Law and power in decentralised natural resource management: A case study from the Inner Niger Delta, Mali

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ABSTRACT

In several African countries, recent decentralisation processes have entailed a transfer of natural resource management responsibilities from central to local government bodies. Decentralisation aims to give local resource users greater control over the natural resources on which they depend. But implementation is riddled with difficulties - for instance, with regard to local capacity, resources and accountability. In addition, local governments must come to terms with pre-existing systems for the management of natural resources, based on local ("customary" but continuously evolving) tenure systems. The complex and diverse relationships established between local governments and customary systems may have significant implications for the "success" of decentralisation processes.

Drawing on a case study from the Inner Niger Delta (Mali) and using a socio-legal approach, this article explores the challenges of implementing decentralisation in contexts characterised by legal pluralism, by long-term historical trajectories of socio-economic change, by increasingly conflictual relations between local actors, and by shifting balances of power. It finds that customary systems in the delta have been profoundly affected by a century of change in the ecological, socio-economic and politico-institutional context. The authority and legitimacy of many chiefs ("*jowro*") and of customary institutions to hold them accountable ("*suudu baaba*") have been eroded, resource access relations have become monetarised, natural resource disputes have increased, and state legislation and greater use of courts have fostered the emergence of hybrids of both customary and statutory norms. In this context, the establishment of local governments endowed with still unclear natural resource management responsibilities has added complexity to this situation, resulting in relations between chiefs and local governments that range from conflict to cooperation through to capture. The diverse and evolving balance of power between central and local government, *jowro*, *suudu baaba*, and different groups of natural resource users shape the development and outcomes of these relations.

1. INTRODUCTION

In several African countries, recent decentralisation processes have entailed a transfer of natural resource management responsibilities from central to local government bodies (e.g. in Senegal, Mali and Tanzania). Decentralisation aims to give local resource users greater control over the natural resources on which they depend. But the implementation of legislation devolving resource management responsibilities to local governments is riddled with difficulties. Lack of financial resources and of institutional capacity in central and local government agencies, lack of legal awareness and, in some cases, limited perceived legitimacy of official rules and institutions all tend to limit the outreach of state legislation in rural areas. On the ground, power relations among different actors shape the way the law operates and disputes are settled (Lund, 1998).

In addition, local governments must come to terms with pre-existing systems for the management of natural resources, which are based on "customary" law.[2] These systems claim to draw their legitimacy from "tradition", as shaped both by practices over time and by systems of belief. In reality, customary law has been profoundly changed by decades of colonial and post-independence government interventions, and is continually adapted and reinterpreted as a result of diverse factors like cultural interactions, population pressures, socio-economic change and political processes (Chanock, 1985; Mamdani, 1996; Cotula (ed), 2007).[3] The coexistence of state and customary systems, and of a range of combinations and hybrids between these (Benjaminsen and Lund (eds), 2003), is usually referred to as "legal pluralism".

Drawing on a case study from the Inner Niger Delta (Mali), this article explores the challenges of implementing decentralisation in contexts characterised by legal pluralism, by long-term historical trajectories of socio-economic change, by increasingly conflictual relations between local actors, and by shifting balances of power. The study is based on a socio-legal approach - in terms of content and research methods. As for content, it looks not only at state legislation but also at the way this is used (or not used, or mis-used) on the ground, and at the articulation between state and customary law.

As for research methods,[4] the study combines legal analysis with a study of the literature and with original fieldwork. As customary systems in the Inner Niger Delta have been documented for decades (see e.g. Gallais, 1967), an analysis of the literature helps understand changes in those systems over time. Collaborative fieldwork was undertaken as part of a programme of action research in the delta, which resulted in several research reports (Cissé, 2001 and 2002; Maiga and Touré, 2001; Cissé and Konaté, 2003; Cotula and Hesse, 2005). More specifically, the article draws on data from collaborative fieldwork undertaken in 2006 by the author and a Malian researcher, Salmana Cissé, which resulted in two joint publications (Cotula and Cissé, 2006 and 2007). This article uses that data for new analysis: while Cotula and Cissé (2006 and 2007) discuss the changes intervened in customary systems, this article explores the implications of evolving customary systems for the implementation of legislation on decentralisation.

Collaborative fieldwork (Cotula and Cissé, 2006 and 2007) covered five communes in the Inner Niger Delta: Dialloubé, Konna, Ouro Ali, Sio and Youwarou. Fieldwork

methodology was qualitative, and centred on semi-structured interviews with central and local government officials, elected councillors and mayors, customary chiefs, officials from national and international development agencies, local lawyers, civil society organisations, and natural resource users. It also entailed the collection of data from government agencies and other sources (e.g. demographic data, court decisions, local agreements for national resource management).

