



Evaluating Consultation in Large-scale Land Acquisitions

Spotlight on Three Cases in Mali

Kerstin Nolte and Lieske Voget-Kleschin

LDPI
Working
Paper

28

Evaluating Consultation in Large-scale Land Acquisitions: Spotlight on Three Cases in Mali.

By Kerstin Nolte and Lieske Voget-Kleschin

Published by:

The Land Deal Politics Initiative

www.iss.nl/ldpi

landpolitics@gmail.com

in collaboration with:

Institute for Development Studies (IDS)

University of Sussex

Library Road

Brighton, BN1 9RE

United Kingdom

Tel: +44 1273 606261

Fax: +44 1273 621202

E-mail: ids@ids.ac.uk

Website: www.ids.ac.uk

Initiatives in Critical Agrarian Studies (ICAS)

International Institute of Social Studies (ISS)

P.O. Box 29776

2502 LT The Hague

The Netherlands

Tel: +31 70 426 0664

Fax: +31 70 426 0799

E-mail: iss.icas@gmail.com

Website: www.iss.nl/icas

The Institute for Poverty, Land and Agrarian Studies (PLAAS)

School of Government, Faculty of Economic and Management Sciences

University of the Western Cape, Private Bag X17

Bellville 7535, Cape Town

South Africa

Tel: +27 21 959 3733

Fax: +27 21 959 3732

E-mail: plaas@uwc.ac.za

Website: www.plaas.org.za

The Polson Institute for Global Development

Department of Development Sociology

Cornell University

133 Warren Hall

Ithaca NY 14853

United States of America

Tel: +1 607 255-3163

Fax: +1 607 254-2896

E-mail: ta12@cornell.edu

Website: polson.cals.cornell.edu

© May 2013 All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without prior permission from the publisher and the author.

Published with support from the UK Department for International Development (DfID), Atlantic Philanthropies, Inter-Church Organization for Development Cooperation (ICCO), Ford Foundation and Miserior.

Abstract

Critics of LSLAs often point to risks imposed on the rural poor and complain about their lack of inclusion in the decision-making process. Consultation and public participation are widely recognized as an important aspect of fair land deals. Most Voluntary guidelines and Codes of Conduct incorporate claims for consultation as an important aspect. However, when it comes to concrete instructions, they remain unspecific. This paper aims at clarifying the concept of consultation and public participation in relation to large-scale land acquisition. To this end, we first propose a conceptual framework for analyzing consultation. Subsequently, we discuss claims for participation as asked for in different voluntary guidelines and locate them in our framework. Against this background, we discuss consultation processes in Mali: The de jure situation is contrasted to case study evidence regarding three different large-scale land deals that take place within geographical proximity, and are thus in very similar political and legal context conditions. We locate both de jure and de facto processes in our framework and compare them to claims as embedded in different voluntary guidelines. Beyond the unsurprising finding that de facto decision-making in the case studies does not comply with claims for participation such as free, prior and informed consent, we also find that the de jure situation leaves much scope for discretion. The paper concludes with some critical remarks regarding the aims of consultation in large-scale land acquisition processes more generally.

About the Authors

Kerstin Nolte, Research Fellow at GIGA German Institute of Global and Area studies and PhD student at University of Göttingen, Germany. My research focuses on large-scale land acquisitions in Sub-Saharan Africa, especially the process of acquiring land and the institutional setting of target countries. Field research is carried out in Zambia, Kenya, and Mali. I hold a Diploma in Geography and a Bachelor in Economics from University of Göttingen.

Lieske Voget-Kleschin, Research assistant at the Chair for Philosophy and Ethics of the Environment, Department of Philosophy CAU Kiel.

Acknowledgements

Field research in Mali would not have been possible without the support of GREAT Groupe de Recherche en Économie Appliquée et Théorique and the interviewees' willingness to share experiences. Therefore, we would like to thank the whole team of GREAT and all participants of expert interviews and focus group discussions (FGD). Moreover, the authors would like to thank Jana Proisinger and Almut Schilling-Vacaflor for feedback and discussion on the paper and decision-making in general. We would like to thank Ian Scoones for comments on an earlier version of this paper. We further acknowledge funding provided by the Federal Ministry of Education and Research (Germany), as well as the LDPI Small Grant Competition 2012.

Table of Contents

1 Introduction	1
2 Conceptual issues regarding participation of local people in large-scale land acquisitions	2
3 Claims for participation in Voluntary Guidelines	5
4 Consultation of local people in large-scale land-acquisitions in Mali	7
4.1 Land acquisitions in Mali	7
4.2 De jure consultation	8
4.3 De facto consultation exemplified: Three Case Studies	9
5 Discussion	13
5.1 Synthesis de jure and de facto Situation in Mali	13
5.2 Different aims of participation and LSLA in Mali	15
6 Conclusion	17
Bibliography	18
Appendix 1: Expert interviews in Mali	22
Appendix 2: Focus group discussions in Mali	23

1 Introduction

The phenomenon of large-scale land acquisitions (LSLAs)¹ has not only grabbed the headlines in recent years but seems to be a reality: Evidence shows that huge areas of agricultural land have been transferred to international investors.²

Critics of LSLAs often point to risks imposed on the rural poor and complain about their lack of inclusion in the decision-making process. A great number of reports identify the lack of consultation or public participation and NGOs and civil societies are concerned about what they call 'land grabbing.' To name just a few, the World Bank (2010) reports on deficient processes for local consultation and demands that, "all those materially affected are consulted, and the agreements from consultations are recorded and enforced." FIAN (2010) asserts that consultations in Kenya and Mozambique involved only community leaders and that communities had few opportunities to articulate their demands. Similarly, Braun & Meinzen-Dick (2009) and Cotula & Vermeulen (2009a) point to insufficient consultation. Via Campesina (2012) gives testimonies of affected peasants from all over the world of which most report on flawed or non-existent consultations.

Moreover, first academic contributions to this particular field of study have recently emerged. Vermeulen & Cotula (2010, pp. 907–910) find that some level of interaction with the local population is usually integrated in the formal approval process of land deals. Most countries require an Environmental Impact Assessment (EIA) prior to project approval that contains at least the most basic level of assessment. In some countries, these studies require consultation with affected communities. However, even in these cases, the role of local people remains rather passive, lacking the capacity to shape or veto the process. Cotula & Vermeulen (2011, pp. 43–44) examine mechanisms of consultation and consent, and scrutinize how local populations benefit from land deals and how they are compensated. They find that procedures concerning consultation are flawed. In particular, they find that (1) consultations are a one-off event rather than an on-going interaction, (2) that often discussions are restricted to village elders and elites and do not include communities that are indirectly affected, (3) that records are incomplete and vague, and (4) that often the role of local people is limited to expressing their concerns, without means to shape or even veto the process.

Finally, several case studies shed light on consultation in specific countries. For instance, German, Schoneveld, & Mwangi (2011) report on processes of LSLAs in Ghana, Mozambique, Tanzania, and Zambia. Similarly, Smalley & Corbera (2012, pp. 1056–1058) provide evidence on how consultation works in specific investment cases in Kenya. For cases in the Tana River Delta, the authors report that even though consultations took place they were flawed. Only part of the population was consulted and of those consulted there is poor understanding of the projects. For the case of Mali, Vermeulen & Cotula (2010) study the implementation of environmental and social impact analysis (ESIA) and report that only six out of 13 biofuel projects have completed an ESIA and of these only two have

¹ Being aware of the delicacy of terminology, we refrain from using the emotionally loaded term 'land grabbing' but stick to a term we consider less sensitive, 'large-scale land acquisition.' In particular, we found that the term 'land grab' can be difficult in the local context. For instance, one interviewee underlines 'It must be noted that Malian law prohibits giving land titles to foreigners so we cannot speak of grabs ('accaparement') (Interview M16, 2011).' However, we are aware of the complexity and ongoing debate, as briefly exposed in Borras and Franco (2012, pp. 34–35). This paper concentrates on acquisitions of land for agricultural purposes, both by domestic and foreign investors. Large-scale does not signify any clear-cut size of land but rather indicates commercial use as opposed to smallholder agriculture.

² We do not want to give an exact number here as the phenomenon is marked by secrecy and it is thus impossible to have precise figures. Estimations include the World Bank (2010) that reports on 43 million hectares in 2008 alone, or - based on the Land Matrix - Anseeuw et al. (2012) who report 83.2 million hectares of total interest in agricultural land of which 21 million hectares have started production on the ground.

made the results publicly available. This indicates that ESIA in Mali are often neglected, and that public disclosure is extremely rare.

Against this background, this paper aims at conceptualizing how local populations³ learn about LSLAs, how they are consulted or participate in decision-making processes.⁴ In doing so, we specifically focus on de jure and de facto consultations in Mali, drawing on fieldwork conducted in 2010 and 2011.

We first present some conceptual ideas on consultation and LSLAs. We draw on the established notion of ‘ladders of participation’ in distinguishing different categories of participation according to the degree of active involvement they allow for the local population. We propose to amend this mono-dimensional frame by adding a second dimension that depicts which parts of the population are included in participatory processes. (section 2) We then discuss claims for participation as asked for in different voluntary guidelines for LSLA (section 3). Against this background, section 4 sheds light on consultation processes in Mali. The de jure situation is contrasted to case study evidence: we present three different large-scale land deals that take place within geographical proximity, and thus in very similar political and legal contexts. In-depth information was gathered through focus group discussions (FGDs) with the local population in adjacent villages and expert interviews⁵ conducted in the Office du Niger (ON) region, Ségou and Bamako in Mali in 2010 and 2011. In discussing this evidence we relate the de jure and de facto situation in Mali to our conceptual framework (section 5.1) and formulate some implications regarding different aims of participation (section 5.2). The final section concludes.

