

## CHALLENGES OF LOCAL LAND GOVERNANCE IN MALI

# Mali



➔ Two-thirds of Mali's population lives in rural areas, where the poverty rate is over 50 percent. Local governance of land and natural resources is meant to encourage development, protect the environment, and foster political stability. *Photo: © Curt Carnemark/World Bank*

By Kelsey Jones-Casey, Ailey Kaiser Hughes and Anna Knox

### INTRODUCTION

When properly implemented, the decentralization of authority over land and natural resource management to the local level can lead to the improved management of natural resources, create an enabling environment for local land and natural resource tenure systems, and strengthen legal recognition of customary land use rights. However, improving security of tenure for rural people through decentralization requires clear and implementable legislation, statutory recognition of customary laws and conventions governing land and natural resource tenure, and the engagement and buy-in of both State and local institutional actors.



Kelsey Jones-Casey is an independent consultant working on land and natural resource rights of indigenous people.

Ailey Kaiser Hughes is a social scientist and land tenure specialist at Landesa.

Anna Knox is a Chief of Party on the LAND Project in Rwanda.



Mali's process of decentralization has been notably participatory. Villages choose other villages with which they would like to form a *commune*.

➔ Photo ©Leif Brottem

In Mali, the process of decentralization, in which the management of public services was transferred to local governments, has been heralded as a success. Decentralization has vested important land and natural resource management responsibilities in local governments and communities, which the State hopes will improve land and natural resource management. Mali's process of decentralization is unique in its participatory local boundary demarcation, and for its participatory local management of land and other natural resources. But while decentralization has the potential to improve resource sustainability and facilitate more equitable resource distribution, challenges to its effective implementation abound, including a lack of: legal recognition of local conventions; capacity to effectively manage natural resources at the community level; and clarification as to how the statutory framework should be applied.

## FRAMEWORK FOR DECENTRALIZATION IN MALI

Mali's process of decentralization followed decades of State control over natural resources that began during the French colonial period. Under

the colonial regime, the State owned all resources that were considered "ownerless" (i.e. lacking a formal title). The only way to establish legal ownership over resources was through *mise en valeur* (productive use) which, in practical terms, meant that vast tracts of land were transferred to State ownership and management. Though customary resource users had well-established norms guiding natural resource management and exploitation, these norms were viewed as environmentally destructive and were replaced by statutory laws.

Under the colonial regime, government administration was highly centralized. The main administrative unit in Mali was the *Cercle*, which was divided into *Subdivisions*. *Subdivisions* were further divided into *Cantons* among sedentary groups and *Tribus* among nomadic groups. Local authorities to govern these units were appointed as administrative representatives of the State rather than elected by citizens. This even included the appointment of traditional customary authorities at *Canton* and *Tribus* levels. Following independence in 1960, the Government of Mali retained the government structure established by the French. Though successive regimes recognized the need for the

devolution of authority from the center to local levels, very little change was implemented.

The process of democratization and decentralization began in 1991 following the ousting of longtime Head of State, Moussa Traore. In Mali, decentralization was a rejection of the colonial style of centralized government, which had created local governments, but vested little authority in them. The Government of Mali's goals for decentralization included empowering local government, encouraging development, protecting the environment, and fostering political stability.

The democratically elected Government of Mali adopted a series of laws and policies designed to guide decentralization. The 1992 Constitution provides the basic tenants of decentralization while the law on decentralization (*Loi 93-008*), adopted in 1993, provides a general framework for decentralization. The law establishes *régions* (regions), *cercles* (districts), and *communes* (communes) as *collectivités* (territorial units) in rural areas. The law also calls for elected assemblies or councils to manage the *collectivités*, and establishes that the *collectivités* should manage their own natural resources.



➔ While the law grants farmers the right to formalize their property rights—which would help protect them against government expropriation—the process is complicated and so costly as to be prohibitive. *Photo ©Wim Dekkers*

Under the *Codes des Collectivités Territoriales*, the principal decentralization law, and *Loi N° 96-050 du 16 octobre 1996*, local governments are given control over the management and protection of natural resources. According to the *Codes des Collectivités Territoriales*, the State may transfer the responsibility of public lands management to local governments while, under *Loi N° 96-050*, local governments are responsible for protecting the environment, managing public lands, formulating land use plans, protecting and developing government land, and organizing agro-forestry production. In turn, *communes* are charged with land management, including developing land use plans and ratifying leases to land for residential purposes.

