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Land registration in Mali – No land ownership for farmers?

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Observations from peri-urban Bamako

Moussa Djiré



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Translated from the French by Lou Leask.

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Acronyms

AOPP	<i>Association des Organisations Professionnelles des Paysannes</i> Association of Farmers' Unions
CLAIMS	Changes in Land Access, Institutions and Markets in West Africa (research programme co-ordinated by IIED)
EPA	<i>Etablissement Public à caractère Administratif</i> Public Administration Body
FAO	UN Food and Agriculture Organisation
FCFA	<i>franc de la Communauté Financière Africaine</i> , unit of currency used in Mali
IIED	International Institute for Environment and Development
USRDA	<i>Union Soudanaise RDA</i> (Soudanese section of the RDA political party)

1. Introduction

1.1 Context

The registration of land rights is a recurrent issue in the debate surrounding land policies in Africa. Many countries have instituted this process through their land legislation, and it has been made compulsory under the OHADA (Organisation for the Harmonisation of Legal Affairs in Africa) Uniform Act so that land assets can be used to secure bank loans.

However, opinions differ as to what registration actually entails. For some, particularly farmer organisations seeking to formalise land transactions, it offers rural producers security of tenure over their land. For others, it is a way of developing private property and capitalism through the formalisation and monetarisation of previously informal rights (De Soto, 2000).

1.2 Study objectives

Registration is generally defined as “the action by which a person or thing is given an identifying number and recorded in a register” (Guillen and Vincent, 1990: 261), thereby publicly establishing the rights concerned. But we need to recognise that registering land ownership is not merely a technical operation. It is a key land policy option that perpetuates the colonial policy of securing a state takeover of land management on the one hand, while introducing widespread private ownership as recognised by the French civil code on the other.

When the colonial system was established most land in Mali was acquired through inheritance within lineage groups. Since this was not recognised by the civil code, the legal question arose of who actually owned the subjugated lands (Vidrovitch, 1982). A solution was found in the concept of “vacant and ownerless lands” set out in Article 539 of the civil code, which attributed ownership of such lands to the State.

The colonial authorities introduced successive pieces of legislation that paved the way for land registration, which was seen as the only way of securing inviolable ownership rights. These were the Faidherbe Order of 11th March 1865, the Decree of 24th July 1906, and the decrees of the 26th July 1932 and 20th May 1955. In the meantime, they also recognised customary rights and set out ways in which these could be recorded (Cissé, 1997; Vidrovitch, 1982; Rochegude, 1982).

All these colonial texts remained in place when Mali became independent. Certain specific measures were introduced immediately after Independence (Rochegude, 1982; 143), but arrangements for recognising customary rights were progressively jettisoned and then reintroduced with the Land Laws of 1986 and 2000.¹ These new laws

1. Order No. 00-027/P-RM of the 22nd March 2000 regarding the Land Law, which was modified and ratified by law No. 02-008 of 12th February 2002.

did give customary rights some legal value, but land ownership henceforth revolved entirely around land titles and registration.

Although a set of legal mechanisms has been put in place to ensure that the registration procedure is transparent and land titles are legal, these have had unexpected and perverse effects that raise a number of questions about the effectiveness of the procedures used to implement the registration process.

This paper outlines the procedures for gaining access to land ownership through land titles, and discusses their limitations. It is based on elements of two pieces of field research undertaken between June 2003 and May 2005 (Djiré, 2004a and Djiré, 2005), which was funded by the International Institute for Environment and Development (IIED) in the context of the CLAIMS research programme (Changes in Land Access, Institutions and Markets in West Africa).

1.3 Research site and methodology

The field research was undertaken first in Sanankoroba, a rural municipality south of Bamako (Djiré, 2004a), and then in the Kati Land Office. The municipality of Sanankoroba falls under the administration of Kati District and Koulikoro Region. Several municipalities in this district border the outskirts of Bamako District, meaning that pressure on land in these areas is intense.

The research methodology was based on anthropological and socio-legal methods: participatory observation, informal and semi-structured interviews, case studies, documentary research and analysis of legislative and regulatory texts.

1.4 Content

This paper begins with an overview of land ownership in the Kati District, moving on to analyse registration procedures, access to land titles and the cost of registration operations, and concluding with several questions and reflections on the pertinence of current procedures.

2. An apparently exponential increase in land ownership in Kati District

Although there has been a massive increase in the rate at which land titles have been registered in Kati District, closer analysis quickly revealed that this growth does not reflect widespread recourse to land registration in rural and peri-urban areas.