The next section analyses relevant legislation on decentralisation and natural resources in Mali. Section 3 briefly presents the geographical characteristics of the study area. Section 4 examines the local arenas in which the decentralisation policy has been implemented, exploring the evolving nature of customary institutions for natural resource management and the way they have been affected by socio-economic change and shifting power relations. Section 5 discusses the implementation of decentralisation in these contexts, exploring relations between newly established local governments and the local arenas in which they operate. Finally, section 6 draws some conclusions and wider reflections from this analysis.

2. DECENTRALISATION AND NATURAL RESOURCE MANAGEMENT UNDER MALIAN LEGISLATION

Rural decentralisation in Mali is rooted in the 1992 Constitution, adopted after the democratic transition, and in legislation passed in the 1990s – particularly Law 93-008 of 1993; Law 95-034 of 1995 (Local Government Code), as amended; and Law 96-050 of 1996. Decentralisation entails three layers of local government, namely the *commune* (typically comprising several villages), the district ("*cercle*") and the region, each governed by an elected council and an executive officer (a mayor for communes and a president for districts and regions). Established in 1999, rural communes are currently at their second mandate.

The powers and responsibilities of local governments are regulated by the 1995 Local Government Code. Devolved responsibilities include for instance environment protection and "the organisation of rural activities and of agro-sylvo-pastoral productions" (article 14, concerning communes). In addition, Law 96-34 of 1996 empowers the state to transfer to local governments part of its estate ("*domaine public*" and "*domaine privé*"), including public lands, which local governments are then responsible for managing (articles 6-9 and 11). Transfers of natural resource management responsibilities are also provided for in sectoral legislation such as the 1995 Forest Code (articles 51-59 of Law 95-004 of 1995). In practice, however, implementing regulations to operationalise this devolution of responsibilities have only been adopted with regard to education, health and water supply (e.g., on education, Decree 02-313 of 2002). The devolution of natural resources and of resource management responsibilities has not been operationalised as yet.

The Pastoral Charter (Law 01-004 of 2001) also provides for a central role of local governments in the management (though not necessarily ownership) of pastoral resources (article 54). Local governments are responsible for regulating all the key aspects of pastoral resource access - including livestock corridors (article 16), transhumance calendars (article 22), management of rangelands ("*bourgoutières communautaires*"; articles 32-33), pastoral access to post-harvest fields (article 35), public water points (articles 43-45) and dispute settlement (article 59). Local

governments are required to perform these responsibilities in collaboration with pastoral organisations (article 56), central government agencies (e.g. in ensuring implementation of the Charter, under article 55), traditional authorities (e.g. in fixing transhumance calendars under article 22), water users (e.g. under article 43) and a range of other actors (e.g. under article 59 on dispute settlement).[5]

The implementation of the Pastoral Charter has been formally operationalised with the recent adoption of its implementing regulation (Decree 06-439 of 2006). Even before then, however, local governments in several areas had already started to rely on its provisions to claim a role in pastoral resource management. In addition, development projects in several communes supported the implementation of the Charter through working with local governments and other stakeholders. A commonly used institutional arrangement to do this is "local conventions" - broadly speaking, sets of rules and institutions negotiated by local stakeholders, possibly enacted as local bye-laws with a view to regulating resource access and use.[6]

Given the very limited amount of titled land, particularly in rural areas (Djiré, 2007), much of the land is vested with the state under the *Code Domanial et Foncier* (Ordinance 00-027 of 2000, as amended in 2002). While ownership based on land registration is the strongest form of private landholding in Mali, customary rights over natural resources do enjoy some degree of legal protection. Already the *Code Domanial et Foncier* of 1986 "confirmed" them so long as the state did not need the land they related to (article 129). The more recent *Code Domanial et Foncier* of 2000, currently in force, further strengthened this protection (articles 43-48). It "confirms" customary land rights on untitled land (article 43(1)), requires payment of fair compensation and a public enquiry for their taking (articles 43(2) and 47), and establishes a procedure for the recording of customary rights and for their conversion into ownership (article 45) - although this procedure has not been operationalised by the required implementing regulation as yet.

