

(662) 347.237  
35.072.12 3515

### **3 Legal and institutional conditions for local management of natural resources: Mali<sup>1</sup>**

GERTI HESSELING

Studies of land tenure in Africa have mainly focused on access to and use of land for agricultural purposes, and, to a lesser extent, on access to land for settlers. Land tenure has often been regarded as a hobby for legal anthropologists who – using in-depth, detailed village surveys – studied the relationships between kinship, marriage and management of land. This relative lack of interest in land tenure problems, particularly from the side of donor agencies, was due among other things to a conviction that in Africa (contrary to Asia and Latin America) land scarcity did not exist. In addition, underestimation of the complexity of tenurial systems with respect to land and related natural resources has been widespread.

In the past 10 to 15 years, many development projects in rural areas of Africa have clearly failed. The problems of these projects were primarily the result of:

- insufficient knowledge of local land tenure systems. As a result, the ability of such systems to adequately meet the changing local environment was overestimated; and, at the same time, not enough attention was given to the existing dynamics of various local authority and management systems;
- the role of the African government, which regarded land as state property but was rarely capable of actually enforcing land management;
- degradation of natural resources. Due to many factors (drought, population increase, increased numbers of livestock, extensive agriculture, growing demand for fuel, and inadequate management) the environment in Africa has deteriorated. This is severe enough to jeopardize the chances of survival of large parts of the population: suitable agricultural land is becoming scarce and the quality of other natural resources, including pastures, water and forest is rapidly decreasing;
- increasing conflicts with respect to land and natural resources, stemming from increased competition.

These factors have increased awareness among development organizations that thorough knowledge of local land tenure systems is required in designing and implementing projects. Land tenure should be placed within a wider context. It is no longer enough to understand local land tenure systems only as they relate to agricultural activities. If the quality of the environment (including the quality of agricultural land) is to be improved, an integrated approach must be adopted, including access to and management of cattle pastures; access to and management of water (for consumption, cattle, horticulture, irrigation, fisheries); access to and management of trees and forests.

Access to land and other natural resources is not only determined by legislation, but also by power relations; socioeconomic and political power relations

largely determine whether and when a person will have access to any of these natural resources; and if so, what use he/she may make of them. Since socio-economic and political relations are rapidly changing in Africa, so are rights to land and other natural resources.

As noted, the role of the government in managing these natural resources is of crucial importance. Currently a major issue is who should bear ultimate responsibility for their management. Alternatives include: full responsibility for the government (nationalization); privatization; or a compromise between these two options. For a long time, the first two options were the only ones considered. Property – whether private or owned by the state – was regarded as the most efficient institutional form for resource management and environmental protection. The unworkability of this unilateral approach has been demonstrated by frequent multidisciplinary research, initiated primarily by the Land Tenure Center (LTC) at the University of Wisconsin in Madison (USA), and the *Association pour la Promotion de Recherches et Etudes Foncières en Afrique* (APREFA) in Paris.<sup>2</sup>

Partly due to this research, Sahelian governments – facing dramatic problems of land, natural resources and environment – became increasingly aware that solutions must be sought first among local communities. These communities, in association with government at local and national levels, should be responsible for land and natural resource management. A first step in that direction was taken during the *Rencontre de Ségou* in 1989, organized by the *Comité Inter-Etats de Lutte contre la Sécheresse au Sahel* (CILSS) and the *Club du Sahel*. During this regional conference, representatives of donor agencies, Sahelian governments and rural organizations frankly discussed the interrelationships between such themes as land tenure, management of natural resources, and decentralization, placing them on the political agenda. In this article, I will discuss some of these topics – recent land tenure and environmental management developments – as they have occurred in Mali.

Mali (see map) was selected as a case study because I had carried out a number of consultancies there in 1991 and 1992, related to the legal and institutional conditions needed to implement a new tenure policy. Developments in Mali may in some respects be regarded as representative of those in the Sahel region, but at the same time they are unique, as they are taking place within a specific context of significant political changes. During President Moussa Traore's long-term of office (1968–1991), political discussion of land tenure and environmental issues was more or less taboo. After the coup in March 1991 a transitional government was installed, which expressed an interest in these problems. This paved the way for frank discussions. The degree of openness and dynamism in the approach to these problems (which took the form of almost revolutionary recommendations for future policies) seems to be decreasing, following the appointment of the newly elected government in 1992.

Mali covers an area of 1,240,000 km<sup>2</sup>. There are substantial ecological differences between regions. The northern half of the country belongs to the Sahara, while the south has a Sudanian climate. Average annual precipitation ranges from less than 400 mm to over 1,000 mm in north and south, respectively. The numerous population groups in Mali have different traditions regarding pro-

duction systems and tenurial rights. The most important economic activities of the well over 7.5 million inhabitants are rain-dependent and irrigated agriculture and animal husbandry; horticulture is also emerging. Two major drought periods in past decades, plus severe erosion, decreasing vegetation cover, extensive agriculture, population growth (causing a substantial run on land), as well as poor government policies, have resulted in an alarming lack of fertile land. This poses an increasing threat to the already fragile natural environment.