2.1 The evolution of land titles in Kati District

Until 1980, the localities that now fall within Kati District were included in the region of Bamako. Administrative competencies for these localities were transferred to Kati in 1981 when it became a district. A land register was opened in 1982,² and a total of 76 registers were filled and 15,111 titles logged between then and 9th May 2005. A summary of the data taken from these registers is presented in Table 1 below, showing the rate at which land titles were acquired. Volume 1 of the Kati Land Register contains 208 titles, 200 of which were created between 1909 and 1982, and eight between the 28th October 1983 and 30th November 1984.

Cross-referencing information from the land registers in Kati and Bamako, we found that the first land title in the Kati area was created on 29th July 1909, the second in 1914, the third in 1936 and the fourth in 1947; with a five-year gap between the first and second titles, a 22-year gap between the second and third, and an 11-year gap between the third and fourth titles. All four were registered in the name of the French State and colonial companies, showing that, despite its desire to introduce widespread private land ownership, the colonial authority was not prepared to lead by example.

Period	Number of titles	New titles
Du 28/10/1983 to 30/11/1984	200 – 208	9
Du 30/11/1984 to 19/10/1988	209 – 400	192
Du 15/11/1988 to 07/10/1992	401 – 591	191
Du 14/10/1992 to 11/03/1996	592 – 992	401
Du 11/03/1996 to 28/03/2000	993 – 4386	3394
Du 28/03/2000 to 30/03/2004	4387 – 10873	6487

This trend continued for a good twenty years or so after Independence, with several entries registered in the name of the Malian State and various individuals. Although less than 200 new titles had been recorded in the Kati District land registers by October 19th 1988, even this modest growth nearly doubled the number of titles registered by November 30th 1984 (an increase of 192 titles, from No. 209 to No. 400).

2. Land titles that existed at this date were transferred into a ledger dated 1983; the day and month is not specified.

3. All the tables in this paper are based on information from registers in the Kati Land Registry.

A similar increase can be seen between November 15th 1988 and October 7th 1992 (with 191 new titles, No. 401 to No. 591). The growth rate then jumped to 200% between October 14th 1992 and 11th March 1996, when 401 new titles were registered (No. 592 to No.992), and this trend was consolidated by a veritable boom in the creation of land titles from the second half of the 1990s onwards.

The period from March 11th 1996 to 28th March 2000 saw the registration of some 3,394 new titles (No. 993 to 4,386) – more than a 300% increase on the previous four years. This upward trend continued over the next four years, with another 6,487 titles registered between 28th March 2000 and 30th March 2004, a 200% growth rate.

This exponential increase in land titles is even more striking when we look at annual growth rates. Only eight new titles were created between 1983 and 1984, and about 45 per year between 1984 and 1988. This level was maintained between 1988 and 1992, and then doubled between 1992 and 1996, when around 100 new titles were created each year. The boom after 1996 is shown in Table 2 below.

Period	Number of titles	Annual increase
11/03/1996 to 01/04/1997	993 à 1593	601
01/04/1997 to 14/05/1998	1594 à 2587	994
14/05/1998 to 07/04/1999	2588 à 3584	997
07/04/1999 to 02/05/2000	3585 à 4587	1003
02/05/2000 to 12/04/2001	4588 à 5594	1007
12/04/2001 to 18/04/2002	5595 à 7013	1419
18/04/2002 to 11/03/2003	7014 à 8628	1615
11/03/2003 to 22/03/2004	8629 à 11704	3076
22/03/2004 to 07/03/2005	11705 à 14512	2808

This table shows that the annual increase between 1996 and 1997 was six times that between 1992 and 1996. Year on year, the number of new titles increased regularly until 2003-2004, when there was a spectacular jump of 3,076 new titles, more in that one year than in the entire period from the colonial era to the end of 1998. The boom continued, albeit at a slightly slower rate, with 2,808 new titles created between 2004 and 2005 – a trend that is likely to increase in the years to come, particularly when one considers that 998 new titles were created in the two months between 7th March 2005 and 9th May 2005.

The rapid increase in the number of new land titles created between 1992 and 1996 and continuing boom thereafter can be explained by several political and socio-economic factors.

2.2 Factors driving this exponential growth

The regime change of March 1991 is the most significant determining factor, since it led to the subsequent adoption of a democratic constitution in 1992, recognition of political pluralism and the creation of an institutional and political space more conducive to economic liberalism.

These political changes encouraged a large number of Malian expatriates to return to their home country, particularly those living in Europe and central Africa. Some went into property, others into farming or rearing livestock, and many bought land for housing in the municipalities bordering on the District of Bamako (Kati, Kalabancoro, Baguinéda and Sanankoroba).⁴

Land in peri-urban areas was also snapped up by the emergent urban middle class composed of civil servants and traders, and by government agents and other operators who had amassed vast sums of money thanks to the unbridled liberalism that accompanied the more open business environment. As demographic growth and galloping urbanisation pushed the capital out towards neighbouring villages, land in parts of Kati District adjoining the district of Bamako was parcelled up and sold to applicants for housing plots.

