Regional programme on the Shared Management of Common Property Resources in the Sahel

GDRN5 Network – SOS Sahel GB – NEF – IIED

Natural resource management policy in Mali:
the process of design and the options for the GDRN5 network

Report prepared for the GDRN5 network
by
Mike Winter

December 2000

Table of Contents

Glossary

APCAM	*Assemblée Permanente des Chambres d'Agriculture du Mali* (Permanent Assembly of Chambers of Agriculture of Mali)
CAFPD	*Centre d'Analyse et de Formulation des Politiques de Développement* (Centre for Analysis and Formulation of Development Policy)
CCL	*Cellule Combustible ligneux* (Wood Fuel Unit)
CDR/E	*Commission Développement Rural et de l'Eau* (Commission for Rural Development and Water)
CESC	*Conseil Economique, Social et Culturel* (Economic, Social and Cultural Council)
CIRAD	*Centre de Coopération Internationale en Recherche Agronomique* (Centre for International Cooperation and Agronomic Research)
CPS	*Cellule de Planification et de Statistique* (Planning and Statistical Unit)
DGRC	*Direction Générale de la Réglementation et du Contrôle* (Directorate General of Regulation and Inspection)
DNAER	*Direction Nationale de l'Aménagement et de l'Equipement Rural* (National Directorate of Rural Amenities)
DNCN	*Direction Nationale de la Conservation de la Nature* (National Directorate of Conservation and Nature)
FAO	United Nations Food and Agriculture Organization
GDRN5	*Gestion Décentralisée des Ressources Naturelles en 5éme Région* (Decentralised Natural Resources Management in the 5th Region [Mopti])
HCC	*Haut Conseil des Collectivités* (High Council for the Communities)
IIED:	International Institute for the Environment and Development
MATCL	*Ministère de l'Administration Territoriale et des Collectivités Locales* (Ministry for Regional Administration and Local Authorities)
MDR	*Ministère du Développement Rural* (Ministry for Rural Development)
MEATEU	*Ministère de l'Equipement de l'Aménagement du Territoire de l'Environnement et de l'Urbanisme* (Ministry for Environmental and Urban Amenities)
NA	National Assembly
NGO	Non-governmental Organisation
NRM	Natural Resources Management
PRODESO	*Projet de Développement de l'Elevage au Sahel Occidental* (Western Sahel Pastoral Development Project)
SG/G	*Secrétariat Général du Gouvernement* (Government Secretariat General)
SED	*Stratégie Energie Domestique* (Domestic Energy Strategy)
SNRM	Sustainable Natural Resource Management
UEMOA	*Union Monétaire Ouest Africaine* (West African Monetary Union)

1. Context

The GDRN5 network promotes decentralised and (thus) sustainable natural resources management (NRM) in the Mopti Region of Mali (also known as the 5th Region), and has for several years been lobbying the National Assembly (NA) to make NRM legislation as pragmatic as possible. *Députés*[1] from the 5th Region have taken part in a number of workshops to consider the laws and bills governing NRM – in particular the various laws dealing with management of forest resources and the recent bill for the Pastoral Charter. These workshops brought together not only the elected representatives and the NGO members of the network, but also a range of other actors: decentralised government services, civil society, etc. In addition, the network has lobbied the National Directorate of Conservation and Nature (DNCN) to raise their awareness of the realities of the region and to highlight discrepancies between local practice and NRM laws.

Despite the apparent success of its initial efforts,[2] the GDNR5 network is always trying to develop its effectiveness as a lobbyist and to identify other ways to influence national policy, not only in the course of evaluation and approval in the NA but also "upstream" in the design and drafting stages.

This report is the result of a consultancy to help GDRN5 to understand and analyse the design of national NRM policy. For the terms of reference see Appendix 1.

In essence, the objective of the consultancy was to describe and analyse the process of NRM policy design in Mali and then to outline lobbying options which would enable GDRN5 to influence policy-making as effectively as possible. Insofar as these national policies are expressed as laws, the project concentrated on the legislative and regulatory process. The chosen methodology was to interview policy makers and others in the capital city, Bamako. The coordinator of GDRN5 participated in part of the research. At the end of the research, the main findings and recommendations were presented to the members of the GDRN5 network. This meeting also provided an opportunity for the members to discuss the operational implications for the network and its lobbying activities.

Although the consultancy was expected to analyse the general processes of policy-making in Mali, it decided to do this by focusing on two specific pieces of legislation: the forestry law and the bill for the Pastoral Charter.

It is important to note that the consultancy was not intended to evaluate the policies *per se*.

2. Typical processes for the design of national policy

2.1 The theoretical policy-making cycle

To set the Malian situation in a broader context, it seems useful to describe a "theoretical" model of the policy-making process in general. It is clear that in reality things are not so cyclical, and that the process of designing and redesigning policy involves numerous comings and goings. All the same, a normative description of the process of policy design as a series of stages in a cycle has the merit of clearly distinguishing the elements of the process.

[1] *Députés* are the equivalent of Members of Parliament.
[2] Notably the fact that the NA has very recently postponed its decision on the bill containing the Pastoral Charter following the CDR/E's meeting with the coordinator.

