Trond Vedeld, NORAGRIC, Centre for International Environment and Development Studies, Box 5002, 1430 As, tlph. 047-64949795, fax 64949385, e-mail trond.vedeld@noragric.nlh.no

STATE LAW VERSUS VILLAGE LAW:
law as exclusion principle under customary tenure regimes[1]

stream: rangelands, rights, law
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Abstract

The paper is based on fieldwork among the agro-pastoral Fulani in the pasturing territory of Jalloubé - in the north central In-land delta of the Niger river in Mali. These Fulani groups control the largest remaining wetland pastures of West Africa. A main concern of the paper is to discover how customary property rights regimes interact with the regimes the state administration (or those who control it) tries to impose. The traditional tenure regime with roots in the Dina state (1818-62) is today under pressure from a variety of processes originating both in the political and the ecological system. The result is increased pressure on the resources. This is most visible in the enclosure of the common floodplain areas suitable for rice growing as well as a critical pasture for the Fulani during the dry season. These wetlands also have global environmental interests attached to them. The paper outlines both the customary system of rights to cattle and access to pasture, and the existing theory of property rights as enacted by the state. The system is very diverse with all levels of control ranging from open access to full private inheritable property. There is a variety of conflict areas depending on the choice between state and customary law as well as its interpretation. This fluidity in rules opens a field of action for political manoeuvres and ambiguous decision-making by officials and administrators. A lack of genuine dialogue between state officials and community leaders over resource conflicts undermines the legitimacy and authority of both state officials and customary leaders necessary for long term strategic resource management. One problem for the state is that the diversity of customary rights is difficult to match in substantive statutory law. It is suggested that the state should put more effort into developing appropriate legal *procedures* for resolving conflicts equitably rather than trying to impose its own system of property rights.

Introduction

Property rights regimes governing the access and use of African rangeland resources generally depend on the customary tenure regimes and the states' laws, policies and practices.[2] The property rights regimes interact with the market forces to create the overall conditions within

[1] The paper is forthcoming in Erling Berge and Nils. Chr. Stenseth (eds.) 1998: Law and the Management of Renewable Resources, Institute of Contemporary Studies, ICS Press, San Francisco.

[2] 'Property rights regime' is defined as follows; "A legitimate and coherent system of formally or informally enforced rules and practices used for everyday appropriation of culturally necessary means of subsistence "(Godelier 1984:71-121)..". Property is not to be understood as an object but rather as a social relation; "a benefit (or income) stream, and a property right is a claim to a benefit stream that some higher body - usually the state - will agree to protect....." (Bromley 1992:2). The local structure of a property rights regime can be more or less conditioned by different institutional pillars, such as ascribed status, norms, rules, power, and enforcement systems. Institutions condition (co-ordinated) behaviour and constitution of meaning among members of a community. Rights in the particular context studied here are mainly conditioned by status and power. Sources of legitimate authority emanate *less* from legal-rational authority (formal institutions and law), and *more* from charismatic and customary authority (customary rights to rule, divined contacts, personal capabilities of leaders).

which individuals or groups act. These regimes have very diverse structures of governance, governments and institutions.[3]

A main aim of this paper is to present the diversity, complexity and dynamism exposed in one particular common property regime, and indicate some of the dilemmas policy and law-makers are faced with when analysing what type of governance structures and institutions would best serve sustainable, efficient and legitimate utilization of the resources governed by such regimes.[4] Concern is primarily with regimes for access- and use regulation of floodplain rangelands of the Inland Niger Delta of Mali dominated by Fulani agro-pastoral communities.

