Briefing

Land acquisitions and rights

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Policy pointers

Inclusive approaches to land tool development founded on local debate and negotiation increases uptake and sustainability of the tools themselves. Decentralised resource management can support this and be strengthened by it.

Farmers are developing ways to increase the formalisation of their land rights, for example through writing down previously oral transactions. Participatory development of land tools can link such evolving local practices to the support required from local authorities, policy and law.

Training local actors rather than relying only on outside experts, building teams of community-based paralegals or para-surveyors, for example, can help to build ownership and local capacity, and bring down costs.

Consideration of household decision making on family land management and transfers in local conventions can lead to a stronger voice for women and youth in such decision making.

Developing tools to secure land rights in West Africa: a 'bottom up' approach

In West Africa, rural people's access to land is being profoundly transformed by ecological, demographic, economic and social change. Intensified commercial agriculture is increasing pressure on higher-value land, and land disputes are on the rise. Both customary and statutory land management systems are evolving but are often not responding adequately to the tenure insecurity these changes bring. People are developing solutions locally and programmes to secure land rights in rural areas need to build on and support these efforts. This briefing distils lessons learnt through action research in West Africa that developed inclusive and locally rooted tools for securing land rights. It shows how such tools can help both implement and shape national policies, drawing on experience from Ghana and Mali.

Emerging land pressures in West Africa: what's to secure?

Land access for rural people in West Africa is changing profoundly because of ecological, demographic, economic and social shifts. Climate variability, demographic growth, rapid and anarchic urbanisation all mean fertile agricultural land is less available. At the same time local production systems are becoming more integrated into the global economy. Smallholder agriculture is intensifying and becoming more commercial, pushing up land values. Large-scale land acquisitions for plantation agriculture, mining or speculation are increasing competition further.

Both customary and statutory land management systems are evolving, but often they do not adequately address the tenure insecurity these changes bring. Competition for land, poor regulatory mechanisms and weak institutional capacities are driving numerous land disputes. In places, conflict, mistrust and local authorities' weakening accountability further hamper chances of equitable and sustainable rural development.

For example, customary ways to access land, such as gifts, rents, pledges, sharecropping or sales, are traditionally oral agreements. But safeguards against abuses of power within the customary system are breaking down. It is becoming easier for individuals to contest customary rules and for authority to advance personal interests. Those with weaker rights, such as migrant farmers, or in some cases women, are most likely to lose out.

People are developing solutions to these problems — writing up land transactions, for instance. Support for rural land rights needs to build on these efforts. At national and regional levels, there is growing momentum for reforming land policy and real demand for practical tools

that can help implement policies and perhaps refine their design.

There is momentum for reforming land policy and demand for tools that can help implement policies

The Securing Land Rights in West Africa project (see Box 1) explored ways to develop such locally rooted tools. This briefing shares its lessons. Two complementary briefings focus on the specific tools developed in Mali and Ghana and a fourth discusses lessons on developing gender sensitive land tools.

Comparing approaches to securing tenure

Documenting land transfer and tenancy agreements. In both Ghana and Mali farmers are keen to document and standardise land transfer agreements, including tenancies, to improve their validity. Simple 'pieces of paper' agreements can be strengthened by using standard templates for each type of land transfer. But first the templates, their terms of agreements for tenancies (sharecropping, caretaking) or transfers (loans, gifts, sales) and the process of transfer (who can sign or witness) must be agreed by local consensus. A validation process with authorities, and in some cases legal professionals, from local up to the national level, is also important to ensure institutional and legal validity. In both cases further validation at the local level, following expert input, ensured the final templates remained grounded in accepted local practice.

In Ghana, all elements of the different tenancy arrangements were captured in the agreement templates, whereas in Mali templates were kept short (one page). In Mali, the agreement instead refers to a 'local convention' that explains the types and processes of land transfer in more depth and the commitment of all parties to abide by the rules of the convention (see Box 2). This includes rules that dictate which family members (including women and men of different ages and marital status) must have been consulted before family land can be transferred. Local conventions must therefore be in place for the agreements to work.

In Mali, the village head completes the agreement document, having seen signed documentation of the household decision-making process, and the two parties sign (paralegals can support village heads in the case they are illiterate). Two copies are kept by the parties, one by the village head and one by the commune chief (mayor). In Ghana a Commissioner of Oaths supports the documentation process. Copies are kept by the two parties to the transaction and by the administrative office of the traditional lands authorities (Office of the Administration of Stool Lands).

