

Emerging land markets, legal pluralism and land tenure security: a few thoughts based on current trends observed in western Burkina Faso

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1. A summary of trends observed and key issues

In the cotton-producing provinces of West Burkina Faso, exchanging land for money, which was once unthinkable, is now becoming common practice. Although customary land management principles do not condone this, some indigenous heads of families permanently cede family or lineage land for payment in cash. Those who acquire the land may be other local farmers, migrants or indigenous people, or **urban-based investors**. Increasingly, there are “new actors” involved originating from outside the local communities who have earned their money through non-agricultural activities, and who intend to farm using hired labor and mechanized equipment.

As these new practices expand, traditional **land-access agreements** contracted twenty or thirty years ago between local farmers and migrant families are now being contested by those who granted the land (or their children): land granted to migrants on a long term basis (sometimes with rights of transmission to their descendants, under certain conditions) are now being retracted unilaterally, and then sold, more often than not, to people from outside the village. The victims of this loss of family land to outside the lineage are sometimes those members of indigenous families who are more vulnerable than others because they are absent from the village. All these new practices (land sales and rentals, land withdrawals) increasingly imply tensions and conflicts. In these new conflicts and transactions, actors use various procedures to make their agreements visible. These practices of validation are of various types. Some are quite formal and codified, while others are more informal and grounded in local forms of sociability and social relations.

Some structural characteristics of the current land tenure changes, as revealed by new practices in many rural areas of western Africa are the following :

- rural land is increasingly a scarce resource circulating in local and imperfect markets, often informal and confused, un-regulated or with missing or weak regulating institutions);
- in this market, demand largely exceeds supply; demand and supply remain deeply embedded in social relationships;
- the players have different capacities to act strategically with regard to a changing and often confused land tenure context. They have different skills and uneven capacities to understand the rules of highly imperfect markets, and to access and use complex and costly legal procedures to establish formal titles of ownership;
- an imperfect commoditization of land –land is increasingly sold in exchange for money, in the absence of effective land market regulation and institutions ;

* This text reflects only personal opinion and not the official position of the Food and Agricultural Organization of the United Nations. It is to a large extent based on previous research and academic work undertaken when I was working at the Institute of Development Studies of the University of Louvain-la-Neuve, Belgium.

- legal and normative pluralism: land tenure rules are “in between” various sets of norms, values, meanings, institutions, authorities;
- growing competition for land, resulting in increasing tensions and local level violent conflicts;
- a growing demand by farmers for securing land rights and land transactions in writing, through formalized and clear arrangements, enforced and guaranteed by the State.

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2. What to do and how to ensure the security of transactions in a pluralistic normative context?

In situations of competition and structural change, is it possible to find answers to the problems experienced by the parties involved? In some circumstances, formalising transactions would seem to be a way of reducing the attendant insecurity. This explains why people are increasingly, though not yet always, seeking written agreements when they transfer land ownership or land-related rights. But the informal or ‘semi-formalized’ agreements on paper, as currently practised, do not fully ensure the stability and security of the ensuing arrangements.

There are no simple, “one-size-fits-all” solutions to the difficulties and issues associated with the insecurity of land-tenure rights resulting from the new forms of transaction.

A gradual and pragmatic approach to improve the security of land rights and transactions needs to consider more than the law and formal (often costly and complex) procedures, but also its social understanding, accessibility and effectiveness: “changing land tenure arrangements (...) is more than changing laws or procedures”. State law will most likely play a growing role in structuring actual practice, but this role depends on the way it is interpreted by the local administrative authorities and other local authorities for managing land-tenure problems in relation to social and political circumstances.

Some concrete steps for pragmatic action

Promote legal and institutional literacy: support the improvement of the rural poor’s access to information and their actual capacity (or capability) to interact State institutions dealing with land administration

Providing information on land-tenure matters is important, as the clarification of locally contested land-tenure situations requires that all the actors can refer to some common basic set of information. The focus here is on visibility, transparency of the new emerging markets, and effective access to legal information and to the procedures of legal (State) institutions.

Support for the formalisation of (new) transactions and the drawing up of contracts

Capacity-building

- State administrations dealing with land tenure rights and land transactions will need growing numbers of trained and skilled professionals. It is also important to encourage and strengthen the collaboration between these land administration professionals and territorial local administration (which so far is mostly responsible for dealing with land problems).