Section 1, below, presents a brief historical summary of the policies followed in Mali with respect to decentralization, land tenure and management of natural resources, until the beginning of the 1990s. A description of events taking place between 1990 and 1992 follows. These events led to a change in policy: in official statements, land policy and environmental management are now invariably linked with decentralization. In Section 2, a number of constraints with respect to legislation and administration are discussed, followed by suggestions for an improved local management regime. While legal reforms are required with respect to land, natural resources and administration, this cannot be regarded as the sole condition required for better environmental management. On the one hand, politicians at national and local levels must be willing to actually transfer responsibilities to local communities; at the same time, managerial capacity at local level must be strengthened. The political context of a country in the form of a democratic constitutional state, in which local producers are able to play their role as an electorate, appears to be of great importance.

## Decentralization and tenurial systems

### Administrative policy in Mali

Until the beginning of the 1990s, administration and tenure policy developed separately in Mali. They are therefore discussed separately here. Although the pre-colonial era will not be the focus of attention, it seems worth pointing out that Mali is made up of the ancient empires of Mali, Songhai and Ghana and that this historical period was one of relatively decentralized political units (Potholm, 1991; Bagayoko, 1987). In the colonial era, a strong centralized government was introduced in all French colonies. After independence, this was continued by the Malian government, without any modification whatsoever. It was not until 1977 that administrative reforms led to a form of decentralization, which was in fact simply deconcentration. These reforms resulted in the recognition of rural communities as administrative units and the installation of participative structures, in the form of Regional Development Councils and Committees, in 1982. In 1985 this was followed by statutory provision for rural organizations (*Tons villageois*) without, however, an autonomous legal status.

Until the end of the eighties Mali was a one-party state, characterized by a strong centralized government with civil servants largely in control of the society. Rural farmers' organizations were not considered capable of establishing and acting on their own priorities with respect to the local environment; these organizations were regarded by the administration as merely 'intermediaries' for the implementation of centrally formulated development programmes.<sup>3</sup>

## Legal policies on land and natural resources

In the colonial era, the French attempted in various ways and at various times to either substitute the French legal system for traditional law, or to merge the two. For a number of reasons these attempts failed, but as a result Mali had a variety of rules and regulations regarding natural resources at the time of independence. The legal chaos increased still more in the next quarter of a century, as a number of colonial texts were partly maintained while – without apparent attempts to create coherence – various political regimes added new texts to those already in existence. At the beginning of the eighties, it was almost impossible to present a complete survey of existing laws with respect to land and natural resources.

In 1986, the introduction of the *Code Domanial et Foncier* and the *Code Forestier* brought legislative reform, including regulations related to fauna, hunting and fishing. In 1990, a law regarding water management was finally adopted. In 1992, these three documents constituted the legal framework for tenure over resources in Mali. The major characteristics of this framework include:

- ownership of land, forest and water is vested in the state (the principle of *domanialité*);
- traditional users possess usufruct rights to land under cultivation, as long as the state does not need these lands;
- a complicated bureaucratic procedure permits cultivators to gain private property (*concession rurale*);
- clearly defined rights for farmers and pastoralists to fallow land, and to traditional grazing territory are lacking;
- a repressive forest code includes a permit and fine system carried out by forest agents; and,
- there is confusion regarding the responsibilities of the administrative arm of the government and those of the judiciary system, with respect to settlement of land conflicts.

Much existing legislation focuses on the needs of the urban population. It does not take into account the specific complexities of the situation for the majority of the rural population. It also strongly disadvantages cattle breeders in comparison to farmers (no specific pastoral code defining the rights of herders exists, but there are taxes on cattle and sanctions against damage to fields by cattle).

This Malian legal framework concerning land and natural resources is in fact representative of legislation in the countries of the Sahel. The government regards itself as the sole authority capable of managing land and natural resources, leaving little room for local initiatives: both legislation and administrative regimes adhere to centralist and bureaucratic principles. For land and natural resources, state property is the rule; individual property is the exception. Complex procedures discourage farmers – unlike civil servants, traders and high-ranking officers, who are in a better position to obtain titles to land. Between 1986 and 1988, only three farmers succeeded in acquiring titles to land, against 132 others for whom agriculture is not the major source of income. Moreover, privatization does not take into account the fact that at local

level individuals seldom possess exclusive and absolute rights. It is rather a question of 'bundles' of rights to natural resources: a superposition of multiple rights to land, woodlots, grazing lands and watersheds. Local societies recognize particular combinations of rights, whereas these 'bundles of rights' may differ from period to period or from season to season (Bruce, 1991, p. 1). Consequently, legislation does not fit the norms and values of the local population. This leads to evasion, misinterpretation and misuse. As a result, current legal regulations are almost impossible to implement.