2 Conceptual issues regarding participation of local people in large-scale land acquisitions

Protection of rights of local communities, including consultation, are derived from human rights (e.g. for the phenomenon of LSLAs Cotula, Djiré, & Tenga, 2008; FIAN, 2010; Schutter, 2009). This is rooted in Article 17 of the Universal Declaration of Human Rights that formulates “the right to own property alone as well as in association with others” and states that “no one shall be arbitrarily deprived of his property” (Triggs, 2002, pp. 125–126). Regarding the specification of this general claim, the development literature on participation encompasses a plurality of both definitions and aims (with regard to definitions, cf. Chambers (2005, pp. 103–104), with regard to aims, cf. Cornwall & Gaventa (2000)). One way of ordering this plurality consists in categorizing different procedures commonly subsumed under the heading of participation in so called “ladders of participation”, (for an overview, cf. Chambers (2005, pp. 103–104: especially Figure 4.1, p. 105 and Table 4.1, p. 106). The different rungs of these ladders depict different categories of participation. These rungs are usually ordered along a gradient of degree of involvement of local people.

³ We are aware that local populations do not constitute a homogenous group. In fact, they might have diverging interests and preferences, as for instance between sedentary farmers and pastoralists, or local elites and smallholders. In line with this, the wide conception that local populations oppose land deals is problematic (see for example Vermeulen and Cotula (2010); Borrás and Franco (2012, p. 47); Smalley and Corbera (2012)).

⁴ The terms ‘consultation’ or ‘participation’ are imprecise and broad (Cooke & Kothari, 2001; Cornwall & Brock, 2005) but are often used interchangeably, e.g. in the voluntary guidelines discussed in section 3. We will follow this course and use ‘consultation’ and ‘participation’ as synonymous, generic terms. Section 2 offers further differentiations regarding degree of influence and degree of inclusion for which we offer more specific terms (cf. Figure 1).

⁵ A full list of all FGD and interviews conducted can be found in the appendix. In order to protect anonymity of interviewees this list reveals position and organization only. All FGDs were held in Bambara, and then transcribed to French. Translations from French to English were done by the authors.

A binary distinction that maps onto this gradient is the distinction between so called bottom-up and top-down approaches to participation. The former term describes initiatives that originate among local people (in rural regions). By contrast, the latter term describes ventures that are initiated by non-locals (Chambers, 2005, p. 87). In regard to LSLAs the important point is the following: In this paper, we understand LSLAs as a process in which an investor acquires large tracts of land. This process can be initiated by an investor in search of land who approaches governmental or regional administrative offices. It can also be initiated by host country governments offering incentives and thus attracting investors. However, in both cases LSLAs is initiated by outsiders rather than local people. It is for this reason that while our own proposal for a conceptual framework for different forms of participation draws on the concept of ladders of participation, we neglect the bottom up approach.

It is a characteristic feature of LSLAs that it commonly targets land characterized by a dual tenure system, meaning a coexistence of statutory and customary land rights (e.g. in regard to Africa Cotula, 2007, in regard to Mali Djiré, Keita, & Diawara, 2012; USAID, 2010). Accordingly, land targeted by LSLAs may be used by local people even though they do not have legal property rights (Anseeuw et al., 2012). Participation should generally include all stakeholders affected by a project. However, the issue of dual tenure highlights that who qualifies as stakeholder is a non-trivial question: While it is clear that local people who feature officially registered property rights to land fall into the realm of stakeholders, it is less clear if and in how far this holds for people who do not feature such property rights but use lands under customary tenure. To express this aspect, we propose to add a second dimension to the mono-dimensional notion of ladders of participation. Our proposal is depicted in Figure 1.

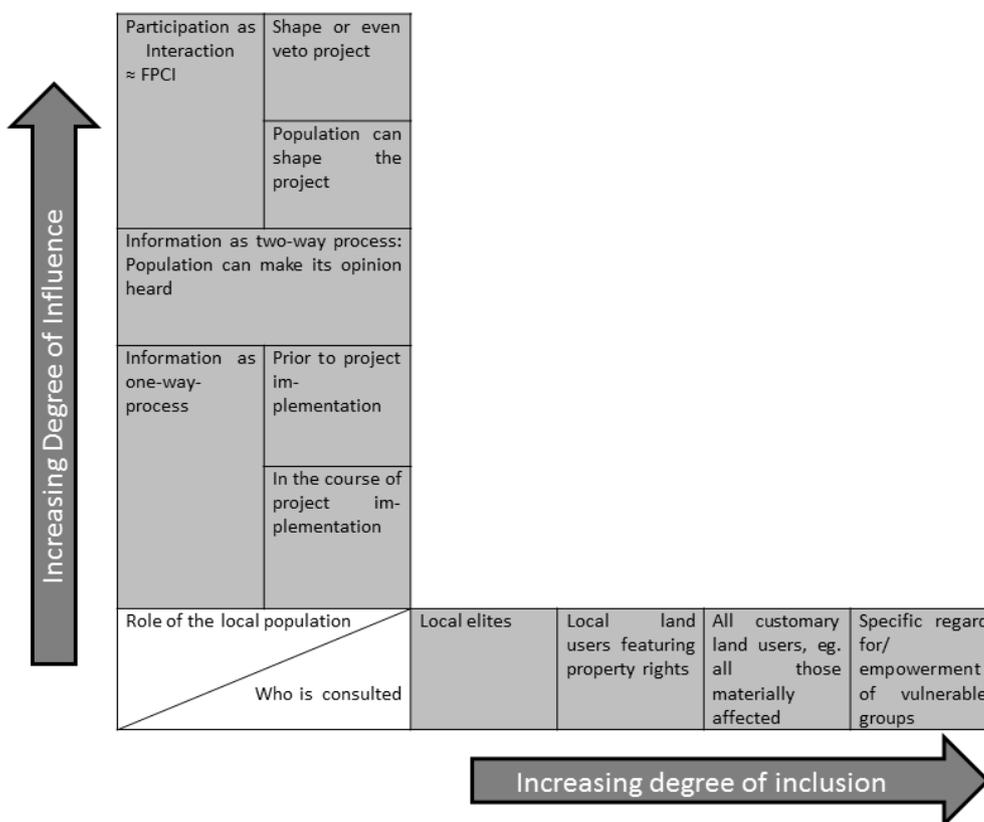
The vertical axis of Figure1 confers the notion of ladders of participation onto LSLAs. It differentiates between different forms of consultation based on the degree of involvement of the local population: we distinguish between (i) information as a one-way-process in which the investor informs the local population about the project, (ii) information as a two-way process in which the investor informs the population and they have the possibility to give feed-back and (iii) participation as interaction in which the local population is able to shape or even veto the project. In regard to information as a one-way process we further differentiate between information taking place prior to the project and information taking place only in the course of project implementation. In contrast, we assume that information as a two-way process and participation as interaction only make sense prior to project implementation.

This is also why we equate participation as interaction with Free Prior and Informed Consent (FPIC) as employed in the political and academic development discourse. In international law, FPIC is recognized in the ILO Convention 169 (Convention concerning Indigenous and Tribal Peoples in Independent Countries), the UN Declaration on the Rights of Indigenous People as well as by international human rights treaty bodies as the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Right (Triggs, 2002; Ward, 2011). While ILO Convention 169 is not ratified by any African country except the Central African Republic, the UN Declaration applies to all UN member states. However, it is important to note that both the ILO Convention and the UN Declaration specifically target indigenous people. While the concept of indigeneity is well-established in South America, it is contested in the African context (Pelican, 2009). Having said that, Cotula, Vermeulen, Leonard, & Keeley (2009, p. 71) argue that despite the focus on indigenous people, the principles of FPIC can be transferred to any local resource user. Finally, FPIC is increasingly recognized as a prerequisite for projects to receive support from international donors such as the UN Reducing Emissions from Deforestation and Forest Degradation (REDD) programme or the World Bank (Laughlin & Sriskanthan, 2011; Triggs, 2002, pp. 136–137).

Regarding the academic discourse, there is no clear-cut definition of what FPCI entails. General comprehension is that it is free of coercion, prior to any authorization or commencement of activities, information on the planned activity is sufficient, and that consultation and participation are adequate in the consent process (e.g. Goodland, 2004, p. 67; Hill, Lillywhite, & Simon, 2010, p. 8; Laughlin & Sriskanthan, 2011, pp. 8–9).

The horizontal axis of Figure 1 depicts if participation encompasses only local elites, all those land users featuring legal property rights or all customary land users. Finally, several authors have highlighted that without further assistance vulnerable groups such as women, children, elders or minorities may not be able to enter participatory processes let alone to participate on par. Accordingly, we understand specific regard for and empowerment of vulnerable groups as a further degree of intensifying inclusion of the local population.

Figure 1: Two Dimensions of Inclusion of the Local Population



Source: Authors' compilation

While both the question of which role local people play in participatory processes and the question of who participates can be understood as referring to what can be described as the degree of inclusion of the local population, we propose that the two dimensions are complimentary. That is, it is both possible to imagine a participatory process that exhibits a high degree of involvement of the local population in that it allows participants to shape or even veto a project while concurrently stipulating that only those with officially recognized land rights qualify as legitimate participants of such processes. Similarly, a process that merely informs the population but does not allow for any active involvement might nevertheless target all those materially affected and even specifically address vulnerable groups. This is why we propose to conceive of the role local population plays and of who participates in participatory processes as two axes of a matrix.

3 Claims for participation in Voluntary Guidelines

Besides international law there exists a growing body of recommendations by development agencies and international organizations under the heading of principles (Schutter, 2009; World Bank, IFAD, UNCTAD, & FAO, 2012b), voluntary guidelines (FAO, 2012) and Codes of Conducts (Braun & Meinzen-Dick, 2009).⁶ Some of these are closely linked to the process of land acquisition by foreign investors. In contrast, others, most notably the FAO guidelines, aim at good governance regarding land tenure more generally.

