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# MALI LAND TENURE ASSESSMENT REPORT

**SEPTEMBER 2010**

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## **DISCLAIMER**

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# ACRONYMS AND ABBREVIATIONS

AFD	<i>Agence Française de Développement</i> (French Development Agency)
AOPP	<i>Association des Organisations Professionnelles Paysannes</i> (Association of Professional Peasants Organization)
APCAM	<i>Assemblée Permanente des Chambres d'Agriculture du Mali</i> (Permanent Assembly of Chambers of Agriculture in Mali)
BASIS	Broadening Access and Strengthening Input Market Systems
BNDA	<i>Banque Nationale de Développement Agricole</i>
CAADP	Comprehensive Africa Agriculture Development Programme
CDF	<i>Code Domanial et Foncier</i> (Land Tenure Code)
CNOP	National Coordination of Peasants Organizations
DED	German Development Service
FAO	Food and Agriculture Organization
FDI	Foreign Development Investment
FEBAVIM	<i>Fédération des Groupements Interprofessionnelle de la Filière Bétail au Mali</i> (Federation of Inter-professional Groups within the Livestock Value Chain in Mali)
FENAFER	<i>Fédération Nationale des Femmes Rurales du Mali</i> (National Federation of Rural Women of Mali)
FGLPA	Framework and Guidelines for Land Policy in Africa
GNP	Gross National Product
GOM	Government of Mali
GTZ	German Development Agency
IFAD	International Fund for Agricultural Development
LandNet	West African Land Network
LOA	Agricultural Orientation Law
LTPR	Land Tenure and Property Rights
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
NGO	Nongovernmental Organization
NRM	Natural Resource Management

OHADA	<i>Organisation pour l'Harmonisation en Afrique du Droit des Affaires</i> (Organization for the Harmonization of Business Law in Africa)
ON	<i>Office du Niger</i>
PACT	Program to Support Local Government
PADON	<i>Projet d'appui au développement économique de l'Office du Niger</i>
PDES	Project for Economic and Social Development
PGP	<i>Programme de Gouvernance Partagée</i>
PNIA	National Program for Agricultural Investment
PNIR	National Program for Rural Infrastructure
PNISA	National Program for Agriculture Sector Investment
PRRGP	Property Rights and Resource Governance Program
PTF	Technical and Financial Partners
SEDIZON	<i>Secrétariat d'Etat chargé du développement intégré de la zone Office du Niger</i>
SNV	Netherlands Development Organization
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development

# EXECUTIVE SUMMARY

The United States Agency for International Development (USAID) mission to Mali requested a summary review of the evolution of land tenure policies of the Republic of Mali. A two-person team carried out a literature review and short field visit to Mali in May 2010, under the auspices of USAID's Property Rights and Resource Governance Program (PRRGP).<sup>1</sup> The resulting study suggests that the relationship in Mali between land tenure and food security is strong. In principle, land tenure security—the expectation that land rights will be respected—should encourage increased investment in agricultural production. In turn, this will contribute to improved income levels from the sale of surplus production, job creation in the agricultural and ancillary sectors, enhanced income opportunities along the extended value chain, and expanded trade opportunities. In the longer term, increased production and income improves food security by expanding both *availability* and *access* to food. Unfortunately, the lack of land tenure security in Mali limits the willingness of small-scale producers and agro-investors to invest in expanding and intensifying agricultural production. The Government of Mali (GOM) is making strides to increase tenure security through new public policies of decentralization and devolution of authority to control and manage land and other natural resources. In the long term, this should increase the country's capacity to ensure household and national food security.

The land tenure situation in Mali is marked by the coexistence of customary land tenure practices inherited from the pre-colonial past alongside colonial and post-colonial state policies that impose Western juridical concepts of state and private property. To this day, customary land tenure practices remain deeply engrained in the country's social fabric due to the cultural legacies of powerful Mandingo and Fulani empires that ruled over much of the country from the 13<sup>th</sup> through the 19<sup>th</sup> centuries. In the late 19<sup>th</sup> century, French colonial rule undermined the authority of customary entities long engaged in determining the use and control of land and other natural resources. The French colonial state attempted to replace customary tenure precepts with Roman legal principles rooted in the right of the state to acquire and utilize vacant and non-used lands (principle of *mise en valeur*). The principle of state ownership of land and other vital natural resources continues to this day as one of the fundamental legal foundations of Malian land law. However, customary practices engrained in traditional cultural land use norms persist in parallel with state conceptions of land ownership and control. Post-independence governments continued the colonial legacy by reinforcing statutory legal principles designed to build national unity and bring land policy and laws into conformity with conceptions of Western legal principles of land tenure. In spite of these efforts, juxtaposition occurs between a Malian legal system governing land tenure and one anchored in customary practices. Only recently has the GOM begun to harmonize the complex web of laws and decrees governing statutory systems, and put in place a mechanism to recognize and record customary practices. It is still unclear, however, how these reforms will play out in practice.

In the past 10 years, the GOM has worked closely with civil society and the private sector to introduce a number of important land-related legislative measures designed to pave the way for significant change in how property rights are perceived and managed. The most important among these documents (existing or currently being drafted) are the *Politique Foncière (générale)*, the *Code Domanial et Foncier* (CDF), the *Loi d'Orientation Agricole* (LOA), and the *Charte Pastorale*. The recently concluded *Etats Généraux du Foncier* is also noteworthy, as it consists of a series of public consultations organized by the Ministry of Housing, Land Issues, and Urban Planning between 2008-2009, held at the *cercle*, regional, and national levels to elicit the opinions and concerns of all stakeholders regarding the proposed CDF. Recommendations emerging from

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<sup>1</sup> The USAID Land Tenure Unit subsequently placed the Mali Country Profile (<http://ltp.rmpportal.net/products/country-profiles/mali>) on the LTPR portal, which may be read in conjunction with this report.

these consultations should be taken into account not only in revisions of the CDF, but also more broadly, in other key land-related legislation and administrative decrees.

Several institutions and agencies in Mali play a role in governing land tenure issues. The Head of State and the Prime Minister work in collaboration with the Council of Ministers and the High Council on Agriculture (comprised of the Ministers of Territorial Administration and Local Communities; Economy, Industry and Trade; Women's Promotion, Children and Family; Agriculture; Livestock and Fisheries; and Housing, Land Issues, and Urban Planning. A Permanent Secretary based within the Ministry of Agriculture follows up on High Council on Agriculture decisions. A separate Secretary of State oversees land tenure issues within the *Office du Niger* (ON) zone; and the Ministry of Housing, Land Affairs, and Urban Planning focuses, in particular, on urban land tenure issues. Despite the proactive measures taken to reform the legal corpus of texts and decrees around land and other natural resources, overall governance of land tenure issues continues to suffer from a lack of adequate communication and coordination within government offices.

