

# IMPROVING TENURE SECURITY FOR THE RURAL POOR

## MALI – COUNTRY CASE STUDY



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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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Improving tenure security for the rural poor –

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# **IMPROVING TENURE SECURITY FOR THE RURAL POOR**

**MALI – COUNTRY CASE STUDY**

**IMPROVING SECURITY OF LAND TENURE FOR THE POOR AND OTHER VULNERABLE GROUPS IN RURAL AREAS**

**Moussa Djiré**

2006

Photograph by the author

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Most of the world's poor work in the "informal economy" – outside of recognized and enforceable rules. Thus, even though most have assets of some kind, they have no way to document their possessions because they lack formal access to legally recognized tools such as deeds, contracts and permits.

The **Commission on Legal Empowerment of the Poor** (CLEP) is the first global anti-poverty initiative focusing on the link between exclusion, poverty and law, looking for practical solutions to the challenges of poverty. CLEP aims to make legal protection and economic opportunity the right of all, not the privilege of the few. (see <http://legalempowerment.undp.org/>)

CLEP has identified specific tenure issues, including i) how to make property rights accessible to all, especially poor and marginalized communities, groups or individuals and ii) how to ensure that property rights of the poor function as means of achieving economic and social empowerment, particularly in the context of gender equity and those affected by HIV/AIDS.

There is growing empirical evidence that giving legal recognition to informal property rights in urban areas brings positive results. However, a similar body of evidence does not exist for the empowerment of people in rural areas. Instead, the signs are mixed, resulting in a largely sterile and divisive debate on formalization of rights.

FAO, with donor funding from Norway, has undertaken a set of activities for "Improving tenure security of the rural poor" in order to meet the needs of FAO member countries and, in turn, support the CLEP. This work falls within the FAO corporate strategy on "Sustainable rural livelihoods and more equitable access to resources". Recognizing that secure access to land and other natural resources (forests, water, fisheries, pastures, etc.) is a crucial factor for eradication of food insecurity and rural poverty, FAO's cross-departmental and cross-disciplinary work focused 2005-2006 activities on sub-Saharan Africa which has the world's highest percentage of poor and hungry people.

This paper is part of FAO's effort to inform the CLEP through its working group on property rights. It was prepared for the regional technical workshop on "Improving tenure security of the rural poor" held in Nakuru, Kenya, October 2006, at which issues relating to property rights were reviewed and actions were initiated to develop common strategies for improving the protection of rights to land and other natural resources of the rural poor.

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## LIST OF ACRONYMS

AMAPROS	-	Malian Association for Promotion of the Sahel
AOPP	-	Association of Farmers' Organizations
CLAIMS	-	Changes on Land Access, Institutions and Markets in West Africa Programme
CLEP	-	Commission on Legal Empowerment of the Poor
FAO	-	Food and Agriculture Organization of the United Nations
HDI	-	Human Development Index
IC Sahel	-	Intercooperation Sahel
IIED	-	International Institute for Environment and Development
KIT	-	Royal Tropical Institute
MDG	-	Millennium Development Goal
PAFOC	-	Communal Land Asset Management Project
PCA	-	Programme Cooperation Agreement
UNDP	-	United Nations Development Programme

## EXECUTIVE SUMMARY

### 1. Introduction

The present study aims to clarify the various issues regarding land security of poor and other marginalized groups in Malian rural areas. It looks into questions relating to how poor and vulnerable groups obtain access to land and natural resources, and what factors cause their exclusion. It analyzes existing methods for formalizing land rights and land transactions and their impacts on the poor. Specific attention is given to the practical organization of the procedures for formalization and recording land rights.

Any study of “land security” requires knowing whose rights are to be secured and protected, from whom or what they are to be secured, and how and why they are to be secured. The majority of the rural population in Mali is poor. Thus, this paper approaches the issue of land from the rural perspective with particular focus on the more underprivileged rural groups. Based on literature review and field research, the study i) examines modes of access to land and natural resources in Mali and their effects on the land tenure situations of poor and vulnerable groups; and ii) analyses the methods used for securing access to land and natural resources for those groups.

### 2. Land access régimes and the tenure security of poor and marginalized groups

The dynamics of access to land and natural resources in rural areas are sometimes complementary but also can be conflicting, such as when dealing with the coexistence of customary rights and statutory law, and the development of an informal land market. These various dynamics influence one another with mixed effects on the land situation of the poor and other marginalized groups.

#### 2.1. *Customary rules: local norms that support the exclusion of women and immigrants*

The customary system constitutes the most widespread mode of access to rural land. It concerns mainly inheritance, gifts, loans and, to a lesser extent, sharecropping and renting land. These modes are defined by the social organization in a community, generally founded on principles of kinship, gerontocracy, seniority, autochthony and gender. Regarding land tenure, these principles undermine the rights to land of women, youth and younger siblings, and immigrants.

Under customary rules, immigrants are the first to be excluded from possession of land. However, in areas where there is not a lot of land pressure, immigrants can access land through loans or gifts. In this case, more or less explicit reciprocity/support relations are established between the immigrant family and the lender family. However, when a conflict emerges between immigrants and the landowner, or when a purchaser is found for the land, the landowner (or heirs) can evict the immigrant from the plot. These evictions are possible because, in the absence of formalized land transactions, access to loaned land can be changed at any moment and because, under customary rules, there can be a problem distinguishing between a loan and a gift.

The situation of the pastoralists, both transhumant nomadic herders and herders residing in sedentary zones, is in many ways similar to that of immigrants, although there are nuances of difference. In many localities, pastoralists' access to pastures and water points depends on the goodwill of the sedentary farmers and, until recently, their position was weakened by the lack of pastoral legislation.

Under customary rule, the management of household relations and the prevailing mode of inheritance exclude women from land ownership and often undermines the rights of younger siblings. Women have access to land through loans of an unspecified duration, but the loan can be withdrawn at any time.

Evictions can be stopped or balanced thanks to relatively effective local control mechanisms and negotiation. However, these local mechanisms are weakening.

## 2.2. Formal legal rights: rules for equitable access handicapped by bureaucracy and the sluggishness of the procedures

Official land rights are founded on the principle of *domanialité* which places all land not held under the terms of a land title in the state domain. The Land Code does not confer full legal property rights but it does recognize and protect customary rights on unregistered land, confers rights of use and exploitation, and can make rural concessions.

Rural concession, a temporary use right granted by the state in order to provide security for making investments (*mise en valeur*), is a first step toward a legal land title that is granted following a public inquiry. Many people stop at this first stage, but a few move on to the second stage in order to transform the rural concession into full property rights through the allocation of a land title. This process involves following steps:

- registration of the plot in the name of the state in order to disencumber existing customary claims and inscribe the ownership title (this confirms the state's hold over the plot which is only presumed until the land title is issued);
- public demarcation of the plot and amicable or judiciary resolution of eventual existing litigations;
- ascertainment, by a commission, that the land is in use and investments have been made;
- payment of the amount due, as determined by the land administrator;
- transfer of the land title from the state to the new legal owner;
- registration of the references in the cadastre.

The Land Code also requires several steps to be taken when there is a request for a title on a certain plot, to ensure transparency of the registration procedure. These include: inserting an extract in a newspaper, notifying the public prosecutor, posting the information at the court and the town hall, and informing neighbours. However, in spite of these measures to make sure the public is informed, slippages may occur that undermine the procedure and are detrimental to the envisaged land security.

The formal law does not, in principle, exclude the poor. On the contrary, it confirms the equality of all citizens, men and women, regarding access to land and natural resources and recognizes and guarantees customary laws. However, in practice, its impact is limited, due to a number of factors such as: difficulty accessing the formal judiciary system, incomplete and disputed legislation, and cumbersome bureaucratic procedures. In this context, there is uncertainty concerning practices of access to and control over land development that are traditionally informal practices seeking to acquire a coat of legality.

There is an observable distinction in the day-to-day management of land and natural resources between the intention of the policy and its implementation and the actual bureaucratic behaviour. The long and complex procedures for obtaining a land title provide opportunity for various dubious practices that affect the credibility and security of the emitted titles. Moreover, they are founded on mechanisms and procedures that are unknown to most of the rural population and are so costly that they exclude many from obtaining a freehold title to their plot.



The weakness of controls leads to the breakdown of procedures, sometimes resulting in the granting of two land titles on the same plot. In certain cases, these anomalies result less from embezzlement, even though the procedures largely open the way for such practices, than from bureaucratic breakdown. In some few cases, there is an intention of finding practical solutions to real problems that result from the complexity of the procedure. However, the personnel staffing the land conservation services often seem insufficient and lack training to handle the demands for processing procedures. The provisions relating to the land register or cadastre are, as a whole, relevant, but they are not easily within reach of the rural people because of costs and lack of qualified human resources and equipment.