There are six distinct stages:

(1) **Identification, analysis and definition of the problem**: this stage consists of first acknowledging the problem(s) and then further defining and analysing it. You could call it a diagnosis.
(2) **Identification and analysis of the "solutions"**: this stage consists of identifying and researching the options for resolving the problem.
(3) **Selection of the preferred option**: a decision is taken as to which of the options seems most promising. Once the decision is made the policy option is written up in detail.
(4) **Adoption of the chosen option**: at this point the selected option becomes official policy.
(5) **Implementation of the policy**.
(6) **Monitoring and evaluation of the implementation**: this is not just a matter of monitoring and evaluating the application of the policy, but also of evaluating its effectiveness at resolving the problem for which it was formulated. It goes without saying that the monitoring and evaluation of a policy can lead to a redefinition of the problem and can thus reinitiate the policy-making cycle.

Each of these steps begs the same questions: who should lead the process? Who should participate in the process and on what grounds? On what basis should the various parties participate in the process? What information is available?

2.2 The policy-making framework of Mali

2.2.1 The legal framework

In Mali, as in other countries with a francophone legal tradition, the legal system has two sectors:

- **Legislature**, which comes under the authority of the **National Assembly**, made up of elected representatives (*députés*). All laws are voted in by the NA. There are two types of law: (i) **organic laws**, which govern the constitution, and (ii) **ordinary laws**, which must comply with the principles of the constitution.

- **Regulation,** which is the responsibility of the **executive**. In principle, this sector is subordinate to the legislature insofar as all regulations must comply with the law. This sector works through various types of order known as ***décrets***, ***arrêtés*** and ***décisions***.

Note that these two sectors overlap somewhat due to the President's power to make edicts – to order measures which have the force of law – if the NA is not in session. However, this power is theoretically limited on two fronts. First, the President can only make edicts in areas stipulated by the NA. Second, even though the edicts have the force of law, they must sooner or later be ratified by the NA, which means that they can also be amended (or even annulled).

The legislature offers two routes for the creation of new laws:

- ***Projet de loi*** (government bill equivalent to a White Paper in the UK parliament): the executive draws up these bills. They go through an administrative process (see section 2.2.2) before being submitted to the NA.

- ***Proposition de loi*** (equivalent to a Private Member's Bill in the UK parliament): these bills are drawn up by individual *députés*.

In Mali, the majority of laws promulgated since 1992 (and therefore under the constitution of the Third Republic) began as *projets de loi*, submitted to the NA by the Government. There have been very few *propositions de loi* submitted by *députés* for reasons that will become clear. All the recent laws concerning NRM, for example, were formulated by the executive as *projets de loi* before being submitted to the NA.

The regulatory sector, which is the responsibility of the executive, works through a broad range of regulatory orders. To a great extent the executive can operate unilaterally, without reference to the NA or any other authority, as long as its regulations comply with the existing law.

2.2.2 Stages in the design of national policy and the main actors involved

Legislative and regulatory procedures

(i) *Propositions de loi*
In the rare cases that a law is formulated by *proposition* (i.e. by *députés*) the procedure is as follows.[3] A *député* will become aware of a particular problem – either through personal acquaintances or through formal or informal groups raising the issue. The *député* will then formulate a *proposition de loi* which must first be presented to and discussed with his parliamentary group[4] to obtain their opinions and backing. Once the bill has the group's support, the *député* will, with the help of as many consultants as possible, arrange for the writing up of the bill and supporting papers, which he then files at the National Assembly office. Although it is not obligatory, the *député* will normally involve the relevant ministries in this process. The NA office assigns the file to the appropriate parliamentary commission, which organises hearings with the *député* and other actors to arrive at a full understanding of the bill and form an opinion. The bill is then submitted to the NA to be voted on.

(ii) *Projets de loi*
In most cases *projets de loi* are designed by government services or departments. They will have become aware of a particular problem and concluded that it can only be resolved through a new law. First of all the government department will organise conferences or studies, mostly in association with other actors (the Government, civil society, consultants, people involved in the sector in question, development partners, etc.). A draft bill will then be drawn up. There may be further consultations on this draft before it is submitted to the Secretariat General of the relevant ministry. At this point the department's legal and technical advisors make their contribution to the bill. The department will also organise interdepartmental consultations (which often involve other departments' advisors) in order to involve other parts of the Government in finalising the bill. At the end of this process and once the department has adopted the bill, the ministry writes up the bill and sends it to the *Secretariat Général du Gouvernement* (SG/G: Government Secretariat General).

[3] The process described here is based on the case of the artisans' law proposed by the *député* for Niafunke in the first year of the Third Republic and commonly known as " Idi Boré's law " after its instigator.
[4] Parliamentary groups are political parties or coalitions represented in the NA.

The SG/G then organises for itself a series of interdepartmental meetings, bringing together the various departmental secretary generals and their advisers. The participants study the bill and amend it as necessary. If the bill concerns the economic, social or cultural life of the country, the SG/G is normally obliged to send it to the *Conseil Economique, Social et Culturel* (CESC: Economic, Social and Cultural Council). The CESC's opinion may be taken into account in the final revisions of the bill. The bill is then discussed at a final interdepartmental meeting before being sent to the Council of Ministers - made up of the President, the Prime Minister and all the departments.

Before submitting the bill to the NA, the Government sends it to the Supreme Court to check that it conforms with legal norms. The court simply plays a consultative role.

