

Briefing

Land acquisitions and rights;
Law

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Policy pointers

Promoting large investments in agriculture and natural resources to stimulate economic growth should not be at the expense of legitimate tenure rights.

Ongoing land reforms should result in the legal recognition of the collective customary rights of rural communities.

All land policies should strive to strike a balance between modern legislation and customary practices supportive of women's land rights.

Legislators should prioritise the decentralisation of land management services and building the skills of local stakeholders.

Land reforms in Guinea: challenges and prospects for the recognition of legitimate rights

In Guinea, the land legislation and successive reform processes have shown their limits in dealing with the proliferation of major land and natural resource development projects in rural areas. The government has recently launched new land governance reforms. To ensure that the reforms are a success, several major challenges will need to be addressed as a priority. These challenges include the weak or non-existent recognition of collective customary rights of local communities, inadequate dispute resolution processes and inequitable land access for women. This policy briefing elaborates upon these issues in detail and provides relevant recommendations to inform these reform processes, to move towards responsible land governance which recognises and protects peoples' legitimate tenure rights in the face of large-scale investments.

In 1992, the Republic of Guinea adopted a Code on Private and State-owned Land (CFD — Code foncier et domanial) to provide a framework for land issues in the country. This law and successive reform processes have shown their limitations in dealing with an increasing number of major natural resource extraction projects.

The country has adopted an economic approach based on developing mining potential and establishing an attractive legislative framework for large-scale agricultural investment. This has ramped up pressure on rural land, increasing land insecurity and land scarcity in rural areas. Although major investments in natural resources may be beneficial for job creation and food security, they also risk harming the family farming

practised by 60% of rural people and occupying 95% of agricultural land.¹ It may also increase the economic instability of these people through the grabbing of land predominantly governed according to legitimate tenure rights, including collective customary land rights.

Guinea recently launched a number of land governance reforms, primarily by organising a 'National Land Forum' (EGF — États généraux sur le foncier), drafting an Agricultural Framework Bill (LOA — Loi d'orientation agricole) and developing a National Reference Framework (Référentiel national) to harmonise practices for the resettlement of communities affected by development projects. This policy briefing aims to identify major land issues and provide relevant recommendations to inform

those reform processes, in order to move towards responsible land governance which is based on the recognition and protection of legitimate tenure rights in rural areas.

Taking stock of the various issues affecting rural land governance

While many legal texts deal with land issues, very few provisions address the recognition of legitimate tenure rights

Weak recognition of legitimate tenure rights.

Since Guinea gained independence in 1958, it has undergone numerous changes under successive political regimes. While many legal texts deal

with land issues, very few provisions address the recognition of legitimate tenure rights. Article 39 of the CFD merely recognises the rights of those who ensure the productive use of the land under certain conditions.²

The legal recognition of land rights is essentially based on the registration and titling procedures. These procedures originates from a Western concept of individual ownership, and does not take into account the reality of land governance practices in rural areas, where communities have collective customary rights over most land. Nor does it consider the widespread illiteracy of people in these regions. As a result, communities cannot access the necessary legal instruments and administrative processes to secure their land, and face barriers relating to geographical distance, cost and navigating the complexity of the procedures. Therefore, rural land is rarely registered.

A problematic institutional framework and inadequate dispute resolution processes.

The institutional framework for land governance in Guinea involves a multitude of government agencies, while coordination of land policies and legislation is poor.

There is a plan to set up land commissions to implement the CFD at a local level, currently for the prefectures and communes (districts) of Conakry only.³ And yet as far as we are aware, only eight of these commissions have been set up, and only on the Simandou corridor, where a plan is in place to build a railway line for a major mining project. The commissions have been set up in the prefectures covered by the project⁴ to facilitate the installation of a railroad and to promote the amicable and local resolution of land disputes.

The land sector is a fertile breeding ground for conflicts in rural areas because of the wide

range of land use interests. There are many different types of conflicts, including those between communities and the state, between communities and investors, and between farmers and pastoralists, etc.⁵ There are two parallel conflict resolution processes: the courts and tribunals on the one hand and customary leaders on the other hand. Some individuals misuse this flawed dual system in an opportunistic way, for their own benefit.

