



# Legal Pluralism and Decentralization: Natural Resource Management in Mali

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**Summary.** — Much recent work on decentralized natural resource management has focused on the institutional arrangements that shape the balance of powers between central and local governments. It has given comparatively less attention to relationships between local government and community-level institutions. In Mali, decentralization has superimposed modern legal institutions on community institutions. The ambiguous relationships between them can undermine both the authority of nascent local governments and the performance of customary institutions. Legal pluralism—the coexistence and interaction of multiple normative orders with different sources of legitimacy and authority—helps explain the dynamic nature of local institutions under decentralization. This article examines the experiences of three Malian communities with decentralized natural resource management: one maintains autonomy from government, another engaged its local government, and a third negotiated a multi-stakeholder agreement—a local convention. They demonstrate that crafting workable relationships between communities and local government requires a pragmatic approach to negotiating and institutionalizing political space for innovation in self-governance.

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## 1. INTRODUCTION

Global trends toward democracy and decentralization have created unprecedented opportunities for popular participation in government and, in many cases, local control over natural resources (Ribot, 2004; Ribot & Larson, 2004; UNDP, 2002). A majority of developing countries have implemented some form of decentralization, and many have decentralized some aspect of natural resources management (NRM) (Agrawal & Ostrom, 2001). Reforms have sought to remedy some of the negative consequences of centralized post-colonial states by creating local governance structures that aim to harness the abilities, knowledge, and incentives of rural people. Yet the outcomes of decentralized NRM have not met initial expectations. Drawing on recent experiences from central Mali, this paper examines how tension between customary NRM institutions and decentralized local governments shapes the outcomes of these reforms.

In many countries, decentralization has not only redistributed power but also created new

forms of local government with some degree of political, administrative, and financial autonomy and often with democratically elected officers and deliberative councils. These new forms of local government are frequently superimposed on customary governance

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structures, including deeply rooted NRM systems.<sup>1</sup> I refer to these NRM systems here as “customary” or “community” institutions—referring to self-organized rule systems that are rooted in shared social experience and histories of communities.<sup>2</sup> This somewhat narrow use contrasts to other “community-based” institutions that are designed by outside agents and implemented at the community level, often in the context of specific projects. Community NRM regimes are based on “rights that are transformed through social rather than legal mechanisms, the legitimacy of which is rooted in tradition rather than legal statute” (Grigsby, 2002, p. 152). Policy analysts commonly regard customary institutions as potentially adaptive but not inherently inclusive or accountable; they can respond rapidly to changing social and environmental factors, but they embody a variety of non-democratic social structures and dynamics. However, despite their potential advantages as representative bodies, nascent local governments frequently lack the legitimacy and capacity of community institutions (Ouedraogo, 2003). As a result, customary institutions often persist, coexist, and interact uneasily with state-sponsored governance institutions, creating a tension between those that are perceived as effective and legitimate by local resource users and those that are sanctioned by the state.

This is particularly true in Sahelian West Africa, where decentralization initiatives have adopted local government structures that have largely failed either to replace or to integrate customary institutions. The relationships between customary and statutory laws and between customary authorities and local governments are frequently ambiguous as a result of either omission or design. The unresolved relationship between rule systems with different sources of legitimacy—legal pluralism—undermines both the authority of nascent local governments and the performance of customary institutions. The manner in which legal pluralism is resolved plays a central role in shaping state-society and human-environment dynamics that emerge from decentralization.

The concept of nesting—formalizing channels of authority and recourse linking rule systems at different levels—discussed by Ostrom (1990) is helpful in understanding the public policy dilemma relating to relations between community-level institutions and higher-level authorities, such as local governments. Vaguely defined or incomplete nesting under decentral-

ization has perpetuated what Onibon, Dabiré, and Ferroukhi (1999) have termed a “sterile dualism”—the coexistence of impracticable state law and unauthorized local practices—that was characteristic of earlier, centralized regimes. The state promulgates laws that are not compatible with local livelihood patterns and practices, while simultaneously rendering many of those practices illegal.

Caught between what is authorized by the state and what is necessary to survive, local resource managers continue to do what they perceive as necessary, yet they are exposed to state repression or predation. Communities are often able to craft workable arrangements under these circumstances, though their security and control over resources may be tenuous. Theorists have pointed out access to resources is always somewhat negotiable and uncertain, the outcome of power and social relations (Berry, 1993). Conflict between custom and state law is only one of the potential influences in negotiation. From this perspective, apparent incompatibility of state law and customary law is not sterile; individuals and communities regularly navigate the space between them and find workable solutions.

However, from a public policy perspective, the uncertainty created by the state’s refusal to recognize custom or to engage customary governance structures may compromise local livelihood security by undermining customary institutions without offering effective alternatives or by introducing new avenues of competition for resources between local users and decentralized local government. The policy dilemma is how to get beyond the cat-and-mouse game of resource users’ avoiding contact with government, whether state or local. These “sterile dualisms” represent a lost opportunity to craft a workable public administration that capitalizes on the knowledge and incentives of local resource managers. Thomson, 1995, p. 11 observes that

The risk, in most parts of Mali, is not that these inappropriate sets of rules will bring public business to a halt at the community level. Communities will continue, as before, to deal with their problems in non-formal ways, probably without much regard to the state. The real problem is that the decentralization legislation represents a strong commitment to retaining state control over all forms of collective action in the country. It fails to establish the kind of enabling framework for community initiative and autonomous problem-solving that seems indispensable to encourage low-cost, efficient, reliable efforts by rural populations to address the myriad issues.

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