

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

Regulating rural land markets. Why should they be regulated, and how?

by Michel Merlet¹, April 2024

Land is unlike any other commodity. Market transactions contribute to much-needed changes in land redistribution – but they should be regulated because unregulated land markets favour those who can buy or rent land, rather than serve the general interest. Various direct and indirect instruments can be used to regulate land markets.

This issue has risen up the public policy agenda in many countries in the global South in recent years. In addition to top-down State measures, regulating land markets often requires interventions by local entities that can establish and enforce rules on transactions with a degree of autonomy.

WHAT IS A LAND MARKET?

We say that “land can be bought and sold.” But even when it becomes a commodity, only certain rights to a plot are transferred to third parties. These rights may be temporary or permanent, and may be held by individuals, families, communities or companies. Transfers vary according to the nature of the rights and the holders concerned, and are often accompanied by various conditions and obligations.

A land market is a set of market land transactions: exchanges or transfers of land rights for a consideration based on a system of equivalence – price. There is no market transfer when the consideration is merely symbolic, even if it is monetary. Classic forms of transaction are *sale-purchases* (definitive transfers), *rentals* (temporary transfers for a fixed consideration) and *sharing contracts* (temporary transfers for a proportional consideration). Market transfers of rights may also include a quantifiable non-monetary consideration in the form of workdays or produce.

Land legislation in Africa often only recognises *land titles*: any transaction on unregistered land is considered legally null and void. Yet land markets can exist where land has no legal status, and may be formally or informally recognised by local institutions,

authorities and communities. Having noted this point, we also look at how market transactions on land that is not legalised by the State are regulated.

WHY REGULATE RURAL LAND MARKETS?

According to neoclassical economic theory, markets are supposed to be *self-regulating* if competition is *perfect*. This is not the case with markets for land rights.

Large farms generate less net wealth per hectare than *peasant* or *family farms*. They do not meet the needs of the majority of the population, but are able to buy or rent land because they generate more money than family farms. City dwellers who buy up peri-urban land and change its use are adversely affecting food production. Unregulated land markets always lead to land concentration, which may also be caused by other factors (history, State allocation of large tracts of land, etc.). This can be deeply detrimental to the general interest.

It may be possible to introduce redistributive agrarian reforms to mitigate land concentration, but circumstances rarely allow for such measures, and it is always hard to implement them. It

¹ Michel Merlet is an agronomist, and was the co-founder and director of AGTER from 2005 to 2020.

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is better to act upstream to prevent land concentration from happening in the first place.

Market land transactions contribute to necessary changes in land distribution over time. They can therefore be useful, provided rules to avoid land concentration and unwanted changes of use exist and are enforced. These rules can be established and implemented at national level by the government, and at local level by various bodies (local authorities, communities, multi-stakeholder governance arrangements).

DIFFERENT INSTRUMENTS FOR REGULATING RURAL LAND MARKETS

When we talk about *regulating rural land markets*, we are referring to a set of practices and provisions intended to guide the operation of these markets so that they contribute to defined policy objectives. Regulation can take the form of *direct* interventions in land transactions, or *indirect* moves to encourage or discourage certain practices. Regulatory objectives vary according to the problems that need to be addressed, the economic and political context, and the balance of power and capacity of state institutions or local authorities to promote and enforce regulations. The most effective course of action is often to combine several instruments.

● Instruments for direct interventions on market land transactions

Defining where these transactions can take place

Certain transactions may be prohibited or discouraged in specific areas. This often happens when the State intro-

duces exemptions for certain types of land (agrarian reform zones, protected natural areas, etc.); although such areas may also be defined in consultation with elected representatives and local communities (land-use plans determining whether or not land can be built upon, restricting land use, etc.). These measures have an immediate impact on land prices.

Implementation of these instruments is determined by decisions taken at State level and enforcement on the ground, which can only be done by local actors.

