

RACE FOR THE PRIZE: LAND TRANSACTIONS AND RENT APPROPRIATION IN THE MALIAN COTTON ZONE

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Introduction

This paper describes how agricultural land in peri-urban areas of the Malian cotton zone is converted, at a remarkable pace, from inalienable customary tenure to various forms of exclusive and alienable holdings. Around the rapidly expanding and densely settled urban centres, in a rough circle with a radial stretch of some ten to twenty kilometres, agricultural fields have become vehicles in a race. The prize pursued in this race is not so much the land itself as its value; the winner is not necessarily the one who, at the end, holds legal possession but instead the individual who has managed to extract the maximum portion of the land's rent.

The participants are numerous and varied; we find customary land chiefs, farmers with customary rights to till the land, merchants, middlemen, commune employees, district and regional government bureaucrats, and, finally, the Malian state, providing the separation of the latter's objectives from those of its servants is at all meaningful. An equally rich mix of strategies, legal and otherwise, is employed, and not just because of the multitude of objectives; in a transitional environment characterized by both legal pluralism and governmental impotence, novel ways to gain advantage thrive.

This text is exploratory, and much work remains to be done with regard to land transactions and rent appropriation in the study area; as cities in the cotton zone expand, a succession of new plots are targeted, and as one race concludes, another begins. Ultimately, however, the findings in this paper support an old lesson. As we shall see, it is mostly the wealthy, the powerful, and the informed that succeed in a race contested under such murky conditions. Although the social fallout of these processes have yet to fully settle, it is plain to see that few winners will be found among the farmers that held original rights to the land.

The information on which much of the paper is based was collected during a visit to the Malian cotton zone in February and March 2001. Besides gathering data on the particulars of 40 odd land transactions in the central part of the zone,¹ interviews were made with district and regional officials, middlemen, land chiefs, court officials, surveyors, and researchers. The main part of the fieldwork took place in the towns of Koutiala (74 000 inhabitants) and Sikasso (114 000 inhabitants).² Remaining information was obtained through official documents and literature.

The Malian Cotton Zone

The Malian cotton zone is situated in the south-eastern corner of Mali, bordering Guinea, the Ivory Coast and Burkina Faso (figure 1). Mean long-term annual rainfall ranges from 600-800 mm in the northern part of the region to 1200-1400 mm at the southern fringe. Besides the cultivation of food crops such as millet, sorghum and maize, production of cotton as a cash

crop has increasingly gained importance during the last decades. The region is among the most densely populated areas in Mali. Cotton is Mali's biggest export product, and the relatively well-developed infrastructure of the region is a result of it being the part of the country where all of Mali's export cotton is produced. The cotton boom in southern Mali during the last decade has caused the Malian cotton zone to be referred to as an African success story.

The population in southern Mali has been growing rapidly for several decades. Administrative reports from the 1940s and 1950s indicate a considerable population growth in the area. After independence, three censuses have been carried out (1976, 1987 and 1998). In addition, surveys of the population were undertaken by the cercle (district) administrations in 1967, 1982, 1996, and 2001. In the Koutiala district, which is the core area of the cotton zone, the size of the population increased from 122 000 in 1967 [Sanogo, 1989] to 396 500 in 2001 (administrative census) which currently implies a population density in the district of forty-one inhabitants per square kilometre.

Population pressure is also increasing through agricultural development. From 1952, cotton production has been based on a guaranteed price announced in advance by the para-statal cotton company (the CFDT until 1974, thereafter the CMDT³). This led to an increase in commercialised cotton from only 150 tons in 1952 to 3 900 tons in 1958, which was only the beginning of a rapid rise in cotton production: in 1972 it reached 68 000 tons, in 1992; 310 000 tons, and in 1998; 561 000 tons. This development made Mali the largest producer of cotton in Sub-Saharan Africa. However, recently cotton production has seen a recession due to a disagreement over farm-gate prices between the cotton producers and the CMDT. This disagreement led the smallholders to go on cotton strike. Consequently, in some parts of the cotton zone virtually no cotton was produced in the 2000/2001 agricultural season, causing substantial reductions in overall production levels. Fraud and embezzlement among top company officials, uncovered prior to the strike, reinforces the image of crisis.⁴

Until the recent crisis in the cotton sector, cash-crop development has been spreading. The main change in this regard has been represented by an extension in space from the core area around Koutiala towards the southwest. The process includes both periods of extensification through rapid extension of the cultivated area and intensification through the application of additional inputs of labour and capital per hectare [Benjaminsen, 2001]. This technological change has also been of benefit to the food crops grown in the area, resulting in an increased food security during the last decades [Dioné, 1989; Raymond and Fok, 1995]. The cotton zone in southern Mali is today a net exporter of grains to other parts of the country as well as to neighbouring countries.

The main ethnic groups in southern Mali are the Minyanka, the Bambara, and the Sénoufo, in addition to the pastoral Fulani. The land tenure systems in the three farming groups are fairly similar.

Institutions and Actors

Customary land tenure

In all cultures, custom is dynamic and changes over time. This is also the case in the Malian cotton zone, as this paper tries to demonstrate. Some institutions and practices may, however, show great resilience to external pressures and a 'customary' system in the cotton zone can be

described with some justification [Benjaminsen, 2002; Colleyn, 1988; Colleyn and Jonckers, 1983; Coulibaly and Joldersma, 1991; Crowley, 1991; Jonckers, 1987; Rondeau, 1980; Sanogo, 1989].

Membership in a lineage determines access to land in the farming communities in southern Mali. Agricultural production is organized in residential patrilineages. These production units are generally also the consumption units. Each production unit holds the right to use a part of the village land. This land is distributed to the unit by the land chief — the oldest male descendant of the founding lineage in the village. Tenure and management of land is tightly connected to religious beliefs. The first settlers in an area establish a sacred alliance with the earth divinities and become, through this direct link, responsible for managing the land. However, land is said to belong to the divinities and to the ancestors and is therefore considered inalienable by chiefs and members of original lineages. The land chief or villagers who have received land from him or whose lineage in earlier generations received land should not sell or give away land to outsiders. The role of the land chief is in this context to allocate use rights to the land. Furthermore, the land chief is by far the biggest landholder in the villages. The village chief who holds an administrative position normally comes from the second lineage established in the village. His task has been, since the French colonial power established this position, to be the contact person and spokesman of the village vis-à-vis the state. Sometimes the land and village chief is a single person.

