

**MALI: THE ENABLING FRAMEWORK FOR
USER-BASED GOVERNANCE OF FOREST RESOURCES**

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A. Introduction

This paper assesses the probable impact in Mali of the *proposed* recent reforms in the forestry code and of the new decentralization legislation² on the capacity of local users to govern and manage forest resources. The empirical examples used to illustrate the argument are based mainly on long-enduring community experiences in governing and managing forest resources in southern parts of the country's Fifth Region.

Mali is the State in the francophone West African Sahelian group that has had the most militarized tradition of renewable natural resources governance and management. This tradition is an institutional artifact. That is, it was created and maintained by a particular set of institutional arrangements. These included, most prominently, the forestry code and the basic forms of State organization from the colonial period forward. Together, these institutions created powerful incentives for a top-down, extractive/exploitative strategy on the part of most foresters to the "management" of the country's woodstocks³.

The Malien forestry service, from independence in 1958 to the fall of the Moussa Traore dictatorship in March, 1991, exercised extremely tight control over access to forest resources in many regions of the country. Foresters did not so much regulate use as collect legal fines and illegal "rents" from users. Those rents (clearly bribes in such circumstances) authorized individual users to deal with woodstocks as open access resources.

With the formal liberalization of politics in Mali under the new Third Republic, efforts have been initiated to modify the forestry code and increase the authority of user

¹Forest resources, as the term is used in this paper, is a very broad concept covering a variety of renewable and non-renewable resources typically found in Mali's wooded areas. Thus the term includes all kinds of wood products, e.g., firewood, lumber, bark, roots, leaves, fruits and nuts, but also wildlife, water and grass resources occurring in forests or areas covered by low brush, and mineral resources such as gravel, semi-precious ores, etc.

²The term *décentralisation* in French is best rendered in English by the concept of *devolution*. The English term decentralization is a broad concept covering at least five distinct sub-concepts: deconcentration, delegation, deregulation, privatization and devolution [Hobgood, 1992].

³The term *woodstock* as employed in this paper refers to all ligneous vegetation, from bushes to full size trees. While in southern Mali one finds many of the latter, in the more northern, drier, Sahelian parts of the country and well up into the Saharan desert, small trees and bushes constitute the bulk of the woodstock.

strengthen community institutions rather than importing a totally new set of rules governing a resources management activity.

Studies of these experiments conducted in several parts of Mali over the past five years substantiate widespread indigenous capacity to overcome the typical issues of collective action and find workable solutions to real resource problems. Some of these institutions reveal a startling degree of sophistication in the deliberate design of institutions to ensure that:

- those responsible for their operation have incentives compatible with proper performance of their duties;
- access and use rules are well adapted to local realities;
- rules are applied uniformly to residents and non-residents;
- penalties are apportioned to the gravity of the infraction;
- information about both the rules and their application circulates rapidly and accurately to all those concerned; and
- resources produced by the sanctioning process are distributed equitably, or are used to achieve community goals, thus providing incentives that build public support in favor of compliance. [Thomson; Dennison et al., *passim*].

On the other hand, certain communities simply make no efforts to preserve the resources upon which their production systems are based, preferring to exploit them in a predatory manner and then move on in search of new resources [cf. chapter on *Foulankraibe* pastoralists in Dennison et al.]

C. Forestry Policy in Mali, 1960-91

I. Overview

Malien forestry policy at independence in 1958 stressed State control of the use of most forest resources. Foresters were required by State law to control access and regulate use and harvesting. Forestry was no different from many other sectors in this regard under the socialist Keita regime. The prevailing political sentiment, as well as contemporary politico-economic theory, favored a much more aggressive, invasive approach to governance than had hitherto applied in most parts of Mali.

Foresters were only too happy to comply. They set out to reinforce the rudimentary forestry field organization established under the French colonial regime. When the military *coup d'Etat* that Moussa Traoré led in 1968 toppled the Keita socialist regime, foresters were able to strengthen their position further because they counted collectively as a reserve unit in the country's military.

Members of Mali's forestry service reinforced their efforts to establish control over the country's woodstock. Typically this led them into confrontations with indigenous populations, many of which had developed their own approaches to managing forest resources. Most indigenous groups had also worked out their own strategies for governing renewables, and were bitterly frustrated when State officials challenged these systems and indeed, outlawed them [for examples of variations in local approaches to management and governance of woodstocks, see Dennison et al., *passim*; Thomson and Sylla].

