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**CILSS**  
*Permanent Inter-State  
Committee for Drought  
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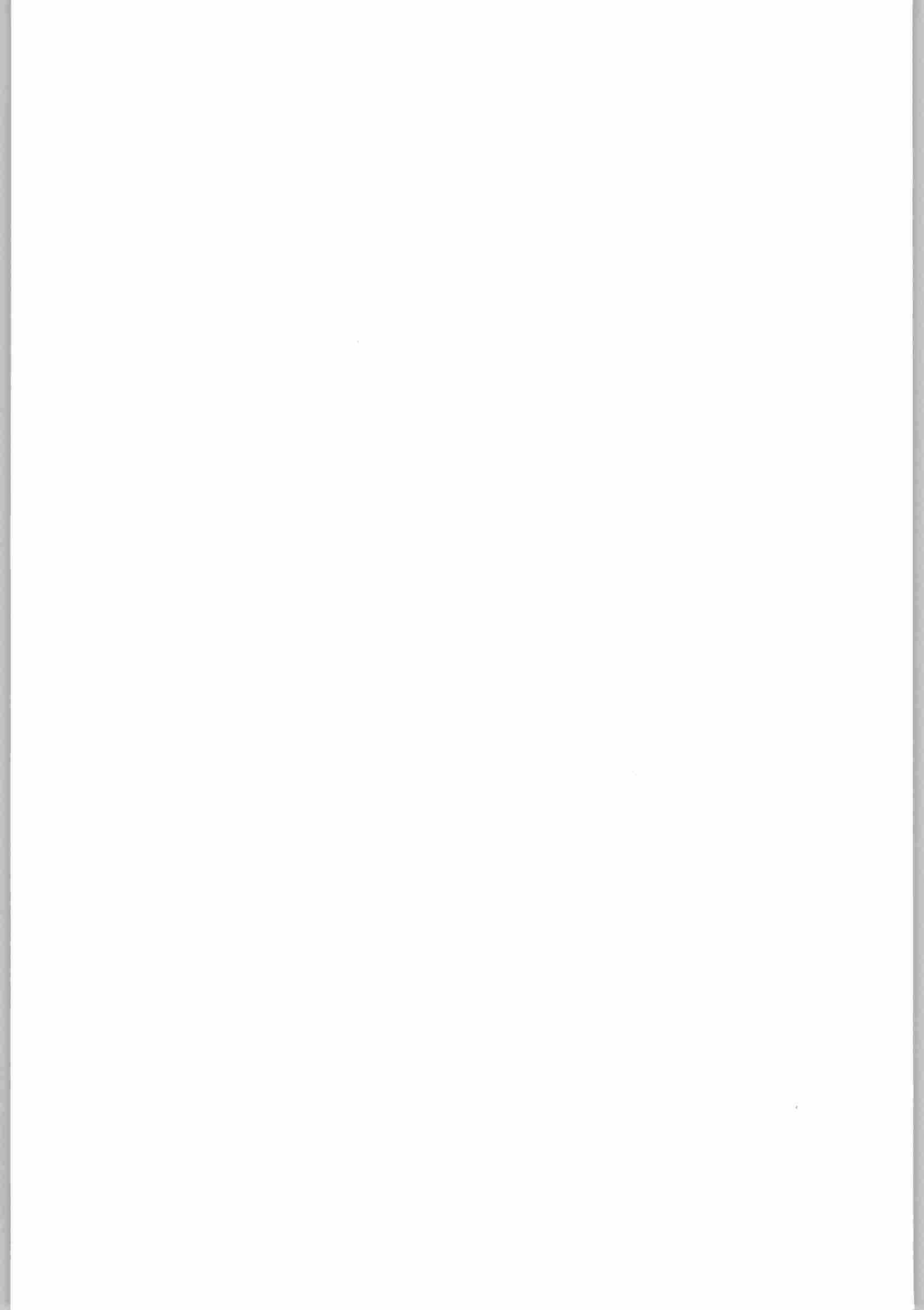
**REGIONAL CONFERENCE  
ON LAND TENURE AND DECENTRALIZATION  
IN THE SAHEL**