While there are numerous examples of such guidelines, in this paper we focus on those which we judge as most influential: The code of conduct for foreign land acquisitions by Braun & Meinzen-Dick (2009), the “set of minimum principles and measures to address the human rights challenges” by the UN Special Rapporteur on the Right to Food (Schutter, 2009), the FAO “Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security” (FAO, 2012) and the “Responsible Agro-Investments (RAI) principles”,⁷ a broad-based and on-going dialog between governments, the private sector, civil society and international organizations (World Bank et al., 2012b). All these contain claims for consultation and participation. The main claims are summarized in Table 1.

Table 1: Claims for consultation and participation in different voluntary guidelines regarding LSLAs

Source	Claims for Consultation and Participation
(Braun & Meinzen-Dick, 2009)	“Transparency in negotiations. Existing local landholders must be informed and involved in negotiations over land deals. Free, prior, and informed consent is the standard to be upheld. Particular efforts are required to protect the rights of indigenous and other marginalized ethnic groups.”
(Schutter, 2009)	Principle 1: “The negotiations leading to investment agreements should be conducted in full transparency, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the arrival of an investor. [...]” Principle 2: “In principle, any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned. [...]”
(FAO, 2012)	3B6. “Consultation and participation: Engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.”
(World Bank, IFAD, UNCTAD, & FAO, 2012a, World Bank et al., 2012b)	Principle 4: Consultation and participation “All those materially affected are consulted and agreements from consultations are recorded and enforced.” “If it is to have meaning, the consultative process should allow communities to turn down investors if they so desire.”

Sources: as given

Regarding the degree of influence, Braun & Meinzen-Dick (2009) and Schutter (2009) explicitly refer to the principle of FPIC. In contrast FAO (2012) does not explicitly mention the term FCPI. However, it calls for “active, free, effective, meaningful and informed participation” to be undertaken prior to the investment decision. It can thus be understood as asking for something rather similar to FPIC. Finally

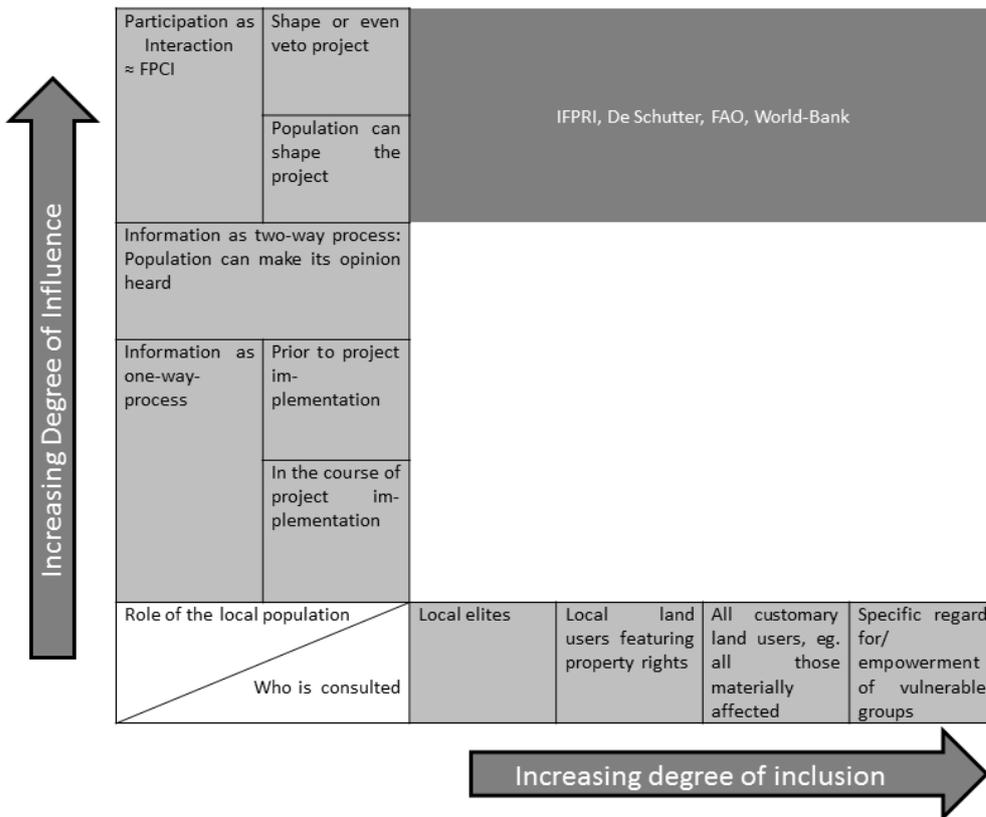
⁶ In the following, we will depict all of these recommendations as voluntary guidelines. For an overview and critical discussion of the potential of these voluntary guidelines, cf. Voget-Kleschin and Stephan (2013).

⁷ This initiative has its own homepage (‘knowledge platform’), promoted by the World Bank, IFAD, UNCTAD, and the FAO: <https://www.responsibleagroinvestment.org/rai/>.

the World Bank et al. (2012a) recognizes the need to clarify the content of consultations and for formal documentation of the process to become part of contractual arrangements. Furthermore, it states that “the consultative process should allow communities to turn down investors if they so desire” which gives communities the power to veto a project.

Regarding the degree of inclusion, the RAI principles by the World Bank et al. (2012b) is the only guideline explicitly mentioning the need to avoid elite capture. Respect for existing land rights, including customary and common property rights is explicitly mentioned by Braun & Meinzen-Dick (2009). In Schutter (2009) the principles themselves do refer to “local communities whose access to land and other productive resources may be affected” but the text of the accompanying document explicitly refers to the need to protect customary and common property. The FAO (2012) generally refers to “legitimate tenure rights” without further clarifying the term. However, in regard to customary tenure systems it asks for “participation of all members, men, women and youth” and that “[t]here should be full and effective participation of all members or representatives of affected communities, including vulnerable and marginalized members.” Furthermore, in regard to public land the guidelines claim that, “anyone who could be affected should be included in the consultation, participation and decision-making processes.” In contrast to these, the World Bank et al. (2012b) does not contain any specific claims but just states the need to clarify who participates. Finally, all presented guidelines call for specific concern for vulnerable groups, such as women or ethnic minorities. Figure 2 relates the claims incorporated in these guidelines to our conceptual framework.

Figure 2: Locating claims for participation in voluntary guidelines in the conceptual framework



Sources: own compilation based on the voluntary guidelines as given in Table 1.

4 Consultation of local people in large-scale land-acquisitions in Mali

In the following, we use this framework for analyzing consultation in Mali. To this end, we first introduce the general situation regarding land acquisition in Mali, and subsequently address the de jure as well as de facto situation.

Generally, results of expert interviews on consultation are inconclusive. For instance, officials in the Office du Niger (ON) have the perception that giving land to investors is a form of redistribution. According to their understanding, prior to the construction of the ON the land was uninhabited. Thus people do not have any claim to the land. Land therefore belongs to the government. As long as people are compensated for land they currently cultivate, they cannot complain. ON officials stress that the law asks for an environmental and social impact assessment (ESIA) which includes public consultation (Interview M24, 2011). On the contrary, the civil society feels that local peasants are neither given adequate nor correct information. Moreover they point out that there is no time for discussion and that the local populations' view is not listened to (Interview M4, 2010). Sometimes there are even false lists of participants (Interview M13, 2011).

4.1 Land acquisitions in Mali

Mali has stirred a lot of attention with huge agricultural land acquisitions recently.⁸ Several large projects emerged in the ON and fuelled a heated discussion on LSLAs within the country⁹ and in NGOs, academia and development institutions (Baumgart, 2011; Cotula & Vermeulen, 2009b; FAO, 2013, pp. 223–264; Oakland Institute, 2011b; Vermeulen & Cotula, 2010).

Most agricultural investments are targeted at the ON (e.g. Interview M8, 2010; M9, 2010; M12, 2011; M13, 2011; M14, 2011; M18, 2011 and M19, 2011), which constitutes Mali's main agricultural region and has huge agricultural potential. Only a few people interviewed mention investments in other regions (e.g. Interview M9, 2010). Thus, in the following, we focus on investments in the ON region,¹⁰ as it is certainly the most sought after region.

The ON is a large irrigation project of 1,000,000 hectares of which about 100,000 hectares are cultivated. Created mainly for cotton and rice production by the French colonial regime in 1932, the ON has been managed by the Malian government ever since independence. Since the 1970s, sugar gained in importance over cotton and rice. Today, the ON region remains one of Mali's most fertile agricultural regions, mainly due to good irrigation potential (Camara, 2013; Djiré & Kéita, 2010, pp. 15–16). However, it remains well below its agricultural potential (Interview M16, 2011).

The economic policy of the government aims at encouraging public and private investors to invest in the ON so as to tap its agricultural potential and invest in infrastructure. Accordingly, agricultural policy in the ON follows its own logic and is exceptional within the Malian context: the region is

⁸The Oakland Institute lists 22 projects with a total of 544,567 hectares in the ON (Oakland Institute, 2011b); the Land Matrix identifies 18 projects in Mali with a total of 485,631 hectares for which contracts have been signed and of those nine are reported to have started production on 434,986 hectares (ILC, CIRAD, CDE, GIGA, & GIZ, 2013). Djiré and Kéita (2010, pp. 19–20) have an extensive list of 35 domestic and foreign projects amounting to 492,871 hectares. As to official sources, the Agency for Investment Promotion in Mali (API) gave the authors a list with six projects adding up to 305,020 hectares in the ON. Cotula (2012, p. 653) reports on leases amounting to 242,577 hectares in the ON, and letters of intent for a further 402,682 hectares according to official figures.

⁹ For example, in November 2010 the *Forum du Kolongo* brought together farmers to discuss investments and articulate their concern. An English version of the appeal can be found here: <http://pubs.iied.org/pdfs/G03055.pdf>.