The upshot was a twenty-year-long battle in most parts of the country between foresters and local populations. Some of the most important confrontations concerned rural people's harvesting wood for local consumptive uses, and the widespread practice of annually burning large areas of pasture and brushland once the harvest was completed. The first complex of practices was simply indispensable to the survival of local production systems, and of those who depended on them [Campbell]. The second was arguably less imperative, but it certainly dealt with a series of problems otherwise very difficult for local people to resolve.⁴

2. *Contemporary Situation*

The former Minister of Rural Development, Bouba Sada SY, was replaced in late 1994. Since then, the idea of fundamentally modifying the State's position vis-à-vis renewable natural resources, and simultaneously authorizing a strengthened role for resource users in governing and managing renewables, has again moved to the forefront of the policy agenda in that Ministry. However, the outcome is by no means certain.

The forestry code has still not been adopted. A somewhat revised version is currently before a commission of the National Assembly, but the new minister of rural development has decided that the code must be thoroughly adapted to the changed circumstances of the Third Republic. Thus the bill prepared by lawyer Mahamane Dédéou Touré will probably die in committee, as it is now judged to be too similar to earlier code versions.

The difficulty in the existing bill turns on the clash between the grassroots sociological realities described above (Section B.) and the civil law legal theory incorporated in the architecture of the Malian State. The latter specifies that the State is the sole source of all legitimate organization.

3. *Forestry Policy versus Grassroots Realities*

People may come together, make common cause to resolve a problem, and act together to achieve their self-assigned goals. Yet the realities of collective action and effective local, non-formal institutions are non-existent as far as the legal system is concerned *unless the State, acting through its designated officials, has accorded a group*

⁴Among these are the venomous snakes that, under cover of tall grasses, approach inhabited areas and sometimes lethally bite those who stumble across them in the dark. Children are the most frequent victims, as their body weight makes them more susceptible to the force of the venom. Another major problem, unresolved from a technical forestry perspective, is the issue of deliberate early "cool" burns versus later deliberate or accidental "hot" fires. See *La poussière et le cendre* [complete footnote].

engaging in collective action prior recognition as a duly authorized organization. As one might imagine, State recognition must be accorded following a set sequence of procedures. Any errors in these procedures also vitiate the process, and reduce the subject institution, juridically speaking, once again to the status of a non-entity.

An example will illustrate the point more clearly. In the Koro District⁵ of Mali's Fifth Region, members of the Dogon ethnic group have for much of the last century inhabited villages on the Séno plains south of the Bandiagara Plateau. There they farm millet and some sorghum, and raise various types of livestock in a mixed farming system. This system depends for many of its inputs on forest resources, e.g., construction materials, firewood, tool handles, fruits and nuts, bark for rope, etc.

The Dogon established themselves in large numbers on the Séno plains only after the French solidified their colonial hegemony in the area late in the 19th century, ending a long period of warfare. Prior to that time various Dogon sub-groups inhabited the high Bandiagara Plateau. These sub-groups were founded by members of different ethnic groups who earlier sought refuge from conflicts in many neighboring areas. The plateau had only one feature that made it attractive to refugees: it was easy to defend because only a few paths lead up from the plains along the sheer cliffs to the plateau. These could be closed to invaders with relative ease.

However, to survive on the dry, resource-poor plateau, the Dogon were forced to become master conservationists. No useable materials that could be wrung from the resource base or the production system were ever wasted. Water, for instance, was used and re-used, first for drinking, then for washing, then for crop and finally for tree irrigation. Access to renewable resources such as woodstocks and pastures was strictly limited. Dogon societies developed institutions to regulate use of woodstocks, in particular, as common property resources. They organized surveillance systems, and strictly applied their own rules concerning harvesting. These systems resulted in effective protection of the available resource base on the Bandiagara Plateau [Thomson and Sylla, *passim*].

When, during the colonial era, some groups descended from the plateau and established villages on the adjacent Séno Plain, they continued to practice tight control over the use of renewable resources. The core institution for environmental governance and management among these Dogon groups was the *ogokana*. The term designates both an office and an institution: *ogokana*, an official, heads *ogokana*, the institution. Members of the institution, which is always based on a single village, patrol village lands for infractions of resource use rules and punish offenders. The latter can appeal to the village council if they contest the accusation or the penalty. By all accounts, so long as the Dogon were left to their own devices, they successfully governed village woodstocks.