*Praia (Cape Verde)*

**Land Tenure and Natural Resource  
Management in the Sahel**

◆ *Summary* ◆

SAH/D (94) 426



**CILSS – CLUB DU SAHEL**

**LAND TENURE AND NATURAL RESOURCE  
MANAGEMENT IN THE SAHEL**

**EXPERIENCES, CONSTRAINTS AND PROSPECTS**

Summary of the Regional Synthesis



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January 1994

# THE UNIVERSITY OF CHICAGO

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October 1983: on the edge of a half-dry *bourgou* swamp in the Niger inland delta stand three men: a *Pullo* who has brought his herd to drink and graze; a *Bozo* perched on his canoe, ready to cast his net; and a *diimaajo*, sickle in hand, hastening to gather in his harvest. Who has priority access to the meager resources available in this difficult time of severe drought? In the bygone days of Cheickou Amadou's *dina*, and more clement agroclimatic conditions, there was a precise calendar to regulate the exploitation of the *bourgou* swamps by our three men, ensuring equitable arbitration and fair solutions to possible conflicts.

But the image of these three men is now familiar throughout the rural Sahel. How can we help them lay down new rules to fit the new situation, satisfactory and fair to all three groups? It has become urgent to find solutions at the local level, or conflicts will multiply and worsen.

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## 1. INTRODUCTION

The Ségou conference of May 22-27, 1989, marked a major turning-point in the debate among the main partners involved in the development of the Sahelian countryside: government representatives, donor agencies, NGOs and farmers' organizations. The encounter was also an opportunity to enrich the CILSS approach in the fight against desertification, highlighting the limits to technocratic approaches. Among the recommendations issued by the meeting, land tenure and decentralization were selected by the CILSS Council of Ministers at their meeting in Bissau on February 4-6, 1990, as priority topics for in-depth examination.

The CILSS and the Club du Sahel, in close collaboration with the Land Tenure Center, Madison, USA, and the Center for African Studies in Leyde, Netherlands, worked out a program on land tenure in the Sahel in April 1990 and have put it into operation in accordance with the particular circumstances of each member country. The Malian experience has convinced the CILSS and the Club du Sahel that it is necessary to handle land tenure and decentralization jointly rather than trying to solve the two problems separately. This is the reason why they have decided to hold a regional conference on both issues together, in Praia, Cape Verde, in June 1994.

Below is a summary of the regional synopsis on land tenure submitted for consideration by the regional conference, in French, English and Portuguese. The summary has been translated into several Sahelian languages including Pulaar and Arabic. The summary discusses: concepts involved; conflict and litigation on land tenure issues; local land tenure practices and institutions; the State, legislation and land tenure regulations. To conclude, it will attempt to identify the right directions in which to look for solutions.

## 2. CONCEPTS

### 2.1. A rough definition of "land tenure"

In this document, when we speak of "land tenure", we are speaking of the land itself, the natural resources directly attached to the land, and all the relationships among individuals and groups that determine the appropriation and use of these resources. Land tenure systems include all types of rules connected with use of and access to the land and its resources, and the institutions and relationships that determine the practical application of such rules.

### 2.2. Land tenure systems in transition in the Sahel countries

In the Sahel, local land tenure systems are changing: although rooted in the past and deriving a large part of their legitimacy and effectiveness from the past, they are also fully in touch with the present and open to the future. They draw on a number of different sources, but one cannot properly speak of "traditional laws" as opposed to "modern law" or of one legal model overlaying another. In the Sahel, local rules and practices on land tenure issues adapt old laws to the daily life of the present; this necessitates reference to the new legislation at the same time, and a skillful use of its particular provisions.

Local land tenure systems are very complex, genuinely effective and readily able to adapt. But, owing to the rapid pace of ongoing change in the region and the new terms in which problems are posed today, available knowledge of land tenure systems has proved too limited and must be constantly renewed.

### **2.3. Different parties see land tenure issues differently**

The approach of Sahelian States over the past thirty years has been characterized by excessive centralism, almost exclusive reference to national legislation and failure to take account of local rules and practices.