A key dimension of the institutional crisis affecting management of rangelands in Africa is conceived to be the lack of compatibility between formal law and institutions, largely transplanted from outside and embedded in post-independence state culture, and customary law and institutions embedded in local custom shaped through history (Swallow and Bromley 1991).[5] Empirical work among pastoral groups, including studies in the Delta, indicates that major threats to efficient and sustainable property rights regimes often arise more from factors *external* to the local resource setting, rather than from *internal* factors related to rapid growth in human and livestock populations. External factors are such as inappropriate state laws and interventions, market integration, and increased encroachment by crop cultivators. If such findings are accepted, research should be focused on *how external arrangements can enhance capabilities of resource users* - individually and collectively - to change constraints of present property rights regimes. Research should go beyond the narrow focus on tragedies resulting from 'prisoners' dilemma' games and internal co-ordination failures, as suggested in Hardin's early metaphor (Hardin 1968).

Legislation and tenure policies in Mali[6]

The Malian state laws are rooted in French colonial laws and Islamic law (shari'a). It draws very little on customary or pre-Islamic rules and institutions. Today, the principal law texts regulating property rights to land and natural resources have been gathered in one main Code Domanial et Foncier (CDF) from 1986. The CDF does not recognise local rights to rangelands. On the contrary, the only regulation to this end says: " All pastures, transhumance corridors and animal

[3] With reference to Swallow and Bromley (1992: 4) 'Governance ' is defined as the process of deciding what a collective will do and how it will do it. 'Governments' (or 'governing structures' or 'organisations') exist for the process of governance; that is, governments are created to carry out governance. Institutions constrain what the governments may do to the members of the collective in the name of governance (cf. Bromley 1989).

[4] Common property" is a complex constellation of rights, rules, conventions (norms), and contracts (Swallow and Bromley 1992:3). Common property is *one* type of land tenure that governs access and use of common-pool resources. It can be defined as a joint management regime controlling assets and allocating rights among co-owners or members (Bromley 1992:14).

[5] "Law" is here used as a broad concept related to social control systematically enforced by authority structures of the society. It is closely related to "custom" and status positions in society. Rather than discussing the relationship between the two abstract terms, I focus on the ways "law" and "custom" interact and materialise through political processes and concrete decisions by "legal" authorities related to property rights disputes. The study of the substantive legal concepts become of secondary importance (Lloyd and Freeman 1985). Law and justice relate to "western" ideas about legitimacy, authoritative, and permanent "knowledge" in institutions. These concepts become difficult when "everything is negotiable", as in the context of Fulani society (Moore 1992, Berry 1989a and 1989b).

[6] Focus here is on land tenure legislation and less on general law regulating administration and decentralisation within the Malian state administration.

water points are properties of the state". Only by developing the land ('mise en valeur') can a more firm property right be claimed. State ownership of land is the general principle of the law. The state property includes all water resources. This formal ownership of all land by the state reflects influence from both Roman law and the Islamic shari'a (adopted by the French colonial administration).[7] The weak support of communal claim-rights to rangelands, compared to crop land, have weak support both in Islamic law and in Malian law. Reflecting the influence of Islam, it is also fair to say that customary law also operate this way within the Fulani community. Vis-à-vis other communities, claims are made on territorial grounds, less related to what type of use the land is under.

Evolution in customary common property regimes

The customary tenure regimes of the Fulani, which still largely control the rich flood-plain resources of the Inland Niger Delta, have intrigued several researchers.[8] These tenure regimes have a history of several centuries, and have evolved to regulate access to pastoral, crop-land, fish and wild-land resources between various producer groups. A majority of the user groups are settled within the Delta, but a significant portion live in the surrounding areas using the Delta mostly in the dry season. The customary tenure regimes are adapted to extreme climatic variability in time and space and high diversity in ecology and production potentials.

For the national law-makers a main parameter of choice regarding the construction of new property regimes for the rangelands, which might include recognition of already existing customary structures, is the *degree and character of excludability* to be introduced.

This paper suggests that some of the dilemmas (not all!) faced by policy and law makers might be approached through the introduction of procedural law (rules of procedure), rather than substantive law (rules of right which the courts are called upon to apply) (Vedeld 1993a). Instead of legislatively dictating detailed property rights to pastoral or agricultural resources, the procedural law could specify an enabling framework within which the concerned parties could legitimately put forward their claims to a certain resource. This institutional framework would be embedded in the local culture and customary law.