## Recent developments: towards local management of natural resources

Due to political developments between 1990 and 1992, Malian government views on land and environmental policy changed drastically. Preceded by social unrest and strikes, and strongly influenced by the actions of students, the coup of 26 March 1991 put an end to 23 years of Moussa Traoré's dictatorship. The *Comité de Transition pour le Salut du Peuple*, under the leadership of Amadi Toumani Touré, was installed as a transitional government within a week and assigned the duty of preparing for free elections within one year.

The coup was primarily an urban phenomenon, from which rural areas felt excluded: 'we are and will remain without a voice' (Bertrand, 1992, p. 17). However, there were also serious implications for the rural areas, as the new government was prepared to seriously review policies towards natural resources. The role of the new Minister of Agriculture, Livestock and Environment, Mrs. Sy Maimouna Ba, was decisive. She proposed making an inventory of major constraints on land tenure and environmental issues during the interim year, to provide a coherent package of policy recommendations for her successor. Within the new political framework, foreign donor initiatives found receptive ground.

To express the new political attitude, CILSS and the *Club du Sahel* organized a national workshop on land tenure issues and decentralization in November 1991. Among the participants were civil servants, lawyers, scientists, and representatives of development and farmers' organizations.<sup>4</sup> Participants unanimously stated that the institutional and judicial systems were the main obstacles to redressing environmental degradation in Mali. Questions of land tenure are critically important not only to the country's agricultural policy, but particularly to the rehabilitation of its environment. Subsequently, a number of far-reaching recommendations were made:

- the role of the government must be restricted to establishing a general policy and a general legislative framework;
- responsibility for natural resource management must be placed in the hands of local institutions, governed by locally elected representatives;
- current legislation regarding administration, land tenure and natural resources must be revised; a legal framework, a *charte foncière* must be developed to replace existing codes, setting out general principles for land and natural resource management. Details should be filled in locally; legislation should be translated into the national languages of the country.
- research and science in general must focus on development constraints at local level. Local initiatives must be stimulated and supported.

Some weeks later, the conclusions and recommendations of the national workshop were adopted by the *Etats Généraux du Monde Rural*,<sup>5</sup> after which they became the official policy programme. The fourth point was in line with a number of ideas that had been circulating within the World Bank and the French development organization CCCE (*Caisse Centrale de Coopération Economique*), for some time. During the period of the transition government, these organizations therefore commissioned feasibility studies for research programmes, to support the new national policy on land tenure and natural resources.<sup>6</sup>

All of these activities were regarded as signs of Mali's new political climate, characterized by openness and the will to actually begin a process that would lead to new, decentralized forms of land and natural resource management. In June 1992, the newly elected government, led by Alpha Oumar Konaré, was inaugurated.

Before addressing the political problems constraining implementation of the policy programme formulated by the transitional government, certain legal and institutional issues of local management of land and natural resources will be discussed in more general terms.

## Legal and institutional issues: problems and reflections

### Instrumentalism versus the social working of law

Malian legislation – as that of most countries – takes an instrumentalist and positivist approach, based on the idea that legislation is capable of influencing social behaviour. Law is regarded as an instrument of social change. Legislation is meant to adapt the behaviour of citizens and make it consistent with the law. This instrumentalist approach has been criticized by sociologists of law. Griffiths (1990, pp. 5–7) has expressed three points of criticism:

- In the instrumental tradition, 'society is seen as made up of individuals bound together by the state organization, and not essentially by anything else. The law addresses itself to individuals and concerns itself with individual behaviour. In reality, every kind of (inter) activity takes place within and is in first instance regulated by a complex web of reciprocal relationships and social fields. The state – and its legislation – usually play at most a distant and indirect role'. This is applicable to discussions of management of land and natural resources in Mali: tenurial and social relationships are indissoluble (or, as the French would say, *'le foncier est un fait social total'*). These relationships determine the attitude of farmers and cattle breeders – whether as organizations or individuals – with respect to land and other natural resources.
- Legislation tends to assume that legal messages will reach the population undistorted. In reality, however, there is always a process of transfer, in which the message is distorted as it is interpreted at various levels. For example, not only is the message that 'ownership of land, forests and water is vested in the state' generally misinterpreted by the population, but also civil servants may use this message as a means to abuse power, resulting in a general neglect of natural resources.
- Further, Griffiths says, 'The state is assumed to have an effective legal monopoly which excludes other sources of regulation as important influences on

behaviour. The instrumental tradition looks not to competitive sources of regulation but to the recalcitrant self-interest or "deviant" character of the individual as the prime suspect in case of non-compliance'. In reality, the state organization is but one of the many arenas in society where regulatory activities occur. Individuals are guided more by the social and cultural standards valid in their own local community: 'the behavioral expectations of the state are frequently less well known, less clear, and in any case far less pressing than those of one or another more immediately present source of regulation'. In Mali today, these sources of regulation are not clearly recognized by the state; this causes tension and conflicts between official and 'customary' law.<sup>7</sup>

If the Malian government wants to achieve efficient management of land and natural resources, it should recognize Mali as a pluralist society, in which the social working of law must be taken into account. This means that current centralist legislation regarding land and natural resources should be deactivated, to make room for transitional regulations. These regulations should provide scope for testing existing local norms and rules with respect to management of land and natural resources in practice, or to adopt new or modified forms of local rural management. Transitional regulation should include basic principles for a new policy, such as: land and natural resources are the common patrimony of all Malians; management of natural resources must be based on social justice and equity before the law, and individual and public interests must be balanced; and, finally, adoption of negotiated public-private contracts between rural organizations and the various intervening parties (state, NGOs and private sector), setting out the rights and duties of all parties concerned. These contracts should provide for fair redistribution of land and natural resources among local actors, as well as specifying rules for arbitration in case of conflicts.