As for the donors, at the level of principles they have reached a consensus on the importance of making secure local land use rights a condition for investment, and on the need to simplify and adapt the procedures enabling this security of tenure. However, there are some differences in donors' views on the concrete ways to apply such principles. Proposals range from private ownership as a precondition for financial support, to the exclusion of land tenure conditions from the criteria for donor intervention, with many intermediate positions.

Local perceptions of the issue vary widely from one situation to another, depending on the degree of pressure on resources and the strength of competition for access to them; the productivity of resources (as a source of money income or the basis of immediate subsistence); types of activity (crop farming, livestock grazing, fishing etc.); the diversity of socio-economic groups present in a locality, etc.

In a context where insecurity of tenure is the rule, where competition for access to resources is fierce and the authorities responsible for managing the resources are weak, the types of behavior most often encountered are detrimental to sustainable management of the environment: among others, over-exploitation and plundering of resources.

## **3. MAJOR TENSIONS, CONFLICTS AND LITIGATION OVER LAND TENURE IN THE SAHEL**

To understand the roots of land conflicts in the Sahel today and how they have evolved, one must take an historical approach. As the population has grown, the needs of humans and animals have multiplied. At the same time, owing to major ecological events (e.g. the desertification of the Sahara), the area suitable for human activity has shrunk, competition has become fiercer and has sometimes given rise to conflict.

Today, land tenure disputes and conflicts are also becoming more acute because of social differentiation and inequality in access to limited resources.



### **3.1. Examples**

In northern Mali and northern Niger, control over land and natural resources lies at the heart of the relations between local communities, particularly between socio-ethnic groups. That is one of the main reasons why this is commonly called the "Tuareg problem".

In Chad too, the hitherto peaceful relations between crop farmers and herders are deteriorating: in the south, for example, herders from the north, guarded by armed men, graze their animals on land normally under the control of local people.

The filling of reservoirs on the Senegal River will irrigate hundreds of thousands of hectares on both the Senegalese and Mauritanian sides of the river. In each of the countries concerned, competition is becoming sharper between different ethnic groups and economic interests. The resulting tensions led to the events of April and May 1989 and those that followed.

### **3.2. Essential land tenure issues**

The land has its religious, cultural and emotional significance, as Mother Earth nourishing her offspring and as the resting place of their ancestors. Until very recently, local rules and practices accepted by the members of the local community governed relationships in connection with the land and formed a framework for settling disputes. These rules and practices have been weakened by modern laws and regulations, and today's conditions require that they be reformed, if not completely reframed.

There are marked inequalities of access to natural resources in the Sahel: women, younger sons, former slaves and the craftsman "castes" particularly suffer from this. Sahelian women take an active part in productive work and supply the bulk of the family's staple food needs; but, paradoxically, they have few rights. Improving the situation of Sahelian women should be a priority for the last decade of the twentieth century and should constitute a major criterion for assessing democratic and social progress in Africa.

From Mauritania to Somalia, there is a danger of widespread violent conflict for control and management of local and transnational natural resources. Given the resources available, the rate of population growth, the potential of the natural environment and existing techniques for realizing this potential, one may well be anxious for the future. Has the point of no return in environmental destruction not already been reached in some regions? If not, what local and international means will be required to avoid the worst and manage resources sustainably?

### **3.3. Sahelian women and land tenure problems**

Women's status with regard to land rights is complex. Women slightly outnumber men and their contribution to agricultural work and the rural economy is often disproportionately high. They have the decisive role in education and the reproduction of culture. And yet, as a general rule, as far as land rights are concerned, women form a marginalized majority.

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

The most common way in which a women can gain access to land is still through allocation of a plot belonging to her husband's family. In general, women's fields are smaller and of lower quality than those of the men. Their rights are usually restricted to usufruct of the land they cultivate. Nonetheless, women's situation in this respect varies considerably according to ethnic group, religion, the social status of the woman and her husband, how production is organized, availability of land etc. Among the Manding and Diola Fogany of Senegal, for example, women may own land and bequeath it to heirs of either sex.

In settlement projects and irrigation schemes, women are the victims of outright discrimination in land rights.

In short, although women's land rights vary according to local rules and practices, they can broadly be summed up in three words: uncertain, insecure and unequal.

### *Women and natural resources*

As a general rule, women are excluded from the right to plant trees because this is regarded as an act of appropriation of the land concerned. This is partly why, for a long time, women were kept out of reforestation and forestry projects.

