

CHANGES IN ‘CUSTOMARY’ RESOURCE TENURE SYSTEMS IN THE INNER NIGER DELTA, MALI¹

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1. Introduction

Across rural Africa, natural resource legislation struggles to be properly implemented, and most resource users gain access to resources on the basis of local tenure systems. Although such systems claim to draw their legitimacy from ‘tradition’ and are commonly referred to as ‘customary’ (and for easier reading we will follow this terminology), they have been profoundly changed by decades of colonial and post-independence government interventions, and are continually adapted and reinterpreted as a result of diverse factors like cultural interactions, population pressures, socio-economic change and political processes. Such tenure systems are extremely diverse, possibly changing from village to village. This diversity is the result of a range of cultural, ecological, social, economic and political factors.

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In recent years, failure of early legislative attempts to replace customary systems with ‘modern’ systems of land tenure, and changes in the perception of ‘customary’ systems have led to a shift in thinking. It is now generally recognized that natural resource policies and laws must build on local concepts and practice, rather than importing one-size-fits-all models. This may entail, among other things, legally recognizing local resource rights, which are the entitlements through which most rural people gain access to natural resources. As a result of this shift in thinking, some African countries have taken steps to legally protect customary rights, even where land remains state-owned or vested with the state in trust for the nation (e.g. Mozambique, Namibia, Niger, Tanzania and Uganda). In Mali, while post-independence legislation abrogated customary rights, the Land Codes of 1986 and 2000 (as amended in 2002) legally recognise ‘customary’ land rights and grant them (some degree of) legal protection.

Such shift in thinking and law-making raises new challenges. For instance, important equity concerns have been raised in relation to many customary systems, particularly with regards to gender and the protection of the land rights of more marginalised groups (Whitehead and Tsikata 2003). Such shift also raises the need to ascertain what is happening to local resource tenure systems on the ground. In recent decades, important changes in African economies and societies have taken place, including demographic growth, urbanisation, monetarisation of the economy, livelihood diversification, greater integration in the global economy, cultural change and government action. These factors are likely to have affected, and to continue to affect ‘customary’ tenure systems.

This paper seeks to respond to this challenge. It explores change in customary resource tenure systems and in their relations with statutory law regimes, focusing on a case study from the Inner Niger Delta, Mali. It discusses changes in customary systems for managing grazing and agricultural lands in the delta. The paper is based on joint fieldwork undertaken by the authors in 2006, and on earlier fieldwork undertaken by the second author in 2002-2003. Fieldwork covered five communes in the Inner Niger Delta: Dialloubé, Konna, Ouro Ali, Sio and Youwarou. It entailed semi-structured interviews with customary chiefs, government officials, mayors, natural resource users and other resource persons (officials from national and international development agencies, local lawyers, civil society organisations, and others). It also entailed the collection of documents from government agencies and other sources (e.g. demographic data, court decisions, local agreements for natural resource management). The study also draws on a literature review undertaken by the first author. The literature review

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examined earlier studies undertaken in the delta, and the wider literature concerning the interface between customary and statutory resource tenure in Africa.

The main reasons underlying the choice of the Inner Niger Delta for a study on the evolution of customary resource tenure systems are twofold. Firstly, the site is of great interest because it hosts particularly valuable natural resources and complex systems of overlapping rights and competing resource uses - as explained in the next section. Secondly, customary systems in the area have been studied for decades, which facilitates the analysis of changes over time. In particular, these customary systems were documented in the 1960s (Gallais 1967). And, in the 1990s, the area drew substantial attention from national and international researchers (Vedeld 1994; de Bruijn and van Dijk 1995; Moorehead 1997, 1998; Turner 1999). International interest seems to have subsided over the past few years. However, the establishment of rural communes in 1999-2000 has altered resource management dynamics in the area. Since then, issues concerning the tensions between customary and statutory institutions have been explored by ‘grey literature’ documents - but not much in internationally available publications.

The next section recalls some general characteristics of customary resource tenure systems in Africa, and draws insights from the literature on how government action has affected them. We then briefly discuss changes in the socio-economic and ecological context in the Inner Niger Delta (section 3), and we map out key turning points and changes in the institutional framework (section 4). Section 5 analyses how local resource tenure systems have responded to this evolving contexts, identifying the nature, direction and extent of change in those systems. Section 6 draws some conclusions from this analysis.

2. ‘Customary’ resource tenure and government action in Africa

According to the dominant if somewhat stereotyped view of customary resource tenure systems in Africa, land is usually held by clans or families on the basis of diverse blends of group to individual rights, accessed on the basis of group membership and social status, and used through complex systems of multiple rights. In reality, customary resource tenure systems vary considerably depending on the context. Important differences exist, for instance, between pastoral and farming contexts. The former tend to emphasise collective rights based on negotiated, flexible and reciprocal arrangements that enable herd mobility (see for

instance, on the Sahel, Thébaud 2002). The latter also usually entail collective rights, but typically involve the allocation of farming rights over specific plots by the land management authority (e.g. the ‘chief’) to smaller family units. The nature of these smaller units and of the farming rights they hold vary considerably from place to place. In many cases, farming rights are conditional upon the continued use of the plot. And, while such rights are often inheritable, restrictions usually exist on sales (especially to outsiders), although certain transactions may be allowed (gifts, loans, etc.) and some systems do allow land sales. In addition, considerable differences exist between patrilineal and (in Africa more rare) matrilineal systems, particularly in relation to gender issues and the scope and strength of women’s land rights.

For a given piece of land, customary systems may cater for multiple resource uses (e.g. pastoralism, farming, fishing) and users (farmers, residents and non-resident herders, agro-pastoralists; women and men; migrants and autochthones; etc), which may succeed one another over different seasons. A wealth of institutional arrangements regulate relations between those who first cleared the land (‘autochthons’) and those who currently use it on the basis of an agreement with the autochthons (‘allochthons’, ‘incomers’ or ‘migrants’; Chauveau et al. 2006).