Even if such a policy were to be adopted, however, a number of social factors would still play a role in determining to what extent local communities would accept the new policy. First, proper communication of legal information to relevant actors is essential: this requires proper distribution, use of comprehensible terminology, and translation into local languages. Such a communication process must start within the government apparatus: civil servants and lawyers are at the same time recipients, as well as disseminators, of legal information; they communicate their personal interpretations.

With respect to farmers and pastoralists receiving legal communications, Griffiths (1991, p. 16) says, 'It is important to keep in mind that the capacity to receive legal communication and to interpret the message in the correct way is very unequally distributed in society ... organizations generally have lower information costs, have access to better media of communication, and are better equipped to process and use legal information than individuals'. Further, he states that 'Information about external law which differs from indigenous legal knowledge is especially likely not to be known'. These statements are generally applicable to the situation in Mali, where communications networks are badly developed and the degree of literacy is extremely low.

Another important social factor determining the degree of 'penetration' of an external law into local society is the capacity of local actors to assess the local

situation autonomously, set priorities and form their own opinions of external law. This capacity is of course dependent on the social context: the organizational capacity of the local community, the social status of the individuals involved, the degree of assertiveness with respect to bureaucracy, and, importantly, the extent of conviction that external law will yield some benefit to the village or the individual.

In short, the acceptance of new legislation regarding land and natural resources depends more on the motivation and situation of relevant actors than on the intentions of the legislator. The introduction of new policies and legislation aimed at decentralized management of land and natural resources therefore requires thorough knowledge of the situation at local level, including the changes being faced by local communities.<sup>8</sup>

#### Local contracts: institutional and legal conditions

Security of tenure is generally seen as one precondition for proper management of land and natural resources. This is frequently translated purely juridically, into a question of state versus individual property. However, although national legislation that explicitly guarantees such security is essential, other factors are involved. In addition to legal factors, social relationships at local level result in certain commitments regarding the use of natural resources (for instance, symbolic acts without explicit legal value). Such commitments or 'contracts' will only be effective if they last for a time period long enough to allow users of natural resources to benefit from their investments.

Such 'contracts' are not at all new to Africa (a classical example is the *contrat de fumure* between pastoralists and farmers). In Mali, a typical example of an agreement is found in the village of Dogon, in Tougoume. A donor organization had selected Tougoume for the construction of a well, so that a village forest and a vegetable garden could be established. After plans had been submitted to the village authorities, a meeting of the villagers, including women, and the donor organization was convened. All aspects of the plan were discussed in detail. As a result, those villagers on whose land the project was to establish the well, forest and vegetable garden transferred their rights to the village community in the presence of all other villagers. (In exchange, they were granted access to plots of land close to the well, which were the easiest to irrigate.) The land for the village forest, as well as for the vegetable garden, was scattered over the various districts of the village. Subsequently, the heads of the districts were responsible for allocation of individual plots. A management committee, which included women, was set up to supervise strict observance of rules covering maintenance and use of these plots. The villagers agreed on an annual financial contribution to be made to this committee. All villagers, and the donor organization as well, regarded the agreement reached at the village meeting as a kind of contract, sufficient to protect the rights of the village as a whole, as well as the rights of individual land users. In the opinion of the villagers, it was neither necessary to confirm the agreement in writing nor to have it legalized by the government administration.

This case is frequently cited as a successful example of local management. However, it must be realized that the example is not easily applicable to a more complex situation. Nevertheless, it illustrates some elements that may facilitate successful realization of oral agreements:

- a management project that is limited in scope and targeted to a relatively small group of people;
- a group that is quite socially coherent (few 'strangers' and a good level of organization). The inhabitants of the village of Tougoume clearly regard themselves as a coherent group; they say they are *edjeri*: people sharing the same culture;
- an authority structure (village head, heads of districts and so forth) that is recognized by the entire group;
- the possibility of integrating new external management rules in the local tenure system, without requiring drastic changes;
- women's participation in decision making and management may be an additional guarantee that 'contracts' will be observed, since women are usually the main users of natural resources; further, they are often seen as important observers of tradition.

In a more complex social situation such oral contracts are rarely sufficient to guarantee the security of all actors. This is not merely a question of requiring more detailed procedures and contracts. Often new local institutions will have to be established that are better equipped to introduce innovations. The government as well as the intervening development agencies must be more involved in the entire process.