3. THE GEOGRAPHY OF THE INNER NIGER DELTA

The Inner Niger Delta mainly covers the districts ("*cercles*") of Mopti, Djenné, Tenenkou and Youwarou, all in the Mopti region of Mali.[7] This is an area of national and international strategic importance. It is the largest inland wetland in West Africa, supporting exceptionally diverse, rich and complex ecosystems. The annual floods bring up to 25,000 to 30,000 km^2 of "extra" land into production (Moorehead, 1998). The delta hosts considerable wildlife resources, and is protected as a listed area under the 1971 Ramsar Convention on Wetlands of International Importance. The delta also contains rich agricultural land, and the highly nutritious dry-season pasture commonly known as *burgu (Echinochloa stagnina)*. It contains some 70% of irrigable land in Mali, and during the dry season it hosts some 50% of the national livestock; fisheries in the delta support the livelihoods of some 300,000 people (CILSS, 2005). In addition to supporting rural livelihoods, the delta supports the livelihoods of urban groups (traders, government officials, etc), who invest much of their savings in livestock.

Ecology and livelihoods in the delta are shaped by seasonal cycles. During the hot dry season (April to June), water only runs in the river beds of the Niger and Bani rivers, and of their tributaries. During the rainy season (June to September), water rises and

spills over the flood plains. Between October and January, a vast area of land is covered by water. The size of this area varies constantly from year to year, depending on rainfall – both in the area and, more importantly, upstream. In the cold dry season (January to March), waters subside progressively along a southwest to northwest transect, with water staying longer around the lakes Debo and Walado in the northwest of the delta. At the end of the dry season, water has retreated into the river beds and floodplains revert to dusty lands (Moorehead, 1998).

Over the past fifty years, the delta has witnessed major ecological and socio-economic change. While rainfalls present substantial fluctuations between years, they have tended to decrease over the past fifty years (CILSS, 2005). Drops by up to a third in rainfall have been documented for instance in Mopti (for the period 1920-1989; Moorehead, 1997) and in Madiama, a commune located in the Djenné district (for the period 1950-2000; Moore, 2005). Major droughts took place in the 1970s and 1980s. The decrease of rainfall has in turn led to a reduction of the flooded area, and to a shortening of the duration of floodings (Moorehead, 1997; CILSS, 2005). This data is reflected in the perceptions of several people interviewed during the fieldwork undertaken by Cotula and Cissé (2006 and 2007). Several interviewees reported reductions in rainfalls and floodings, and some claimed that, in addition to decreasing rainfalls, reductions in floodings may be linked to the damming of the River Niger for irrigation and hydropower purposes.

At the same time, the delta has experienced substantial demographic growth. A comparison between the 1964, 1976 and 1998 censuses shows this.[8] Between 1964 and 1998, the population residing in the Mopti region as a whole increased from 910,713[9] to 1,478,505. In the same period, population has grown in all of the Delta districts (e.g. from 131,288 to 263,551 in the Mopti district, and from 84,414 to 155,551 in the Djenné district) and in most of the villages covered by the fieldwork (e.g. from 2,151 to 3,710 in Djalloubé, from 3,094 to 3,993 in Konna, and from 1,962 to 2,785 in Senossa, a village in the commune of Ouro Ali) (GREM, 1964; and MEF, 2001). Such demographic change is due not only to high birth rates but also to the immigration of groups from the surrounding areas, particularly the Seno, the Gourma and the Haire.

The delta hosts three main livelihood activities: farming, herding and fishing. These activities coexist over the same territory, and are combined in a range of production systems (farmers, agro-pastoralists, fishers, farmer fishers, transhumant herders) (Moorhead, 1997). Farming mainly concerns millet on sandy soils and rice in seasonally flooded areas (Moorehead, 1997). Fishers include local groups and transhumant groups following the seasonal floodings. Herding is practiced by local groups and by transhumant pastoralists, who move from dryland areas (sometimes hundreds of kilometres away, in Mauritania and Burkina Faso) to the delta to spend here the dry season (November to May; Moorehead, 1997). Every year, transhumant herders enter the delta from identified crossings posts (the main ones being Diafarabé and Sofara, respectively southwest and southeast of the delta) and generally move northeast along the delta, following the flood retreat.

Because of this complex system of overlapping resource uses, the delta has been for a long time a crossroads of different ethnic groups and cultures. Historically dominated by the Fulani herders (Fulbé), the delta is also inhabited by the Bozo and the Somono

(traditionally fishers), who first occupied the area, the Bambara (farmers), and other groups. The Rimaibé are the descendents of slaves captured by the Fulani.

4. LOCAL NATURAL RESOURCE MANAGEMENT SYSTEMS IN THE DELTA: A CHANGING ARENA

The complexity of resource use patterns and of ethnic composition is reflected in the mosaic of resource tenure systems that coexist over the same territory – not only customary and statutory systems, deriving their legitimacy on "tradition" and on legislation, respectively; but also different customary systems, ranging from those based on the right of the first occupants (Bozo and Somono agro-fishers) to the sophisticated *Dina* system established in the 19th century by the Fulani. In this sense, legal pluralism is not just the product of colonisation, but preceded it (Vedeld, 1994).