Villages usually have at least one sacred forest. The land chief is responsible for making sacrifices in this forest to the earth divinities, to God, and to the ancestors on behalf of the village. Failure to comply with norms and taboos related to land and natural resources management may lead to sanctions, decided by the land chief. These may include interdiction to participate in ceremonies, but also rituals designed to inflict health problems or pest damage to the offender's crops. Failure to comply with rules may also bring misfortune to the whole village. 'Thus, the fundamental sanction which the land chief controls to encourage villagers to follow prescribed resource management is a spiritual link to promote well-being, health and fertility' [Crowley, 1991: 42]. These are 'customary' rules and sanctions which today are said to be disintegrating and less respected than before, due to factors such as the expansion of Islam, the influence of modern legislation and state management of forests, and increased market integration [Coulibaly and Joldersma, 1991]. The extent to which one today finds elements of these customary rules in the individual villages varies considerably depending on local political and religious struggles over leadership.

Customary land transactions

Even though the cotton zone is one of the most densely populated areas in Mali, it still has a relatively low density compared to other African regions with similar amounts of rainfall and with noticeable agricultural development [Benjaminsen, 2001]; it is currently only the core area (Koutiala district) that is experiencing an emerging shortage of land. This relative abundance of agricultural land has led to an open and hospitable system of lending land to outsiders. Hence, when all land has been distributed to the diverse lineages settled in a village, plots may still be obtained through borrowing from other farmers, but with one condition attached; investments on the land, because they may signify more long-term claims, are not allowed. Tree planting, digging of wells, or construction of buildings would thus be reason to terminate the contract.

Borrowing of land is basically free of charge, but requires important symbolic gestures. In order to obtain land, borrowers extend gifts of token material value to the head of the lineage holding the land. Such gifts have traditionally been cola nuts, a white cock, or cauri shells. Since the land chiefs have been the largest landholders, they have also been the most frequent lenders of land. The land chief interviewed in Baramba village in the core cotton area (25 kilometres from Koutiala town) said that allocation of land traditionally required a gift of one white cock and 80 cauri shells. In addition, a basket of grain was given to the land chief after the harvest. Other informants said that it was only necessary to give a few grains of the harvest in order to maintain the contract. This should not be regarded as rent, but rather as a symbolic gift manifesting a political allegiance to the village community [Gruenais, 1986; Jonckers, 1987; Platteau, 1993].

Land can be withdrawn when the holder needs it or if the contract is broken by the borrower through investments. In the former case, the lender would usually feel a moral obligation to find some new land for the borrower. A loan arrangement is, however, not necessarily the one-way street that it may at first seem. Borrowed fields are often found on marginal land, and borrowers may improve this land, initially by clearing it, and subsequently through perennial tilling and use of fertilizers. And the borrower, after working a given plot for some years, may be moved by the lender to another marginal area to carry out similar improvements.

Through the increased pressure on land, earlier generations' land loans are today causing conflicts. This happens either when the lending family attempts to retrieve land or when the borrowers start investing in land. The latter is considered an attempt at appropriation and is immediately sanctioned. As confirmed by lawyers in the district court in Koutiala (Palais de la Justice), both these practices appear to be increasing as land conflicts are on the rise and most of these conflicts are linked to earlier loans of land.

In accordance with these findings, Zongo [1999], studying land transactions in the cotton zone in neighbouring Burkina Faso, found that reclamation of land by lenders was increasing [see also Mathieu, 2001]. This usually happened after 20 to 30 years and often at the occasion of the death of one of the original parties to the transaction. There was also a diminution and in some places a disappearance altogether of land loans.

Formal law

In the colonial period in French Sudan, the state and individuals with title deeds were the only possible land owners. This idea came from the French Code Civil or Code Napoléon from 1804 stating in its article 713 that 'Les biens qui n'ont pas de maitres appartiennent à l'Etat' ('goods without a master belong to the state'). And, in its article 539, the Code Civil states: 'Tous les biens vacants et sans maitre ... appartiennent au domaine public' ('all vacant goods without a master belongs to the public domain') [see Rochegude [1977] for a review of colonial law in French Sudan]. Hence, only the state and individuals with titles have property rights to land. Although, over time, a more realistic recognition of customary rights developed within the colonial administration, the system still only acknowledged the use rights of customary holders.

Similarly, according to the Forest Code of 1935 (Code forestier), fallow land, pastures and forests were formally under the authority of the state. There were only acknowledged customary rights to land that had been mise en valeur (put to use, or to which value is added).

This meant in practice that only farming gave a community or individuals customary use rights.

As a heritage from colonial law, the Land Code of 1986 (Code domanial et foncier) acknowledged property rights only in the case of individually held title deeds. Customary rights were defined as use rights with a much weaker status than titled land. On registered residential plots, people hold permis d'habiter which are provisional titles implying a right to occupy the plot and to resell it to a third individual (incurring a tax to the commune of 24 250 CFA).

Since the emerging Malian democracy from 1991 and the new government's decentralization policy, several of the old laws originating in the colonial period have been revised. There were only minor revisions to the Forest Code in 1968 and 1986, but in 1995 a new Forest Code, designed to be more in tune with decentralization efforts, was introduced. However, the state is still the owner of all 'vacant' land such as forests, pastures, and fallows older than ten years. On cultivated land and fallows younger than ten years customary use rights are acknowledged.

The Land Code of 1986 is at the time of writing being replaced by a recent Land Ordinance⁵ (Ordonnance du 22 Mars 2000 portant code domanial et foncier).⁶ In the spirit of decentralization, this new law opens up for the titling of land also in the name of groups (collectivités) either in the form of residential lineage groups, villages, nomadic fractions, or communes.⁷ However, the main question that remains is how these groups can form legal and moral entities; the definition of a group is a dynamic problem, raising issues of permissible entry and exit as generations succeed each other, and is difficult to solve once and for all. As long as the groups have not registered their land they can only hold customary use rights.