Land tenure insecurity and inequitable access to land and natural resources define the current situation with respect to land tenure in Mali. Smallholders and family farms, women, youth, migrant populations, and major agribusiness investors all face these issues, although to varying degrees.

Customary land inheritance practices cannot continue to endow subsequent generations with adequately sized areas of land, even if only for subsistence purposes. As a result, the rural poor are either forced into other vocations or compelled to migrate to lands traditionally owned or controlled by others. Both options have a negative effect on land tenure security. While many senior government officials and intellectuals promote agribusiness as a means toward economic growth and improved food security, and argue that it will not impede smallholder farming, the rural poor still see large-scale agribusiness as a threat to their land tenure security and livelihoods.

Traditionally, women cannot own land in Mali. While they can be granted temporary land use rights, these can be retracted at any time. To improve their land tenure security, women frequently form legally recognized associations, and through this avenue, request land for their collective use. This strategy improves women's tenure security, but still does not guarantee that the state will not reclaim the lands later. Public attitude with respect to women's ownership of land in Mali is beginning to change. The state is advancing policies that will improve women's access to land, and titling may provide women with more secure tenure rights.

Migrant populations have virtually no access to land ownership (other than formal titling via land purchases). These include sharecroppers, seasonal workers, disinherited youth, pastoralists-turned-sedentary farmers, and resettled populations that often have not received proper compensation. For pastoralists, the situation is particularly tenuous with respect to access to, and use of, land and natural resources. As the total area of cultivated land expands to support crop production, it encroaches upon transhumant passageways, especially along the Niger River and in pasture-rich areas. Overreliance on increasing agricultural (crop) output to achieve food security, without due consideration of the needs of pastoralist populations and the contribution they could make to improve food security, could harm a significant percentage of the transhumant population.

Land tenure security for agricultural investors depends on the mechanism used to acquire land. Most large-scale investors seek land in the ON where long-term leases are negotiable. Investors are required to make significant improvements on the land, pay annual water user fees, and render the land continuously productive. If at any time investors fail to fulfill these obligations, the ON can reclaim the lands. Agribusiness investors complain that this leads to insecurity and fails to foster sustainable land use.

The root causes of land tenure insecurity and inequitable access to resources in Mali are diverse in nature. As described in more detail in this report, some of these variables include demographic growth, unsustainable land use practices, climate change, coexistence of customary and statutory land tenure systems, lack of public awareness of legal frameworks, lack of good governance and competence within the land administration system, slow decentralization, land expropriation, and poor land market performance.

Recognition of customary land tenure and property rights within the emerging statutory system is an initial step toward improving land tenure security in Mali, especially for some vulnerable groups in rural areas. However, supporting legislation, systems, and processes that explain *how* this will translate into improved tenure security must be carefully developed and broadly communicated.

The GOM has tried to raise public awareness of land tenure legislation and formalization processes but, in general, the majority of rural stakeholders are not adequately aware of, informed, or involved in the development of these policy frameworks. This is due to several factors, including the high cost of awareness building and education, the delicate nature of the information to be communicated, the potential impact on rural populations and land management practices, and the costs associated with land tenure formalization. All of these elements indirectly affect land tenure security.

Demand for land administration services is extremely high in urban and peri-urban areas where land markets are rapidly emerging. Titling is expensive, complicated, heavily bureaucratic, and poorly understood by the general public. High demand for services coupled with a perceived urgency (to formalize tenure) and general confusion around titling procedures create opportunities for corruption. Pressure is high to register lands in urban and peri-urban areas, but lack of access to finance using customary land tenure rights as collateral makes it difficult for the rural poor to engage in larger-scale agribusiness activities. Mali's experience with respect to leasing and titling in the ON and land market development in urban and peri-urban areas will strongly influence future land market development and performance.

Effective tenure reform and land administration require technical and managerial competencies that are lacking in Mali. Persons qualified to design viable policies and systems are limited in number and scattered throughout various levels of government and among private consulting partners. In addition, local GOM offices responsible for land administration do not possess the broad range of technical and managerial skills necessary to fulfil the land administration responsibilities that will be devolved to them.

Political will to institute land policy reforms seems strong within the President's office, but the topic's sensitivity makes many political leaders cautious about taking a stand on key land issues. In addition, the vested interests of some Malian officials in maintaining the status quo may temper genuine will toward change.

The GOM reserves the right to expropriate land from traditional users—even titleholders if necessary—in pursuit of the public good. In exercising this right, the GOM has leased or otherwise allocated large blocks of land to agro-investors, particularly within the ON. Many smallholders perceive this as a direct threat to their land security and livelihoods. Unfortunately, in most cases, little has been done to ensure that displaced families are properly compensated when their lands are expropriated.

Violent clashes rooted in land tenure issues are increasing in Mali, contributing to land insecurity. Most land-related conflicts are caused by competition for land and natural resources. This occurs between agriculturalists and pastoralists, among pastoralists, between indigenous populations and migrant or displaced populations, and among various users of forest resources. Other core causes of land-related conflict include escalated inheritance disputes or contested judicial rulings over land tenure.

Unsustainable use of arable land has led to diminished soil fertility, land degradation, and erosion. Development initiatives that promote sustainable agricultural production and improved natural resource management have been insufficient to keep up with broader, unsustainable natural resource management practices. While irrigation efforts can enhance agricultural productivity, few investors undertake studies to ascertain the environmental effects of their proposed activities, or their impact on water availability for other users. Overall, unsustainable natural resource management is increasing competition for land and resources.

Population growth in Mali hovers at around 3% annually. Maintained at this rate, the country's population will grow to 20 million in 2025, and to over 34 million in 2050. More than any other factor, this will have a profound impact on access to land and natural resources. Climate change has already begun to take a toll on resource availability. Desertification, change in transhumant patterns, decreased agricultural production levels

and yields, and shortened growing seasons will all lead to increased competition for agriculturally viable land and natural resources. This in turn will impose additional challenges to existing and future tenure systems.

The present study suggests illustrative areas of support and activities that could enhance land tenure security, encourage increased investment in agricultural production, improve food security, and improve vulnerable populations' access to natural resources. The broad areas of recommended USAID support and some specific activities proposed under each include the following:

#### *Legal and Regulatory Framework: Development of Land Tenure Policy and Legislation*

- Provide direct technical support and advisory services to key ministries involved in land legislation and support coordination among them.
- Support dialogue around legislative reform, ensuring that all stakeholders are consulted and their concerns are taken into account as policy is developed.
- Support widespread awareness building and information campaigns focusing on the evolving status and content of land policy and legislation.