In the early 1970s, the forestry service began to establish patrol posts in Dogon country. Forestry agents applied a rough version of the forestry code in the area [Campbell]; as usual they countered local regulations. This led to resistance which was, in most cases, eventually crushed. A period of resource degradation set in, as was to be expected. Some

⁵District is the translation adopted here for the administrative unit of the *cercle* in the current Malian administrative setup.

twenty years later, the international NGO, CARE, began trying to encourage a greater role for communities in management of village-level resources. CARE agents convinced the then-resident forester and *commandant* to approve this approach. As part of the four-way contract between the villagers, the foresters, the State and CARE, villagers associated with the *ogokana* were to be allowed to find people for infractions committed against locally formulated rules.

A few years later this approach was challenged by both the forest service and the administration. The core of the challenge turned on the fact that the *ogokana* in the two villages were question were, juridically speaking, non-entities. These communities were not officially recognized as units of governance. Nor were they either cooperatives or legally-constituted private associations. In consequence, though village representatives had signed the quadripartite contract with the forestry service, the *cercle* administrator and CARE, the contract was void and without legal effect since one of the parties - the *ogokana*, representing the villages - lacked the legal status to commit itself to the agreement, much less to impose fines on those caught violating local environmental regulations [Touré et al.: 9-12]. The agreement has not been quashed, but neither has this type of contract been extended to other communities.

Similar efforts by persisting or revived indigenous organizations in other areas adjacent to the Bandiagara Plateau, involve Dogon, but also Bambara, Fulbe and Soninké villages [Touré et al.: 4-37]. The Dogon *alamodiou* organizations are structured by relationships that link original villages on the plateau to communities founded by settlers from those villages. The *alamodiou* groups are charged with both environmental and social police. They have survived for hundreds of years in the area of what is now the Bankass *Cercle*, west of Bandiagara.

Walde Kelka is another organization, this one composed of some Dogon villages and some peopled by other ethnic groups, in the Douentza *Cercle*, north of the plateau. *Kelka* is essentially a federation of village-based environmental control units. Each unit in the federation controls access to resources on its territory, and regulates their harvesting. The federation exists to enable member villages to better address problems that concern them all, and that exceed the capacity of individual villages to resolve.

4. Forest Service Position on Role of Community Organizations in Environmental Policing

As of early 1994, the activities of the *alamodiou* and *Walde Kelka* were being challenged by forestry service representatives on the same grounds as were the *ogokana*. Forest service representatives maintained that such organizations have a role to play, but it must, legally, be a limited one. Representatives of community environmental organizations, according to foresters, should continue to patrol their lands and identify those guilty of infractions. But their sole role thereafter should be to inform the foresters, who would, by law, take all necessary policing actions in hand. Under no circumstances should community organizations engage in repression, that is, punishing delinquents.

From the perspective of these organizations, the forest service position fails for two equally strong reasons. First, groups like the *alamodiou* and the *ogokana* have an explicit

"mission", in the eyes of their members and members of the broader community, to teach proper environmental stewardship. Over the centuries they have worked out well-recognized strategies to achieve this goal. They punish offenders, but in a highly nuanced way which involves, in first instances, largely symbolic sanctions. Only recidivists are subject to heavier penalties.

Under this scheme, turning over a first offender to a forester for punishment simply aborts the association's educational mandate. Leaders, members and community residents view turning someone guilty of infringing local regulations over to foresters as an explicit admission that the group cannot deal with problem. Such an action would amount to overkill, and would, in their view, far more likely encourage further deviant behavior on the part of the culprit than future adherence to local working rules of environmental stewardship.

Field foresters object to this approach essentially because it deprives them of opportunities to collect either legitimate rebates on fines officially assessed, or rents - bribes, in this case - resulting when fines are threatened but then not applied in return for a bribe of smaller amount than the fine, which the forester retains.⁶

The second point of local organizations' resistance to being forced to rely on foresters for sanctioning of infractions is that it is likely to be ineffective because unreliable. Members of the *ogokana*, the *alamodiou* and *Walde Kelka* have all found that certainty of sanctioning is what prevents infractions, not the severity of the penalties [for an *Kelka* example, see Thomson: 20]. They know that Malian foresters are too few in number to ever mount effective surveillance systems [Touré et al.: 11-12]. If they are on patrol, they cannot be contacted in their offices at the *cercle*. The likelihood of their actually catching a culprit is simply inadequate to deter repeated infractions. Community members strongly prefer effective local management of local woodstocks as common properties to what is a de facto system of open access with occasional fines imposed or bribes extracted, but no real regulation of use.

C. Malian Decentralization Law of 1995

The decentralization bill for the Malian Third Republic has been passed into law, as has a related piece of legislation that fixes the status and benefits of civil servants under the decentralization law. These two laws were voted by the National Assembly in February 1995, but the administrative regulations required for their implementation - the *textes d'application* - have not been approved.