Customary systems are not static, but continually evolving as a result of diverse factors like cultural interactions, population pressures, socio-economic change and political processes. According to the so-called ‘evolutionary theory of property rights’, for instance, population pressures and increased land scarcity tend to push towards a transition from communal to more individualised rights and towards the emergence of monetarised land transactions (Boserup 1965; for a critique, see Platteau 1996; Chauveau et al. 2006). In much of the Sahel, customary resource tenure systems have been influenced by Islamic law. Colonialism also had a major impact on many customary resource tenure systems across Africa, as local groups and individuals as well as the colonial administration manipulated customary law for their own ends (e.g. Chanock 1985). And, in the processes of social and economic transformation that are underway in many parts of Africa, ‘custom’ is being reinterpreted and ‘reinvented’ (Ranger 1983), with different actors using different interpretations of different bits of customary law to support their competing claims.

Colonial and post-independence government interventions that have affected local resource access relations include land nationalisation and centralised resource management, land registration programmes, devolution of resource management

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responsibilities to local government bodies, and many others. The implementation and the intended and unintended outcomes of these government interventions are function of the interplay between the many actors involved (from government officials to development agents to local farmers; Berry 1993), and of the way those interventions have been anticipated, reinterpreted and manipulated at the local level (see e.g. Lund 1998; Lavigne Delville et al. 2001). Government attempts to formalise ‘custom’ through codification and/or through enabling courts to apply it tended to distort the content of customary law (e.g., on male-biased interpretation of custom in Kenya, see Mackenzie 1998), and led to a gap between the ‘juristic’ re-elaboration of customary law used by lawyers and courts, and the customary rules followed by resource users on the ground (e.g., on Ghana, Woodman 1996; Date-Bah 1998). In many parts of Africa, the colonial and post-colonial integration of chiefs in the state administrative apparatus resulted in a reinterpretation of customary rules concerning chiefly powers; and in chiefs drawing power from a double source – ‘reinvented’ tradition on the one hand, and state legislation on the other. This has fostered relations of tension and/or of mutual dependence between state and chieftaincy (Mamdani 1996; Rouveroy van Nieuwaal 1996). In other countries, government interventions aimed at abolishing customary systems (either through registration programmes aimed at replacing customary law with private ownership, or through legislation vesting land ownership and management responsibility with government agencies) rarely succeeded in replacing customary systems (e.g., on land registration in Kenya, see Coldham 1978), but often affected their functioning and, in many cases, their effectiveness and legitimacy (as legislation set up competing authorities to perform similar functions). In recent years, decentralisation processes initiated or consolidated in several African countries have further complicated the issue, as new local government bodies responsible for land/natural resource management (e.g. Tanzania, Senegal, Mali) must come to terms with customary institutions. Besides formal policy and legislation, other forms of government interference may also affect local land relations by triggering anticipation and positioning strategies - as evidenced by the repercussions of the radio announcement of Cote d'Ivoire's president Houphouët-Boigny that “land belongs to the tiller” (Lavigne Delville, pers. comm.).

As a result of the limited implementation of state legislation and of the continued application and reinvention of customary law, several legal systems – statutory, customary and a range of ‘in-betweens’ (Cousins and Hornby 2006) – regulate property rights in the same territory, resulting in overlapping rights, contradictory rules and competing authorities. The neat distinction between customary and statutory land tenure systems is considerably blurred, and easy dichotomies

between the two must be avoided. Customary systems have been much changed by a century or more of interpretation by courts and interference by governments, both colonial and since independence. Equally, statutory systems for land management usually operate with considerable possibilities for negotiation, and it is not uncommon for government officials to follow customary law principles to settle natural resource disputes on the basis of mediation and conciliation. Between the ideal-type ‘customary’ and the ideal-type ‘statutory’, a great deal of hybrids and in-betweens exist. Farmers may have registered their land, thereby converting their customary rights into freehold; but not updated the register following succession or sales, so that existing rights are unregistered, with land tenure reverting back to ‘customary’ practices (e.g. on Kenya, Coldham 1978; on South Africa, Cousins and Hornby 2006). In many disputes over land rights, parties selectively refer to bits of both customary and statutory law, choosing those norms and dispute settlement institutions that better support their claims (‘forum shopping’²). In other words, resource users gain access to natural resources through a blend of customary and statutory arrangements. Rather than a dichotomy between opposing extremes, local reality usually resembles more a continuum of different combinations of both (Benjaminsen and Lund 2003).

3. The Inner Niger Delta: An evolving ecological and socio-economic context

The Inner Niger Delta mainly covers the districts (*cercles*) of Mopti, Djenné, Tenenkou and Youwarou, all in the Mopti region of Mali³. This is an area of national and international strategic importance. It is the largest inland wetland in West Africa, supporting exceptionally diverse, rich and complex ecosystems. The annual floods bring up to 25,000 to 30,000 km² of ‘extra’ land into production

² The concept of forum shopping has long been used by lawyers in relation to the strategic manipulation of multiple dispute settlement fora within federal systems and in private and public international law. The concept has also been used within legal anthropology to describe a similar phenomenon - but broadened to non-legal dispute mediation and settlement mechanisms (from customary institutions to religious authorities through to political parties; see e.g. Benda-Beckmann 1981; Lund 1998).

³ The seasonally flooded part of Tenenkou is also known as the Macina.