In some instances the SG/G will submit the bill for evaluation by the Supreme Court or the Constitutional Court, particularly if it concerns fundamental or organic laws.

Once it has been adopted by the Council of Ministers the bill is sent to the NA office, which refers it to the relevant commission. Bills concerning NRM are dealt with by *the Commission Développement Rural et Environnement* (CDR/E: Commission for Rural Development and the Environment). The working party studies the bill and gives its opinion (including any amendments), which is then considered by the NA.

The NA passes the bill into law (with or without amendments) and sends it to the Constitutional Court for a ruling on its legality and conformity with the Malian Consitution. Finally it is presented to the President for signature and promulgation.

(iii) Regulation

After promulgation, *décrets d'application* must be written, which are orders detailing how the Government should implement the law. Writing of these orders is solely the responsibility of the executive and is generally carried out by the relevant government department and its advisors. The draft orders are submitted – via the SG/G – to the Council of Ministers for adoption before being signed by the President or the Prime Minister.

The NA is not automatically shown the orders for the laws it passes. Nevertheless, these days it insists that the Government send it copies of the orders.

<u>The main actors</u>

Although some of the actors involved in this process are quite well known, others are less so. This part of the report describes all of the actors but gives more detail about the lesser known ones.

(i) The President of the Republic

The President promulgates laws presented by the National Assembly and orders submitted by the Council of Ministers. The President cannot refuse to sign a law passed by the NA, but in certain instances he can send it back to the NA for a second reading before promulgating it. He can, however, reject a regulatory order.

(ii) The National Assembly
The NA is made up of 147 elected *députés* (currently 127 belong to the majority party) and is the country's legislature. Every law must pass through the NA before it is adopted. After the long journey through government departments, bills submitted to the NA are in more or less their final form, although the *députés* do have the right to amend them.

Députés also have the right to propose laws. However, this is rare due to heir lack of resources and capacity. Nevertheless, it is important to note that *députés* can challenge current legislation at any time and force the Government to explain its relevance. In other words, the NA can demand a reformulation of legislation in the light of its own evaluation of the law and its application.

For practical reasons, the bulk of the NA's preparatory work is carried out by the various commissions (finance, law, employment, industry, rural development and the environment, etc.). The commissions are made up of *députés*, whose membership is voluntary. Each commission studies bills that fall within its field and gives its opinions on other bills which affect its field.[5] The NA office distributes bills to the various commissions.

In general the commission asks the minister responsible for the bill to defend it by asking for rationale behind its formulation. The commission also invites other departments involved in the bill to present their points of view. Similarly, the commission can also seek contributions from non-governmental actors. Representatives of one commission can participate in the work of another if necessary. In the light of these hearings and its own analysis, the commission decides whether or not the bill is in need of amendment. The commission then invites the minister to attend a meeting to discuss the final amendments.

(iii) The Economic, Social and Cultural Council (CECS)
The existence of the CESC is laid down in the 1992 constitution. It has two main roles:

- To report to the President, the Government and the NA on the expectations, needs and problems of civil society regarding the direction taken by the Government and its proposals.

- To be consulted on all financial bills and all bills with economic, social and cultural implications.

The Council is made up of 58 members, representing trade unions, socio-professional associations, employees, NGOs, and regional bodies. Members are designed by their respective organisations and appointed by presidential order. In theory the members of the Council are apolitical. The CESC is made up of five commissions, including one which deals with rural development issues.

According to the constitution the CESC has significant consultative powers even though it has no legislative power. It must be consulted for all legislation concerning the economic, social and cultural life of the country and the Government and NA are obliged to follow up on its recommendations.

[5] The Commission for Rural Development and the Environment, for example, advises on industry bills if they have an environmental dimension (e.g. pollution)

(iv) The High Council for the Communities (HCC)
Although it is embodied in the constitution, the HCC has not yet been set up. However, the bill to establish it is being prepared.[6]

The HCC will be made up of elected local representatives (chosen from *the conseilleurs des collectivités territoriales*: local councilors) and will certainly play a significant consultative role in the legislative process. Some people speak of it as a "senate" or "second parliament" with the right to be consulted on all proposed legislation concerning local government bodies.

(v) The Government
The Government intervenes in the process of policy formulation through its Secretariat General (SG/G), which checks all the draft bills coming out of the departments. It sends the draft bills to the CESC and the judiciary for review if necessary; it also organises interdepartmental meetings. Afterwards it sends the draft bill on to the Council of Ministers and once the bill has been adopted it submits it to the NA.

(vi) Government departments
Government department undertake the bulk of the work of designing NRM policy. The process is initiated by the relevant technical division within the department often with inputs from other actors (NGOs, research institutes, civil society, etc.). Later the draft bill is transferred to the department cabinet for review by the department's technical and legal advisors. The department also arranges the first meetings with other departments with the aim of making the bill as consistent as possible with existing policies in the sector.

(vii) The judiciary
The Supreme Court advises on ordinary laws, while the Constitutional Court deals with organic laws. In either case the court is not concerned with the appropriateness of the bill, but with its legality and its compliance with existing law.

(viii) Development partners
Officially, development partners are participants consulted during the policy-making process. But in practice, funders clearly play a far more significant role – in the definition of the problem and (through conditions placed on their aid or the way they support the consultation process) in the identification of the political "solution".