### *2.3. The development of the commercial transactions: a source of cash for the sellers, but a threat to the rights of vulnerable groups*

The existence and the extent of the commercial transactions depend on several factors, such as the proximity of urban centres, investment in land development such as irrigation, or the development of cash crops. From the second half of the 1970s and through the 1980s, immigrants living in zones with strong land pressure only had the possibility to access to land through the purchase of a plot or, to a lesser extent, through rental or sharecropping. In spite of the relative importance of commercial transactions in the aforementioned zones, they remain practically informal. These transactions do not lead to ownership of land; they are land transactions under customary law that are part of the preparations for the official upgrading of land rights.

The presence of land markets may facilitate access to land for women and immigrants who have financial means and these commercial transactions will provide a source of revenue for the customary owners. However, in terms of vulnerable groups, they have negative effects. For example, land can be sold by one family member without the knowledge of others, particularly younger siblings. This deprives the latter, as well as their heirs, of their legitimate rights. If the sale involves the privatization or destruction of wild fruit trees on the sold land, it can affect livelihoods of local women who earn income by gathering and processing those fruits. Lastly, if the land being sold was already loaned to a third party, the sale will result in the expulsion of the present users.

As this shows, no single mode of land tenure management in force can guarantee security of land rights for poor and marginalized groups. Solutions to enhance security need to be developed that take into account the local dynamics and can gradually improve the positive elements of the existing institutions.

## **3. Ways to secure land rights of the poor and vulnerable groups**

“Innovate without destroying everything!” These words of Vanderlinden (2000) characterize the actions required to achieve more secure land rights for the poor and marginalized groups in rural areas. The existing laws and procedures as well as the local (customary) land practices hold positive elements that can and should be consolidated and built upon in order to achieve security.

### *3.1. The promotion of locally agreed conventions and regulations*

Local resource management agreements, any written or unwritten agreements of two or more local stakeholders, can bring relevant solutions to issues concerning equitable and sustainable management of land and natural resources. When the negotiation process is led well, these agreements guarantee relatively protected access to the various users and constitute an opportunity to establish a regional land use planning programme. One such convention was

developed in Banko which is near national capitol and thus attracts well off investors from the city. At a meeting of all families from the village it was determined that the plain area between the village and the river would be common property for the entire village. As a result, villagers work together to keep purchasers away from their common land.

### *3.2. The negotiation and the securing of the collective rights for the vulnerable groups*

In order to provide long-term security for individual land rights of vulnerable groups, especially women, schemes have been launched to negotiate and formalize collective (joint) rights to land. For example, in N'dogosso, a village chief agreed to allocate land for village women to use as market garden plots. This group approach protects women against withdrawal of their fields, because nobody would dare evict all of the women of the village from land allocated to them. It also has created an opportunity for women to form groups, improve their skills by working together, and increase their income with market sales.

### *3.3. The formalization of land transactions, land rights, and the implementation of the provisions relating to the land register*

Finding ways to formalize informal land transactions is a legitimate demand of farmers organizations that must be tackled from three different levels: formalizing transactions, recording various land rights, in particular customary, and converting customary land rights into rural concessions and then into land titles.

Formalization of land transactions, based on voluntary agreements between local actors, serves to prevent conflicts and can be used to resolve possible litigations. In theory, formalization is to the advantage of all actors involved and should be supported. But when the population is generally illiterate and the groups involved are vulnerable, it is important that authorities regulate and oversee the transactions and encourage the installation of local control mechanisms to avoid the potential of fraud. The mechanisms should include local witnesses, standardized forms and the possibility of registration with local authorities.

This formalization of customary rights through their ascertainment, official recording and possible transformation into land title reinforces the protection mechanisms and allows holders to obtain a freehold title deed. However, establishing a new process for ascertaining and recording rights is likely to upset fragile balances on which intra- and inter-communal relations rest. As long as the stakes are not too high, the various actors will accept more or less sustainable compromises, but this can change with the advent of large-scale formalization operations. Thus, it is important to know who benefits from this recording – the family, the clan or the village. The Association of Farmers' Organizations (AOPP) suggests recognizing and titling customary rights in the name of a household, and providing precise definitions of the prerogatives assigned to each category of right holder within a household.

Customary rights over land cannot be used as collateral to obtain credit from a bank. This raises the issue of whether customary rights should be transformed into full title to provide poor landowners with this opportunity. On the other side of the issue is the fact that the titling procedure is expensive and, although there is no land tax at this point, there is the possibility that such a tax will be levied in the future. This would result in a useless additional financial burden for title holders who are not involved in highly profitable agricultural activities. In areas that are relatively underdeveloped, it would be advisable to put more emphasis on the recognition and the security of long-term user rights, in particular customary rights that provide the same basic guarantees as a land title.

Current cadastre procedures for registry of land titles are heavy and not very operational in rural areas. Serious efforts are needed to expand cadastral services and simplify cadastral procedures. Local people should be part of any planning to expand formalization in an area, they should understand what the reform will mean to them, and qualified paralegals and auxiliary land surveyors should be available to support the implementation of demarcation and registration.

### 3.4. Using state law to enhance the access of poor and vulnerable groups to land and natural resources

The laws and judiciary system offer great opportunities for guaranteeing access of the poor to land and natural resources. But this potential has hardly been exploited because of factors such as lack of awareness and inaccessibility for rural people. Serious efforts should be made to offer large-scale free legal assistance to the poorest and most vulnerable groups, in order to communicate the essence of the legal provisions and procedures.

## **4. Conclusion**

Taken individually, none of the modes of land tenure management in force – customary rules, state law or informal land transactions – can guarantee security of land rights for poor and marginalized groups. Any solutions to enhancing security need to take account of local dynamics and make gradual improvements to the positive elements of the existing institutions. These dynamics concern the following.

- Promotion of locally agreed conventions and regulations that guarantee relatively protected access to various users and provide a basis for devising a regional land use planning programme. Authorities should support these by removing obstacles that block their success.
- Negotiation and formalization of collective (joint) rights to land for vulnerable groups, particularly women, that will assure them more sustainable and secured land rights.
- Utilization of state laws that can enhance the access of poor and vulnerable groups to land and natural resources by setting up and making available large-scale free legal assistance to the poorest and most vulnerable groups.
- Formalization of land transactions to help prevent and resolve land litigation, differentiate between land loans and gifts under customary rules and give more transparency to informal commercial transactions while at the same time, setting up local control mechanisms to avoid the potential for fraud that can result from dealing with an illiterate populace. Formalization also impacts development of local land markets and, thus, efforts must be made to ensure that any land market development is kept transparent and there is recognition that, when the demand on land is low, promoting a land market can encourage speculation.
- Formalization of customary rights, which requires i) ascertaining and recording in order to give more legal force to future transactions and ii) transforming them into legal land titles that can be used as collateral to obtain bank credit. However, this should be preceded by a public awareness campaign and open, transparent dialogue with all concerned local people. Note: If land taxes are levied in the future, then a title deed would make land subject to taxation, creating a useless financial burden if the title holder is not involved in highly profitable agricultural activities. In areas that are relatively underdeveloped, it is more advisable to emphasize recognition and security of long-term user rights, in particular customary rights.

Any land titles must be registered with the cadastre. This is not easily within reach of rural people because registration is a complicated and costly procedure, and there is a lack of qualified human resources and equipment. Cadastre registration is easier in urban areas where

lands are already registered in state accounts and situated in allotted areas. In rural areas, the solution to cadastral registration is to make gradual improvements to the positive elements of the existing institutions, taking in account the realities of rural areas, relying on simple and inexpensive delimitation and demarcation methods, and assuring the availability of paralegals and auxiliary land-surveyors to support registration.

Simplifying these recommendations, the following lists the findings of this study in terms of what should not be done when starting the process of formalization. Do not:

- implement the new system without providing information to the local actors who will be affected;
- set up an operation in which there is a lack of information, transparency and accountability;
- emphasize technical and bureaucratic approaches;
- exclude any parts of the population, especially traditional leaders;
- make unilateral changes in the established rules;
- allow the system to have different rules for different persons or groups;
- emphasize judiciary resolution of eventual litigations;
- isolate personnel who support the formalization from the population.

It is useful to underline that secure access to land and natural resources is only one preliminary element of poverty reduction in rural areas. In addition to working to provide secure access to land, it is also important to provide access to equipment, agricultural inputs, land improvement, training and credit at preferential interest rates. Moreover, agricultural produce should have fair access to markets. In other words, land security should be complemented by vigorous measures that are all part of the fight to alleviate poverty and support rural development.

## 1 INTRODUCTION

Reducing poverty in developing countries is one of the major concerns of the international community. Many development programmes have been drawn up and implemented for this purpose by developing country governments, donors and international bodies. One such initiative, the Programme Cooperation Agreement (PCA) between FAO and Norway, has been designed to contribute to the achievement of the Millennium Development Goals (MDGs), among others, through a project entitled Improving the tenure security of the rural poor. The project focuses on sub-Saharan Africa and supports FAO's overall strategy for achieving "sustainable rural livelihoods and more equitable access to resources."

The project, designed to support FAO Member Nations and the work of the Commission on Legal Empowerment of the Poor (CLEP), commissioned a series of country case studies to increase understanding of the issues. This study, which looks at access of the poor to land and natural resources in rural areas of Mali, is part of that initiative.