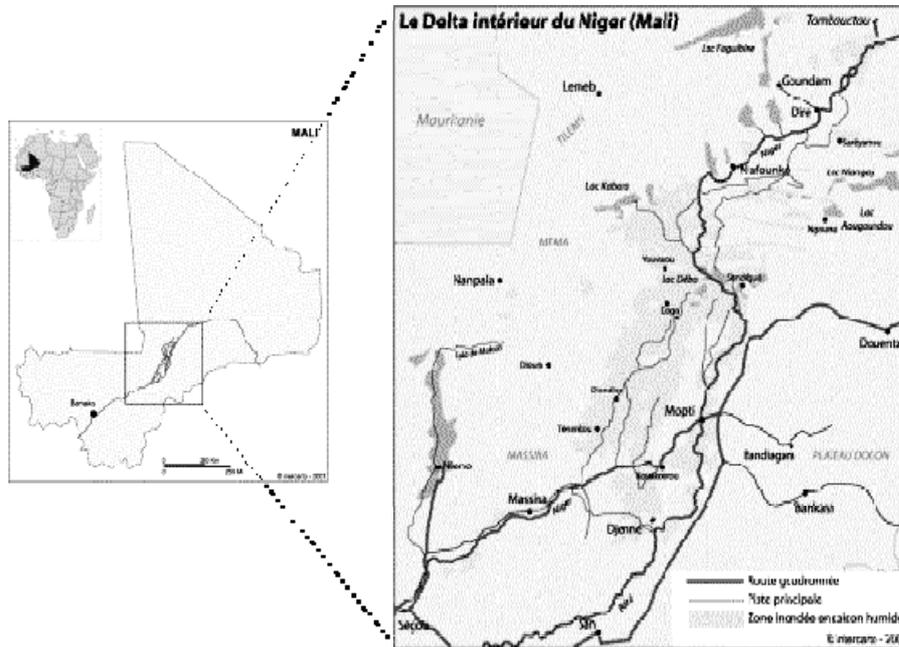
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(Moorehead 1998). The delta hosts considerable wildlife resources, and is protected as a listed area under the 1971 Ramsar Convention on Wetlands of International Importance. The delta also contains rich agricultural land, and the highly nutritious dry-season pasture commonly known as *burgu* (*Echinochloa stagnina*). It contains some 70% of irrigable land in Mali, and during the dry season it hosts some 50% of the national livestock; fisheries in the delta support the livelihoods of some 300,000 people (CILSS 2005). In addition to supporting rural livelihoods, the delta supports the livelihoods of urban groups (traders, government officials, etc), who invest much of their savings in livestock.

Ecology and livelihoods in the delta are shaped by seasonal cycles. During the hot dry season (April to June), water only runs in the river beds of the Niger and Bani rivers, and of their tributaries. During the rainy season (June to September), water rises and spills over the flood plains. Between October and January, a vast area of land is covered by water. The size of this area varies constantly from year to year, depending on rainfall – both in the area and, more importantly, upstream. In the cold dry season (January to March), waters subside progressively along a southwest to northwest transect, with water staying longer around the lakes Debo and Walado in the northwest of the delta. At the end of the dry season, water has retreated into the river beds and floodplains revert to dusty lands (Moorehead 1998; see map on next page).

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

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



and the Somono (traditionally fishers), who first occupied the area, the Bambara (farmers), and other groups. The Rimaibé are the descendents of slaves captured by the Fulani. Slavery was abolished by the French colonisers in 1906.

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

Over the past fifty years, the delta has witnessed major ecological and socio-economic change. While rainfalls present substantial fluctuations between years, they have tended to decrease over the past fifty years (CILSS 2005). Drops by up to a third in rainfall have been documented for instance in Mopti (for the period

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1920-1989; Moorehead 1997) and in Madiama, a commune located in the Djenné district (for the period 1950-200; Moore 2005). Major droughts took place in the 1970s and 1980s. This decrease of rainfall has in turn led to a reduction of the flooded area, and to a shortening of the duration of floodings (Moorehead 1997; CILSS 2005). This data is reflected in the perceptions of several people we spoke with during our fieldwork, who reported reductions in rainfalls and floodings. Some have claimed that, in addition to decreasing rainfalls, reductions in floodings may be linked to the damming of the River Niger for irrigation and hydropower purposes.

At the same time, the delta has experienced substantial demographic growth. A comparison between the 1964, 1976 and 1998 censuses shows this⁴. Between 1964 and 1998, the population residing in the Mopti region as a whole increased from 910,713⁵ to 1,478,505. In the same period, population has grown in all of the Delta districts (e.g. from 131,288 to 263,551 in the Mopti district, and from 84,414 to 155,551 in the Djenné district) and in most of the villages we visited (e.g. from 2,151 to 3,710 in Djalloubé, from 3,094 to 3,993 in Konna, and from 1,962 to 2,785 in Senossa, a village in the commune of Ouro Ali) (GREM 1964; and MEF 2001). Such demographic change is due not only to high birth rates but also to the immigration of groups from the surrounding areas, particularly the Seno, the Gourma and the Haire.

The delta has also witnessed important changes in the economy and society. These include the monetarisation of the local economy, the growing fragmentation of the extended family, and a shift in power from the traditional aristocracy, which reflects the interests of Fulani herders, in favour of agriculture (backed by the government) and of ‘purchasing power’, i.e. the power deriving from access to financial resources. The latter has enabled urban elites (traders, government officials, etc) to purchase large numbers of cattle and, in some cases, to rent out or

⁴ Such comparison is made difficult by the different administrative levels for which demographic data are presented (village, *arrondissement* and *cercle* for the 1964 and 1976 censuses; communes and *cercles* for the 1998 census); and by the many changes in administrative boundaries. In addition, while the censuses capture change in the resident population, they do not necessarily reflect changes in the overall resource user population, which includes large numbers of non-resident (transhumant) fishers and herders.

⁵ This included 158,227 from a *cercle* now attached to a different region.

even buy land for their exclusive use. These and other socio-economic changes will be discussed in greater detail below.

4. Political and institutional change in the delta

Historically, Fulbé pastoralists have dominated the land use patterns and tenure rules governing resources in the delta. Arriving in successive waves from the 13th century onwards, they gradually spread throughout the delta, carving out areas over which they controlled access to pastures. Initially, resource access was regulated by warrior chiefs (*ardo*), who governed the seasonal movement of livestock in response to the pattern of flooding. During the flood period, rights to exploit the area belonged to the fishers and farmers; but once the waters receded, the *ardo* controlled the timing and pattern of the clan's grazing regime as well as the conditions of access for outsiders' herds. Over time, a more complex pasture management system developed, with the *ardo* delegating responsibility for the management of pasture land to the *diom-ouro* ('head of the encampment'), or *jowro*. The *ardo* could dismiss the *jowro* working under their supervision; in some cases, this gave rise to tensions between the *ardo* and the local population (Gallais 1967; Moorehead 1998).