(ix) Civil society and local people
Civil society are also consulted during the policy-making process. Local people may also be involved through local consultations.

3. Existing natural resource management policies

In order to illustrate the policy-making process, the following sections attempt to describe the formulation of forest policy and the new Pastoral Charter.[7]

[6] A draft bill for the creation of the HCC was criticised by the Constitutional Court in 2000.
[7] For now, the Pastoral Charter remains a bill, as the NA has not yet passed the submitted text

3.1 Forestry policies[8]

(1) Identification and analysis of the problem

The new law governing management of forest resources (no. 95-004) replaced the forest code of 1986. The reasons for the change are fairly widely known: the change of regime in March 1991 began the democratic process, which led people to question the authoritarian and repressive practices in the forestry sector. The National Conference and Rural Audit, both held during the period of transition of power, were a chance for the people to vehemently criticise the forestry service and to demand the redesign of forestry policy, which was seen as non-participative and not conducive to sustainable management of forest resources. In addition, decentralisation – advocated in the 1992 constitution – made the 1986 code unworkable, because it only allowed for centralised state control of all the country's forest resources. The new situation demanded a new forest policy and a re-evaluation of the old laws.[9]

(2) Identification and analysis of the "solutions"

The re-evaluation of the forestry policy during 1992-3 involved the forestry service in a self-assessment which led to the design of a number of pilot schemes.[10] These were only just within the law but results were fairly convincing in terms of participation and of forestry management.

With the support of several funders, the forestry service also organised local and regional consultations to involve the users of forest resources in the debate. This process was carried out by a national commission for the re-evaluation of forest law, made up of technicians, sociologists, lawyers, administrators and several journalists. Some Districts held forums and the management of bush fires was the subject of particularly lively debate in the south of the country. Management of trees on farmers' fields and the definition of state forests were debated everywhere.

With the support of development partners the forestry service made field visits to neighbouring countries (Senegal, Burkina Faso, Togo) to seek ideas for the new legislation.

(3) Selection of the preferred option

By 1993 the outlines of the new legislation were becoming clear. The most important aspects of this included:

- Adoption of a "guiding law", setting out the principles governing management of forest resources and leaving room for local regulations in line with the policy of decentralisation.

- Removal of the most repressive aspects of the old law, particularly the bush fires code and the obligatory use of improved stoves. Additionally, the scale of penalties was reduced compared with the old law.

[8] Note that the story of the design of the forestry laws in 1995 is based on interviews with former heads of the forestry service and other actors. It is therefore an oral history. Remarkably, no official report precisely details the stages of the process.
[9] This reinterpretation was made easier by the fact that the new heads of the forestry service were mostly development-minded and not inclined to repression.
[10] Including BIT at Kita, OAPF and PAFOMA

- Establishment of three forestry sectors – state, communal and private – to give responsibility to local people and permit local management of forests by local government bodies.

The bill was drafted by lawyers (and hence in legal jargon), then ratified through a series of regional meetings followed by a national conference. According to the policy makers of the time, these hearings were meant to ensure that the legal dispositions within the bill respected the will of the people. The draft was also submitted to development partners before being going through the official channels leading to its presentation to the Council of Ministers.

(4) Adoption of the chosen option

After adoption by the Council of Ministers in 1994, the bill was submitted to the NA. The National Director of the forestry service was summoned several times by the CDR/E to defend the project, which was seen as very sensitive after the 1992 protests. The NA passed the bill without significant modifications during the October 1994 parliamentary session. The President promulgated the law (no. 95-004) in January 1995.

(5) Comments

There is no doubt that the Malian authorities tried hard to make this a participative policy-making process. Of all the laws promulgated since 1992, the forestry law (95-004) has probably involved the most intensive local and regional consultation process. However, several problems should be noted:

- The "will of the people" was not wholly respected in the final draft. For example, the fact that several species of tree are totally protected by law, despite their local economic importance,[11] shows that local opinion was not taken into account.

- The new law still contains ambiguities, particularly concerning the distinction between trees growing on farmers' land and forests. A more effective consultation process would probably have prevented such ambiguities.

- As a "guiding law"[12] the new law leaves room for local authorities to regulate forest management. However, the law itself is silent on how such local management should be defined as this is dealt with in the *décrets d'application*.

In summary, although there was a major consultation process, it does not appear to have been of sufficient quality.

Note also that the forestry law (95-003) concerning timber production, transport and trade, which was promulgated at the same time as law no. 95-004, was not explicitly subject to broad consultation at the local level. The truth of the matter is that the funders of the domestic energy strategy demanded this law, and its terms and conditions were not seriously discussed with users of forest resources. It appears that the political will for consultation has its limits.

[11] The case of *anogeissus leocarpus* is notorious. It is the dominant timber species in some Districts in the Mopti Region, but it is nevertheless legally protected and hence cannot legally be exploited.
[12] Some observers contest the description of law no. 95-004 as a "guiding law", given its sometimes very detailed terms.

3.2 The Pastoral Charter

At the time of the consultancy the bill of the Pastoral Charter has still not been passed as law. The bill is currently being worked on by the CDR/E and will not be voted on before the April 2001 parliamentary session.

