



Land investments, accountability and the law: Lessons from Senegal

Mamadou Fall and Moustapha Ngaido

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Executive summary

In Senegal, concern about large-scale land acquisitions has been growing since 2000. Senegalese agriculture has long relied on small-scale family holdings and extensive agriculture. But the current population growth rate, combined with rapid urban development and natural resources degradation, have inevitably changed the game. In order to address the ensuing need for intensification, the government of Senegal has established a political, legal and institutional environment designed to attract agricultural investment, and is taking increasingly radical measures to enable private investors to access agricultural land. Many investors have targeted fertile parts of the country, increasing pressures on resources, often to the detriment of rural people.

Against this background, our action research aimed to scrutinise the national legal framework governing land investment, and test in selected sites practical tools enabling people to seize the opportunities for accountability that the law provides.

This study finds that there is a need for informed and inclusive national-level debate on tenure and, ultimately, on desirable development models. Over the past few years, a federation of rural producer organisations have made considerable efforts to work with grassroots organisations to make innovative proposals for a new land law that keeps family farming centre stage, while also encouraging private sector investment. Shifts in the government's policy positions in important areas – for example, through enhanced opportunities for stakeholder consultation – suggest that these efforts are partly paying off.

The study further shows that, at the local level, it is important to develop effective arrangements that can clarify the roles and responsibilities of actors, and the lines of accountability between actors, in the context of growing pressures on land.

Building on the analysis summarised in this report, our action research is now piloting the development of locally negotiated agreements that establish the rules, systems and safeguards to promote the downward accountability of local leaders vis-à-vis their constituents beyond the electoral ballot. The hope is that, should new private sector investments be initiated, these “local conventions” might provide a more solid, locally grounded basis for making real the legal provisions governing land and decentralisation in rural Senegal.

1. Introduction

In Senegal, concern about large-scale land acquisitions has been growing since 2000. This is closely linked to the pressure created by the need to intensify agricultural production. Senegalese agriculture has long relied on small-scale family holdings and extensive agriculture. But the current population growth rate, combined with rapid urban development and natural resources degradation, have inevitably changed the game. In order to address the ensuing need for intensification, the government of Senegal has sought to establish a political, legal and institutional environment that promotes agricultural investment, and is taking increasingly radical measures to enable private investors to access agricultural land. Many investors have targeted fertile parts of the country, increasing pressures on resources, often to the detriment of rural people. This is happening in a complex land tenure context, where private property is very rare – the state is the default owner of all land and only tolerates local customary land tenure rights, which are not recognised legally.

Against this background, our action research aimed to scrutinise the national legal framework governing land investment, and to test in selected sites practical tools to enable people to seize the opportunities for accountability that the law provides. Site selection was based on patterns in land acquisition, local demand for the project's action-research tools, and local contexts where the project would not expose communities to conflict or threats. The project worked in the *Communes* of Beud Dieng, Darou Khoudoss, Diokoul Diawrigne and Dodel. Tool testing is still ongoing, and this report primarily summarises findings from the analysis of legal frameworks.

2. Overview of land governance in Senegal

Land has always been a key part of the political landscape in Africa, and contemporary land laws in many African countries are still influenced by the way that the French and English colonial authorities managed land issues in previous decades. In Senegal, the land tenure regime has recognised three types of land since 1976, when Law No. 76-66 of 2 July 1976 regarding the Code on state land (*domaine foncier de l'État*) supplemented Law No. 64-46 of 17 June 1964 on national lands (*domaine national*). The three categories are national land, state land (both public and private) and private land held by individuals with registered titles. Numerous changes since the reform of 1976 led to the emergence of new economic, social, political and environmental issues, and have made land one of the most complex natural resources to manage.

Most agricultural and livestock-rearing activities in Senegal take place in rural spaces with no clear boundaries, which often leads to conflict between different land uses and users (e.g. landowners, farmers, herders). Under national law, rural land tenure is primarily regulated by the tenure regime applicable to national lands (*domaine national*). The adoption of this legal regime was preceded by a long and still unravelling history of customary rules and practices, which often continue to be applied in rural areas.

The role of customary land tenure systems

Customary land tenure systems in Senegal were historically shaped by a set of practices and diverse and complex customs that conceptualised land as a sacred resource, which belongs to everyone and cannot be assigned to any individual for their sole use or enjoyment. There was no concept of private property.¹ Land was seen as the space where life is organised, a means of subsistence that ensures the community's continued existence, and whose occupancy and use was universally recognised and accepted. Land management was often overseen by the "lamane" or "land master", who was sometimes also the king, oldest male or chief. The "lamane" was responsible for controlling and allocating land among members of the family group for an annual or seasonal fee or free of charge. The main advantage of the customary system was that it enabled each individual or group to access land and make a living from it, in contexts where land was abundant relative to labour.