The 2000 ordinance aids decentralization; it stipulates, for instance, that procedures related to authorization of expropriation and to foreclosure of mortgaged land should be handled at lower administrative levels than before. It may also strengthen the security of customary rights holders by making it possible to convert individual as well as collective use rights to full property rights. Such conversions will, however, weaken customary rights in the long term; the fate of holders of customary rights will thus depend on their ability to avail themselves of the opportunities provided by the new ordinance and the outcome of the conflicts that inevitably will arise. Finally, the new law makes it simpler and easier to expropriate land. Previously, expropriation had to be authorized at the ministerial level, but with the new law this can be done by district authorities.

Neither the old 1986 code nor the new 2000 ordinance consider transactions of non-titled land to be illegal. However, while the former did not explicitly recognize these transactions, the latter does, but in practical terms there is no difference. When a seller and a buyer agree on a transaction, the two parties and two witnesses usually sign a written attestation. To make a sale legitimate, it is sufficient to take this letter of sale to the local commune administration and have it signed and stamped.⁸

The requirements for obtaining a provisional title are: (1) there should be no conflict about ownership and (2) a sketch map made by the district topographer should be completed. As far as no dispute about ownership is concerned, a commission of six people is set up whose responsibility it is to investigate contesting claims to the relevant land. A letter is sent to the relevant commune, and an announcement is made on local radio and in a couple of

newspapers, indicating when the commission will be present in the village to listen to potential objections to the title.

Upon receiving a provisional title, the landowner has five years in which to complete improvements deemed necessary for a full title to be granted. These improvements are specific to each case, depending on location and intended use. Holders of provisional titles meanwhile pay a tax to the district of 4 700 CFA per hectare per year. Once improvements are completed, the landowner may apply to the regional authorities for a freehold title. Improvements are inspected and a more detailed map is made. Within a minimum of 75 days, providing no competing claims appear and upon the payment of 197 000 CFA for every hectare held, the owner can be in possession of a full title.

Actors

The main actors in the evolving land markets around the towns of Koutiala and Sikasso are the following groups:

Land chiefs: Generally descendants of the first family to settle in an area, land chiefs are the biggest landholders and consequently the most important sellers of land. Land chiefs in villages within a radius of ten to 20 kilometres from Koutiala and Sikasso are currently selling land cheaply and frequently. Their status and prestige among the subjects to which they are responsible is pitched against the threat of their villages being swallowed by the rapidly expanding urban centres.

Farmers: Not only land chiefs have started to sell land, but also farmers in general who feel that they have some land to spare. Sometimes land is sold where there is a conflict over who is the rightful owner. Farmers are rarely buyers.

Urban buyers: Urban elites represent the biggest land-buying group. It mainly consists of wealthy merchants and bureaucrats. About half of the transactions studied involved merchants as buyers. Despite other professional commitments, however, the motivation for land purchases by members of this group is generally to engage in farming.

Middlemen: In about a third of the land transactions studied in Koutiala there was an intermediary involved. These middlemen are known locally for having detailed knowledge of the peri-urban land market. In Sikasso, there is an estate agent who is also a speculator in land. In an interview, he states that he represents 'a new race' which he expects to grow.

Urban communes: Urban communes are major actors in the land markets in the Malian cotton zone. Through the expropriation of customary holdings and their subsequent subdivision into residential plots, urban communes represent the main driving force in the expansion of urban centres. Besides obtaining parts of the revenue from sales of residential plots, urban communes also realize tax revenues from building and occupancy permits.

District and regional authorities: District and regional authorities represent the state as the land owner. The district awards provisional titles, while the region allocates full titles. Taxes are collected from owners with provisional titles, while full titles are sold for a one-time fee. state authorities also realize revenues from expropriation⁹.

Land Transactions and Rent Appropriation

Erosion of customary norms

A feature of the transition from inalienable customary land to alienable and exclusive holdings is the rapid and apparently smooth manner in which it takes place. Three underlying forces can be identified in this transition [Coulibaly and Joldersma, 1991]. First, Islam has been expanding in the area, especially during the last decades and at the expense of local animistic practices. Because customary norms and their sanctioning are strongly linked to such animistic beliefs and practices, an erosion of traditional authority inevitably attends this transition. Because Islam, in contrast to customary belief systems, does not militate against trade in land, the idea of land as a communal inheritance with deep spiritual significance has gradually lost currency.

A second challenge to customary norms is made by the commerce that expanding towns in the cotton zone push ahead of themselves like ripples in a pond. As observed by Bohannan and Dalton [1962], money, by providing a universal medium of exchange, will naturally tend to dissolve the boundaries that traditionally exist between different groups of goods and their legitimate modes of exchange. When these 'multicentric spheres' disintegrate, goods such as land that were previously only transferred through succession and reciprocal arrangements may enter the market economy.

Modern legislation and the telescopic reach of local and regional government bodies represent a third force contributing to the erosion of the legitimacy of customary norms in land relations. In rural areas, this force mainly involves state management of forests and village woodlands. In peri-urban areas, however, expropriation exerts increasing influence over how rights to agricultural land are perceived. The effect is straightforward and unilateral; in villages in the immediate vicinity of major urban centres, tenure security is reduced through the risk of losing land to local government.

Initial sales

To potential buyers of land, land chiefs are attractive business partners. Not only do they possess more land than other villagers, and thus possess a greater variety of holdings from which to choose as well as the possibility of making large purchases, but land chiefs also possess more secure land, insofar as they retain some influence over other lineages' land. This latter point is illustrated and formalized through the provision that the land chief must sign any provisional title application. Among the 34 straight sales of land registered by us, 16 (47 per cent) represent sales by land chiefs. In terms of area sold, however, their share is much higher: of 301 hectares traded, 221 hectares (73 per cent) were lands previously held by chiefs. The average size of holdings sold by chiefs was thus 13.8 hectares, compared to an average of 4.4 hectares among other sellers.

Whereas the reasons why chiefs are attractive to buyers seem straightforward, the reasons why chiefs themselves are attracted to buyers are more puzzling. To understand these reasons, it is necessary to consider the limited options faced by chiefs in peri-urban locations with dwindling authority among their subjects and the prospect of dwindling land areas over which to rule as land-hungry urban dwellers and urban commune officials threaten to swallow their villages through conversion of loans to permanent ownership or through expropriation. It appears that chiefs, and the communities to which their variable authority applies, in these conditions fall into three broad categories: those who resign themselves to the inevitability of

town expansion and complete commoditisation of land; those that take the middle road, accepting limited commercial transactions in land while attempting to maintain some level of social cohesion and traditional values; and those who vehemently resist the process.