¹⁰ Concerning land deals in Mali in general, Cotula and Vermeulen (2011, p. 43) provide a very concise account of the general process of acquiring land in Mali.

managed by the Delegate Ministry of the Prime Minister in Charge of the Comprehensive Development of the Zone Office du Niger (MDDIZON).¹¹ The management of the ON is fixed in the management decree ('décret de gérance') 2011-216 (République du Mali, 2011). This decree, dating back to 1996, was in the process of being amended (at least prior to the military coup) in order to take recent changes induced by the Agricultural Orientation Law (LOA)¹² of 2006 into account (Interview M16, 2011; M20, 2011 and M24, 2011).

In order to use land in the ON, one has to obtain property or usage rights (Interview M16, 2011). All contracts to use land are between the ON and the land user. Smallholders and commercial farmers receive/obtain different rights to access land: While smallholders can request either an annual contract for exploitation ('contrat d'exploitation') or, succeeding at least a three years contract for exploitation, a permit for use ('permis d'exploitation') on irrigated land, commercial farmers can obtain leases. There are two different lease forms, the ordinary lease ('bail ordinaire') for up to 30 years, and the long-term lease ('bail emphytéotique') for 30 to 50 years (Djiré & Kéita, 2010, pp. 16–17). In terms of payment, smallholders only pay water use fees (USAID, 2010, pp. 42–43) and lessees are expected to make investments on the land (such as irrigation infrastructure) in addition to paying water use fees. These additional investments are fixed in the lease contracts.

Despite a lot of noise and considerable infrastructural work with implications for the local population, few projects have actually come to fruition. In fact, there is evidence of projects that started off big but have gone quiet in recent years. For instance, the huge Malibya investment has stopped operating due to the recent political developments in Libya (Interview M24, 2011). Furthermore, since the military coup in Mali,¹³ the future of most projects is unclear. For example, a recent headline on one of the case studies described below, the Markala Sugar Project (MSP),¹⁴ indicates that one of the main sponsors pulled out of the deal (Kumwenda, 2012).

4.2 *De jure consultation*

In Mali, commercial investors acquire land through leases. According to decree no. 08-346 the investor has to undertake feasibility studies as well as an environmental and social impact assessment (ESIA)¹⁵ prior to the lease contract (Djiré & Kéita, 2010, pp. 17–18; République du Mali, 2008 & Interview M24, 2011). The ESIA anticipates effects of the project such as displacements and proposes mitigation measures. A public consultation has to be undertaken as part of any ESIA (Interview M24, 2011). Thus, the ESIA is the legal instrument that stipulates consultation. Décret N

¹¹ In French, 'Ministère Délégué auprès du Premier Ministre Chargé du Développement Intégré de la Zone Office du Niger..' In 2011 the former 'Secrétariat' established in 2007, was transformed to a Ministry (Djiré & Kéita, 2010, p. 18). Thereby, the ON was successively given more power as the Ministry is now part of the government and no longer subordinate to the Ministry of Agriculture (Interview M14, 2011 and M20, 2011).

¹² In French, 'Loi d'Orientation Agricole' (LOA). The LOA identifies investment promotion as one aim of land policy and to this end wants to simplify access to land (République du Mali, 2006, Article 75 & 82). A comprehensive account of the LOA's implications with reference to the right to food through access to land and natural resources is given in Cotula, Djiré, and Tenga (2008, Chapter 2).

¹³ 'The government', refers to the government before the military coup. On 21 March 2012 Malian soldiers overthrew the government of Amadou Toumani Touré. The Malian army claimed that the government had not adequately supported its fight against Tuareg-led rebellions in the north of the country. The Tuareg-led National Movement for the Liberation of Azawad (MNLA) backed by Islamists declared independence of 'Azawad state' in April 2012. A clash between MNLA and Ansar Dine, an Islamist group, further exacerbated tension in the region. In January 2013, French forces joined the Malian army in its 'Opération Serval' to free the North following a request by interim president Dioncounda Traoré (BBC News, 2012; Hagberg & Körling, 2012). Presidential elections are scheduled for July 2013 (BBC News, 2013).

¹⁴ In French, 'Projet Sucrière de Markala.'

¹⁵ In French, *étude d'impact environnementale et sociale*.

08-34616 defines public consultation as “the set of technics that serve to inform, consult or involve all stakeholders of a project.” This in line with many African countries, where the legal basis for consultation is an environmental impact assessment (EIA) (or an ESIA).¹⁷

In Mali, the National Department for Sanitation and Control of Pollution and Nuisances (DNACPN)¹⁸ is in charge of ESIA. All projects that are classified as A (potentially very negative effect) or B (not as bad as A)¹⁹ have to undertake an ESIA (République du Mali, 2008, pp. Article 6). Investors have to address the DNACPN and commission an engineering bureau to conduct an ESIA. The investor has to produce a detailed schedule on how (s)he wants to conduct consultation within the framework of the ESIA. The ESIA proposal is examined and approved by the DNACPN and several government ministries (Interview M22, 2011; Oakland Institute, 2011b) and its implementation is regularly monitored. Once the ESIA is approved, local authorities and all affected populations are informed about the project (Article 15). Public consultation is then conducted with the aim of collecting the opinion of affected populations. It is organized under the auspices of the government²⁰ (Article 16). Vermeulen & Cotula (2010, p. 33) criticize that the decree does not specify whether concerns of the population have to be taken into account by the project developer. It is in the government’s responsibility to verify that compensations are being paid. However, the government can ask the investor to incur costs of compensations, which can be specified in lease contracts (Interview M19, 2011 and M20, 2011). The protocol of the public consultation has to be signed by all parties and attached to the ESIA (Article 17) (République du Mali, 2008). However, there is no obligation to publicly disclose ESIA results (Oakland Institute, 2011b, pp. 37–38). Thus, information on realized consultations is scarce.

Cotula & Vermeulen (2011, p. 44) summarize the role of ESIA in Mali: “in its simple form, this consultation constitutes simply a scientific study in which the subjects are passive respondents.” Thus, the *de jure* decision-making process in Mali fits into the ‘information as one-way’ category of our framework introduced. Determining the degree of inclusion is more difficult: The law refers rather vaguely to “local authorities and all affected populations” which might include those with customary land rights. While customary rights are officially recognized in Mali (République du Mali, 2000, Chapter III), in the ON all land is state-owned and customary rights are thus not protected by law (Oakland Institute, 2011b, p. 40). This is illustrated by an official from DNDC: “The population is not consulted if the land belongs to the government” (Interview M19, 2011). Thus in the ON, consultation only covers those with official property rights.

4.3 *De facto* consultation exemplified: Three Case Studies

The *de jure* consultation is not necessarily congruent with the *de facto* consultation. For instance an official of the Regional Department for Sanitation and the Control of Pollution and Nuisances (DRACPN) reveals that ESIA are not always completed due to diplomatic or political reasons (Interview M22, 2011). Accordingly, we complement our account of the *de jure* situation by case studies which look into what actually happens on the ground.

¹⁶ Amended by the Décret N°09-PRM-318 du 26 juin 2009 (République du Mali, 2009).

¹⁷ For example, an interesting and comprehensive account of the legal framework for public participation in Nigeria is provided in Omorogbe (2002). The important role of the ‘landmark’, the EIA, in formally giving the right of participation in decision-making is discussed in great detail.

¹⁸ In French, ‘Direction Nationale de l’Assainissement du Contrôle de Pollution et de Nuisance.’

¹⁹ Projects classified as A or B include all hydroagricultural projects above 50 hectares in the Sahel zone (resp. 10 to 50 hectares for B), 100 hectares in ‘zone soudanienne’ (Sudanian climate zone) (resp. 50 to 100 hectares for B) and 200 hectares in ‘zone guinéenne’ (Guinean climate zone) (resp. 100- 200 hectares for B).

²⁰ More specifically, Article 16 stipulates “public consultation [...] is organized by the representative of the government or the mayor of the project implementation site with the help of the technical services and the participation of the investor” (République du Mali, 2008, Art. 16)

In the following, we thus concentrate on consultation processes of three specific investment projects, all of which have long-term leases with 50 year-durations (Interview M1, 2010; M2, 2010 and M6, 2010). In order to triangulate information gathered during field research, we use a variety of sources: a) to present the view of the investor we use official documents such as lease contracts (and where available interviews with the investor), b) additional information from the literature, c) additional expert voices and d) voices from the local population gathered during FGDs.

4.3.1 Malibya

‘Malibya Agricole’ is a Libyan company and probably the most debated investment case in Mali. With a size of 100,000 hectares (meant for rice production) this is hardly surprising. The case is often mentioned as an exception to the rule. For instance, the lease contract was signed by the minister of agriculture and not by the CEO of the ON as is the general rule (République du Mali & La Grande Jamahiriya arabe Libyenne populaire et socialiste, 2008). Many reports display potential and actual adverse effects (e.g. Oakland Institute 2011a, USAID 2010, p. 14, Diallo & Mushinzimana 2009, pp. 18–21, and Djiré & Kéita 2010, pp. 21–22). As to implementation on the ground, basic infrastructure work was conducted by a Chinese subcontractor; in particular a large canal was dug. However, with the recent developments in Libya, it is unclear whether the project will resume and whether agricultural activities will commence (Interview M24, 2011).

The investor provides little information on consultation of the local population. The investment agreement specifies that feasibility studies have to be commenced within three months after granting the land and should not take longer than twelve months to finish; an ESIA is, however, not mentioned (République du Mali & La Grande Jamahiriya arabe Libyenne populaire et socialiste, 2008, pp. Article 21). The technical director of Malibya confirms that before the project was implemented, feasibility studies were undertaken that included compensation measures (Interview M6, 2010). However, it is not specified who is informed about the project.