Defining who can be involved in these transactions

- Market transactions of land rights may only be possible for specific groups of actors (farmers or herders, natives or non-natives, family groups, etc.). In Africa, Asia and America these opportunities are often determined by local rules, but they may also be influenced by national land policies.
- Certain categories of actor may be *given priority* for particular transactions, without excluding other groups from them. For example, the French law on agricultural leases (*Loi sur le fermage*) gives tenant farmers in France the *right of first refusal* to buy land that they are working on.
- New bodies may be created to intervene in market transactions involving land rights. In France, SAFERs (*Sociétés d'Aménagement Foncier et d'Établissement Rural – Organisations for land development and setting up producers in rural areas*), which bring together stakeholder representatives at the departmental level) were set up to intervene in the sale/purchase market for agricultural land, prevent land concen-

tration and encourage young people to set up farms. These bodies can replace a buyer whose offer has been accepted by the vendor, and resell the land to a producer deemed to be in a better position to contribute to the development of the region. Landowners cannot sell to whoever they want, but they can cancel a sale.

SAFERs have worked fairly effectively for several decades, but now have to contend with new land markets that are beyond their control as they no longer concern property rights, but company shares or holdings.

Defining rules for transactions and changing types of transaction

Rules may relate to the content and terms of transactions.

- The rules governing the operation of markets for tenancy rights in various European countries have been modified by *tenancy laws*, which have influenced the development of national agrarian structures. These laws set out owners' and tenants' rights, the duration of contracts, methods for setting and increasing rents, etc. France has specific courts to enforce these laws, with guaranteed 18-year leases and low rents that have provided security for tenant farmers and reduced non-farmers' interest in land ownership.
- It is also possible to use specific regulations to create new rights. France was able to limit land concentration from the 1960s onwards, by introducing a '*right to farm*' that is not tied to land ownership or leases. All landowners or tenants who wish to expand their farm must obtain authorisation from local '*structure commissions*' which determine whether the expansion is compatible with the

regional development plan. These commissions bring together representatives of the State, farmers, landowners and professional agricultural organisations (which go by various names).

Simple, inexpensive tools can be used to make land markets more transparent. These include:

- recording, publishing and keeping accessible records of land prices;
- making it mandatory to give the regulatory authorities prior warning of planned transactions, to enable them to work effectively.

Setting size limits

One way of regulating rural land markets is to set maximum/minimum limits on property sizes (which are often easy to circumvent) or farm sizes (for owner and tenant-operated farms).

Taxing market land transactions

Taxes can be used to help regulate market land transactions. They may be levied on the sale value or the difference between the acquisition and resale values, with possible exemptions for certain categories of actor (such as young farmers setting up in the sector).

● Indirect instruments that change the economic environment

Indirect instruments can help restore the balance of power by affecting different actors' ability to participate in land markets.

Interventions on non-market mechanisms to transfer land rights (regulating settlements, inheritance, etc.)

While regulations relating to settlements can be useful, it is also very

important to regulate inheritances as they play a key role in creating land assets. Inheritances may be egalitarian or unequal, and are generally distributed between descendants, or between sons and daughters.

The possibility of transferring land during the owner's lifetime also profoundly changes the way it is passed on from one generation to the next.

Interventions on financial markets

Access to credit for property, production and to set up new farmers can affect the way that agrarian structures change. For example, offering farmers publicly *subsidised loans* with lower interest rates can make it easier for them to acquire land rights; while enabling poor households to access emergency consumer credit limits *distress sales* and thus land concentration.

Interventions in other markets

Regulating the markets for agricultural inputs, products and labour (especially temporary labour) has significant effects on different forms of production and the viability of small farms, as do agricultural policies in general. Increasing capacity to acquire *leased* or *owned* land and reducing forced sales has an impact on land markets.

Interventions through taxes and subsidies not directly related to market land transactions

Other interventions that have proved effective in rural land markets include *annual taxes on the amount of land owned and/or used*, which make it more expensive to own unused land, and *inheritance tax*. In some countries, these measures have led to fundamental changes in agrarian structures in just a few decades.

