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LAND TENURE AND NATURAL RESOURCES MANAGEMENT IN THE SAHEL

EXPERIENCES, CONSTRAINTS AND PROSPECTS

Regional Synthesis Report

(Draft Version)

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## VOLUME II



## 1. INTRODUCTION

The land, this nourishing mother, has become a challenge for the survival of Sahelians and a source of major disputes among them. Sahelians, donor agencies and development experts are in quest of feasible solutions fostering social peace.

The question of Land Tenure figures prominently among the eight landmarks adopted by the Ségou Regional Encounter in May 1989. The Council of Ministers of CILSS, held in Bissau in February 1990, decided that Land Tenure and Decentralization must be dealt with as matters of priority. The present report is the outcome of the programme of action on Land Tenure in the Sahel, drawn up by CILSS and Club du Sahel in Ouagadougou in April 1990, with the participation of Land Tenure Center (LTC), Madison.

CILSS and Club du Sahel have conducted various activities in the different Sahelian countries for the purpose of summing up land tenure and natural resources management issues in the Sahel :

- Mali : a national workshop on Land Tenure and Decentralization was held at a historic moment (November 1991), with the involvement of Malian peasant farmers in the deliberations and discussions, in search of solutions ; the findings were directly taken up by the appropriate authorities and services, assured of the backing and assistance of their partners. The outcome was the National Conference on Land Tenure and Decentralization Policy in Mali, held in January 1993 ;
- Niger : A CILSS/Club du Sahel joint mission was conducted, helping to evaluate the major steps undertaken by the team in charge of the Rural Code, identify strengths and weaknesses and propose further studies ;
- CILSS embarked on a stock taking exercise in Mauritania, stressing the need to draw lessons from a controversial experiment ;
- Senegal : the LTC carried out a quite instructive case study, climaxed it with the holding of the Saint-Louis seminar in November 1992 and supplemented it with a short bibliographical review of CILSS ;
- Burkina Faso : CILSS/Club du Sahel organised, on the basis of significant case studies, a National Seminar on Land Tenure and Decentralization in February 1993 ;
- Chad : a programme of action has been formulated by CILSS and Club du Sahel with the participation of LTC ;



- Guinea-Bissau : in January 1992, CILSS and Club du Sahel contributed to the holding, in Bula, of the "National Meeting on Common Property Natural Resources Management ; the meeting took stock of existing knowledge as well as on-going activities and projects in the area of Land Tenure and Decentralization ;
- Cape Verde : as part of the study on Decentralization, carried out by the Associates for Rural Development (ARD), an expert of Club du Sahel elaborated on Land Tenure issues ;
- The Gambia : a national programme on preparations for the regional conference has been prepared and is partly implemented in close collaboration with LTC ;

In the implementation of the programme in Mali at the outset, it became necessary to conduct, jointly, the study on Land Tenure in the Sahel and that on Decentralization which, hitherto, were carried out separately. The on-going policy changes in Mali clearly indicated that in rural areas, democratization of the entire economic and social relations were centred first and foremost, on natural resources management.

From the outset, the context in which the study was carried out tended to be marked by the aggravation of the economic and social crisis in the Sahel, and the emergence of intolerance in the competition for access to resources.

The authors of the synthesis report deliberately opted to refrain from making it a summary of the different country reports. Instead they opted for a comprehensive analysis of land tenure issues in the Sahel, based on significant field experience, to illustrate the working assumption, partial conclusions, strengths and weaknesses of texts in force, solutions anticipated and future orientations of research.

This report does not purport to provide answers to the most burning land tenure issues in the Sahel. Its aim is more modest, namely, generating discussions leading to the identification of obstacles that must be overcome most urgently and undertaking steps to deal with them with some chances of success. Accordingly, and taking account of the diverse backgrounds of participants at the Regional Conference, the report attempts to meet their expectation. The body of the report is directed, as a priority, at policy makers (Sahelians officials and their partners). Peasant farmer associations, NGOs, and the Sahelians private sector, which are more confronted with concrete field realities, will find food for thought in the information provided in the shaded parts of this document. Volume II of the report strives especially to arouse the interest of development researchers and experts imbued with the concern for indepth analysis of theoretical controversies.





The report firstly addresses concepts based on land tenure experiences in the Sahel. Chapter 3 of the report outlines types of tenure disagreements, disputes, and litigations in the Sahel, with emphasis on the trends of conflicts and following a historical approach. Chapter 4 sets forth the major land tenure Institutions in the Sahel, their dynamics and their foreseeable trends. The 5th Chapter focuses on the critical presentation of texts and regulations in force and the policy direction of on-going reforms. Chapter 6 discusses the areas where solutions must be sought from and the principles which can sustain this solution finding.

## 2. LAND TENURE AND NATURAL RESOURCES MANAGEMENT

### 2.1 Land tenure systems and transitions in Sahelian countries

Tenure systems are in transition in all Sahelian countries. The transitions are more or less rapid depending on the region and the time concerned, and will no doubt lead to deep-seated changes in the medium term.

#### *Originality, complexity and adaptability of local systems*

In this context of transition, despite the intervention of State-funded or State-supervised projects, and the fact that all the countries have "modern" Land Tenure laws which have officially replaced the "traditional" authorities and regulations, the populations, by and large, continue to view land tenure from the angle of local regulations and perceptions. At the same time, they adapt to external interventions and new laws inasmuch as they are informed of the new regulations and are affected by projects initiated from outside.

The roots of local tenure systems can be traced to the past from which they largely draw their legitimacy and their relative efficiency. They are also aligned to the present and open up onto the future. Their legitimacy derive from history and local practices but, at the same time, they adapt dynamically to the new realities in which they evolve : demographic, political changes, new State laws on land tenure, changes in relation with local communities, etc. This adaptability of so called "traditional or customary" land tenure regulations and systems (but which should more appropriately be described as local or "endogenous"), is an important characteristic, often ignored or under-estimated.



## *Irrigated Village Lands in Senegal*

Irrigated Village Lands (IVL) have been developed on the Senegalese bank of the Senegal river since 1975. By the end of the 1980s, they covered a total area of over 16,000 hectares, farmed by over 40,000 farmers. The State then laid down some conditions for aid grants, namely village consensus and equitable access of all households, to irrigated plots. In the context of the drought, these conditions were most often accepted.

Lands owners saw their rights being recognized and therefore offered the dependant groups and castes the opportunity of enjoying a new autonomy in the acquisition of land along the flanks of the river. That is an important change in the rules governing local land tenure even if this change turned out to be very limited.

Since the end of the 1980s, the same lands have been meeting with serious technical and economic difficulties, bringing about unplanned and partly uncontrolled land tenure transformations.

As regards degraded lands, former owners are claiming them back by exercising their land control rights. On "productive lands", indebted peasant farmers mortgage their lands or stop cultivating, and land tenure and economic inequalities in irrigation has become increasingly pronounced. Hence, there emerged land tenure black marketeering over irrigated lands alongside with or in disregard of the official legislative provisions. The practices of players in the field did not take much account of the legal constraints of the National Estates Act. (Mathieu, P., 1991).

Former practices and "rights" corresponding to actual social relations persist, albeit in an adapted form : new practices of "unofficial marketing" of land are a response to the new economic conditions of returns. The practices are adapted even before laws are passed and they do speculate on the necessarily slower adaptation of legal regulations. Finally, compromise among players, between the population and the States and between formal regulations and unofficial "non-legal" practices, are an essential component of the transformations and the changing relations in the Land Tenure system.

### *Limited knowledge of local tenure systems*

Overall knowledge of local tenure systems is still limited. The diversity, complexity, adaptational capacity and "relative efficiency" of local tenure systems were often underestimated in researches until some ten years ago. Very often, the various development players (including a large number of State representatives, administrators, and national technical experts) also have very limited knowledge of local land tenure systems.



The majority of players are still unconsciously imbued with the colonial ideology and with the dominant ideas of development theories and policies over the past 50 years. To them, the rural populations are backward-looking, lacking any driving force and so "development", modernisation and solutions to their problems should be brought to them from outside. The implicit but real attitude adopted towards peasant farmers and herders was therefore that : "the experts, administrators, scholars, the State, funders, etc know what is good for them and have nothing to learn from them". Where land tenure and natural resources management is concerned, this attitude has not entirely changed. There is still a passivity and significant ignorance inherited from this dominant ideology over the past 50 years.

### *Need for adaptation of land tenure systems*

The efficiency and adaptability of local tenure systems should not be romanticized either, for that could be another way of misjudging land tenure realities in the field; In yet some limited cases, particularly when economic pressures and commercial exploitation of lands are very strong (eg. peri-urban areas), or when social cohesion and the systems of "traditional" authority are deeply weakened the local tenure management systems are no longer capable of adaptation, nor of coping with situations or solving newly emerging problems.

Most often, and in most rural areas, local tenure systems are still largely recognized and the populations refer to them as a matter of preference. In the wake of new problems and rapid changes, local authorities and the local decision-making and management machinery manage, albeit with increasing difficulty, to work out and enforce workable solutions accepted by the various parties concerned. This applies particularly ( but not solely) to the solution of disputes involving different social entities (disputes among neighbouring villages), various socio-ethnic groups (eg. indigenous people/migrants or farmers/herders disputes). Unfortunately, such situations and disputes have tended to be on the ascendancy, on account of population growth, farm extension and population migrations.

### *Local land tenure management - a necessary focal point for Land Tenure and Decentralization issues.*

This local articulation between endogenous systems of tenure management and State institutions is also the focal point for land tenure and decentralization issues which are generally dealt with distinctly. Experiences of concerted approaches, contracts and co-management of local resources and lands abound in various Sahelian countries. Such experiences, limited in number, are often based on experiments, at least partially, alongside existing legislations. They demonstrate, however, that there are institutional rooms for manoeuvre and that some innovations are possible when backed by policy will.



## 2.2 Divergent perceptions of land tenure by various players

The perception of land tenure varies according to the player concerned : each of the major players (village populations, the State, donor agencies) tend to give pride of place to some specific elements most important in regard to his concerns, his constraints, or his own objectives.

### *Perceptions of the State*

Generally speaking, the State's role should be, in principle, to safeguard the collective interest of the Nation and the entire people. That justifies its role and its responsibility of ensuring equity in land tenure management, neutrality and fairness in the enforcement of laws and regulations. In matters concerning development and environmental preservation, the State's role is to ensure nation-wide coherence and effectiveness of all decisions and actions at the local level.

In their developmental role, the States are confronted today by the challenges of a difficult transition, with the constraints of structural adjustment and State divestiture. Instead of seeking to play every role at the same time (driving force, guiding light, banker, project manager, etc in developmental issues), the States should strive to play the role of facilitator and provider of conditions which can stimulate the dynamism of economic agents.

In land tenure management, the situation created by the conception and the role of the State in recent decades, may be outlined as follows :

- tendency towards centralization of effective management responsibilities, in other words, only the State supposedly knows what is good in developmental issues and land tenure management was solely limited to the enforcement of the State's land tenure regulations ("modern", written tenure laws often unfamiliar to the population and often misapprehended or misapplied by the administrations and the local representatives of the State authority) ;
- unrealistic and inefficient overestimation of the potency of modern law ;
- underestimation or ignorance of the interdependence between legal provisions and the effective conditions for the enforcement of the said provisions in the local contexts ;
- weaknesses of the mechanisms and conditions for effective application of the texts, uncertainty and indecision in the interpretation of regulations.





### *Perception of donors agencies*

In principle, there is a consensus on the importance of safeguarding local tenure rights as a condition for investment, and on the need to streamline and adapt the procedures making it possible to safeguard such rights. Concepts vary as to the methods by which land tenure rights can be safeguarded : eg. licensing, written registrations of rights, private ownership and tenure contract, or other more informal and intermediate registration of rights.

When it comes to concrete operations in the field, donors' stands are even more varied :

- private licensing of land has been singled out as a condition for financial assistance from some institutions in some countries and is very strongly recommended in some others :
- some donors operating in the field refuse to intervene in land tenure issues, considering them as political, conflicting and a matter to be avoided since they hamper the efficiency of technical activities. That amounts to an option to intervene only in coherent and favourable land tenure situations. Whereas that option is pragmatic, it fails to help improve the situation of areas whose land tenure systems are saddled with problems.
- In some other cases, land tenure is not singled out as a pre-condition for donor intervention, but is treated as a necessary component and an element in a mix of technical, economic and institutional operations.

### *Perceptions of the populations*

The perceptions of the population vary widely, according to the context and depending on the following major factors :

- Extent of the pressure on resources and of competition among groups over access to natural resources ;
- resources productivity, function in the production system : land tenure can attract investments and could be a source of substantial monetary income (orchards in peri-urban areas), or simply the most immediate basis for survival in unproductive areas and for the poorest among peasant farmers ;
- types of activities : agriculture, animal husbandry ;
- various socio-ethnic groups : migrants/indigenous people ; farmers/transhumant herders ;



- sub-groups within a given community : heads of extended families, the youth, women, etc.

Various different categories of players are now concerned with land tenure issues which are no longer a matter for only the "traditional" rural populations, but also capital-owning farm investors ( eg. civil servant or traders dealing in orchards), NGOs (national or otherwise) working in environmental spheres, local associations, etc.

The most frequent and virtually widespread perception is that land tenure has become a limiting factor and the object of increasing competition among rural producers. Competition for resources and the weakening of traditional authorities in charge of tenure management and rights have prompted the adoption of extensive strategies of land speculations and safeguarding. The idea is to immediately occupy valuable lands (or consume available resources) lest they be taken over subsequently by others. The golden rule has therefore tended to be : "fastest possible settlement on or appropriation of available resources".

