Briefing

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Policy pointers

The 'bottom up' land tool development described here could be scaled up and adapted elsewhere in Mali to help ensure land reform works for local people and livelihoods.

Formalising and documenting local land transactions can be important for preventing conflict. Including all stakeholders is key, as is embedding the land management rules in locally negotiated 'conventions'.

Where land is under pressure, land information systems that document land users and land uses can form the basis of local development plans and help mitigate land disputes.

Policymakers need to listen and respond to local dynamics in land tenure. If a law is not appropriate to the local context it should be revised.

Securing land rights in Mali: local solutions to thorny national problems

In rural Mali, competition over access to land is driving conflicts between farmers, herders and fisher folk. Land users and the authorities have to contend with ineffective land legislation and administrative practices, and customary rights that have not adapted to a changing situation. A sense of secure land rights requires clear and transparent public mechanisms for land transfers that are accessible to everyone regardless of social status or sex. This briefing shares lessons from a project developing 'land tools' in southern Mali for documenting land transactions and recording multiple interests in land at the local level. In particular, it discusses how a participatory process for developing such tools is as important as the tools themselves.

Increasing land disputes

The availability of rural land in Mali is declining, generating intense and sometimes violent competition over increasingly degraded land. This makes all rural producers less secure, but especially those who generally experience weak tenure security (migrants, women, youth and herders — see Box 1).

As the population increases and competition over access to land intensifies, conflicts over boundaries and shared resources are more likely. Rights transferred through traditional transactions, such as loans and gifts, are increasingly being challenged and inheritance rules violated.

The increasing role of money in land transactions is challenging traditional land transfer procedures. Sales of land used to be rare, now they are common. Land sales often involve fallow land or fields that have been already been loaned out. The borrowers are then displaced. Family heads sometimes sell part of the family

landholding without the consent of others. They may find biased witnesses to support their secretive selling of collective landholdings. This kind of transaction deprives family members (particularly younger members) of their legitimate land rights and may threaten the livelihoods of future generations, particularly if forest resources are lost or destroyed. When such a transaction is discovered and challenged problems arise. Sometimes, the same parcel is even sold several times. In this context, inheritance rights can become highly contested.[1]

Customary tenure regimes are not adapting to these changing contexts and traditional rules are not necessarily able to resolve emerging land issues and conflicts.

There are also legal provisions and state institutions that do not reflect local realities. Registration procedures are slow, expensive and cumbersome. Links between the institutions responsible for land management are poor and land governance is generally weak.[2] Elected

officials in local government do not always govern land issues in accordance with the rules and there is a widening gap between the law and the way that land is actually governed on the ground.[3]

Also, land administration services, courts and tribunals are in urban centres far from the rural areas they are supposed to serve. Most rural people know nothing about official rules and procedures.

The Malian government recognises the weaknesses in its legislative and regulatory framework for rural land development and a new rural land law is currently under review to try to correct the problems faced.

To secure land tenure, leaders must understand what tenure security means to different people (landowners and tenants, women and men, pastoralists and agriculturalists), and how the rights of each are affected by external pressures and internal social change.

Developing inclusive and flexible land tools

This briefing shares experiences from an initiative to develop and pilot land 'tools' in three communes in the Sikasso region of Southern Mali through a genuinely bottom-up and participatory approach. The objective was to develop a kind of 'tool box' — a range of templates and village level agreements on land management — that can be drawn upon according to different villages' or other local actors' needs. Physical demarcation and even documentation is not enough to generate confidence in secure land tenure. People need a collective sense of security: gained by using land tools that are accepted and owned by the local population and fostered through a participatory and inclusive process. Without this, insecurity and instability over land access can escalate.

For such innovations to work, the process of developing the tools is as important as the tools themselves. The initiative addressed tricky issues and conflict-prone contexts by working with villagers to identify established and emerging solutions and how to build on these, and then extending the discussions to relevant land sector agencies and elected officials at local and national levels.

Documenting transactions

Traditionally, oral agreements over land transactions were based on trust. But trust is breaking down and the checks and balances within customary systems are weakening. The lack of written proof of transactions is making many disputes difficult to resolve. Many rural people feel that more transparency around local land transactions and greater opportunity for consensus amongst the families of any two parties would lead to a greater sense of tenure security.