1. The customary land tenure regime, particularly prevalent before the colonisation, is characterised by the following principles: i) rights are collective: there is no individual right to land as it belongs to the group or family; ii) rights are inalienable: the land cannot be sold as it belongs not only to the living but also to the dead, the spirits and the gods; iii) rights are imprescriptible: the land use right cannot be called into question as long as its holder effectively uses the land and pays usage fees to the "lamane" (if not, the land goes back into the "njol", becoming property of the lamane); and iv) rights are hereditary: the right to land belongs to the family, group or clan and is passed on from a generation to another.

The colonial authorities imposed legal concepts based on Roman law onto the traditional system so that they could claim the right to manage land, and retain territorial control by opening it up to free trade and using it as a means of exchange and credit. The legal texts introduced under the colonial regime promoted a land tenure system based on the recording, registration and publication of state-sanctioned rights. Recording enabled the land tenure services to identify land assets, while formal registration allowed them liberate the land from any customary rights. The colonial endeavour ultimately failed due to the strength of the customary systems, which still exist today even if they are not legally recognised.

Indeed, land still has a strong spiritual and cultural significance for rural people, who typically see land rights as collective, imprescriptible, inalienable and hereditary rights that can be transferred, but only from one generation to the next. And although land is officially regulated by the national land law, rural people still follow customary practices to varying degrees.

National land law and the role of local government

Senegal's land law is the product of the country's historic, economic and cultural environment. It is still strongly influenced by the colonial model, as post-independence legislators made few major changes to the system developed by the colonial authorities.

Law No. 64-46 of 17 June 1964 effectively designated 95 per cent of the land in Senegal as national land. Prompted by a strong and continuing political will to shift from traditional methods to a more “modern” land governance system, the law of 1964 regarded all unclassified land in the public domain and any unregistered land as part of national lands (*domaine national*). The law did not recognise customary land rights, and private property that was not recorded within two years was challenged. As a result, almost all land fell into a “national domain” administered by the state.

The law of 1964 identified four types of area within national lands:

- Urban areas within a municipality;
- Classified areas containing ecological and forest reserves (*zones classées*);
- “Home territories” used for housing and rural livelihood activities (*zones des terroirs*);
- Virgin and unused “pioneer zones” (*zones pionnières*).

This classification has important implications for the way that the different types of land were managed. Urban areas were jointly managed by the state authorities and the municipality, while in rural areas “home territory” land was managed by rural councils, which were the lowest level of local government in rural areas.

Incomplete legislation on decentralisation hampered the exercise of these prerogatives by the rural councils. Law No. 96-07 of 22 March 1996 opened the way for decentralisation, introducing major changes in the way that national affairs were managed as the state transferred powers for nine areas of governance – including certain aspects of land governance – to local governments. But due to a critical shortage of qualified personnel at the local level, this transfer of power has only had limited effect in practice, with land titling and allocation being actually co-managed by the state and local governments.

The land law of 1964 gave the rural councils the power to allocate and withdraw land in rural areas. Their presidents are charged with executing the council's decisions, and structures such as local-level land commissions are responsible for clarifying the council's decisions and helping put them into effect. Law No. 96-06 of 22 March 1996 containing the Local Government Code states that "rural councils shall deliberate on all matters for which they are legally responsible, most notably (i) general land use plans, development projects, works to parcel and sell off public land to developers (*lotissement*), installing amenities on land allocated for housing, and authorising new housing or encampments; (ii) the allocation and withdrawal of national lands."

In reality, however, the powers that local governments had in land matters were constrained. On paper, in accordance with articles 193, 195 and 251 of the Local Government Code, rural councils are supposed to have gained decision-making power in collecting and allocating property tax, but things have not worked out as expected in practice. Procedures for registering land titles at the local registry are also reportedly slow, cumbersome and costly, acting as a deterrent to landholders.

By restricting the rural councils' powers, the state retained ultimate control over national lands. Senegal is now undergoing important legislative reforms affecting both the land law and the laws governing decentralisation. The latter reforms are redefining the very nature of local government, and a new Local Government Code was developed in 2013 that transformed the rural councils into rural municipalities. There are questions about the nature of the powers that the newly rebranded rural municipalities will have in land matters, and concerns have been raised that the new reform might effectively re-centralise some devolved powers – for example, in relation to land right.