Such attitudes of competition and resource appropriation are, no doubt, most detrimental to sustainable environmental preservation and management. The absence of clear-cut, applicable rules and the inadequate recognition of authorities, encourage plunder or irrational exploitation of resources : none is willing to conserve a resource from which he has no assurance of benefitting tomorrow if he manages it with care today. That brings about insecurity for all and fans the "each for himself" attitude. Alongside this feeling of insecurity and competition, there is a growing wish of the populations living in areas of heavy environmental pressure, to obtain some form of safeguards for their rights over the resources they exploit. If feasible and dependable safeguards are proposed, they could constitute a significant motivation for investments in improved techniques or the adoption of new environmental management practices.

### **2.3 A summary definition of land tenure**

The term "tenure", as used in this document, refers to the land and its direct allied natural resources ( water, trees, pasturelands, etc) and to the set of relations among individuals and groups for the appropriation and harnessing of these resources. Land tenure systems embody at the same time the set of rules governing lands and its resources, institutions and the relations which determine the practical implementation and enforcement of these rules. Land tenure relations do not exist in a vacuum and are not independent of the overall mechanics of society : they cannot be dissociated from social and political relations (power and authority relations), economic relations (distribution or appropriation of incomes from the primary sector's productions), and the bases of the cultural identity of groups and individuals. From the technical and economic standpoint, land tenure systems determine the management and allocation (more or less efficient) of the set of productive resources. This technical aspect of the matter is inseparable from the social and political dimension. The function of tenure management implies that there are one or many forms of authorities : for efficiency sake, the authorities must have legitimacy and must be recognized by the players.



### *Land tenure systems and natural resources management*

Land tenure systems regulate access to the natural resources embedded in the soils and determine the relations governing the appropriation of these resources and the security of ownership or usage rights over them. In so doing, they help offer a series of economic and institutional incentives for the different possible ways of harnessing resources : either by "consuming" them irrationally (eg. in extensive farming without soil fertility maintenance) or, in contrast, by managing them judiciously for the future, when income generated from the resources and the security of rights over resources encourage the players to preserve the productive base of activities (and hence of income) for the future.

Land tenure incentives are never provided in isolation : they always go hand in hand with the technical, social and economic conditions of the activities in question. Experience demonstrates that it is relatively rare to find, at one time , the economic conditions, the context of land tenure and institutional security (which depend largely on the States) and the forms of social cohesion needed (among the local communities) for the spontaneous establishment of new forms of local management of the environment responding to the challenges posed by the present situation of crises (see Volume II : natural resources management at the local level and the case studies incorporated).

### 3. MAJOR LAND TENURE DISAGREEMENTS, DISPUTES AND LITIGATIONS IN THE SAHEL

To understand the basis and trends of present-day land tenure disagreements and disputes in the Sahel and apprehend how they evolve, one needs to approach the issue from the historical angle. The truth is that ecological and climatic conditions have not always been the same : the environment has undergone some changes, available resources have considerably dwindled, while human and animal populations have increased noticeably.

When the Sahara was green, given the large volume of available resources and land resources conducive to human activities - unoccupied or sparsely populated land - disputes were certainly not only less frequent but also of limited magnitude. Recourse to fallows in a given village land or migration towards areas subjected to less competition among the different groups of people then had less likelihood of leading to disputes (Homer-Dixon and Al., 1993. Kopitoff, 1987).

With the increase in population, both men and animal saw their needs expanding. At the same time, with the major ecological events (like the onset of aridity in the Sahara), lands suitable for human activities diminished and competition then became more keen, giving rise, at times, to disputes.



Under such circumstances, any difference (whether it be economic, cultural, racial, ethnic, etc) triggered off disagreements and clashes among different groups for land occupancy and for exploitation and control of resources. Man's inability to find solutions satisfactory to parties in competition has been the cause of disputes - peaceful or violent, major or minor, generator (or not) of workable solutions - devastating resources and, at times, entire human communities.

These days, land tenure disagreements and disputes may also be aggravated by social differentiation or by unequal access to limited resources. In this light, it is least surprising that in the wake of droughts in recent decades and its consequences, land tenure disagreements and disputes are both multiplying and aggravating, in a context where the Sahel is passing through a period of structural economic and social crisis.

In the course of their multi-secular history, Sahelians, having established economic, social, cultural and political relations among themselves, designed and enforced rules for natural resources management. The changes and the crisis mentioned earlier have clearly exposed the drawbacks of the rules in force and the fact that they are incapable of helping to find solutions or to set up solution-finding frameworks.

It is urgently necessary, to make new rules likely to help keep land tenure disagreements and disputes connected with natural resources management within tolerable limits for Sahelian society, i.e. limits within which the conditions necessary for reaching acceptable solutions could gradually be evolved.

### **3.1 Some examples of land tenure problems in the Sahel**

There are many examples to illustrate our contention :

#### **Violence in natural resources management in Chad :**

Over the past 25 years or so, Chad has been the scene of a civil war devastating human, animal and natural resources. The existing rule governing land and natural resources management in both urban centres and rural areas are being called into question.

Henceforth, new relations are being forged through the barrel of the gun. (see the May, June, July, 1990 issues of N'Djamena Hebdo, a weekly).

Entire populations are displaced from one region to the other. When they settle on their new sites, not only do they aggravate competition but also they introduce new practices. The people originating from Guéra who settled in the N'Djamena region initiated the practice of gum exudation from the gum tree and marketing of the product - a practice hitherto unknown to the indigenous people. When trade in gum arabic proved lucrative, disputes broke out between the indigenous people and the migrants.





The *modus-vivendi* between herders and farmers has also been called into question : for example, it is not rare in the south to find herders from the north grazing their animals under armed guard on lands controlled by the local populations. In Guéra, armed groups of people controlling access to some boreholes subject the populations to tax payment and intervene in land management.

#### Conflicts in the Senegal river basin :

The filling up of the dam of the Senegal river signalled prospects of irrigation of hundreds of thousands of hectares along the two banks. Within each of the countries concerned, competitions intensified between different ethnic groups and groups of economic interest. The ensuing tension resulted in the bloody events of April-May 1989, bringing Senegal and Mauritania to the brink of war. The bone of contention was especially on access to water, lands, and the possibilities opened up for agricultural, livestock and fishing development (see the April to December 1989 issues of *Sud-Hebdo*, a weekly);

When competition for natural resources takes the form of disputes among different communities, as has often been the case in the Sahel, land tenure disagreements provoke tragic situations.

That underscores the importance of matters connected with land tenure issues in the Sahel and the dire need for Sahelians and their partners to assess their gravity and apprehend the far-reaching implications of their decisions.

### 3.2 The main challenges associated with land tenure issues in the Sahel

#### *At the local level*

In the context marked by famine, structural economic and social crises, objections to the environmental order and the quest for new "balances", access to natural resources and their control implies, first and foremost, the struggle for survival around ponds, rangelands, and pasturelands, for the demarcation of the boundaries of farmlands, etc. The struggle becomes even more intense when a project is in the pipeline or when the market value of the coveted resource soars.

The land, this nourishing mother, the cradle of our ancestors laid to rest, assumes a religious, cultural, and emotional importance at the same time. In the past, local rules and practices accepted by members of the community, regulated relations and constituted a framework for dispute settlement. Not only have these local rules and practices been called into question by national laws and regulations but also the present-day conditions call for their reforms if not their reframing.



At what level, should new rules be defined for resources management ? What should be the available options for redress and arbitration, given the intensity of competition ? How can the most vulnerable groups be protected against the many on-going abuses ? How can the populations be assisted to exercise control over the administrations and elected representatives.

In the endeavour to find answers to these questions, one needs to evaluate the existing possibilities and limitations, against the background of the structural economic and social crises rife in the Sahel.

The Sahel is experiencing a situation in which some objections are being raised to entrenched convictions, resources management methods, governments, men, relationships between communities and interest groups, etc. In regard to such questions, sufficient allowance must be made for time, to enable conditions to develop and ripen for the emergence of appropriate solutions.

What must be done meanwhile, is to attend to most pressing issues, limit competition within such margins as to safeguard resources and the survival of society. Under the prevailing conditions of instability, in the absence of a context capable of ushering in a relative level of stability, and prior to even the establishment of acceptable modus vivendi among parties in dispute, it will then be possible to define new regulations and laws on a tentative basis, subject to amendments that become necessary in the light of the experiences of the players themselves.

#### *Concerning some social classes*

There are deep-rooted inequalities of access to natural resources in Sahelian societies. The youngest of family children, former slaves and other so-called second-rate "castes" are notable victims of this practice. In the quest for equitable solutions, based on local realities and while avoiding any voluntarist approach, sustained attention must be accorded to the reduction of these imbalances and to the institution of a given minimum of representation of such disadvantaged categories of people in decision-making and arbitration bodies. Broader channels of redress can also be arranged.

For their part, Sahelian women participate actively in productive work and provide for the bulk of the family's needs in terms of staple food commodities. Ironically, their right of access to natural resources, particularly land, are just ridiculously insignificant.



### *At the national level*

The very existence of countries could ultimately be jeopardized by ethnic strife arising from competition for access to natural resources.

Competition in Sahelian societies brings into focus the various social classes, human communities, interest groups, and various persuasions and cultures. To foster coexistence among the different entities, there is a dire need to work out the content of reforms in relation to the search for equitable solutions.

In the peripheral areas of urban centres, like Bamako, N'djamena, Niamey, particularly along the Niger and the Chari rivers, top functionaries, army officers, etc very often appropriate and occupy lands to the detriment of peasant farmers, by investing huge capital in them in a bid to enter the market economy. Competition among Mauritanian businessmen and peasant farmers along the Senegal river basin, coupled with inter-community disagreements, have the same cause. Moslem peasant farmers originating from Northern Senegal and established in the Casamance lowlands are considered as "foreign" encroachers. Here, competition between indigenous people and settlers is often compounded by differences in religious persuasions.

The interests at stake cover not only land tenure but extend as well to the establishment of economic and social systems capable of meeting the basic needs of all players, ensuring their survival without exception nor discrimination.

### *At the regional level*

From Mauritania to Somalia, there are widespread violent conflicts over the management and control of local and transnational resources. Threats of war outbreaks between countries, like the one between Mali and Upper Volta or that which nearly broke out between Senegal and Mauritania in the Senegal river basin, loom large.

### *Environment, sustainable development and living habitats in the Sahel*

A retrospective look at historical trends, bearing in mind the worsening living conditions of Sahelians in relation to available resources, increase in populations, natural resources potential and available techniques for their harnessing certainly give cause for concern about the future.

How best to avoid crossing the point of no return in environmental destruction ? Otherwise, what are the local and international resources needed to push farther this gloomy prospect and avoid the worst. These are questions to be addressed foremost by Sahelians, as a matter of duty.



On the other hand, for solidarity reasons and for the survival of the planet, given the probably disastrous implications of these phenomena - difficult to evaluate though - mankind as a whole should feel concerned and would be erring if they should fail to share thought about solution finding.

### 3.3 Sahelian women and land tenure issues

The problem of Sahelian women and their tenure status is complex (our gratitude, to Marie Momimart for her relevant comments on the subject, cf. Monimart, 1993). From the demographic point of view, women in general only slightly outnumber men (making up, on the average, 50.5% in sub-Saharan Africa), but in terms of rural production, their labour input (particularly in agriculture) and their contribution to the rural economy is very substantial and often exceeds that of men, albeit with significant local variations. Women also play a decisive role in education and reproduction of culture.

Yet, as a Peul adage says : "the land is a father who gives no recognition to his daughters". In most Sahelian societies, in effect, women constitute a marginalized majority as regards their land tenure status, despite the major responsibilities they shoulder in land and natural resources management.

To take full account of such objective factors and improve upon the essential activities carried out by women for the benefit of society, it is necessary to devote attention to their relations with land tenure and natural resources management issues.

#### *Women and land tenure in the Sahel*

Where women are concerned, the most frequent mode of access to farmlands remains "allocation of plots to married women by the husband's family" . As Konaté points out (1992 : 23) : "for being generally considered as 'prospective strangers' by their own families and as 'actual strangers' by their husbands' families, women cannot lay claim to and control such a cherished property as land". Women are therefore entitled to only a usufructuary right to farmlands for the duration of their marriage, a precarious right which is lost in the event of divorce and often upon the death of the husband.

Their fields are generally smaller in size and are less productive than those of men. Furthermore, they have little or no access to farm input for soil improvement and the yield of their fields are quite low as a result. By way of example, in 1978, men produced between 1100 and 1359 kg/Ha of peanuts, and women between 650 and 980 kg/ha ( cf. Droy, 1990 : 87). The unfavourable situation of women in the farming system is further aggravated by the fact that most of them are obliged to participate fully in work on the family's collective farms.





Nonetheless, contrary to the belief that women are systematically excluded from land ownership, their situations vary considerably. Not only is there a wide variability among the different tribes, but also, some allowance must be made for such relevant factors as religion, the social status of the woman and her husband, how production is organized in the family, the availability of lands, the rate of migration, etc. (Konaté, 1992 : 28).

Hence, in Senegal for example, rice fields in the Manding and the Diola Fogny areas and in some parts of the Serere areas can be owned by women and be bequeathed to their heirs, be they males or females. Another frequent example in the Sahel is this : should the head of family leave to work elsewhere (in the city, abroad) the wife often takes control over the family farm if the husband has no adult son to replace him.

Hence, some individual women exceptionally have access to land ownership and in some cases, women have easier access to land borrowing from men. Even so, that it for purely strategic reasons : since women request smaller stretches of land, the owners find it easier to evict them and retrieve their lands, when necessary. (cf. Konaté, 1992 : 24).

On newly developed lands, particularly irrigated areas, the tenure status of women is often just unfair :

" most of the developed lands share common characteristics : traditional ownership rights are simply forfeited, the States takes over and develops the land through a project and grants usufructuary rights on a rather precarious basis to peasant farmers. The allottees are almost exclusively the heads of family (men), even in regions where developed cropping responsibilities rest with women. Women are frequently required to offer their labour and know-how, but are denied control over production". (Droy, 1990 :66).