*Advantages of the contractual approach* (Picciotto, 1992). Although a contractual approach can sometimes be hazardous (due to inequalities between parties and risk of fragmentation of policy), in certain situations local management contracts offer important advantages. For example, in the current discussion about improved management of land and natural resources in Sahelian countries, consensus regarding the desirability of achieving decentralization seems to have grown. While opinions with respect to actual implementation of such a policy differ substantially, local management contracts would be one option.

Further, in certain situations the contractual approach offers flexibility in:

- the number of parties involved. For example, this approach could make it easier to involve the appropriate groups, e.g. seasonal users of a natural resource, plus local NGOs and private producer groups;
- protecting 'bundles of rights' of various user groups. While property rights (which in the long term make land registration) establish the rights of one person or one group, a contract can handle situations involving 'bundles of rights' and a variety of user groups;
- duration of the contract. This is especially important; taking the rapid developments into account, for example in Mali, a contract can yet guarantee users the benefits of their investments, as long as they fulfil their obligations;
- tailoring contract stipulations to specific local situations.

Additional advantages of this approach are:

- certain stipulations could be used to lay down the rights and obligations of all parties; this in contrast to the current practice of the *cahier des charges*, which generally contains a one-sided listing, covering only the obligations of local users;
- a contract can be better adapted to local conditions; in particular, it can contain a clause creating the possibility of, under specific conditions, breaking open the

- contract and reopening negotiations;
- agreement of local contracts with regional and national policy can be assured by standard incorporation of the obligation that these must fit within the local policy plan, since this must be in accord with the framework of regional and national policy plans.

#### Issues in establishing local contracts

Two key questions to be dealt with in a contractual approach are the choice of the most suitable local authorities to be charged with management, and what the requirements are to be for such local management contracts. Given the variety of ecological zones, the variety of resources involved, the multiplicity of ethnic groups and their various social systems, the variations in existing arrangements, and the many different forms in which local leadership is organized, it is obviously impossible to formulate tailor-made, generally applicable answers to both questions. Instead the attempt here will be to go through some minimal juridical and institutional conditions, which are logical consequences of the preceding discussion.

*Local involvement in designating an administrative unit.* A major constraint on decentralized management of natural resources is the difficulty involved in determination of the geographical unit over which a local institution is to have authoritative power.<sup>9</sup> Restriction to the village territory (*terroir villageois*) may lead to conflicts over demarcation of village boundaries, poses problems with respect to natural resources (water, forests, grasslands) in relation to villages and hamlets, and may exclude active participation of, for example, cattle breeders who reside in the village area temporarily. The geographical unit should therefore be identified in consultation with the local communities. This process requires the active participation of these communities in laying down criteria for (a) demarcation of geographical units, and (b) identification of the villages, hamlets and socioeconomic groups to be represented within local management institutions. Further, detailed and updated maps indicating the most important natural resources in the vicinity must be available.

*Taking time.* Time is a major factor in this preparatory stage. Ample time should be allocated for the exchange of information between all relevant parties. Moreover, time is required to allow everyone to absorb the various proposals and alternatives.

*Elaborating a local management plan.* At the end of this preparatory phase, a provisional team made up of representatives of the parties concerned should draft a long-term management plan for the natural resources. This plan must be sufficiently flexible to meet the requirements of a constantly changing situation at local level, taking into account multiple uses of land and natural resources and guaranteeing that the various socioeconomic groups within the community (including women, young people, migrants and pastoralists) will have fair access to natural resources.

*Election of a local management authority.* Relevant criteria should be drafted for the selection of eligible candidates for the local management team. This

must take place in collaboration with local communities. Cernea (1989, p. 39) rightly points out that 'Communities and villages are geographical residential units, not necessarily corporate organizations ... (but) heterogeneous population clusters, stratified and split in factions and subgroups with fragmented socio-economic interests'. Drafting criteria that insofar as possible guarantee equal representation of relevant communities and (potential) user groups is thus an essential, but highly complex factor in the process of setting up a local authority. It will be necessary to pay attention to participation of those who will be impacted by change, or who will be important users; to assure implementation, respected authorities and upholders of local traditions are also especially important. Thus, for example, participation of women and/or 'older people' may require special attention. On the other hand, national political issues and the influence of political parties should be avoided, insofar as possible.

*Official recognition of the local management authority.* Local management teams are only capable of functioning effectively if they are granted some form of official recognition, specifically authorizing them to supervise the use of natural resources and to sanction violations. The procedures and conditions with respect to this authoritative power must be identified. At the same time, the form of government supervision established should be flexible and efficient.

*Strengthening local managerial capacity.* Enabling local management authorities to act as serious counterparts of the government and development agencies is of major importance. Members of such teams should thus be well trained, and a permanent, properly functioning information exchange system should be implemented.