#### *Land Administration*

- Help establish and build the capacity of proposed decentralized land management structures, particularly with respect to areas such as democracy and good governance, understanding and implementation of existing land legislation, conflict mitigation and resolution, and public awareness and education.
- Provide strategic support to registration of land rights, through a cadastre or other means, at the decentralized level by assisting the GOM in developing a methodology, tools, and an action plan for its implementation.
- Support a pilot test for land registration—through a cadastre or other means—in a few selected communes to identify proposed systemic strengths and weaknesses, create best practices, and identify implementation issues.
- Design, introduce, and support a means of recording land transactions at the village level and build local capacity to maintain these records and communicate them to authorities at the commune level.
- Support villages and/or communes in documenting local customary law, rules, and regulations regarding land tenure and access to natural resources in preparation for the gradual transition to more formalized, statutory land tenure systems.

#### *Equitable Access to Land and Resources Support*

- Assist the GOM and stakeholders in conceptualizing how they will harmonize customary and statutory land tenure systems in a way that supports equitable access to land and resources.
- Build general awareness of processes for formalizing customary rights (once developed).
- Assist vulnerable groups in securing and formalizing communal access to large blocks of land.
- Build the capacity of rural populations at risk of displacement by incoming agribusinesses to negotiate their fair treatment/compensation where appropriate.

#### *Land Use Management*

- Support small-scale irrigation outside the ON as an effective way to directly benefit the poor and improve household and national food security.
- Train village and community groups holding customary land in negotiating win-win public-private partnerships with potential agro-investors and attracting more socially responsible investment.
- Support land and resource use mapping at the local level and design mechanisms to feed this information into commune and regional mapping exercises.

### *Conflict and Dispute Resolution*

- Train decentralized land administration and management structures in conflict management and resolution.
- Work with the GOM to develop a legal framework pertaining to compensation for expropriated lands and to design systems for delivering compensation when due.
- Support stakeholder groups (training, coaching) in addressing conflict between agriculturalists and herders.

### *Agribusiness Development within the Office du Niger*

- Provide technical support to ON administrators in charge of managing land issues within the Millennium Challenge Account (MCA)-Mali Altona project zone.
- Work with ON officials and appropriate GOM authorities to build their capacity to negotiate with large agribusinesses and foreign direct investors to ensure that signed contractual agreements are in the best interests of the Malian people and support national food security.
- Work with producer's and women's associations to help them engage in joint, large-scale agribusiness activities and assist them in obtaining formally recognized access to larger areas of land.
- Work with banks and microfinance institutions to improve access to credit for medium-sized, Malian-owned agribusiness activities, in conformity with the Organization for the Harmonization of Business Law in Africa (*l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires* [OHADA]).
- Work with financial institutions to develop new loan products to support agricultural investments.
- Build the capacity of existing producer and stakeholder organizations to mobilize members; and advocate for, and create conditions for, more socially responsible agribusiness investment.



# I.0 INTRODUCTION

The United States Agency for International Development (USAID) field missions and host country governments are increasingly committed to improving land tenure and property rights (LTPR) institutions and practices. Development actors have turned their attention to investigating how tenure and property rights regimes affect, or are affected by, factors such as economic growth, governance, and food security. USAID/Mali is not alone in launching an inquiry into the linkages between LTPR and food security. Similar enquiries are emerging from missions around the world. USAID/Mali requested an assessment to describe tenure issues, constraints, policy, and administrative practices in Mali and then to suggest possible interventions to improve land tenure security. Carried out through USAID's Property Rights and Resource Governance Program (PRRGP), this report provides a general overview of the LTPR situation in Mali. This assessment is part of a series commissioned by USAID/Mali on issues affecting food security.

## I.1 OBJECTIVES, METHODOLOGY AND DEFINITIONS

The overall objective of the Mali tenure assessment is to review and synthesize Mali's current land tenure policies and practices. Due to the limited duration of the study, the report focuses primarily on *land* tenure with less attention directed to tree, water, and sub-soil resources. The review serves USAID/Mali and its partners as a first step in identifying potential land-related program focus areas—in particular, those that could have a significant impact on national and household food security.

In May 2010, the team conducted a three-day desk review prior to arriving in Mali, and then over a two-week period in Mali, carried out field interviews with (1) public officials responsible for formulating tenure policy, and (2) individuals and representatives of stakeholder groups (farmers, herders, producer organizations, nongovernmental organizations [NGOs], and donor representatives) to understand their concerns and solicit ideas for possible program interventions. The assessment team did not travel to the interior of the country. Due to the short duration of the study, they were advised by USAID/Mali to concentrate their efforts on meeting with key stakeholders in Bamako. While in Mali, the team collected and reviewed numerous documents listed in the attached bibliography (Annex I). The tenure assessment is, therefore, a succinct overview of the literature confirmed by many instructive interviews with members of civil society, the private sector, and government. The rich tapestry of documentation and vignettes derived from interviews has largely been sacrificed for brevity.

The study team utilized USAID's Land Tenure and Property Rights Framework and accompanying Assessment Tools to guide the assessment.<sup>2</sup> As required in the scope of work, the analytical framework structures much of the presentation of this assessment report. The report presents a succinct summary of the interface between customary and statutory tenure systems, describes the symptoms and causes of tenure insecurity, and spells out a range of programmatic recommendations. The Mali tenure assessment comprised a two-person team, a Food Security Specialist and a Land Tenure and Property Rights Specialist.<sup>3</sup> A list of persons and organizations consulted in Bamako is listed in Annex II.

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<sup>2</sup> For further information on this framework, consult the NRM/LTPR Portal at <http://ltp.rmpportal.net/>. The LTPR Framework and Assessment Tools were developed by ARD Inc. under the Broadening Access and Strengthening Input Market Systems (BASIS) Indefinite Quantity Contract Task Order implemented in 2007.