Concrete examples abound in the Sahel : perhaps the most researched example is that of Jahally-Pacharr in the Gambia (see among others : Dey, 1981 and Carney, 1988). As Marie Monimart rightly points out (1989 :141), the same phenomenon recurs in farmer settlement projects (Autorité des Vallées des Volta in Burkina Faso ; Société des Terres Nouvelles in Senegal, etc), and in the fledging approaches to "land-use planning" in which women are deliberately distanced from eventual land redistribution.

Another farming activity traditionally carried out by women is market gardening and food commodity production, often located on vegetable farms of backyard gardens or grown on a part of the husband's farm. Here, once again, the ownership situation is predominantly precarious.

All in all, the land tenure status of women in local regulations and practices may be summed up in three words : uncertainty, insecurity, inequality (Monimart, 1989 :139).



### *Women and natural resources*

Natural resources-related activities of women are very diversified, whether it be in the use of trees and waters or in extensive livestock breeding practices.

Trees are generally used by women in feeding, for herbal medicine and as fuelwood. Many studies have already demonstrated, in this regard, that following the effects of desertification in the Sahel, the work load of women has gradually increased. The right to trees is, as already known, closely related to land tenure rights. It is therefore least surprising that women's rights to trees are generally uneven and poorly defined. Where tree-planting rights are concerned, women are usually denied them on the grounds that such a right amounts to land appropriation. For these reasons and also for the "myopic" view of some project authorities, the actual involvement of women in tree-planting or wood harnessing projects was neglected for a long time (cf. Raintree, 1987 : 381-384).

Access to water is a daily preoccupation of Sahelian women. The women are those in charge of water supply for household use, they need water in order to water the gardens and the animals entrusted to them ; also in some areas, women engage in fishing activities and are mainly in charge of fish processing and marketing. Women's access to water does not raise any special legal problems ; environmental degradation is what has seriously aggravated their situation in regard to water.

Women systematically practice livestock rearing although knowledge of this role is limited : rearing of cattle in some areas and of small ruminants and poultry almost everywhere (Monimart, 1987 : 98 and 114 ; see also Pointing and Joeques, 1991). In this regard, Peul women occupy a prominent position, since animal rearing is their main activity. Just as for men, women are facing increasing difficulty in gaining access to water and to cattle feed, but given the general exclusion of women from natural resources management, their situation is even more painful.

The overall assessment of the situation of Sahelian women vis à vis farmlands and other natural resources is therefore quite discouraging. Fortunately, there are other more encouraging experiences.

### *New trends, positive experiences*

Two encouraging trends may be identified in regard to Sahelian women. First, women are less willing to undergo passively the erosion of their land tenure and socio-economic status and are increasingly making collective and individual tenure claims. Further, women are increasingly involved in development projects (either specifically women-oriented projects or women's component of other projects). Some examples of positive developments may be cited for illustration purposes.



### Date palm plantation at Boulhazar

"At Boulhazar in Mauritania, some 300 recently settled women came together to set up a booming cottage industry cooperative. They decided to invest their profits in market gardening and date palm plantation and bought a field for that purpose. Their choice was for scarce species with heavy demand like dates, henna and lemon trees. All these trees were ultimately meant for income generation. This courageous venture and the development of the new common-property resources by women hitherto confined to sitting under the tent are evidence of dynamism and a source of hope "( source : Monimart, 1989 :121);

In all the Sahelian countries, one can now find examples of women negotiating on their rights to land and natural resources : in Senegal (Lake Guiers) (Freudenberger, 1992 : 26) ; in Cape verde (Fazenda Tarrafal Cooperative) ( Monimart, 1989 : 122) ; in Burkina Faso where common-property natural resources management projects have opened up women's access to collective farms (Faure, 1992 : 14 ) ; in the Gambia where women are negotiating with land owners on tree plantations in their market gardens (Freudenberger, 1993), etc

Throughout the Sahel, the tendency is for women to seek individual appropriation of lands. But, as Marie Monimart points out ( 1989 : 142) : "Individual access to land remains very difficult, be it in the traditional system or in development approaches (...). Women therefore willingly use the channel of collective appropriation as a substitute for or to facilitate individual appropriation". To counter the precariousness of their land tenure status, women also resort to other strategies such as loaning, leasing or purchase of land. These strategies deserve some attention.

### *The impact of land tenure legislations and institutions on women's status*

As a general rule, the laws governing land tenure and natural resources in Sahelian countries are "gender-neutral", implying that they make no explicit distinction between men and women. Even so, apparently neutral laws may establish or foster **de facto** discrimination against women, especially since they rarely contain provisions intended to eliminate such a discrimination.

In Senegal, the National Estate Act made access to land a right for all members of society. In theory therefore, women have equal tenure rights in law, but that has yet to be translated into deeds. Apart from socio-economic, political and ecological reasons, there are also legislative and institutional impediments to the integration of Senegalese women. According to the Law relating to rural communities - an institutional corollary of the National Estate Act - a



third of Rural Councillors must be representatives of cooperatives. However, at the moment, cooperatives are no longer the most widespread peasant organisations : women's groupings particularly economic interest groups are the dominant. No less than 3400 officially recognized women's groupings are denied access to community responsibility in order to safeguard their interest. Out of the 317 rural councils in Senegal, only one is headed by a woman, and of the nearly 4000 councillors in the country, the membership of women is barely up to six.

In Burkina Faso, the 1984 Agrarian and Land Tenure Reform amended in 1991, is also "gender-neutral", yet the schedule of conditions pertaining to the exploitation of irrigated lands contains some conditions discriminatory against women and fails to make satisfactory provisions for women to serve on village land management commissions (cf. Konaté, 1992 : see also Yaméogo & Darga, 1992, for some positive experiences).

Another major problem for women and women's groupings throughout the Sahel is their ignorance of the law and of the channels of redress in the event of discriminatory decisions against them.

#### *Some major constraints*

Based on the foregoing, it is possible to formulate some of the major constraints to the actual incorporation of women in land and natural resources management in the Sahel :

- local land tenure practices, based on social organisations of peasant communities, continue, to a large extent, to favour men in access to natural resources and their management. Women's workforce is appreciable but their knowledge and capacity in natural resources management are still largely unknown.
- the right to land inheritance is rarely granted to women - even in Islamic Sahelian societies - thereby discouraging them from making long-term investments.
- the market economy tends to deprive women of even their meagre rights and, therefore, to marginalize them all the more.
- whereas the legislations themselves do not discriminate against women, they fail to explicitly foster the effective involvement of women in land and natural resources management.
- the under-representation of women in local management institutions is oppressive;
- women's access to information (including legal information) is poorly organised.





### 3.4 Trends of solution of land tenure disagreements and disputes

By closely studying land tenure disagreements and disputes, one realizes that they differ in nature and follow sharply varying trends. This question of nature and trends brings into play the parameters already discussed, namely : available resources, consumption of these resources and the pace of their renewal ; human and animal populations using the resources and the rate of population increase ; mastered and/ or accessible techniques and their impact on the exploitation of the potential of the milieu. Extraneous factors like climate, rainfall and environment largely influence these land tenure disagreements and disputes and their trends.

At times, workable solutions are found to tenure disagreements which emerge, preventing them from developing into disputes. The volume of available resources, the availability of lands for migrations, etc, are some of the factors which facilitate this solution-finding possibility. In contrast, some other land tenure disagreements inevitably degenerate into conflicts for various reasons, and many situations may then ensue.

For lack of the necessary maturity, solutions to some disputes are not easy to find. It often happens that the quest for such solutions is made belatedly, for the reasons that the parties in dispute fail to agree to a compromise and to the need to have speedy recourse to a compromise formula necessary for the survival of all parties.

In other situations, in spite of the deep wounds left behind by some conflicts, the perspectives they offer the populations concerned indicate that it would have been difficult otherwise to hope, within tolerable time limits, to find workable solutions to their disagreements over the control of land and its resources. This situation applies to the April-May 1989 events and their consequences in Senegal and Mauritania.

For two years, the situation of latent war between the two countries disrupted trade and agro-pastoral activities along the two banks of the Senegal River. The survival of thousands of families in both Senegal and Mauritania depended on the possibility of migration offered by the relations of peaceful coexistence between the two countries. The death of hundreds of men, the plunder and destruction of considerable material and animal resources, the tragedy of tens of thousands of refugees on both sides, all convinced the majority of Mauritians and Senegalese that the solution did not lie in divisionism. Rather, constructive respect for differences, taking account of contrasting interests, offered the possibility of solution finding for coexistence.

The persistence of disputes within some limits and in some forms is not necessarily a bad thing. Examples are cases where one of the solutions possible at a given point in time could lead to even more serious developments subsequently.



At Dourbali in Chad, there is a pond which, for several decades, has been the object of competition - at times violent - between two rival communities. Each of the two communities demand a radical solution commensurate with the primacy of their respective rights. One might be tempted to try a settlement, but experience has shown that such an option paves the way for protracted violence and even threats of poisoning of the lake itself. In contrast, exploitation of the lake in common, based on a compromise (even if shaky) periodically called into question and re-negotiated, offers less alarming perspectives (Ba, B.M., 1993 :discussions).

The tendency to make a definite demarcation of village lands or to make a choice between different players concerned with given resources, instead of creating the conditions for competitive co-existence among them, often leads to solutions that generate conflicts even more serious than the ones being solved.

### **3.5 Players concerned, conflicting interest, multiple levels : what approaches and what scenarios ?**

#### **Dinde Fello**

Dinde Fello (Freudenberger, 1992) in Eastern Senegal offers the example of a site in which many players have a stake with clashes of interest, and where the responsibilities of the players involved in or concerned with the exploitation of resources are located at very different levels.

The Dinde Fello falls supply water to the populations of the surrounding villages practising agriculture and fishing in particular. The river which replenishes the falls draws its source from the Futa Jallon in the Republic of Guinea. The populations involved in the exploitation of available resources originate from Senegal, Guinea, or Mali. The transnational dimension of the water resources of the Dinde Fello falls and the diversity of the indigenous players turns out to be indispensable.

The particular ecosystem of Dinde Fello is one the rarest in West Africa : some ferns, subject to extinction elsewhere, survive in the area ; a group of chimpanzees have taken refuge in a yet unexplored natural forest, while some botanists claim to have discovered, in the area, the "tallest" flower ever known in the world. In this respect, the importance of Dinde Fello goes beyond the limits of the surrounding localities and their populations.

Dinde Fello is of importance to the State of Senegal, the national and global scientific community and all organizations working on the defence of animal and plant species facing the threat of extinction. Even UNESCO has an interest therein on account of the defence of the site which forms part of mankind's resources.



Endowed with fairy charm, Dinde Fello is already the object of a keen but uneven competition among tourism multi-nationals and the local populations desirous of exploiting the common-property resources to their own advantage.

Survey and analysis by specialists confirm that there is an increasingly serious threat on the Dinde Fello site. The use of the waters of the river for domestic purposes by the populations of the village located on the hill - particularly the use of detergents - not only changes the natural composition of the water collected from the falls but also it poses a threat to the lives of the ferns and other rare species.

How best can equitable solutions be found to the exploitation of the resources of Dinde Fello, taking account of the diversity of players concerned and their contrasting interest ? From the local level to the global level, not forgetting Senegal and transnational concerns, the responsibility of the players and the magnitude of the consequences of their behaviours cannot be truly appreciated by merely taking account of their respective interests.

At the country levels, the same kinds of difficulties are encountered in the management of lands, forests, lakes, ponds, rivers, and phreatic water-tables straddling many localities and regions. The list of players concerned is exhaustive. It includes the State, private operators, organized local communities (rural communities, cooperatives, associations, economic interest groups, NGOs, etc.), finance and credit institutions and bilateral and multilateral partners involved in projects working on the resources in question.

Numerous activities are in contrast : agriculture in its various forms (rainfed, irrigated, recessional), livestock breeding, fishing, harvesting of picked crops, mining, construction (of roads, works, houses), etc.

The interests at stake therefore concern different players and activities established at specific levels and, hence, having natural resource management approaches subject to multiple levels of appreciation.

This underscores the urgent need to refer to institutions in charge of dialogue, negotiation, appeal and arbitration, taking account of the interest of each and everyone. Guarantee for the exercise of sovereignty in the management and control of institutions over the natural resources under their jurisdiction should be sought for by taking account of the impact at various levels.

### **3.6 Settlement of disputes : favourable and unfavourable factors.**

The settlement of land tenure disagreements and disputes and the emergence and application of solutions depend on several factors, not excluding local experiences and initiatives, local authorities, the administration, specialized technical services and the judicial system, donor agencies, etc.



### *Local experiences and initiatives*

Local experiences and initiatives, particularly the take over of natural resources and village land management by the local populations, play an essential role in the search for solutions to land tenure disagreements and disputes. Similar examples abound in the Sahel but we shall cite only two of them : namely Shilaah Lahmiir in Mauritania and Fandène in Senegal.

#### **Shilaah Lahmiir**

Shilaah Lahmiir is an average camp in the Brakna region whose capital is Aleg, located close to Magta-Lahjar. Its inhabitants belong to the Taagat tribe, one of the most important in Mauritania in terms of population. Over the past fifteen years or so, the inhabitants of Shilaah Lahmiir have been developing an original experiment for management of their land resources, despite opposition from the administration ( BA, 1984).

Under the colonial regime, a dam was built, making it possible to practise recessional farming over hundreds of hectares. The family which played the preponderant religious role at the time thus represented the tribe in its transactions with the colonial authority. Accordingly, the dam and the lands developed through the dam were registered in the name of that family.