In light of diverse experiences of documenting rural transactions, discussion groups deemed it useful to develop simple generic templates. But before any such templates could be drafted, the project worked to consolidate understanding of different types of land transactions. In other words, documentation for land transactions must be firmly rooted in a process that gives everyone a voice in establishing the rules. After extensive dialogue at the village level, and consultations up to national level, templates for the following types of land transfers were agreed: gift, loan, rental, pledge, sharecropping and disposal. The rules governing these transfers were enshrined in village-level 'conventions'.

To maximise grassroots participation, the project worked at the village level, rather than with village representatives at the higher municipality level. This approach differs from some earlier experiences with 'local conventions' in Mali.

In developing these conventions people agreed that more inclusive family council meetings were

The process of developing tools is as important as the tools themselves

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Box 1. Insecure land tenure in rural Mali

Land in rural areas is managed according to customary rules that flow from the right of the first occupant (the first person to clear the land) or a right of conquest. Incomers to the village (or 'allochtons') access land through gifts or loans, but increasingly may find that their land rights are insecure because traditional checks and balances that prevented abuses have been eroded. Additionally, a lack of formalised agreements and of distinction between traditional loans and gifts makes it easy to withdraw land from the borrower. In order to avoid disputes, most loans are now short term.

Pastoralists generally depend on negotiating informal agreements with sedentary farmers for access to pastures and water points. The relations between farmers and pastoralists are sometimes cooperative, sometimes conflictual.

In many parts of rural Mali, most women are excluded from traditional decision-making bodies, face a heavy work burden and experience insecure rights to land. Women do not inherit land under customary law — this is to prevent family landholdings passing to another lineage group. Women can access land through open-ended lending arrangements, but the land they borrow can be withdrawn at any time.

Finally, intra-family land management is also characterised by challenges. Traditionally family lands are managed collectively by the family council (traditionally the head of the family and his brothers). However, this consultative mechanism does not always work. In practice, the head of a lineage group can alienate assets without the knowledge of other family members.

required for land management decisions, in particular that female family members should be present. It was agreed that compliance with this rule for greater inclusion should be demonstrated by documenting the discussion and who was present. The village-specific negotiation process meant that some village-level conventions stipulated that all women in the family had to be present at family council meetings on land transfers, whereas others decided just the eldest woman should attend.

The project then worked with villagers and municipal authorities to harmonise the village-level conventions on land transfer rules into municipality-level, inter-village conventions. Formalising land transfers does involve institutionalising the documentation. So to keep land transfer procedures not only transparent but inclusive and effective, the key is to ensure the formalising process remains accessible to the population by the transfer procedures and documentation being situated and managed at the most local level possible.

Under the agreed procedures, transactions are endorsed by the village head and registered in village-level registries. Having municipal-level engagement following village-level negotiation builds participation while ensuring the relevant institutions are taken into account and brought along in the process. Consolidating village-level conventions into municipality-level conventions also engages local authorities in clarifying local land management rules, in implementing the rules and in the process of revising them as appropriate.

Lessons on process

In the context of declining checks and balances and rising secret sales, debate can help communities fully understand the implications of land transactions. A first step is to initiate local debate and develop consensus on the rules applicable to land transactions, the tools to document these transactions and the institutions responsible for administering these tools.

Procedural elements are as important as the documentation itself. Procedures for securing land transfers can include:

- Documenting the minutes of family council meetings

- Issuing a certificate based on the family council meeting and signed by the parties in the presence of witnesses, for the village head to authorise

- Recording the transfer in the village and municipal registry so the documentation is retained beyond the two parties

- Enshrining the rules governing transactions in village-level local conventions, so giving a reference point for the community, authorities and legal practitioners

- Training paralegals to provide support to illiterate village heads overseeing land transfers.

Local conventions are not a new idea, but can be approached in a more inclusive, dynamic and land-tenure oriented way. Past criticisms of their legal validity can be overcome by going through consultative processes and establishing institutional recognition. Wide representation, inclusion of all groups and building 'ownership' are all crucial. The commune-level convention, if built on a patchwork of village-level conventions, fosters awareness and ownership of commune-level authorities. This bottom-up approach demonstrates greater representation and inclusion than in past processes. Whether this establishes greater compliance with the rules only time will tell.