Although there was particular upsurge in these trends following the Revolution of 26th March 1991, we can trace their roots back to the 1960s and the “return to the land” programmes sponsored by the USRDA regime in 1962 (a phenomenon analysed by Chéibane Coulibaly; see Coulibaly, 1997). As the food crisis worsened, the rush by civil servants, traders and artisans to acquire land gathered momentum and ultimately led to land speculation in peri-urban areas. The better informed and better off among those procuring land went on to transform their acquisitions into land titles, which were then divided up when demand for housing plots rose sharply in the 1990s. Thus, the creation of new titles is not always associated with new registrations.

As the capital expanded into surrounding neighbourhoods certain landowners parcelled up their holdings in these localities and sold the land as housing plots. The subdivision of several hectares covered by a single land title could create hundreds of plots and a corresponding number of titles.

Table 3 below shows that in September 1999 only nine localities in the 26 villages of the rural municipality of Sanankoroba were covered by land titles. Most of these were villages near the capital, with the number of titles decreasing the further the land was from Bamako. Banankoro, a village near the Sénou neighbourhood on the outskirts of the district, had the most titles, followed by Sanankoroba and Banco.

4. This analysis is not based on a detailed study of data from the land registry, which does not generally allow one to distinguish between incoming and resident Malians. It is based partly on field studies that enabled us to establish the number of former migrants in the district's peri-urban areas, and partly by considering the different dynamics at work during this period.



Table 3. Distribution of land titles in villages in the rural municipality of Sanankoroba (1999)

Locality	Number of title deeds
Banankoro	152
Banco	41
Digato	2
Kabé-Touréla	3
Nieguen koro	6
Sanankoroba	51
Siené	2
Sinsina	6
Touréla	5
Total	268

These titles relate to relatively small areas. Out of a sample of 234 land titles studied in the rural municipality of Sanankoroba, 70 (nearly a third) were for plots of less than one hectare, 54 (nearly a quarter) were for plots of 1-5 hectares, 47 were for plots of 5-10 hectares, 23 were for plots of 10 hectares and over, and only three were for plots exceeding 11 hectares. The larger areas belong to the State and various economic operators. There does not seem to be any particular enthusiasm for creating land titles in these localities, and those that were created mainly relate to relatively modest amounts of land.

All this shows that the exponential growth in land titles observed in the Kati district, and especially in the rural municipality of Sanankoroba, was due to urban middle class bureaucrats and traders trying to secure their land acquisitions rather than rural people rushing to appropriate land through titles. The concentration of titles in peri-urban areas is the result of the urbanites' dual concern of protecting their holdings from possible State initiatives to subdivide and sell off land in these areas for development, and their own desire to parcel up and resell the land as housing plots.⁵

The widespread use of land titles can be explained by the fact that they were supposed to give the holder inviolable rights, thanks to the many measures designed to ensure their transparency and reliability. In reality, however, we found that this was far from the case.

5. It should be noted that there were also a number of "urban farmers" who used their land for farming.

3. The challenges of establishing a transparent procedure for creating and registering land titles

Under Malian legislation, registration covers two aspects of access to land ownership: the registration of untitled land in the name of the State, and the transfer and recording of titles in land registers, in the name of the person to whom they have been assigned or allocated. As rights have to be acquired before they can be registered, we need to look at the various stages involved in gaining access to land ownership before we can properly understand the registration procedure.

3.1 Long and complex procedures

In accordance with Article 75 of the Land Law, all state land must be registered before it can be allocated. Land in rural areas may be allocated as rural concessions without needing to be registered, but registration is compulsory when the rural concession is transformed into a land title. This process, which usually relates to rural lands, is considered below.

From the initial acquisition of use rights to securing a rural concession

Individuals usually gain access to land ownership by acquiring use rights, either through inheritance (customary rights), gifts or purchases between villagers (discreetly known as 'village allocations') or by being allocated rural concessions by the State.

The first step for customary rights holders or beneficiaries of 'village allocations' seeking a concession is to get a surveyor to draw up a plot plan, which is submitted to the Prefect along with their application and various other documents. Files are dealt with by the head of the land section, who circulates a summary to be commented on by the head of the cadastral division of the national land office, the head of agricultural engineering and the head of land services in the district.