During the trying years of drought (1970-73), there emerged a strong social movement questioning the leadership and custodian role of this family of the Moslem shrine. This movement rallied not only former slaves (h'raatiin) but also the broad masses of former "masters", including members having blood relations with the leading family. The movement also rallied the support of not only women but also the aged.

The majority of members of the tribe turned to good account the provisions of the law to set up a cooperative. The movement culminated in the adoption of a written land tenure charter granting equal rights of ownership to the former masters and their former slaves and to men and women alike. That was a revolution in the true sense of the word, in Mauritania where the tribes are sharply marked by social injustice, fanned by ancient slave-trading practices.

All the tribes in Brakna and neighbouring regions (eg. Tagant), all Mauritanian religious brotherhoods, public opinions and political organizations were compelled to take a stand on the issue - for or against the reforms spearheaded by the Taagat population. For nearly twenty years since, the antagonisms persist, while retreats, progress and significant headways have succeeded one another. Notwithstanding, none is in a position to predict with certainty the eventual winner.





## Fandène

The populations of Fandène (Freudenberger, 1992), in the Thiès Region of Senegal have a rich experience in the growing of palmyra. According to evidence given by specialists of the "Institut Sénégalais pour l'Environnement" (ISE), their scientific knowledge on the palm tree far exceeds that of the Senegalese Scientific Community on the subject. Researches are underway for gathering these knowledges for publication.

The populations of Fandène, organized into associations and economic interest groups, have drawn up and enforced simple but efficient rules for common-property resources management and for settlement of disputes. For example, they have initiated relations of co-existence with the Fulbe herders, thereby ending their long-standing violent conflicts.

The Cayor Canal, a project of the Senegalese State, will cross lands under the control of the Fandène populations and wide stretches of lands will thus be expropriated from the populations. There is growing concern among the Fandène populations - does national interest justify the failure to take account of local concerns ? An alternative approach would have certainly helped to safeguard the two conflicting interests.

### *Local authorities*

For being long, complicated, hardly enforceable and worded in a language hardly understandable by the majority of players, Sahelian legislative texts governing natural resources management frequently conflict with the will of the local authorities in charge of land resources management and to whom the populations refer for arbitration and settlement of their disagreements.

Quite often, the urban classes of people capitalize on the texts in question to expropriate resources belonging to the more vulnerable citizens. Having learnt from experience, the citizens and those authorities in whom the citizens repose their trust, are increasingly learning to circumvent the new legal provisions or to adapt to them.

### *The Law, the Administration and the Specialized Technical Services*

When disagreements turn into disputes, the opposing parties often refer the matter to local institutions or to the judiciary for settlement. The forms of settlement based on local regulations (undocumented in most Sahelian rural areas) then help avert land tenure disputes, even though minority groups and some social categories of people (women, youth, former slaves) often end up being disappointed with the verdict.



With the introduction of Islam and especially with the colonial regime, new jurisdictions foreign to the social and cultural set up emerged and conflicted with the local rules. Litigations brought before such new authorities whose working principles were least understood by the parties in dispute, thus occasioned judgements grounded on new reasoning (Debène, 1990. Le Roy, 1990).

Sahelian countries which inherited the colonial judicial system advocate constitutional government and give secondary importance to local methods of dispute settlement. Yet, it is only in exceptional cases that Sahelian peasant farmers refer to the official judicial system for settlement of their land tenure disputes, preferring the arbitration of local institutions or recourse to new but unofficial modes of settlement not recognized by law (Le Roy, 1990).

The Sahelian layman's ignorance of the content and the workings of the judicial system, the complexity of legal procedures, the expensiveness of the system's services and the corruption with which it is fraught have plunged the judicial system into a deep-seated crisis.

The land tenure texts have often been used to dispossess the most vulnerable groups of their lands, for the benefit of the urban classes of people better educated and willing to understand and then adopt the labyrinthine channels of resource allocation, of redress, of judgement, etc. Within 30 years, top functionaries and army officers in Bamako have succeeded in plundering the resources of peasant farmers in the peri-urban areas and have established properties covering several hundreds of hectares around the city, pushing back the peasant farmers beyond the thirty-kilometre radius.

In Sahelian rural areas, litigations brought before the State institutions are, in most cases, "settled" by representatives of the Administration and exceptionally, by judges. As a general rule, the representatives of the Administration have little knowledge of legal provisions and their verdicts are often based on considerations such as the relative political and social influence wielded by litigants, their relative affluence, etc.

Technical experts and the specialized services of the Land Registry Department, Estates Department, etc put a high price on their competence and exert strong influence in land allocation and settlement of ensuing disputes.

#### *Donor Agencies*

The natural resources management crisis and the many outbreaks of conflicts, embezzlement and dissipation of aid donations and protests from public opinion have all contributed to the emergence of the so-called policy of donor conditionalities.



In connection with land tenure issues, this policy consists in making aid grants conditional upon the reform of the text in force, towards promoting private ownership. In most Sahelian countries, this policy has borne its fruit, with the consummated or imminent adoption of new texts affirming the primacy of private ownership (see chapter 5).

#### **4. LOCAL LAND TENURE INSTITUTIONS AND PRACTICES AND NATURAL RESOURCES MANAGEMENT**

Pronounced cultural, ecological, and economic diversity of the sahel is such that land tenure systems are very varied and complex. In spite of comprehensive changes, some elements of the "traditional" land tenure systems have posed strong resistance to new legislations. Yet, hitherto-unassailable local land tenure rules and practices, have clearly undergone changes over the past twenty years of drought. In some cases, the local bodies in charge of natural resources management have lost their weight. In others, new land tenure institutions and practices have emerged. The land tenure system now operating in the field is neither purely traditional nor of the strictly Western type. What obtains at the moment is a mix of land tenure practices strongly influenced by the specific social and ecological history of each area.

##### **4.1 Characteristics of local land tenure practices in the Sahel**

By making an overview of all local land tenure situations, one can hardly identify similar cases. Admittedly, the historical causes of land tenure disputes among the Ganzourgou people in Burkina Faso are quite different from those which fomented troubles among the N'Doukoye people in Mali. Land tenure trends in the area around the forest of the Amba village in Mali is not even the same as in the Fandène village land in Senegal (See Volume II). How then can one describe, with precision, the basic characteristics of land tenure systems in so vast a region as the Sahel ?

In the pre-colonial period, the scarce factor in rural societies was not land and other allied natural resources, but rather the workforce. The challenge that faced rural populations was how to manage nature and its resources by clearing "wild" forests and establishing villages, using a minimum labour force. The populations resorted to the use of several techniques to assert their occupancy of the land and its resources. Bush fires, forest clearings and geographical landmarks like sacred trees were used as border demarcations which were often subject to alteration on a given occupied territory.

This situation of resource abundance no longer exists today. Land and other natural resources are becoming scarce factors although the scarcity trends are neither uniform nor homogeneous (CINERGIE project, 1992). Gradually, increasingly precise rules crystallized on the question of land and other natural resources.



In the situations of resource abundance, the populations could always migrate to escape from not only over-populated areas but also situations of conflict. Where the economic and political situation became unbearable in a given place, the disadvantaged group could opt to settle elsewhere. By leaving their place of origin, they preserved the traditions and customs of their own society. Village historians often recount the causes of migrations of their ancestors and the importance of their links with the distant place of origin. On rare occasions were the new host sites found unoccupied. Hence, the "pioneers" settled either by conquering the area or by assimilating weaker populations (Kopytoff, 1987). To date, one can find an interaction of different tenure laws being practised in a given area, which is often symptomatic of a long history of co-existence among many social groups with different historical backgrounds.

The founder was often vested with the necessary authority to determine the rules governing access to natural resources in the area. These days, the descendants of founders generally have "pre-eminent right of occupancy", a concept which influences the practices of land appropriation and conveyancing. The lineage, the clan, the family or persons exercising control over the virgin land on which they were first to settle, often maintain their priority rights to the said land. The descendants of founding families may subsequently relinquish the use of one or many resources as a donation or lease-hold for varying periods of time. Lands were rarely sold, but served as a means of establishing social relations which fostered labour trade (Le Roy 1982).

Since long, usufructuary rights seemed to have been particularly well defined for the natural resources vital to the survival and reproduction of the village community. On the contrary, the rules are less explicit in other areas (Freudenberger et al., 1993).

Many case studies have shown that, since long, there have been well-defined land tenure laws over floodlands, watering holes and rich grazing lands and fishing grounds along Sahelian rivers (Dupré, 1991 ; Price, 1991). Tree ownership rights are also well defined in regard to species used for family consumption such as the tamarind tree, the baobab, the shea tree, the date palm and palm tree (McLaine, 1992 ; Fortmann and Bruce, 1988).

The existence of clearly established laws does not stem solely from the importance of the role played by the resources in the family economy. Since colonial times, individual ownership rights emerged over trees whose products were intended for exports eg. the gum tree (*Acacia Senegal*) which is the source of gum arabic well prized by European industries. Hence, Black Moors and the Fulbes of Ferlo in Northern Senegal have, since long, retained their individual rights over dense groves of gum trees (Freudenberger, 1992).





## 4.2 Trends of local land tenure institutions in the Sahel

Land tenure institutions and practices in the Sahel have been strongly influenced by colonial and post-colonial policies (See Chapter 5). One of the practices of the colonial State was to manipulate the local authorities vested with powers over natural resources control and management. As a result, the authority and efficiency of such institutions declined and rules governing natural resources usage and harnessing worked less efficiently.

Upon the onset of drought in the early 1970s, some natural resources became increasingly vital to the survival of the populations. Lowlands gained added importance in off-season farming, often to the detriment of herders who thus lost access to grazing lands in the dry season. Places conducive to irrigation were developed by projects, thereby aggravating competition among heterogeneous communities for access to these new resources.

Some forest products such as the baobab fruit or the tamarind became not only an important source of food for the family, but also a source of income when the products are sold on the market. The turmoil created by the drought led to covetousness of some resources which hitherto, were of only secondary importance.

Consequently, "owners" of these resources tried to assert monopoly rights to them, which often triggered off fierce struggles for the redefinition of what previously used to be latent and implicit usage rights. Thus, people used to harnessing the resources of a given tree may try, by forcible means, to prevent others from coming to do likewise, by invoking the ancestral laws of "first occupancy". The populations generally tried firstly to settle their disputes locally. If that failed, the administration intervened to apply western-originated laws in settling the disputes. In practice, that resulted in overlaps between local laws and the States' land tenure law. Nonetheless, the tempo of change is not uniform over the entire Sahelian region.

Village institutions encounter difficulties in the management of their land resources within a legal context in which management authority is given to State services which often lack the financial resources needed for enforcing the laws and regulations. When villagers attempt to exclude "foreigners" from the use of waters, grazing lands or trees located on their common-property resources, they are confronted with the new realities : i.e from the legal point of view, those resources belong to the State and are under State control. In the event, the local communities lose not only their monopoly rights but also the possibility of negotiating with non-residents on new arrangements.



In village communities, land tenure instability can fan existing divisiveness among the different social classes of people. In some irrigation projects, families emancipated from bondage hardly have access to irrigated lands (Bloch, LTC. 1985). Women can lose their rights to rice farms as soon as their husbands invest in off-season farming (Schroeder, 1991). Moor collectors of gum arabic at Ferlo in Senegal are witnessing the invasion of their preserve by Fulbe herders in search of financial resources to reconstitute their livestock. The access of Nigerien herders to seasonal grazing lands keeps diminishing, with the development of food crops on the same lands rich in organic matter (Loofboro, 1993).

Finally, drought in the Sahel has prompted a mushrooming of development projects, leading to over-abundance of new institutions exerting some impact on local tenure practices. These projects often set up new institutions on the assumption that the village is lacking in structures and initiatives. That tends to foment, in some Sahelian villages, competition between "traditional" and "modern" organizations created through projects. A village wood project which introduces new norms for profit distribution and ownership transfer can, in the short term, reap results beneficial to some deprived social classes of people. In so doing, the project establishes a new "oasis" of land tenure regulations recognized by the State, but operating in the midst of other land tenure regulations and practices governing the entire area. How sustainable could such tenure practices be ?

#### **4.3 The diversity of present tenure practices**

It would be a hasty conclusion to state that "traditional" land tenure systems are dying out. Some case studies have demonstrated however that certain local practices are finding it difficult to survive. Along the Niger and Senegal rivers, fishermen have designed and enforced complicated regulations to govern riverside fishing, but most of the rules have been subjected to comprehensive amendments, following the years of drought onset in the early 1970s. In the Niger delta in Mali, the Fulbes from Macina have set up mechanisms to regulate access to the rich pasturelands along the Niger river, but these systems are currently operating with difficulty (Moorehead, 1989). At the beginning of the century, the Moors of Ferlo in Senegal established a sophisticated system of gum tree management, which is dying out today (Freudenberger, 1992). In Chad, the Kwang people in the Baguirmi Region used to plant palmyra stands as an anti-raid device ; this practice has also disappeared. Finally, in some places, *Acacia albida* "parks" are being destroyed (Raison, 1988 ; Shepherd, 1992).

At the same time, new land tenure practices are gradually making inroads, which gives evidence of the initiatives of the populations themselves in the conservation and regeneration of soils, waters, and forests in the Sahel (IFAD, 1993 ; Rochette, 1989 ; Shaikh et al, 1988). These techniques often involve the creation of new natural resources management rules.



The populations along the Senegal river try to protect their meagre forest resources against encroachment and plunder by illicit charcoal burners, by preventing wood cutting by means of patrols by the youth (Fischer, 1991). A similar experiment is going on in N'Doukoye village of Mali. An inter-village association of sedentary herders and peasant farmers at Ferlo in Senegal try to control bush fires which pose a threat to their herds. The association has erected firebreaks and its members combat the practice of fire lighting on pasturelands (Freudenberger, 1992). The Dogons in Mali still practice extensive farming on the plateau by undertaking well-organized communal labour (Kassougue and Ponsioen, 1990). The people of Mayo Kébi are trying to establish an inter-village system to enhance the control of gum trees against depredation by foreign groups (BA, personal paper, 1993).

