

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 & Development” Technical Committee

AFAFE: a decentralised tool for agricultural, forest and environmental land management

by Mathieu Bonnefond¹ and Maylis Desrousseaux², September 2020

AFAFE is a land management system that restructures land so that it can be used for agriculture, forestry and environmental purposes. Previously known as land consolidation, AFAFE aims to establish production units on single blocks or large plots of land in order to improve land use, ensure that natural spaces in rural areas are used productively, and support communal or inter-communal land planning and management. This constantly evolving, multi-actor system dates back to the 18th century. It was initially used by rural communes to deal with land fragmentation arising from inheritance, and then adopted by the State as a means of furthering public interests following the First World War.

SUCCESSES AND REVISIONS OF A CONSTANTLY EVOLVING TOOL

● Initially intended to improve farming conditions

The reparcelling procedure was widely used from the 1950s to the 1990s, to improve farm production structures and support efforts to modernise French agriculture through the Common Agricultural Policy (CAP). Its main purpose was to improve farming conditions by grouping together agricultural holdings and create landholdings that could accommodate the growing use of increasingly large heavy farm machinery, thereby accelerating the modernisation of French agricultural production systems.

In the 1960s increasing criticism of reparcelling and its impacts on the environment and landscape led to changes in the legal framework for the process, the inclusion of nature protection professionals in municipal commissions, and the introduction of mandatory impact assessments in the mid-1970s. Its application was also widened to include major road and rail infrastructure works, and then municipal development projects (establishing

land reserves to construct new roads, business parks and facilities). The drive towards greater decentralisation in the 1980s saw departments play an increasing role in financing and managing reparcelling projects, although the State remained a key player in the process.

● The New Deal: Decentralisation and Greening

Rural reparcelling peaked in the second half of the 20th century, when almost half of the country's usable agricultural land was reconfigured, mainly in northern France. It started to fall out of favour in the 1990s as growing concern about its social and environmental effects (destruction of hedges and wetlands) and the legitimacy of State control prompted calls for the tool to be reviewed and repurposed. This led to major changes in rural land management in the first years of the 21st century, and a new name for land consolidation, which

Technical Committee


LandTenure&Development


AFD


Liberté • Égalité • Fraternité
REPUBLIQUE FRANÇAISE
MINISTÈRE
DE L'EUROPE ET DES
AFFAIRES ÉTRANGÈRES

¹ Senior Lecturer in Spatial Planning and Urban Development, Conservatoire national des arts et métiers.

² Senior Lecturer in Public Law, Conservatoire national des arts et métiers.

was rechristened 'Agricultural and Forest Land Management' (AFAF) in 2005. It is one of the four types of rural land management shown in Box 1 below.

The first main change came with the decentralisation of decision-making, which gave departments and communes real powers over agricultural planning and development.

In 2012, a growing desire to strengthen the environmental aspects of land management prompted the national Order of Land Surveyors to suggest that the system should include environmental objectives; then in 2016, AFAF became AFAFE – the additional 'E' reaffirming the legislature's wish to make it a tool for environmental protection. Under the new regime, plots of land within a defined area can be used for natural purposes, agriculture or forestry in order to pro-

tect biodiversity, maintain the quality of watercourses and encourage the creation of green and blue corridors. AFAFE's remit therefore extended to environmental as well as economic and social functions.

LOCAL LAND ACTION AS A PLANNING PRINCIPLE

● A communal or intercommunal-level procedure

Communes may jointly or separately ask the departmental council to carry out a preliminary study to assess the land and environmental conditions in their territory and identify potential opportunities for land improvement operations. If necessary, the department will issue a decree to set up a communal or inter-communal land use planning commission (CCAF or CIAF)

to oversee these operations. Based on the conclusions of the preliminary study, the CCAF/CIAF submits its proposals for a land improvement zone and environmental measures to the departmental council, which are examined in a public enquiry.