(1) Identification and analysis of the problem

In the 1990s, the former livestock department considered that the lack of any formal legislation regulating the livestock sector was a major constraint to this sectors economic development. The absence of any law governing access and to and control over pastoral resources was also considered to be an aggravating factor in the growing number of conflicts between herders and farmers.

The purpose of the Pastoral Charter was thus to improve herders' access to natural resources. Growing recognition among policy makers in West Africa of pastoralism as a viable economic activity probably contributed to the recognition of the problem.

(2) Identification and analysis of the "solutions"

In 1995-6 the livestock service applied to the UN Food and Agriculture Organization (FAO) to fund a study on customary pastoral resources management practice. The FAO immediately gave its support and arranged funding through its technical cooperation programme. However, the funds were not releases until 1997.

The National Directorate of Rural Amenities (DNAER), part of the Ministry of Rural Development, carried out the study. It took the form of an inventory of the norms and customs of pastoral land use, and was intended to supply policy-makers with the necessary information to draw up the Charter. The inventory covered seven pastoral zones and was carried out by Malian consultants under the supervision of the DNAER and foreign advisors from the FAO.

The results of the studies were presented and ratified at six regional workshops. A report was prepared and, with the help of the FAO, a draft bill was drawn up. In 1999, a national conference ratified both documents.

(3) Selection of the preferred option

The DNAER and the Ministry of Rural Development (with strong backing from the FAO) were now able to take a strategic position. Perhaps the most significant part of the strategy was to formulate the Pastoral Charter as a "guiding law", setting out the general principles of pastoral management but leaving the details up to the local authorities. It is said that this fundamental choice was inspired by the findings of the Praia regional meeting organised by the CILSS in 1994.

After the national conference, which largely accepted the original proposals, the Ministry sent the draft bill to the regional government departments for comment. According to the department, only the Mopti Region responded (as a result of the work organised by GDRN5). Although the department agreed that the comments were relevant, it did not include them in

the bill because it considered them very (even too) detailed and thus applicable to the regulatory orders rather than the law itself.

The Ministry of Rural Decelopment (MDR) then sent the file to the SG/G. In the first interdepartmental meeting organised by the SG/G the participants decided it would be better to avoid the term "charter" and stick to "law". Other modifications mostly concerned the legal consistency of the bill (consistency with other laws, removal of redundant clauses already contained in other laws). The interdepartmental meeting of secretary generals insisted on clarification of certain concepts (such as "herders" and "nomadic life").

The SG/G decided, on account of the economic and social nature of the bill, to take the advice of the CESC. Its comments (mostly small details) were included in the final draft presented to the Council of Ministers in October 2000. The Council Of Ministers decided to reinstate the name "Pastoral Charter" before submitting the bill to the NA.

(4) Adoption of the chosen option

The bill came before the NA in October 2000 and was referred to the CDR/E. The CDR/E organised a series of hearings with several actors: the Minister of Rural Development, the DNCN, the Chamber of Agriculture, and the GDRN5 network. These sessions (in particular that with GDRN5 network) persuaded it to postpone the vote until the next parliamentary session in order to take in a number of amendments.

(5) Comments

- For the first time, the process of policy design attempted to take local customs into account. This is a very positive sign. Although the bill is not always "faithful" to local practices,[13] the initiative of basing it on a study of the real situation was entirely laudable.

- On the other hand, the degree of real involvement of pastoralists seems to have been poor. The regional workshops and the national conference had a very low level of participation of pastoral people. In addition, it is very important to note that the Pastoral Charter bill was at no point discussed with the local government officials who will have a key role in its implementation – and it's no longer possible to claim that local government bodies don't exist!

- Very few fundamental changes were made between the first draft and the version submitted to the NA. Certainly there were changes, but most concerned the form of the bill or its legal consistency. In short, the bulk of the content of the bill was determined right at the start of the process.

- Having received information from GDRN5, the NA decided not to rush into voting on the bill. The CDR/E intends to propose some changes and, while waiting for them to be written up, has postponed the vote until the next session of parliament.

[13] One could question for example the practical "legitimacy" of a concept such as pastoral exploitation of land, a concept of land use foreign to the customary pastoral systems in the Sahel.

4. Analysis of the NRM policy design process

It is worth underlining several aspects of the process of NRM policy design.

4.1 Positive aspects

Before launching into criticisms it is important to point out the positive aspects.

(1) Improvement in the design of new policies

Compared both with the past and with laws in other sectors (e.g. the penal code) the writing of the current laws governing NRM was more participative and more pragmatic. This is positive progress. The forestry law was adopted only after numerous consultations (local, regional and national). The Pastoral Charter was conceived in a pragmatic fashion, on the basis of an inventory of existing norms and customs. In addition, both laws are "guiding laws" which in principle leave plenty of space for local regulation.

(2) Political will

Compared with other West African countries, Mali has a very open political and administrative elite, which is prepared to engage in public debate. Most policy makers are remarkably well disposed to listening to others, even if they're not of the same opinion. This benefit should not be underestimated.

(3) The institutions of the Third Republic are increasingly fulfilling their roles

Despite their "youth" and the usual problems associated with lack of human and material resources, the Republic's institutions are beginning to function better and better. The NA has shown the will to play an increasingly serious role in legislation; the CESC is advising on relevant issues; and the judiciary seems on occasion prepared to challenge the legal standing of new bills (as seen with the bill to create the HCC). Clearly the executive continues to exercise a great deal of power in practice, but it is trying to abide by the rules of the game. In summary, Mali's political evolution is entirely positive, albeit slow.