Mali, a transitional country between Arab-Berber North Africa and sub-Saharan Africa, is located in the heart of West Africa. It has a total area of 1 241 238 km<sup>2</sup> and a population of 11.1 million.<sup>1</sup> In terms of poverty, Mali is one of the world's poorest, ranking 172 out of 175 ranked countries, with a Human Development Index (HDI)<sup>2</sup> of 0.3373 according to the United Nations Development Programme's 2003 *Global Report on Human Development*.

However, in spite of the fact that most social development indicators are below the requirements of the MDGs,<sup>3</sup> for almost 15 years Mali has been engaged in a process of political and economic reform that makes it one of West Africa's leaders in terms of democratic governance. This has allowed it to benefit from debt relief under the United Nations Highly Indebted Poor Countries Initiative.

### **Background and objectives of the study**

In Africa in general and Mali in particular, rural people derive most of their income from the land and other renewable natural resources. Access to these resources is vital for food security, poverty reduction and rural development. Farmers, especially the poor and marginalized, suffer from insecurity of land tenure and official mechanisms for securing tenure are inaccessible to them.

This study looks at ways to rectify this situation and make access and ownership rights for rural Mali more secure. It focuses on five key questions:

- How do the poor and other vulnerable groups in rural areas gain access to land and natural resources, and how are they excluded from such access?
- What are the main constraints of formalization as a tool to protect property rights in rural areas, and, more specifically, which groups benefit from formalization and which lose and therefore need protection?
- How are these issues addressed at the local level, and what are the pros and cons of developing land markets in areas where they do not exist?

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<sup>1</sup> *Système des Nations Unies au Mali*, 2004

<sup>2</sup> HDI is a comparative measure of life expectancy, literacy, education, and standard of living for countries worldwide. It is used to determine and indicate whether a country is a developed, developing or underdeveloped country and also to measure the impact of economic policies on quality of life.

<sup>3</sup> The Government of Mali contests these figures.

- What practical examples can be given of situations where the rights of the poor, vulnerable and marginalized groups have been successfully protected, and situations where problems have been exacerbated?
- How are formalization procedures organized in practical terms – registration system, human resource capacities, public awareness, implementation and sustainability of the system, and maintenance costs in rural areas?

Based on an analysis of land tenure legislation and practice in Mali, the study also sheds light on the various factors involved in strengthening ownership rights of the poor and other marginalized groups in rural areas. This information can serve to generate new empirical material to support the deliberations and messages of the CLEP.

### **Theoretical considerations and methodological approach**

Securing land tenure for the poor in rural areas means addressing issues that are both complex and relative. On the one hand, the concept of tenure security is a complex and changing one. On the other hand, the concept of poverty is relative because poverty is based on criteria that are very fluid. In this study, the concepts of security and poverty will be defined as follows.

**Security.** In the legal sense, security means that acquired rights are safeguarded, and the various subjective rights of individuals or social groups are recognized by objective laws and regulations. Within the context of land tenure, security refers to a process of recognition and affirmation of rights of access, extraction, management, exclusion or alienation of property, or to rights to use the land and its natural renewable resources.

A number of studies addressing the issue of tenure security have stressed the relativity of the concept.<sup>4</sup> All have dealt with basically the same questions (Hesseling and Ba, 1994):

- Whose property is to be safeguarded?
- Against whom and/or what?
- How and why?

Whose property is to be safeguarded? The answer to this question is straightforward. The study focuses on the issue of safeguarding the land tenure of the poor and other vulnerable groups in rural areas.

Against whom and/or what? These questions concern factors and circumstances that hinder access of the poor and marginalized to land and raise issues about the tenure system. The answer is complex because it must include not only land tenure issues but also norms and practices of land ownership and management. In introducing the issue, Crousse, Le Bris and Le Roy stress that mechanisms of spatial setting in sub-Saharan Africa follow two broad models: indigenous and capitalist (Crousse, *et al.*, 1986). The indigenous model views social relations in terms of control and power within the space and the requirement for “practical, tangible” ownership. The capitalist model views social relations on the basis of an exclusive and absolute concept of private property.

In analysing tenure systems, some works highlight the tenure and territoriality aspects of land (van Djik, 2000; Mathieu, 1996; Le Bris, *et al.*, 1982; 1991), while others focus on land transactions (Mathieu, 1996; 2001; 2003), the opposition or complementarity between customary and statutory law and also land policies (*Institut National de Formation Judiciaire*,

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<sup>4</sup> Le Roy, *et al.*, 1996; Mathieu, *et al.*, 2003; Mathieu, 1996; Hesseling, *et al.*, 2005; Delville, 1998; Hesseling and Ba, 1994

1997; Mathieu, 1996; 2001; 2003; Hesselings, *et al.*, 2005; Coulibaly, 1997a; Delville, 1998) and land disputes (Crousse, *et al.*, 1986; Coulibaly, 1997b). Most stress the limited impact of official African legal systems and the limitations of public policies, and analyse the various factors involved in conflicts.

How and why? These questions require identification of various ways that tenure can be safeguarded and the reasons they are chosen. In this context, decentralized management of land and natural resources is often seen as a solution (Delville, 1998; 1999; Djiré, 2004b; 2005b; Djiré and Dicko, 2006).

Since formalization of the various acts concerned with land tenure is at the heart of land policy debates, the issue is addressed by a number of works, albeit from sometimes opposing points of view (De Soto, 2000; Van Der Molen and Lemmen, 2004; Djiré, 2005a; AOPP, 2006). In this category, special mention should be made of the study conducted by the International Institute for Environment and Development (IIED) in various regions of Ghana, Ethiopia and Mozambique (Kanji, *et al.*, 2005) that examined how the poor in these three countries are affected by the process of registering land rights.

**Poverty.** This paper sets out to identify the various factors that facilitate or hinder access of the poor to land and natural resources, starting with case studies. However, inasmuch as poverty is a generalized and multidimensional phenomenon and there is no unanimity on its definition, how are the poor in rural Mali to be identified? Studies conducted on this subject distinguish three forms of poverty: i) monetary or income-related poverty; ii) poverty of living conditions and iii) poverty of potential. The first refers to an insufficiency of resources, resulting in insufficient consumption; the second refers to shortfalls in the spheres of food, education, health, employment and housing; and the third refers to a lack of capital in terms of access to land, equipment, infrastructure, credit, employment, etc. The third category is the one that includes insecurity of land tenure.

Some 88 percent of those considered poor in Mali live in rural areas, and poverty affects many more women than men. Given that the vast majority of the rural population is poor, the issue of land tenure will thus be addressed in the twofold perspective of security of tenure for rural inhabitants in general and for vulnerable groups in particular.

A review of the literature was conducted for this study to clarify the concept of land tenure security and identify vulnerable groups requiring protection. The issue of access to land and natural resources was addressed through i) cross-analysis of domain and land tenure legislation and, ii) the empirical material gathered during previous research. This research was carried out using anthropological and socio-juridical methods (Hesselings, *et al.*, 2005) including participatory observation, interviews with stakeholders, case studies, examination of administrative files and analysis of juridical texts. The choice was made to present a number of cases in order to illustrate the various scenarios. Some cases also include complementary field research.

The discussion of the issues has two main focuses. First, it looks at the various modes of access to land and natural resources and their effects on the tenure situation of the poor and vulnerable groups. Second it considers ways of ensuring secure tenure for the poor and vulnerable groups. The study concludes with a reflection on the details of the various solutions.

## **2 MODES OF ACCESS TO LAND AND NATURAL RESOURCES, AND THE TENURE SITUATION OF THE POOR AND MARGINALIZED GROUPS**

Access to land and natural resources in rural areas is marked by dynamics that are sometimes complementary and sometimes conflicting, e.g. the coexistence of customary rights and statutory law, and the development of an informal land market. These various dynamics influence one another and have mixed effects on the land situation of the poor and other marginalized groups.

### **2.1 Customary rules: local norms fostering the exclusion of women and immigrants**

Customary law is the most widespread mode of land administration in rural areas. It is defined by social organization, usually based on hierarchical principles of kinship, gerontocracy, seniority, indigenoussness and gender, to the disadvantage of women (Djiré, 2005b). With regard to land, these principles render precarious the rights of women, young people and immigrants who, together with the monetarily poor, constitute vulnerable groups.

Land was initially occupied when communities or villages were founded or following conquest. After this, inheritance, gifts and loans and, to a lesser extent, leases and sharecropping became the main customary means of access to land. As a rule, farmland is the property of lineage but, with time and demographic growth, families within the same lineage have expanded and split up and land often has been divided among the new family units. Family land is divided among the male members of the family and handed down from father to sons, with the oldest son being responsible for its administration.

Immigrants are the first group excluded from customary land ownership. Traditionally, in places with little pressure on land, outsiders have had access to land through loans or gifts. Guardianship relationships are established to varying degrees between the immigrant family and the lending or donor family. However, when a conflict breaks out between the immigrant and his “guardian”, or when the latter or his heirs find a purchaser for the lent land, they can evict the immigrant from the plot. Such withdrawals are facilitated by the grey area between traditional loans and gifts of land. In the absence of formalized land deeds, land rights based on loans can be challenged at any time. However, certain cases observed in the field show that prolonged and unrestricted use that permits them to make improvements, particularly to plant fruit trees, can enable immigrants to gain access to customary land ownership (Djiré, 2005b).