Although there are no legal restrictions on women's access to water for household needs, the deterioration of the environment has seriously worsened their position in this respect.

Although their role in livestock raising is underestimated, women are systematically involved in this activity. It is the main activity of Peul women, for example. But, given the marginal situation of pastoral folk and women's particularly low status, their situation is even more distressing than the men's.

### *New trends, encouraging experiences*

However, women are less and less inclined to passively submit to the worsening of their socio-economic situation and their land rights. With increasing frequency, they are making collective or individual demands for land. In all the countries of the Sahel, there are examples of women negotiating their rights to land and allied resources. More and more, they use collective appropriation as a channel to substitute for, or facilitate, individual appropriation.

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

Although the laws governing natural resources and land tenure in the Sahel are "gender-neutral", they can foster *de facto* discrimination, especially as they rarely include provisions to forestall it. For example, Senegal's Public Lands Act has a corollary on rural councils in which it is stipulated that one third of rural council members must be representatives of cooperatives - whereas in fact women's groups are by far the most widespread form of farmers' organization.

### *A few major constraints*

- Local land tenure practices favor men over women in access to and management of natural resources;
- Women's inheritance rights are rarely recognized, even in Moslem societies;
- The market economy tends to eliminate even the residual rights women do enjoy, and so marginalizes them even further;
- Existing legislation does not explicitly provide for effective involvement of women in natural resource management.

### **3.4. Settling land tenure disputes**

There are several kinds of situation. Sometimes workable solutions are found to land disputes before they develop into full-scale conflict. In some cases, however, there is no easy solution at hand and conflict develops. In other situations, it is only the regrettable results of open conflict that open the eyes of the parties concerned: for example, it was only when they saw the consequences of the events of April-May 1989 that the majority of Mauritians and Senegalese concluded that expulsion was not a workable solution. The persistence of conflict, within certain limits and in certain forms, is not always a bad thing: there are cases where a short-term solution might lead to even worse problems later on.

### **3.5. Different players, conflicting interests, multiple levels**

In the management of land, forests, lakes, ponds, streams and aquifers that overlap several localities or regions, many agents are involved. They include the State, private operators, organized local communities, finance and credit institutions, and bilateral and multilateral development partners working on projects involving the resources in question. The interests involved concern different activities and different players at different, specific levels. Institutions able to provide a forum for dialogue, negotiation, arbitration and appeal, taking the interests of all concerned into account, are therefore urgently needed.

### **3.6. Conflict resolution: favorable factors and obstacles**

The Sahel abounds with encouraging examples of local communities taking in hand the management of their local resources and finding workable solutions to differences and conflicts over land.

However, the laws in force are long, complicated, difficult to enforce, and are drawn up in languages unfamiliar to most of those concerned. They often conflict with the will of the local authorities responsible for managing the resource heritage and to whom local people turn for arbitration and settlement of their differences. Very often, the laws in question are used by certain classes of town dwellers to appropriate resources belonging to more vulnerable citizens. The official legislation often acts as a trap for vulnerable groups.

The Sahel countries, having inherited the colonial judicial system, advocate the rule of law and attach only secondary importance to local ways of settling disputes. The common people's ignorance of the law and the workings of the judicial system, the complexity of its procedures, the high cost of legal services and the corruption with which the system is fraught, have plunged the legal system into a deep crisis.

Specialists of the cadastral services, public land administration, etc. sell their skills dearly and have a strong influence on land allocation and dispute settlement.

Generally speaking, the donors' policy is to make aid conditional on the reform of existing law to promote private ownership of land: in most of the Sahel countries, new laws along these lines have been passed or are in the process of being passed.

Accelerated degradation of the environment, destruction of resources on a gigantic scale due to natural disasters, the constant growth of the human and animal populations, the problem of pollution: all these are seriously threatening environment and habitat in the Sahel. Local solutions suited to old problems (e.g. fallowing or migration) do not solve the new problems (e.g. where there is a serious imbalance between human and animal population density and the carrying capacity of the land). It is now necessary to draw lessons from all fruitful experiences in other regions of the world and extend research in the Sahel to find appropriate solutions.