(4) An emerging civil society

Malian associations are beginning to show their strength - the recent cotton-producers' strike is just one example. Much remains to be done, but it is clear that civil society is increasingly able to take a role in the policy-making process.

4.2 Criticisms

Analysis of the policy-making process raises numerous questions, some of which have implications for the future work of GDRN5.

(1) Early and late stages of the process

Although the process of policy formulation is cyclical, it is possible to distinguish separate early and late stages. The early stages cover everything from definition of the problem to submission of the draft legislation to the NA. The late stages are the work of the NA and the promulgation of the law by the President.

Experience shows that the bulk of the work associated with policy design takes place in the early stages of the cycle. Bills brought before the NA are already pretty much finished, which leaves the *députés* with little room for manoeuvre. The relevance of a bill, for example, would be very difficult to challenge in the NA. And because the bill is coherent within itself, making changes could be complicated. Although the NA can demand amendments, it is less clear whether it could mount an outright challenge to the bill or demand significant redrafting.

In summary, the greater part of all national NRM policy would appear to be already decided before the NA becomes involved.

(2) Preliminary consultations – is the Government really keen or just going through the motions?

We have seen that, in the initial stages of NRM policy-making, government departments can be quite open and involve others in gathering ideas. However, this openness is optional – nothing obliges the MDR or the environment ministry to consult others. As we have seen, law no. 95-003 (timber production, transport and trade) was designed in a far less participative manner than no. 95-004 (management of forest resources).[14]

Government departments do not have any formal procedures for drafting bills in a participatory way. There are, for example, no published guidelines to ensure that participation does take place.

(3) Lack of monitoring and evaluation (M&E) of policies and laws

Neither the executive nor the NA seems particularly worried about monitoring or evaluating the implementation of policy or the implementation of laws. For example, the forest laws have not undergone a single evaluation to assess whether or not they can be effectively implemented or whether they are having the desired effect. Perhaps it is less surprising that M&E is conspicuously absent at the *député* level, and yet the NA has the right to receive information on the effectiveness of the laws it passes.

While all development projects include an M&E element, laws (which are in a way "society projects") do not follow the same logic. But without M&E of laws and their implementation, how can anyone know whether or not they solve the problems they set out to address? In all honesty, the mechanisms of NRM polices are only tested in periods of crisis, such as that of 1991.

All the same, note that M&E has been introduced by the *Direction Générale de la Reglementation et du Contrôle* (DGRC: Directorate General of Regulation and Inspection), part of the MDR. On its own initiative, the DGRC has reappraised some laws and drafted new

[14] In reality, law no. 95-003 was a condition laid down by the World Bank.

ones.[15] Although the DGRC looks after the pastoral and fishing sectors, it is sadly not responsible for regulation of forest and wildlife resources.

(4) Limits to participation, representation and consultation

In the course of designing the forestry policies and the Pastoral Charter, the departments made efforts to ensure the participation of and consultation with non-governmental actors (such as resource users and NGOs) as well as involving representatives of other departments. In general this is entirely laudable. However it is not evident that the participation/consultation is of the required quality:

- The "representatives" of rural society are not always the most representative. The Government tends to content itself with consulting the Chamber of Agriculture in Bamako, an institution which is not necessarily the most representative of rural society.

- Some observers who applauded the forestry service's efforts to involve the people in formulation of the forest policies nonetheless feel that the service is ill equipped to ensure true local-level participation.

- Consultation is generally rushed. Involved parties do not have enough time to read the documents closely and representatives of the various organisations and authorities do not have time to consult their own membership or other parties. Delegates at workshops and forums are therefore denied the chance to make an informed contribution.

There is also the problem of participation/consultation with the local government bodies, which have been operational since 1999. NRM laws are increasingly devolving responsibility for NRM to local authorities. However, this is being done without adequate consultation with local elected representatives. Before 1999 this was clearly not possible,[16] but the drafting of the Pastoral Charter, which places serious regulatory responsibilities on the *collectivités territoriales*, should have involved such consultation.

(5) Legislation and regulation

The distinction between the legislative and the regulatory sectors lies at the heart of the Malian legal system. While the former, for all its failings, is ensuring some involvement of civil society and the people (throughout the consultation process and the deliberation of the NA), the same does not go for the latter, which is solely the responsibility of the Government. The writing of *décrets d'application* is neither open nor participatory. Broadly speaking, it is a monopoly of departmental technocrats and lawyers.

Funders have their strongest influence in the regulatory sector because they only have to deal with the executive. Take the example of order no. 98-402/P-RM and its predecessor no. 95-422/P-RM, which set tax rates for forest products. They are a condition of the World Bank's Funding for the Domestic Energy Strategy.[17]

Note the paradox implicit in this system. The new forest and pastoral laws were conceived as "guiding laws", setting out the governing principles of their respective domains. They must

[15] In 2000, the DGRC reappraised laws governing quality control and conditioning of foodstuffs (which date from the colonial era) and drafted laws governing fertilisers and milk and dairy products.
[16] Local government bodies were only elected in 1999.
[17] Note, however, that the World Bank only "demanded" the measures governing production of wood-energy; other fiscal measures (such as the tax on palm leaves and lumber) were DNCN initiatives.

therefore be fleshed out by orders and local regulations (which are themselves subject to regulatory orders). Hence there is a risk that the interpretation of "guiding laws" will be formulated entirely by the executive.