In the 19th century, Sekou Amadou, also of Fulbé descent, conquered the delta and established a theocratic state (the *Dina*). The *Dina* defeated the *ardo*, sedentarised the delta's pastoralists and formalised the repartition of the delta's pastoral resources into 37 territories (*leydi*). Each *leydi* was managed by a *jowro*. Having abolished the *ardo*, the *Dina* reinforced the position of the *jowro* as the only authority for the management of pastoral resources within their *leydi*. The *Dina* organised the pastoral system according to a coherent – though geographically diverse – set of rules, with the *jowro* regulating the seasonal movement of livestock in and out of the delta. For herders belonging to clans based in the delta, access to pastures was free of charge and based on reciprocity. However, the *Dina* regulated the priority order according to which local herders would access pastures. Usually, first came the herd of the *jowro*, followed by the other herds ordered according to kinship proximity to the *jowro*, age and social status. Outsiders would access grazing resources after resident herders. They would also have to pay a fee to the

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jowro (*tolo* or *connji*).⁶ Such fee would be paid in kind (e.g. a young bull or a cow, in addition to some cola fruits), and was aimed at recognising the primacy of local herders and of the *jowro*. The *jowro* could restrict access for outsiders’ herds, for instance by regulating the length of their stay in the *leydi* (Gallais 1967; Moorehead 1998; our fieldwork).

While focused on the management of valuable rangeland, the system established by the *Dina* also has implications for the management of land, water and fisheries. Rules on these aspects vary considerably from place to place. In some area, the *jowro* is only responsible for pastures. Here, land management is performed by other authorities, which vary depending on the area (village chiefs, *bessema*, etc). Water and fisheries are also managed by other authorities (the *jitu*, ‘master of waters’). The relationship between these authorities and the *jowro* varies from place to place – but often entails some form of supremacy of the *jowro* in his *leydi*. In other areas, the *jowro* is directly responsible not only for pastures but also for land and/or water (e.g. around Djenné and in the Macina). In this context, the role and status of the *jowro* vary substantially not only in relation to the scope of their remit (pastures, land and/or water) but also, for instance, with regard to their wealth (size of their herd; size and quality of the *leydi* they managed) (Gallais 1967; Moorehead 1998; our fieldwork).

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

The *Dina* consolidated power among the sedentary Fulani communities represented by the *jowro*, within a socio-economic order that favoured the pastoral economy over that of fishing and farming. It was nonetheless an effective system for

⁶ While often used interchangeably, strictly speaking these terms refer to two different things – the fee for access to fertile islands (*tolo*) and the fee for access to other less valuable grasslands (*connji*).

allocating and controlling access to the delta's rich resources for both resident and outside populations (Moorehead 1998).

French colonialisation undermined this system for regulating resource access. As Moorehead (1998) noted, while in the case of the Dina outside conquest produced a system that was rooted in the local economy and society, that relied heavily on the resources of the delta and that built on pre-existing institutions, the colonial administration had a poor understanding of local resource tenure systems in the area and sought to replace them with a radically different institutional regime. The abolition of slavery, on which Fulani society was based, affected the very heart of the social fabric. Colonial land legislation (land tenure decree of 24 July 1906) stated that all 'vacant' land (i.e. long-term fallow or land used on a seasonal basis) belonged to the state. This allowed certain groups to gain access to productive resources to which they had no access under customary systems. The colonial administration also issued directives specifying the dates at which livestock were to enter and leave the dry season pastures. This weakened the ability of the *jowro* to regulate the number and timing of livestock entering their *leydi*, particularly vis-à-vis outsiders (Moorehead 1998).

The land tenure and development policies of a succession of post-independence governments have exacerbated this situation. The proliferation of state institutions involved in one way or another in allocating access to resources, often without reference to each other, has further weakened the powers of the *jowro*. The cumulative effect of these measures has been the gradual opening up of the delta's resources to outsiders, without the assurance that their numbers and mode of production are effectively regulated either by the state or by customary authorities (Moorehead 1998).

Recent developments in policy and legislation have further raised the stakes. The Land Codes (*Code Domaniale et Foncier*) of 1986 and 2000 have recognised customary land rights. This has enabled some *jowro* to assert claims of 'customary ownership' over the resources they manage. Under legislation on decentralisation adopted in the 1990s, newly established local government authorities (rural communes) have been vested with the responsibility for managing natural resources within their jurisdiction, including, in the case of the Inner Niger Delta, pasturelands such as the highly prized *burgu* grasslands (*bourgoutières*). However, the implementing regulations to operationalise this devolution have not been adopted yet. Similarly, the Pastoral Charter 2001 is a piece of legislation regulating access to pastoral resources. It gives substantial natural resource

management responsibilities to communes – although again the necessary implementing regulations have not yet been adopted. These laws have paved the way to tensions between the newly established communes and the *jowro* (see below).

Currently, access to the pastoral resources of the delta is regulated by the ‘*Conférence des Bourgoutières*’, an institution without formal legal backing that brings together government administration, local governments, representatives of user groups, and *jowro*. The Conference meets every year to fix the transhumance calendar (dates of entry into the different *leydi*). In his *leydi*, the *jowro* implements this calendar, opening the crossing into his *bourgoutières*. Although weakened, the *jowro* has thus survived this history of legislative interventions. In most cases, colonial and post-independence administrations have de facto left resource management to the *jowro*, who in turn provided them with informal ‘gifts’⁷.

5. Changes in the delta’s customary resource tenure systems

The customary resource tenure systems centred on the *jowro* have responded to the evolving ecological, socio-economic and politico-institutional context outlined in the previous sections through undergoing major change. This section reviews nature, direction and extent of this change.