Once the Prefect has received a positive response from these three services he can set in motion the procedure for a public land inquiry, which allows each side to present and defend their case. This should be announced in the national daily newspaper *I'Essor*, and an agent from the district land office should go to the village on the date specified to register declarations and minute any discussions regarding the site.⁶

These minutes (PVs) should be signed by the village authorities (village chief and advisors) to testify that that local customary rights to the land have been relinquished and signify their consent for the rural concession. An administrative certificate signed by these village officials and witnessed by the sub-prefect is then added to the file. Provided no counter-claims are made, the Prefect can sign the decision granting the concession for a five-year period, adding the terms and conditions specifying the rights and responsibilities of the concessionary. Among other things, these include a payment of 50,000 francs CFA and an undertaking to put the land to productive use.

6. These written minutes of a discussion held in the presence of a government official are known as *procès verbaux de palabre*, or PVs

From rural concessions to permanent titles

The law gives concessionaries the right to transform their rural concession into a land title once the land has been put to productive use and this has been verified by a commission. If the productive use is deemed to comply with the conditions of the concession, a fee set by the land office is paid and a deed signed by the parties concerned.

Box 1. Notices of public land inquiries, registration and boundary demarcation

Avis-Annonces

AVIS D'ENQUETE DE COMMODO ET INCOMMODO

Le Prefet du cercle de Kati, informe la population du village Sanankoroba, commune rurale de Sanankoroba, cercle de Kati qui'il est saisi de la demande de concession rurale suivante:
 Nom et adresse du demandeur: Madame Mariétou Niangado S / C Seydou Niangado, commençant à Bafalabougou, rue 170, porte 92-Bamako.
 Objet: Plantation d'arbres fruitiers-Elevage- Cultures Vivrières-Construction de maison à usage d'habitation
 Situation du terrain : Sanankoroba
 Superficie du terrain : 1 ha 00 à 00 ca
 L'enquête réglementaire sera effectuée sur le terrain, objet de la demande de concession rurale le 30 juin 2005 à partir de 9 heures 30 minutes.
 Les collectivités voisines et notamment celles qui seraient éventuellement titulaires du droit d'usage sur le terrain sont invitées d'y envoyer leurs représentants.

Le Prefet du cercle de Kati, informe la population du village Sanankoroba, commune rurale de Sanankoroba, cercle de Kati qui'il est saisi de la demande de concession rurale suivante:
 Nom et adresse du demandeur: Madame Faqta Niangado S / C Seydou Niangado, commençant à Bafalabougou, rue 170, porte 92-Bamako.
 Objet: Plantation d'arbres fruitiers-Elevage- Cultures Vivrières-Construction de maison à usage d'habitation
 Situation du terrain : Sanankoroba
 Superficie du terrain : 1 ha 00 à 00 ca
 L'enquête réglementaire sera effectuée sur le terrain, objet de la demande de concession rurale le 30 juin 2005 à partir de 9 heures 30 minutes.
 Les collectivités voisines et notamment celles qui seraient éventuellement titulaires du droit d'usage sur le terrain sont invitées d'y envoyer leurs représentants.

Le Prefet du cercle de Kati, informe la population du village Sanankoroba, arondissement de Sanankoroba, cercle de Kati qui'il est saisi de la demande de concession rurale suivante:
 Nom et adresse du demandeur: Madame Houtou Dramara S / C Dialou Dramara, employée de commerce à Maganabougou, rue 422, porte 11-Bamako.
 Objet: Plantation d'arbres fruitiers-Elevage- Cultures Vivrières-Construction de maison à usage d'habitation
 Situation du terrain : Kabé
 Superficie du terrain : 1 ha 25 à 00 ca
 L'enquête réglementaire sera effectuée sur le terrain, objet de la demande de concession rurale le 30 juin 2005 à partir de 9 heures 30 minutes.
 Les collectivités voisines et notamment celles qui seraient éventuellement titulaires du droit d'usage sur le terrain sont invitées d'y envoyer leurs représentants.

Le Prefet du cercle de Kati, informe la population du village Kabé, commune rurale de Sanankoroba, cercle de Kati qui'il est saisi de la demande de concession rurale suivante:
 Nom et adresse du demandeur: Monsieur Amakaye Maxime Sagara à Kalaban-Courou-Bamako.
 Objet: Plantation d'arbres fruitiers-Elevage- Cultures Vivrières-Construction de maison à usage d'habitation
 Situation du terrain : Kabé
 Superficie du terrain : 1 ha 25 à 00 ca
 L'enquête réglementaire sera effectuée sur le terrain, objet de la demande de concession rurale le 30 juin 2005 à partir de 9 heures 30 minutes.
 Les collectivités voisines et notamment celles qui seraient éventuellement titulaires du droit d'usage sur le terrain sont invitées d'y envoyer leurs représentants.