<sup>3</sup> The assessment was carried out in the field in Mali from May 15-30, 2010, but was preceded by a US-based literature review. The two-person team consisted of (1) Food Security Specialist, Claudia LaLumia, an Associate at ARD Inc. with 12 years of experience working in agricultural development and on food security-related projects throughout West Africa; and (2) LTPR Specialist, Koffi Alinon, who participated in the launching of the West African Land Network (LandNet) initiative in 2000 and has served as its Executive Secretary since

For the purposes of this tenure assessment, the authors refer to “property rights” and “land tenure” in the following ways. “Property rights” are the social agreements governing use, control, and transfer of assets. “Land tenure” is the institutional structure that determines the distribution of access to land and other natural resources and how this access is secured across societies. Thus, this assessment focuses on the evolution of the institutions that structure land tenure and property rights arrangements. “Institutions” are defined as social systems that support the creation, implementation, and enforcement of rules governing human behavior and interactions. The Mali tenure assessment describes the interface between “customary” tenure on one hand, and “statutory” or state policies, legislation, and legal practice on the other. The report’s premise is that the state’s facilitation of tenure security around land and property rights is essential for economic growth, good governance, and sustainable resource management, particularly in rural areas and for vulnerable populations. Consequently, the term “tenure security” refers to the expectation that state and local authorities will respect land and other resource rights.

The report uses broadly the term “land tenure” to refer to the bundle of rights, responsibilities, and sanctions around land as well as other natural resources. Western legal traditions consist of complex policies, laws, and decrees governing the ownership, use, and transfer of land and other natural resources. Similarly, “customary tenure”—the traditional beliefs and norms governing the use of land and other resources—structures the use and transfer of rights to land and other natural resources like forests, specific tree species, grazing areas, and water resources. The fusion of customary and statutory tenure arrangements, so common in Africa and other parts of the world, lead to a rich mosaic of constantly evolving tenure regimes for particular places.<sup>4</sup>

## **1.2 LINK BETWEEN LAND TENURE AND FOOD SECURITY IN MALI**

With a land area encompassing 478,000 square miles, the Republic of Mali is the sixth largest country in sub-Saharan Africa. The country comprises a range of ecosystems from semi-tropical forests in the south, to savannah in the center, to the arid Sahara desert in the north. Inhabiting this land are more than 13 million people, including some 40 distinct ethnic groups, each with its own language, customs, and unique identity. Having interacted over centuries, these human and physical factors have produced a broad range of indigenous land tenure systems. Mali’s culturally diverse population has learned to adapt to their harsh environment, manage the land they live on, and for the most part, live in peace together. To an outsider, these tenure systems may appear to be simplistic, chaotic, or even nonexistent. But, in reality, Mali’s customary land tenure systems are present, ordered, and complex. Despite decades of pressure from colonial and post-independence influences of Western legal traditions, these customary norms, rules, and land use practices remain remarkably resilient. However, they evolve in the face of new land policies—like decentralization and devolution—so characteristic of many Sahelian countries and now Mali. New land policies, land codes, legislation, and administrative decrees are progressively transforming the tenure landscape.

The country and peoples of Mali have long suffered from chronic food shortages. Periodically, food production is affected severely by the failure of rain in the agricultural zones of this Sahelian country. Environmental issues, like desertification, have similarly compromised the agricultural sector. Since independence in 1960, the GOM has instituted many plans and strategies designed to improve food security—defined here as the “state of having sufficient quantity and quality of food throughout the year for a healthy and productive lifestyle.”<sup>5</sup> While erratic rainfall in the semi-arid environment is a principal cause of food insecurity, public policies also affect deeply the country’s ability to generate sufficient agricultural

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April 2006. Mr. Alinon has researched and written extensively on land tenure and natural resources management issues encountered throughout West Africa. He is Co-Chair of the Membership Committee of the International Land Coalition based at IFAD headquarters in Rome.

<sup>4</sup> For further definitions, refer to the USAID Land Tenure and Property Rights portal (<http://ltpr.rmportal.net>) and to common terminology defined by the Food and Agriculture Organization (FAO) (<http://www.fao.org/docrep/005/y4307e/y4307e05.htm>).

<sup>5</sup> USAID, 2010, [On-line]. Available: <http://ltpr.rmportal.net/products/issue-briefs>.

production for internal needs. The Malian government's ambitions and plans for rural development, and food security in particular, are defined in several current strategies. Among the most important: the *Strategic Framework for Growth and the Reduction of Poverty II 2007-2011*, the *Strategy for Accelerated Growth 2008-2012*, and *Mali's National Food Security Strategy* (operational through 2015). Decentralization of GOM administrative and budgetary responsibilities to government offices at the regional, *cercle*, and commune levels is an important part of the grand scheme of development plans guiding the country.<sup>6</sup> The Project for Economic and Social Development (PDES, 2007-2012) describes President Amadou Toumani Toure's vision, strategy, and plans for the country's overall development.

The National Program for Agriculture Sector Investment (PNISA) of 2009 defines the policy measures needed to strengthen the agricultural sector. The National Program for Agricultural Investment (PNIA) builds upon plans outlined in the PNISA and reflects Mali's adhesion to the Comprehensive Africa Agriculture Development Programme (CAADP) compact signed in October 2009. Finally, Mali's recently validated *Plan de Passage à l'Approche Sectorielle pour le Développement Rural 2009-2011* (Plan for Transition to a Sectoral Approach to Rural Development) underscores the importance the GOM has given to a number of key points, including the development of a policy for agricultural development, coordination of relevant development efforts, monitoring of progress, and planning for investment in the sector.<sup>7</sup>

Strategies to promote food security in Mali must necessarily consider LTPR questions. As noted above, tenure security is the perception of having secure rights to land and property on a continual basis, free from unreasonable interference from outsiders. It is also the ability to reap the benefits of labor and capital invested, either in use or when leased or rented to another.<sup>8</sup> The relationship in Mali between land tenure and food security is little different from other countries. By improving land tenure security and creating equitable access to land, one can expect increased agricultural investment to occur, for example, in irrigation infrastructure, pasture management, improved use of agricultural inputs like seed and fertilizers, and technical support services—all aimed at increasing overall food production and yields. The increased availability of food, whether consumed or sold, serves to enhance household and national food security. By improving the land tenure and food security situation in a country, one may expect an increased investment by smallholders and agribusinesses, which in turn should lead to improved income levels from the sale of surplus, job creation, enhanced value-added opportunities along the extended commodity chain, and expanded trade opportunities. Increased income improves food security (*access*) as well as other aspects of quality of life.

While improved tenure security constitutes a key foundation contributing to greater food production, tenure security alone is insufficient. Reforms in national tenure policies and practices must be accompanied by other interventions, such as improved agricultural technologies, agricultural extension services, rural credit, rural transport and other building blocks of the rural economy. Even though the foundations of the agricultural sector may be solidifying in Mali, adequate tenure security is still lacking. This tenure assessment suggests that small-scale producers and agro-investors are unable to obtain sufficient tenure security needed to stimulate agricultural investment. Farmers and agribusinesses are hesitant to invest significantly in expanding and intensifying agricultural production, and for this reason, the agricultural sector has not yet become the motor of national and local economic development. However, a caveat is in order. Certainly, as in any country, the level of tenure security perceived by farmers and other entrepreneurs varies widely depending on the individual's (or the investing entity's) social, economic, or political position. The politically powerful and wealthy may perceive greater tenure security than the powerless and vulnerable.