#### 4. NATURAL RESOURCE MANAGEMENT AND LOCAL LAND TENURE PRACTICES AND INSTITUTIONS

Sahelian land tenure systems are quite varied and complex, owing to the region's great variety of cultures, ecologies and economies. While some local systems are proving highly resistant to the new legislations, most have changed considerably over the past twenty years of drought.

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

From one region to another and one country to another, it is hard to find two cases exactly alike. In pre-colonial days, the scarce factor was labor rather than land or natural resources. People used various techniques to assert their occupation of land: bush burning, forest clearance, landmarks such as sacred trees, etc.

Descendants of the founders of village communities, for example, generally enjoy pre-eminent "rights of first occupant". Rights of use are particularly clearly defined for those natural resources that are most important for survival: seasonal wetlands, watering holes, rich grazing land and fishing grounds, etc. Similarly, individual rights have emerged over trees whose products are destined for export, e.g. the gum tree *Acacia senegal*.

## **4.2. Recent developments**

The authority and efficacy of local institutions were sapped by the colonial authorities' manipulations.

With the upheavals engendered by the drought, there is now fierce competition for some resources: competition between crop growing and cattle grazing on the bottomlands, competition for the baobab and tamarind trees (which bring in cash), etc. The usual holders of these resources are trying to assert exclusive rights to them, whereas previously they had only implicit or latent use rights.

However, where the primacy of national legislation is asserted, village communities lose not only their right of exclusion but also the possibility of negotiating new arrangements with new claimants.

The drought has also led to an extraordinary increase in the number of development projects, resulting in a plethora of new institutions exerting an impact on local land tenure practices.

## **4.3. The diversity of existing land tenure practices**

Case studies show that some local practices are finding it hard to survive: rules concerning fishing in the Niger and Senegal rivers are an example. At the same time, new land tenure practices are gradually being established, demonstrating the creativity of local people in the matter of conservation and regeneration of soils, water and vegetation (one telling example: groups of young men now patrol along the Senegal River to prevent woodcutting by illicit charcoal burners).

# **5. THE STATE, LEGISLATION AND REGULATIONS ON LAND TENURE**

## **5.1. Historical overview**

Under the colonial regime, "customary land tenure" became a subject of research and a political issue. "Traditional" land tenure systems were seen as a static, monolithic set of ancient rules. Villagers themselves used this "traditional" theory of land attribution to protect their prerogatives in matters concerning the control of access to land and settlement of disputes. It is this historical development that led to the now widespread dualistic view of land law, which sees traditional systems as an obstacle to development, in contrast to "modern" land law which is represented as stable, rational and unambiguous.

British policy, as applied in The Gambia, was based on the theory of indirect rule, which strengthened the role of the "native" authorities.

Portuguese legislative policy was characterized by the "indigenato" system, based on the conviction that Portugal's African "subjects" were not "civilized" enough to become Portuguese citizens.

The French colonial State, on the other hand, adopted the doctrine that there should be one land law for all. Slowly but surely the authorities acquired a greater respect for the different indigenous legal systems, but legislators have always regarded these systems as secondary. The colonial State gradually acquired a land monopoly based on the notion of "vacant and ownerless property".

After independence, in The Gambia, Guinea Bissau and Cape Verde, the colonial laws remained in force, with their dualistic division between the "traditional" and the "modern". In the former French colonies, despite some major differences, the common features of today's land law are inherited from the colonial rationale. One way or another, land ownership is a government monopoly in all the first wave of land reforms.

In present day practice, the great majority of conflicts over land and natural resources are still adjudicated outside the official system, by local institutions that continue to draw on their own rules for inspiration - rules which, in some regions, have been partly shaped by Moslem law.

## **5.2. Local land tenure practices in a changing world**

Recent studies of the Sahel show a wide and complex range of local practices, endowed with lively internal dynamics. The great variety of ecological conditions, historical and cultural backgrounds and political structures makes it unsafe to generalize.

Among past changes in the Sahel, the Moslem conquest was, in most countries, a major event: it introduced share-cropping, the possibility of selling land, the Koranic tithe or *zēkaat*, etc. The result is a complex land tenure system that is constantly being reshaped.