The basic strategy of those chiefs completely resigned to the process seems to be to cash in quickly before the expropriators arrive, selling untitled customary land indiscriminately in quantity at relatively low prices rather than engaging in the traditional lending agreements. This is certainly a fair description of what is going on in many villages around Sikasso and Koutiala today, and it is in these villages that the most rapid transformation from customary to market system takes place. Under these circumstances, chiefs, rather than fulfilling their role as guardians of customary law, are often the first to embrace the new market order and thereby trigger a process of land alienation that rapidly spreads to the rest of the village.

Those who take the middle road will follow a slightly different strategy. Chiefs and complying subjects will here sell land at even lower prices, sometimes approaching in value the symbolic or token gestures associated with loans, but will try to restrict the amount of land made available through time. The discrepancy between demand and supply of land will then be used to ensure that outside buyers are of a preferred type; friends or relatives of existing villagers (who might not afford market-clearing prices), or erstwhile townspeople willing to settle and participate in the social mechanisms of the village.

Finally, there are those that resist. There are still chiefs in the area with enough authority both to summarily reject prospective borrowers or buyers from town and to convince their subjects to do the same.

Who are the initial buyers of customary lands? Expropriation notwithstanding, buyers are generally town dwellers who wish to farm but who also possess other comparatively lucrative income-earning opportunities. Of the 34 transactions recorded, 16 involved purchases by merchants and shop owners of various kinds. Most of the remaining transactions involved purchases by government bureaucrats and entrepreneurs. In only one case was land bought by an individual describing himself as a farmer, plain and simple, with no other professional interest. It should be noted, however, that initial buyers of land by and large engage in transactions for the purpose of farming.¹⁰ Only one of the transactions registered involved a resale. Of the 18 parcels where no fixed improvements existed at the time of sale, only six had failed to see improvements completed subsequent to the transaction. Moreover, two of these six parcels were purchased within the last three months, and all within the last five years.

The inflation-adjusted per hectare price for initial sales, when aggregating land sales registered by us, was roughly 140 000 CFA or approximately USD 200. This can be compared to annual per hectare net revenues from cultivation of typical crops such as cotton, millet, or maize of some 40 000 to 60 000 CFA when hired labour and machinery is applied, giving present values of 400 000 to 600 000 CFA per hectare at a ten per cent discount rate.¹¹ Part of the rather substantial discrepancy between land prices and net present values from crop cultivation can be found in the very cheap prices for land supplied by communities following the middle road. The risk of having land expropriated, discussed later, will further depress prices. And, as pointed out by Shipton [1989], it may be marginal lands that first enter the market, because there would be less hesitation among potential sellers to sell this type of land. The discrepancy must, however, also be considered in the light of cash constraints and limited credit markets. Many farmers in rural and peri-urban areas, though poor, possess more land than they can meaningfully cultivate using family labour alone. Since credit is restricted

to farmers with legal title to land or to very wealthy individuals, poorer farmers are able neither to till nor to invest on this 'surplus' land.

An alternative that might seem available to sellers is to put their land up for rent. However, rental arrangements, for which the market is limited even in central urban areas, are very uncommon in rural and peri-urban communities.¹² This is in part due to the aforementioned cash constraints within these communities. In addition, urban dwellers without such constraints, though increasingly willing to buy land outside the town perimeter, seem unwilling to rent because land improvements are unfeasible or unattractive. The classic distribution of wealth between landlord and potential tenant is here reversed, with the landlords generally being poor and the potential tenants comparatively wealthy. On the one hand, potential tenants with ability to invest will often be prohibited from doing so since such behaviour is seen as an effort to claim permanent possession; on the other hand, they will be unwilling to do so because of the obvious risk of having the rental agreement terminated without compensation for improvements.

Some sellers will, however, attempt to increase their share of the spoils by dubious means. We were told of many instances where the same parcel of land had been sold to more than one buyer. In one such case the buyers took the seller, a chief, to court. The owner with the oldest dated letter of sale was in this case given possession of the land.¹³ And rather than instructing the chief to return received moneys to the two other buyers, he was told to provide land of equivalent value for these also. Another adaptation is seen whereby sellers alienate land that does not belong to them. A particularly crafty individual in Koutiala had, by virtue of his position as chief, sold vast tracts of land belonging to other lineages. In some cases, these lineages were able to reclaim their land; in others, notably when the buyer was a wealthy individual, they were not.¹⁴ When successful, swindles such as these may increase rent appropriated by sellers, who may or may not be land owners, but may thus also serve the interests of wealthy and powerful buyers.

As far as buyers are concerned, at this stage their rent appropriation is still unknown, depending on the fate of their land in the future. Clearly, as evidenced by the discrepancy between sales price and obtainable net present value from agriculture, they may gain from cheap purchases of rural or peri-urban land simply by being prudent farmers. They may lose, however, if their land is expropriated. Or they may gain considerably more if they manage to acquire legal title to their land. Before we turn our attention to the latter process, however, we must briefly consider the role of middlemen.

The role of middlemen

As noted earlier, middlemen were involved in roughly a third of transactions recorded by us. The role of middlemen is, at least for now, one that is mostly enacted in the initial sales described above, and their share of the spoils is therefore constrained by the comparatively modest prices typical of these transactions. At the low end, we find individuals who, for various reasons, have a multitude of contacts among both buyers and sellers, for instance people whose business makes them familiar with both rural and urban communities. In the process of socialising with these contacts, they register the desires of potential transactors and, if a suitable match is found, bring them together. Their fees, around five per cent of price, is attuned to their modest involvement. More professional agents, who carry out their business in a more systematic fashion at established premises and who probably involve

themselves to a greater degree in their clients' hunt for land, require a fee of ten to 15 per cent of the price.

It is possible that a third and more speculative group of middlemen should be distinguished. It is by no means an uncommon practice for middlemen to quote different prices to seller and buyer. This is, of course, a strictly illegal practice in nations where the role of real estate agents is more established. In Mali, however, the distinction between fraud and honest speculation with respect to untitled land seems more obscure.