Participatory documentation of farmland occupancy. Clarity on overlapping use rights or interests is important for reducing conflicts over competing claims. Local conventions in Mali help mediate between user groups, and focusing on land tenure within them may support this further. But bottom-up land tools that document occupancy and take account of local practices and resources are also needed: to guide land registry development (most land sector agencies are likely to expand their registry systems at some point); and to provide a stop-gap where land conflicts are rising. Gaining a clearer picture of occupancy and associated pressures on land can help develop land use plans and local planning processes as well as resolving competing claims even when land 'ownership' is not implied.

In southern Mali, farmers want to find ways of documenting occupancy without necessarily determining fixed boundaries. To meet these needs, the project's Malian research team piloted a Land Information System (LIS). Following local dialogues, they and staff from a national urban cadastre programme developed a database to capture data from a community land survey to provide a snapshot of current land occupancies. In Ghana's cocoa growing region, where land is more individually managed, researchers and farmers developed a low cost survey method that farmers could largely finance (so increasing sustainability and scalability — see briefing, 'Securing land rights in Ghana: building on local

Box 1. Securing Land Rights in West Africa

Securing Land Rights in West Africa was a three-year initiative to generate 'bottom-up' land tools that inform policy. Action research took place in two countries (Ghana and Mali) and in contrasting agro-ecological zones and land tenure systems. Following a scoping study led by IIED, project teams in Mali (led by AMEDD and GERSDA)[1] and Ghana (led by LRMC)[2] worked with a select number of communities to develop and test a number of tools. A project advisory board of regional experts (including relevant regional government organisations)[3] fostered links and dialogue between local and regional levels. IIED convened annual board and partners meetings to facilitate cross-country learning and expert input on themes and issues common to the different localities. US-based Landesa supported the monitoring and evaluation of tool testing at the country level.

AMEDD: Association Malienne d'Eveil au Développement Durable (Mali); **GERSDA:** Groupe d'Etudes et de Recherche en Sociologie et Droit Appliqué (Mali); **LRMC:** Land Resource Management Centre (Ghana)

[1] In partnership with PAFOC (Projet de Gestion du Patrimoine Foncier Communal)

[2] In partnership with CICOL (Civil Society Coalition on Land); COLANDEF (Community Land & Development Foundation); and KNUST (Kwame Nkrumah University of Science and Technology)

[3] ECOWAS (Economic Community Of West African States), CILSS (Permanent Interstate Committee for Drought Control in the Sahel), UEMOA (Union Economique et Monetaire Ouest Afrique) and African Union's Land Policy Initiative

aspirations and innovations'). This holds potential to meet local aspirations for individual plans of farm holdings.

Documenting rural land occupancy is costly and time-consuming. Indeed many past centrally run initiatives have struggled to reach their objectives in one region, let alone go to scale. These two pilots — Ghana's participatory surveys and Mali's prototype LIS — sought to innovate with minimal financial resources. The Malian LIS was relatively low cost in comparison to the national land registration scheme still under development (costs were around 20,000 euros for one commune) (see IIED briefing 'Securing land rights in Mali: practical local solutions to thorny national problems').

The Ghana survey tool sought to reduce costs through the farmers negotiating a price they could afford with the surveyor for surveying multiple plots and contributing labour for boundary demarcation (see IIED briefing 'Securing land rights in Ghana: building on local aspirations and innovations'). The process is still time and resource intensive. Land occupancy surveys and boundary demarcation require all neighbouring farmers and traditional authorities to be present. In a context of high levels of absentee landlords as in Ghana this is no easy task. Effective dispute resolution mechanisms are also indispensable components of any initiative of this type. The input of the research teams in facilitating the 'process' of a community-based tool should not be discounted. In Mali, backstopping and troubleshooting in the community land survey all took considerable time and resources.

The approaches to documenting occupancy in Mali and Ghana were very different, but both compiling the individual farm plot surveys in Ghana and the LIS in Mali could facilitate land use planning, and help farmers and traditional authorities clarify use rights on contested lands.

From 'local' to 'legal and long term'

Both project teams spent considerable time engaging local authorities. In Ghana regular audiences with the district chiefs and the traditional assembly were held. These involved consultations on the different tools, building acceptance of the different pilot initiatives and negotiating the fees that might be asked of farmers by the authorities for endorsing site plans. The project also hoped to establish clear roles for the Customary Land Secretariats being developed under the Ghana Land Administration Project, and to support their capacity development. In practice the secretariats are not yet ready to administrate site plan registration and tenancy agreements in the project sites. In Mali, the commune authorities and mayor were engaged from the outset.