AVIS DE DEMANDE D'IMMATRICULATION

CERCLE DE KATI

Au titre foncier du cercle de Kati, suivant requête N° 425 déposée le 14 avril 2005 le chef de bureau des Domaines et du Cadastre de Kati, demandeur à Kati et domicilié à Kati, site à Moribabougou cercle de Kati, communi sous le nom de MARIAM SASSOKO, et borné à l'ouest par la parcelle DW 6, au sud par la parcelle DW 7, au nord par une rue, au nord par la parcelle DW 15/7 et déclare que le dit immeuble rural appartenant à l'Etat du Mali, et n'est à sa connaissance grevé d'aucuns droits ou charges réels, actuels ou éventuels, autres que ceux de ses mains du conservateur dans un délai de trois mois à compter de l'affichage du présent avis qui aura lieu nécessairement en l'auditoire du tribunal de Kati.

Au titre foncier du cercle de Kati, suivant requête N° 483 déposée le 26 avril 2005 le chef de bureau des Domaines et du Cadastre de Kati, demandeur à Kati et domicilié à Kati 05 ca, site à Manankoroba cercle de Kati, communi sous le nom de MARIAM SASSOKO, et borné à l'ouest par une servitude de passage, à l'est par la parcelle de Kadiouba, et borné au nord par la parcelle de Fémoko, Nialé, à l'est par la parcelle de Kadiouba, et borné au sud par une servitude de passage, à l'ouest par la parcelle Kallifa Diarra et déclare que le dit immeuble rural appartenant à l'Etat du Mali, et n'est à sa connaissance grevé d'aucuns droits ou charges réels, actuels ou éventuels, autres que ceux de ses mains du conservateur dans un délai de trois mois à compter de l'affichage du présent avis qui aura lieu nécessairement en l'auditoire du tribunal de Kati.

AVIS DE BORNAGE

CERCLE DE KATI

Le jeudi 14 juillet 2005 à 10 heures du matin, il sera procédé au bornage contradictoire d'un immeuble situé à Sala, cercle de Kati, consistant en une concession rurale d'une contenance de 86 a 59 ca, communi sous le nom de Abdoulaye Hote et borné au nord par la parcelle DW 11, au sud par une servitude de passage, au sud par une servitude de bras du pont. L'immatriculation a été demandée par le chef de bureau des Domaines et du Cadastre le 2 février 2005, N° 117.
 Toutes personnes intéressées sont invitées à assister ou à s'y faire représenter par un mandataire nanti d'un pouvoir régulier.

Le lundi 18 juillet 2005 à 10 heures du matin, il sera procédé au bornage contradictoire d'un immeuble situé à Dialoula, cercle de Kati, consistant en une concession rurale d'une contenance de 5 ha 00 à 44 ca, communi sous le nom de Zoumana Sylla, et borné au nord, à l'ouest, au sud et à l'est par des servitudes de passage.

Le mercredi 22 juin 2005 à 10 heures du matin, il sera procédé au bornage contradictoire d'un immeuble situé à Diatoula, cercle de Kati, consistant en une concession rurale d'une contenance de 2 ha 50 a 00 ca, communi sous le nom de Mariam SASSOKO, et borné à l'ouest par la parcelle n° 14, au sud et à l'est par des servitudes, au nord par la parcelle n° 11. L'immatriculation a été demandée par le chef de bureau des Domaines et du Cadastre le 25 avril 2005, N° 483.
 Toutes personnes intéressées sont invitées à assister ou à s'y faire représenter par un mandataire nanti d'un pouvoir régulier.

Le jeudi 21 juillet 2005 à 10 heures du matin, il sera procédé au bornage contradictoire d'un immeuble situé à Diatoula, cercle de Kati, consistant en une concession rurale d'une contenance de 3 ha 00 a 00 ca, communi sous le nom de Mahamane Satao, et borné à l'ouest par la parcelle 096 bis, au sud par la parcelle 040 bis, au nord et à l'est par des servitudes de passage. L'immatriculation a été demandée par le chef de bureau des Domaines et du Cadastre le 28 avril 2005, N° 500.
 Toutes personnes intéressées sont invitées à assister ou à s'y faire représenter par un mandataire nanti d'un pouvoir régulier.

Le lundi 18 juillet 2005 à 12 heures du matin, il sera procédé au bornage contradictoire d'un immeuble situé à Sanankoroba, cercle de Kati, consistant en une concession rurale d'une contenance de 1 ha, 00 a 13 ca, communi sous le nom de Moussa Bissoum, et borné au nord par la parcelle 101, à l'est par Cheick Oumar Bathily, au sud et à l'ouest par des servitudes de passage. L'immatriculation a été demandée par le chef de bureau des Domaines et du Cadastre le 3 mai 2005, N° 314.
 Toutes personnes intéressées sont invitées à assister ou à s'y faire représenter par un mandataire nanti d'un pouvoir régulier.