Subsidies can also be put in place to provide access to land, set up young

farmers, or enable older farmers to leave the sector. They may concern all *producers* or *owners*, or only certain actors.

NEW FORMS OF GOVERNANCE ARE REQUIRED TO REGULATE RURAL LAND MARKETS

The globalisation of trade, climate change and growing inequalities are accelerating the pace of change and leading to increasing conflict. The emergence of *corporate agriculture* has undermined 20th century measures to regulate rural land markets in Europe, and land concentration has increased worldwide since the start of the 21st century. The question of how to regulate land markets is now being raised everywhere, often as a matter of urgency.

Rural land markets are regulated in particular political, economic and institutional contexts, in pursuit of negotiated political objectives. These interventions are always fiercely resisted by powerful actors who benefit from a lack of regulation, and therefore require a broad coalition of interests to support and defend them.

It is important to ensure that regulatory instruments and mechanisms are *effective* and *resilient*. Because they involve the State, local communities and producers, their implementation often requires new governance mechanisms at different levels.

The primary beneficiaries of these interventions should be clearly defined, as should the composition and funding of new bodies that are likely to be responsible for regulating markets. The actors who set the political objectives for these controls should be able to ensure that regulations are imple-

mented, and are not circumvented or misused. This can be done by setting up collective bodies to regulate transactions, and often by recognising that certain communities have a legitimate right to govern their own territory.

This is a new issue for many countries in the global South, which will therefore need to devise and test appropriate regulatory mechanisms for their particular situation. Systems can be improved by drawing on *but not directly replicating* experiences in other places and times, and by *learning from past failures*. Regulatory policies will always need to be periodically adjusted in line with changes in global, national and local contexts.

Regulating land markets is not about depriving certain actors of their *rights*; it is a matter of rethinking the balance between the different kinds of rights that people hold: between *individual rights* and *rights as members of families, local communities, municipalities and states*. Doing this

not only entails recognising people's values and practices and the existence of the 'other', but also challenging the ideological and unworkable notion of *absolute and exclusive land*

ownership, which is a legacy of the past and of colonial history. This will require political realism and efforts to promote genuine democratic processes. ●

FOR FURTHER INFORMATION, SEE:

- >> Merlet M. (2020) [*Régulation des marchés fonciers et de l'utilisation de la terre : des outils pour réduire les inégalités. Illustrations à partir d'exemples européens*](#), Uneven Ground, Land inequality at the heart of unequal societies, International Land Coalition, AGTER, 29 p.
- >> CTFD (2020) [*Young people's access to land. Proposals to improve the design and monitoring of rural development interventions and policies*](#), 109 p.
- >> Basserie V., Lavigne Delville P., Colin P., Ka I., Merlet M. (2018) [*7 fiches de synthèse. Principaux enseignements de l'Étude régionale sur les marchés fonciers ruraux en Afrique de l'Ouest et les outils de leur régulation*](#), UEMOA.
- >> Lavigne Delville P., Colin J.-P., Ka I., Merlet M. et al. (2017) [*Étude régionale sur les marchés fonciers ruraux en Afrique de l'Ouest et les outils de leur régulation*](#), Union économique et monétaire ouest-africaine (UEMOA). IPAR, avec l'IRD et AGTER, 2017, Tome 1 et Tome 3.
- >> CTFD, Merlet M. (2015) [*SAFERs: Land agencies that have been used to regulate the French rural land market for over 50 years*](#).

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EDITOR

Michel Merlet: merlet.michel@gmail.com – www.agter.org

REVIEW PANEL

Philippe Lavigne Delville – IRD, UMR SENS:

philippe.lavignedelville@ird.fr

Mathieu Boche – AFD: bochem@afd.fr

Sidy Seck – Gaston Berger University: sidysecksn@yahoo.fr

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