5.1. The erosion of customary institutions

First, the *jowro* as a resource management institution has been undermined by socio-economic change and by a century of colonial and post-independence government interventions. For a start, farming interests have acquired weight vis-à-vis pastoral ones, of which the *jowro* are expression. In the 19th century, the Dina granted primacy to pastoral interests, in relation to both access to resources and control over labour (many farmers being slaves of the Fulani herders). The abolition of slavery by colonial authorities in the early 20th century began to undermine this system. Since then, many former slaves have acquired resources

⁷ For instance, during colonisation, in many places the *jowro* paid a third of the fees they received to the colonial era *chefs de canton*.

and invested in land and livestock – thereby acquiring influence vis-à-vis their former masters. With the increasing monetarisation of the economy, access to financial resources has become increasingly important compared to traditional aristocracy as a source of power in the local society. New elites have emerged that are able to draw on this source of power - from better-off farmers to urban elites (civil servants, traders, lawyers and others). As a result of this shift, the position of the *jowro* vis-a-vis these groups has been gradually eroded.

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

In addition, in many areas farming (mainly rice) has encroached on grazing lands, particularly the more fertile ones. This has been explicitly or tacitly supported by the government administration. This is because farming is perceived as more productive than pastoralism, and because farming groups tend to be politically more vocal. Such process was further accelerated after the 1973 drought, with the launch of ‘*Operation Riz*’ (now ‘*Office Riz*’). We found ample evidence of this agricultural colonisation in our fieldwork. In Saba, for instance, a village in the Dialloubé area, villagers have started to cultivate rice in a pond without seeking the authorisation of the *jowro*, banking on the support of the local government administration, of an NGO and of a member of the *jowro* family. This expansion of cultivated areas to the detriment of pastureland is on the one hand the result of the loss of influence of the *jowro*, and on the other a further root cause for such loss of influence – as it has eroded the very base of the power of the *jowro*, control over natural resources.

In some cases, the authority of the *jowro* has also been undermined by the proliferation (and hence ‘inflation’) of the position of the *jowro*. With population pressures, the value of fees paid to the *jowro* has increased dramatically (see below). As a result, the position of *jowro* has become very lucrative, and the

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wealth of many *jowro* has increased. However, the higher economic stakes, coupled with the growing fragmentation of the extended family, have also fostered disputes over the succession in the position of *jowro*, and encouraged many members of *jowro* families or better educated individuals to term themselves ‘*jowro*’ – despite their lack of formal endorsement by the *suudu baba* (e.g. in Ouro Ali).

Our fieldwork found ample evidence of this shift in power relations and of the erosion of the *jowro*’s influence. We found evidence, for instance, of farmers openly contesting the authority of the *jowro*. In Ouro Ali, farmers have started to challenge requests for payment from the *jowro*, and have sought the support of the mayor. Significant tensions between farmers and the commune on the one hand, and the *jowro* on the other have followed. Here, there have also been contestations of the legitimacy and authority of the *jowro* from within the pastoral community, represented by the *suudu baaba*, particularly in relation to the allocation of the resource access fees collected by the *jowro* (see below).

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

5.2. Monetisation of resource access relations

Population pressures (see section 3 above for some statistics), monetarisation of the local economy and increased competition for access to strategic resources have brought about a monetarisation of resource access fees and a steep increase in their values. As the resource base has become scarcer, fees that were historically paid in kind and were of relatively small value (see above) now tend to be paid in cash, and have reached very high values relative to the local economy. While the amount of such fees varies depending on social relations, herd size and pasture quality, and while direct questions about this are taboo, there are reports that herders not

belonging to a resident group can pay up to 1,000,000 CFA or more (some 1,000 GBP) for access to a *leydi*. Most herders would not be able to afford such fees. However, many herders today take care not only of their own cattle, but also of livestock entrusted to them by wealthy individuals (e.g. urban elites). It is possible that they use that livestock to help cover resource access fees – and then report them as ‘lost’ or ‘dead’ to their absentee owners.

Increases in the cost of access to resources are also linked to attempts on the part of the *jowro* to extend the duration of the paying period. While under customary law pastoral resource access fees are levied for periods of up to a month, after which the *leydi* can be accessed free of charge, in 2005 the *jowro* of Dialloubé has levied fees way beyond the prescribed date – and obtained the support of the armed police to secure such payments. In the Macina, the access fee period has long expanded to several months (October-March).

In addition to the monetarisation of fees for access to pastoral resources, we found evidence of numerous monetarised land transactions for agriculture purposes. In areas where the *jowro* claims land management or even ownership rights (Konna, Ouro Ali, etc), they have been at the centre of such transactions. These usually entail rental or sharecropping contracts (or combinations of both) rather than sales. In Konna, farmers pay a fix price upfront and a share of produce every year. In most cases, these practices seem part of a ‘privatistic’ management of the resources on the part of the *jowro* – the broader group or even his family not being consulted nor benefiting from these deals (e.g. Konna; Ouro Ali).

These developments are in line with the growth in political influence and in ‘purchasing power’ of farming interests and urban elites vis-a-vis pastoral interests over the past few decades, described above. As the local economy has become increasingly monetarised, access to financial resources has become more and more important in shaping access to natural resources. And, as competition for access to a scarcer resource has increased, resource access fees have risen sharply. As a result, those groups that have easier access to financial resources (from better-off farmers to urban elites) tend to strike deals with the traditional aristocracy (embodied in the *jowro*) to improve their access to resources. In this sense, strategic alliances may emerge between wealthy elites and traditional aristocracies, with the former being granted access to resources by the latter in return for cash payments or other services. On the one hand, wealthy groups invest part of their savings in livestock, and need the *jowro* to secure access to grazing resources. On the other, the *jowro* are eager to tap into the financial resources that these groups

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have access to. In our fieldwork, we found examples of urban elites providing services to the *jowro* (e.g. legal advice) and being granted, in return, exclusive grazing rights in the ‘common’ pasturelands managed by the *jowro* receiving the services.