Rural communities involved in land disputes find it difficult to use the courts and tribunals. Legal services are far away and procedures slow, costly and complex, which to a certain extent deprives communities of their right to justice.

Increasing land insecurity and constant pressure on land.

Major land-based investment projects and the explosion of land commoditisation are factors which aggravate land insecurity and land pressure in rural areas. Since 2010, the country has put a great deal of effort into developing its hydroelectric potential by building dams in Kaleta, Souapiti, Fomi, Amaria and Koukoutamba. There has also been a boom in the mining sector, with an increase in bauxite production capacity and new companies being integrated into the national industrial ecosystem.

This exponential development has led to land expropriations that jeopardise family farming and traditional pastoralism, and increase the vulnerability of already disadvantaged rural communities.⁶ Consequently, their legitimate tenure rights are constantly under threat. Indeed, expropriations in defiance of the law have accelerated due to the economic interests associated with these major investments.

Women's poor access to land ownership rights in rural areas.

Women's access to land in rural areas is hampered by a number of factors, including the persistence of certain harmful customary practices, a lack of awareness of the law, women's lack of economic power and a general failure to comply with the law. There are still deep-rooted gender inequalities with regards to land ownership.

Under the customary land tenure systems, land belongs to men. The systems grant men exclusive rights to manage land issues, and in most cases exclude women from ownership and inheritance. Women have usage and enjoyment rights only, and may only use land on a temporary basis since their rights can be withdrawn at any time. Yet under Guinean national and international law, women's rights are guaranteed and protected.⁷

Land governance approaches to uphold legitimate tenure rights in Guinea

Fully recognising the legitimate tenure rights of local communities. The major challenges of future land governance reforms in Guinea remain the recognition, respect and protection of customary land rights. In order to tackle them, the state would benefit from adopting a rural land code with innovative provisions on land ownership. The aim would be to integrate customary rights into modern law by providing communities with new land documents including property certificates of land ownership and certificates of possession of customary land rights. These documents would be readily accessible, enforceable against third parties and recognised by national legal instruments, in the same way as recent developments have been in other countries such as Mali.⁸

Promoting women's land rights. The guarantees provided by national and international legal instruments on paper are not sufficient to grant women equitable access to land in rural areas. In practice, social and cultural barriers need to be broken down in order to improve access to land resources. The integration of customary law in new legal texts and instruments should not contradict legal principles of equality. All Guinea's land policies must therefore aim to strike a balance between modern legislation and customary practices supportive of women's land rights.

Decentralising land administration. The ongoing reforms should grant further responsibility to local authorities and promote the provision of local services. Establishing management services in local districts will simplify land transaction and registration procedures in rural areas, while reducing the administrative burden which may act as a deterrent.

The decentralisation of land management must be supported by further devolution of the land administration, to provide local authorities with the support they need for streamlined management of land resources. Setting up land commissions should therefore be a priority. In order to work as closely as possible with rural communities, these commissions should be set up for each commune — which normally should be in charge of land resources.

Structural and legislative reforms should lead to robust measures including the devolution of technical services, which should become the local land and natural resource managers, and

building the skills of local actors. This will promote the implementation of new procedures that recognise customary land rights, as well as provide communities with local bodies that are both recognised by modern legislation and in sync with local realities.

Upholding legitimate tenure rights in the face of major investments. Encouraging and promoting large-scale investment in agriculture and natural resources may seem like a win-win to stimulate economic growth and achieve food self-sufficiency and infrastructure development. Such investment should not, however, come at the expense of legitimate tenure rights, already precarious food security or sustainable and inclusive development. Thus, during the investment process, seizing rural lands through expropriations should only be considered as a last resort, in accordance with international standards and voluntary guidelines in this area.⁹

Furthermore, the state should ensure that when expropriations cannot be avoided, multinationals do not relocate rural communities 'informally' without formal decrees. To achieve this, it is essential to define and implement a regulatory framework for the transfer of rural land to domestic or international private investors. The maximum surface area and how long usage rights can be granted for could be regulated accordingly. The framework should also ensure that the rights of legitimate tenure holders to consultation and consent are upheld, and ensure the continued and inviolable inclusion of a significant proportion of agricultural land remains in the hands of communities, regardless of the demands and scale of investments. Procedures governing land transactions in rural areas will need to be more transparent, inclusive and accountable.

