

Consultation in Large-Scale Land Acquisitions: An Evaluation of Three Cases in Mali

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Summary. — Consultation is widely recognized as an important aspect of fair land deals; however, in terms of tangible instructions, this aspect remains unspecific. We develop a framework for consultation in the case of land acquisitions and analyze proposals for consultation contained in voluntary guidelines and private governance instruments as well as de jure and—by way of three case studies—de facto consultative processes in Mali. We acknowledge that consultations take place in complicated settings of power relations that determine the aims of consultation. In countries with serious background injustice, regulatory changes that alleviate these inequities are necessary before implementing land acquisitions.

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1. INTRODUCTION

The phenomenon of large-scale land acquisition (LSLA) has not only captured 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.¹ Critics of such acquisition often point to the damage this does to the rural poor and complain about their exclusion from the decision-making process. LSLAs have now become an academic field of study (Cotula, 2013). The literature has different foci, such as the scale and geography of the phenomenon (Anseeuw *et al.*, 2012; Cotula, Vermeulen, Leonard, & Keeley, 2009; Deininger, 2011; Edelman, 2013; Hall, 2011), its drivers (Arezki, Deininger, & Selod, 2013; Cotula, 2012; Cotula & Vermeulen, 2009b; Montemayor, 2009; Zoomers, 2010), the processes and political economy of LSLAs (Burnod, Gingembre, & Andrianirina Ratsialonana, 2013; Deininger & Byerlee, 2012; German, Schoneveld, & Mwangi, 2013; Nolte, 2014; Wolford, Borras, Hall, Scoones, & White, 2013), as well as impacts (Mujenja & Wonani, 2012; Oya, 2013; Schoneveld, German, & Nutakor, 2011).

A specific focus of the literature on processes is put on the extent to which local people are consulted and enabled to participate: In a study of land deals for biofuels projects, Vermeulen and Cotula (2010) find that some level of interaction with the local population is usually integrated into the formal approval process. Most countries require an Environmental Impact Assessment (EIA) prior to project approval that contains at least the most basic level of assessment of the impacts on the local population. In some countries, these studies require consultation with affected communities. However, even in these cases, the role of local people remains rather passive. Cotula and Vermeulen (2011) examine mechanisms of consultation and consent and scrutinize how local people benefit from land deals and how they are compensated. They find that consultation procedures are flawed in four ways: the consultation is a one-off event rather than on-going interaction, discussions are often restricted to village elders and elites and fail to include communities that are indirectly affected, records are incomplete and vague, and the role of local people is often limited to expressing concerns, without means to shape, much

less veto, the process. These flaws are documented by several case studies that investigate consultation in specific countries, such as Ghana, Mozambique, Tanzania and Zambia (German *et al.*, 2013), Kenya (Smalley & Corbera, 2012), Mozambique (Borras, Fig. & Suárez, 2011; Fairbairn, 2013), and Mali (Vermeulen & Cotula, 2010).

Against this background, this paper compares claims as found in voluntary guidelines and private governance instruments with case study evidence from three land-acquisition processes in Mali. To this end, we propose a conceptual framework that facilitates such a comparison. In the next section we introduce the framework, which we then use to analyze recommendations for participation as set out in various voluntary guidelines and private governance instruments for LSLA. We then contrast these theoretical considerations with case study evidence from three land-acquisition processes in Mali, drawing on field work conducted in 2010 and 2011, as well as on literature and document reviews. We demonstrate that recommendations made by voluntary guidelines and private governance instruments exceed both what is stipulated de jure and happens de facto in Mali. With that in mind, the final section takes a critical look at the potentials and limits of consultative processes in LSLA.

2. PARTICIPATORY PROCESSES IN LARGE-SCALE LAND ACQUISITIONS: NECESSARILY TOP-DOWN

The development literature on community rights lists a plurality of aims of participation (Cornwall & Gaventa, 2000;

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Michener, 1998). The wide variety of *aims* can be broadly categorized as bottom-up approaches, initiated by local people and corresponding to participation as an end in itself, and top-down approaches, initiated by non-locals and corresponding to participation as a means to a given end (Chambers, 2005; Goulet, 1989; Pring & Noé, 2002). The difference between top-down and bottom-up development and participation is mirrored in human rights documents. On the one hand, several human rights treaties contain claims for free, prior, and informed consent (FPIC),² especially in regard to the eviction, removal or relocation of people from their land.³ Furthermore, 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 and the World Bank (Triggs, 2002; UN-REDD Programme, 2014).