A process to revise the land law has been ongoing since the mid-1990. A concern about promoting private sector investment in agriculture has been a key driver of this government-led process. The land law reform has triggered lively debates and considerable mobilisation of rural producer organisations federated in the *Conseil National de Concertation et de Coopération des Ruraux* (CNCR). Momentum for land law reform experienced considerable fluctuations, and the government reactivated the process several times, lastly in 2014.

Lack of implementation

At the village level, people maintain that no-one respects the law, least of all those who are responsible for implementing it. There is a perception that the state is the first to requisition land in the name of the general interest and public utility, yet land is allocated to private operators whose business ventures are heavily geared towards commercial production and external markets.

In rural councils, elected officials often allocate land to non-residents, even though Article 8 of the land law of 1964 stipulates that “home territory” lands can only be allocated to members of the local community. The law does not allow land sales, though these are often effected informally, often followed by a formal land allocation decision by the rural council. Most rural people do not register their land rights, and believe that they own the land they work because it has been passed down through the family. This situation can lead to tensions when non-residents who have rented or bought productive plots seek to register their land rights– sowing the seeds for future conflict with people from the area who may feel dispossessed of their claim to their ancestors’ land.

When private sector operators acquire land for agribusiness investments, they enter local arenas where land relations may be heavily contested – due to the continued application of customary systems, discontinuities in national legislation on land and decentralisation, and the challenges in implementing national legislation on the ground.

3. Process for allocating land to investors

This research has documented the multiple ways in which investors gain access to land. In the research sites, large-scale land acquisitions were made for extractive industry projects (Diogo and Darou Khoudoss area), an agri-food project (Diokoul Diawrigne area) and a project to produce biofuel (Beud Dieng area).

In Diogo and Darou Khoudoss, the company obtained land rights for a mining concession under Article 13 of the land law of 1964. This provision allows the central state to require national lands including “home territories” to be registered in the name of the state, and to issue decrees allocating this land in the public interest. The state often uses this power of compulsory acquisition to take land out of the areas managed by rural councils/municipalities and allocate it to private operators through long-term leases.

In Diokoul Diawrigne, on the other hand, the company acquired the land from the rural council, which appeared to follow instructions from high government officials. In Beud Dieng, on the other hand, the rural council consulted villagers before agreeing to allocate the land to the biofuel venture, and the only external intervention appears to have come from a local man who had migrated overseas.

These three diverse configurations illustrate the complexities underlying processes of large-scale land acquisition for commercial projects, which may be due partly to features of the legal frameworks, and partly to lack of legal awareness and of appreciation or regard for the law. The three configurations also illustrate the diverse local and central authorities that could potentially drive land allocation including in a context where important governance powers are devolved. But one overriding aspect is the lack of transparency in how decisions to allocate land to projects are made.

Depending on the situation, the rural council / municipality may be the key actor in decision making, may rubber stamp decisions effectively taken elsewhere, or even lose control of the land in its “home territory”. These diverse configurations would require diverse mechanisms for accountability, depending on where real decision-making authority is exercised and by whom.

The legislation on decentralisation states that rural councils/municipalities should ensure that land governance processes are consultative and land decisions are collegial. In order to do this, local authorities are required to set up land commissions whose members can inform citizens at public sessions convened to decide on land allocations and withdrawals. However, lack of adequate consultation is a recurring complaint made by rural people, including because even when consultations do take place, there are strongly felt local perceptions that the consultation process primarily involved one-way information provision and did not include all the actors concerned. For instance, it seems that in one case one village

chief was the only person that the authorities informed of their decision regarding a land allocation affecting eight villages.

Lack of transparency about the land allocation process and its underlying conditions has been another recurring concern at the local level. Lack of transparency can lead to speculation and considerable frustration among rural communities. There is no effective institutional mechanism for monitoring land allocation processes at the local or national level, nor any mechanism for citizens to call those in power to account for the way that land is managed. Both are clearly needed to ensure realistic expectations and prevent conflict in relation to that any land transactions.

4. Distributing the risks, costs and benefits of investments

Senegal has made considerable efforts to attract private investments in agriculture. This has included the development of legislation, including an investment code that provides various incentives to private sector operators. For example, special advantages that the investment code gives investors for a three-year period during the investment phase include exemption from duties on imported materials and items that are neither produced nor manufactured in Senegal, and which are specifically intended to be used for production or operations in the agreed programme; and suspension of value added tax on imported materials and items that are neither produced nor manufactured in Senegal.

These provisions are intended to encourage investors to set up operations in certain areas, and to produce certain socio-economic benefits – for example, creating jobs in the interior of the country.