In addition to devolving management responsibilities, the law also devolves rights and authority over land to local governments through the revised *Code Domanial et Foncier*. Under the law, local governments can subdivide and lease or sell public land for residential uses in a process called *lotissement*. Local governments also have the power to appropriate land held under customary tenure for the creation of *lotissements*. In conjunction with the *Code Forestier* and *Code de l'Eau*, Le

*Code Domanial et Foncier* codifies the State's ownership of land, water and forests, and asserts that customary users have usufruct rights to the land that they cultivate, as long as the State does not demand it. While the law grants farmers the right to formalize their property rights - which would more securely protect them against government expropriation - the process is complicated and so costly as to be prohibitive for rural cultivators.

Although progressive as compared to the centralized model, the legislation supporting decentralization is dense, difficult to navigate, and even more cumbersome to implement. Today, a complex of overlapping rules governs land and other natural resources in the country. These rules originate from a web of legal systems including local conventions, customary law, traditions,

local government bodies, and national laws. All land that is not titled is considered State property, though most land remains untitled and is primarily governed by customary law. Most rural communities are unfamiliar with national or even local statutory laws governing land and natural resources.

## COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT

Decentralization policy in Mali is based on *gestion des terroirs* (i.e. community-based land management). *Gestion des terroirs* usually refers to management by a village of its *terroir*—all the resources to which a given village has customary rights. This approach has been extended to *communes*. The approach is community-centered and would empower *communes* to manage

### + FACT

The process of democratization and decentralization began in 1991 following the ousting of longtime Head of State, Moussa Traore. Decentralization was a rejection of the colonial style of centralized government.

their own natural resources. At the same time, however, *gestion des terroirs* is vague and contributes to confusion over rights to and management of land and other natural resources.

Few formal rights are, however, transferred to *communes*, though many natural resource sectors—including fishing, grazing, and village lands—are managed by *communes* through contracts known as *conventions*. *Conventions* are informal resource management agreements between the State, *communes*, and local resource user groups that embody rules on natural resource management and use, and specify which party has rights to these resources and which party is responsible for enforcing those rules. The *conventions* are not legally binding; rather, their purpose is for communities to commit to a way of working together and be involved in natural resource management.

*Communes* also have informal natural resource management agreements that predate colonization. In Mali, most communities had agreements governing land rights between original claimants to a territory and newcomers. Even today, these agreements inform customary laws regarding a community's or lineage's rights to land, perhaps contributing to many *communes*' acceptance of decentralization and community-based natural resource management.

Though decentralization devolved authority over land and natural resource management to *communes*, it did not inherently provide these local governments with the financial capacity to effectively manage the resources within their charge. In many cases, local governments have very limited financial capacity. Increasingly, the governments of *communes* have used *lotissements* to generate revenue. While this has been an effective fundraising strategy, it has also fueled land speculation, benefited the elite, and alienated customary leaders who feel that it undermines their authority. To overcome administrative financial constraints, some *communes* are also levying higher fines for land use infractions.

### PARTICIPATORY ESTABLISHMENT OF COMMUNES

Mali's process of decentralization has been notably participatory, particularly in regards to the establishment of administrative territorial units. Under *Loi N° 96-059 de 4 novembre 1996*, the process of creating *communes* should be “progressive, consultative and participatory.” Villages are allowed to choose the other villages with which they would like to form a *commune*. Most villages choose to affiliate with villages of shared kinship or lineage, or villages comprised of similar ethnic groups.

The process began with local task forces formed by *La Mission de Décentralisation et des Réformes Institutionnelles (MDRI)* who sensitize local communities on the process of creating *communes*. *Commissions Locales de Découpage (CLD)* were ultimately responsible for establishing boundaries on the basis of geographic location, demographics (minimum of 10,000 citizens residing there), and a “desire to live together,” in addition to “social cohesion and economic viability.” Today, Mali has 703 *communes* making up 49 *cercles*, which are in turn grouped into 8 *régions*.

### + FACT

Effective decentralization faces a number of challenges, including a lack of legal recognition of local conventions, and lack of capacity and funding to effectively manage natural resources at the local level.