## **5.3. A new wave of legislation**

Thirty years of reforms, amendments, adaptation and patching up of the law in the different Sahelian countries have produced laws with some undoubted advantages. Some are gems of legal technique, others offer original solutions. Nonetheless, it can generally be said that legislation on land, water and forests is difficult to enforce at the local level. Almost everywhere, land legislation is seen as an obstacle to balanced, equitable, environment-conscious development.

Special emphasis is generally placed on the following shortcomings:

- Laws are conceived in a foreign language, beyond the understanding of the majority of users;
- Laws do not take sufficient account of local natural resource management practices and skills;
- Almost everywhere, pastoralism has been ignored or treated only marginally;

- Procedures are beyond the understanding and beyond the practical reach of the great majority of the population, many of whom are illiterate;
- There is competition among local solutions, administrative acts, and decisions by the judiciary;
- Environmental policy and natural resource management policy are not integrated, or are poorly integrated;
- There is incoherence between the laws of neighboring countries, especially as regards border areas and transnational resources.

New legislation is being elaborated in many countries, with a strong bias towards the primacy of private ownership (Burkina Faso, Guinea Bissau, Mauritania, Senegal, The Gambia). Despite the rhetoric of greater respect for local land tenure practices, the reforms are not really designed to rehabilitate these systems. The idea of a Land Tenure Charter (a document of general scope accompanied by decentralized statutory instruments for implementation) is making some headway but, for the moment, only Mali has taken this option.

Among the main conceptual limitations at present are (a) legislation viewed as a miracle cure-all and (b) decentralization conceived as a panacea for all the government's problems. The danger of the latter view is that the State will merely shrug off costly responsibilities, placing them on the shoulders of rural populations.

For local communities to feel more willing to take responsibility for certain resource management tasks, three pre-conditions seem to be fundamental:

- To treat these communities as serious partners in negotiations over the sharing of resource management tasks;
- To re-establish the people's confidence in the State;
- To create clearly defined relationships, which means that both sides must be prepared to be accountable to the other for commitments and responsibilities.

## 6. IN WHAT DIRECTION DO THE SOLUTIONS LIE?

We have taken a multidisciplinary approach based on an historical analysis and current experiences in the Sahel. What emerges is an extremely complex and varied pattern of land tenure problems, in a region that is clearly in transition. To point towards some possible solutions, we shall first of all set out what seem to us to be the most burning issues.

### 6.1. Some burning issues

- Security of tenure: how, why, of what kind and for whom? As regards "for whom", for example, different interests are in conflict: "historical" inhabitants versus more recent migrants, "first occupants" versus later arrivals, farmers versus herders, etc.
- What does decentralization of natural resource management mean to the different social agents concerned? Who wants it, and in what form?

- What are the conditions for decentralization to promote "responsible" local management of land and resources?
- What are the main land tenure problems that cannot be adequately solved by existing regulations, institutions and procedures?

## **6.2. How can women be integrated into natural resource management?**

With regard to land, women live under specific constraints connected with the social organization of their local communities. Changes in the relations between men and women should be encouraged, so that women's knowledge and capacities in natural resource management matters can be properly taken into account without causing too great a shock to men's and women's sensibilities alike.

The positive developments now under way should be encouraged, but at the same time one must plead for explicit recognition of equal rights for women in the legislation. That means the need to choose between individual or collective property rights, whether the land in question is project land or not. It means full rights to trees; equal access to water and grazing land; and equal or at least improved inheritance rights.

In Islamic societies, coherence must be assured between the principle that recognizes women's inheritance rights and current practice, which all too often continues to run counter to this.

In principle, the market economy could improve equality of rights. In the Sahel, however, the reverse is happening. Ways must be found to ensure that new forms of production (e.g. irrigation schemes) do not entrench a male monopoly on land.

It is also necessary to institutionalize women's rights to organize, in order that they may express themselves freely, reflect together on their specific problems and defend each others interests.

It is also important to involve women in all information initiatives, consultations and decision-making processes concerning land and resources in their area.

The improvement of women's situation must figure among the top priorities of the last decade of this century and beyond and constitute an important criterion for assessing social and democratic progress in Africa.