(6) The Republic's representative institutions

The NA, the CESC and (soon) the HCC are all institutions with important mandates in policy design. The NA is the legislative authority and the other two are consultative bodies. All three fulfil the democratic principle of representation of the people.

However, as far as NRM is concerned, these institutions are not well equipped to understand the relevance of the bills brought before them by the executive. This is as it should be in the sense that their members are not chosen on the basis of expertise in NRM. However, in order for them to give their opinion (CESC and HCC) or to legislate (NA) the members of these institutions need to be well briefed of the issues pertaining to NRM policy, and not only by civil servants and Government departments.

Although the NA increasingly taking the initiative to seek the information it requires to understand the relevance of bills presented before it by the executive, it is clear that an overwhelming majority of *députés* of the governing party are disinclined to step out of line. However, other parties are represented and form various parliamentary groups. Their members are certainly not prepared to swallow the Government line wholesale.

We have also observed that *députés* rarely propose private bills. Seeing as the NA is still short of financial resources (to engage consultants or commission studies), this situation could well remain unchanged in the short to medium term. Also, we should note that there is little contact between *députés* and the people. Communities in general and civil society in particular rarely take their problems to the *députés*, even when they are related to the existing law. Unless they are confronted with people's problems, it is difficult for the *députés* to suggest bills or amendments to existing laws.

5. Options for GDRN5

In the light of this analysis of NRM policy-making practice, GDRN5 has several options for improving its lobbying activities.

5.1 Working within the current system

Under the current system it appears that the majority of the important decisions are taken before the NA becomes involved. Hence to influence policy more effectively, the network should try to work "upstream" of the NA at the same time as pressing on with its briefings to *députés*.

(1) Broadening the scope of its interventions

By working solely with the NA, GDRN5 is not exploiting all the possibilities for influencing the policy-making process or for participating more widely in the formulation of NRM policy.

The network should broaden the scope of its interventions in order to reach as many actors as possible.

Among the **institutions of the Republic**, GDRN5 must target the CESC. We have seen how the Government actively sought the advice of the CESC over the Pastoral Charter and noted that this advice was incorporated into the bill. The key here is to help the CESC perform its consultative role more effectively. The network should provide the CESC with good information on NRM issues in order that it might assess new legislation in a more informed manner. To this end the network could:

- Identify CESC members from the Mopti Region and involve them in its workshops and discussions. The CESC members would thus become better informed about NRM and be able to make a more valuable contribution to the deliberations of the CESC.

- Contact the Secretary General of the CESC in order to build a relationship between the two organisations.

- Organise a workshop on NRM for the benefit of the CDR and the CESC.

The same could apply for the HCC once it has been set up.

While waiting for the HCC to become operational, GDRN5 could usefully involve the regional members of the *Association des Municipalités du Mali* (Association of Malian Town Councils) in its work. The important thing is to make sure that local officials are increasingly informed and consulted about NRM issues.

As regards the **executive**, the network could attempt to involve departmental advisors in its work. We have seen that these advisors play an important part in initiating and formulating policy – hence it would be useful to include them in the network's workshops and discussions.

The same goes for the representatives of **development partners**, who could also be involved in the network's work.

GDRN5 could broaden the scope of its work with the **National Assembly** by formally involving all the parliamentary groups. Although *députés* of the ruling party may be disinclined to challenge projects submitted by the executive, those from the opposition parties are less so. Hence, by targeting all the parliamentary groups, the network could provoke more debate within the NA regarding NRM legislation.

To further extend the scope of its interventions, GDRN5 will probably need to forge strategic alliances with **other actors**. It would certainly be worth developing synergies with organisations such as *Intercoopération* (which intervenes in the Sikasso Region) and the *Coopération Française*, which is currently involved in the debate about rural land.

Finally, the network must ensure that it continues to base its work on real issues by strengthening the involvement of **user-groups**. After all, it is on their behalf that it intervenes with the national authorities.

(2) Informing the debate

All actors involved in making NRM policy need to be better informed, or at least to have access to information from different sources. To achieve this the network must first of all develop its own **communication and information strategy**. Information should be clear, relevant and accessible: it should enable the user to set priorities. It is apparent that key policy makers often have little time to read documents, so the network's documents must be concise and well structured. The communication strategy should also set out which actors are to be briefed by the network and when. The network should be able to develop its own strategy with support from consultants.

It is also important to consider the need to raise GDRN5's profile. Currently it is only well known in the 5th Region. To inform and influence national debates, the network would probably need a **national profile**. Therefore, any communication strategy must seek to make it known in national forums.

The **press** could also be used to inform debate. The network could invite journalists to workshops and meetings in the hope of creating a news item.

Finally, the network would do well to supply the CDR/E with a list of consultants or institutions to consult regarding NRM issues. At present the CDR/E does not know who to turn to for advice about the potential or the relevance of bills submitted to the NA.