This trend towards growing monetarisation of resource access relations is in line with developments in other parts of West Africa, particularly in contexts characterised by growing population pressures (e.g., on Burkina Faso, Mathieu et al. 2003; on Ghana, Amanor 2001). At first sight, it seems to confirm the key tenets of the above-mentioned ‘evolutionary theory of land rights’, according to which population pressure tends to push towards tenure individualisation and monetarised transactions. However, our fieldwork suggests that these issues are far more complex than this theory seems to suggest. In the delta, the process of individualisation proceeds at two speeds in its internal and external dimensions. Externally, i.e. vis-a-vis herders coming from outside the delta, the collective dimension of resource tenure remains strong, and is used to reassert the primacy of the resource rights of local resource users (for findings along similar lines in other parts of West Africa, see Chauveau et al. 2006). As land and natural resources are held by local groups, outsiders must pay for accessing resources while locals must not. Internally, however, a shift has taken place, with the erosion of the customary arrangements for representing the interests of the extended family (see the decline of the *suudu baaba*) and with the growing claims of the *jowro* to manage common resources for private gain.

In other words, what we are witnessing in the delta is not a ‘horizontal’ individualisation of rights, with households and/or individuals gaining greater and stronger rights over the land they use (e.g. in relation to inheritance); but rather a ‘vertical’ tenure individualisation in which customary chiefs increasingly manage common resources for personal economic gain and without consultation of their extended family. Rather than towards a fragmentation of common resources into smaller individual plots, this process of individualisation seems to be evolving towards the privatisation of the bulk of the resource base in the hands of those who were meant to act as their custodians on behalf of the group. Monetarised transactions are developing within this context - with the *jowro* occupying the centre ground, and renting or selling out rights over resources to groups and individuals from outside the extended family for herding or farming purposes.

Differently from research findings from other parts of West Africa, we found no evidence of an evolution towards written contracts, or even towards other

mechanisms to secure land transactions such as witnesses. Deals are usually concluded orally. In some cases, this results in different interpretations of the nature of a deal – with the *jowro* asserting it was a temporary allocation in exchange of a gift, and the farmer claiming it was a sale. In Sio, the *jowro* is reported to have ‘sold’ a pond to a rice grower. As the *jowro* does not own the land, such a transfer would be null and void. A dispute followed, with the *jowro* claiming never to have sold the land. After the intervention of the government administration, the buyer was evicted. No one knows what happened to the money he paid for the land. On the other hand, written documents (*‘procès-verbal’*) are sometimes used to formalise key decisions – e.g. the *suudu baba*’s endorsement of a *jowro* succession (e.g. in Koubi, in the commune of Konna).

The reasons for this lesser documentation of resource access transactions compared to other parts of West Africa are unclear. A fascinating but not yet well-researched hypothesis relates to the nature of the Fulani customary chieftaincy in the delta and to its attitude vis-a-vis the French colonisers first and the independent government then. This resulted in very low levels of scolarisation among the Fulani and among the *jowro*. Most of the *jowro* we met did not speak French (the official language) and were illiterate. This may partly explain the diffidence towards written documents to secure transactions.

The allocation of the important financial flows generated by the monetarisation of resource access has itself formed the object of bitter disputes – between different members of the same *jowro* family (with different members trying to negotiate resource access conditions with outsiders in order to personally benefit from this – e.g. in Dialloubé), between the *jowro* and the broader group represented by the *suudu baba* (e.g. in Ouro Ali, where a *jowro-suudu baba* dispute was brought before the *préfet*, and the *jowro* was forced to ‘apologise’ to the *suudu baba* for his behaviour), and between the *jowro* and the newly established communes (e.g. in Ouro Ali, where a commune-*jowro* dispute is pending before the tribunal of Djenné). Disputes on the allocation of financial flows have also opposed pastoral institutions and farming interests (for instance in Dialloubé, where a dispute has long opposed the *jowro* of the Dialloubé *leydi* and the village of Gobé on the one hand, and the village of Ouro Alfaka on the other).

5.3. *Natural resource conflict and dispute settlement*

Disputes over resource access and control have always existed in the delta – and some of the current disputes date back to colonial times. In recent times, such disputes have increased in both quantity and intensity. Our fieldwork documented a substantial number of disputes - some of them longstanding, others emerged over the past couple of decades. They concern the delimitation of *leydi* boundaries (e.g. Konna); the succession in the position of *jowro* (e.g. Koubi, in the commune of Konna); control over *bourgoutières* (e.g. Ouro Ali; Ouroubé Doudé, in the Dialloubé area); the allocation and utilisation of resource access fees (e.g. Ouro Ali); land transactions (e.g. Sio); crop damage caused by herd passage; and many other issues. Disputes may oppose villages or individuals; herders, farmers and fishers; communes and *jowro*; etc.

Another evolution that is taking place is greater use of courts as a dispute settlement forum. While access to courts remains generally limited in much of rural Mali, we found numerous examples of disputes that were brought before tribunals (e.g. the boundary dispute in Konna, the disputes on control over *bourgoutières* in Ouro Ali and Ouroubé Doudé, the succession dispute in Koubi, the dispute over the allocation of resource access fees in Ouro Ali, and many more). And, while in the past judicial disputes rarely went beyond the court of first instance, they now tend to reach the Court of Appeal (now available in Mopti, so that parties no longer need to go as far as Bamako) and even the Supreme Court (in Bamako).

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

Greater use of the court system has not necessarily brought greater clarity to dispute settlement. Court decisions, even if final, are in practice very hard to enforce. Disputes settled by final judgements nonetheless resurface, sometimes years or even decades after the judgement. For instance, in Ouro Ali, a dispute between two *jowro* for control over the *bourgoutière* of Diaroukoye was first solved by colonial courts in 1951 – and yet it resurfaced in very similar terms in 2005. The dispute is currently pending before the tribunal of Djenné. There have even been reports that a dispute decided by the tribunal and the appeals court of Mopti was resubmitted under a different name (the same place often has different names in the different local languages). For an example of the complex nature of dispute resolution, see box 1 below.