The 1992 Constitution provides the basic tenants of decentralization. The 1996 *Codes des Collectivités Territoriales* gives local governments control over the management and protection of natural resources. Photo: ©Melody Nelson



The process of establishing administrative territorial units has had its challenges. Some villages' requests to form communes have been rejected for fear that conflicts might emerge between different social groups. Many communes are considered too small and must merge with other communes despite the wishes of local people. These challenges have contributed to community-level confusion and disillusionment in the process. In addition, the areas for local government administration and allocation have not yet been delineated. *Loi N 96-056* calls for the establishment of local government boundaries, but these boundaries have only rarely been established in the process of creating *communes*. It is predicted that, as pressure on land and other natural resources increases, there will be more incentive for *communes* to demarcate

their land so that they can better enforce local agreements relating to its use.

## CONCLUSIONS

The rapid and participatory creation of local governments and their territories in Mali is heralded as a success, but decentralization and the devolution of natural resource management has not been a perfect solution. The laws governing decentralization are dense, difficult to interpret, and perhaps even harder to implement. *Communes* often lack the financial capacity to effectively fulfill their responsibilities, which has led to the abuse of *lotissements*, fueled land speculation and benefited the elite. Also, though the State seeks to devolve responsibility over natural resource governance to local governments and communities, the security of

communities' rights to land and resources remains weak in the absence of legal recognition for local *conventions* and customary rules.

Despite its imperfections, decentralization in Mali has proven to be an important avenue for communities to gain greater control over land use decisions and over the natural resources on which they depend. Local governments are working closely with citizens and are better able to navigate the local customs governing natural resources. However, until the Malian government enforces local *conventions* and accords greater recognition and security to customary rights over land, incentives for communities to comply with natural resource management conventions and invest in good stewardship practices may not endure over the long-term.

## SOURCES

- Benjamin, Charles E. 2008. Legal Pluralism and Decentralization: Natural Resource Management in Mali. *World Development*, Volume 36, No. 11, pp 2255-2276.
- Benjaminsen, Tor. 2011. Review of draft "The Challenge of Decentralization and Participation in Mali." On file at Landesa.
- Benjaminsen, Tor. 1997. Natural Resource Management, Paradigm Shifts, and Decentralization Reform in Mali. *Human Ecology*, Volume 25, No. 1, pp. 121-143.
- Coulibaly, Amadi and Thea Hilhorst. 2004. Implementing Decentralisation in Mali: The Experiences of Two Rural Municipalities in Southern Mali. IIED Issue Paper 127. Available online.
- Cotula, Lorenzo, Camilla Toulmin and Ced Hesse. 2004. Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues. IIED.
- Djiré, Moussa. 2004. The Myths and Realities of Local Governance in Sanankoroba, Mali. IIED Issue Paper 130. Available online.
- Eboh Enone, Théodore. 2009. The State of Decentralization and Local Governance in Mali. Report prepared for the Municipal Development Partnership - ESA. Available online.
- Hadj, El et al. 2002. Sur la Problématique Foncière dans les Périmètres Irrigués au Mali. University of Wisconsin - Madison, Land Tenure Center. Working Paper 50-F. Available online.
- Hershkowitz, Ann. The Tuareg in Mali and Niger: The Role of Desertification in Violent Conflict. ICE Case Studies Number 151, August 2005. Available online.
- Hilhorst, Thea and Amadi Coulibaly. Elaborating a Local Convention for Managing Village Woodlands in Southern Mali. Available online.
- Hilhorst, Thea. 2008. Local Governance Institutions for Sustainable Natural Resource Management in Mali, Burkina Faso and Niger. KIT Working Papers Series G1. Amsterdam: KIT. Available online.
- Hilhorst, Thea. 2010. Decentralization, land tenure reforms and local institutional actors: Building partnerships for equitable and sustainable land governance in Africa. *Land Tenure Journal*, No. 1, Food and Agricultural Organization (FAO).
- Idelman, Eric. 2009. Décentralisation et Limites Foncières au Mali: Le Cas du Cercle de Kita. IIED, Paper 151. Available online.
- Kaboré, Pato Daniel. 2008. Conflicts over Land in the Niger River Delta Region of Mali.
- Leonard, Rebeca and Judy Longbottom. 2000. Land Tenure Lexicon: A glossary of terms from English and French speaking West Africa. IIED.
- Nijenhuis, Karin. 2003. Does Decentralisation Serve Everyone? The Struggle for Power in a Malian Village. *The European Journal of Development Research*, Vol. 15, No. 2, pp. 67-92.
- Syll, Ousmane. 2005. La Décentralisation en Afrique Subsaharienne - Mali. Masters thesis, University of Franche-Comté. Available online.