Local legal and institutional landscapes for natural resource management provide arenas for power relations among different actors - from a range of customary institutions to different interest groups underpinning different forms of resource use. The implementation of decentralisation in the delta must come to terms with these arenas.

4.1. The "Dina" system and state law

Established in the 19th century by the Fulani theocratic state of Sekou Amadou while building on pre-existing practice, the *Dina* provided a coherent – though geographically diverse - set of rules, with Fulani chiefs (the "*jowro*") regulating the seasonal movement of livestock in and out of the delta. For herders belonging to clans based in the delta, access to pastures was free of charge and based on reciprocity. However, the *Dina* regulated the priority order according to which local herders would access pastures. Usually, first came the herd of the *jowro*, followed by the other herds ordered according to kinship proximity to the *jowro,* age and social status. Outsiders would access grazing resources after resident herders. They would also have to pay a fee to the *jowro* (*tolo* or *connji*).[10] Such fee would be paid in kind (e.g. a young bull or a cow, in addition to some cola fruits), and was aimed at recognising the primacy of local herders and of the *jowro*. The *jowro* could restrict access for outsiders' herds, for instance by regulating length of stay in their territory (the *leydi*) (Gallais, 1967; Moorehead, 1998; Cotula and Cissé, 2006 and 2007).

While focused on the management of valuable pastoral resources, the system established by the *Dina* also has implications for the management of land, water and fisheries. Rules on these aspects vary considerably from place to place. In some area, the *jowro* is only responsible for pastures. Here, land management is performed by other authorities, which vary depending on the area (village chiefs, *bessema*, etc). Water and fisheries are also managed by other authorities (the *jitu*, "master of waters"). The relationship between these authorities and the *jowro* varies from place to place – but often entails some form of supremacy of the *jowro* in his *leydi*. In other areas, the *jowro* is directly responsible not only for pastures but also for land and/or water (e.g. around Djenné and in the Macina). In this context, the role and status of the *jowro* vary substantially not only in relation to the scope of their remit (pastures, land and/or water) but also, for instance, with regard to their wealth (size of their herd; size and quality of

the *leydi* they managed) (Gallais, 1967; Moorehead, 1998; Cotula and Cissé, 2006 and 2007).

The *Dina* system is essentially centred on the role of the *jowro* as the manager of natural resources. However, the *jowro* are meant to be accountable to the *suudu baaba*, a group of resident herders claiming descent from the same ancestor. The *suudu baaba* chooses the *jowro* among its members, based on rules that vary – but that generally involve factors such as age and proximity to the previous *jowro*. The *suudu baaba* also played a key role in monitoring the activities of the *jowro*, so as to ensure they contributed to the good management of the delta's resources (Gallais, 1967; Moorehead, 1998; Cotula and Cissé, 2006 and 2007).

French colonialisation undermined this system for regulating resource access. The colonial administration had a poor understanding of local resource tenure systems in the area and sought to replace them with a radically different institutional regime. Colonial legislation (Decree of 24 July 1906 on Land Tenure) stated that all "vacant" land (i.e. long-term fallow or land used on a seasonal basis) belonged to the state. This allowed certain groups to gain access to productive resources to which they had no access under customary systems. The colonial administration also issued directives specifying the dates at which livestock were to enter and leave the dry season pastures. This weakened the ability of the *jowro* to regulate the number and timing of livestock entering their *leydi*, particularly vis-a-vis outsiders (Moorehead, 1998).

The land tenure and development policies of a succession of post-independence governments have exacerbated this situation. The proliferation of state institutions involved in one way or another in allocating access to resources, often without reference to each other, has further weakened the powers of the *jowro*. But albeit weakened, the *jowro* have survived this succession of legislative interventions. Despite the legislative assertions of state control over resources, in practice colonial and post-independence government officials had to come to terms with customary institutions in order to reach rural areas in the delta. In most cases, government officials de facto left resource management to the *jowro*, who in turn provided them with informal "gifts".[11]

The recent developments in policy and legislation discussed in section 2 above have further raised the stakes. The legal recognition of customary land rights under the *Code Domanial et Foncier* has enabled some *jowro* to assert claims of "customary ownership" over the resources they manage. The devolution of natural management responsibilities to local governments under the Pastoral Charter and under the legislation on decentralisation brought a new player - the *commune* - in this arena.