1. Disincentives to Applying the New Law

⁶Discussion with a field forester in Bankass, February 7, 1994. The individual in question eventually indicated he would be willing to consider a policing role for local organizations, but only if *alamodiou* representatives would agree to split any sanctions they imposed with foresters. In this regard, concerning Koro Cercle, see also Campbell.

Curiously, neither the elected deputies who approved this law, nor the members of the executive branch's *Mission de Décentralisation*⁷ are prepared to render these laws public. The explanation for their reticence lies in the fact that, by the terms of the law governing the status of civil servants, a number of the latter will be transferred to the budgets of local governments. As we will see, under the decentralization law the budgets of these governments are not likely to comprise the same level of resources as does that of the national government. Civil Servants are understandably nervous about being compelled to work for governments whose ability to pay their salaries and indemnities is subject to considerable doubt. They are thus prepared to resist this legislation. The elected and appointed officials of the national government know this, which partially explains their reticence to activate the new laws.

The other factor behind the reticence of elected national politicians and high appointed officials is a strong suspicion that many rural voters understand the issues, oppose the national government leaders' position on decentralization as articulated in the law, and are well enough organized to translate disapproval into opposition in public debates and at the polls.

Despite the reticence of deputies and executive branch members to publish the laws they have prepared and approved concerning decentralization, various organizations have managed to obtain copies. In particular, the heads of large and powerful peasant producer groups have pressured their deputies to provide them copies of the two laws. Both the *Syndicat des cotoniers et vivriers* (SYCOV), based in the economically powerful Third and Fourth Regions (Sikasso and Ségou), and the *Syndicat des producteurs* in Keita, in the First Region, have obtained copies.⁸ Their success in this regard may be explained by the presumed capacity of these peasant leaders to influence their members' votes in the national elections scheduled for 1997. This gives them considerable leverage vis-à-vis the deputies elected in jurisdictions where these peasant producer organizations are active, and some capacity to insist that deputies adopt a constituency service orientation, rather than following nationally-determined party lines [Kanté et al.: 27-28, 114-15].

2. *Structural Weakness of the New Decentralization Law*

From the perspective of these peasant leaders, as well as many members of their organizations, the major failing of the decentralization law of February, 1995,⁹ is the deliberate non-recognition of villages, pastoral camps (*fractions*) and urban neighborhoods

⁷Executive branch unit responsible for developing and implementing decentralization policy within the country.

⁸Personal communication, Chéibane Coulibaly, May 19, 1995.

⁹Since I have been unable to consult the final version of the decentralization law, all references to Articles in this law are based on the bill (*projet de loi*) dated October 20, 1993. As the intermediate administrative jurisdiction of the *cercle* has since been eliminated, the article sequence included in the final version of the decentralization law has undoubtedly changed. References to the article sequence included in the law voted by the National Assembly will be included in a revised version of this paper.

(*quartiers*) as community-level jurisdictions with real capacity for collective action and a legitimate claim to some degree of political autonomy.

An attentive reading of Mali's decentralization law reveals that the document is thoroughly inspired by prior practice, and represents very little by way of innovation. The general outlines of this law may be summarized in the following points:

- devolution, in the sense of recognizing the partial autonomy of sub-national jurisdictions, is limited to the *arrondissement* level, currently the lowest level in the administrative system, staffed by national civil servants, and functioning with a budget approved by the Ministry of Finance.¹⁰
- the *commune*, which despite some language in the law suggesting that willingness of inhabitants to be grouped in a common collective action unit will be a criteria for recognizing a *commune* as an autonomous constituency [Art. 2] will apparently, in almost all cases, take the form and geographic limits of existing *arrondissements*. This solution will be imposed although in many situations populations of those jurisdictions do not constitute effective units for collective action.
- autonomy of the proposed *communes* is strictly limited:
 - the positions and duties of elected leaders are fixed by the decentralization law [Arts. 4, 14-37 (communal council: members, responsibilities and operations); 38, 44-55, 59-60 (mayor and his deputies)];
 - the revenue sources of communal jurisdictions are stipulated by the law, and taxation rates subject to national approval [Art. 182];
 - budgetary autonomy is practically nil, as all steps in the budgetary process are specified beforehand and subject to *a priori* approval by oversight authorities (those exercising *tutelle* in the name of the State) [Arts. 172-86];

¹⁰In a recent television interview, Ousmane SY, the head of the Ministry of Interior unit charged with planning and implementing devolution, refused to answer pointed questions concerning the probable geographic basis of the proposed *communes*. He avoided specifying either *arrondissements*, or *cantons* (a colonial administrative unit, based sometimes on pre-colonial units of governance that typically included between ten and forty villages. Personal communication, Chéibane Coulibaly, May 19, 1995.