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<sup>6</sup> See Republic of Mali, 2006a, which is particularly relevant to future plans for land administration.

<sup>7</sup> For further details on the rural development context in Mali, the reader is referred to a recent study carried out by Michigan State University that focused on Mali's food security challenges, agricultural sector trends, and investment needs.

<sup>8</sup> USAID, 2010, *Ibid*.

The link between tenure insecurity and food production has long been recognized in Mali. This assessment report notes that a number of international bilateral and multilateral development organizations have provided support over the years to LTPR reforms. USAID/Mali could contribute again to this long and fruitful partnership with government, civil society, and the private sector to strengthen tenure security. Certainly, its previous bilateral engagement to bring about reform in the forestry sector has been much appreciated.<sup>9</sup> A summary of the major donors currently involved in tenure initiatives and their recent activities in Mali is presented in Annex III.

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<sup>9</sup> USAID/Mali invested much in forest code reform in the late 1980s through the Land Tenure Center at the University of Wisconsin.

## 2.0 EVOLUTION OF CUSTOMARY TENURE SYSTEMS IN MALI

A review of the history of land tenure and natural resource management in Mali shows that considerable confusion surrounds land tenure legislation and administration. While this could be attributed to many factors, the primary cause is the clash between customary tenure practices of the pre-colonial past and the many land policies instituted by colonial and post-colonial states. Over time, both systems have evolved considerably to such extents that, today, land tenure systems in Mali reflect a complex amalgamation of both customary and statutory norms and practices. Consequently, the general public poorly understands the complexities of land policies and practices. Tenure insecurity exists because few expect that national and local authorities will respect either the law or traditional land management practices.

As elsewhere in sub-Saharan Africa, historical realities significantly influence the tenure situation in Mali. Traditional rules governing access to land and natural resources in pre-colonial Mali were integral elements of the social structure—control over land and other assets was inseparable from social relationships and cultural norms. Highly organized empires ruled over the country in the pre-colonial period. Powerful institutions governed individual access and use of resources. Often power was delegated to local authorities to determine rules governing the control, use, and transfer of land and other natural resources. Similarly, these same institutions were involved in resolving the invariable conflicts of land and other natural resources.

The Mandingo Empire of Soudiata Keita established many of the tenure regimes still in use by the Bambara people. For example, in the Kouroukan Fouga agreements reaching back to 1235, “ownership” use, and management of the land was left to rural communities that employed customary rights passed on through lineage and the principle of first occupancy. However, exceptions to the rules always existed because allies to the emperor obtained and maintained control over land for political purposes. Access to land for migrants wishing to settle was encouraged in order for the ruling elites to obtain adequate labor for agricultural production and to have sufficient access to warriors in case of attack. As is still the practice today, indigenous families with long-held rights of occupancy to land controlled the conditions of settlement for incoming migrant populations. Married women had no property rights, as this would contribute to the fragmentation of family lands through inheritance. As is the logic of many customary land tenure systems around the world, clans and large family groupings go to considerable lengths to retain control of land and resources within the unit itself.

Under the reign of Sekou Hamadou, the Macina Fulani Empire enacted the “Dina” in 1818—a set of social rules based on local practices and Islamic beliefs. These rules entrusted the “Dioros”<sup>10</sup> with the management of pastures that then became controlled access areas. Similarly, the management of lakes and rivers were entrusted to the “Djitu”. Forest resources, wild products, and wildlife were not subject to any specific regulation and could be used by all.<sup>11</sup> Some of these practices remain; others have long since disappeared.

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<sup>10</sup> The Dioro are Fulani noblemen in charge of regulating the use of pastures in the inner Delta of the Niger River.

<sup>11</sup> For a detailed description of ancient tenure practices, see Coulibaly and Diakite, 2004, *Les ruraux et la gestion du foncier au Mali*, Bamako, AOPP/OXFAM.

The French colonial period in Mali brought radical changes to the pre-colonial tenure systems. The French colonial regimes undermined the traditional power of the authorities of the sedentary and pastoralist peoples responsible for allocating and enforcing the use of land and other natural resources. The application of the French Civil Code imposed new practices—for example, legal principles like those of “*mise en valeur*” (land belongs to the state unless productively utilized), which incited landowners to convert registered lands to productive use—where the state defined land uses and practices. Public registration created a new category of land referred to as “vacant lands without owner,” which clearly benefited the colonial power.<sup>12</sup> Thus emerged the view that public powers control land—one that has persisted to date through the concept of state ownership of land and other vital natural resources. In the case of Mali, the colonial strategy of economic exploitation was fueled by the need to provide raw material and cash crops to French industries prior to and during World War II. The construction of the Markala dam and irrigation of lands in the ON zone in 1932 were in line with this policy. This large-scale irrigation scheme was carried out through the use of foreign labor in its early years for the production of cotton and sugar cane for the colonial power.

Following independence in 1960, Mali nationalized land with the result that all types of land use were considered temporary and revocable by the state at any time. During the height of the socialist government, national policies were developed to redefine tenure relations in order to encourage development of rural areas. Under President Modibo Keita of Mali’s first republic, the Marxist-styled regime strengthened these land policies of state ownership. The regime ended in a coup when a military junta seized power. Under military rule, state control over land increased, enacted through land laws in 1984 and 1990. The 1990 legislation confirmed the principle of state ownership, defining the state’s private domain as land registered on behalf of the state, as well as all unregistered land.

The military regime ended in 1993, following widespread popular demonstrations. The era of democracy introduced new attitudes toward the government’s approach to land tenure. A new land law, the *Code Domanial et Foncier* was enacted in 2000 and revised in 2002. New features reflected the decentralization and devolution policies sweeping across Sahelian West Africa at the time. The new laws included provisions for decentralized local state entities to manage their own lands. In addition, customary rights were recognized to a certain extent. However, the state reaffirmed its power to manage land within the national domain (including airspace, land, and sub-soil resources).

The management of other natural resources is marked as well by the predominance of state rights. The 1995 Forestry Law reinforced classified and protected forest areas while the state maintained strict oversight of community and individual forest lands. The Malian government also declared state ownership of water resources. These new legal principles have, to some extent, taken over customary practices that continue to rule tenure relationships mainly in rural areas. Today, customary and legal systems continue to coexist, creating “legal pluralism.” As discussed further in this report, the interface between the two systems—customary and statutory—is often fraught with deep contradictions, inconsistencies, and complexities. Tenure insecurity today is largely derived from juxtaposition of the two, constantly evolving legal and local traditions.