A slightly different type of racket is also in operation. Instead of quoting different prices, middlemen may keep part of the land for themselves, presenting buyers with a plot reduced in size from that which the seller has supplied. The beauty of this arrangement is that it is not jeopardized by face-to-face confrontations between the clients, so long as these do not take place in the field or are not accompanied by maps of the field in question.

Middlemen are, however, a desirable feature of the land market menagerie insofar as the market itself is seen as desirable. They act as lubricants in a highly imperfect market machinery characterized by vast information asymmetries and differing access to capital. And, despite their often inventive efforts to secure a larger portion of the rent, their share, at least in aggregate, remains modest. Ten or 15 per cent of an already limited per hectare price does not amount to much. In order to become important competitors in the race for the value of land in the Malian cotton zone, middlemen would have to recognize and exploit the potential provided by legal titles. And such a middleman is as yet a very rare breed.

Titling

Widespread acquisition of individual titles by chiefs and other original owners of village farmland would be an apparently viable way for peri-urban communities to resist town expansion. This would not only ensure tenure security for original land holders — titled land cannot be expropriated except under extraordinary circumstances¹⁵ — but would mean that those who eventually did decide to sell their land would receive prices for it that vastly exceed those attained for customary holdings.¹⁶ Such a strategy may, however, backfire, as evidenced in one of the villages we visited, located 17 kilometres outside Sikasso. Here, villagers stated frankly, with the chief in attendance, that sales became legitimate at the precise point when the chief acquired title to his land, an act perceived as doing away with customary restrictions. Thus, titling, even when it can be afforded, may instead trigger and accelerate the process of rapid land alienation in rural areas.¹⁷ Moreover, the fact remains that the cost of legal titles to land is beyond the means of most villagers.

The only cost, officially, of acquiring a provisional title is the 15 000 CFA or so needed to obtain a sketch map. After a provisional title is secured, annual taxes to the district of 4 700 CFA per hectare should be paid. A provisional title, however, is only an intermediary stage on the way to full title; unless required investments are completed within five years, the provisional title should be revoked. A full title will require a further one-time payment of 197 000 CFA per hectare.

These costs seem prohibitive for customary farmers, who realize net revenues of some 40 000 to 60 000 CFA per hectare per year. Even when ignoring the costs of maps and investments, farmers would have to save net revenues from around four years of cultivation to pay for every hectare of titled land.¹⁸ In view of this, the lack of titles among original holders is

hardly surprising. Apparently, however, these costs do not deter urban dwellers from seeking title to purchased land to the same extent. If the official cost of a title is high compared to the incomes of peri-urban farmers, it is also low compared to the potential value of possessing such title. More than 40 per cent of recorded parcels without full title were currently in the application process for provisional or full title.

In fact, however, obtaining legal titles to land is, also for urban dwellers, an exceedingly expensive and painfully slow process. First, the very attraction of possessing legal title means that the demand for such titles is huge. Second, for various reasons such as general elections and introduction of the new ordinance, the titling process has been halted at both district and regional levels in recent years. Third, and more importantly, the discrepancy between demand for and supply of titles, arising from a similar discrepancy between official cost and value, has created a queue. Within this queue, it is primarily individuals with an inside track to government or those capable of affording substantial ‘extra-invoice’ payments who are given service.¹⁹

The necessity of bribes in title acquisition has the effect of slowing down the application process. The backlog that accumulates will raise the price in what is, in effect, a monopoly situation. Perhaps importantly, this procrastination is fully in line with the economic objectives of both the state and local government; because awarding titles is financially inferior to expropriation, there is no fundamental bureaucratic incentive at any level to speed up the titling process.

Expropriation

Expropriation, which is the responsibility of the communes, comes about mainly for one reason — creation of residential plots — but in two different manners. The first of these is through lotissement, which involves the expropriation of relatively large areas for which the urban commune subsequently purchases title from the regional office in Sikasso. Compensation for land expropriated in this manner follows a fixed schedule,²⁰ the important stipulation being that plots above a size of 3.5 hectares are all compensated identically regardless of size. Expropriation by lotissement occurred twice in Koutiala over the last decade, both times in 1994. According to information supplied by one commune topographer, these expropriations involved some 600 hectares of land; according to another, the area expropriated, based on number of plots, amounts to barely 200 hectares.²¹

The other form of expropriation is through raccordement. This involves, officially, the piecemeal ‘joining together’ of residential areas separated by customary holdings. Large tracts have been expropriated this way.²² Here, lands are not provided with full title by regional authorities, who instead simply provide the commune with the permission to develop the land for residential purposes. The distinction does not, apparently, serve any practical purpose besides presumably allowing a faster and more flexible process. In terms of compensation, however, there is an important distinction; compensation does not follow a fixed scale but is determined through negotiations between commune and landowners.

The disinclination, on the part of customary landholders, to simply wait for expropriation now seems obvious. First, if expropriation is through lotissement, compensation will be the same whether your land is 3.5 hectares or fifty hectares, investments notwithstanding, and the rational thing to do is thus to sell all land on consolidated plots exceeding 3.5 hectares. Fragmentation through sales will, among other things, have the effect of exacting greater

aggregate compensation from expropriation, and thus is a market born. Second, if expropriation is through raccordement, even the meagre compensation stipulated for lotissement expropriation is uncertain.²³

It is in the conversion from farmland to residential plots that the big money lies. The arithmetic is quite simple. Of the land seized by the urban commune, 30 per cent are deducted for roads, pathways, and other public areas. The remaining 70 per cent is converted into residential plots of 15 by 20 metres, giving roughly 23 plots per hectare. For expropriations up to four hectares, one of these plots (or three per cent of land now greatly enhanced in value), plus occasional cash compensation for any improvements undertaken, is returned to the expropriatee.²⁴

Each plot sells for between 200 000 and 400 000 CFA in Koutiala and between 300 000 and 500 000 CFA in Sikasso, depending on location. This provides revenues of between 4.4 and eleven million CFA per hectare, subsequent revenues from building and occupation levies not included.