Whether a formal ESIA was conducted is unclear (Oakland Institute, 2011b, p. 27). Adamczewski & Jamin (2011) state that the ESIA for Malibya was only conducted at the end of 2008 after the operations had already started. The official procedure was thus not adhered to.

This is confirmed by an official in the ON:

“Malibya started without an ESIA. The relationship between Libya and Mali are of such an importance that Amadou Toumani Touré [president until the coup in March 2012] himself gave permission to start the project without an ESIA”

Interview M22, 2011

FGDs reveal that Malibya contacted the population through the village chief three months before they started digging the canal. Three meetings were held in which agreements with the population were made. However, Malibya did not stick to these agreements, canals were built and fields were confiscated and destroyed without any form of compensation to prior owners (FGD M4, 2011 and M5, 2011). One female participant during a FGD in Boky Were complains:

“Malibya confiscated land, some of the land was destroyed [...]. Nothing was done to allow the population to access water for gardening on areas not affected by Malibya’s operations and surrounding the canal. No action was taken for compensation of withdrawn or destroyed land”.

FGD M5, 2011

This statement was followed by applause.

4.3.2 Markala Sugar Project (MSP)

The Markala Sugar Project (MSP)²¹ portrays itself as a ‘good investment’ (Interview M1, 2010 and M25, 2011). It was initiated by the Malian government that sourced private partners and sought funding for the project from the African Development Bank. Processing facilities for the production of ethanol and sugar cane are to be installed and sugar cane is to be grown on an area of 14,123 hectares. Moreover, the project includes a social component with integrating schemes for local farmers, in particular outgrower schemes as well as programmes for poverty alleviation.

Concerning the progress of the undertaking, MSP has always had problems with raising funds (Interview M1, 2010 and M25, 2011; Adamczewski, Jamin, & Tonneau, 2011). Even though reports identify problems and adverse impacts of the project (e.g. Djiré & Kéita 2010, pp. 23–24 and Diallo & Mushinzimana 2009, pp. 21–25), little has actually happened on the ground: So far, only some test fields started being cultivated (Interview M25, Adamczewski et al., 2011). This was confirmed during a FDG where participants claimed that boundary stones had been installed to mark the territory; however, fields have so far not been reclaimed (FGD M6, 2011). The recent developments in Mali have aggravated the funding situation: Illovo Sugar has withdrawn from the engagement (Kumwenda, 2012; Djiré et al., 2012, pp. 57–58) and in light of the unstable political situation the future of MSP is uncertain. Diarra (2012) reports that farmers went to court to claim back land occupied by MSP.

The ESIA – which is publicly available²² – states that public consultations took place in line with decree 08-346 in May 2007, January to April 2009 and August 2009 during a pre-evaluation mission. It targeted villages in irrigated and adjacent areas, villages that might host displaced people, as well as administration and technical services on the national, regional, and local level. It also specifies the objective of the consultation. Hence, the consultation should inform and sensitize the population on the future project and its operation, collect their opinions, concerns and proposals on solutions to eradicate, mitigate and compensate negative impacts. These inputs were then taken into account in succeeding steps of the ESIA. Consultation finished with a 3-day workshop with all involved actors (African Development Bank, 2009).

According to MSP, the integration of the population is of great importance. MSP claims that during the ESIA, it talked to individuals in villages and that public consultation took place in each of the affected villages. MSP underlines that it is a project that includes the population and is very specific: 5,600 hectares are to be allocated to the population, with 1,150 hectares as compensation and 4,450 hectares for anti-poverty measures. Only villages with less than 100 people are going to be displaced. They can then decide to which of the neighbouring villages they want to move. Those who lose access to their land can decide what type of compensation they want: Compensation in cash, compensation with plots for sugar cane, compensation with plots for rice, compensation with a mix of plots for rice and sugar cane. Initially, only plots for rice and plots for sugar cane were planned, but then the local community asked for compensation with a mix of plots, which was then added. The amount of compensation is calculated according to the value of the land. In general, compensation should not leave anybody worse off (Interview M1, 2010 and M25, 2011).

Adamczewski et al. (2011) agree in that consultation of the local population has taken place, organized by the governor, project managers, and local leaders and that different expectations were listened to. However, in contrast to the account by MSP, Adamczewski et al. (2011) state that these meetings were only held in two villages, while remote villages were excluded.

²¹ A more detailed overview on the rather complex MSP is provided in Djiré, Keita, and Diawara (2012).

²² The ESIA is available online: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/mali%20fr.pdf>.

Participants of a FGD confirm that they were contacted by the director of MSP and that he explained the project to them (FGD M6, 2011). One participant states:

“SoSuMar came to inform the population about the setting-up of the factory and the sugar cane fields and that this is to be done no matter if the population accepts it or not”.

FGD M6, 2011

The population wonders whether they will receive any compensation for reclaimed fields and what type of compensation this is going to be.

“Our only hope is our fields, and the government wants to take our fields for the benefit of a foreign company. They say that there will be change, but what type of change? If they can show us another place, that would be very helpful to us. Therefore, we are in a state of uncertainty at the moment”.

FGD M6, 2011

In general, people were rather confused about the project and did not know what was going to happen. They expressed fear about not being properly compensated (FGD M6, 2011).

4.3.3 N-Sukala

New Sugar Complex of Higher Kala (N-Sukala)²³ is the extension of a pre-existing investment project called Sugar Complex of Higher Kala (Sukala)²⁴ dating back to 1965.²⁵ N-Sukala has the same partners as Sukala: 40% Malian shares and 60% Chinese shares represented by China Light Industrial Corporation for Foreign Economic and Technical Co-operation (CLETC). N-Sukala is an independent entity but a fusion with Sukala is envisaged. It was created so that N-Sukala can get tax advantages (eligible only to newly established companies), which would have not been possible with a simple extension of Sukala. N-Sukala got titled land (*‘tire foncier’*) of 857 hectares for the construction of the factory and a lease for 50 years (*‘bail emphytéotique’*) for 19,143 hectares for sugar cane production. The factory was completed in November 2012 (Maiga, 2012). Production has started on test fields (Interview M2, 2010 and M11, 2011; République du Mali & China Light Industrial Corporation for Foreign Economic and Technical Cooperation, 2007); thus it seems to be the only project in our sample that has not failed (to our best knowledge).

The lease contract states that the “government of the Republic of Mali is obliged to (...) sensitize populations that are potentially affected by the project.” However, the CLETC is in charge of covering the costs for the ESIA, as well as costs for sensitization, evictions and resettlement of villages and populations affected by the project. Thus, the responsibility to carry out these measures is clearly assigned to the government, whereas the CLETC has to cover all costs (République du Mali & China Light Industrial Corporation for Foreign Economic and Technical Cooperation, 2007, pp. Article 6 & 7). Similar to Malibya, N-Sukala is accused of not having done an ESIA before the project started. For instance, an official from the Regional Department for Sanitation and the Control of Pollution and Nuisances (DRACPN) states:

²³ In French, ‘Nouveau Complexe Sucrier Du Kala Superieur SA - Mali.’

²⁴ In French, ‘Complexe Sucrier Du Kala Superieur SA - Mali.’

²⁵ The predecessor of Sukala (*‘complexe sucrière de bassin’* and then *‘complexe sucrière de canne’*) was created in 1965 as integral part of the ON. In 1984, it became a government project with technical advice from China (*‘phase de cogestion’*). In 1996, it was privatized and became a Société Anonyme (SA) (public limited liability company) with 40% Malian shares and 60% Chinese shares represented through the state company China Light Industrial Corporation for Foreign Economic and Technical Co-operation (CLETC). From then on, the project has been called Sukala. Today, sugar cane is grown on 5,000 hectares (50-years lease) with processing facilities in Dougabougou and Siribala. The company is known for using very little technology and relying on human labor for most production stages (Interview M5, 2010; M10, 2011 and M23, 2011).

“N-Sukala started the construction of the factory before the study was finished. There are political and diplomatic reasons. The Chinese wanted to finish the project before the elections in 2012, that is with Amadou Toumani Touré. Therefore they pushed the construction of the factory”.

Interview M22, 2011

Participants of FGD held in Sissako report that there was no initial consultation.

A participant states that:

“The government does what they want as the land belongs to them. Therefore, they do not think about the population anymore and therefore they signed a contract with N-SUKALA without taking our concerns into account”.

FGD M2, 2011

One female participant reports:

“No, no, we were not informed, we were surprised to find boundary stones in our millet fields. Thus, we formed a delegation to go and inform ourselves with the major of Dougabougou [nearest village] to know what is going on. The mayor also confirmed that they are not aware what this is at the moment. Only after all this we received people that said they were from the government. They presented their excuses and then presented N-Sukala”.

FGD M2, 2011

This story is confirmed by others in this group, and also by a FGD held with a youth group. Participants of these FGDs testify that their fields have been taken but that they did not receive any compensation so far (FGD M2, 2011 and M3, 2011).

5 Discussion

5.1 *Synthesis de jure and de facto Situation in Mali*

The objective of consultation is to ‘collect opinions’ (République du Mali, 2008, pp. Article 16) which classifies as ‘information as one-way process (prior to project implementation)’ for those with official property rights in Figure 1. Taking the de jure situation as a point of reference, we scrutinize how far the case studies comply with de jure claims.

Concerning the ‘degree of inclusion,’ official documents (e.g. lease contracts and in the case of MSP the ESIA) do not clearly specify who is included in consultations. While the Malibya contract does not specify who is to be informed, MSP and N-Sukala remain vague: “Populations potentially affected” (African Development Bank, 2009) or “villages located within irrigated sectors” (République du Mali & China Light Industrial Corporation for Foreign Economic and Technical Cooperation, 2007, pp. Article 6 & 7). Even though not entirely clear, customary land users seem to be included. FGDs confirm this: if consultation took place, whole villages were informed about the project. Vulnerable groups’ needs were never specifically taken into account.