In addition, the devolution of decision-making powers to local government bodies would be expected to increase the leverage of these bodies in negotiating local socio-economic benefits from incoming companies. However, as discussed real-life acquisition processes involve multiple routes, including some where local government bodies have little control over developments. Also, the law contains no real requirements for particular types of benefits to be shared at the local level – effectively, all is left to negotiations that occur in contexts characterised by imbalances in information, skills, resources and negotiating power.

In practice, the issue of cost and benefit sharing is often addressed through promises to create jobs for local people and provide social investments that will benefit local communities. However, these promises are not necessarily reflected into legally binding and enforceable instruments, and there have been frustrations about the extent to which investors honoured the promises made. Bottlenecks in the formal processes to ensure the downward accountability of local government bodies, reflected for example in the levels of contestation experienced for some land allocation decisions, further compounds these challenges.

5. Mechanisms to regulate land disputes

There are judicial institutions mandated to settle land disputes at several levels: the district courts, the regional courts, the Court of Appeal and the Supreme Court. But recourse to the courts typically involves long and expensive procedures, and the legal route can be risky. Many plaintiffs have great difficulty travelling to the courts, and find the complex mechanism and interactions with experts and lawyers at best unintelligible, and at worst contrary to their interests. Many rural people find it hard to obtain legal assistance, judges and judicial officials may be partial or corrupt, and judgements are slow, contradictory and rarely well publicised.

As a result, many people prefer to use non-judicial mechanisms to resolve land disputes, and resort to local institutions for mediation. In the traditional model for settling land disputes, the authorities' primary concern is maintaining social peace rather than finding in favour of one or other party. These traditional mechanisms are often quicker, more effective and more accessible than the courts, but they are of limited relevance in contexts where a commercial operator acquires land rights from the state.

In many other cases, weak legal arrangements, or arrangements that do not favour the interests of the rural poor, led people to resort to political, rather than legal, avenues to challenge their grievances and advance their aspirations. But large-scale land acquisitions have also prompted the use of both customary and statutory dispute settlement systems – in some cases, with some success. In one case, a group of 99 landless farmers from the rural community of Diokul Diawrigne felt dispossessed of their land and brought a legal case to reclaim it. The farmers ultimately won the case thanks to the legal and other assistance provided by non-governmental organisations.

People in Beud Dieng also managed to recover their land after the rural council supported them through a lengthy mediation process with the project promoter and local groups that had supported the private sector venture. This situation points to the divisions that may exist within the same “community”, and highlights the relevance of extra-judicial dispute settlement processes. The success of the mediation owed much to the fact that the investor agreed to deal directly with the community and to locally negotiated terms and conditions.

6. Conclusion

Development actors are increasingly aware of the social, economic, political and legal issues associated with the governance of land and investment. The ongoing land law reform process seeks to rationalise land use, increase local communities' security of tenure and create a more favourable environment for investments that can contribute to agricultural development – but it has also triggered lively debates in which strong positions are taken on land tenure and, ultimately, on desirable development models.

The surge in demand for land from private investors over the last decade is partly due to a changing global context. But it is also due to the proactive policies of successive liberal governments in Senegal. The state has taken increasingly radical measures to enable private investors to access agricultural land. The ensuing tensions over land in some contexts highlight the need to question conventional legal models, and to find new ways for reconciling “modern” economic ambitions with landholders' socio-cultural aspirations.

At the national level, this situation calls for informed and inclusive debate. Over the past few years, the rural producer organisations federated in the CNCR have made considerable efforts to work with grassroots organisations to make innovative proposals for a new land law that keeps family farming centre stage, while also encouraging private sector investment. Shifts in the government's policy positions in important areas – for example, through enhanced opportunities for stakeholder consultation – suggest that these efforts are partly paying off.

At the local level, there is a need to develop effective arrangements that can clarify the roles and responsibilities of actors, and the lines of accountability between actors, in the context of growing pressures on land. Building on the analysis summarised in this report, our action research is now piloting the development of locally negotiated agreements that establish the rules, systems and safeguards to promote the downward accountability of local leaders vis-à-vis their constituents beyond the electoral ballot. The hope is that, should new private sector investments be initiated, these “local conventions” might provide a more solid, locally grounded basis for making real the legal provisions governing land and decentralisation in rural Senegal.

Land investments, accountability and the law: Lessons from Senegal

The recent wave of land deals for agribusiness investments has highlighted the widespread demand for greater accountability in the governance of land and investment. Legal frameworks influence opportunities for accountability, and recourse to law has featured prominently in grassroots responses to the land deals.

This report discusses accountability in land deals in Senegal. It scrutinises the country's legal framework governing land investments, and explores the opportunities the framework provides and how communities can seize them in practice. It finds that there is a need for informed and inclusive national-level debate on tenure and, ultimately, on desirable development models, and suggests some ways forward.

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