The Inland Delta resources

The Inland Delta represents a complex ecological system of great but uncertain productivity, which depends crucially on rainfall (3-500mm) and annual flood levels of the Bani and Niger Rivers. About 16,000 sq. km is flooded under "normal" flood levels - leaving several thousand sq. km of flood-plain pastures for dry-season grazing and land for flood retreat crop cultivation (rice). This constitutes the largest flood-plain pastures of West Africa. Following the drought that started in the late 1960s, only 1/3 of this area is presently flooded (CABO 1991). This indicates large and stochastic fluctuations in pasture (and crop) production between seasons, years and different areas. The flood-plain pastures play a vital role in sustaining livestock production and pastoralism in Mali and in the Mopti region. More than 1 million cattle and 2 million small-stock utilize these areas for dry season grazing 7-8 months per year, from October/November to May/June.

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[7] In Roman and Continental Law all bundles of rights are normally gathered on one hand (the state), ref. the concept 'dominium'. This is so in Mali, building on French law. In Islamic law the head of state is conceived to represent the Islamic community, and, hence, "the ultimate source for ownership of land" (Park 1993:1). Many state authorities of Islamic West Africa have adopted similar laws.

[8] Cf. Gallais 1967 and 1984, Ba and Daget 1962, CIPEA 1983, Lewis 1981, Swift 1988 and 1989, Moorehead 1991, Turner 1992, Vedeld 1993a, Cissé 1991, Vedeld 1997.

The main resource-access conflict: crops or cows?

The *main* resource-access conflict, which has specific tenure dimensions, follows from increased demand for flood-recession rice land in the deeper lying flood-plain areas. These areas host some of the best remaining pastures for livestock and pastoralism. The conversion of these flood-plain pastures for crop fields represents an 'enclosure' of the most valuable and critical common-pool resource for the pastoral Fulani of the Delta. The pure pastoral groups are often outmanoeuvred in local tenure conflicts by compact and powerful local Fulani elites with interests in cultivating common floodplain pastures (Vedeld 1997). These agro-pastoral elites operate together with subordinate cultivators in local bargaining processes.

Processes of interpreting access- and use rights

How are access rights defined and defended today? The point of reference for most local users is the property-rights institutions as they stood at the time of the Dina (1818-1862). This rule or 'Village Law' is here denoted: the right of the *founder (Dina/Islam)* (see below Table 1.). The founding lineages of a community have legitimate rights to allocate land and to control exclusion, to manage, and to use resources. The institutions formalised by the Dina and legitimised by Islamic beliefs and ideologies, separated clearly and formally between insiders and outsiders. Outsiders have to pay a grazing fee (conngi), while insiders have free access rights. Such fees are paid for passing the river, for trespassing a leyde and for camping within a leyde. These fees have increased significantly with increasing scarcity of pasture. There are also other important rules from the time of the Dina including the rank-order of the corporate herds, systems of cattle tracks and stop-over points, inheritance rules for offices, cattle, land, and property. The Dina represented a regime that through conquest overthrew *rights of first arrivals* in certain areas, while providing all groups with new identifications and status positions in society. Groups were conquered, enslaved or in other ways dominated by the pastoral Fulani and their regimes. In this regard, the rights of local subordinate cultivators (Rimaybé ex-slaves) and Somono and Boso-agro-fishermen were suppressed in the interest of the pastoral Fulani.