4.2. Monetarisation of resource access and erosion of the authority and legitimacy of the jowro[12]

As the local economy has become increasingly monetarised and competition over resources has increased (see section 3 above for data on population growth), access to financial resources has become more important in shaping access to natural resources. This is reflected in the monetarisation of resource access fees ("*tolo*") charged by the *jowro*, and in the steep increase in their values (as documented by Cotula and Cissé, 2006 and 2007). Monetarised transactions have also emerged with

regard to land allocation for agriculture purposes - mainly in the form of rental or sharecropping contracts. In areas where the *jowro* claim land management or even ownership rights (Konna, Ouro Ali), they have been at the centre of such transactions. In most cases, these monetarised practices seem part of a "privatistic" management of the resources on the part of the *jowro* – the broader group or even his family not being consulted nor benefiting from these deals (e.g. Konna; Ouro Ali).

In the context of this monetarisation of resource access relations, social groups that have easier access to financial resources (from better-off farmers to urban elites) tend to strike deals with the traditional aristocracy (embodied in the *jowro*) to improve their access to natural resources. In this sense, strategic alliances are emerging between wealthy elites and traditional aristocracies, with the former being granted access to resources by the latter in return for cash payments or other services. On the one hand, wealthy groups invest part of their savings in livestock, and need the *jowro* to secure access to grazing resources. On the other, the *jowro* are eager to tap into the financial resources that these groups have access to.

Besides monetarised transactions, these alliances have also taken different forms – including exchanges of services. For example, a lawyer based in Mopti has assisted the *jowro* in their court battles to assert those claims - and even encouraged them to do so. Such assistance brings not only legal expertise and representation but also contacts in government and in the judiciary, which can help define the outcome of court cases, and, through that, "set precedent" and add legal authority to the interpretation of customary law put forward by the *jowro*. In return, the lawyer has been granted exclusive access for his livestock to the "common" pasturelands managed by the *jowro* receiving the services.

While the monetarisation of the economy and the ensuing monetarisation of resource access relations are profiting some *jowro*, they are also contributing to the long-term erosion of the *jowro*'s power. As the economic stakes rise and extended families become increasingly fragmented, disputes over the succession in the position of *jowro* have become increasingly common, with members of *jowro* families or better educated individuals terming themselves as "*jowro*" despite their lack of formal endorsement by the *suudu baba* (e.g. in Ouro Ali and in Koubi, a village in the *commune* of Konna). The proliferation (and hence "inflation") of *jowro* has undermined their status.

In addition, the monetarisation of the economy tends to favour access to financial resources over traditional aristocracy as a main source of power. The increasing importance of "purchasing power" as a resource access mechanisms parallels the greater weight that farming interests have acquired vis-à-vis pastoral ones, of which the *jowro* are expression. In the 19th century, the *Dina* granted primacy to pastoral interests, in relation to both access to resources and control over labour (many farmers being slaves of the Fulani herders). The abolition of slavery by colonial authorities in the early 20th century began to undermine this system. Since then, many former slaves have acquired resources and invested in land and livestock – thereby acquiring influence vis-à-vis their former masters. These long-term processes of social and economic change have tended to erode the position of the *jowro* - as evidenced by the growing contestations of the authority and legitimacy of the *jowro* not only from groups traditionally marginalised under the *Dina* system (fishers, farmers) but also from pastoral groups themselves (e.g. in Ouro Ali).

The erosion of the authority and legitimacy of the *jowro* has been accelerated by government interventions. For instance, while the *jowro* as a resource management institution has no legal recognition, village chiefs – largely expression of farming interests – are integrated in the administrative structure of the state (lastly under Law 06-023 of 2006). This reflects the greater political/electoral weight of farming interests, and strengthens village chiefs in their relations with the *jowro*. In some areas (e.g. in Saya, in the Dialloubé area), village chiefs have used the leverage derived from their administrative role to gain greater control over pastureland to the detriment of the *jowro*, particularly through the proliferation and expansion of "*harrima*" – village pasturelands, the management of which is traditionally performed by village chiefs rather than by the *jowro*.

The relative decline of the *jowro* has enabled and is reinforced by agricultural encroachment on grazing lands, particularly the more fertile ones. Agricultural encroachment has been explicitly or tacitly supported by the government administration, which perceives farming as more productive than pastoralism. Government support is also linked to the fact that because farming groups tend to be politically more vocal than pastoral ones. In Saba, for instance, a village in the Dialloubé area, villagers have started to cultivate rice in a pond without seeking the authorisation of the *jowro*, banking on the support of the local government administration, of an NGO and of a member of the *jowro* family. This expansion of cultivated areas to the detriment of pastureland is on the one hand the result of the loss of influence of the *jowro*, and on the other a further root cause for such loss of influence – as it has eroded the very base of the power of the *jowro*, control over natural resources.