(3) Establishing dialogue with Government departments

The ministries are responsible for overseeing policy design, so it is entirely logical to enter into dialogue with them. First of all the network could contact the Secretary Generals of the departments responsible for NRM. Then, once good relations had been established, the network could suggest occasional meetings with the various departments during which it would brief them about its activities and gather information about deliberations within the Government. Such a dialogue would put GDRN5 in a better position to influence the "upstream" stages of policy-making.

5.2 Working to change the current system

GDRN5 could equally lobby to change the policy-making process itself.

(1) Encouraging evaluation of the law

A completely new law such as the Pastoral Charter is very rare. In practice, most NRM laws have been and will be reformulations of existing legislation. But it is unclear how the decision to reformulate a law is taken. There is little evidence of M&E of existing laws, so they are hardly likely to be challenged. But the network could intervene to provoke a re-evaluation.

There are three possible courses of action:

- The network could commission studies to evaluate the application and effectiveness of current legislation.[18] The presentation of the findings would be an opportunity to involve national actors in debate and their publication would reach a wider audience.

- The network could organise workshop-debates between members of the NA and representatives of local NRM organisations. These workshops will allow the people who are subject to the laws to confront those who passed them and the *députés* will inevitably have to evaluate the laws and their effectiveness.

- The network could also raise the problem of M&E of existing policy through its relationships with institutions of the Republic and Government departments.

(2) Provoking debate over the separation of the legislative and regulatory sectors

Under Mali's current system, the separation of legislature and regulation means that the NA has no control over the regulatory sector. This is of greater significance in the NRM sector because the laws here are increasingly "guiding laws" which require numerous orders for their implementation. But it is not inconceivable that the NA could exercise some control over the wording of orders or that they could be drafted more openly.[19]

It is a complex issue. The network could commission a study into the ambiguities between laws and their orders. The results should be discussed in workshop and made available to the various actors.

(3) Provoking debate on the policy-making process

As we have seen, the policy-making process is not formalised. There are no rules governing who should be consulted or how during the drafting of a bill. The extent of participation is entirely up to the executive. However, a participation/consultation process could be institutionalised. The NA could established formal procedures making it obligatory to consult certain actors.

The network should hold a meeting to consider whether such an option is realistic.

[18] One such study - "Local NRM practices and related laws" (Sanhogo, N., Cissé, I. and Bocar, O.) commissioned by the network in 1999 - already exists.

[19] In other West African countries (particularly Benin), the principal orders are submitted to the NA along with the bill, which gives the *députés* a much better understanding of the laws they pass (related to the author by M. Idi Boré)

Annex 1: Terms of reference

"Study of decision-making procedures regarding NRM"

Prepared by Ali Bacha Konaté, Coordinator, GDRN5 network

Introduction

NRM decisions in Mali have always served powerful elites at the expense of the majority of the population, for whom even the idea of understanding the laws is a fantasy.

The Malian State, like the Colonial State before it, has introduced new policies with aims at odds with the people. From the colonist to the Malian legislator, the common denominator in all policy-making has been to **assure the primacy of the rights of the State over all resources** and to invalidate traditional laws. But the laws have not been as successful as expected and a number of grievances have been raised:

- The State's continuing stranglehold on resources
- Resulting failure to take local differences into account
- Lack of consistency between NRM laws and between laws and local customs
- Lack of community participation in decision-making

During the National Conference of August 1991 and the Rural Audit of October 91, civil society clearly spelt out its desire to take charge of its own resources. Since then the State has undertaken a series of reforms backed by a proliferation of laws and regulations[20] aimed (among other things) at decentralisation of power and skills and ensuring community participation in and responsibility for decisions. But when it comes to implementation, there remains a huge imbalance between the power of the State and that of civil society.

In sum, the legislative process has not succeeded in implementing efficient NRM. Willfully inappropriate or simply unrealistic legislation coupled with the unsuitability of the modern institutions in charge of their implementation has resulted in failure and in resistance from entrenched traditional practices.

One might wonder if the State is really committed to reform when one looks at the inconsistencies and contradictions between the State's decisions and the aspirations of the people. Are political debate and the resulting decisions just a diversion? Is policy-making in general well targeted or well ordered? What factors or events initiate and/or shape policy? How can the people be brought into the decision-making process? How can they become skilled decision-makers? Such questions demand an appropriate response to help NGOs strengthen their ability to influence the Government.

Aims and objectives

This study is directly linked to the network's objective of influencing policy concerning NRM and decentralisation. Its aim is to familiarise NGOs with the decision-making process in order to strengthen their lobbying activities.

[20] From 1995 to 98, more than 25 NRM laws and regulatory orders have been promulgated.

The objectives are:

- To provide a historical overview of NRM policy
- To identify and describe the various processes and factors influencing decisions taken by national institutions
- To analyse the strengths and weaknesses of the processes identified
- To analyse consistency of policy with local practices and/or the degree to which local practices are taken into account during policy formulation.
- To suggest strategies for the network and its partners (grassroots organisations, NGOs, associations); also to identify training or capacity-building needs to help the network be more effective in influencing policy.

The final stage will be followed by a workshop to present and debate the findings and establish strategies for influencing policy.

Expected results

- A report addressing the project objectives
- A workshop to present and debate the report held to assist the formulation of a strategy for influencing policy and for lobbying activities
- A report on the workshop, available to all participants
- Etc