Local initiatives to address the land tenure situation are aimed at re-establishing political and economic control over village land resources. The populations are indeed trying to erect tenure "fences" around their resources to forestall encroachment by foreigners. That is, to some extent, a monopolistic policy but the approach is also an expression of the populations' awareness of the need for the safeguarding and regeneration of their natural resources endowment.

Not always do Sahelian Governments accept this principle of self-assumed monopolistic rights exercised by the populations themselves, for they contrast with the concept that natural resources "belong" to the national community, and should be managed by State Services.

The foregoing studies cited prove, that in some situations, local institutions have a remarkable capacity to ensure sustainable management of some of their resources. But such commendable experiments can still be described as an "oasis" in a setting characterized by frequent failures.

The challenge therefore remains unabated : rural communities should have the possibility of making rules to govern the exploitation of local resources, while the State limits itself to the enforcement of the rules (Bruce, 1986 : 139-140 ; Lawry, 1990).

Land-use planning projects for villages, so much in vogue today, perhaps provide the appropriate context for the emergence of a new local understanding in matters concerning natural resources management (Barrier, 1990 : Painter 1991). It is through such projects, that new relations of authority are negotiated upon between the State and users of these resources. The foregoing experiences illustrate that local land tenure systems are adapting to the new realities. They deserve to be monitored closely in order to draw useful lessons from them. But such projects could be powerless and short-lived. For as long as the project remains operational, the State will adhere to and protect the new rules negotiated upon at the local level. But can the arrangement survive upon the completion of the project ? What measures should the State adopt to safeguard the sustainability of these management practices designed and implemented at the local level ? How can institutions - from the apex of the State down to the local community - settle the complex legal and administrative matters arising from the transfer of control over natural resources to local communities ? Answers to such questions must be sought for according to concrete situations, which vary from one case to the other and from country to country.



## 5. THE STATE, LAND TENURE LEGISLATIONS AND REGULATIONS

### 5.1 Historical overview of the role of the State in land and natural resources management.

At the moment, a choice tool for State intervention is, doubtless, the medium of legislation. Yet, as every one knows, behind State rules formulated by professional jurists lie the practices of peasant farmers, herders and fishermen, based on their own way of thinking and of organizing their local-level resources. In the sphere of natural resources management, the dialectics between local practices and official legislation is the outcome of a long process dating back to the colonial era and continuing to date. We shall make an attempt to indicate some of its relevant stages.

#### *"Traditional land tenure rights"*

During the first phase of colonial rule, the need to control the workforce (inter alia, to provide farm products) prevailed over the need to control the organization of land tenure.

In particular, it was not until societies began to shift to the production of export commodities that "traditional land tenure" became the subject of research and indeed a political challenge. Knowledge, concerning land tenure institutions and practices prior to and during the first phase of colonial rule was based, for so long, on this administrative and scientific literature. "Traditional" land tenure systems were perceived as a set of secular, static and monolithic rules with stereotyped features (collective appropriation, the right of first occupancy, individual usage right). This perception was nothing but a cultural "reconstruction" meant, foremost, to justify colonization. At the same time, the villagers themselves applied the "traditional" theory of land allocation to preserve their prerogatives in matters concerning the control of access to land and dispute settlement (Le Bris, Le Roy & Leimdorfer, 1982. Moore, 1986. Chanock, 1991. Berry, 1988).

This historical trend is not at the origin of the presentation of land tenure in dual terms : "traditional" tenure rules which supposedly posed impediments to development as against the "modern" law on land tenure, considered as stable, transparent and rational. Fortunately, recent studies have now taught us that land tenure realities at the local level were much more diversified and complex (Le Bris, Le Roy & Mathieu 1991. Bruce, 1991. Downs & Reyna, 1988). Evolution of law during the colonial period is a factor (among many others) of change of local land tenure systems which however managed to maintain their own reasoning, based mainly on the survival of the group(s). On the other hand, colonial policies were decisive factors for post-colonial land tenure laws of the State ; these laws placed emphasis on standard rules and procedures and land control by State institutions.





## *Colonial policies on land tenure*

The nine countries which now form CILSS have undergone the influence of three different colonial powers whose land tenure policies, were theoretically very different. Within these colonial territories, differences in production (predominance of export crops or food crops) further strengthened the differences in the impact of colonial policy on local land tenure organization.

The first legislative provisions on land tenure were issued everywhere during the 19th Century and raised the legal question as to "who should be considered as the owner of conquered lands".

The British colonies adopted a pragmatic approach by establishing a dualism between the colonial law (concession and lease system) applicable to the lands of the colonial masters, and the "customary law", applying to the lands and reserves of the indigenous people. Under the arrangement, local land tenure systems were respected - at least apparently - based on an interpretation suiting the needs of the colonialists. British policy applicable to the Gambia was based on the theory of "Indirect Rule" which made room for an increasing role of the traditional authority.

The legislative policy of the Portuguese was characterized by the "indigenato" system, based on the conviction that their African "subjects" were not sufficiently civilized to become Portuguese citizens. In their colonies, colonial administrators were those who filled positions in the police force and the judiciary. In this respect, the Portuguese colonial doctrine is closely similar to that of the French (Roberts & Mann, 1998 : page 19). From the strictly land tenure point of view, the Portuguese policy resulted - as in the British colonies - from a dualism between the colonial law and the so-called customary law.

In contrast, the French colonial State adopted a unique land tenure doctrine, i.e. a single law applicable to all. At the outset, the keynote of the French colonial policy was assimilation with attendant denial of local land tenure rights and theoretically offering to each one - Europeans and Africans alike - the possibility of receiving concessions and of gaining access to private ownership. Slowly but surely, the tendency was to accord greater respect for the different indigenous legal systems, but the lawmakers merely considered them as relatively second-rate. Another feature of this policy was the gradual emergence of land tenure monopoly of the colonial State, based on the principle of landed proprietorship (estate) and the notion of "property in abeyance and without owner".

The application of this latter concept in Africa contributed immensely to the feeling of insecurity among peasant farmers. Local communities and farmers were required to prove their "traditional" rights to the land, failing which the land was declared to be in abeyance and without owner and automatically became part of national estate.



By virtue of these principles, virtually all lands in the French colonies became part of national estate and could be allocated by the colonial administration, in the form of concessions, to allottees of their choice, without any regard for local usage rights (Coquery - Vidrovitch, 1982 p.75).

These differences should not be exaggerated though ; the objectives of the colonial powers were the same (viz. economic exploitation of the colonies), and all colonies were considered as a "tabula rasa" pending the establishment of totally new land tenure and production relations. At the local level, whereas the aim of compelling the rural populations to relinquish their land tenure systems for replacement by the "modern" tenure system failed to materialize, local land tenure concepts gradually underwent change. At the national level, newly independent States either initiated land tenure reforms always strongly marked by the colonial thinking (specific reference to the French colonies) or simply prorogated the colonial laws (as in the Gambia or Guinea-Bissau).

### *The early land tenure reforms*

After the independence of the Gambia in 1965 and of Guinea-Bissau and Cape verde in 1975, the colonial laws with their characteristic dualism between the "traditional" system and the "modern" system remained in force. Land tenure reforms are still underway in those countries and began only recently. This matter will be discussed subsequently in the document.

In the other Sahelian countries, namely the former French colonies, the national authorities undertook "modern" land tenure reforms in the early years following independence in 1960. In spite of differences (at times considerable) between the reforms - those in Senegal for example were thoroughly original - they shared some common characteristics deriving from the colonial line of thinking.

As Etienne le Roy wrote : " The new African elites were only superficially familiarized with the colonial institutional model ; they therefore had to work with a model without knowing its mode of use and invented legal solutions based on a literal interpretation of the basic "unitarian" model : the system of one chieftain, one party, one trade union, to form one nation, one State, one legal system (Le Roy, 1988). Everywhere in the French-speaking Sahelian countries, the weight of **centralism** and the bureaucratic pecking order was overwhelming.

Thereafter, in all the early land tenure reforms, land ownership was in one way or the other, the **monopoly of the State** which could grant fairly similar rights of private ownership. The logical consequence of this **ownership ideology** was that local practices of land tenure management were officially ignored, abolished or under-estimated. In other words, the State purported to control the management of all lands, despite lacking the necessary resources for efficient execution of such a task. Niger provides a typical example of the difficult merger of "customary" law and "modern" law (Ngaido, 1993).



In French-speaking Africa, colonial lawmakers were very hesitant on the question of the judicial organization most appropriate for French colonies (Mangin, 1990 ;p.21-26). Finally, the lawmakers opted for an intermediate solution by establishing judicial systems based on French law while maintaining respect for the judicial powers of traditional chiefs and religious authorities. Even so, the powers of the latter system gradually diminished, firstly in 1903, with the imposition of a colonial administrator as "Chief Justice" presiding over all the courts of customary law, and then in 1944, with the establishment of traditional courts with curtailed powers. What post-independence Governments did was to abolish the traditional courts and opt for a single judicial system.

Yet in present-day practices, the large majority of disputes over land and natural resources are always settled outside the official system, by the chief, the Village Council, the **Cadis (Mohammedan judge)** etc ,who continue to draw inspiration from their own tenure rules often influenced, in some places, by Islamic norms. Only disputes which the local communities are unable to settle are brought before the State courts or local administrators ("prefet", "Commandant de Cercle, etc"). In some Sahelian countries like Mali, strained relations between the administration and the judicial system continue to exist, thereby increasing the land tenure insecurity of the local people.

## **5.2 Local land tenure practices in a context of transition.**

We have already recounted the preconceptions and the stereotyped ideas which have, for so long, dominated knowledge about indigenous land tenure concepts and institutions. More recent studies give a new interpretation to indigenous land tenure systems. While stressing the diversity, the complexity and the internal dynamics of local practices, these studies have somehow corrected the erroneous image of local land tenure, created by the colonial system.

Even in the Sahel which is considered as having a fairly homogeneous ecosystem, there is a wide variety of ecological conditions, historical and cultural backgrounds and political structures making any generalization a risky exercise.

Individual peasant farmers rarely enjoyed exclusive and absolute rights to the land. What prevailed was rather "a spectrum of rights" : i.e an interaction of numerous rights to a given land, forests, pond, etc. The composition of this spectrum of rights may vary from one local society to another, but can also be subject to inter-seasonal variation. For a long time, these principles enabled local land tenure systems to adapt to economic and social changes.



Notable among these changes, in most Sahelian countries, is the Islamic conquest. The rules of the Islamic law were re-interpreted and gradually incorporated into local tenure practices at different paces and intensity and at different points in time, most importantly, in the mid-19th Century. We can cite but a few examples :the introduction of sharecropping, possibilities of land sales, inheritance regulations (individual inheritance, possibility for women to inherit lands in some cases), greater tendency towards individualization, the emergence of new land tenure and judicial authorities, the introduction of the **Zēkaat** (coranic tithe)... Changes in local land tenure practices, caused by internal factors, also brought, in their wake, changes in some key concepts of land tenure eg. land-master, user, or owner. A few examples may elucidate this change or trend.

What does the word owner mean ?

In Senegal, the 1964 National Estate Act nationalized all lands which had neither been privately registered nor incorporated into the national estate. Ownership of suchs lands was then assigned to the "Nation", but the Act recognizes thereafter the State's specific authority as "holder", the Rural Councils as "managers" and users as "occupants" (Le Roy, 1988 ; P. 29). From the standpoint of the State, peasant farmers thus have a usage right, which is a personal precarious and revocable right. For his part, the peasant farmer generally considers himself as owner of his plot, by alluding to land tenure traditions (a claim rejected by the State). Notwithstanding, not always are the two parties totally opposed to one another. It also happens that peasant farmers refer to the "President" as owner by invoking the law. For their part, Rural Councillors and State workers ("sous prefet", forestry workers, etc) feel compelled to apply the official legal norms. Yet, since they belong to the local society, they are also attached to the system of values of their respective groups (See Freudenberger, 1992 for recent examples).

### Hospitality Contract

Demba Diedhiou is an old Diola, originating from a village to the north of the Casamance river in Senegal. In the traditions of the Diola villages, any stranger (**adjaoura**) wishing to settle in a village should imperatively contact the head of a lineage who could offer him temporary accomodation and lease farmland to him. Thus develops between the **adjoura** and his host (**adjati**) a special relation often interpreted as relatives, which confer on the **adjati** some form of authority. When Demba left his village prior to the Second World War in search of work at Ziguinchor, he therefore contacted the suburb chief who accommodated him for some years, acquainted him with urban life, assisted him to find work and a plot on which to build his house. Years later, Demba, who had become relatively affluent and well-respected, in turn acted as a host for all those coming from his village and wishing to settle in town. One of his protégés later became the principal land tenure intermediary of his suburb by turning to good account the same system of **adjati**, a situation coupled with his brilliant career in local politics. The village system thus continue to apply in (peri)-urban areas, albeit in an adapted form : seemingly blood-relations are gradually and partially supplanted by business relations in which politics play an important role (Hesseling, 1992 : 43-45).





That has resulted in a complex and ever-evolving system which is both the outcome and the subject of re-interpretation by all State, popular and other operators. Where the interests of the principal players are not at cross-purposes, situations of legal pluralism can bring about a compromise. On the other hand, there could be a clash in other situations which may be referred to as "the legal moment" eg. when there is a dispute, when a development project compels peasant farmers to regularize their situations, when peasant farmers need a bank loan, etc.