I present a relatively complex typology of state-community encounters which defines the system of property rights in crude terms in three Fulani village communities studied (2-4000 people). The *layers* of laws and rules are interpreted differently by the different interest groups and bargaining parties to property rights. The paper indicates the mismatch between 'constitutional' rules as claimed by different appropriators and actual rules-in-use applied by those in power over local regimes (cf. Vedeld 1997). The rules-in-use shift according to local circumstances related to the type of resource-use conflict, power structures, and particularities of the state-locality encounters. This fluidity reflects disagreements over status hierarchies and certain rules (not all), and unpredictability in their interpretation and application. The different legal sources are combined with the accumulated knowledge in oral (and written) traditions from case-to-case decisions over individual tenurial disputes, or cases of tenurial transactions ('case-law'). The knowledge about these cases is embodied in local specialists (marabouts, Chiefs, elders, Jowro, Bessema (leader of the Rimaybé)). Bargaining stands of individuals are determined through interpretations in different arenas and levels of social organisation. Interpretations may change from one arena to another and often from one level of organisation to another. Often these different arenas are inter-woven and not easy to distinguish from each other. When conflicts arise, coercive methods are often used, especially between groups with different ethnic or social

identity and origin. Power is particularly employed by stronger groups against weaker.[9] Both among the Rimaybé, descendants of conquered or enslaved groups, and among the Boso/Somono, there are groups that claim rights to crop land as '*first arrivals'*. They also claim rights of *'long term occupancy'* and *'all Malians'*.[10] Such rights are overruled by the Fulani elite. Women are provided access rights through their husbands (or kins), and do not inherit land. Divorced or deserted women can loose their land.

The state and rangeland management

The state claim *de jure* ownership to all rangelands in Mali. In practice, state officials do observe local custom - or rather the rights of customary leaders to manage and allocate resources. But this is not done in a uniform or strategic manner. State officials, when asked, claim that they adhere to the rule '*long term occupancy'* (without any reference to what that means). Judges of the court basically claim to judge according to the same rule. But when studying the practice of state officials and judges, another picture emerges. They can - sometimes unilaterally - decide to use either the rights of the last conqueror (Jowro), or founder (Fulani villages), or long term occupancy (in zones dominated by e.g. Boso agro-fishermen), or rights of 'all Malians' (supporting the entry of influential outsiders).

Table 1. Mismatch between constitutional rules and rules-in-use as perceived by groups of appropriators

Appropriators	**Constitutional rule claimed**	**Rules-in-use**
State	Rangeland: state ownership Crop land: 'Mise en valeur' (recognition of usufruct	'all Malians', or first arrival, or Founder (Dina/Islam) or ambiguous use of power
Chiefs and members of founding lineages	Community member-ship, rights of founding lineages (Dina)	Founder (Dina/Islam), all members have usufruct, authority/ambiguous use of power
Jowro ('masters of pasture') (customary leaders)	Customary lineage right Community member-ship (pre-) Dina/Islam	Customary (Dina/Islam), access for community members 'all Malians' when Jowro lease crop land to outsiders
Noble Rimbé pastoralist (clergymen, pastoralists, traders, craftsmen)	Rights of founder (Dina) Rights of last conqueror (divined Islamic right over land and people)	Founder (Dina/Islam) (supported by the state in the Fulani villages, but often not elsewhere).

[9] As observed by Spiertz (1995), in many life situations resource users, leaders and state officials make use of more than one normative (rule-based) repertoire to rationalise and legitimise their decisions and behaviour. He claims that people orient themselves after local knowledge, perceived contest of interaction, and power relations.

[10] The rule "all Malians" is referred to by the state as all citizens of Mali having access to state property rangeland. The concept of "mise en valeur" means that the a certain investment in the land e.g. land preparation must be carried out before a proprietor can claim a usufruct right or ownership right to the land.

Subordinate Rimaybé cultivators	First arrivals, or 'all Malians', or Community members, Long term occupancy	Founder (Dina/Islam) Limited access to CPRs, Village law/power, custom
Subordinate Boso/Somono agro-fishermen	First arrivals ‘all Malians’ Long term occupancy	Founder (Dina/Islam) Limited access to CPRs, Village law/power, custom
Women	none	Village law/power, custom

In general, state officials seem to support the local groups with most power (and wealth), often in rent-seeking manners. This reflects that the law is basically irrelevant for settling the type of conflicts that occur between local individuals and groups over access to high quality land. There are no set procedures for managing conflicts. Enforcement of regulations or decisions is mostly weak, non-existent, or un-predictable in an authoritarian way. Gifts and bribes are common ways of settling disputes. ‘The one who is willing to pay wins’. Key representative of the local leaders - for example the "masters of pasture" (Jowro) cynically argue that the administration is simply interested in "keeping the conflicts going to get money out of it". There are multiple ways of settling disputes or re-opening conflict cases.