In summary, colonization provoked a division in Mali between state-established legal principles and those anchored in customary practice. Subsequent political regimes following independence have sought to establish laws and legislation intended to build the nation, unite the country, and “modernize” society<sup>13</sup>. Public legal practices have remained rigid and inflexible, seeking to anticipate every juridical situation with extremely detailed legal texts. This has led to the fragmentation of legal texts, adding yet another dimension of complexity within the current land tenure situation in Mali.

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<sup>12</sup> Recall that colonies sought to create new economic opportunities for trade in favor of French companies (“*les comptoirs*”) and landowners. Colonial public authorities sought to secure land and other natural resources to support expansion of the economic interests of the entrepreneurial elite.

<sup>13</sup> We use this term “modernize” with caution. Directly translated from the French vernacular widely used in Mali, this term alludes to economic development, higher living standards, and replacement of the old with something new.

# 3.0 EVOLUTION OF STATUTORY TENURE SYSTEMS IN MALI

## 3.1 OVERVIEW OF LAND TENURE POLICIES AND LAWS

The Republic of Mali inherited from the French legal tradition a corpus of law, decrees, and administrative practices that, to this day, remain deeply engrained throughout the country. As in many francophone West African countries, the post-independence Malian government has instituted numerous changes in tenure policies and practices. Over time, distinct statutory tenure arrangements have emerged to interact with the underlying customary tenure arrangements described in the previous section. This section reviews land tenure-related policies and laws that are either currently being drafted or are presently implemented. A brief description of each is provided below:

## 3.2 GENERAL LAND POLICY (*POLITIQUE FONCIÈRE GÉNÉRALE*)

The Republic of Mali is in the process of developing a land policy (*Politique Foncière Nationale*) to guide the harmonization of the disparate codes, laws, and regulations governing the use of land and other natural resources. As in most francophone West African countries, distinct legal frameworks arose around individual resources (land, forests, water, and wildlife), but often these laws and decrees are not only contradictory, but very difficult for the general public to understand. The African Union has encouraged member countries to develop strategic land policies as part of the harmonization of the disparate legal corpus. The *African Union Framework and Guidelines for Land Policy in Africa* (FGLPA) guides the preparation of national land policies throughout the continent.<sup>14</sup> The Malian land policy, or *Politique Foncière Nationale*, is currently being drafted under the auspices of the Ministry of Housing, Land Issues, and Urban Planning. A national dialogue (*Etats Généraux du Foncier*, described below) was launched in 2008 to help build consensus for elements of a land policy. While this work in progress should address both urban and rural land, the assessment team found from discussions with stakeholders that the draft land policy focuses more on urban and peri-urban land tenure issues than on those of rural areas. While this national policy debate is currently unfolding, the Ministry of Agriculture has initiated a parallel process to clarify rural land tenure and land management procedures. This initiative is represented in the new Agricultural Orientation Law (LOA) discussed in more detail below.

## 3.3 2000 LAND TENURE CODE (*CODE DOMANIAL ET FONCIER 2000*)

The GOM launched, in early 2008, a national dialogue to revise the 2000 Land Tenure Code. This consultative process, called the *Etats Généraux du Foncier*, consisted of a series of conferences organized by the Ministry of Housing, Land Issues, and Urban Planning that sought to record the proposals and points of view of all stakeholders with respect to the outdated 2000 CDF. Consultations were held at the *cercle*<sup>15</sup> and regional levels, culminating in December 2009 with inter-professional and national consultations in Bamako. At the conclusion of these consultative meetings, participants urged the ministry and the GOM to establish a land tenure observatory, create a commission charged with identifying state properties, establish a clear and transparent system of land management of irrigated lands, clarify the role of by-laws (local conventions) concerning land and natural resource management, and establish an appropriate mechanism for communicating the content of legal texts to the general

<sup>14</sup> The FGLPA, jointly drafted by a consortium of the African Union, the United Nations Economic Commission for Africa, and the African Development Bank, was adopted in July 2009 by all African heads of state in Syrte, Libya.

<sup>15</sup> Administrative jurisdiction in Mali is broken down into eight regions and the capital district (Bamako). Regions are comprised of 50 *cercles*, or districts, which are themselves subdivided into communes. In total, there are 703 communes in Mali (19 urban and 684 rural).

public. According to some participants interviewed by the assessment team, President Toure himself strongly urged the idea of a land tenure observatory designed to monitor the evolution of land issues throughout the country. The President also called for the launch of a National Land Management Agency (*Agence Nationale de Gestion Foncière*). Following this consultative process, the Food and Agriculture Organization (FAO) approved a grant to the Ministry of Housing, Land Issues, and Urban Planning to hire consultants to develop the statutory texts that would lead to the creation of both public agencies. The revised CDF is expected to address other public concerns raised during the lengthy consultative process. Until now, the draft CDF has not been presented to the National Assembly.

The current CDF (Article 46) recognizes, to a certain extent, customary practices regulating ownership and access to natural resources. It states that no individual or community can be forced to transfer customary rights of land to the state except in cases serving the broader national interest. The Code stipulates that the transfer of rights is subject to fair and prior compensation (Article 43). Article 48 goes even further, emphasizing that agreements between individuals or communities based on customary practices and procedures can be formalized in writing and that this documentation serves as proof of land transactions. While these declarations are positive indications of respect for customary rights, these legal precepts have never been translated into decrees and administrative practice. Some view this as an indication of policymakers' hesitancy to proceed with formalization of customary rights. Policymakers may still be clinging to the legal principle that all lands are state owned. This view is further reinforced by the CDF's provision that local governments shall manage land and public properties in their jurisdiction. However, the transfer of these legal responsibilities to decentralized entities has not yet occurred aside from the transfer of certain assets and authority in the education, health, and water sectors.

### **3.4 AGRICULTURAL ORIENTATION LAW (LOI D'ORIENTATION AGRICOLE)**

The LOA is a key legislative text illustrating the GOM's new commitment to reform in Malian agriculture. The law begins by summarizing the structure of the agriculture sector. As with most orientation laws of francophone countries, the law has a chapter specifying how implementing laws and decrees will structure the tenure arrangements on agricultural lands. The LOA affirms that the GOM will promote both small-scale family and agribusiness farming in order to attain "food sovereignty."<sup>16</sup> In recognizing the inherent value of both systems, the LOA commits the government to securing, for all, equitable access to land and sustainable management of natural resources. The LOA allows the option of land titling to anyone involved in agricultural activities and seeks to reduce costs and simplify procedures for acquiring land titles, rural concessions, and long-term leases (Text Box 1 describes the eight types of land registration that currently exist in Mali. More detail is provided in Annex IV).