#### Terms and conditions

There are no standard formulas for the content of local management contracts. However, the general terms and conditions that will be needed to meet the requirements of such contracts include:

- a negotiated public-private partnership (which might include local communities, individuals, the state, and/or development agencies, among the partners). A public-private character is essential to prevent local management from deviating too far from or being incompatible with national policy measures. Moreover, the aspect of negotiation between all relevant actors is essential. An 'enforced' contract will ultimately be just as ineffective as any enforced external decision;
- all parties involved must be clearly defined in each contract (criteria are given in the preceding section);
- the rights and obligations of all concerned parties must be defined explicitly. The various partners to the contract will be more inclined to meet their obligations if a proper balance between investments on the one hand, and anticipated advantages on the other, is guaranteed;
- for individuals as well as groups, user rights to various natural resources must be identified. This is particularly important where bundles of rights are involved: even when only one resource appears to be involved, several different activities, and thus several types of rights, may be at stake.<sup>10</sup> In all cases, user rights will have to be incorporated in the local management plan;

- clearly, procedures will have to be established for settlement of conflicts. The contract may assign specific persons or authorities to deal with such problems;
- contracts should take into consideration that Mali is a society in transition. Therefore, a contract should state that after a fixed period of years (or earlier, if there is reason to do so), terms should be reviewed, renewed, renegotiated or reconfirmed;
- finally, the language used in the contract should be clear and understandable. The use of descriptions and definitions that are in use in the local communities concerned is recommended, instead of trying to translate western juridical concepts into local languages. Further, contracts must be available in the local languages, possibly in an auditory form, e.g. on tapes.

### Political dimensions of improved environmental protection<sup>11</sup>

Implementation of a system of local management of natural resources is a lengthy process, requiring much creativity, flexibility and tolerance on the part of all parties concerned. Such a process can only succeed in a politically favourable climate.

In defining and implementing new policies on environmental protection, legislation and institutional regulations may be useful instruments – provided they are or can be adapted to local problems. It would be difficult indeed to create a new policy without having legislation that is well adapted and stands a fair chance of being implemented at local level, both by civil servants and local communities. However, legislation is not the only, and perhaps not even the most important, instrument to use in achieving better environmental protection. Political, economic, financial and technical factors will be equally decisive.

This section focuses on the political dimensions of better environmental protection, in view of recent major changes in Mali. Two aspects will be highlighted: first, problems related to rapid implementation of decentralized natural resource management; and second, the importance of durable democracy.

#### Decentralization

Decentralization seems to be a 'magic word,' frequently heard in discussions of solutions to management problems in African states. The concept is, however, often carelessly interpreted; what is actually 'deconcentration' may be mistakenly called decentralization, although there is an essential difference between the two forms of administration. Decentralization involves a substantial transfer of some government tasks to regional and local organizations. Where there is real decentralization, these organizations become largely autonomous. 'Deconcentration' indicates assignment of tasks to lower ranking organizations, while they remain under the control of the central government, to which they are accountable. Many administrative reforms are 'sold' under the pretext of decentralization, while in fact it is a matter of deconcentration, with local institutions still subject to government control.

In the past few years the World Bank and IMF have put particular pressure on African governments to trim their bureaucracies. The Malian government understands development jargon, and the priorities of these donor agencies. At

national level, this has resulted in the political will needed to begin working toward decentralized management of natural resources. However, the problems faced by a policy of decentralization are often severely underestimated by both donor agencies and by national governments.

There is a risk that decentralization will be limited to use by central governments to solve current financial and bureaucratic problems, by shifting more expensive tasks and obligations to local communities. Often these communities lack sufficient financial, human and intellectual resources to cope with the increasingly complex situation. Time is an important factor: it should be the willingness and abilities of the local population that determines the pace at which transfer of power and tasks occurs. In practice, however, the pace is now being determined by central governments.

The degree of interest of local communities in assuming responsibility, and the feasibility of their doing so, may vary within the country. In the north of Mali, for example, the Tuaregs seem quite willing to take over the management of local natural resources. The possibility of this is questionable, however, in view of the tense situation in the northern provinces. Armed conflicts in this area prevent various population groups from working together and efficiently taking over certain tasks. However, in southern Mali, where CMDT (Compagnie Malienne pour le Développement des Textiles – a cotton-related organization), has been actively organizing villages for more than a decade, village associations have become strong, self-confident organizations. They have a sufficient 'traditional' basis, plus a local cadre with a 'modern' attitude. Here, village organizations and farmers set up a trade union after the revolution in 1991. Initial successes, increased cotton prices, and unilateral suspension of certain stipulations of the forest law (*Code Forestier*) point to the ability of village associations to eventually become a countervailing power (Marchant, 1991, pp. 72-87; Le Roy, 1992). However, even the secretary of the newly emerged *Syndicat National des Cotonniers et Vivriers* (SYCOV) has admitted that the rural population is currently incapable of taking a hard line against the central government's administrative apparatus.