### **5.3. A new legislative impulse in the Sahel**

#### **Legislation : an obstacle to development ?**

Thirty years of legislative reforms, changes, adaptations and potterings in the Sahelian countries have resulted in the production of laws of undeniable quality ; some are indeed the centrepiece of legal technicality, while others contain quite original solutions. Nevertheless, it was noted in the 1980s that as a whole, Sahelian land, forest or water legislation can be hardly enforced at the local level. Almost everywhere, land tenure legislation (at the broadest sense) is considered as an obstacle to a balanced, equitable and environmentally sound development.

Although considerable differences do exist between the internal legislation of each country, the main problems noted do show common characteristics. They are the results of changes which took place in the Sahel, and which formed the subject of numerous studies. We limit ourselves to mentioning and illustrating them with concrete examples.

#### *"Ignorance of the law is no excuse".*

How can this maxim be meaningful in the context of Sahelian countries where the entire legislation is conceived in the language of the former colonial power (with the exception of Mauritania : Arabic and French) which is not at all (or so little) spoken by the majority of the peasant farmers? It should be also added that the concepts used belong to the Western juridical jargon. It is not only a matter of form or style, but indeed a political and ideological problem too. While acknowledging that a law in itself necessarily has a specialized technical aspect, a big step forward could be taken when legislative texts are prepared basing more on local languages, concepts and knowledge, and on debates conducted in the said languages. The circulation of information, notably legal information, is more complex an issue and making use of one language or the other, far surpasses the purely legal context.



**The legislation does not adequately take into account local practices and capacity to manage natural resources.**

This has been a recurrent theme throughout the debates on tenure legislation in the Sahel. The fact that the law sanctions in various forms and terms the principle of a clear and visible exploitation of the land as a precondition for the official recognition of one's rights over it, e.g. developing and vivifying the land, "he who tills the land, owns it" and so on, is quite a relevant example of this problem.

### **Land development in Senegal**

In Senegal, the concept of land development is embodied in the Loi sur le Domaine national (the Public Lands Act) and the rural community Act : rural councils may allocate or not, public lands according to the applicants' capacity to manage the land. But, what should be the criteria ? Because the laws have failed to provide a clear and precise answer in respect to that question, this is left to the discretion of the rural councils and the **prefet** who must approve their decisions. Thus, the pastoralists of Barkedji applied for and got from the rural council, 14,000 ha of grazing land, but the **Prefet** of Linguère disapproved of the allocation on the pretence that the reason put forward in their application (i.e. grazing) cannot be considered as a form of land development. However, grazing can help to improve the quality of the soil and fodder, according to experts in pastoralism. Is grazing not a form of land development according to the herders' practices ?

### **Pastoralism : an activity ignored by the legislation**

The Sahelian legislator's attention was more attracted by agricultural and forest activities, and to a lesser extent by fishing and water management activities. Thus, the herder is the most notable absentee of the legislation, although he contributes considerably to the country's income in the Sahel.

### **Land tenure procedures are often very complicated and constraining**

Most Sahelian legislations provide for procedures to follow in order to be granted a legal title deed (Mali : a rural concession, Mauritania : permanent concession). Such procedures are often so complex that they cannot be understood and complied with by a very large number of applicants who are often illiterate.



## **A complicated procedure in Mauritania**

An old peasant farmer in Eastern Trarza in Mauritania complained that he was to go 22 times to the **prefecture** (60 Kms away from his village) to make up a complete dossier of his allocation application. He showed his dossier which contained already more than ten documents including a topographical sketch of the plot as well as a land development programme he paid much for. All things considered, he had already spent a total amount of 35.000 MU (2MU = 5 CFAF). He had not yet received any response to his application. Should his dossier be accepted, he would be allowed to develop the plot of land during five (5) years ; then he would be allowed to apply for a 5-year temporary concession again. After this second 5-year period - if the land is integrally developed as certified again by the administration - he would be granted a final concession which establishes him as the owner of the land. Not surprising therefore, that many peasant farmers ask themselves the following question : "For several centuries this land has belonged to us ; why then should we go through all these formalities to get the land which already belongs to us ?" (Hesseling & Crousse, 1992).

### **Settlement of disputes: by whom, according to which criteria and procedures ?**

Despite or because of the creation of a single judiciary organization in most Sahelian countries, the settlement of land disputes poses everywhere serious problems. The competition between local solutions, administrative actions and judicial decisions often results in conflicts being brought up again instead of making the local populations feel secure.

### **Environment : a new challenge, a new competition**

The relationship between land and natural resource management on the one hand, and a sound environmental policy on the other hand is no longer to be demonstrated. At the institutional level, this resulted, in most Sahelian countries, in the adjunction of a department or service in charge of environmental issues to an existing ministry. The capital "E" of the word "environment" appears henceforth in most acronyms designating the former Forestry Ministries. Many difficulties are still noted at the legislative and political levels :

- There is not yet a clear definition of the environmental concept (often limited to pollution problems) ;
- The role of natural resource management in the context of environmental preservation is not yet well defined ;
- There is often a confusion with respect to the specific missions of the various departments within the ministries concerned ;
- Different ministries are in competition to play the role of project manager in environmental matters, a competition which is, at times, intensified by the Donors.



In practice, the inadequacy or lack of integration between the environmental policies and natural resource management often has dramatic effects. Though there exists Desertification Control Programmes and development Plans which take into account the environmental component, such documents seldom form a basis for land and forest interventions. The Mbegue forest in Senegal and the land reform on the Mauritanian bank of the Senegal River are recent illustrative examples among many others (Hesseling & Crousse, 1992 ; K.S. Freudenberger, 1991).

### **Inadequate or lack of harmonization between national legislations**

Several land legislations may come into contact with one another on either side of a border, despite common features existing between the various Sahelian natural resource management legislations. Their development and enforcement in the same border region can take sometimes different directions, which may entail discontinuous effects detrimental to transborder development policies. This is, for example, the case in the Senegal River Valley which is governed by three national legislations. Another example pertains to fishing on the Sourou River. This is the Burkinabe "interpretation" :

"Fishing in the Sourou River calls for a debate on inter-border natural resource management. Fishing activity seems to be more severely controlled and more respectful of the reproduction cycle of fish species in Burkina than in Mali where the use of closely- woven mesh nets is commonplace and causes frequent conflicts among fishermen of the two countries on the Sourou River. Yet, "spontaneous" fishing is a source of considerable income. How can the Burkinabe fishermen develop this crucial element of their economy, if their Malian counterparts remain so unrespectful of norms governing the exploitation of fishing resources ?" (Issues Paper, 1993 : 6).

### *Are the new legislations allies of development ?*

Towards the end of the 1980s, the land tenure issue was put again on the political agenda of Sahelian governments. In the turmoil of the democratic movement, anxious of preserving environment and also in the constraining context of the Structural Adjustment Programmes, all CILSS member countries are beginning to call the existing legislations in question again and are going through a process of reforms which are more or less innovative.

With respect to forest, the statal, repressive and protectionist nature of the codes (largely based on the colonial code) is being increasingly in dispute. Since the 1980s, some work has been initiated by a majority of Sahelian countries with a view to reforming their forest code. A regional workshop on forest codes was organized by CILSS and the Land Tenure Center in Bobo-Dioulasso, from January 18 to 20, 1993 (McLain, 1993).





### *The trends of the ongoing reforms*

The question raised during the colonial period (i.e. how can the government control land and natural resources to arrive at maximum exploitation) has therefore become a topical issue again, but in a new form : how can co-management of natural resources be organized for a better preservation of environment.

Generally, a trend towards private ownership is noted (in Burkina Faso, Guinea Bissau, Mauritania, Senegal, and the Gambia in the guise of a long term lease), though state property is not seriously questioned. In spite of the discourse calling for the respect of local forest practices, the (draft) forest reforms do not aim at a genuine rehabilitation of such local practices. On the other hand, at the national level, the political will to encourage a more active participation of local collectivities in the management of natural resources seems to be firmly established in the majority of the Sahelian countries.

Until now, the debate over a co-management of resources and the distribution of tasks between the state and the populations is, justifiably, basically directed towards the question of knowing what should be the appropriate local level at which some management powers can be transferred (village or inter-village, rural community level natural resource management). This is precisely the meeting point of land tenure problems and decentralization.

Finally, notions such as Framework Law (Loi d'orientation) and Rural Code are now coming to light in Mali, Niger and Chad. Apparently, the option for a Land Charter (a legal text of general and internal scope which contains only a few basic land tenure principles accompanied with more or less localized or decentralized enforcement texts) was chosen by Mali only. Yet, should the idea of maintaining the current Land and Domanial Code but in a modified form prevail, then, the idea of a genuine decentralization from the legislative viewpoint would be emptied of its subject matter. The law which sets the guiding principles of the Rural Code in Niger cannot be considered as a land charter in the above defined sense, since it won't be accompanied with decentralized enforcement laws.

### *Some major constraints*

#### **Legislation as a panacea for natural resource management problems**

The legislation can be an important tool in the drawing up of new land policies. Yet, emphasis tends to be placed on legislation as if laws alone can change the peasant farmers' attitude towards land issues. To state the facts grotesquely : "just pass a law, revise it, and your problems will be solved". Of course, this is anything but true.



Developments in the preceding chapters showed that the land behaviour of the Sahelian farmer is primarily determined by complex and mutual social relationships. The State and legislation cannot but play an indirect role and "from afar". The State may assert that the single source of law is the official legislation. The peasant farmer will nevertheless continue to refer also to his own social and cultural norms. Finally, there is the mistake which consists in assuming that the law message will be received by the peasant farmer according to the legislator's wish. Reality is more complex here again. In fact, this message is always received "indirectly", interpreted by the administration, the courts and the police, and influenced by the local context. An illustrative example in the field of land tenure is the message which states that the "land belongs to the State", which leads to not only deliberate misinterpretations, but also quite intentional misuses.

If the land tenure law is considered at the central level as the unique source for the change in the Sahelian farmers' behaviour vis-à-vis their land property, there is a risk that this might produce undesired and "perverted" effects. Sahelian societies are pluralist ones, which requires that the legislator adopts a "sociological" approach. Then, once the new legislation is adopted, account should be taken of the social factors which help determine to which extent such a legislation can be "internalized" by the local communities (notably their capacity to properly understand a legislative text and take a stand in accordance with the priorities of the environment). In short, the effects of a new land tenure law are dependent more on the motivation and the situation of the players than on the legislator's intentions. (Griffiths, 1990 ; Hesselings & Le Roy, 1990 : 2-11 ; Mathieu, 1990 : 72-81).

### **Decentralization as a panacea for the State's problems**

To "decentralize" seems to be the miracle word to remedy the failures of the state's policies and development projects. Yet, many administrative reforms are presented as a decentralization policy, while in fact it is a deconcentration process which puts local collectivities under the central authorities' supervision which, at times, is quite burdensome.

Problems related to a genuine decentralization are often under-estimated by the Donors (who increasingly press on Sahelian governments to "disengage the State"), as well as by the governments themselves and development experts. The willingness to decentralize natural resources management seems to be basically inspired by the necessity to find as urgently as possible a solution to the state's (financial and bureaucratic) difficulties : thus decentralization might be limited to relieving the State from the burden of costly tasks at the peasant farmers' expense.

The willingness and capacity of local populations to shoulder the responsibility of their land property are often easily taken for granted. At first glance, this assertion may seem contradictory, in comparison with the "adaptability of local land tenure systems" so many times reiterated throughout this report. But, when you take a closer look at it, you may realize that, in the first case, the problem tends to be basically the overestimation of local populations'



capacities by those people who are suggesting innovative solutions. In the second instance, if the "adaptability of local tenure systems" cannot be denied, such adaptability is more often than not largely under-estimated by the representatives of the administration, hence the need to further lay emphasis on it, at the risk of repeating oneself a lot. Yet, this capacity is unevenly distributed among the various local communities of a country. Strengthening local capacities is therefore a necessary but distinct requirement for any decentralization activity. Other conditions are essential in order to strengthen the will of the local populations to assume responsibility of some management tasks. Such conditions are :

- To treat the populations as reliable partners in the negotiation process which must go together with the distribution of these management tasks
- to restore confidence vis-à-vis the State (represented by a **prefet**, a forest ranger, the judge, the police and so on)
- to establish more transparent relationships, which means that the various partners in a joint management can mutually ask for explanations (explanations and justification of activities) with no fear of reprisals (accountability or "making the administrations more responsible"). As far as the local authorities and technical officers are concerned, decentralization consequently requires a change in their attitude, mentality and capacities. Not only should they be prepared to transfer part of their legitimate or usurped powers to the local collectivities, but their role should, in some respects, be given a new content : a partner in joint management, a facilitator in the negotiation process, arbiters, and so on (Moore, 1991).

Let us conclude these reflections by quoting Max Falque (1986 :59) : to manage land or to "protect environment is not only a matter of just putting up a fence to have one's rights respected, but also to accept the cost and constraints thereof". As far as the Sahel today is concerned, the costs are those of the necessary and effective institutional changes, while the constraints refer to new responsibilities being effectively shouldered by the administrators vis-à-vis the populations.

## 6. SOLUTION-FINDING AVENUES ?

We tried in the previous chapters to give a general picture of current land tenure problems in the Sahel, by relying on a historical analysis and on current experiences in the Sahel. Ours was a multidisciplinary approach. The image that follows therefrom is that current land tenure problems in the Sahel are extremely complex and diversified and that they are in a transition.



Consequently, there exists no standard solution. We shall have to think in terms of process. Therefore, we are submitting **indicative proposals** to the criticism of all those who feel concerned by the current crisis in the Sahel, and more particularly to the participants in the Regional Conference on Land Tenure Problems and Decentralization scheduled to take place in 1994.

We shall first raise a few "burning" questions which can be derived from our analysis. They are knowingly formulated somewhat provocatively with a view to livening up the debate. Then we shall present a range of possible solutions by emphasizing again the complexity, the diversity and the transitional nature of the current land tenure situation. We shall conclude by submitting a few development options for the Sahel by placing emphasis on some anti-failure principles.