Towards legislative and regulatory reform of Guinea's rural land

Faced with these many challenges, and aware of the urgent need to reform the legislative and structural frameworks that regulate and govern the land sector, state actors and civil society organisations (CSOs) have set up initiatives for responsible land governance. At the state level, two of the major initiatives are organising a Land Forum (EGF) and the Ministry of Agriculture's preparation of the first draft of the Agricultural Framework Bill (LOA).

The main purpose of this policy briefing's recommendations is to ensure that national laws recognise and protect the legitimate

tenure rights of local communities. They should form an integral part of the discussions on the adoption of the LOA and the National Reference Framework on resettlement, and of the discussions that will take place during the EGF. Specifically, they call on authorities to consider the constraints associated with administrative procedures for registering land in rural areas.

However, the implementation of these various recommendations is not the responsibility of state bodies alone. They require support from all other land stakeholders, including civil society organisations, local politicians,

customary authorities, and technical and financial partners. All of these stakeholders must play a part in the series of actions to be undertaken, including providing information, awareness-raising, inclusion, training, facilitating dialogue and technical support.

Mamadou Alpha Mariam Diallo, Dakala Grovogui and Moussa Soumaoro

Mamadou Alpha Mariam Diallo is a lawyer, responsible for the Natural Resources Governance Programme at The Same Rights for All (MDT — Les Mêmes Droits pour Tous) and the Collective of NGOs Defending the Rights of Communities (COD-DC — Collectif des ONG pour la Défense des Droits des Communautés). Dakala Grovogui is a substitute lawyer for MDT and COD-DC. Moussa Soumaoro is a sociologist based in Conakry, Guinea.



Knowledge Products

The International Institute for Environment and Development (IIED) promotes sustainable development, linking local priorities to global challenges.

MDT is a Guinean CSO which is actively involved in defending and promoting human rights in Guinea.

COD-DC is an association of ten Guinean CSOs (including MDT) which works with the government on legal reforms for development projects which impact the lives of communities.

IIED provides technical support for COD-DC's activities.

Contact

Brendan Schwartz
brendan.schwartz@iied.org

Thierry Berger
thierry.berger@iied.org

Jérémy Davis
jeremy.davis@iied.org

Third Floor, 235 High Holborn
London, WC1V 7DN
United Kingdom

Tel: +44 (0)20 3463 7399
www.iied.org

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Notes

¹ Republic of Guinea (2017) National Agricultural Development Policy (Politique Nationale de Développement Agricole). ECOWAS, NEPAD. <http://extwprlegs1.fao.org/docs/pdf/Gui186295.pdf> / ² Article 39 of the CFD states: "The following are owners for the purposes of this Code: (1) Natural or legal persons holding a title deed, (2) Occupiers who are natural or legal persons, holders of a land record, housing permit or authorisation to occupy, (3) **Occupiers who are natural or legal persons, who can provide evidence of peaceful, personal, continuous and good faith occupation of a property and as an owner.** Where appropriate, proof of good faith may be provided by any means, and in particular through the payment of property taxes related to said property, **by the productive use of the property in accordance with local customs** or by way of a public survey in the presence of all parties." (emphasis added). / ³ CFD, Article 49. / ⁴ The following prefectures are included: Beyla, Macenta, Kérouané, Kankan, Kissidougou, Kouroussa, Faranah, Mamou, Kindia and Forécariah. / ⁵ Benkahl, A, Diallo, B, Diawara, I, Faye, I M, Hochet, P and Rey, P (2016) Étude sur la situation et les enjeux du Foncier rural en Guinée: Rapport d'état des lieux (Analysis of the study on Guinea's rural land situation and challenges). Insuco. <https://bit.ly/2ZaavFU> / ⁶ See, for example, the case of the Souapiti dam: <https://bit.ly/2LETVLc> / ⁷ See in particular the 2020 Guinean Constitution (Articles 1, 9 and 16), the CFD (Article 19), the Civil Code (particularly on inheritance law) and the Convention on the Elimination of All Forms of Discrimination against Women (1979). / ⁸ See Law no. 2017-001 of 11 April 2017 on agricultural land in Mali, Articles 9, 11 and 16. / ⁹ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, section 16.8.