The issue of access to land by vulnerable populations has also been addressed. Article 83 devotes special attention to access to land for women and youth, according them preference when it comes to allocating land in irrigated areas. Pastoral activities have also gained special recognition, as the LOA declares that pastoralist livelihoods are important means of land management in arid zones (rather than as environmental hazards—as is sometimes claimed). Importantly, the LOA requires the involvement of all stakeholders in decentralized land management and encourages broad participation throughout the implementation and follow-up phases of the LOA.<sup>17</sup> While Chapter 13 of the LOA relates to the development of fisheries, it only addresses modernization of fishing equipment and infrastructure. The overlap of state ownership of all water resources with communities' traditional rights to local fisheries, and responsibility for their management, is problematic and needs further clarification.

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<sup>16</sup> The LOA considers "food sovereignty" to be the state's prerogative to define and implement an autonomous food and agricultural policy that guarantees sustainable farming based on local production and accountability of producers who, for this purpose, may be provided with appropriate means including land, water, credit, and markets.

<sup>17</sup> Even the process of adopting the LOA, monitored by the National Coordination of Peasants Organizations (CNOP), is said to have been inclusive.

The LOA is unfolding at this time and leading to the following concrete actions:<sup>18</sup>

- **Steering Committee for the Elaboration and Implementation of the Agricultural Land Policy.** Located at the *Secretariat Permanent du Comité Exécutif du Conseil Supérieur de l'Agriculture*, this committee has been set up to implement the various phases of the law. The committee comprises representatives of all stakeholders working in the agriculture sector. However, concerns are mounting among peasants' associations that their participation is less than expected.
- **Roadmap (*feuille de route*).** This document details the steps necessary to adopt the national agriculture land policy and its related land laws. The civil society organization, Hub Rural of Dakar, Senegal, assisted the Malian Ministry of Agriculture to develop the roadmap with financial assistance from *Agence Française de Développement* (AFD).
- **Lands Commissions (*Commissions Foncières*).** Prescribed by the LOA for all of Mali's regions, the Lands Commissions have been legally set up following the adoption of a decree on January 19, 2009. The commissions' duties are to settle land disputes prior to any eventual appearance before the courts, compile and record customary practices, develop local cadastres, and participate in the adoption of land policy. The Lands Commissions exist at regional and commune levels (but not at the *cercle* level). The commissions will certainly be critical to the process of customary rights recognition in rural areas.

#### **Text Box I. Eight Types of Land Registration**

- #1. **Contrat d'exploitation** (Contract for exploitation of land and resources)
  - #2. **Permis d'exploitation** (Permit for use)
  - #3. **Permis d'habitation** (Permit for housing)
  - #4. **Bail avec promesse de vente** (Lease with promise to buy)
  - #5. **Bail ordinaire** (Ordinary lease)
  - #6. **Bail emphytéotique** (Long-term lease)
  - #7. **Titre Foncier** (official, legally recognized title to land)
  - #8. **Décision de concession rurale** (Administrative decision regarding a rural concession)
- See Annex IV for further descriptions.**

### **3.5 PASTORALIST CHARTER (CHARTÉ PASTORALE)**

The national policy on pastoralism, called the *Charte Pastorale*, dates back to January 21, 2001. At the time, the intent of the Pastoralist Charter was innovative since it stressed the place and functions of pastoralism alongside sedentary agriculture. The policies embodied in the charter recognize the importance of livestock mobility and the specific functions of pastoralist activities as a way of maintaining Sahelian ecosystems, the principle of consultation between pastoralist and sedentary communities and the state, the establishment of conflict management committees at the local level, and the role of government as referee charged with the arbitrating the peaceful use of shared natural resources. Implementation of the charter has proven difficult. Few legislative measures have been enacted to carry out the broad principles. The Ministry of Livestock and Fisheries has written only one decree into law since 2006. A second decree is in the works that specifies the best conditions under which sustainable pastoral activities are to be undertaken. Apparently, this decree is in the final stages prior to adoption.

### **3.6 DECENTRALIZATION LAWS (1996)**

The GOM launched an ambitious policy of decentralization in 1996, accompanied by vast administrative reforms leading to the current configurations of administrative regions, *cercles*, and communes. The intent of the decentralization policy is to facilitate the progressive transfer land and natural resource management from the state to decentralized entities at the regional, district, and local levels. In principle, decentralized entities now possess the authority to manage three categories of land: 1) land that falls within the private domain of the state (*domaine privée de l'Etat*) that has been transferred to decentralized entities; 2) unregistered land that falls within the boundaries of the decentralized entity; and 3) land that the decentralized entity has purchased itself or the state has otherwise allocated to it. While complete transfer of land from the central state to decentralized entities has not yet occurred, the devolution of land administration responsibilities to the local level will be critical to the effective implementation of

<sup>18</sup> For a complete overview of legislative and institutional accomplishments of the LOA, see Ministry of Agriculture, 2009c.

present and future Malian land policies and laws. At some point, decentralization must be accompanied by some type of legal recognition of rural populations' current rights to land and other natural resources. Registering the location and extent of state lands is a critical first step, since, only then will local entities be able to lease, rent, or otherwise utilize the state lands for local-level economic development. At the same time, recognition of customary rights through some type of register or even cadastre will be a critical factor in generating benefits for local governance and land management.

The USAID assessment team believes the new decentralization policy offers many opportunities to strengthen the administration of land at the local level. Implemented properly, effective local-level land administration connects formal ownership via some type of land cadastre with land valuation for purposes of collateralization, wealth generation, and taxation for revenue generation, thereby enhancing the capacity of decentralized government to respond to public needs. Local decentralized government entities (i.e., communes) require tax revenues that support public infrastructure including schools, health care/clinics, sanitation/hygiene, and public works. However, the land tax is frequently seen as an end-all-and-be-all solution to finance municipal and regional budgets, and practitioners often disregard the fact that local governments often lack capacity and resources to carry out their visions and mandates.

Capturing private rents, particularly around cities and irrigated areas, could indeed be beneficial for both government and its citizens (if public goods are fair, transparent, and proportional), but this practice could risk undermining the benefits of land ownership if rent seeking is excessive or public expenditures fail to deliver real and tangible benefits. Land taxes are discriminatory in that they disadvantage wealth holders at the expense of society at large, thereby undermining agricultural and economic growth unless kept modest and affordable, given other production costs and tax burdens levied. Mali's decentralization laws can help mobilize funds for local government and improved public services through the implementation of a land tax, but this must be done in a careful manner that takes into account local capacity, means, and the risk of over taxation this might entail.