Le jeudi 4 juillet 2005 à 10 heures du matin, il sera procédé au bornage contradictoire d'un immeuble situé à Manankoroba, cercle de Kati, consistant en une concession rurale d'une contenance de 1 ha, 00 a 00 ca, communi sous le nom de Idrissa Dembélé et borné à l'ouest par la parcelle 196 bis, au sud par la parcelle 197 bis, au nord et à l'est par des servitudes de passage. L'immatriculation a été demandée par le chef de bureau des Domaines et du Cadastre le 23 décembre 1999, N° 333.
 Toutes personnes intéressées sont invitées à assister ou à s'y faire représenter par un mandataire nanti d'un pouvoir régulier.

However, the land asset has to be registered before this deed can be issued, and the plot must be demarcated before it can be registered. Applications for registration (prefectoral requisitions) are submitted to the land registrar,⁷ and will only be accepted if they are deemed to be in order. Under the Land Law various steps must be taken to ensure that the procedure is properly publicised, by issuing notices in a newspaper

7. The local land office and registry official.

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authorised to carry public announcements, notifying the Attorney General's Office and posting notices in the Court of Justice and town hall.

Interested parties have 30 days to stake their claim. Once this time has elapsed, the registrar can order the land to be marked out by one of the specialist surveyors attached to the land registry. Under Article 148 of the Land Law, the date set for this operation should be made public 15 days before it is due to take place.

In theory, demarcation is conducted in the presence of a representative of the administration and, wherever possible, duly summoned neighbouring landowners. After a one-month period allowed for third parties to assert their rights and demarcation PVs to be submitted, the registrar can proceed with the various checks required by law, and if everything is in order the plot will be logged in the land register (Article 154 of the Land Law).

Any objections to the process must be resolved before the land can be registered and title to the plot established. If this cannot be done amicably, the registrar should transfer the file to the relevant court of first instance, deferring registration until the court has made its ruling and the plot boundary and plan have been amended accordingly. The measures put in place to ensure that the registration procedure is transparent are reinforced by various operations to determine that the title is in order, and numerous arrangements making the registrar responsible for any errors and omissions or failure to comply with the law. Unfortunately, however, they do not always succeed in preventing practices that effectively undermine the intended outcomes of the registration process.

3.2 Procedures subverted by irregular practices

We noted a number of irregularities in the procedures for granting rural concessions and registering land, particularly in the various surveys involved in each phase and the requirements for them to be publicised. In addition to this, some of the practices used to keep the land registers raise questions about the legal measures regarding registration and the manner in which it is recorded.

The high demand for rural concessions means that files take a long time to be processed by the prefecture and relevant technical services, often needing a nudge in the right direction to break through the logjam. Because their files have to be constantly monitored to get them through the process, applicants usually end up calling on the services of an intermediary⁸ – whose relationship with the officials responsible for ensuring that the procedure is in order can easily shift from co-operation to collusion.

Due to the lack of proper checks and controls, concessions have been granted for plots within Bamako's urban perimeter⁹ and PVs signed by village authorities without any consultations taking place. Public announcements regarding applications for concessions or the public inquiries that should precede registration are sometimes not posted

8. The twenty or so concessionaries and landowners we interviewed in Sanankoroba and Banko admitted to using an intermediary.

9. These should not exceed more than a quarter of a hectare.

until just before – or even after – an inquiry, and are not always posted where they should be; while neighbours of the plot in question, who should be kept informed about proceedings, are frequently left in the dark. Given the high levels of illiteracy in rural areas, it is hardly surprising that many local people know little or nothing about operations such as the parcelling of land in Banko (Djiré, 2004a) or the *lotissement*¹⁰ in Sanankoroba (Djiré, 2004b).

To illustrate this point we followed five files relating to titles for one-hectare plots in the urban area of Bamako District. The applicants duly received signed concessionary deeds for one-hectare plots within the district's urban envelope, but in one instance notice of the public inquiry where all sides could state their case was carried in an issue of *l'Essor* after the date set for the inquiry, and the accredited surveyor was not present when the plot was marked out.¹¹

We also found that procedures to ensure that land was put to productive use were not always followed, as the field survey revealed several plots covered by land titles that had been left untouched. These anomalies suggest that people acquiring land titles are more interested in securing official documents that can be used against third parties than in following procedures aimed at ensuring that their titles are in order. The way that the registers are kept also raised a number of questions about whether certain legal requirements are being observed. Article 85 of the Land Law stipulates that land registers and registers recording counter-claims and deposits must be numbered and signed by the president of the court before they can be used. However, we found that some registers had been signed and dated after the first entry was made (volumes 5, 6, 32, 52, 80, 61 and 73). For example, Register No. 60, whose first entry is dated 22nd March 2004, was signed on 5th July 2004.