Local leaders vs. state agencies: case of rank order in the corporate herd

Let me provide one case in which Malian state officials stand out as authoritarian, weak and rent-seeking, and how strong leaders are both victims and strategic users of the state. The case illustrates the ambiguity and incompetence of the state apparatus, from the local to the ministerial level, when dealing with powerful local leaders and resource conflicts. Key constitutional rules about division of power between the state administration and the court system appear to be violated. The state officials follow no set procedures and application of rules for handling the dispute. The sequence of encounters shows how both customary and state laws/rules in general are set aside, and how wealthy and influential leaders manipulate state officials and are themselves being manipulated. For an outsider the process is almost incomprehensible.[11] There is complete lack of predictability and transparency in decision-making, and weak enforcement.

The conflict, at the surface, concerns dispute over the *rank order of a herder in the corporate herd* between the Jowro of HorrŽ Wumbere, Samba Aly Bocoum (lineage Haali), and the pastoralist Bella Seydou Diall. Underneath the dipute, is internal rivalry between key lineages of DialloubŽ related to political hegemony in the village.[12] One group is with the present Chief (Diall), the other opposed to him. They both have recourse to state officials and use the court system. When I met Diall during our field-work in 1993, he was highly frustrated about the process and the present outcome of the conflict.[13] From his initial, in retrospect,

[11] All details are not revealed. The key point is to illustrate the changes in decisions taken at each level, to the frustration of all parties. I have reviewed the official documentation referred to and cross-checked findings with local researchers (cf. note by B. Ba 1996).

[12] The Jowro is a close relative of influential persons of the Haali family, which is the key opposition group to the Village Chief. The pastoralist (Diall) is among the group around the ÔparamountÕ Jowro(Village Chief). The ÔparamountÕ Jowro cannot veto or push the Jowro to change his position. The dispute started with the father of the present Jowro, who recently passed away. But the son has taken the same stand in the conflict.

[13] The case is also about interpretation of customary rules. Diall wants to detach from the group Gordi and form his own corporate herd, since the herd has grown in size. He means

unfortunate decision to detach from the corporate herd, the decision has changed ***six*** times (against, for, against, etc.) as the bargaining process has moved up and down between different actors within the state and court systems. Yet no permanent or respected solution to the problem has been found. Internal rivalries make it difficult to agree on a common interpretation of customary rules, and these influential local personalities do not respect state or court decisions.

The ambiguity of the state and court system in conflict resolution

The family cattle herd of Diall in the group Gordi has historically held the 3nd rank in the sequence of the corporate herd unit (for 166 years). Due to disagreements with the Jowro regarding his access rights to pastures, Diall voluntarily announces his detachment from the corporate herd. He wants to form his own corporate herd. The Jowro sees that this may create conflicts in the use of joint pastures and brings the case forward in a meeting headed by the 'paramount' Jowro/Village Chief of DialloubŽ.
1974/75: The meeting decides **against Diall.** He is not to be allowed to move with his herd independent of the Jowro. He should attach again (in 5th place). Diall puts forward a complaint but no new agreement is reached at Arrondissement level.
1976: The Commandant de Cercle now decides **against Diall** (Decision no. 24/CM du 20 Aožt 1976). Diall is not happy with the situation, however. He brings his case forward to the Minister of Interior, who orders an investigation,[14] which in general supports the decision by the Commandant de Cercle (**against Diall**).
1978: The Governeur launches a regional commision, resulting in a Governeur declaration **for Diall** (Decision no. 249/GRM/CAB du 25.11.78) and (Decision no. 331/GRM/CAB du 7.12.78).
1981: The Jowro, being opposed to this decision, asks the Minister of Interior to review the case. A decision is made **against Diall**.
1982: Diall obtains an annulation of this decision in the Court (**for Diall)** (Arr• t No. 45 du 25/10/1982).
1985: The Jowro obtains an annulation of decision 331/GRM by the governor. The Supreme Court decides **against Diall** (Arr• t du 21/03/1985.
1986: Diall complains to the Minister of Interior because he is blocked at the river crossing. The Ministry makes the Governor intervene and he decides **for Diall** (No 217/CM du 4 Sept. 1986).
1991/92: The Supreme Court orders an execution of the Arr• t du 21/03/1985 (**against Diall**). Diall crosses the river with his herd. He tries to follow after the corporate herd. The Jowro engages the police to stop Diall and ensure that the Court-decision is followed.