At the end of this preliminary phase, the departmental council issues a decree authorising the commencement of operations. The first phase consists of classifying the land in terms of its productivity, drafting preliminary new plot plans and a programme of related works, discussing them with landowners, and putting the proposals to a public enquiry. After the departmental land use planning commission (CDAF) has given its final opinion on the proposals, a closing order is issued formalising the property transfers for the operation, and landowners should be given land of equivalent productivity to compensate for the land they have relinquished.

Any related works (roads, ditches, hedges, etc.) are undertaken by the commune or a land association composed of all the landowners in the area affected by the development, which is specially created by prefectural order to carry out related works and maintain and manage collective works.

The departmental council usually funds the studies for land improvement operations and is responsible for the operational implementation of the development. It may also subsidise any related works carried out by the municipality at the end of the operation. When an AFAFE is undertaken as part of an infrastructure project or major public works, its cost is borne by the operator (see Box 2 below).

BOX 1: THE FOUR TYPES OF RURAL LAND MANAGEMENT IN FRANCE

1. Agricultural, forest and environmental land management (AFAFE).
2. Exchanges and transfers of rural property (ECIR). These procedures for exchanging plots in order to consolidate landholdings and enhance land use are undertaken at the owners' behest or ordered by departmental councils as part of land improvement operations. ECIRs are less restrictive than AFAFE, cause very little disruption to cadastral parcels and do not generate any related works.
3. Putting uncultivated or obviously under-exploited land to productive use. Departmental councils are responsible for this procedure, which consists of recovering, consolidating and making uncultivated or obviously under-exploited land available for productive use by new operators (individuals or groups). This type of land management may be a departmental council initiative, or be requested by the Prefect, the Chamber of Agriculture or an EPCI. In the latter case, the area concerned will be established and a land use planning commission set up.
4. Afforestation. Communal or inter-communal territory is divided into different zones where afforestation is freely permitted, prohibited or regulated. While the main aim is to maintain land for agriculture, this process is also intended to preserve landscapes, protect natural environments and water resources, and combat natural risks.

BOX 2: MAJOR PUBLIC WORKS

The agencies that implement major structural projects (canals, railways, roads, etc.) are responsible for rectifying their impacts on agricultural structures. This means that they fund all AFAFE operations and related works to be implemented in the area affected by the project, which may be extended subject to agreement between the departmental council and the implementing agency.

The two main features of AFAFEs carried out in this context are:

- all the costs of operations to remedy the impacts of the infrastructure project are borne by the implementing agency;
- it is up to the CCAFs or CIAFs set up by the departmental council to decide on the advisability of land improvement operations.

The land required for such initiatives is acquired amicably, expropriated or taken from each property in the development zone, although the need to take parts of landowners' holdings can be reduced or eliminated by using land reserves (especially those established by SAFER).

● The three key actors in AFAFE: communal land development commissions, land surveyors and departmental councils

The municipal council initiates the procedure by asking the departmental council to set up a communal or inter-communal land use planning commission (CCAF or CIAF).

This commission is chaired by the investigating commissioner appointed by the presiding judge of the administrative court, and is composed of two elected municipal councillors, two representatives from the department, one representative from the tax services, three nature conservation professionals, three farmers' representatives and representatives of landowners.

These commissions have been the cornerstone of the procedure since the Second World War, providing a forum for stakeholder discussions and negotiations, and working closely with the land surveyors responsible for preparing parcel plans and the departmen-

tal councils that oversee the procedure and technical support.

Land surveyors also play an important role in land development operations. According to conditions of the Public Procurement Code, they should be appointed by the President of the Departmental Council and approved by the Minister for Agriculture. They liaise with all the actors concerned (landowners, farmers, CCAF/CIAF, departmental and State services, consultancy firms, nature conservation associations, etc.), advise and assist the commissions with land classification and proposals for new parcel plans, and support the investigating commissioner during public enquiries.

Specialist consulting firms are also often involved in the process, particularly in relation to environmental and land issues. They are called in to conduct preliminary studies for developments (baseline conditions in the commune) and environmental impact assessments for parcelling projects and programmes of associated works.