The action-research approach adopted in this project also gave many opportunities for consultation, reflection, feedback, adjustment and validation. Communication tools such as video and radio programmes supported this reflective process.

Piloting land information systems

In the rural commune of Kifosso, the project also piloted work to develop a land information system that can collect and manage information on plots and their uses and limits and the landholders. The aim was to reduce disputes about land holdings and boundaries, promoting peaceful coexistence among land uses and users. The approach was participatory and inclusive from start to finish. The project gathered information from administrative and traditional authorities, and ran local consultations, paving the way for a feeling of local ownership (over two thirds of the population were represented). Commune-level meetings and signing an agreement with the supporting organisations generated 'ownership' among the villages for engaging in the development of the system.

The next step was a socio-land survey documenting the history of the village and identifying areas of conflict and its sources, governing rules and any other notable characteristics. This laid the ground for the technical team (led by the government department responsible for surveying) to start documenting the farmland and village areas. Surveyors held mapping sessions and validation workshops with the local population to correct any errors that might be made. The process ended with a paper certifying occupancy by particular clans and families.

Elements of participation and inclusion involved:

- No 'delegated representation' whereby village representatives participate in municipal or higher level consultations. Villages get the chance to represent themselves.

- Participation of all stakeholders (administration, technical services, groups and local associations, local authorities etc.) in consultations and validation meetings.

- Partnership agreements with local authorities and the government department responsible for surveying (PAFOC).

Conclusion

The experience of developing land tools in rural Mali offers lessons for both development practitioners and policymakers. It drew on emerging local practice (of documenting land transfers) and previous attempts to formalise local rules (in village conventions). But above all it shows how the process of developing tools is as important as the tools themselves.

Lessons for practitioners

- Engage in debates about land at the local level. Many organisations hesitate to engage on land tenure issues in rural Mali but, when done in the right way, local enthusiasm to discuss and debate the issues is extremely high. This is a context ripe for innovating.

- But addressing land issues should not be treated separately from questions of power relations and social dynamics. A broad and integrated approach that does not reduce efforts to technical exercises is critical.

- Addressing specific problems or the experiences of a specific group can best be addressed from a starting point that tackles more general issues — that is, land tenure and protection of all community members. In this process, particular groups' insecurities will become clearer to the whole group.

- Real participation, as opposed to delegated representation at the commune level, is the only way to generate local ownership, to consider the needs of different groups and build on local practices. Any rolling out of new tools must take place with good facilitation and participation at the most local level.

- Ensure initiatives embed new approaches in existing institutions to generate institutional acceptance and avoid criticisms of being outside the law.

Lessons for policymakers. The land tools developed by the project could be adapted and scaled in other parts of Mali and taken up by land administration bodies. This initiative has indicated some key steps and entry points — it is up to the government to make use of them, including in the development and implementation of the new land law. We hope these innovations can assist in the democratisation and decentralisation of land management in Mali. Inclusive tools appropriate to emerging and evolving local contexts will go some way to ensuring that land tenure reforms are not simply a technical endeavor, but rather support rural development and secure rural livelihoods.

The crucial lesson is that policymakers need to listen to and be responsive to local dynamics in land tenure. Land laws and policies must be there to support the people and not the other way round. If something in the law is not appropriate to the local context it should be revised.

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This briefing is part of IIED's Securing Land Rights in West Africa project. Related briefings include:

Developing tools to secure land rights in West Africa: a 'bottom up' approach http://pubs.iied.org/17216IIED

Gender-equitable land tool development in West Africa. http://pubs.iied.org/17215IIED

Securing land rights in Ghana: building on local aspirations and innovations. http://pubs.iied.org/17214IIED

Notes

[1] Lavigne Delville, P (2002) Les pratiques populaires de recours à l'écrit dans les transactions foncières en Afrique rurale: eclairages sur les dynamiques d'innovation institutionnelle. www.mpl.ird.fr/ur095/resultats/Documents%20de%20travail%20UR/7Lavigne.pdf / [2] Djiré M. (2006) Improving tenure security for the rural poor. Mali – country case study. FAO. www.fao.org/docrep/010/k0785e/k0785e00.htm / [3] Allassane, BA and Gaye, B (2009) Etude relative à l'analyse des textes législatifs et règlementaires régissant le foncier communal au Mali. PACT-AMBERO

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