As to the ‘degree of influence,’ information is particularly scarce in the case of Malibya. While the investor promised a feasibility study, it is not specified what this actually entails. Thinking about Table 1, the investor’s own account might qualify as ‘information as one-way process (prior to project implementation).’ Evidence from FGDs and additional information from the literature suggests that a formal ESIA was – if at all – seriously delayed. Evidence from FGDs evince that three meetings in which agreements with the population were made were held. This case is rather difficult to judge: On the one hand the meetings allowed for the local population to give feedback to the

investor. This speaks in favor of classifying the process as “information as a two-way process.” However, on the other hand the meetings were only held in the course of project implementation. This speaks in favour of classifying the process as “information as one-way process in the course of project implementation.” We hold the importance of the latter aspect to outweigh that of the former because in our view deferring consultation to a phase where project implementation has actually started renders any feedback of the population null and void. Accordingly, we classify Malybia according to FDGs as “information as one-way process in the course of project implementation.”

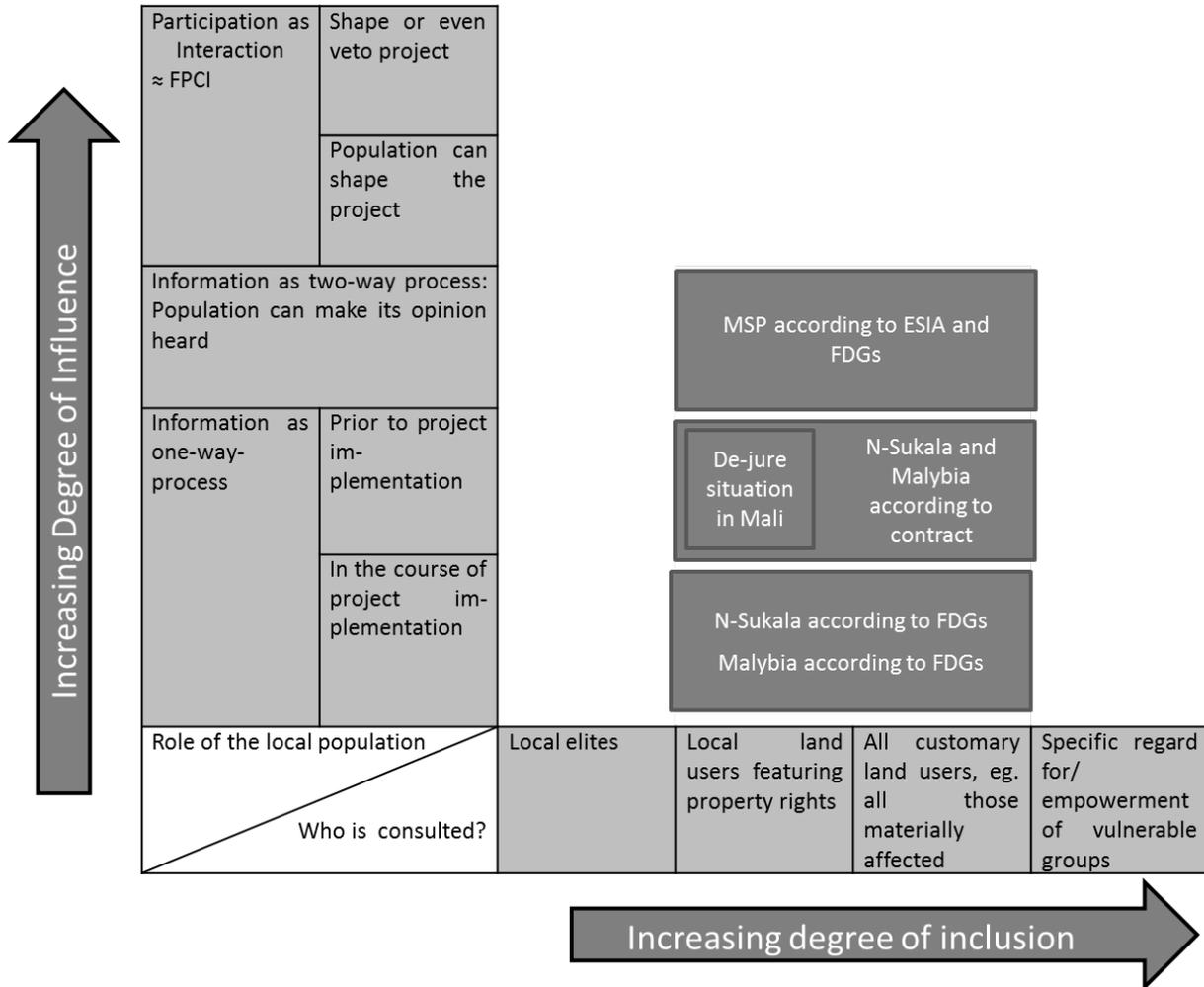
In the case of MSP, all sources are consistent. In comparison to the other cases we find most evidence on prior sensitization of the population. Thus, in so far as documents on the ESIA are publicly available, the case is more transparent than both Malybia and N-Sukala. Moreover, the consultation with the local community led MSP to alter the type of compensation they were going to offer and local people are free to decide where to move (Interview M25, 2011). However, the statement presented above, “that this is to be done no matter if the population accepts it or not” (FGD M6, 2011), shows that even in this case consultation does not give the local population any scope to shape the project let alone speak of vetoing it. MSP thus qualifies as ‘information as a two-way process’ – which is, however, the highest degree of influence for local populations within our case studies – and is more than ‘information as a one-way process’, as required by law.

For N-Sukala, the lease contract draws a different picture than evidence from FDGs: while the lease contract asks for sensitization of populations potentially affected, interviewees and participants of FDGs testify that no prior sensitization took place. Thus, arrangements as stipulated by the lease contract classify as ‘information as one-way process prior to project implementation’ but de facto the population was only informed in the course of project implementation.

Figure 3 classifies the Malian de jure situation as well as the three case studies in our framework.

We can conclude that a) inclusion of the local population in decision-making processes de jure and de facto is far from international regulations and norms as presented in Section 2 and 3 b) the de jure required assessment is not adhered to in practice, c) guidelines concerning consultation as laid out in lease contracts are not implemented, but as the case of MSP shows, d) a project can exceed the de jure obligations.

Figure 3: Two Dimensions of Degree of Inclusion of the Local Population Applied to Mali



Source: Authors' compilation

5.2 Different aims of participation and LSLA in Mali

As discussed in the introduction, the development literature does not only encompass a plurality of definitions of participation, but also points to a plurality of aims (Cornwall & Gaventa; 2000). Analogous to the distinction between bottom-up and top-down approaches to participation, we propose that this plurality can be broadly divided into two categories: bottom-up approaches link to a perspective on participation as an end in itself. In contrast, top-down approaches conceive of participation as a means to a given end²⁶ (Chambers, 2005, pp. 103–104; Pring & Noé, 2002, pp. 22–26). We propose that this distinction can be related to LSLA in the following way: As discussed in section 2, in this paper we understand LSLA as a process that is initiated by outsiders (investor and governmental or regional administrative office) rather than by local people. Accordingly, LSLA per definition contrast bottom-up development rather than being able to integrate such bottom-up approaches. This is why our conceptual framework neglects bottom-up approaches. It allows explaining why even the integration of ambitious participatory approaches in land acquisition processes could not satisfy objections by certain opponents of LSLA (e.g. by proponents of food sovereignty, cf. McMichael, 2010). In so far as these opponents object to the paradigm of development behind LSLA and ask for bottom-up, agency-oriented development as freedom (Sen, 1999), no way of top-down participation can ever overcome these objections.

²⁶ For a similar differentiation of two types of participation cf. Pring and Noé ; (2002, pp. 22–26).

In contrast to such a bottom-up understanding, top-down approaches conceive of participation as a means to an end. The category summarizes a range of aims of participation. This is mirrored in the aims of the voluntary guidelines discussed above. The principles provided by Schutter (2009) and FAO (2012) explicitly aim at the realization of the right to food. They thus primarily aim at ensuring positive and avoiding negative outcomes for local land users. In contrast, the RAI principles (World Bank et al., 2012b) as well as Braun & Meinzen-Dick (2009) are rather geared towards what they call win-win-solutions. They thus concurrently address consequences regarding local land users as well as investors. Regarding participation as a means to an end, this means that in the latter case participation might also be advanced as a means to increase acceptance of a project by the local population so as to allow for smooth project implementation or as a means to gather local knowledge so as to improve the projects performance.

From a perspective that conceives of participation as primarily targeted at ensuring positive outcomes for the local population the more active the role of the local population and the higher the degree of inclusion, the better. That is, from this perspective the closer a participation process is placed towards the upper right hand corner of the diagram (cf. Figure 1), the further it tends towards participation as an end in itself. Regarding the situation in Mali as presented in section 4, an evaluation focusing on the degree of inclusion does not feature too badly. In contrast to concerns raised by reports from NGOs (e.g. (2010) and academic contributions (e.g. Borrás & Franco, 2010, p. 519), none of the case studies involved only local elites to the disadvantage of other community members. Furthermore, while it is not entirely clear how far consultation processes did involve customary land users, at least none explicitly limits consultation to legal landowners. By contrast, regarding the degree of influence, none of the projects allowed for FPIC as stipulated in both international norms as well as voluntary guidelines. Rather, consultation amounted to no more than information of the population. Only one case, namely MSP, even allowed the local population to make their opinion heard.²⁷ Thus on the basis of our case study material we propose that in Mali both de jure as well as de facto consultation does not live up to the aim of ensuring positive outcomes for the local population. Accordingly, in so far as consultation aims at ensuring positive outcomes for the local population, consultations processes should be advanced by designing them in a way that deepens both degree of inclusion and degree of influence.