Legal pluralism: state law or village law

As indicated above, the property rights regimes to rangeland and livestock among Fulani are not regulated by formal law or by law alone. The strucuring properties that create social order arrive from different types of institutions and actions of agents at different levels of social organisation (e.g. custom, Islamic law, state law). The paradigm of legal pluralism (in anthropology) takes as a point of departure that law is not representing the ultimate or even the main source of order in society. Law is conceived as one among many structuring institutions for behaviour within society (Spiertz 1995). In Africa, other observors also stress that the security of (rangeland) tenure is mostly not guaranteed by law..,.

"but must be maintained through negotiation, adjudication and political manoeuvre"..."If rights in land are defined through on-going, open-ended debate over authority and obligation as well as rules and practices, the security of farmers' rights (*or* pastoralists rights - my addition) depends on the terms in which they participate in such debates and in the domestic, judicial, and bureaucratic arenas in which they occur." (Berry 1994:11).

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that while leaving Gordi, which has the 3rd place, he is entitled to 4th place. He is however only offered 5th place.

[14] The Minister of Interior heads the state administrative services at arrondissement, cercle and region levels.

Tenure rights among the Fulani are determined in many (political) arenas of society. Local users, chiefs, state officials, or intrants make use of more than one normative or cognitive repertoire to rationalise and legitimise decisions or behaviour. It is fruitful to distinguish actions and rationalisations (but often not easy since they are intervowen). Focusing on "law", there are different interpretations by agents at different levels of organisation. One can distinguish between local customary law, which is basically embedded in history and custom, and 'Village Law' (folk law). Village Law is basically forms of social control more or less systematically enforced by authority structures of the society at village or community level, in part embedded in customary status and meaning systems, in part in power hierarchies. The 'Village Law' has two dimensions. First, it encompasses 'customary law' (which may or may not be written, recorded, or clearly codified). Secondly, there is a world of paralegal or quasi-legal forms of rules and regulations of groups operating outside regular systems of courts and law, but embedded mainly within the state systems (cf. Allott and Woodman 1985). As indicated, chiefs and local officials in their exercise of (state) power related to land use and tenure conflicts tend to combine 'state law' and various dimension of 'Village Law' to produce a third legal system or everyday practice: 'local law'.[15] 'Local law' represents an original attempt to balance the convergence of central and local general needs" (Le Roy 1985:257). Local law represents a blend between Fulani manner ('Village Law'), Islamic law, and state law. Focusing on law as a means of creating social order, important aspects of the legal pluralism in the local context can be illustrated, crudely, as follows moving from custom to substantive state law:

Customary law -- Village Law -- Quasi-legal systems --Local law -- State law

It is important, however, that conflicts over interpretations of historic rights are not clarified by reference to law alone.

Problems of legal reform and national integration

The shaping of more accountable and efficient regimes for resource management at community level is a large step towards facilitating such national integration. Law is at the core of such processes of institutional change. But the introduction of substantive law and legal rules at national level is no guarantee for change of status positions, behaviour of individuals, and enforcement practices at local level. The relationship between constitution of meaning, behaviour, custom, and local power hierarchies, on the one hand, and formal law, on the other, is a complex matter.