The *suudu baba* as an institution capable of ensuring the accountability of the *jowro* to the wider group has also been weakened – though this varies from place to place. In Youwarou, the *suudu baba* still meets to discuss and advise the *jowro* on important matters. In Konna, on the other hand, the *suudu baba* no longer functions on a regular basis. Its only function seems to be formally endorsing a new *jowro* at the time of succession. This decline of the *suudu baba* seems associated with the parallel decline of the role of the extended family and with the growing fragmentation of family units. It is also linked to power relations – in Konna, a *jowro* with a strong power base and an assertive personality managed to sideline the *suudu baba* and other possibly competing institutions.

4.3. Resource conflict and dispute settlement[13]

Disputes over resource access and control have always existed in the delta – and some of the current disputes date back to colonial times. In recent times, such disputes have increased in both quantity and intensity (Cotula and Cissé, 2006 and 2007). Disputes concern the delimitation of *leydi* boundaries (e.g. Konna); the succession in the position of *jowro* (e.g. Koubi, in the commune of Konna); control over *bourgoutières* (e.g. Ouro Ali; Ouroubé Doudé, in the Dialloubé area); the allocation and utilisation of resource access fees (e.g. Ouro Ali); land transactions (e.g. Sio); crop damage caused by herd passage; and many other issues. Disputes may oppose villages or individuals; herders, farmers and fishers; or communes and *jowro*.

The (qualified) protection of customary rights under the *Code Domanial et Foncier* 1986 and its successor adopted in 2000 (and amended in 2002) has opened the door for courts to interpret and apply customary law. While access to courts remains generally limited in much of rural Mali, fieldwork by Cotula and Cissé (2006 and 2007) found numerous examples of disputes that were brought before tribunals (e.g. a boundary dispute in Konna, disputes on control over *bourgoutières* in Ouro Ali and Ouroubé Doudé, a succession dispute in Koubi, a dispute over the allocation of resource access fees in Ouro Ali, and many more). In addition, while in the past judicial disputes rarely went beyond the court of first instance, they now tend to reach the Court of Appeal (now available in Mopti, so that parties no longer need to go as far as Bamako) and even the Supreme Court (in Bamako).

This greater use of courts is linked to the higher stakes associated with the growing value of resource access fees. Indeed, disputes with limited economic value (e.g. crop damage disputes) still tend to be resolved locally. On the other hand, disputes involving higher economic stakes (e.g. those concerning *jowro* succession and the allocation of resource access fees) are often brought before courts. The greater use of courts is also linked to the erosion of the perceived legitimacy and authority of customary institutions. While in the past parties to a dispute would accept settlements by village chiefs, *jowro* and other customary authorities, now they are less prepared to do so. This is linked to the erosion of the authority of the customary chieftaincy (see above), and to the fact that customary authorities are themselves often involved in disputes, some of which relate to their very legitimacy (e.g. succession disputes).

Greater use of the court system has not necessarily brought greater clarity to dispute settlement. Court decisions, even if final, are in practice very hard to enforce. Disputes settled by final judgements nonetheless resurface, sometimes years or even decades after the judgement. For instance, in Koubi (a village in the commune of Konna), a longstanding succession dispute has opposed two *jowro* family members and their descendants since the 1980s. The dispute has resulted in several judgements of the Tribunal and Court of Appeal of Mopti, and is still to find a final solution (for a discussion of this dispute, see Cotula and Cissé, 2006 and 2007). In Ouro Ali, a dispute between two *jowro* for control over the *bourgoutière* of Diaroukoye was first solved by colonial courts in 1951 – and yet it resurfaced in very similar terms in 2005. The dispute is currently pending before the Tribunal of Djenné.

Over time, the involvement of courts in the interpretation and application of customary norms may lead to developments echoing the historical experience of Ghana. Here, judicial application of customary law since colonial time has produced a body of "customary" rules interpreted by courts and following the principles of judicial precedent, rules which differ from customary practice as applied by local resource users (Woodman, 1996). For instance, in the Inner Niger Delta, customary *jowro* succession rules vary substaintially from place to place. In some places (e.g. Konna), the eldest member of the *jowro* family inherits the position of *jowro*. This rule means that often it is the younger brother of the deceased *jowro*, rather than his son, who inherits. However, in Dialloubé and in Youwarou, *jowro* succession is linked to inheritance of the *jowro*'s herd – which tends to favour the son. In interpreting and clarifying the content of customary succession rules, the Court of Appeal has sought to adopt a flexible formula (Judgement No. 636 of 1994, concerning the *jowro* succession dispute in Koubi). It is to be seen whether the succession criteria set out in the

judgement in relation to a specific dispute will be relied on in different areas, where customary rules may be different - thereby promoting a standardisation of customary norms.