On the other hand, the ILO Convention (ILO, 1989) and the UN Declaration on the Rights of Indigenous Peoples (UN, 2007) stipulate the right to self-determination for indigenous peoples.⁴ Furthermore, the Declaration on the Right to Development asserts that:

states have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from (UN, 1986, Article 2.3).

It is arguable whether these claims can be interpreted as claims for bottom-up participation.

The importance of distinguishing bottom-up and top-down development and participation lies in their power dimensions. This can be explained by drawing on the work of John Gaventa. Gaventa (2006) presents a tripartite distinction between (i) closed spaces, where decisions are made by a set of actors behind closed doors; (ii) invited spaces, where people are invited to participate; and (iii) created spaces, which are claimed by less powerful actors from or against power holders. Gaventa's first category corresponds to a lack of participation or, in the case of LSLA, the exclusion of local people from decision making. His second category translates into top-down participation. In the case of LSLA, the process by which land is acquired is initiated by non-local people: it can be initiated by the investor through the governmental or regional administrative offices of a host country or directly by the government of the host country. The process of acquisition is thus necessarily top-down rather than bottom-up as the local population neither initiates the land acquisition process nor the participatory process. Rather, they are consulted by the investor or governing body. This is also why when referring to participatory processes in the course of LSLA, we use the more narrow term consultation in the following. Finally, Gaventa's third category corresponds to bottom-up development and participation. Crucially, Gaventa highlights the importance of who actually creates the space, arguing that "those who create it are more likely to have power within it, and those who have power in one, may not have so much in another" (Gaventa, 2006). This power does not only encompass the capacity of A to prevail over B in a conflict, it also entails A's capacity to construct barriers to B's participation, as well as A's capacity to influence or shape B's consciousness (through myths, information control, and/or ideologies) so that inequities themselves become non-issues (Gaventa, 1982). This is why Gaventa argues that "participation as freedom is not only the right to participate effectively in a given

space, but the right to define and to shape that space" (Gaventa, 2006). Similarly, Cooke and Kothari (2001) argue that top-down participation only gives the impression of empowering the poor and excluded but in reality constitutes "simply another means of pursuing traditional top-down development agendas" (summarized by Parfitt, 2004). Such critiques of top-down participation and top-down development more generally are also found in food and land sovereignty proposals (Borras, Saturnino, & Franco, 2012; Oya, 2013), as well as claims for genuinely "human development" (UNDP, 2014) or "development as freedom" (Sen, 1999).

However, as explained above, LSLA and consultation in the course of land acquisitions are inherently top-down. Integrating consultative processes into the course of land acquisitions moves decisions about such transactions from the level of closed spaces to those of invited spaces; it does not and cannot reach the level of created spaces, simply because it constitutes a top-down process. This means that integrating consultative processes into land acquisition procedures cannot satisfy objections by LSLA opponents that are based on claims for bottom-up, agency-oriented "development as freedom" (Sen, 1999). Rather, such a perspective on desirable development would most probably lead to a general refusal of LSLA—precisely because LSLAs are initiated by outsiders and thus necessarily top-down.

Digging further into the different aims of participation, we draw on Borras, Franco, and Wang (2013), who differentiate between three "political tendencies" in regard to the regulation of land acquisitions: (i) the facilitation of land acquisitions, (ii) the mitigation of adverse impacts and the maximization of opportunities, and (iii) the stopping and rolling back of land acquisitions through regulation. Claims that bottom-up development is the only acceptable development imply that land acquisitions should be stopped and rolled back by appropriate regulation. Meanwhile, consultation understood as a means to an end and as a top-down process can contribute to and aim at both facilitating land acquisitions and mitigating its adverse impacts.

To recap, participation has different aims that are rooted in power relations. In the following sections, we look at top-down consultative processes in the course of land acquisition. We investigate how consultation can contribute toward improving the process and its consequences from the perspective of the local population. Throughout our analysis, we bear in mind that consultation processes take place in complicated settings of power relations.

3. A FRAMEWORK FOR ANALYZING LOCAL PARTICIPATION IN LARGE-SCALE LAND ACQUISITIONS

Our own conceptual proposal is depicted in Figure 1. It draws on Chamber's concept of ladders of participation that organizes the different procedures commonly subsumed under the heading of "participation" into what Arnstein (1969) calls "ladders of participation" (Chambers, 2005). The "rungs" of these ladders represent ascending levels of participation according to the degree of influence of local people (see the vertical axis of Figure 1). It differentiates between three forms of consultation on the basis of the *degree of influence* of the local population: information as a one-way-process in which the investor informs the local population about the project, information as a two-way process in which the investor informs the local population and they can provide feed-back, and 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 add a time dimension, to differentiate between

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