By contrast, from the perspective of participation as a means to improve the investments performance, matters are more complex. It does seem plausible that most goals such as acceptance of the project by local population and gathering of local knowledge are advanced the more active a part the local population can play. However, in so far as participation does play an instrumental role in forwarding the interests of investors, these benefits can always be outweighed by either the costs of participatory processes or by other aims the investors might have on his or her agenda. From this perspective the degree of inclusion, that is, answering the question of who should be included in participatory processes, depends on what participation is supposed to achieve and on contingent means-end relations. By way of example, if the primary aim of participation consists in preventing protest and interference by locals, it is not necessary to include vulnerable groups into participatory processes because they will most probably not be in the position to organize harmful interference anyway. On the other hand, if the aim of participation is to gather local knowledge about the land, then participation should involve those who work the land. However, in some settings this may be women who often do not have officially recognized land rights. Similarly, in regard to the degree of influence, this perspective would weigh any potential gains (in terms of acceptance and readiness to provide local knowledge) resulting from increasing influence of locals with the very real risk that this

²⁷ As an aside, it is interesting to note that in allowing for feedback by the local population MSP actually performed better than de jure claims. Similarly, though consultation in the case of N-Sukala did not proceed according to contract, it is still notable that stipulations as given in the contract exceed what is asked for de jure.

influence might bear on the project's design in ways that causes additional costs for investors. This demonstrates a potential source of tension between those two aims that can allegedly be achieved by voluntary guidelines aiming at a win-win-solution. However, we hold that the original idea behind participation as a means to an end as proposed in both the wider development literature and in voluntary guidelines is to ensure positive and avoid negative outcomes for the local population. Therefore, in so far as this aim conflicts with aims along the line of project performance from the investor's perspective, we hold that the focus should definitely be the former rather than the latter.

6 Conclusion

This paper reveals how the local population is included in decision-making processes of LSLAs in Mali. Consultation and public participation are widely recognized as an important aspect of fair land deals; however, when it comes to tangible instructions, they remain unspecific. We argued that a more conceptualized understanding of consultation is needed. Taking Chamber's (2005) ladders of participation as a point of departure, we conceptualize consultations in the case of LSLAs. We acknowledge that LSLAs are initiated by outsiders and thus leave aside bottom-up approaches; and taking into account who takes part in consultations, we add the dimension 'degree of inclusion.' Against this backdrop, we analyse proposals for consultation contained in voluntary guidelines as well as de jure and – by way of example – de facto consultation processes in Mali. We find that neither de jure nor de facto consultation is in compliance with international norms and voluntary guidelines. We conclude by discussing different aims of participation. In this regard we point out that to ensure that consultations live up to the aim that a project produces positive and avoids negative outcomes for the local population, they need to achieve a stronger degree of inclusion and influence.

Bibliography

1. Adamczewski, A., & Jamin, J.-Y. (2011). Investisseurs libyens, paysans maliens. *Le Monde Diplomatique*, pp. 20–21. Retrieved from <http://www.monde-diplomatique.fr/2011/09/ADAMCZEWSKI/20937>.
2. Adamczewski, A., Jamin, J.-Y., & Tonneau, J.-P. (2011). Investisseurs versus paysans locaux vers quelle agriculture irriguée au Mali?: L'exemple du secteur sucrier. *Transcontinentales (online)*, 10/11.
3. African Development Bank. (2009). *Mali. Projet Sucrier de Markala: Résumé exécutif de l'étude d'impact environnemental et social*. Retrieved from <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/mali%20fr.pdf>.
4. Anseuw, W., Boche, M., Breu, T., Giger, M., Lay, J., Messerli, P., & Nolte, K. (2012). *Transnational Land Deals for Agriculture in the Global South: Analytical Report based on the Land Matrix Database*. Bern/Montpellier/Hamburg.
5. Baumgart, J. (2011). *GIZ Assessing the contractual arrangements of large-scale land acquisitions in Mali with special attention to water rights*. Eschborn.
6. BBC News. (2012). *Mali crisis: Who's who?* Retrieved from <http://www.bbc.co.uk/news/world-africa-17582909>.
7. BBC News (2013). Mali sets 7 July election date, says minister. *BBC News*. Retrieved from <http://www.bbc.co.uk/news/world-africa-21471186>.
8. Borras, S. M., & Franco, J. (2010). From Threat to Opportunity? Problems with the Idea of a "Code of Conduct" for Land- Grabbing. *Yale Human Rights and Development Law Journal*, 13, 507–523.
9. Borras, S. M., & Franco, J. (2012). Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis. *Journal of Agrarian Change*, 12(1), 34–59.
10. Braun, J. von, & Meinzen-Dick, R. (2009). "Land Grabbing" by Foreign Investors in Developing Countries: Risks and Opportunities. *IFPRI Policy Brief*, 13.
11. Camara, B. (2013). The Dynamics of Land Tenure Systems in the Niger Basin, Mali. *Africa*, 83(Special Issue 01), 78–99.
12. Chambers, R. (2005). *Ideas for Development*. London, Sterling, VA: Earthscan.
13. Cooke, B., & Kothari, U. (2001). *Participation: The New Tyranny?* London ; New York: Zed Books.
14. Cornwall, A., & Brock, K. (2005). What Do Buzzwords Do for Development Policy? A Critical Look at 'Participation', 'Empowerment' and 'Poverty Reduction.' *Third World Quarterly*, 26(7), 1043–1060.
15. Cornwall, A., & Gaventa, J. (2000). From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy. *IDS Bulletin*, 31(4), 50–62.
16. Cotula, L. (Ed.). (2007). *Changes in "Customary" Land Tenure Systems in Africa*.
17. Cotula, L. (2012). The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers. *Journal of Peasant Studies*, 39(3/4), 649–680.
18. Cotula, L., Djiré, M., & Tenga, R. W. (2008). *The Right to Food and Access to Natural Resources: Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor*. Rome: FAO. Retrieved from http://www.fao.org/righttofood/publi08/natural_resources.pdf.
19. Cotula, L., & Vermeulen, S. (2009a). 'Land grabs' in Africa: Can the Deals Work for Development? *IIED Briefing*.

20. Cotula, L., & Vermeulen, S. (2009b). Deal or No Deal: The Outlook for Agricultural Land Investment in Africa. *International Affairs*, 85(6), 1233–1247.
21. Cotula, L., & Vermeulen, S. (2011). Contexts and Procedures for Farmland Acquisitions in Africa: What outcomes for local people? *Development*, 54(1).
22. Cotula, L., Vermeulen, S., Leonard, R., & Keeley, J. (2009). *Land Grab or Development Opportunity?: Agricultural Investment and International Land Deals in Africa*. London/ Rome.
23. Diallo, A. & Mushinzimana, G. (2009). *Foreign Direct Investment (FDI) in Land in Mali*. Eschborn.
24. Diarra, S. T. (2012). Malian Farmers Want Their Land Back. *IPS*. Retrieved from <http://www.ipsnews.net/2012/09/malian-farmers-want-their-land-back/>.
25. Djiré, M. & Kéita, A. (2010). *Revue du cadre juridique et institutionnel de la gouvernance des ressources naturelles : une étude de cas sur la gestion des terres à l'office du Niger*. Bamako.
26. Djiré, M., Keita, A., & Diawara, A. (2012). *Agricultural Investments and Land Acquisitions in Mali: Context, trends and case studies*. London/ Bamako.
27. FAO. (2012). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Retrieved from <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.
28. FAO. (2013). *Trends and impact of foreign investment in developing country agriculture: Evidence from case studies*. Rome.
29. FIAN. (2010). *Land Grabbing in Kenya and Mozambique: A Report on two Research Missions – and a Human Rights Analysis of Land Grabbing*. Heidelberg: FIAN.
30. German, L., Schoneveld, G., & Mwangi, E. (2011). *Contemporary processes of large-scale land acquisition by investors: Case studies from sub-Saharan Africa* (Occasional Paper No. 68). Bogor, Indonesia.
31. Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law & Policy*.
32. Hagberg, S., & Körling, G. (2012). Socio-political Turmoil in Mali: The Public Debate Following the Coup d'État on 22 March 2012. *Africa Spectrum*, 47(2-3), 111–125.
33. Hill, C., Lillywhite, S., & Simon, M. (2010). *Guide to Free Prior and Informed Consent*. Victoria: Oxfam Australia.
34. ILC, CIRAD, CDE, GIGA, & GIZ. (2013). *Land Matrix*. Retrieved from <http://landportal.info/landmatrix>.
35. Kumwenda, O. (2012). Illovo Pulls Out of Mali Sugar Project: 28.05.2012. *Reuters*. Retrieved from <http://af.reuters.com/article/investingNews/idAFJOE84R08320120528?pageNumber=2&virtualBrandChannel=0&sp=true>.
36. Laughlin, J. & Sriskanthan, G. (2011). *UN-REDD Programme Guidelines for Seeking the Free, Prior, and Informed Consent of Indigenous Peoples and other Forest Dependent: Draft for Comment -- December 2011*.
37. Maiga, F. (2012, November 13). Sucrierie : N-Sukala Ouvre Ses Portes. *L'Essor*. Retrieved from <http://www.essor.ml/newspaper/sucrierie-n-sukala-ouvre-ses-portes.html>.
38. McMichael, P. (2010). Food Sovereignty, Social Reproduction and the Agrarian Question. In A. H. Akram-Lodhi & C. Kay (Eds.), *Peasants and Globalization: Political Economy, Rural Transformation and the Agrarian Question*. (pp. 288–311). London: Routledge.
39. Oakland Institute. (2011a). Understanding Land Investment Deals in Africa: Malibya in Mali. *Land Deal Brief*.