If local communities are to assume more responsibilities, both communities and civil servants at local level must have the political will needed to achieve this. This is a general problem after a coup or change of regime: it is impossible to immediately replace all civil servants and technicians at local level, even if they have acquired bad habits under the old regime. The alternative is to attempt to drastically change their attitudes towards the local community: they must be willing to transfer the responsibility and authority for a number of tasks – which for a number of years they will have been performing at their own discretion – to locally elected authorities. This implies acceptance of an entirely different conception of their duties. In the new situation, they will sometimes have to be a party to locally negotiated contracts regarding development or safeguarding of natural resources. In other cases government agents would simply facilitate the process of identifying local resources, helping to secure traditional arrangements among local people with respect to these resources, and act as an arbitrator of any disputes that might arise out of those arrangements.

In practice, however, rather than learning these new functions, civil servants and technical agents may try to safeguard their positions, and restrict their action to declarations of good intentions. To overcome this tendency, it will be necessary to organize intensive training workshops. Civil servants will need help in truly understanding the necessity for change and the importance of their new roles. They will also need to acquire skills in negotiation, arbitration and the legal techniques involved in drafting agreements in the local context of practical, relevant environmental issues. Such well trained negotiator-administrators can play important roles in the democratic process at local level. By serving as intermediaries between local and national levels, they can support an acceptable level of local autonomy while building democratic connections with national institutions.

### Toward a durable democracy

For local communities that are to be gradually charged with management of local natural resources, the creation and maintenance of a democratic environment is of critical importance. Even if they are given some level of autonomy, local management authorities will only be capable of performing their tasks well if they actually become countervailing powers, and are accepted as equal partners in the negotiating process. This can only be achieved if they are confident that the democratic process is not limited to the national level, reducing the population to a 'voting machine' for political parties created by and targeted to the urban population. Local communities must come to feel that they live in a constitutional state. Among other things, this means first that natural resource legislation should create possibilities for local solutions; second, that future policy for rural development should be formulated in consultation with the rural population; and third, that the various parties involved with natural resource management need to be able to demand mutual accountability, without fear of retaliation.

The far from exhaustive discussion in this chapter of the institutional and juridical conditions required for local management of resources shows that both the Malian government and the Malian population face a challenge that calls for substantial inventiveness, creativity, patience and tolerance. The government that came to power in 1992 has, with good reason, made the formulation of a new policy regarding natural resource management a high priority. This has resulted in numerous legislative and administrative initiatives. Within the Ministry of Agriculture, Livestock and Environment – which became the Ministry of Rural Development and Environment in May 1992 – a *Commission de Réflexion* was set up to translate the recommendations of the *Etats Généraux du Monde Rural* into legislation and policy. This committee organized regional workshops at the end of 1992 to discuss policy planning with respect to decentralized natural resource management. In addition, the committee devised a draft for a *Loi d'Orientation*, to establish management of all natural resources. At the same time, however, the Ministry of Finance nevertheless went ahead with the drafting of new legislation for the implementation of the current *Code Domaniale et Foncier*. Within that Ministry, it appears there is still some resistance to embracing the recommendations for (among other things) radical changes in existing land laws. The administrative reforms required for the

introduction of the promised decentralization also appear to be creating some anxiety in sections of the national government.

The proposals made thus far are limited to changing the lowest government level, the *arrondissement*, to *communes*, with greater authority. The *communes*, however, are apt to be far too distant from local populations. Clearly, lack of insight into possible consequences and budgetary constraints still stand in the way of exploring the possibilities for appointing new local authorities charged with natural resource management. As noted above, although the Ministry of Rural Development and Environment has given a positive response to the revolutionary spirit of the transitional government, it faces opposition from other ministries. Further political developments must be awaited to see whether the transitional period becomes a bridge to the future or simply an interesting intermezzo.

### Notes

1. The author would like to thank Marianne N. Bloch, University of Wisconsin, Madison, for giving comments on an earlier draft of the manuscript.
2. Among the many of the LTC studies are: Lawry, 1989; Barrows and Roth, 1989; Bruce and Fortmann, 1989. The theoretical studies of APREFA can be found in: Le Bris, Le Roy and Leimdorfer, 1982; Crousse, Le Bris and Le Roy, 1986; and Le Bris, Le Roy and Mathieu, 1991. See further, for a critique of the property rights school: Platteau, 1991; and for a critique of the myth regarding the theory of the tragedy of the commons, Bromley and Cernea, 1989.
3. A detailed study of decentralization in Mali is given in *Etudes sur la Décentralisation au Sahel*, 1991.
4. *Atelier sur la problématique foncière et la décentralisation*, Bamako, 25–28 November 1991.
5. Following the national conference in August 1991, a number of *Etats Généraux* were organized in the second half of 1991 for several policy matters: trade and industry, transport and rural areas.
6. See Coulibaly and Hesseling, 1992, and Kintz, 1992. In 1992, the CCCE changed its name into *Caisse Française pour le Développement* (CFD).
7. The notion of 'customary law' poses analytic and methodological questions, because it is associated with a centuries-old, unchangeable, and monolithic block of traditional rules. In reality, it is a cultural construct with political implications, which has its own history in the colonial and postcolonial worlds (cf. Falk Moore, 1986, p. 15; see also the explanation of the *référént colonial* in Le Bris, Le Roy and Leimdorfer, 1982, pp. 23–26).
8. The creation of local monitoring facilities (*observatoires du foncier*), has been suggested to observe normative, social, economic and technical developments, and so forth.
9. There have been experiments with local level management for some time in Burkina Faso. In 1991, the *Programme National de Gestion des Terroirs Villageois* (PNGTV) dropped the word *villageois*, as it appeared that the village territory was not the most suitable unit. See Quedraogo and Faure, 1992, and Faure, 1992. For a critique of the romantic view of villages as homogeneous communities, see Cernea, 1989.
10. A classical example in Mali is the use of *leydi* (territory) in the interior delta of the Niger river for fishing, rice cultivation and cattle feed.
11. Ideas in this section are in part based on an internal memorandum from Sally Falk-Moore to the *Club du Sahel* (1991).