With regard to areas expropriated and partitioned by the commune, it is the state that initially receives these revenues, but up to 40 per cent is returned to the commune providing appropriate investment projects can be identified. Taxes paid subsequently by residents for building and occupancy permits add a further 1.35 million CFA per hectare to commune coffers. Again, however, there are various ways in which to extract a share of the rent for shrewd officials. First, it is possible to fiddle with compensation numbers; official documents may indicate greater compensation to expropriatees than was actually given, leaving plots available for sale by individual government officials. Second, areas assigned as public spaces on the official plans may in fact be sold as residential plots on the sly by the same officials. Third, in the past, plots have been sold at official prices as low as one third of the going market rate, leaving ample room for 'extra-invoice' payments.

Sharing in this bonanza are also some of those individuals wealthy or crafty enough to obtain legal title to land in areas earmarked for residential development. Among these we find the single, genuine land speculator in Sikasso, who purchases land around the town from chiefs and other customary holders, obtains title to these areas, then resells the land as residential plots for a per-hectare price that is 20 to 100 times greater than that for which he bought it.²⁵ It is possible that other urban dwellers are able to take advantage of the opportunity to convert titled land to residential plots but we found little evidence of this; the four farmers we met who had succeeded in obtaining legal title to their land all used it for farming.²⁶

One final strategy does, however, require examination: the direct conversion of customary holdings to residential plots. In the early 1990s, a powerful chief in Koutiala sold large parts of his land as residential plots without having obtained title.²⁷ A few years ago, the commune deemed these sales to be legal. The power and pull wielded by the chief in question is certainly a consideration here, but the practical difficulties of expropriating and selling land on which residents and dwellings are already established should not be ignored. Similar developments were observed, albeit on a smaller scale, outside Sikasso. Here again, a chief sold land as residential plots directly to urban dwellers wishing to settle outside the town centre. The prices obtained, given the absence of security engendered by legal title and occupancy and building permits, is considerably lower than those obtained for residential plots on titled land; but they are also considerably higher than the modest prices obtained when customary holding are sold wholesale to urban dwellers. It is thus possible that the

superior strategy for customary holders, as far as rent appropriation is concerned, is to ignore formal procedures entirely and to effect the process of conversion from customary holdings to residential plots themselves. Such a strategy is, strictly speaking, not legal. As should now be apparent, however, *de jure* and *de facto* considerations are often immaterial to one another in the Malian cotton zone.

Rent and rent appropriation

Rent generated by urban expansion in the Malian cotton zone cannot, of course, be attributed to ‘the original and indestructible powers of the soil’ in the classical sense; it is, in the main, a location rent. Regardless of whether or not one considers it an unearned surplus, however, the rent formation that attends the conversion of customary holdings to residential plots is substantial. If we primarily are interested in the rent formation caused by increasing land scarcity as cities expand, then it matters how we regard the value of land prior to such expansion. Qualifications with respect to credit market failures and the attendant notion of ‘surplus land’ notwithstanding, the net present value of tillable land averages roughly 500 000 CFA. The total value of land partitioned into residential plots reaches an average of around 9.4 million CFA per hectare, building and occupation levies included. Rent formation is the difference between these figures; around 8.9 million CFA.

Who receives this bounty? Consider the typical sequence of land alienation that accompanies urban expansion (figure 2). In this scenario, a plot of land held under customary tenure is first sold on to an urban dweller who, unable to obtain title, has it expropriated by the urban commune, which in turn sells the land as residential plots. In this sequence of events, given average figures observed by us, the original holder of land will be left worse off by some 360 000 CFA per hectare — the net present value of tillable land minus the average price of 140 000 CFA per hectare for initial sales — thus ‘capturing’ a negative four per cent of total rent formation. The urban dweller who pays 140 000 CFA per hectare will in turn receive residential plots worth the equivalent of 160 000 CFA per hectare upon expropriation (he will receive 0.43 plots per hectare, given an average land size of 8.8 hectares per transaction), and thus realize a gain of 20 000 CFA per hectare, or 0.2 per cent of rent formation. The commune and the state will share the ‘remaining’ 104 per cent, depending on how much of revenues from sales of plots that the commune is able to recoup through public projects. If the maximum 40 per cent is retrieved, then the commune will capture just over 4.5 million CFA (or 50.6 per cent) — 1.35 million from building and occupation fees and the remainder from sales. The state will capture 4.73 million (53.2 per cent), all of it from sales.²⁸

The inclusion of a middleman would distort these figures by at most 0.2 per cent of the total rent formation, at the expense of customary holders and urban dwellers. If, as an alternative, one chose to regard the initial sales price as representative of the true value of land prior to urban expansion, customary holders would be indifferent to this expansion. Urban commune and state would still capture 99.8 per cent of the rent between them. The basic picture also changes little when one considers the purchase of a customary holding by a speculator who succeeds in obtaining full title, thus enabling private development of residential plots. The question here is how much of the rent the speculator and individual bureaucrats will be able to capture at the expense of state and urban commune, and this will depend on the size of taxes and bribes.

It may seem audacious to draw radical conclusions on the basis of such a limited sample of transactions. The most important points are, however, quite insensitive to large variations in

sample size and observed variables. For example, even if the true price paid for customary holdings is the double of what our data indicate, or if true discount rates are twice of our estimate, land prices paid to customary holders would still fall short of net present values from agriculture. Note also that any substantial underestimation of initial sales prices is implausible, since negative rent would then be realized by urban dwellers whose untitled land is subsequently expropriated.

Conclusions

Problems of land rent appropriation as towns expand are not confined to the Malian cotton zone. Nor are they of recent origin. Suret-Canale [1971] describes a 1935 decree for French West Africa, allowing the French administration to ignore the claims of ‘certain speculators’ to uncultivated land, in the following manner:

The ‘speculators’ here are clearly Africans claiming their rights over lands that had gained in value through town building, or road or railway construction, and which the colonial companies or the settlers had arranged to have ‘conceded’ to themselves, so that they could ‘speculate’, in a perfectly legal manner, by parcelling the land out with enormously enhanced values. In effect, the difficulty which the Africans encountered in having their land rights acknowledged was only equalled by the ease with which the companies or individual Europeans arranged to obtain ‘concessions’ often of immense portions of land claimed by the state. (pp. 257-8).