The situation of transhumant nomadic herders or herders residing in sedentary zones is generally similar to that of immigrants, but with certain differences. Animal husbandry has traditionally been the chief economic activity in the northern regions. This includes extensive livestock production and transhumance from home grazing territories to other regions (generally in the south) where the climate is more favourable. In these latter areas, the herders negotiate livestock routes and grazing lands with the local population. Successive droughts have led some herders to settle permanently in these areas, and their relations with the local farmers are marked by conflict, negotiation and renegotiation. Although herders often have large herds, they cannot be considered poor, at least in monetary and potential terms. However, they do appear to be marginalized. Until recently, the absence of grazing legislation rendered their situation precarious. As landless outsiders, they depended – and still depend in many zones – on the goodwill of sedentary farmers for access to grazing lands and watering points.

Intra-family and inter-generational management and the current mode of inheritance exclude women from customary land ownership and sometimes infringe on the rights of younger brothers. In many zones, women are considered potential members of an outside community



(both by their family of origin and the family of their husband) and are therefore barred from inheriting land in order to avoid passing part of the family assets to another lineage or an outsider family. They have access to land through loans of unspecified length, but such land can be withdrawn at any time.

In some zones, inter-family and especially inter-generational management leads to violation of the rights of the younger siblings, since the administrator of lineage or family land (the father or eldest brother) can alienate part of the property without the knowledge of the other rights holders.

However, the above mentioned violations of vulnerable groups' land rights are simply possibilities. In certain circumstances, the violations can be prevented by local control and negotiation mechanisms – although such mechanisms are being eroded as a result of a number of factors.

## **2.2 Statutory law: laws of equal access hampered by bureaucracy and cumbersome procedures**

Statutory land law is based on the “principle of domain”, which affirms the state’s monopoly over land management in the name of national unity and the need for economic development. Like previous land legislation, the 2000 Domain and Land Tenure Code stresses in its first article that the Malian national domain encompasses the airspace, the surface and everything beneath the surface of the national territory.

The national domain is made up of the public and private domains of the state and local communities, and the land assets of other natural or juridical persons that are the object of a title deed (a definitive official ownership title).

The public domain is composed of areas classified as such by the law including, *inter alia*, rivers, forests, quarries and water sources. Sectoral laws define modes of access to the resources of this domain. In most cases, their use is subject to obtaining a permit and paying rent. Even if the legislation recognizes customary local resource management agreements and the priority use rights of local inhabitants, it guarantees equitable access and does not institute gender-based discrimination.

The private domain is composed of all land that is not the object of a title deed. There is, thus, an assumption that all unregistered land is the property of the state. Rural land over which customary rights are exercised falls into this category. In this case, “customary rights” refers to customary land ownership, in other words a collection of prerogatives and real rights exercised over land by an individual or a group of individuals in virtue of customary rules. Although small farmers who hold customary rights consider themselves the legitimate owners of the land they farm, in terms of the law they merely exercise use rights. They do not have the right of disposal because an actual title deed is the only proof of ownership rights recognized in Malian courts. All related transactions (sale, gift, lease, mortgage, etc.) must be carried out by a notarized deed.

The new Domain and Land Tenure Code places land held on the basis of customary rights in the private domain of the state while also recognizing that such rights have major juridical value. In Article 43, it not only confirms customary rights exercised individually or collectively over unregistered land, it also states that no person or community can be dispossessed of his, her or its customary rights except for reasons of public utility and upon receipt of fair compensation. When these customary rights provide for regular usage or exploitation of the land, they can be

granted to the benefit of any third party or transformed into ownership rights to the benefit of their holder (Article 45). Following a public inquiry during which all parties are heard, customary rights can be the object of a title valid against third parties. At the same time, the state sets limits on the exercise of said rights. When customary rights do not entail clear and permanent control of the land, they cannot benefit from the various effects listed and cannot be registered. Specification of this condition helps to curb the sometimes exaggerated claims of customary communities. Moreover, by refusing to recognize full ownership of such land by rights-holders, the state is in a way preventing land-grabbing by the customary elite.

Apart from customary rights, which constitute initial tenure and use rights, the law indicates other modes of access to land, for example rural concession and transfer by the state (leading to the issuance of a title deed). Rural concession is a temporary right of use of a piece of rural land granted by the state. It is a provisional title authorizing the beneficiary to carry out improvements depending on conditions laid down in the concession deed. It may be granted in two ways: allocation of a plot in a subdivided or developed rural area, and formalization (through the concession) of a “rural allocation”, for example of a piece of land acquired from local people through an informal transaction.

Allocation. In the first case, the subdivision is carried out after a public inquiry at which all parties can be heard. The customary owners of the land that is to be subdivided are identified and compensated. A map of the subdivided area is drawn up by the Rural Works Department, and the prefect then allocates concessions to interested parties who apply. The procedure is not so lengthy here. The grantee “purchases” a concession deed and has the Rural Works Department issue an extract of the subdivision map indicating his plot.

Formalization. In the second case, the public administrative inquiry at which all parties can be heard is held before the rural concession is granted. If the inquiry does not reveal the existence of customary rights over the land in question, or if the holders of recognized customary rights have expressly renounced them in favour of the applicant (in an attestation certificate), the concession is granted. Many “purchasers” stop at this first stage.

However, since the law makes provisions for transforming a rural concession into a title deed (a definitive certificate of full ownership), some holders undertake this second stage, which entails the following operations:

- registration of the land in the name of the state, fully disencumbering it from customary rights and confirming the state’s ownership (until this point, the state’s ownership of unregistered land is only assumed, it becomes a reality with registration);
- public demarcation of the plot with boundary markers by a licensed surveyor and the issuance of an official certificate attesting to the boundary marking;
- settling of any dispute amicably or in court;
- verification of the value appraisal of the plot by a commission;
- if the appraisal is judged sufficient and in line with the concession deed, fixing of the transfer price by the Land Office;
- conveyance (transfer) of the title deed into the purchaser’s name after payment of the sum fixed;
- entry of the various operations in the registers and issuance of the title deed.

The Domain and Land Tenure Code lays down a number of measures intended to ensure the transparency of registration and boundary-marking procedures: insertion of notices in a newspaper authorized to publish legal announcements, notification to the Public Prosecutor (District Attorney), display in the offices of the court and at the town hall, and informing of local inhabitants.

Transparency measures surrounding the registration and boundary marking procedures are reinforced by various operations intended to ensure the authenticity of the title, together with many provisions that hold the property holder responsible for any breach of the law, errors and omissions. However, in practice, breaches and evasions of the rules laid down are sometimes observed. Such occurrences have the effect of vitiating or weakening the procedures and infringing the land rights of certain villages or rural families.

In general terms, the impact of state law and procedures is curbed by a number of factors, including difficulties of access to justice for rural inhabitants, the incomplete and disputed nature of the legislation, and the cumbersome nature of the bureaucratic procedures. The legal texts are generally incomprehensible to ordinary people. In addition, they are written in French, the official language, which is not understood by the vast majority of the population. There is also the handicap of distance, inasmuch as land conservation departments and magistrate courts are located only in urban centres, while courts of appeal are located in certain regional capitals, and the Supreme Court is in Bamako. Moreover, full enforcement of provisions concerning customary rights is hampered by the lack of a decree defining the forms and conditions of the procedure for their verification. Thus, practices of access to land ownership are in a context of considerable legal ambiguity as they move from an initial informal status to legality.

Based on a study financed by IIED under the Changes on Land Access, Institutions and Markets in West Africa (CLAIMS) research programme (Djiré, 2005a), this paper uses various case studies in the Kati District and Sanankoroba Rural Commune as a starting point. The case studies illustrate how the long and complex process of access to land ownership can lead to various violations and evasions that, in turn, affect the credibility and solidity of the titles issued. Moreover, the official procedures are based on mechanisms unknown to most of the rural population and entail costs that exclude these people from land ownership.

Violations and evasions of the law can occur during the procedures for granting rural concessions, their transformation into title deeds or their registration in the land book. The Nienguen Koro and Nienguen Coura example in Box 1 (Djiré, 2004a) illustrates the irregularities and defects that can be involved in preparatory operations for the granting of rural concessions.

#### **Box 1**

##### **Subdivision of the Nienguen Koro and Nienguen Coura plain: an irregular administrative act leads to major insecurity of land tenure**

Nienguen Koro and Nienguen Coura are two villages in Sanankoroba Rural Commune, located 60 km from Bamako. A vast plain separates them from the River Niger. In the second half of the 1980s, the government started to subdivide the plain without involving all the villages in the area. The parcels were subdivided into four zones:

- a servitude zone for the oxbow, \* forming part of the public domain;
- a zone reserved for the resettlement of peasant farmers from Nienguen Koro and Nienguen Coura villages;
- a zone reserved as a “vital domain” for the fishermen of Goungoundjou hamlet (falling under Nienguen Koro village);
- a zone intended for distribution to third parties (farmers, herders, foresters and other citizens not living in the two villages).