5. **IMPLEMENTING DECENTRALISATION IN THE INNER NIGER DELTA**

It is in this context that the legislation on decentralisation discussed above (section 2) has been implemented on the ground. Rural *communes* were established in the delta in 1999, and are now at their second mandate. The implementation of decentralisation has raised a range of challenges - including, for instance, in terms of building the capacity of elected councils, mayors and local government officials to perform the responsibilities devolved by the law, and of ensuring effective accountability mechanism between these actors and their constituents.

From a legal and socio-legal perspective, local governments in the five *communes* covered by the study have been grappling with tensions in the law as it is implemented, and in their relations with other local actors. As discussed, legislation formally devolves legal powers in a range of sectors, including service provision (water, education, health) and natural resource management. Implementing decrees have been adopted for the devolution of responsibilities for service provision, which involve financial costs for local governments. But the implementing regulations to operationalise the devolution of assets that can be used for a basis for wealth creation and for funding local governments - such as natural resource management responsibilities - have not been adopted yet. The only recent exception is the 2006 decree implementing the Pastoral Charter, which concerns the management of pastoral resources (see section 2 above).

As a result, elected local governments have to live up to the expectations of the local population (e.g. in terms of service provision) but face significant challenges in terms of access to the resources required to do that. In some cases, they have responded by claiming a role in natural resource management even in the absence of implementing regulations. In so doing, they have had to come to terms with the local arenas in which they operate – namely, with the long historical trajectories of socio-economic change, the highly conflictual relations between different actors, and the evolving balance of power associated with them.

Meanwhile, for local resource users like fishers and farmers, who feel disempowered under the customary *Dina* system centred on the *jowro*, the establishment of rural *communes* provides opportunities for creating alliances in their efforts to contest the authority of the *jowro*, and to resist their “extortionate” demands.

The nature and extent of these dynamics and of their outcomes vary from place to place, depending on the positioning of different actors and on the balance of power between them. In Konna, the strong personality and vast wealth of the *jowro* have kept the mayor at bay. On the other hand, strong tensions between communes and *jowro* have emerged in Sio and Ouro Ali. In both cases, the commune has intervened to defend the interests (and the resource rights) of fishers and farmers against the demands of the *jowro*. In Ouro Ali, for instance, farmers have challenged requests for payments from the *jowro*, and have sought the support of the mayor. Significant

tensions between farmers and the *commune* on the one hand, and the *jowro* on the other have followed.

Tensions have also emerged in relation to the allocation of the resource access fees collected by the *jowro*. In Ouro Ali, while the mayor and his councillors recognised the resource management powers of the *jowro*, they claimed to have a "right" to a third of the resource access fees collected by him. Interestingly, they based such claims on "customary" law – namely on the colonial-era "customary" practice of the *jowro* giving a third of their earnings to the *chef de canton*. With decentralisation, they argue, the *communes* are the "legitimate heir" of the *chef de canton*. Although this argument has no legal basis, a dispute between the commune and the *jowro* of Ouro Ali was pending before the Tribunal of Djenné at the time of fieldwork. A similar argument about the "inheritance" of the *chef de canton*'s share was put forward at the *commune* of Dialloubé. The *jowro* deny that payments to the *chef de canton* were part of customary law, insisting that such payments were rather "gifts".

In some cases, possible tensions between *jowro* and communes are eased by the capture of the municipal council by the *jowro* or his family. In Youwarou, the *jowro* himself has been elected mayor, and is now at his second term. In Dialloubé, while the mayor comes from outside the *jowro* family, such family holds the majority of the seats in the municipal council. By using its capture of the municipal council, the *jowro* family was able to increase resources access fees and have them enforced by the police. These situations of close cooperation and even capture are rare, however, as farming interests tend to dominate local politics due to demographic reasons. Most of the mayors encountered during the fieldwork were expressions of farming and/or fishing interests, which makes the commune-*jowro* relationship prone to tensions.

6. CONCLUSION

This article has discussed the implementation of decentralisation in the Inner Niger Delta of Mali. It has studied the local arenas within which implementation occurs, and examined how power relations and social transformation in those arenas affect the implementation and outcomes of legislation. The study also raises two broader reflections.

First, with regard to the patterns of change in customary law systems. It has been pointed out by many that customary systems are extremely dynamic, and evolve in response to changes in economies and societies. In line with research findings from different parts of Africa (e.g. Ubink, 2007, on Ghana), the analysis presented here emphasises the importance of power relations in shaping that evolution: changes in customary law systems are the outcome of struggles between groups pulling the rules to their advantage.