Agents from the land office in Kati explained that due to the delays involved in getting registers numbered and signed by the president of the court, they record incoming files in a notebook and then transcribe them into the signed registers when they arrive. Successive volumes carry the same date because they are sent to be signed in batches so that the Land Office doesn't run out of registers. So while there is a perfectly clear explanation for these practices, they still raise questions about the legal validity of such documents, or at least whether the requirement for registers to be signed and dated should be maintained.

We also found that many of the blank pages in certain registers had been given land title numbers. There were two explanations for this. Firstly, that the titles to new plots created when holdings are sub-divided are recorded in the land register before they are assigned to their new owners, whose details will be recorded on the corresponding pages. The second explanation is that some rural concessionaires complete all the procedures for transforming their concession into a land title – which is given a number and entered in the register – but then fail to pay for the land to be assigned. In such

10. Parcelling and selling off public lands to urban developers.

11. However, it should be noted that during the course of this inquiry the administrative official supervising the operation did go to the village and get the sub-prefect to verify the advisor's signatures and ensure that the initial customary rights holders had given their consent.

cases the procedure is halted until the situation is regularised, and I was assured that this only happened during the first years of the service and is no longer a problem as titles are now only registered once the procedure has been completed.

Rather than being proof of underhand practices in the land registry services, these anomalies are attempts to find practical solutions to the real problems caused by the complex registration procedure.¹² Nevertheless, while the shortcomings we observed may not be the result of intentional efforts to subvert the process, they still leave the door open for such behaviour.

12. Not only are there insufficient staff to deal with all the files, but most also seem ill-equipped to deal with the various tasks in hand.

4. The repercussions of expensive and unfamiliar procedures

The complexity of the legal procedures involved in registration, and relatively expensive and unfamiliar operations it entails effectively exclude much of the rural population from land ownership and are a potential source of conflict.

4.1 The expense

By cross-referencing information from various sources we established that the average cost of land titles for a one-hectare plot in the rural municipality of Sanankoroba is 959,990 francs CFA (see Table 4 below). Customary rights holders in rural areas, who do not have to pay the initial acquisition costs or fee for the village authorities' signatures, pay an average of 719,990 francs CFA.

However, these figures only apply to cases where the applicants deal with the procedures themselves. Recourse to an intermediary increases the cost according to the task in hand. With the five files that we followed, the intermediary charged 350,000 francs

Costs (in descending order)	Operation	Average cost (in francs CFA)
1	Land purchased from farmer	225.000/ha
2	Topographical survey and map making	75.000/deposit
3	Notice of public inquiry	17.500
4	Surveyors' travel costs	30.000
5	Sub-prefect's signature	7.500
6	Village chief and advisors' signatures	15.000
7	Terms and conditions for the rural concession	3.500
8	Land Office registration stamp	1.250
9	Rural concession charges (for five years)	50.000
10	Notice of registration	17.500
11	Notice of demarcation	17.500
12	Demarcation fees	75.000
13	State assignment fees	360.000
14	Registration fees	54.000
15	Stamps	6.000
16	Transfer fees	5.240
17	Total	959.990

CFA per hectare to get a decision on a rural concession,¹³ and an additional 325,000 francs CFA for seeing the procedure through to the point where a land title was secured. In these five cases, the land title for one hectare of land acquired through ‘village attribution’ cost 1,100 000 francs CFA. This sum included the intermediary’s daily expenses (675,000 francs CFA), the cost of the state assignment (360,000 francs CFA), registration fees (54,000 francs CFA), stamps (6,000 francs CFA) and transfer fees (5,240 francs CFA), but not the preliminary cost of acquiring the land or the initial demarcation of the plot. Table 4 below presents a breakdown of the various costs involved.

4.2 Tenure insecurity and exclusion from land ownership in rural areas

People in rural areas are not the only ones to find that legal ownership of their land has been taken out of their reach by a bewildering array of expensive procedures. As the developing land market concentrates legal land ownership in the hands of an elite urban minority, elements of the urban population that used to have access to plots through the “back to the land operations” are also being excluded –low wage earners, artisans, etc., (Coulibaly, 1997: 151).

Table 5 below is based on a sample of 268 titles in the directory of land titles established before September 1999. It shows the distribution of land titles in the rural municipality of Sanankoroba across different socio-professional categories. Most titles (44.29%) are held by state employees (civil servants, employees in public institutions), followed by the State itself (35.44%), then economic operators (19.40%), private legal organisations such as NGOs and businesses (1.88%), farmers (1.44%), artisans (0.75%), retired people (0.37%) and students (0.37% of titles, which are usually held in their name on behalf of relatives who have several land titles).