CONTROLS AT SEVERAL LEVELS

● Departmental and national level

In the first instance, disputes relating to land parcelling should be dealt with by the Departmental Land Use Planning Commission within five years of the final plan being posted in the town hall. If the situation cannot be rectified, landowners will be fully compensated for their loss by the department, and the dispute will be taken to the expropriation (i.e. judicial) judge.

If it is felt that the departmental commission has exceeded its powers (*ultra vires*), it must be consulted before being taken before the administrative judge. This is not the case if the dispute relates to the procedure that generated the reparcelling plan (and possibly the quality of the impact assessment), as the environmental authority, which operates at a higher level, will have given its opinion of the document and identified any weaknesses in it. However, this is only a simple opinion.

AFAFE impact assessments take insufficient account of biodiversity as they only cover species on the site that are protected under environmental law.

● A judge-led procedure

Judicial judges are the sole guarantors of individual liberties. As such, they have exclusive jurisdiction over matters pertaining to property rights and thus land expropriation and development. As with expropriation, any questions relating to the legality of the administrative aspects of an AFAFE (jurisdiction, procedure, substantive rules) may be taken to the administrative judge; while matters relating to compensation rates and transfers of ownership are dealt with by the judicial judge.

BENEFITS OF LAND IMPROVEMENT

Successive reforms have transformed land improvement initiatives into a multifunctional land use planning tool. While AFAFE's main objectives are still to reorganise rural land and improve farming conditions, local authorities have also woken up to its potential to deliver sustainable land use planning and development. It may be expensive, but in addition to enabling them to build up land reserves for development operations, rethink and adapt roads, enhance the landscape and improve the living environment, it now also allows them to tackle environmental issues such as water quality, water catchment protection, erosion control and ecological connectivity.

While works to improve farmland or forests may contradict policies to achieve zero net artificialisation and

protect these areas, environmental objectives can lead to land boundaries being redrawn and plot sizes reduced where they are too large to protect biodiversity (by reintroducing hedges, for example).

Another advantage of land use planning and improvement is that it provides an opportunity to organise land matters at the local level, update owners' and operators' knowledge, and delineate different properties in the area. ●

KEY REFERENCES

>> L'Aménagement Foncier Agricole, Forestier et Environnemental, Géomètre-Expert. http://geometre-expert.fr/upload/docs/application/pdf/2019-10/afafe_2017_ordre.pdf

>> L'Aménagement Foncier Agricole, Forestier et Environnemental (AFAFE) Un outil départemental au service de l'excellence environnementale du territoire, Département de la Dordogne. https://www.dordogne.fr/fileadmin/telechargements/DGA-TD/DEDD/SAETE/Les_chiffres_cles_de_l_AFAFE.pdf

>> L'Aménagement foncier dans la Somme. <https://www.somme.fr/wp-content/uploads/Services/Agriculture/Agriculture-et-territoires/Guide-amenagement-foncier-2019.pdf>

>> PAUCHARD Laura, MADELINE Philippe and MARIE Maxime, "L'échange parcellaire : une nouvelle étape dans l'aménagement foncier de l'Ouest français", *Norois* [online], 240, 2016, posted online 30 November 2018, consulted 13 July 2020. <http://journals.openedition.org/norois/5928> – DOI: <https://doi.org/10.4000/norois.5928>

These pedagogic factsheets were produced with the support of the Technical Committee on "Land Tenure & Development" and the "Land Tenure Policy Elaboration Support" mobilizing project financed by the Agence Française de Développement. These factsheets can be downloaded in their entirety from the www.foncier-developpement.org web portal.

EDITOR

Mathieu Bonnefond: mathieu.bonnefond@lecnam.net
Maylis Desrousseaux: maylis.desrousseaux@lecnam.net
Conservatoire national des arts et métiers

PEER REVIEWERS

Robert Levesque – AGTER: robert.levesque@agter.org
Antoine Bouquemont – CSN: antoine.bouquemont@notaires.fr

le cnam

aGter

CONSEIL SUPÉRIEUR
DU NOTARIAT