According to a popular theory, the source of increased agricultural land market activity in Africa is to be found in population growth and agricultural commercialisation. In short, these give rise to increased land values, creating a demand for the more secure and specific rights granted by full titles, which in turn permit redistribution of holdings from less to more efficient farmers [Platteau, 1996]. In the Malian cotton zone, both population growth and agricultural commercialisation are prominent features of the overall dynamics, and features of the above process can be observed in some rural areas. Around the urban centres, however, there is a sense in which this process is reversed. In what we consider to be a typical sequence, sales take place prior rather than subsequent to acquisition of titles, and it is the acquisition of title that in turn causes the steep rise in the value of land. There is, of course, nothing organic or evolutionary about this reversal: land market activity is urged on by the fear of losing customary holdings to expanding urban centres, and title is most often established only after land has been expropriated. Indeed, it is the lack of protection against expropriation, as well as the meagre compensation that attends it, that depresses the value of untitled land.

We have described the competition for land rent in the Malian cotton zone as a race. And, as in a race, the actors involved are competing against both time and each other. Chiefs and other customary holders, in order to minimize their losses, must sell their land before expropriators arrive on their doorsteps; urban buyers of land must obtain title before the same expropriators seize their land; the state and the commune must expropriate before titles are obtained; and speculators, such as there are, must on the one hand buy ahead of urban farmers and on the other obtain title before land is expropriated.

It is a race that disproportionately favours those who are able to exploit asymmetries of information and discrepancies in wealth. The regional government and its servants control the titling process, which is hardly unusual. Through this control, however, they are also able to

create a virtual local government monopoly in development of residential areas; by slowing down the titling process to a crawl, they ensure that urban development and its attendant riches are carried out and realized only by various branches of government or by individuals wealthy enough to buy into the process through bribes. The expropriation tool acts as a price depressant: directly, through the meagre compensation meted out to expropriatees; and indirectly, by engendering a market for land where per-hectare prices are but a fraction of those that apply to sales of residential plots.²⁹

It is a system that rewards disregard for formal law and procedure. In government, direct monetary bribes linked to purchases of titles and residential plots are but alternatives to more inventive strategies such as selling multiple titles to the same land and residential development of areas officially designated as public spaces. Institutional problems also affect strategies at other levels. A single customary holding will be sold several times over to different individuals; land held by one individual will be sold by another; middlemen will quote different prices to sellers and buyers, or adjust the area exchanged in the process. The results of disputes seem to depend not on any established procedure but on the wealth and power of the individuals involved.

The result of this is that customary holders of land, who are generally poor, end up with very little: they will retain but a fraction of their land and they will retain but a fraction of the value of the land they lose through sales or expropriation.³⁰ The urban dwellers responsible for most of the initial purchases of these customary holdings do not fare much better. Only those few who are able to obtain a legal title will potentially realize the full value of their holdings. It should be noted that the initial transactions between these two groups might be efficient in that they often bring idle land into cultivation, often attended by substantial improvements.

There is also the matter of transaction costs. An institutional environment where justice is something that is auctioned out must, in the long term, be costly. A surfeit of disputes and litigation, contract insecurity, information asymmetry, and bribes are symptoms of struggling economies, and these will be perpetuated if the institutional environment in the Malian cotton zone is allowed to persist. The problem is that those in a position to do something about this environment have substantial economic incentives to maintain the status quo.

Nevertheless, policy measures can be instituted at central government levels that will allow for a more just — and ultimately, we believe, more efficient — division of the rent formation that accompanies land on its journey from rural cradle to urban resting place. First, there is a need for a considerable opening up of the titling process. The price paid for the acquisition of full titles must come down to a level affordable by rural farmers with customary holdings. And the capacity to award titles must be expanded significantly, either by decentralization to district level or by increasing capacity at regional level; this will not only make for briefer application periods and a higher volume of awards, but should also bring down the cost of the bribe, currently far beyond the means of most farmers, that attends each separate application.

Second, the compensation provided for expropriated land must be increased. At the very least, owners of customary holdings should receive compensation equal to the potential net present values realizable through farming. At present, owners of large holdings will receive but a fraction of this. Third, customary holdings should be granted greater security through a more formal recognition of rights, providing greater protection against expropriation and thus higher value in the market. The 2000 land ordinance, not yet implemented at the time of our

fieldwork, goes some way towards addressing this problem; but issues regarding the precise nature of group membership through time need to be resolved.

Finally, there is a need for further research into these matters. In particular, information regarding the social dynamics that compel some chiefs and subjects to sell land, while others resist, is required. Studies of rent appropriation from other regions where urban centres are expanding rapidly would provide valuable comparisons.

Acknowledgements

The authors would like to thank the Nordic Africa Institute for a travel grant that made this research possible. Further research funds were in part provided by the Norwegian Research Council. The authors are also grateful to Camilla Toulmin and Christian Lund for valuable comments to earlier drafts.

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¹ Transactors were identified with the help of middlemen and researchers. In face-to-face interviews, sellers and buyers of land were asked to provide details regarding the transacted land (date, price, size, and location), livelihoods, use of middlemen, reasons for selling or buying, relationship to the other transactor, land use (prior, present, and planned), existing and planned investments (pre- and post-sale; type, quantity, and cost), current and intended legal status (pre- and post-sale; incurred costs), and problems encountered in connection with transactions and title applications. Interviews were also made with residents whose land had been expropriated, and details regarding land size, location, investments, and compensation were obtained. More general aspects of land use, land transactions, and registration were also discussed with respondents.

² These population figures are taken from the preliminary results of the 1998 census.

³ The Compagnie Malienne pour le Développement des Textiles (CMDT) is a para-statal of which sixty per cent is owned by the Malian State and forty per cent by the Compagnie Française pour le Développement des Textiles (CFDT) (in which the French State holds sixty-four per cent). In addition to its main activities related to cotton production (purchase of cotton from the peasants, sale of farm inputs, export of cotton etc.), it has also been given the responsibility for implementing and co-ordinating an integrated rural development programme in southern Mali.

⁴ In 2001, ten top officials of the CMDT are in jail on charges of embezzlement of fifty-three Billion FCFA (approximately 7.5 Million USD).