### 6.1. Some "burning" questions

#### **Urgency or prudence in the legislative reforms ?**

Is it "urgent to wait" ? What are the priorities ?

Should laws only be taken into consideration when looking for better natural resource management conditions, < the idea being that behaviours are determined by the laws ; that new laws could create new behaviours > , or should one first try to better know the local populations' priorities so that they may form the basis of a new land tenure legislation? Are the most effective local practices as well as the colonial and postcolonial legislations enough to serve as a critical basis for new internal laws which are more in keeping with the demands of the current circumstances ?

#### **Land tenure protection : protection of whom, of what, how and why ?**

Protection of whom ?

The sole "historical" and earliest inhabitants of the villages? At the migrants' expense? Protecting the farmers at the pastoralists' expense? Or the opposite, which is more uncommon? What to do in the numerous situations in which "historical rights" of various groups using the same area are in opposition, with no priority or exclusive right being recognized by some to the others ?

Protection of what ?

Of property or user rights? For how long? For life or for more than one generation? For a period of time which guarantees the owner a benefit of the yields of the investment made (including labour investment)? What about the transfer of rights?





What types of "land development" can be considered as justifying or legitimating the protection of the rights : only capital investment incorporated and fixed in the land (e.g. infrastructure, agricultural production, orchards) or also "mobility" or labour investment made to upgrade scattered and fluctuating resources (transhumant grazing, rarely admitted as a form of "land development")?

#### How to Protect ?

With regard to legislative texts, and by legal title deeds or through effective recognition by the administration of the rights, legitimacies and responsibilities at the local level? Should administrative officials be made aware of their responsibilities? Should we train, motivate, sensitize, make more aware of their responsibilities and protect the rural populations , or the administrators and technicians also on whom the populations concretely rely in their relations with the State, and for the enforcement of state land regulations?

The role of national technical services and administrators at the local level is essential, sometimes under-estimated or bypassed by the projects, and this role, owing to many reasons, is not ensured as adequately as possible all the time. What is the source of these difficulties and what can be done to remedy them?

#### **What does decentralization of natural resource management mean? Who wants it, and in which form ?**

Who really wants natural resource management to be decentralized? What does it mean for different players ? What is the linkage between increasing the responsibility of land management by the local communities and administrative decentralization? In the light of experience, what are the conditions for natural resource management at the local level?

In other words, do the executives and field agents believe in the decentralization of natural resource management ? Do they view it as something positive for them and a process which they would be well advised to contribute to ?

#### **What are the conditions of decentralization to promote "responsible" natural resource management at the local level ?**

- From the peasant farmers' side :

What are the levels of "competence" and the capacity of management, cohesion, discipline and authority of the populations? What are the favourable and institutionally restrictive factors for natural resource management at the local level?



Which forms of communication and "co- management" should be sought between endogenous local systems on the one hand, and the external systems coming from the State and development interveners, on the other?

- From the administration's side :

How did its role evolve, particularly as a support to the strengthening of management capacities? Does the administration contribute to promoting competence? Does it offer the required motivations and incentives?

- Between the State and the populations : what types of relationships?

For natural resource management at the local level, is trust (which first requires knowledge and mutual respect) a necessary condition in the relationships between the populations and the external interveners, essentially the members of the administration?

**What are the main tenure problems to which satisfactory solutions have not yet been found through current regulations, institutions and procedures?**

- Agriculture / transhumant grazing cohabitation ;
- supra-village areas management
- mass migrations from degraded areas to relatively "rich" or available areas (a problem linked to the two preceding questions) ;
- Inter-community conflicts
- transborder conflicts.

**How can women be involved in land and natural resource management?**

Women have special land tenure constraints in connection with the social organization of local communities. How can progress be promoted in the relationships between men and women in order to better take into account women's capacities and know-how in the field of land and natural resource management, without coming up against the reservations of both men and women themselves?

Would it be enough to encourage the ongoing positive developments or should one plead for a clear recognition of equal rights for women in the legislation? Inter alia : individual or collective ownership of the land, either developed or not ; full right to the trees ; equal access to water and pasture land ; equal or improved rights to inheritance, and so on.



In Islamic societies, how can the principle recognizing the right of women to inherit be made consistent with the current practices which still oppose this right too often ?

In principle, free market economy could establish more equal rights. The process is reversed in the Sahel. What are the best mechanisms which can help prevent that the new farming methods (irrigation for instance) rather assert men's exclusive rights?

How can the right of women to organize themselves be institutionalized so that they can express themselves freely, think of their own problems and jointly and severally defend themselves?

How can women be associated with all information campaigns, consultations and decision-making processes concerning the management of their land?

The improvement of Sahelian women's conditions deserves to be listed among the priorities of the last decade of this century and be an important criterion for the appraisal of democratic and social breakthrough in Africa.

## **6.2. Much-debated issues**

Many concerns arise from land tenure and natural resource management problems. The answers which will be found to such concerns will have decisive consequences on future economic and social relationships, relations among sahelians, rural landscape, environment as a whole and the living environment in particular. We propose to introduce some of these concerns though we cannot go deeper into detail.

### *What future for pastoralism in the Sahel ?*

Tuareg, Fulbe, and Moor people are some of the Sahelian populations whose customs and way of life were deeply disrupted in the course of the last decades. Population and cattle growth, scarcity of available natural resources, accelerated urbanization and the expansion of areas occupied by other economic sectors (particularly agriculture), are so many phenomena which are developing especially at their expense. Their range and pasture lands are considerably damaged by other players, encircled by activities which spurn them to the fringes of their century-old lands, so much so that they are even more and more denied any access thereto. Many Tuareg, Fulbe and Moor people and other Sahelian herders have no other recourse left to them than to give up pastoralism and find another activity, for want of areas of survival. It must be added that some of them make up the fringe of Sahelian urban centres.

Therefore, if it is fully justified to be worried about their condition, and moved at the challenge being posed to their right to live as players - though a minority group -, their right to invest themselves in the defence of their own survival, the most important thing would be :



- to reflect on the economic, social and cultural conditions which allowed them to be present, throughout centuries, as fundamental players in the Sahelian landscapes ;
- to study the evolution of these conditions ;
- to see how these conditions could again contribute, without any major reforms, to environmental protection and help find some solutions adapted to certain threats - as supported by many specialists (cf. Breman & Ridder, 1991);
- finally, to define more accurately the necessary reforms, or even heartrending reorganizations dictated by present circumstances. Such reforms and reorganizations should be approved by the pastoralists concerned. Besides, they should be respectful of the latter's right to live, and, at the same time, be compatible with their culture, their frame of mind and capacity to integrate the change made inevitable by life itself.

The management of the Sahelian lands, access to available natural resources, local tenure rules and practices would gain much if the research and debate were thoroughly conducted in the shortest possible time in order to outline the first solutions which would help save Sahelian pastoralist peoples. It would also add to the credit of mankind in many respects because the law which predicted the inevitable extinction of pastoralism - by relying on the bloody and eventful history of the relationships between pastoralists and sedentary people in Asia, Europe, America - will then be challenged. Consequently, the birth of the new Sahelian societies will not be but less painful, and a second life could start for the nomadic and semi-nomadic Tuareg, Fulbe and Moor people.

What are the prospects for communal estate and the privatization of natural resource management ?

In Sahelian urban centres, rules and practices originating in the past, combine with the national legislation, under the influence of the free market economy, to give birth to quite new contemporary local rules. The primacy of rules inherited from the past but which adapt themselves to new conditions, or the primacy of principles inspired from more recent national legislation, depends on the conditions prevailing in each locality. In capital towns, progress towards private appropriation seems to be moving faster than in the urban centres of the hinterland of the Sahelian countries.

In this respect, Bamako and N'Djamena are good examples of a historical evolution which is particularly interesting. Thirty years ago, a few cola nuts to the "land care-taker" and a white chicken slaughtered in offering to the ancestors and the spirits were enough to be granted user rights over a plot of land. Today, free market economy has developed to such an extent that it has given rise to a buoyant land market, even though the holders of rights of command over the land continue to make their hold clear over the outlying zones. In N'Djamena, the role of





the Boulama or "land priests" is still dominant, although it is increasingly in competition with the town council, the prefecture and the public estate services. Inhabitants of N'Djamena always apply to the Boulama for a plot of land and also bow to constraints related to official building-land development requirements.

In the forests, all around the lakes and in irrigation schemes and so on, joint management of resources and private appropriation coexist, move forward or backward one against the other according to uncontrollable factors. In the Senegal river basin for instance, there has been noted, since half a century now, a steady decline in lineage-managed lands (joowe) to the benefit of households and individuals (cf. Minvielle, 1976 and Boutillier, 1962).

Can we infer from the foregoing that communal estate will disappear in the long run ? In the on-going heated debate on communal estate, reference is no longer made to the tragedies or benefits of community resources only. First introduced by Hardin (1968), the questioning was further developed by Marty (1985), Wade (1988) and Bromley & Cernea (1989) (for further details, see P. Mathieu, 1992). Practices -though still embryonic- in the Sahel, are indicating ways likely to help overcome the "tragedies" by taking into account the cultural factors which have been for so long ignored.

Will free market economy have here the same expression as in Europe and the United States of America? Will the African capitalist look like the European entrepreneur or the American banker? Or, as for those Baol-Baol or Mauritanian Moor businessmen, will the accumulation and maturation of resources and "business" plans continue, in spite of everything, to be the community's responsibility, even though they are carried out through an individual? Will the latter, thanks to his success, still devote himself to increasing his contribution to the survival of the community and its members, be he exiled in New-York or in Saudi Arabia? Will he remain convinced that the future of his lineage and people will depend, in the final analysis, on the diligence with which he will continue to maintain this umbilical cord? Several generations will go by before things can be done in a different way- if ever this should happen some day! In short, for quite a long time again, the strategy for survival will be anchored mainly to the group and not the individual. Local rules and practices referring to the group will, of course, be "cooled down" by the necessities to promote free enterprise economy though they will still pervade the economy, society and culture. But in this perspective, will the laws for the development of a free market economy be effected, inexorably, according to the same methods and processes as in Europe, or should they - as it was already the case in Asia- be adapted to the Sahelian tempo and to the cultural characteristics of the sahelian people?

### **6.3. What tenure policy options for the Sahel ?**

There exists in rural and urban areas of the Sahel a mosaic of land tenure systems which is not in fact a fixed and concreted picture, but a mosaic whose constituent parts can take new shapes. New solutions to land tenure problems are also emerging, as a result of the intervention of projects or through the initiative of the populations themselves.



However, natural resource rights are not framed similarly evrywhere. Sometimes, access to natural resources seems to be free i.e. the resources can be exploited without the intervention of any local or state regulations. These are quite disturbing cases, as the lack of precise or authoritative rules can accelerate the degradation of natural resources.

As emphasized by us, Sahelian societies are changing and land tenure conditions may therefore change, either gradually or suddenly. When a project comes to an end, the solution to land tenure problems linked to the said project may also be lost, and when a resource begins to have a higher grade, strict and complex access rules will have to be gradually introduced.

Sahelian lands are therefore characterized by the coexistence of several micro tenure systems. Such a diversity of land tenure systems is often used as an argument in aid of a policy of harmonization and standardization of land tenure rules. The limits of such a policy were stated in the previous chapters. It is a matter of finding flexible answers by establishing a legal, administrative and political framework which will allow for the constructive coexistence of the various land tenure systems.

### *A range of possible solutions*

In such a context characterized by a variety of land tenure systems, continued creation of new land practices and more or less rapid changes, it is just impossible to suggest infallible solutions to all the problems raised. Nevertheless, this synthesis would be incomplete if we do not try to make suggestions to the governments and populations of CILSS member countries. Instead of "turnkey" recommendations, we are sketching three possible tenure policy options by underlining that a range of modalities and combinations lie hidden in each option.

At first, we examine in which types of land tenure situation private ownership could be (or become) the dominant system. Then will be studied a second set of options, i.e. what are the appropriate land tenure systems likely to promote a form of joint management between the State and the local communities? Finally, we examine the types of tenure situations in which it is more advisable that local tenure practices be developed more or less independently and that the State should play but a distant role.

In the Sahel's current situation characterized by transition, none of these patterns can be found in its pure form and we do not think that one option or the other should be chosen , once and for all. Indeed, each situation will require a specific solution and must take into account factors such as the scarcity of resources, the density of the population, the balance of powers, the ethnic heterogeneity, etc. In certain situations (in towns for example) private ownership can be the best option, in others (the management of a pond for example) local populations may have found more effective local solutions ; in yet other cases (e.g. forest exploitation) a form of joint management seems to be more desirable. But, the different options can coexist sometimes (in a peri-urban context for instance), provided emphasis is put, at a given time, on the one or the other option. Let us now try to illustrate these ideas with the help of concrete examples. In which types of tenure situations can private ownership be the dominant system ?



The assertion of the individual's rights over natural resources is progressing everywhere, with both advantages and disadvantages for the populations. A typical case of natural resource privatization is that of the Niayes of Senegal.

### The Niayes of Senegal

The Niayes of Senegal stretch out along the country's coast from Saint-Louis in the north to Mbour in the south. Before the 30s, the area was covered by dense and green forests. Wolof people cultivated the banks, while the ponds were exploited by the Fulanis who used to graze their cattle there.

As fast as the city of Dakar grew, the forest and its abundant palmyras were decimated for fire and building wood. At the same time, off-season farming practised by Wolof people basically for commercial purposes appeared. Because of their traditional user rights, the Fulanis maintained a priority right of access to the shallows. Of course, such a cohabitation was not free from conflicts requiring frequent bargainings.