## Bibliography

- Bagayoko, S., 'L'état au Mali: représentation, autonomie et mode de fonctionnement.'  
In: E. Terray, *L'état contemporain en Afrique*. Paris, L'Harmattan, 1987, pp. 91-122.
- Barrows, R. and M. Roth, *Land tenure and investment in African agriculture: theory and evidence*. Madison, Wisconsin, Land Tenure Centre, 1989.
- Bertrand, M., 'Un an de transition politique: de la révolte à la troisième République'.  
*Politique Africaine*, 47 (1992) pp. 9-22.
- Bromley, D.W. and M.M. Cernea, 'The management of common property natural resources; some conceptual and operational fallacies'. *World Bank Discussion Papers* no. 57, Washington D.C., World Bank, 1989.
- Bruce, J.W., *Community forestry; rapid appraisal of tree and land tenure*. Rome, FAO, 1989
- Bruce, J.W., and L. Fortmann, *Agroforestry: tenure and incentives*. Madison, Wisconsin, Land Tenure Centre, 1989.
- Cernea, M.M., *User groups as producers in participatory afforestation strategies*. Washington D.C., World Bank, 1989.
- Club du Sahel, *Etudes sur la décentralization au Sahel. Décentralization en matière de fournitures des services publics, gouvernance et gestion des ressources naturelles renouvelables, au Mali contemporain*. Paris, 1991.
- Coulibaly, C. and G. Hesseling, *Note sur la problématique foncière et la décentralization au Mali. Etude sur un programme de recherche-observation préparée à la demande de la Banque Mondiale*. Bamako/Leiden, IMRAD/Centre d' Etudes Africaines, 1992.
- Crousse, B., Le Bris E. and E. Le Roy (eds.), *Espaces disputés en Afrique noire. Pratiques foncières locales*. Paris, Karthala, 1986.
- Faure, A., *Perception de l'approche gestion de terroirs par les populations rurales au Burkina Faso*. Ouagadougou, Caisse Centrale de Coopération Economique, 1992.
- Griffiths, J., *Legal pluralism and the working of the law*. (Unpublished paper, Groningen, 1990.)
- Hesseling, G. and C. Coulibaly, *La législation et la politique foncières au Mali. Rapport dans le cadre du schéma directeur de développement rural*. Leiden/Bamako, ASC/IMRAD, 1991.
- Kintz, D. (ed.), *Le foncier rural au Mali. Bilan et recommandations pour un observatoire du foncier*. Bamako, Ministère de l'Agriculture, de l'Elevage et de l'Environnement/CCCE, 1992.
- Lawry, S.W., *Tenure policy and natural resource management in Sahelian West-Africa*. Madison, Wisconsin, Land Tenure Centre, 1989.
- Le Bris, E., Le Roy, E. and F. Leimdorfer (eds.), *Enjeux fonciers en Afrique noire*. Paris, ORSTOM/Karthala, 1982.
- Le Bris, E., Le Roy, E. and P. Mathieu (eds.), *L'appropriation de la terre en Afrique noire. Manuel d'analyse, de décision et de gestion foncières*. Paris, Karthala, 1991.
- Moore, S.F., *Social facts and fabrications: 'customary' law on Kilimanjaro 1880-1980*. Cambridge, Cambridge University Press, 1986.
- Moore, S.F., *Reconceiving rural land law in the Sahel*. Paris, Club du Sahel. (Unpublished.)
- Ouedraogo, H. and A. Faure, *Foncier et décentralization, Le Burkina Faso*. Ouagadougou/Paris, CILSS/Club du Sahel, 1993.
- Picciotto, R., 'Participatory development. Myths and dilemmas'. *Working Paper WPS 930*. Washington D.C., World Bank, 1992.
- Platteau, J.-Ph., *Formalization and privatization of land rights in Sub-Saharan Africa: a critique of current orthodoxies and structural adjustment programmes*. Namur, Facultés Universitaires Notre Dame de la Paix, 1991.
- Potholm, C.P., *La politique africaine: théorie et pratique*. Paris, Economica, 1981.
- Thomson, J. et al., *Décentralisation au Sahel*. Paris, Club du Sahel, 1993.