Where their local power base allows (e.g. in Konna), the *jowro* are claiming greater control or even ownership over the resources they manage on behalf of their community, marginalising traditional accountability mechanisms (such as the *suudu baaba*). In order to further their cause through advocacy and collective action, the *jowro* have been discussing for years the establishment of an association representing the interests of the *jowro* - although such initiative has so far failed due to internal rivalries. Other groups have endorsed or resisted the claims of the *jowro*, depending on whether

they stand to lose or benefit from them. Farmers and fishers facing rising resource access fees have contested those claims. *Communes* eager to tap into the financial resources generated by resource management may not challenge the claims of the *jowro* as such; but may support contestations from farmers and fishers, and reinterpret "custom" to back their claim to a share of those resources. Local lawyers may support the resource claims of the *jowro* in court, and benefit from the exercise of those claims through privileged access to grazing lands. It is the interplay between these competing claims, shaped by profound social transformation (demographic growth, monetarisation of the economy, fragmentation of the extended family, establishment of the colonial and post-colonial state) and weighted by the balance of power among the actors putting them forward, which profoundly affects the nature and direction of change in customary law systems.

This analysis has implications for understanding processes of legal change and the role of power relations within them - particularly in contexts where legal rules are weak (due to the erosion of customary systems) and incomplete (due to the non-operationalisation of legislation devolving natural resource management responsibilities), and where the "secondary" rules for regulating procedures for legal change are not in place or have been eroded (as argued by Ubink, 2007, with regard to Ghana). The analysis also has very practical implications for equity among local resource users, particularly with regards to differences along status, income, gender and other lines, as those with greater access to sources of power (traditional aristocracy but increasingly financial resources) tend to be better able to bend the rules to their advantage.

The second consideration relates to the relationship between state and customary law. This relationship has been characterised by some as a dichotomy between "legality" and "legitimacy", between "formality" and "informality". This study contributes to the growing body of evidence from different parts of Africa, which shows that the picture is much more complex. There are all sorts of combinations and hybrids between state and customary institutions. State institutions also operate with a certain degree of "informality" - for instance, when local governments claim a role in natural resource management despite the lack of implementing regulations that legally operationalise that role. In two *communes*, elected councillors and local officials even relied on "customary" norms to back their claims (presenting the *commune* as the legitimate heir to the colonial-era *chef de canton*). On the other hand, the "legitimacy" of many *jowro* is increasingly contested - by groups traditionally marginalised under the *Dina* system, such as farmers and fishers, but also, in some cases, by pastoral groups.

This calls for a more nuanced approach that goes beyond dichotomies between legality and legitimacy; that analyses resource claims in terms of competing sources of legitimacy (whether custom, state law or combinations of these); and that considers the diverse relations that exist between different sources of legitimacy and between different systems (from confrontation to cooperation down to capture), as well as the balance of power and historical trajectories that shape those relations. In the delta, this more nuanced analysis can help promote dialogue between local governments, *jowro* and other local actors, dialogue that is key to developing a shared framework for more effective and equitable decentralised management of natural resources.

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[2] On customary systems as "law", see among others Allott (1980:51-67).
[3] While acknowledging the important changes in local systems of resource tenure, this article uses the term "customary" for easier reading.
[4] On socio-legal research methods, see Banakar and Trevers (eds) (2005). For an application of socio-legal research methods to land and natural resource law in Mali, see Hesseling et al (eds) (2005).
[5] For a comparative analysis of pastoral legislation in the Sahel, see Cotula et al (2004:23-26) and Hesse and Thébaud (2006).
[6] For an authoritative text on local conventions in Mali, see Djiré and Dicko (2007).
[7] The seasonally flooded part of Tenenkou is also known as the Macina.
[8] Such comparison is made difficult by the different administrative levels for which demographic data are presented (village, *arrondissement* and *cercle* for the 1964 and 1976 censuses; *communes* and *cercles* for the 1998 census); and by the many changes in administrative boundaries. In addition, while the censuses capture change in the resident population, they do not necessarily reflect changes in the overall resource user population, which includes large numbers of non-resident (transhumant) fishers and herders.
[9] This included 158,227 from a *cercle* now attached to a different region.
[10] While often used interchangeably, strictly speaking these terms refer to two different things – the fee for access to fertile islands (*tolo*) and the fee for access to other less valuable grasslands (*connji*).
[11] For instance, during colonialisation, in many places the *jowro* paid a third of the fees they received to the colonial-era *chefs de canton*.
[12] This section is based on data from Cotula and Cissé (2006 and 2007).
[13] This section is based on data from Cotula and Cissé (2006 and 2007)