Box 1. A succession dispute in Koubi

Koubi is a village in the commune of Konna. Since the 1980s, a longstanding succession dispute has opposed two *jowro* family members, and their heirs. Part of this dispute was first documented by Maiga and Touré (2001). The dispute first erupted in 1985, following the death of the *jowro* Balakaly Diall. That dispute opposed the son (Sadou Boukary Diall) and the brother (Issiaka Mody Diall) of the deceased *jowro*. Issiaka Mody Diall was first recognised as *jowro* by the *suudu baba*, and obtained a declaration by the Tribunal of Mopti that such succession was ‘regular’ and ‘consistent with custom’ (judgement no. 172 of 1988). However, Sadou Boukary Diall was not involved in the proceeding. He therefore sought the annulment of judgement 172. He claimed that, being the son of the *jowro* and being older than his uncle, he had stronger claims to the succession. The tribunal concluded that Sadou Boukary Diall was indeed the legitimate *jowro* (judgement no. 58 of 1991). Such decision was confirmed by the Court of Appeal (judgement no. 56 of 1992). However, contestations on the part of Issiaka Mody Diall continued, and several other judgements were issued on this matter (e.g. judgement no. 636 of 1994, of the Court of Appeal of Bamako).

In early 2002, following the death of Sadou Boukary Diall, the *suudu baba* chose his brother Bella Boukary Diall as the new *jowro*, applying relevant customary norms (as stated in judgement 636 of 1994). A *procès-verbal* of the *suudu baba* meeting was written by a professional lawyer. On the basis of this document, the new *jowro* sought a ‘homologation’ of his succession by the Tribunal of Mopti – with a view to securing his succession against the continuing claims of Issiaka Mody Diall. Such ‘homologation’ was granted, with the Tribunal of Mopti certifying that the succession was conform to custom (judgement no. 136 of 2002).

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However, Issiaka Mody Diall appealed against this judgement. He argued that, as the deceased Sadou Boukary Diall was never the legitimate *jowro* in the first place, his brother Bella Boukary Diall could not succeed in the position of *jowro*. The Court of Appeal of Mopti dismissed the appeal and confirmed the regularity of Bella Boukary Diall’s succession (judgement no. 60 of 2003). At the time of writing, the case was pending before the Supreme Court. Meanwhile, a joint commission composed of the two would-be *jowro* and two people from the government administration manages the *leydi*.

5.4. Statutory and customary law: complex processes of hybridisation

Over the past decades, the resource tenure system established by the Dina has undergone a process of hybridisation with statutory regimes regulated by state legislation. Far from creating a ‘dualistic’ system based on a dichotomy between the ‘customary’ and the ‘statutory’, state interventions have produced a range of competing hybrids (in line with findings from other parts of Africa; see e.g. Benjaminsen and Lund 2003). These have fuelled tensions not only between customary and statutory institutions, but also among customary authorities (e.g. *jowro* and village chiefs) and among government agencies (particularly between local and central governments).

The (qualified) protection of customary rights under the Land Code (*Code Domanial et Foncier* 1986, replaced by the Code of 2000, as amended in 2002) has opened the door for courts to interpret and apply customary law. In so doing, they may unwittingly promote a simplified and standardised version of geographically diverse customary legal systems. For instance, customary *jowro* succession rules vary substantially from place to place. In some places (e.g. Konna), the eldest member of the *jowro* family inherits the position of *jowro*. This rule means that often it is the younger brother of the deceased *jowro*, rather than his son, who inherits. However, in Dialloubé and in Youwarou, *jowro* succession is linked to inheritance of the *jowro*’s herd – which tends to favour the son. In interpreting and clarifying the content of customary succession rules, the Court of Appeal has sought to adopt a flexible formula (judgement no. 636 of 1994 – see above, Box 1). However, it is to be seen whether the succession criteria set out in the judgement in relation to a specific dispute will be invoked in different areas, where customary rules may be different. Over time, this may lead to a situation similar to that characterising Ghana, where judicial application of customary law since colonial time has produced a body of ‘customary’ rules interpreted by courts

and following the principles of judicial precedent, rules which differ from customary practice as applied by local resource users; and/or to a hybridisation of locally applied customary rules towards greater standardisation.

While customary law has been changed by a century of legislative interventions, statutory institutions also operate with a degree of ‘informality’ - with incomplete legal backing and often beyond their legal powers. While the legislation on decentralisation (particularly the Local Government Code 1995) and the Pastoral Charter 2001 vest natural resource management responsibilities with local governments, their lack of the necessary implementing regulations makes them inoperational. Yet, communes are seeking to carve out a role in natural resource management even in the absence of implementing regulations, generating ambiguities vis-à-vis the central government and fostering tensions with the *jowro*. The extent to which this happens varies from place to place. In Konna, the strong personality and vast wealth of the *jowro* have kept the mayor at bay. On the other hand, we found strong tensions between communes and *jowro* in Sio and Ouro Ali. In both cases, the commune has intervened to defend the interests (and the resource rights) of fishers and farmers against ‘extortionate’ requests from the *jowro*. Tensions also arose in relation to the allocation of resource access fees. In Ouro Ali, while the mayor and his councillors recognised the resource management powers of the *jowro*, they claimed to have a ‘right’ to a third of the resource access fees collected by him. Interestingly, they based such claims on ‘customary’ law – namely on the colonial-era ‘customary’ practice of *jowro* giving a third of their earnings to the *chef de canton*. With decentralisation, they argue, communes are the ‘legitimate heir’ of the *chef de canton*. Although this argument has no legal basis, a dispute between the commune and the *jowro* of Ouro Ali is currently pending before the Tribunal of Djenné. Interestingly, we heard a very similar argument about the ‘inheritance’ of the *chef de canton*’s share at the commune of Dialloubé. The *jowro* deny that payments to the *chef de canton* were part of customary law, insisting that such payments were rather ‘gifts’.

In some cases, possible tensions between *jowro* and communes are eased by the capture of the municipal council by the *jowro* or his family. In Youwarou, the *jowro* has been elected mayor, and is now at his second term. In Dialloubé, while the mayor comes from outside the *jowro* family, such family holds the majority of the seats in the municipal council. It is by using its capture of the municipal council that in 2005 the *jowro* family was able to impose resources access fees beyond the prescribed period (see above). Indeed, it was the commune that called in the armed police that helped secure payment from incoming herders. These

situations are rare, however, as farming interests tend to dominate local politics. Most of the mayors we met were expressions of farming and/or fishing interests, which makes the commune-*jowro* relationship prone to tensions.

