, the research establishes that land governance requires the definition of shared national values through concise yet high-ranking guiding legal texts (i). It further specifies that implementation should be approached at the local level through joint land commissions, allowing governance to adapt to the contexts and practices of local populations (ii). Finally, it highlights the critical role of the judiciary, which, as the interpreter of the law, must bridge the formal and informal systems. The judiciary thus emerges as the guardian of order within the pluralist land governance system (iii).

Reference: Pennec Jérôme, *La rénovation des cadres juridiques de gouvernance foncière dans les pays en développement : étude de cas croisée du Niger, d'Haiti et de l'Afrique du Sud*, thèse de doctorat en droit, Université de Bretagne occidentale, Brest, 2023, Français, <https://theses.hal.science/tel-04257339>