- the State maintains representatives who will exercise oversight to verify the legality of all actions taken and rules established by communal officials [Arts. 231-37].¹¹
- communal business must be conducted according to a specified process for public decision making that is rich in requirements for written record keeping (although rural populations are largely illiterate in French, the language of official government transactions such as these); legally subject to numerous opportunities for bureaucrats to control the actions and activities of communal governments; and exposed to suspension or revocation when communal governments fail to comply with imposed substantive and procedural requirements.
- as noted, no provision is made to recognize any degree of autonomy of sub-*commune* units, even though these are clearly the primary units of effective collective action in many sectors, including forestry.

3. *Implications of Decentralization Law*

The consequences of this approach to decentralization are important. The law reflects the State's well-established top-down, control-oriented approach to community and local-level collective action. Malien civil servants and politicians have been schooled in this approach since early in the colonial era, beginning a century ago. This system strongly emphasizes uniformity in administrative and governance procedures in order to facilitate administrators' oversight and control tasks.

The new rules insist that groups of villages, constituted as a *commune*, conduct their business in a highly formalized manner, and that records be kept in French. In so doing, this law ensures that the vast majority of the population will be precluded from exercising effective control over the governance of their own public affairs at the communal level. This is because most rural and many urban adults are functionally illiterate in French, whatever their achievements in national language literacy using either Latin or Arabic script.

Public business at the community level - in the village, *fraction* or *quartier* - will predictably be conducted in national languages rather than French, and will therefore be accessible to popular control [Coulibaly, 1995].¹² But that same public business has no officially recognized status. Community leaders exist - from the perspective of the

¹¹In the original version of the decentralization law, these officials were to be stationed at the level of the *cercle*, the first jurisdiction above the *commune*. As the *cercles* are to be suppressed under the terms of the revised decentralization law, it is probable that State officials charged with oversight of communal public affairs will be located at the regional level.

¹²Coulibaly notes that, in most Dogon communities in the Fifth Region, children are allowed to assist at village council meetings so long as they follow the proceedings and do not disrupt them. Elders children to learn how to conduct public affairs, and they know, from personal experience, that participating in these processes as observers from a very early age is an efficient and low cost means of transmitting the required knowledge.

decentralization law - mainly to execute the laws established by overlapping governmental jurisdictions. They are appointed to their offices by a State representative after nomination by the village or *fraction* council, or the communal counsel in the case of *chefs de quartier* [Art 63]. Community leaders are to be paid, under terms of the new decentralization law, by the State following existing legislation [Art. 74]. They are authorized to propose ideas for action to the mayor of their *commune*, but lack authority to make and implement their own rules. Nor can they resolve disputes in a binding manner: they are authorized only to serve as mediators [Art. 69]

What emerges from these institutional arrangements are sets of incentives that:

- sharply limit and circumscribe the field of community, and even *commune* government, initiative;
- subject most initiatives to *a priori* State oversight;
- raise the transactions costs of doing public business and solving public problems by:
 - failing to recognize the autonomy of the lowest- level units of collective organization which in fact are also the most appropriate units to deal with many forestry problems;
 - prescribing a decision-making process that will, in all likelihood, force groups of villages or pastoral camps that have no natural affinity to work together to solve problems.

The risk, in most parts of Mali, is not that these inappropriate sets of rules will bring public business to a halt at the community level. Communities will continue, as before, to deal with their problems in non-formal ways, probably without much regard to State regulations. The real problem is that the decentralization legislation represents a strong commitment to retaining State control over all forms of collective action in the country. It fails to establish the kind of enabling framework for community initiative and autonomous problem solving that seems indispensable to encourage low-cost, efficient, reliable efforts by rural populations to address the myriad issues in the public services and natural resources sector, upon the resolution of which their security and development depend. The new decentralization legislation represents the loss of a signal opportunity to inaugurate a new era of collaboration, based on the principle of *subsidiarity*¹³ among autonomous governments at many levels.

¹³Millon-Delsol presents a thorough review of the principle of subsidiarity in action in Europe through the ages. Subsidiarity means allowing the smallest collective action unit capable of addressing a problem to deal with it as it sees fit, while at the same time authorizing smaller units, when a problem exceeds their capacity, to request and receive assistance from larger units.

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