5. Multifaceted social transformation and changes in customary tenure

The previous sections tackled some of the main processes of change that are ongoing in the Inner Niger Delta (erosion of customary institutions, monetarisation of the economy, growing conflict, institutional hybridisation). Devoting one section to each of those processes enabled us to identify the main drivers of change and to present them with some clarity. In reality, however, these processes are closely linked - they are rather different aspects of the same complex, multifaceted process of social transformation.

On the one hand, some of these aspects are interlinked by relations of causation or of close interdependence. While the monetarisation of the economy and the ensuing monetarisation of resource access relations are profiting some *jowro* engaged in renting or even selling out natural resources (see section 5.2 above), they are also contributing to the long-term erosion of the *jowro*'s power (described in section 5.1). This is because they tend to favour access to financial resources over traditional aristocracy as a main source of power and means for access to resources. Similarly, increasing resource conflict (see section 5.3) is closely linked both to the growing monetary value of resource access and control (section 5.2), and to the erosion of the perceived legitimacy and authority of customary institutions (section 5.1).

In other respects, some of these phenomena are linked because they are (at least partly) rooted in the same or in similar causes. The declining role of the extended family and the gradual fragmentation of family units have contributed both to the erosion of customary institutions (decline of the *suudu baaba*, ‘inflation’ of the *jowro*; section 5.1) and to the increase in natural resource disputes (including within the extended family; section 5.3). Population pressure and increasing resource scarcity have contributed both to higher and monetarised fees for resource access (section 5.2) and to growing resource conflict (section 5.3). The establishment of a state (colonial first and independent then) that - differently to its Dina predecessor - did not crucially rely on the local resources and economy of

the delta, and that did not properly understand the logic of its local rules and institutions, led to the imposition of an external system of resource tenure - without however the power to enforce this new system at the local level. This contributed to the erosion of customary authorities (section 5.1), to the hybridisation (rather than replacement) of local rules and institutions (section 5.4) and to loss of effectiveness in handling resource disputes (section 5.3).

Besides being affected by these changes in the local economy and society, changes in customary tenure are also the outcome of struggles between groups pulling the rules to their advantage. This has important implications for differences along status, income, gender and other lines, as the more powerful are usually able to bend the rules to their advantage. Where their local power base allows (e.g. in Konna), the *jowro* are claiming greater control or even ownership over the resources they manage on behalf of their community. In order to further their cause through advocacy and collective action, the *jowro* have been discussing for years the establishment of an association bringing together all the *jowro* in the delta. Such initiative has so far failed due to internal rivalries – particularly in relation to the leadership of the association. On the other hand, local *jowro* associations with more limited mandates have been established in some districts – but without major impacts so far.

Other groups may endorse or resist the claims of the *jowro* depending on whether they stand to lose or benefit from them. Farmers and fishers facing rising resource access fees may contest the claims of the *jowro*. Communes eager to tap into the financial resources generated by resource management may not challenge the claims of the *jowro* as such but reinterpret ‘custom’ to back their claim to a share of those resources. Local lawyers may support the *jowro* in their court battles to assert those claims - and even encourage them to do so - if they can benefit in return through privileged access to ‘common’ lands. Such support brings not only legal expertise but also contacts in government and in the judiciary, which can help define the outcome of court cases, and, through that, ‘set precedent’ and add legal authority to the interpretation of customary law put forward by the *jowro*. It is the interplay between these claims, shaped by profound social transformation (demographic growth, monetarisation of the economy, fragmentation of the extended family, establishment of the colonial and post-colonial state, etc) and weighted by the different bargaining power of the different actors putting them forward, which profoundly affects the nature and direction of change in customary systems.

6. Conclusion

In much of rural Africa, ‘customary’ land tenure systems are experiencing profound change, as a result of dramatic structural changes in economies and societies. In line with this trend, customary rules and institutions for natural resource management in the Inner Niger Delta have been profoundly affected by a century of change in the ecological, socio-economic and politico-institutional context. The authority and legitimacy of many *jowro* have been eroded, within the broader context of a power shift from herding to farming interests. Resource access relations have become monetarised, and the spiralling values involved have fostered tensions over fees and their utilisation. Natural resource disputes have increased in both quantity and intensity. State interventions in land relations have fostered the emergence of hybrids of both customary and statutory norms. The establishment of the rural communes endowed with (still unclear) natural resource management responsibilities has added complexity to the situation.

In this context, the role and position of the *jowro* and of the customary systems associated with them are at a crossroads. The historical claims of the *jowro* and their asserted resource management skills, as well as their alliance with sections of the emerging economic elites make them still a powerful force in the local society. However, the important transformations that have taken place in the local society and in the legal and institutional framework (particularly with the implementation of the decentralisation policy) have brought about challenges to the authority of the *jowro* and pushed towards the rethinking of their traditional role.

As for national and international policy debates, recent emphasis on the need for natural resource legislation to build on local tenure systems (rather than attempting to ‘replace’ the with ‘imported’ systems) is a major step forward compared to the past (see e.g. Deininger 2003). In tackling issues concerning the extent to which, and the way in which customary rights are to be protected by the law, however, attention must be paid to the very substantial transformation that is taking place in many customary resource tenure systems; to the hybridisation of customary and statutory norms and the continuum of combinations that it generates; and to the processes of alliance building between old and new elites, and of marginalisation and social exclusion that accompany that transformation. Government interventions to secure customary land rights may end up supporting and even exacerbating these processes of privatization and resource grabbing. This raises the challenge of finding ways to square the circle of securing local resource rights, which are the

entitlement through which most rural people gain access to resources, on the one hand; while avoiding entrenching inequitable power relations and unaccountable local institutions, on the other. This case study from the Inner Niger Delta has illustrated this. A solid understanding of these issues and a clear vision as to how to tackle them are key to developing appropriate legislation and government interventions on land and resource tenure in rural Africa.

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