## **6.3. Controversial questions**

Here we briefly introduce some matters of concern regarding land tenure and natural resource management.



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

The Tuareg, Fulbe and Moors are among the Sahelian pastoral populations whose habits and ways of life have been most severely disrupted in recent decades. While one may reasonably be concerned for their fate and seek to help safeguard their survival, there are two priority tasks:

- To study the economic, social and cultural conditions that have enabled these groups to live and survive for centuries as essential players in the Sahelian landscape;
- To gain a better understanding of the reforms - or indeed fundamental re-shaping of rules - that present day circumstances dictate. These reforms must enjoy the support of the pastoral folk concerned, must respect their right to exist, must be compatible with their cultures, their wishes and their capacity to adapt to the inevitable changes in their lives.

If this can be achieved, the forthcoming birth of the Sahel's new societies will be the less painful for it, and a second lease on life could begin for the pastoral peoples.

### *What future for common property and privatization of natural resource management?*

In the urban centers, in the forests, around the lakes, in the irrigation systems, etc., common management of resources and private appropriation coexist, each alternately advancing and retreating, swayed by factors beyond anyone's control. The market economy is expanding and the commons shrinking in some parts of the Sahel; but can one deduce from this that the commons are inevitably doomed? Will the market economy take the same form here as it has in Europe or the United States? Will the growth of the market economy inexorably obey the same laws as it has in Europe or will it, as in Asia, "acclimatize", adapting to the Sahelian pace of life and Sahelian cultures?

#### **6.4. What options for land tenure policy in the Sahel?**

There is a whole mosaic of land tenure systems in force in the Sahel, in urban and rural areas alike. Between management of the resource heritage by local communities themselves according to local rules and private, individual land ownership, several combinations are possible, while still remaining open to change.

In some situations, e.g. in and around urban centers, increasing promotion of private property seems likely to be the main trend and also one of the most suitable. In local situations that lend themselves to these developments, where land is coveted by traders, civil servants and other holders of capital, the land will be increasingly subject to the rules of an intensely active real estate market. Very often, this real estate market is illegal under existing legislation. Here, it will be useful to envisage an appropriate form of registration or even a fully-fledged cadastral plan. The role of the State in this case is of prime importance, with a view to:

- Enabling a gradual and flexible transition;
- Regularizing and controlling the real estate market and protecting the most vulnerable social groups;
- Preventing land speculation and creating simple, clear-cut procedures.

With situations involving the protection of natural resources (e.g. forests), joint management involving local communities, the State and outside operators seems most appropriate. In this case it is important to:

- Set up or legalize, at the appropriate local level, decision-making authorities that local people will recognize and respect;
- Ensure the presence of persons capable of leading negotiations, and work out mechanisms for the transfer of power;
- Ensure that the State properly fulfills its role as mediator, and pay attention to the interests of groups or categories not represented in the decision-making structure.

There are cases where it seems preferable to leave the local rules and practices as the predominant land tenure system. This applies to situations where local rules and institutions are still capable of handling resource management and finding solutions to conflicts that may arise. "Predominant" does not mean "exclusive", however: there must also be room for private property and joint management. There are three conditions for a system based on local rules and practices to operate effectively:

- Flexible legislation and promotion of simple procedures;
- Incentive measures to ensure equitable access to resources;
- Establishment of a democratic forum at the local level.

While some think that precise, systematic laws must be drawn up, others recommend a Charter setting general guidelines for natural resource management, sufficiently flexible to allow local initiatives full play.

#### **6.5. A few principles for avoiding failure**

While promotion of the private sector has a growing number of partisans, some of whom argue for an entirely free market, partisans of grass-roots development, closer to the farmers' organizations, are worried that some free-market policies will lead to impoverishment and marginalization of whole populations.

A new approach is being developed to reconcile the interests of all the parties involved, by promoting private initiative alongside the development of the self-help movement. The State could then fulfill a specific role in organizing debate, discussion and negotiation among the social agents concerned.

Three principles:

- Start from the diversity of national and local situations,
- Organize democratic debate on the basis of the needs and preoccupations of the people,
- Wherever possible, reverse the existing top-down process of elaboration and dissemination of laws by relying more on local knowledge and experience.



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SAH/D (94) 426