"Jurists and anthropologists are not agreed on the relationship between custom and law. Law grows with societal complexity, with the decline of the importance of primary groups, such as family, with breakdown of organised religion, with industrialisation and bureaucratisation" (Lloyd and Freeman 1985:878).

Efficient "top-down" law reform requires a minimum of reflection of new values, norms, and rules carried by the law reform - both among those who are to abide by the law and those who are set to interpret and execute the new law.[16] As long as there is large discrepancies in state law and customary legal systems, there is room for ambiguous behaviour - by all groups. If personal rule ship continue to dominate over bureaucratic ethics and legal-rational ideals embedded in the

[15] Islamic law is an integrated element of the village law.

[16] Incompatibility between formal law and local behaviour is observed in different forms across the world. The adoption of "liberal" ideas about the concepts of property for example through "top down" privatisation can create legitimacy and efficiency problems if reforms are not sensitive and adaptive to local custom. Cf. Swallow and Bromely 1995 for a review of this issue related to African rangelands.

"Rule of Law", legal instruments will remain coercive tools in the hands of state officials and local leaders. Nation-building becomes empire building. The notion "we are all Malians" used by central elites as a way of creating open access for all citizens of Mali to CPRs of the Delta, is a typical value-rational claim. It makes no distinction between different claim right holders to resources, and promotes "open access" situations to meet demands of potential powerful political supporters.

Legal dilemmas and procedural law

It is first of all necessary to develop *procedures* for how the more precise content of customary laws can be synthesised, and later how new rules can be enforced through new institutional arrangements. This requires an assessment of the principles behind customary law and local systems for creating order, including judgements of fairness based on local custom. At the level of the villages, the administration, and courts that handle tenure disputes, jurisprudence develops. But few attempts have yet been made to systematise legal cases and accumulation knowledge about local conflict resolution.[17]

Procedural law: land tenure reforms as a process

The flexibility and complexity of the customary law cannot easily be captured and homogenised in national law by using the written Dina taric held up against pre-Islamic customs and other oral agreements. Country-wide measures of this type would not only be conflictual, complicated and costly for the state, but they would also easily strain flexibility and resource-sharing.[18] A possible solution to some of these dilemmas is for the government to elaborate and enforce procedural (rules of procedure) rather than substantive law (rules of right which the courts are called on to apply) (Vedeld 1993). In stead of legislatively dictating detailed property rights to pastoral or agricultural resources, the procedural law could specify the framework within which the concerned parties could legitimately put forward their claims to a certain resource. This would include the identification and building of administrative or legal institutions which would handle such claims, the principles for judging between opposing claims, as well as procedures for enforcement. Over time, a jurisprudence would develop and competence in the processing governments and organisations be built.

Regulation of access rights to the Inland Delta

Today, the Malian state property law contains no concept of 'joint usage right' to land or legal institutions capable of handling these legal issues. This is ironical when most resources are held and used jointly by various user groups. Even if the rangelands in important ways represent relatively indivisible resource systems, there are ways of dividing the benefits from these resources. This is reflected in the bundles of rights defined by the customary tenure regimes. In Mali, as in most African countries, there is great ethnic diversity and a long history of tribal rivalry. These conflicts may grow worse if the right balance is not found in the sharing of rights, duties and powers between state laws and policies, market forces, and customary leaders and resource users. A major responsibility for achieving such balance rests with the Malian leadership and political elites at local and state levels.

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[17] An increasing number of research works have however started to raise these problems in Mali and Sahel: CIPEA 1983, Cissé 1985 and 1991, Tiffen 1985, Rochegude 1990, Hesseling and Coulibaly 1991, Coulibaly and Hesseling 1992, Le Bris et al. 1991, Kintz 1990 and 1992, Le Roy (ed) 1992, Le Roy et al. 1996, Cissé (ed) 1995.

[18] The "negotiability of rules and relationships in Africa may be seen as an opportunity rather than an impasse." (Berry 1994:2). It reflects perhaps that land in general is less of a constraint to development than labour and capital, and implies that the scope for dynamic change is maintained.

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