Although this proposed division appeared to offer a fair and rational distribution of parcels, that was not the case for all stakeholders. There was a lack of transparency in the subdivision operation – it was carried out with the participation of the leading inhabitants of Nienguen Koro who were the only signatories of the decision. The inhabitants of Nienguen Coura, who were left out of the process and unaware of the existence of any administrative subdivision, removed all the boundary markers set up in areas that they normally used.

The way in which this subdivision was carried out has led to many conflicts between the two villages. When the third party users – mainly business people and civil servants from urban areas – tried to take possession of the plots allocated to them, they were prevented by the inhabitants of Nienguen Coura who believed that their land had been sold by their neighbours to the district commander, who had then reassigned it to people from Bamako.

\* Oxbow is the U-shaped bend in a river.

With regard to the procedure for granting rural concessions, it should be noted that the large number of applications creates a constant logjam at the prefecture and in the technical service departments concerned. The wheels often need greasing in order to speed up the processing of applications. Since success requires close follow-up, applicants normally use the services of intermediaries. However, the collaboration between these brokers and the various officials responsible for processing applications tends to turn into something closer to collusion, which may foster dispatch in the procedure, but does little for its legal propriety. The weakness of controls leads to skimmed procedures, so that two titles are sometimes issued for the same plot. Monitoring of five cases that were part of the CLAIMS study found that minutes of inquiries had been signed by village authorities although proper consultations had not always taken place. It also found one case in which public notice of the concession application was published only the day before the inquiry and, in another case, a few days *after* it.

The various anomalies observed give the impression that purchasers of land titles are more interested in having official documents that can be used against third parties than following procedures intended to ensure their legality. Accepted as long as they are kept discreet, these anomalies seem structural and in certain cases infringe upon the rights of rural inhabitants. They are based on an attitude in which respect for rules and regulations is subordinated to kinship, clan-based or client relations. These practices work to the advantage of the urban elite (civil servants and businessmen) and to the disadvantage of rural inhabitants.

Certain practices observed in the keeping of land books also constitute infringements of legal prescriptions. For example, in some books, the date of signature by the President of the Court is after that of registration of the first title.

These anomalies, for example signing after the register has been started, are not necessarily the result of any real intention of malpractice – although they certainly open the way to such actions. Often they merely indicate a wish to find practical solutions to problems posed by the complexity of the procedure. Staffing seems to be far from sufficient in view of the number of applications to be processed and staff members are, for the most part, poorly trained.

A wide range of departments takes part in the process of obtaining a title, a fact that further lengthens and complicates the whole process. In addition, the relatively high cost of the various procedures excludes most small farmers from land ownership.

## Box 2

### The cost of a title deed in Sanankoroba

On average, the title deed to a 1 ha plot in Sanankoroba Rural Commune costs CFAF 959 990. If a broker is involved, the cost will be even more.

In a study of five cases, the broker asked for CFAF 350 000 per ha to obtain a favourable decision on a rural concession and a further CFAF 325 000 in order to obtain a title. In these five cases, the cost of a title deed to 1 ha of land acquired through “local allocation” equals CFAF 1 100 240 or the total of broker’s fees (CFAF 675 000), price of title transfer by the state (CFAF 360 000) and registration fees, stamp duty and conveyance fees (CFAF 54 000, 6 000 and 5 240 respectively). This does not take into account the preliminary costs of acquisition or initial demarcation of the plot.

\* 1 euro = roughly CFAF 655.55.

The relatively high cost of the various procedures *a priori* excludes most of the rural population from full land ownership. Figure 1, based on a sample of 268 of the land titles issued as of September 1999, breaks down the distribution of land titles in Sanankoroba Rural Commune by socio-professional category. Officials (civil servants 16.03 percent, public agents 24.26 percent) occupy first place with a total of 40.29 percent, followed by the state itself (35.44 percent) and private businessmen (19.40 percent). Last come private organizations (1.88 percent), small farmers (1.49 percent), craft workers (0.75 percent), retired people (0.37 percent) and students (generally proxies for parents who hold several titles: 0.37 percent).

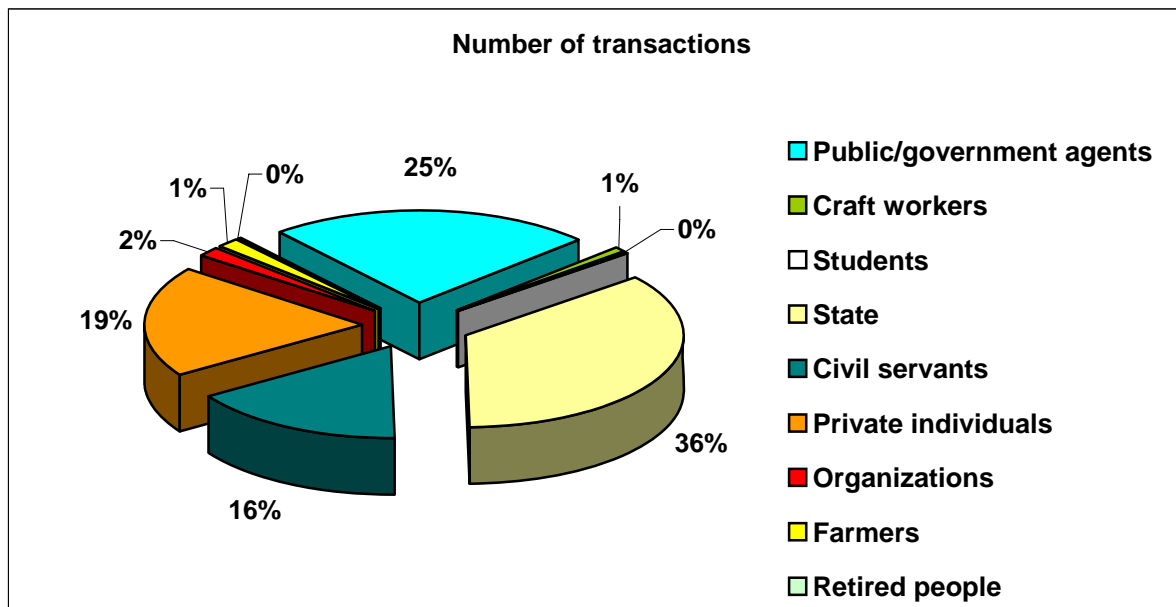


Figure 1 Distribution of title deeds according to socio-professional category in Sanankoroba Rural Commune (Djiré, 2005a)

### 2.3 Development of commercial transactions: a source of financial resources for vendors, but a threat to the rights of vulnerable groups

Although in the relatively recent past, immigrants could acquire land in rural areas by offering the customary owners some cola nuts, this is no longer the case, especially in zones with strong pressure on land. Starting in the second half of the 1970s, and increasingly so since the late 1980s, immigrants have had access to land through commercial transactions. However, the number of such transactions in a given zone depends on several factors such as its proximity to urban or semi-urban centres, the existence of development schemes or new settlements and the expansion of cash crops.

Nevertheless, these transactions remain basically informal, even if at various levels the administrative authorities are applied to for certification of the documents drawn up. They do not lead to full ownership in the legal sense, but entail an informal transfer of customary rights. In practical terms, this transfer paves the way for an official upgrading of these rights.

The existence of a land market can facilitate access to land ownership for anyone with the financial means, including women and immigrants. Moreover, the sale of land can produce financial resources for the vendors. However, it also has negative effects on vulnerable groups. The sale of land by the family administrator, sometimes without the knowledge of the other rights holders, especially younger brothers, deprives the latter of their legitimate rights and may jeopardize the prospects of future generations. It leads to the privatization or destruction of

forest resources on the alienated land. In most cases, the land is purchased by urban inhabitants or Malians living abroad with a view to establishing farms and orchards to grow citrus fruit. The purchased land is cleared and the wild trees uprooted. However, women from nearby villages would have been obtaining income by gathering the fruit of these trees (especially karité, locust beans and tamarind). Lastly, the land sold is generally fallow or lent out to third parties, particularly women and immigrants. The sale of such land thus leads to the eviction of the farmers. The Banko case study illustrates some of the effects of land sales.

**Box 3**

**Eldest brother harms family with a land sale in Banko**

Banko, population about 1 000, is a Malinké village in Sanankoroba Rural Commune situated on the banks of the River Niger about 30 km from Bamako. Its proximity to the capital means that the village land is much sought after. Two successive subdivisions carried out by the state in the 1970s placed many rural concessions at the disposal of people from Bamako, but were not able to satisfy the demand for land.