Several types of sharecropping were practised in the market garden zones. Although lands were seldom sold, the tenure price steadily increased. Landowners increasingly made use of several strategies aimed at preventing the tenants or beneficiaries of leased out lands to take advantage of the Public Lands Act by having the plots of land they are cultivating allotted to them (by reducing inter alia, the period of the tenure or lease to two years).

Today, the lands around this area are coveted by the "absentee farmers" who are basically civil servants and traders living in Dakar. Although any sale is prohibited under the Public Lands Act, they purchase big plots of land belonging to the traditional owners. Then walls are erected around the plot, houses built inside and fruit trees planted. Finally, to "legalize their purchase", they apply to the rural council for the allocation of the plot of land thus developed. The allocation is rarely refused, since the traditional owners - beneficiaries of the transactions also - are always well represented in the rural council. Because of the increasing demand for lands by the Dakar dwellers, the new "owners" are more and more seeking to resell their plot at ever increasing prices. Thus the Niayes have entered into a process of land speculation.

Situations of land speculation similar to the one described in the box above are more and more frequent in the Sahelian countries. The move towards an increased privatization and individualization of natural resources, notably land, seems to be inevitable in this context. The legal solution in this case is not necessarily a true copy of ownership in the Western sense, by granting the individual exclusive and permanent rights over a resource and allowing him to exclude the other people therefrom. It may be better, in certain circumstances not to opt for absolute and monopoly rights, but to look for intermediate solutions (lease or long lease between the rural community and the individual; or priority rights the content of which has to be defined according to the context and so on). At any rate, the role of the State becomes important in order to :



- allow for a gradual and flexible transition ;
- regularize and control the land market in order to protect the most vulnerable categories ;
- check the speculation on land ;
- establish simple and transparent procedures ;
- establish simple and relevant criteria to identify the priority allottees ;
- provide for registration systems which are adapted to the local context (by starting from a simple land book, going through a simplified cadastre, to a traditional cadastre).

At any rate, it will be necessary to :

- take into account the high costs of a privatized land tenure system (social costs for some categories, plus financial costs) ;
- choose the most appropriate time to introduce privatization in a certain zone ; that is to say taking the on-going changes into consideration ;
- allow for the coexistence of several options at times ;
- look for intermediate solutions sometimes.

*What types of tenure situations do make joint management possible ?*

Natural forests south of Ouagadougou : an example of joint management.

The "Projet Aménagement des forêts naturelles pour la sauvegarde de l'environnement et la production du bois" (a UNDP/FAO-sponsored project for the development of natural forests for environmental protection and wood production) situated south of Ouagadougou is an example of a participatory approach and joint management of natural resources between three partners, i.e. the project (provisionally), the government and the local populations. (the presence of the transitional project ; 2 partners in the long run).

The project and the government (through the technical departments concerned) acknowledge the rights of the populations and the legitimacy of village chiefs and land priests, by requesting the approval of the latter to the development and the delimitation of forest exploitation units (here the protected forests and not the classified estate).





The forest is exploited by the populations (who cut and sell the wood) according to instructions and general rules defined by government services with respect to the technical aspect and the types of organization and management : precooperatives, Union of village groups for forest management.

Returns from wood sales are shared among the loggers, the village the groups are coming from, the government (taxes) and a development fund which is reinvested in the maintenance and renewal of the forest, and (partly) finances a very small body responsible for the technical supervision of the groups.

Since the end of the 1980s, the States and the Donors have started to look for development solutions which combine agricultural improvement with a strategy of natural resource protection and upgrading. The new approach, under various appellations, aims at promoting local level natural resource management with a global, participatory, multisectorial and integrated orientation and focussing on the voluntary participation of the people in the planning and implementation of the projects.

Joint management of a natural resource is a dynamic process aimed at defining new types of relationships between the local collectivities, the state administration and (provisionally) external interveners (projects). It is a quest for intermediate solutions applicable to very diversified land tenure situations :

- state property (classified forests, lakes, etc.)
- collective property (women's collective gardens, irrigation scheme, etc.)
- a resource governed by local management rules (pond, village farmland, cattle shelter..)

Some requirements should be met by these land tenure situations to make joint management effective and efficient. Such requirements should include :

- existing or newly established authoritative and decision-making bodies which are accepted and respected at the local level ;
- the presence of people capable of leading negotiations.

With respect to the role of the State, the following tasks should be mentioned :

- to work out mechanisms for power transfer ;
- to look for the appropriate local level by consulting the local communities ;
- to play the role of a facilitator (by encouraging discussion within the local collectivities for the establishment of joint management rules);



- to act as a mediator in case of conflict ;
- to provide for simple procedures to recognize the arrangements concluded (administrative visa)
- to ensure that joint management rules do not negatively affect the neighbouring villages or the categories which are not represented (transhumant pastoralists, for instance).

In which types of situations can local management practices be the dominant system ?

The next two examples show two different attitudes of the State vis-à-vis local land tenure practices. In Mauritania, the abolition of customary land tenure rules is imposed by the State, but it is in obligation to negotiate with the parties concerned by the management of Lake R'Kiz's lands ; in practice, the State is kept at a distance by the local landowners. In the Gambia, the tradition of the **Common Law** has made it possible to "closely monitor" the progress of local land tenure practices; in spite of an official recognition of the "traditional" rules governing the possession, distribution and transmission of natural resources, the State is not absent, but just stands aloof.

#### Lake R'kiz

Lake R'kiz in the Trarza Region of Mauritania waters thousands of hectares of remarkably fertile lands for millet growing. For centuries, these lands have been governed by local rules, based on the rights of the former masters over their former slaves and on the practice of share-cropping (Maurel, 1972).

With external funding, the Mauritanian Government has embarked on a recessional agriculture improvement project covering 4 500 ha which may be expanded shortly to 7 500. From the outset, the tenure issue gave rise to intense negotiations : the local land owners adopted an uncompromising stance, demanding that local practices be maintained as a condition for the acceptance of the project. Notwithstanding the provisions of the law abolishing "traditional" modes of land tenure, the State ended up accepting the conditions put forward by land owners. Actually, there is supposed to be a report ratifying the agreement, in violation of the provisions of Ordinance N° 83-127 on land tenure and Estate Reforms.

For local specificity reasons, the so-called traditional rules therefore continue to govern land exploitation and settlement of disputes, especially those between land owners and farmers : "hence, a slave farmer is required to pay fees to the owner of his farmland, whereas modern law totally absolves him from making any such payments to his master. The problem becomes even more delicate should the proprietor happen to be, at the same time, the master. Here the servant farmer faces the threat of eviction in the event of his refusal to pay the fee required of him as a servant". (Maurel, 1972). Such an example underscores the need for provisions protecting the rights of the servant not only as farmer but also as a human being.



## The lands Act in the Gambia

In the Gambia, the Lands Act of 1990 explicitly gives its seal of approval to customary tenure practices throughout the national territory, except for areas within the Banjul vicinity (Kombo St. Mary). The Administration does not interfere with local practices except for the purpose of reconciliation. In the **Common Law** tradition, the courts at the various levels exert a remarkable influence on the trends of local land tenure rules. Their judicial precedents which reflect local concepts in regard to the management of land and other natural resources constitute an important source of law. In spite of the State policy of refraining from direct intervention in local tenure systems, there is still a series of laws affecting the prerogatives of the people. The use of trees is influenced by a Forest Code, the State is vested with expropriation rights on the grounds of public interest and the constitution protects individuals from abusive tendencies in the enforcement of local rules.

Referring to local land tenure practices as a new policy option in the Sahel, is a very delicate matter. Firstly, because that might create the impression that we are trying to restore the colonial image of land tenure in terms of dichotomy, i.e modern law versus customary law. We hereby emphasize, therefore, that we are not referring to any static body of "traditional" rules to be compiled into a code. We are thinking in terms of what constitutes "the law in practice", which has been undergoing continuing change (Hesseling & Le Roy, 1991 : 2-11).

In preceding chapters, emphasis was placed on the need to take more account of local concepts and practices in natural resources management. The Lake R'kiz example (refer to the box) demonstrates, once again that local practices should not be idealized because they are at times fraught with traits of social inequalities, contrary to universal human right concepts. In some other cases, political, economic, demographic and ecological upheavals have rendered ineffective the traditional authority and decision-making bodies, such that a State policy of non-interference can pave the way for anarchy. Even so, case studies (see chapter 4) have shown that at the local level, there are effective land tenure solutions and institutions based mainly on local concepts and norms. A new tenure policy should offer the possibility of turning such solutions and institutions to good account.

We further emphasize the fact that the recognition of local tenure systems in a specific area does not automatically exclude the possibility of privatizing natural resources and adopting forms of co-management. Further, the conditions enumerated above may change overnight thereby necessitating a more direct intervention by the State.

Finally, for local tenure practices to be efficient, the State, once again, has an important role to play :

- formulating laws which leave sufficient room for manoeuvre in order to avoid disrupting the dynamic of adaptation of local tenure practices and which take account of the diversity of tenure situations at the local level ;



- anticipating quite simple procedures in order to give formal recognition to rights deriving from local practices ;
- providing incentives for equitable access to natural resources ;
- promoting a democratic forum at the local level (open debates, access to appeals) ;
- promoting local studies that help identify the strengths, weaknesses and trends of local tenure practices (eg. establishing land tenure observatories, cf Kintz, 1992).

We shall conclude this section on new tenure policy options by making three remarks :

Firstly, the present situation in the Sahel calls for **innovative and creative** solutions. Mistakes will therefore be inevitable and that calls for much tolerance and flexibility on the part of players concerned (one may even consider introducing "the right to err").

Furthermore, in the light of past legislative experiences, it will be necessary to re-think the role of legislation. In other words, instead of laws **prescribing** such or such tenure systems, it will be desirable to formulate laws **allowing** the quest for and application of a whole spectrum of possible solutions.

In the on-going debates on major tenure disagreements and disputes in the Sahel, two types of solutions are generally anticipated.

Mindful of the usual formulation of documented norms, as basis of constitutional rule, to govern life in the society as a whole, some players advocate the formulation of precise and systematic texts which deal, in detail, with all matters connected with natural resources management. However, while it is indispensable to define new rules under the present circumstances, there is no gainsaying that the said rules will be subject to many amendments in the aftermath of the on-going changes in the Sahel.

In contrast, other players consider that the Sahel's present situation , marked by far-reaching changes, will at best, make for the definition of a sufficiently flexible overall framework, in the form of a natural resources management policy Charter to help deploy local initiatives.

Given the diversity, the complexity and the transitional character of the tenure situation in the Sahel, it seems preferable to formulate (in a Charter, policy act), in clear and simple terms, some land tenure guidelines, to form the "bedrock" of what may be described as the land tenure mosaic.





## 6.4 Some anti-failure principles

Development options are also subject to a sustained controversy. Following the striking failure of the interventionists policy of post-colonial African States, private sector promotion is rallying an increasing number of supporters, some of whom advocate wholesale liberalism.

Supporters of grassroot development, more sympathetic with NGOs and producer associations, seem rather to have their reservations towards some liberal policies which lead to the marginalization and impoverishment of entire populations.

A new approach is underway towards reconciling the interests of all the parties involved, by ensuring the promotion of private initiatives alongside with the development of the urban and rural associative movement and NGOs, while the State plays the specific role of promoting and contributing to the organization of discussions, dialogue and negotiations among players.

### *The diversity of national and local situations : a starting point*

The diversity of situations among Sahelian countries and the specificity of local situations in each country underscore the fact that it is impossible to implement a uniform land tenure policy in all Sahelian countries.

On the other hand, one may envisage general principles to guide the formulation of policies suited to these various situations :

- recognition and guarantee of the right of access to land and other natural resources for all players without any discrimination whatsoever (based on race, religion, sex, or social status) ;
- priority of access (but not monopoly rights) for residents of an area to natural resources ; their right to determine and negotiate on the conditions for a sustainable exploitation of the resources in question ;
- simplicity of legislative texts and their accessibility to citizens in appropriate languages and forms (written, oral, etc.) ;
- the readiness of the administration to facilitate and provide the necessary assistance to the processes of negotiation on the right of access to natural resources among competing groups.



### *Organizing democratic debates based on the needs and concerns of the population*

The debates on legislative and administrative reforms have to be conducted in a highly participatory and democratic manner. Without the full and entire involvement of the populations concerned, the reforms anticipated are doomed to failure.

National Conferences held in Niger and Mali on this subject have made it possible to make giant strides. For once, national preoccupations became the subject of public debate, just as for the 1984 Maradi Seminar on desertification the 1989 and 1990 Seminars on the Rural Code in Niger and during the national conference on land tenure and decentralization policy, held in Bamako in January 1992.

Even so, both in Niger and in Mali, the debates brought together especially the elite, with only a very limited participation of peasant farmers, herders and fishermen. Efforts should be made to reverse the trend.

### *Reversing as much as possible, the processes of formulation and dissemination of legislative texts by drawing more on local experiences and knowledge*

Very often, experts and policy-makers design and formulate texts out of voluntarism and good faith, with a view to improving the living conditions of their countrymen. It even happens that the texts correspond to objective needs but, gradually, they are not based on local experiences and knowledge and on the needs and concerns of the people.

Moreover, the working approach needed to help win over the populations, under the present circumstances, to make them participate in the design and formulation of the measures anticipated and even in the dissemination of measures adopted through the appropriate channels of communications, are generally neglected ; under such circumstances, it is difficult to avoid the attitude of indifference towards "misunderstood" measures ; it is indeed difficult for the citizens to see to the implementation of such measures as reflecting their own will.

The use of local languages is necessary to help reap truly significant results reflecting the needs and concerns of the people . That is indeed indispensable for the taking up of the reforms by the populations. One may even say that it is a precondition for making the new legislation the legal framework likely to help find realistic and equitable solutions applicable to all disagreements and disputes at the rural level.