⁵ In French legislative terms, a loi is a piece of legislation enacted by vote of the National Assembly, an ordonnance is enacted by the head of State, a décret is an enactment of the executive, often used to clarify a loi or ordonnance or to provide the guidelines for its application, and an arrêté is formulated and promulgated at the ministerial, or even the regional level [Elbow and Rochegude, 1990].

⁶ During field work in February/March 2001, the implementation of this ordinance of 22 March 2000 had not started as yet. District and regional authorities were waiting for decrees (décrets) to define the modalities of implementation.

⁷ Following the decentralization reform, the administrative levels of the State are région (region) and cercle (district) each run by appointed state officials. A cercle contains a number of communes administered by an elected mayor and communal council.

⁸ According to the president of the Koutiala court, it is sufficient for the court that the seller has signed and that the land in question is clearly identified.

⁹ Most of the expropriated land is formally not subject to expropriation since customary holders do not have full property rights to land. It is said by state officials that the state cannot expropriate something it already owns.

¹⁰ Most of these urban dwellers have grown up on farms before moving to the city, and possess knowledge of farming as well as a desire to farm; a desire that no doubt is also fuelled by the general farming boom experienced over the last decade or so.

¹¹ These are average figures, based on statistics collected at CMDT in Sikasso and Bamako and data collected by one of the authors in connection with previous studies. Net revenues from crop cultivation will, of course, vary between farmers and from year to year, depending on prices, rainfall, soil fertility, management skills, etc.

¹² The transactions registered were surprisingly straightforward, free of caveats or complex contractual arrangements. Rental agreements mainly involve swaps of land for use of oxen or machinery, or payment in the form of labour or a fixed amount of grain. Land pledges, though not unknown, are not common in the Cotton Zone.

¹³ Such letters of sale were present in eighty-eight per cent of the transactions we recorded. In most cases, witnesses are involved, and in many letters are also taken to the local or district authorities for official registration.

¹⁴ Victims of the sham felt that taking court action against the interests of these buyers would be of no use. 'The court is for the rich', they said. The chief was, however, dismissed from office by his subjects.

¹⁵ This is specified in the 2000 ordinance. Also, topographers for the urban commune in Koutiala informed us that titled holdings were left alone when expropriation for development of residential purposes was undertaken, even when the holding was in the middle of the planning area.

¹⁶ Full titles are perpetual and not subject to tax. Their value derives from security against expropriation and the ability to convert titles to residential plots. We did not record any sales of fully, as opposed to provisionally, titled land. One middleman estimated the market price of titled land to be around 1.5 million CFA per hectare. The value of titled land, however, is probably measured more accurately by considering conversion to, and prices of, residential plots.

¹⁷ This is in accordance with what Platteau [1996] has dubbed the Evolutionary Theory of Land Rights (ETLR), where titling is seen as a prerequisite for land market integration. In the ETLR, however, the link arises simply from the fact that titles are alienable.

¹⁸ Although required funds may, perhaps, be accumulated in shorter time when relying solely on family labour.

¹⁹ Accurate data on the magnitude of bribes are, for obvious reasons, elusive. Most applicants agreed that receipt payments constituted only a fraction of the total. A figure that often cropped up in our conversations with applicants was CFA two million for parcels ranging in size from two to fifty hectares; it is thus possible that bribes, in contrast to official fees, do not vary proportionally with size of land. Another form of blatant abuse of office is illustrated in the case of one Koutiala landowner, who has held a provisional title to his land since 1998. He discovered that the Sikasso office had sold parts of his land, with full titles, to three separate buyers and pocketed the money themselves. A bizarre situation thus obtains, where different individuals hold different titles to the same plots of land; the legal tangle has not yet been unravelled.

²⁰ Land expropriated is compensated through the allotment of the resulting residential plots, which today generally measure fifteen by twenty metres, permitting the commune to seize land while suffering monetary expenditures only with regard to improvements. For land up to 1.5 hectares, one residential plot is awarded; for land between 1.5 and 2.5 hectares, two plots are awarded; for land between 2.5 and 3.5 hectares, three plots are given; and for land greater than 3.5 hectares, four plots are given. Thus, for land up to four hectares, owners retain 0.03 hectares of land from every hectare they are forced to give up and for bigger pieces of land they receive even less, albeit land greatly enhanced in value through the creation of residential plots. Trees planted by the owner are priced between 500 and 3750 CFA, depending on species, but the commune will occasionally deflect these costs onto buyers of residential plots by instructing them to pay for any trees cut during the building process.

²¹ Given the town's population, the former figure seems excessive, since it would involve at least some 6000 plots accommodating at least 30 000 people.

²² Exact figures were not made available to us at the communal headquarters. A topographer with CMDT, however, estimates that raccordement expropriations in Koutiala exceed lotissement expropriations in area over the last decade.

²³ We recorded eight cases of expropriation; in half of these, expropriatees had received, more or less, the compensation stipulated for lotissement procedures; the remaining four cases had received less, and in two cases much less. One respondent was currently in the process of having land expropriated, and had teamed up with seven other landowners in an attempt to build a stronger negotiating platform. The legal position of these landowners, however, seems uncertain to put it mildly; neither expropriators nor expropriatees gave the impression that the latter retain vetoing rights if unsatisfied with the compensation offered.

²⁴ The highest cash compensation received by any expropriatee interviewed by us was 11,250 CFA per hectare.

²⁵ The nature of the investments required of this speculator for him to obtain title deeds was not revealed.

²⁶ Development of urban residential areas by individual urban dwellers, speculators notwithstanding, would happen on a rather limited scale. Whereas land purchased more than five kilometres from the town perimeter averaged 16.5 hectares in size, parcels within five kilometres averaged only 4.1 hectares; and few buyers had purchased more than one parcel.

²⁷ See Bertrand (1994) for more information on this particular chief.

²⁸ Other assumptions here are: a discount rate of ten per cent; the average price of a residential plot is 350 000 CFA; compensation for investments is ignored (these would anyway not significantly affect the result); the absence of public investment in infrastructure (generally accurate); costs of planning incurred by the urban commune are ignored.

²⁹ One would also expect fear of expropriation to discourage investment. The desire to obtain titles, which require investment, will tend to work in the other direction.

³⁰ Note, though, that it is those customary holders with the largest holdings that have the most to lose through expropriation. The discrepancy between compensation and agricultural land value will be lower for smaller holdings.