Zantigui (a fictitious name), the villain of the piece, is the eldest of six brothers who, collectively, inherited about 30 ha of arable land. Two of the brothers live in Bamako and the other three live abroad. Zantigui farms about 10 ha with his sons and nephews. One of the brothers who lives in Bamako farms 1 ha. The rest of the family land is lying fallow or has been lent to acquaintances. Zantigui wanted to sell part of the land, but was sure that his brothers would oppose the idea, since their father had warned them against the temptation to sell the land. So, without letting his brothers know, Zantigui sold 12 ha to people from Bamako for CFAF 300 000 per ha, making a total of CFAF 3 600 000. He used some of the proceeds to improve the living conditions of his family, and invested the remainder in farm equipment. He fenced off a plot beside the river and started growing intensive commercial crops in a small garden. When his brothers learned what he had done, they objected strongly and the family was on the verge of imploding. Family unity was maintained only through the mother's mediation and tears, helped by the healing effects of time.

The sale has clearly had collateral effects, such as the eviction of two landless families who were farming part of the land in question and the uprooting of wild trees on 4 ha, which is likely to lead to a loss of income for the women who used to gather karité nuts in this zone.

The case clearly shows that the land sale transaction allowed Zantigui to acquire capital – a kind of investment fund that he could never otherwise have obtained. It also shows that surplus land resources can be sold to finance productive investments. Nevertheless, such a transaction should be carried out in a transparent manner and with the agreement of all the rights holders. However, such guarantees are hard to establish when the law of the market rules and in the absence of public regulation.

All of these cases illustrate that the existing modes of access to land are not capable of guaranteeing security of land tenure for the poor and marginalized groups. Other solutions need to be invented, but in a framework that takes into account the various dynamics currently at work in the country.

### **3 SOME WAYS OF SECURING LAND RIGHTS FOR THE POOR AND OTHER VULNERABLE GROUPS**

“Innovate without destroying everything!” This solution, proposed by J. Vanderlinden (2000) to solve the problem of teaching law in Africa seems an appropriate approach to securing tenure for the poor and other marginalized groups in rural areas. The existing legislative and regulatory provisions and local land tenure practices harbour positive elements that can and should be consolidated in order to achieve the desired security.

### 3.1 Promotion of local resource management agreements and regulations guaranteeing rights for all users

A local resource management agreement can be defined as any written or unwritten agreement between two or more local stakeholders, especially social groups, local government, technical departments and NGOs. It lays down rules for access to and use of land and/or any natural resource (Djiré, 2004b).

An analysis of the possibilities of local resource management agreements in Mali (Djiré and Dicko, 2006) concludes that such agreements constitute, for example, appropriate instruments for consensual regulation and sustainable, equitable co-management of land and natural resources. Properly applied, they take into consideration the rights of all users, including marginalized groups such as women and immigrants. These conclusions are confirmed by another study on capitalization carried out with a team from IC Sahel, a Swiss NGO supporting development (Djiré, *et al.*, 2006).

#### Box 4

##### The case of the Yorosso rangeland management guidelines

Yorosso District is situated in Sikasso, Mali's third administrative region bordering Burkina Faso and Côte d'Ivoire. It has a relatively favourable climate for animal husbandry and is a transit zone for transhumant herds moving toward Burkina Faso. Successive dry seasons in the north of Mali have led some Peulh herders to settle in the district. At the same time, a number of farmers have invested income from their cotton crop in livestock. These factors have moved pastoralism to centre stage with regard to socio-economic development of the district, particularly in view of the conflict between immigrant herders and indigenous farmers. The access of immigrant herds to grazing land and watering points is hampered by unregulated clearing and fencing put there by settled farmers.

Against this background, in the second half of the 1990s the Peulh herders from Yorosso formed a cooperative and applied for support from IC Sahel's Sustainable Natural Resource Management Project. The ensuing dialogue among the various users of the land and rangeland resources led to the idea of designing rangeland management guidelines for the district. The process was based on the establishment of local resource management agreements and the implementation of development and management plans in the various communes.

During consultations held according to geographical zone, sets of rules were drawn up for rangeland resource management for the various groups of communes. These rules cover the definition of transhumance corridors, widths of secondary tracks, regulatory distances between fields and watering points and the choice of sites for rangeland infrastructures and management of the latter. They also allowed the various groups of communes to reach an agreement on a rangeland area. The results of the local consultations were approved at a major forum held in December 2000. Each territorial unit (communes and district council) then adopted the necessary regulatory measures for implementation of the rangeland management guidelines in its area of jurisdiction. Appropriate support and supervisory measures were defined and implemented, encompassing the training of stakeholders and the construction of watering points, vaccination yards, reservoirs, livestock markets, etc.

Despite its limitations and shortcomings, the Yorosso case has many achievements to its credit. It led to establishment of an appropriate methodology for identifying all the rangeland issues and for consensual definition of rules and mechanisms for rangeland management and conflict management. It also led to the organization of local stakeholders and the inception of major technical initiatives.

However, one of the most important achievements has been improvement in relations between indigenous groups and immigrants, with more equitable access of the latter to rangeland resources. Conflicts still exist, but most of them are solved through local arbitration mechanisms.

In addition to benefits for herders, women in some communities have benefited from the support measures for the rangeland management guidelines. For example, the Hybrid Pumping, Pastoralism and Environment Project in Karangana Rural Commune established a market garden area worked by the village women that has brought a considerable increase to their incomes

Although local resource management agreements generally concern the management of natural resources, some, such as those in Banko and Siby, deal exclusively with land management. The Banko agreement, detailed in Box 5, prohibits the sale of land in a sensitive zone and thus safeguards a strategic resource or the benefit of all the villagers, men and women, poor and less poor, alike.

**Box 5**

**The Banko local resource management agreement**

According to a prominent Banko inhabitant, its proximity to Bamako is a kind of curse. The village is subjected to all the vices and temptations of the city, but draws no advantage from it. Moreover, its land is much sought after by people from the city. The large plain lying between the village and the river is particularly sought after by senior officials and rich businessmen from the capital.

Aware that land alienation in this zone entails the risk of having outsiders settle between the village and the river, the village authorities decided to prohibit sale of any land. In 1987, at the suggestion of people from Banko who live in Bamako, a meeting was held for representatives of all the families in the village and the decision was taken that made the plain the common property of the whole village. Each family continues to use the plot it has traditionally occupied, but does not have the right to alienate it.

The measure is effective and is rarely breached. If a contravention does occur, the village uses every possible means to prevent the purchaser from taking possession. No bill of sale relating to land in the plain can obtain the signature of the village chief or a councillor. Several rich businessmen and senior officials have experienced the effectiveness of the measure.

### 3.2 Negotiation and formalization of collective rights for vulnerable groups

To counter the trampling of women's rights by customary landowners, some NGOs, such as the Malian Association for Promotion of the Sahel (AMAPROS), have launched successful schemes to settle groups of women on plots of land, negotiating the land transfer with the traditional administrators. The AMAPROS case, detailed in Box 6, is from the village of N'dogosso in Fatinè Rural Commune, situated in Ségou District and Region.

**Box 6**

**AMAPROS support to the women of N'dogosso**

AMAPROS is a national NGO that supports disadvantaged groups. Founded in 1988 by a group of young professionals, it intervenes in the fields of education, health, the environment, microcredit, the promotion of human rights and sustainable agriculture.

N'dogosso, population of 1 157 and located 120 km from Ségou, has economic activities in agriculture, livestock production and fishing. The inhabitants, particularly the women, are very poor. Following a request from the villagers in 1998, AMAPROS offered support to the village to build capacities and improve incomes. Under a specific project component, women receive training and form groups to work market garden plots. One of the groups, named *Benkadi* which means "good understanding", negotiated with the village chief who agreed to allocate land. A deed of transfer was signed to this effect, and *Benkadi* members started to work the land with AMAPROS' support. AMAPROS drilled a well, provided training in literacy and horticultural techniques, and supplied inputs and various types of equipment.

*Benkadi* membership is open to any woman from the village who wishes to join. Its 95 current members pay a symbolic annual subscription of CFAF 50. Each member works an individual plot on the collectively owned parcel. At the start of the project, the women concentrated on growing vegetables such as onions, cabbages, tomatoes and beets, but difficulties over yields and market disposal of these crops led to a switch to bananas, papaws and citrus fruits. The women interviewed during the study expressed their full satisfaction.

***Testimony of Astan Tangara, President of the Benkadi Group***

*We see this project as a gift from God. It has changed our living conditions in a few short years. Our income has improved considerably. Thanks to the sale of papaws and bananas, we are able to meet our needs and even help our husbands. Some of us have been able to save and make investments. I have personally bought a horse with my savings (on the local market a horse costs between CFAF 250 000 and 300 000). Some members have bought donkeys and carts, and others*



*have started fattening small and large ruminants. Even our diet has changed. Before we knew nothing about bananas and other vegetables, but today everybody eats them. At the beginning, we worked 1 ha, but then we were able to add another half ha. We have to face two problems: a shortage of water during the dry season because of the drying up of wells, and the defective condition of part of the fence.*

The sincerity of this testimony is corroborated by the great serenity visible on the faces of the village women and also by their clothes, which are as good as those of their city sisters.

In the N'dogosso case, the negotiation of collective rights led to security of land tenure for women, since nobody would dare evict all the women of the village from the land allocated to them. Moreover, this security is reinforced by the existence of a document showing the transfer of the land free of charge. However, it must be kept in mind that access to land, or even its ownership, constitutes only a potential means of reducing poverty. Fulfilment of this potential is reached with investment and improvement, as illustrated by the women of N'dogosso.