Box 2. Local conventions developed at village level: supporting inclusive land transfer formalisation

In West Africa, developing local conventions for natural resource management is not new, but has previously focused on natural resources (grazing rights, and forest and fisheries) management rather than on land tenure arrangements. Local conventions have sometimes been criticised for being outside the formal legal system. In addition their development has tended to be based on 'delegated participation' at a commune level. The Innovative Tools project worked with villages in three communes in Mali's Sikasso region to develop local conventions at the local level that included details on land management and land transfer arrangements, including on intra-household decision making procedures, maximised local deliberation and participation amongst the community, and secured official approval and legal validity. See IIED briefing, 'Securing land rights in Mali: practical local solutions to thorny national problems' for more detail on how the local conventions were developed and institutionalised including mechanisms for monitoring and implementation.

Village-level local conventions were consolidated into commune level conventions and the commune led the official signing ceremonies. In Mali official endorsement for building a rural LIS was necessary to start a pilot. The technical elements of sustaining the system require another layer of commitment from the commune authorities. These processes of engagement were not always plain sailing. Individuals in local authorities managed to block processes in both countries at times. But the dialogue that followed has led to greater clarity on competing interests in the land sector and how these can be negotiated and reconciled.

Annual national workshops in both countries engaged land sector agencies and other stakeholders. In Ghana these focused on the relevance of the tools to a new land bill and the national Land Administration Programme. In Mali the Agricultural Orientation Law recognises customary tenure in theory, but in practice the mechanisms to protect rights under these systems are not in place; workshop discussions made links between the locally rooted tools and the implementation of the law. The debates highlighted the need for a more coherent land code in Mali.

Gender sensitive land tools

A completely new direction in Ghana, building on the land transfer agreement tool, is seeking to secure land access for widows and children and mitigate family land disputes. The idea behind the 'spousal agreement' template (see IIED briefing, 'Gender-equitable land tool development in West Africa') was not only to secure women's rights to land in general, but to tackle the uncertainty over how men can pass land to their wives and children within a matrilineal inheritance system. In Mali, the team looked beyond the established practice of securing collective plots for women's groups to household decision-making processes

about land. Deliberations on the land management rules for the local conventions and land alienation provided space to debate differentiated rights to land-related decision making. Collectively households recognised the need to include women and youth more in family land management decisions and transfers and developed mechanisms to formalise their involvement (see IIED briefing, 'Gender-equitable land tool development in West Africa' for more on developing gender sensitive land tools).

Lessons for policy and practice

This project did not seek to determine whether promoting formalisation or land markets were appropriate to local populations, rather it looked at tenure security options in locations where pressures on the land and conflicts were on the rise and how to respond to local aspirations and priorities. Furthermore, where formalisation of aspects of land tenure are deemed appropriate and necessary by the local population, and where land markets are emerging, it considered what fail-safes can be put in place to protect the rights of those with weakest land rights. Some cross-cutting lessons present themselves relating first to the process of developing bottom-up tools, secondly to principles to increase the likelihood of uptake and sustainability.

Steps to locally rooted land tool development

- Understand the different pressures and sources of insecurity and conflict with local people
- Understand emerging processes to address these pressures and sources of insecurity from local people
- Capitalise on and share lessons from different contexts (build on past successes and learn from failures)
- Promote inclusive deliberation, elaboration and documentation of local rules of land management
- Collectively strategise solutions to the challenges faced
- Test, validate, deliberate each approach iteratively through action-research as appropriate (including with the necessary institutions)
- Establish local monitoring mechanisms to assist implementation as appropriate
- Analyse and communicate lessons learnt and policy implications.

Principles for uptake and sustainability

- Understand local dynamics and the socially embedded nature of land relations. A technical approach will not be enough and is likely to trigger conflict.
- Go beyond participation to build local ownership: strategies include building on local practices, using and training local actors (for example, community-based paralegals or parasurveyors) and institutionalising new approaches.
- Formalisation does not equate to tenure security, but formalisation of specific agreements or processes can help secure the rights of particular groups.
- Adapt policy, law and the role of the state to support and legitimate evolving practices (including through technical and financial assistance). Decentralisation of resource management can enable local ownership and be strengthened by it.
- Ensuring legal validity is not always about conforming with the law but pushing its boundaries without being illegal.
- Invest time, resources and skills in considering and reconciling the interests and visions of all stakeholders. This involves limiting opportunities for some to exploit the process to establish new rights.
- Conflict mitigation and resolution should drive and accompany every step. This may involve assessing the effectiveness of existing mechanisms and establishing new community-based dispute resolution mechanisms if existing ones are inadequate. This must be relevant to all groups including ensuring a gender balance in their make-up.
- Locally rooted and effective monitoring and evaluation mechanisms should be mandated to oversee and review implementation. Tools may need refining and adapting over time.

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

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

Securing land rights in Mali: practical local solutions to thorny national problems. http://pubs.iied.org/17222IIED

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