40. Oakland Institute. (2011b). *Understanding Land Investment Deals in Africa: Country Report: Mali*.
41. Omorogbe, Y. (2002). The Legal Framework for Public Participation in Decision-making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless. In D. N. Zillman, A. R. Lucas, & G. Pring (Eds.), *Human Rights in Natural Resource Development. Public Participation in the Sustainable Development of Mining and Energy Resources*. Oxford ; New York: Oxford University Press.
42. Pelican, M. (2009). Complexities of Indigeneity and Autochthony: An African Example. *American Ethnologist*, 36(1), 52–65.
43. Pring, G., & Noé, S. Y. (2002). The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resource Development. In D. N. Zillman, A. R. Lucas, & G. Pring (Eds.), *Human Rights in Natural Resource Development. Public Participation in the Sustainable Development of Mining and Energy Resources*. Oxford ; New York: Oxford University Press.
44. République du Mali. (2000). *Ordonnance N°00-027/P-RM du 22 Mars 2000 Portant Code Domanial et Foncier*. Bamako.
45. République du Mali. (2006). *Loi N° 06-045/ du 5 Septembre 2006 Portant Loi d'Orientation Agricole*. Bamako.
46. République du Mali. (2008). *Décret No 08-346 du 26 Juin 2008 Relatif à l'Étude d'Impact Environnemental et Social*. Bamako.
47. République du Mali. (2009). *N°09-PRM-318 du 26 juin 2009*. Bamako.
48. République du Mali. (2011). *Décret de Gérance 2011-216 du 28.04.2011*. Bamako.
49. République du Mali, & China Light Industrial Corporation for Foreign Economic and Technical Cooperation. (2007). *Convention Particuliere sur les Conditions de Cession et de Bail des Terres au Nouveau Complexe Sucrier du Kala Supérieur (N-Sukala)*. Bamako.
50. République du Mali, & La Grande Jamahiriya arabe Libyenne populaire et socialiste. (2008). *Convention d'Investissement dans le Domaine Agricole Entre La République du Mali et La Grande Jamahiriya arabe Libyenne populaire et socialiste*. Bamako.
51. Schutter, O. de. (2009). *Large-scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*: UN. Retrieved from http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf.
52. Sen, A. (1999). *Development As Freedom*: Oxford University Press. Retrieved from http://books.google.de/books?id=vZq_FHQInxkC.
53. Smalley, R., & Corbera, E. (2012). Large-scale Land Deals From the Inside Out: Findings from Kenya's Tana Delta. *Journal of Peasant Studies*, 39(3/4), 1039–1075.
54. Triggs, G. (2002). The Rights of Indigenous Peoples to Participate in Resource Development: An International Law Perspective. In D. N. Zillman, A. R. Lucas, & G. Pring (Eds.), *Human Rights in Natural Resource Development. Public Participation in the Sustainable Development of Mining and Energy Resources*. Oxford ; New York: Oxford University Press.
55. USAID. (2010). *Mali Land Tenure Assessment Report*. Burlington.
56. Vermeulen, S., & Cotula, L. (2010). Over the heads of local people: consultation, consent and recompense in large-scale land deals for biofuels projects in Africa. *Journal of Peasant Studies*, 37(4), 899–916.
57. Via Campesina. (2012). *International Conference of Peasants and Farmers: Stop land grabbing!: Mali, 17 to 19 November 2011. Report and Conclusions of the Conference* (La Via Campesina Notebooks No. 3).

58. Voget-Kleschin, L., & Stephan, S. (2013). The Potential of Standards and Codes of Conduct in Governing Large-Scale Land Acquisition in Developing Countries Towards Sustainability. *Journal of Agricultural and Environmental Ethics*, 1-23. doi:10.1007/s10806-013-9454-y.
59. Ward, T. (2011). The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law. *Northwestern University Journal of International Human Rights*, 10(2). Retrieved from <http://www.law.northwestern.edu/journals/jihr/v10/n2/2/index.html>.
60. World Bank. (2010). *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* Washington, D.C.
61. World Bank, IFAD, UNCTAD, & FAO. (2012a). *Knowledge Exchange Platform for Responsible Agro-Investment (RAI): Consultation and Participation*. Retrieved from <https://www.responsibleagroinvestment.org/sites/responsibleagroinvestment.org/files/Extended%20Principle%204.pdf>.
62. World Bank, IFAD, UNCTAD, & FAO. (2012b). *Knowledge Exchange Platform for Responsible Agro-Investment (RAI): One stop information shop for policy-makers, practitioners and stakeholders*. Retrieved from <http://www.responsibleagroinvestment.org/rai/>.

Appendix 1: Expert interviews in Mali

All interviews were conducted by Kerstin Nolte. She led expert interviews with people involved in processes of land acquisitions, such as officials in ministries or the Investment Promotion Agency in Mali (API), and investors. Moreover she consulted people not directly involved in the process but knowledgeable about it, such as representatives from the National Coordination of Peasants Organizations or other non-governmental organizations. Interviews followed a semi-structured guideline. Thus, certain aspects were definitely covered but a level of openness was maintained to allow the interviewee to touch upon aspects we did not include in the guidelines. Due to reservations from interviewees and sensitiveness of the topic, interviews were not recorded. The interviewer took detailed notes during the interview and typed them the same day.

Code	Date	Gender	Position/ Organisation	Location
M1	29.11.2010	M	DGA ¹ /MSP	Bamako
M2	28.11.2010	M	DGA/N-Sukala	Bamako
M3	29.11.2010	M	Director/ Angeliqne	Bamako
M4	01.12.2010	M-M	Representatives/AOPP ² and Sexagon	Bamako
M5	02.12.2010	M	DGA/Sukala	Dougabougou
M6	04.12.2010	M	Technical Director/ Malibya	Bamako
M7	06.12.2010	M	Representative/ Jamajigi Cooperative	Kolongo
M8	08.12.2010	M	Official/ Planning and Statistical Department, Ministère de l'agriculture	Bamako
M9	08.12.2010	M	Official/ Ministère de l'agriculture	Bamako
M10	21.10.2011	M	Official/ Sukala	Dougabougou
M11	22.10.2011	M	DGA/ N-Sukala	Ségou
M12	28.10.2011	M	Official/ API	Bamako
M13	28.10.2011	F	Representative/ Via Campesina - CNOP ³	Bamako
M14	01.11.2011	M	Official/ FAO ⁴ Mali Country Office	Bamako
M15	02.11.2011	F	Official/ API	Bamako
M16	02.11.2011	M	Official/ Comité Exécutif National du Conseil Supérieur de l'Agriculture	Bamako
M17	02.11.2011	M	Official/ Ministère de l'agriculture	Bamako
M18	02.11.2011	M	Official/ API	Bamako
M19	03.11.2011	M-F	Official/ DNDC	Bamako
M20	04.11.2011	M	Official/ MON	Bamako
M21	04.11.2011	M	Official/ DNACPN	Bamako

¹ Directeur General Adjoint, in English Deputy General Manager.

² Association des Organisations Professionnelles Paysannes, in English Association of Professional Peasant Organisations.

³ Coordination nationale des organisations paysannes du Mali, in English National Coordination of Peasants Organizations.

⁴ Food and Agricultural Organisation.

M22	09.11.2011	M	Official/ DRACPN ⁵	Ségou
M23	10.11.2011	M-M	Human Resources and Logistics Representative/ SUKALA	Dougabougou
M24	14.11.2011	M	Official/ ON	Ségou
M25	22.11.2011	M	DGA/ MSP	Bamako

Source: Authors' compilation

Appendix 2: Focus group discussions in Mali

In every village, a discussion with young people and a discussion with a mixed group of men and women was envisaged. Youth groups ('groupes des jeunes') included men up to the age of 40. In Ballabougou, all young people were working in the fields, so no FGD with a youth group was possible. Each group aimed to have between 7 and 15 participants. In practice, group sizes varied and people would join in discussions and then leave again.

Number	Date	Group	Place	Close to which project
M1	10.11.2011	Mixed Group	Dougabougou	Sukala
M2	11.11.2011	Mixed Group	Sissako	N-Sukala
M3	11.11.2011	Youth Group	Sissako	N-Sukala
M4	12.11.2011	Youth Group	Boky Were	Malibya
M5	12.11.2011	Mixed Group	Boky Were	Malibya
M6	13.11.2011	Mixed Group	Ballabougou	MSP

Source: Authors' compilation

⁵ Direction Régionale de l'Assainissement du Contrôle de la pollution et des nuisances, in English Regional Department for Sanitation and the Control of Pollution and Nuisances.

LDPI Working Paper Series

A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase 'global land grab' has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an 'engaged research' initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: 'what do they do to each other?', and 'how do changes in politics get shaped by dynamic ecologies, and vice versa?' The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

Evaluating Consultation in Large-scale Land Acquisitions: Spotlight on Three Cases in Mali

Critics of LSLAs often point to risks imposed on the rural poor and complain about their lack of inclusion in the decision-making process. Consultation and public participation are widely recognized as an important aspect of fair land deals. Most Voluntary guidelines and Codes of Conduct incorporate claims for consultation as an important aspect. However, when it comes to concrete instructions, they remain unspecific. This paper aims at clarifying the concept of consultation and public participation in relation to large-scale land acquisition. To this end, we first propose a conceptual framework for analyzing consultation. Subsequently, we discuss claims for participation as asked for in different voluntary guidelines and locate them in our framework. Against this background, we discuss consultation processes in Mali: The de jure situation is contrasted to case study evidence regarding three different large-scale land deals that take place within geographical proximity, and are thus in very similar political and legal context conditions. We locate both de jure and de facto processes in our framework and compare them to claims as embedded in different voluntary guidelines. Beyond the unsurprising finding that de facto decision-making in the case studies does not comply with claims for participation such as free, prior and informed consent, we also find that the de jure situation leaves much scope for discretion. The paper concludes with some critical remarks regarding the aims of consultation in large-scale land acquisition processes more generally.



landpolitics@gmail.com

www.iss.nl/ldpi