### 3.3 Formalization of land transactions

The grey area that exists between traditional loans and gifts of land can sometimes lead to brutal revocation of initial agreements. Moreover, land sales are not always carried out transparently, so transactions are often challenged by certain rights holders. Those purchasing land are thus increasingly keen to regularize their transactions in writing. A deed of sale is a private agreement, bearing the signatures or fingerprints of the two parties and two witnesses. If the purchasers deem it necessary, they may have the document “legalized” at the town hall or the sub-prefecture. In some villages, especially those distant from commune headquarters, sales are reported to the village chief.

The level of education of the writer dictates the content and form of the document. In general, the vendor acknowledges ceding, selling or giving a piece of land to the purchaser, with the geographical location and total area being indicated. In Sanankoroba, brokers fill in standard forms that the two parties and the witnesses sign in order to regularize deals for which they have acted as intermediaries.

“Legalization” by the administrative authority constitutes *a priori* certification of the vendor’s and the witnesses’ signatures. The signatories’ identity card numbers, professions and addresses appear on the document and are recorded in a register. Whether certified or not, the document has no cast-iron legal force and cannot be imposed on third parties. However, in the event of dispute, it may, in principle, be useful in an appeal by the purchaser. When the sale is disputed by rights-holders, the purchaser may sue the vendor in order to obtain a refund or compensation. The document then serves as evidence and, in this case, can be used in support of legal proceedings for fraud.

In most cases, written formalization takes place on the initiative of the purchaser in order to secure the purchase. However, these written documents are not particularly intended to protect the weakest. There are other forms of formalization intended for this purpose. The main one is certificates of land transfer to women’s groups. The transfer document, signed by the customary administrator, the village chief or lineage chief and two witnesses, testifies to the transfer of customary property and in principle makes any later withdrawal impossible.

People increasingly feel the need to formalize transactions (Mathieu, 2001; Mathieu, *et al.*, 2003). Formalization is particularly called for by farmers’ associations (AOPP, 2006) and is provided for by certain local resource management agreements, such as the 2004 local

agreement on land management signed by 18 communes from Kati and Kangaba Districts. This agreement deals mainly with local land transactions (loans, gifts, customary pledges, rentals and sales) and the coexistence of indigenous groups and transhumant herders in an approach based on the principle of subsidiarity.<sup>5</sup> In seeking to promote local land management rules and in particular to strengthen their legal reliability and security, all land transactions are now made in writing (customary authorities have been provided with models) and are declared at village and commune levels.

These cases constitute a solid starting point for the gradual establishment of a simplified formalization system accessible to rural inhabitants. Such a system could be based on three elements: witnesses well-known in the locality, standardized forms that take into account the wide range of local transactions, and registration with the local authorities (village council or town hall). This formalization of transactions clearly distinguishes the various acts concerned in land transfers, reduces conflicts caused by the confusion between loans and gifts of land, and makes the new practices of monetary transactions more transparent.

### **3.4 Facilitation of rural inhabitants' access to justice and improvement in existing registration arrangements**

Despite the inadequacies of the Malian judicial system, practical experience shows that, in some cases, it can serve to protect the land rights of vulnerable groups. Although the official system for the recognition and registration of land rights is not intrinsically anti-poor (Kanji, *et al.*, 2005), it does need major improvements if it is to benefit vulnerable groups.

#### **Using the possibilities of state law to improve access to land and natural resources for the poor and other vulnerable groups**

As the case in Box 7 illustrates, the national judicial system can act as a shield for groups marginalized by customary practices.

##### **Box 7**

###### **When a citizen seeks protection “under the shadow of the law”**

Several years ago, when N'toba Samaké, a large landowner from Dialakoroba, died, he left a widow, four daughters and extensive land, but no direct male heir. His cousin, Seydou Faoulé Samaké, declared himself the heir and, on this basis, sold 58 ha of the dead man's land, leaving the widow in abject poverty. After mediation by the council of elders and the town hall had failed, the widow's eldest daughter, Sokona, filed a complaint with the Ouélessébougou Court on 2 May 2002.

The village chief and several prominent villagers wrote to the judge, warning him against taking any decision that could be construed as recognizing women's right to inherit. After several postponements, the case went for trial in December 2002 in the Ouélessébougou Civil Court before a Justice of the Peace with extended jurisdiction.

In his ruling, the judge declared the case brought by Sokona Samaké, representing the heirs of the late N'toba Samaké, to be valid. He sentenced the defendant Seydou Faoulé Samaké to return 8 ha of arable land in the part under contention.

The judge's ruling was based on the argument that sale of the land had abrogated its customary status and rendered it a patrimonial right, having a monetary value such as any other patrimonial right, and hence capable of transmission to all rights holders whether male or female. Sokona received the 8 ha, which she sold, and continued to support her mother until the latter's death (Djiré, 2004a).

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<sup>5</sup> Subsidiarity refers to the idea that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level.

Despite the limited nature of this ruling, it was a major advance in terms of women's access to land through inheritance. It was made possible by the existence in the village of people who sided with the widow and her daughters and who believed that a fair judicial ruling was possible. The necessary support could have been provided by any free legal assistance organization, but such organizations are not common in Mali. The few legal clinics that do exist are found in the capital. A public awareness campaign and legal assistance system for rural inhabitants need to be designed and set up. Apart from consolidation and expansion of the practice of legal clinics, use could also be made of the thousands of jobless law school graduates, who could carry out legal public awareness campaigns under the direction of local jurists.

### **Making provisions concerning the verification and registration of land rights operational**

The land register provides what might be called an “identity card” for land ownership. Its purpose is to record details of ownership, real rights, size, allocation or nature of crops, and a valuation of any built and non-built properties. When Mali attained independence, it chose this registration system and has confirmed the decision in successive legislation. Despite the various reforms introduced, the provisions are still cumbersome and hard to implement in rural areas. If they are to become operational, considerable streamlining is needed.

The new legislation provides for the creation of a land register in each of Mali's 703 communes. Article 2 of Decree 02-113/P-RM of 6 March 2002, establishes how these land registers are to be organized and compiled. Specifically, their aim is to compile administrative documents and maps through:

- inventory of all landholdings;
- recognition and definition of their boundaries;
- verification of any improvements;
- valuation with a view to establishing land taxes.

The land register guarantees land ownership and serves as a basis for major development works. Its compilation must be accompanied by demarcation and boundary marking of public and private properties. In accordance with Article 8 of the Decree, a commission chaired by the Prefect is set up to demarcate and mark boundaries. Apart from representatives of the various government departments, the commission includes a representative of the town hall, village and neighbourhood chiefs or their representatives, a representative of the Malian Institute of Geography and the surveyor in charge of operations.

On completion of this technical work, the owners and holders of real rights receive individual notification of the results of the compilation. A copy of land register maps, valuations and other relevant documents is lodged at the town hall for a month so that all interested parties can examine it. Appeals can be made within the same period to the land register representative, who is available at the town hall on specified days and times. The compiled land register is updated once a year at state expense. Changes are verified either following a declaration by the owner or real rights holder, or *ex officio* by the local government office.

Although these provisions seem satisfactory, their effects are limited by constraints related to (a) the relatively high cost of preliminary registration, (b) the absence of reference to customary rights in the law, (c) the fact that the provisions concerning the land register seem to be concerned more with taxation than increasing security of tenure, and (d) the complexity of the procedures and the probable cost of the operation, indicating that for the moment it is more a declaration of intent. Given the country's current level of socio-economic development and the limited availability of financial, material and human resources, it is uncertain whether the

anticipated demarcation and boundary marking commissions can be established simultaneously in several communes. A less cumbersome structure would have been more realistic. Implementation of the Communal Land Asset Management Project (PAFOC) slightly reduces the apprehensions expressed.

**Box 8**

**Main thrusts of the Communal Land Asset Management Project (PAFOC)**

The Communal Land Asset Management Project, the result of German-Malian cooperation, was designed to develop a reliable land information system to support Mali's communes in efficient and sustainable management of their land resources. Launched in September 2003 as part of a seven-year programme, it supports a pilot phase of the government's programme to establish land registers in every commune in the country. To start, it covers three urban communes (Ségou, Koulikoro and Kati) and three rural communes (Macina, Baraouéli and Markala) situated in two of the country's administrative regions (Koulikoro and Ségou). The project goals are:

- formulation and implementation of amendments to regulatory texts concerning (a) inventories of the land assets of communes and (b) management of land registers, taking local contexts into account;
- boosting the land management capacities of technical experts and senior staff of central and local government institutions and private service providers;
- carrying out a land inventory and establishment of criteria for evaluating land assets in the selected communes;
- use of land information systems by local government offices, decentralized technical departments and service providers in order to meet the needs of communes.

PAFOC is being implemented in two phases.

- Phase I, three years, began in October 2003, focuses on the six communes already targeted;
- Phase II, four years, will focus on extension of the project to other localities.