The titles held by the State mainly relate to land that was registered before being assigned to deconcentrated services or development projects; while state employees with land titles are mainly senior managers and officials. Less than 2% of the individuals holding these titles actually live in the locality concerned, and two of the four “farmers” we questioned turned out to be traders who had set up in the area. In recent years several farmers have transformed their customary rights into rural concessions, not pursuing the legal process any further because they don’t realise that rural concessions give them no more security of tenure than their customary rights.¹⁴ In these cases the intermediary was paid in kind, usually with part of the land that was being registered.

Non-compliance with the registration procedures can have serious consequences, not only in failing to provide security of tenure for rural producers, but also by creating the potential for conflict between them and the new landowners, since the combination

13. These prices were negotiated for each file, but were broadly similar in all the cases we monitored as they all related to plots of around one hectare. Intermediaries may accept half this amount for a half-hectare plot.

14. Five such cases were observed in Sanankoroba.

of botched procedures and land speculation can result in two title deeds being issued for the same piece of land.¹⁵

Table 5. Distribution of land titles according to socio-professional category		
Socio-professional category	Number of title deeds	%
EPA Agent	65	24,26
Artisans	2	0,75
Students	1	0,37
The State	95	35,44
Civil servants	43	16,04
Private operators	52	19,40
Organisations	5	1,88
Farmers	4	1,49
Retired persons	1	0,37
Total	268	100

15. Two cases of this kind were reported during our stay in Kati

5. Conclusion

Although the aim of the legislative and regulatory mechanism governing access to land ownership and registration is to ensure that the new titles are inviolable, efforts to make land tenure more secure are being undermined by the unforeseen outcomes of this procedure in rural and peri-urban areas. These are largely due to the lengthy and complex nature of the procedures, certain shortcomings in the process or its preliminaries, and the relatively high cost of registration. All these factors prevent the vast majority of rural producers from gaining access to legal land ownership, despite the exponential growth in the number of land titles being created in the Kati District.

Rather than reflecting widespread recourse to this mode of access to land ownership, the proliferation of land titles is due to various economic and social factors, from the political liberalisation that began in 1991 to the increasing urbanisation of the city of Bamako that has seen Bamako District roll out towards neighbouring villages. As full ownership of rural lands becomes concentrated in the hands of the urban elite, we need to think about more secure and democratic means of access to land ownership.

It is not a case of questioning the principle of land registration, since it would be unrealistic and seditious to seek to oppose the registration of citizens' assets in a country whose constitution regards private property as sacred. But given the limitations of current procedures in rural areas, we do need to find pragmatic responses to land registration, and especially modes of acquiring land assets. The solution lies in instituting procedures that local people can understand, afford and appropriate. This will not only entail greater consideration and better framing of customary rights, but also questioning the need to transform customary rights into land titles. There is no single solution to this issue, as such rights are often collective and sometimes relate to huge areas covered by several 'bundles of rights'. Transforming customary rights to agricultural land into full ownership titles without reference to the other rights in place (dry season grazing, livestock corridors, etc.) would inevitably lead to conflict, while failing to address the improper use of customary rights denounced by the Agricultural Framework Law.

The very concept of land titles also needs to be clarified. Surely leasehold contracts and concessions qualify as land titles, particularly as landowners and government agents refer to rural concessions as "provisional titles"? In reality, however, these concessions are not so much provisional land titles as use rights that may or may not be transformed into ownership title.

As we emphasised in a study for the FAO, (Djiré, 2006), the advantage of formalising customary rights by confirming, registering and possibly transforming them into land titles is that this protects them better and gives title holders access to full land ownership. However, a major initiative to recognise and register such rights would inevitably upset the delicate balance of relations within and between communities. Compromises

that are acceptable when the stakes are relatively low could be rendered unworkable by a massive operation to formalise land rights. And who would benefit from land registration? Families, lineage groups or villages? The AOPP rightly observed (2005) the need to recognise family farms and give them a legal status, determining and registering their customary rights while precisely defining the prerogatives of each category of rights holder.

Since customary rights cannot be used to secure bank loans, should we be encouraging people to transform their customary rights into land titles so that they can gain access to full ownership? Poor people should certainly not be denied this right, but setting aside the financial cost of obtaining land titles, we need to recognise that banks will value land according to its geographic location and the developments and infrastructures it supports. Titleholders are unlikely to be able to obtain substantial loans if their land is not sufficiently developed or used for highly profitable agricultural activity. We believe that more attention should be paid to recognising and securing sustainable use rights in relatively under-developed areas, particularly customary rights, which provide very similar security to land titles. In this regard there are a number of lessons to be learned from experiences with the Rural Code in Niger.

Rather than thinking about opening up access to land ownership for all as a means of fostering capitalism, we should see it as a means of improving security of tenure, since “the mysteries of capital” lie not so much in the formal registration of ownership as in the concrete modalities of acquiring and increasing land ownership.

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