The total project cost is € 100 000 (CFAF 3 345 380 700). It is funded by a contribution of the Federal Republic of Germany of € 500 000 (CFAF 2 689 423 700) and Malian counterpart funds of € 500 000 (CFAF 393 574 200). The allocated budget for the first phase is € 556 000 (CFAF 1 676 626 092).

While not wishing to judge the results of the project in advance, both its cost and the appropriateness of the decision to use cutting-edge technology such as aerial photography are questionable. Although the aerial and high-precision mosaic photographs, of which it seems so proud, may prove important in compiling the land register, it is equally, if not more, important to put in place a land information system based more on local dynamics and activities that can be understood and carried out by local actors. Large, ambitious projects that rely mainly on outside aid are not always sustainable.

The establishment of an efficient land register should be based on a simplified system for the verification and registration of land rights, taking account of local practices and resources. As a support measure, the provisions concerning customary rights and the various procedures must be completed, simplified and disseminated to the stakeholders. When the official process of wide-scale formalization is launched, it is bound to pose challenges to established orders because certain stakeholders will wish to obtain new rights. With a view to minimizing such effects, it would be advisable to organize a preliminary stage of social dialogue among the various stakeholders and strategic groups, with explanation of what is involved and the major elements of the procedure.

Procedures also need to be simplified and local management encouraged. The shortage of qualified staff could be alleviated by training support staff and thus encouraging the emergence of paralegals and auxiliary surveyors. However, this approach is bound to meet with resistance from the traditional professionals such as surveyors and land registrars.

In any case, when a procedure to regularize and register land rights in rural areas is launched, it is wise to bear in mind the essential differences between urban and rural land tenure. The former concerns relatively small spaces that already have been clearly demarcated for living, craft, trade or industrial use. The latter concerns vast spaces with multiple uses (agricultural, pastoral, residential, fish farming, etc.), where independent, superposed rights are exercised over the same space, all of them legitimate and therefore deserve to be taken into account.

A range of “informal” rights has been negotiated and established in the course of time. This means that any demarcation must prevent private seizure of common resources and take the various interests into account. Establishment of a formalization system must be preceded by an awareness-raising information campaign aimed at all the stakeholders, stressing, for example, the transparency of operations and preventing the exclusion of one section of local stakeholders.

#### **4 IN CONCLUSION: HOW CAN THE NECESSARY REFORMS BE CARRIED OUT?**

Three lessons can be drawn from an analysis of the various elements presented in this study. They deserve to be taken into account in any project seeking to ensure secure access to land and natural resources for Mali’s poor.

##### **4.1 Existing modes of access are not *per se* anti-poor, but do contain factors leading to insecurity of tenure for vulnerable groups**

The customary – and also the most widespread – system of access to land and renewable natural resources in rural areas generally protects the rights of rural inhabitants. However, it also has the potential to exclude women and immigrants from customary land ownership. These groups generally obtain access to land through loans, relatively precarious rights and, more rarely, gifts. As far as statutory law is concerned, placing customary rights in the private domain of the state theoretically offers great potential for safeguarding the rights of the weakest. However, its decision in favour of title deeds and all the ramifications of the procedure to obtain them exclude the vast majority of the rural population, especially the poorest, from full land ownership. Although commercial transactions provide local vendors with financial resources and those rare rich members of marginalized groups with secure access to land ownership, they also can lead to the eviction of women and poor immigrants from land lent to them or even sometimes granted to them free of charge.

There is no simple answer to the question of whether commercial land transactions should be encouraged with a view to fostering the emergence of a land market. In any case, it would be unwise to encourage the appearance of a land market where none exists. The laws of economics teach that a market is an objective phenomenon that comes into being and develops under the influence of interactions between supply and demand. If there is supply but no demand, a market cannot exist. Supporting development of a market in such a case would amount to encouraging speculators to acquire land at low prices and wait for its value to go up.

However, where a market does exist, especially in areas with high demand, safeguards should be established to protect the rights of the weakest such as: official recognition of transactions, establishment of transparent mechanisms for the consultation of rights holders, and formalization of the various transactions. Since none of the existing frameworks is capable of guaranteeing sustainable security of land tenure for the poor and marginalized groups, ways of providing such security need to be invented, always taking into account the various dynamics at work in the country.

## **4.2 There are various ways of securing access to land and natural resources for poor and vulnerable groups**

### **Promotion of local resource management agreements and consensual regulations guaranteeing the rights of all users**

Local resource management agreements offer valid solutions to the multidimensional problems facing land and natural resource management. Based on negotiations and agreements among the various local stakeholders, they seek to respect local rules while guaranteeing secure access to land and natural resources for the various users. They constitute an opportunity for development projects and also allow the prohibition or regulation of land sales in sensitive areas. The government should encourage such initiatives, and obstacles to their success should be removed.

### **Negotiation and securing of collective rights for vulnerable groups**

Attaining sustainable security of individual land rights for vulnerable groups, especially women, is not easy. Thus, these groups should be supported in the negotiation and formalization of collective rights. The advantage of this approach is that it protects them against any later challenges and opens up opportunities to develop synergies with a view to developing the land placed at their disposal.

### **Formalization of land deeds and implementation of provisions concerning the verification and registration of rights**

Farmers' organizations are calling for the formalization of customary land deeds. However, this issue must be addressed from three perspectives: formalization of transactions, registration of the various land rights, particularly customary ones, and transformation of the latter into rural concessions and title deeds. The first secures transactions, the second guarantees customary rights, and the third allows access to full land ownership.

In principle, the first works to the advantage of the two parties to the transaction and deserves to be supported. However, in a context of generalized illiteracy, it can be used to cloak fraudulent activities at the expense of the most vulnerable. The government should, therefore, regulate them and encourage the establishment of local control and registration mechanisms. As P. Mathieu (2001) stresses, "inventive local practices producing new ways of formalizing transactions thus lead to simplified, accessible "informal and semi-formal forms" for the registration of transactions. In this way they help to make land interactions or transactions that are carried out in a complex, changing and uncertain context, more explicit, stable, visible and predictable, and hence providing more security". As practices in some places show, formalization can take place in writing, using standard forms that take into account the wide variety of local transactions, with the certification of a local authority (village chief or mayor) and two witnesses. The document can be registered at the village council and/or town hall level.

Formalization of customary rights through their verification and registration is also needed. However, starting a generalized process of verification and registration of these rights is bound to upset the fragile balance of relations within communities and between communities and others. As long as the stakes are not too high, the various communities accept compromises that are relatively sustainable but may be challenged by a formalization operation. Moreover, to whose benefit would the registration be made? Each rights holder, the family, the lineage or the village? In any case, as the Association of Farmers' Organizations (2006) suggests, family farms should be recognized and granted legal status. Customary rights could be verified and registered for such farms, always making sure that the rights granted to each rights holder are precisely defined.

Since such rights cannot be mortgaged, should their transformation into title deeds not be encouraged in order to facilitate access to credit for customary landowners? There is no wish to deny access to full landownership to the poor and marginalized groups. However, apart from the financial cost of the procedure to obtain a title deed, another rarely considered consequence is the potential tax liability if the government eventually decides to levy a land tax. If such a tax is implemented,<sup>6</sup> it would add a pointless extra expense for a title-holder who does not use the land in question for any high-profit agricultural activity. In relatively underdeveloped zones, it would be worth paying more attention to recognizing and securing sustainable use rights, especially customary rights, which offer almost the same guarantees of security as title deeds.

Inasmuch as the land register is a valid legal prescription, serious efforts should be made to extend its use and streamline procedures. However, its establishment in rural areas should be supported by information and awareness campaigns for the various local stakeholders, and the development of the professions of paralegals and auxiliary surveyors to carry out activities connected with registration and boundary marking. Simple and inexpensive demarcation and boundary-marking techniques should be preferred. Particular attention should be paid to transparency in demarcation and boundary-marking procedures, the dissemination of information, and the participation of all the stakeholders.

#### **Use of the possibilities of state law to improve access of the poor and vulnerable groups to land and natural resources**

The national judicial system and the state law on which it is based offer major potential for guaranteeing access to land and natural resources for the poor. However, this potential is little exploited for a number of reasons, such as inaccessibility to rural inhabitants, intellectually (ignorance of essential juridical and institutional mechanisms), economically (the cost of justice) and geographically (distance from courts). Serious efforts need to be made to disseminate knowledge of the essential provisions of land law and the relative procedures. This can be done in the framework of legal education programmes or through the organization and popularization of free legal advice for the most vulnerable. Here, too, use could be made of the many unemployed young graduates to carry out information campaigns where needed.

### **4.3 Implementation of vigorous support measures**

Securing access to land and natural resources is only one of the possible ways of reducing poverty in rural areas. However, its potential cannot be achieved unless this access is accompanied by adequate support measures, such as providing rural inhabitants with equipment and agricultural inputs, carrying out land improvement initiatives for them, training farmers, facilitating their access to credit at preferential interest rates and restructuring farm produce markets to make them more equitable. In other words, action to achieve tenure security should be complemented by vigorous political, juridical and economic measures in the perspective of the global fight against underdevelopment.

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<sup>6</sup> There is a current debate about instituting taxes on titled freehold land.

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