### 3.7 OTHER RELEVANT LAWS

**The Forestry Law (1995).** For years, observers of the Malian legal frameworks around land and other natural resources have pointed out the lack of complementarity between the Forestry Law of 1995 and the CDF of 2000. The legal status of trees on farms is one major flaw.<sup>19</sup> The law is intended by the forestry service to protect many valuable species of trees and shrubs in order to prevent deforestation and desertification. Since the exploitation of such species is controlled by the state, farmers are inclined to avoid planting (and are discouraged from conserving) tree species protected by the law. Rural people fear losing exclusive control over their land because authorization for cutting and trimming these species must be obtained from the forestry service. For this reason, many speculate, the forest code is a disincentive to reforestation activities.

**The Fisheries Law (1995).** This law creates national (or communal) fishing areas. As such, it reflects the general principle of state ownership of resources. However, individual user rights are recognized everywhere apart from within fishing reserves, nature reserves, and national parks. Every fisherman must hold a permit to fish and pay periodic fees to government.

**The Water Resources Code (2002).** The law confirms the principle of state ownership of public water resources while stressing the need to satisfy the public's need for potable water. While the law legitimizes the state's authority to manage water resources, it must heed the water rights and obligations of local communities and water users.

**The Mining Code (1999).** The general principle of the mining code, as in most of the world, is that mineral resources belong to the state. The mining code states that a holder of a permit of exploration or exploitation of mines is obliged to seek the consent of the owner of the land surface before engaging in any extractive activities.

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<sup>19</sup> Source: Alinon, K., Yatich, Th., Weber, J., Kalinganire, A., et al, 2008.

Where there is non-consent, the landowner must allow mining activities on his/her property, but the code requires compensation.

### 3.8 INSTITUTIONS GOVERNING LAND TENURE

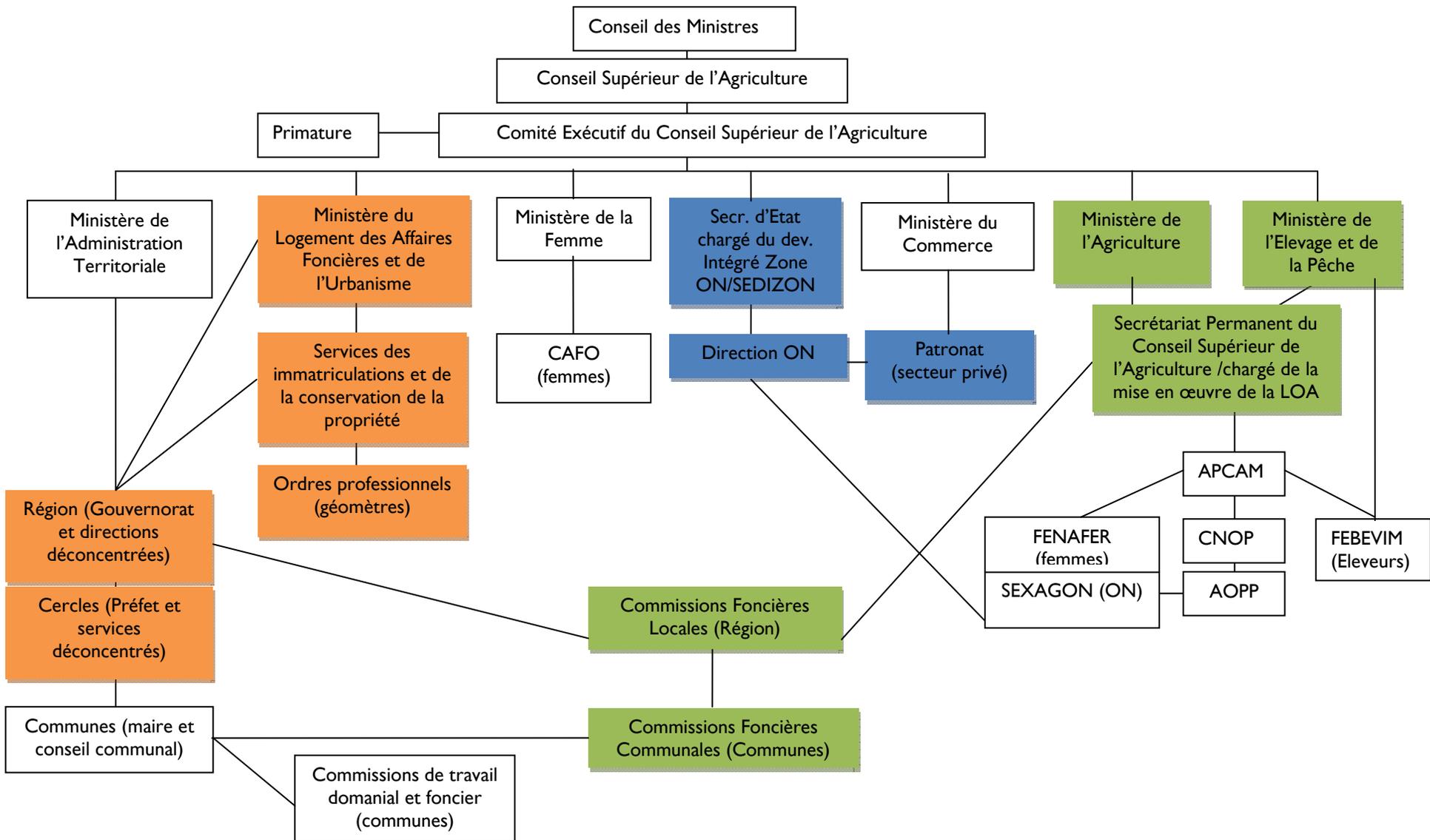
The institutions governing the use and allocation of land are still largely centralized at the state level despite the new decentralization policies. Land issues are monitored at the highest level by the Head of State and the Prime Minister, who jointly make decisions during the *Conseil des Ministres*. The *Conseil Supérieur de l'Agriculture* (High Council on Agriculture) has been created to deal with agriculture issues, and by default, land tenure issues. This council is composed of nearly all related ministerial departments and meets twice a year in the presence of other stakeholders (farmers, herders, the private sector, etc.). Follow up on decisions made during these meetings is the responsibility of a Permanent Secretariat established within the Ministry of Agriculture. This Permanent Secretariat is also in charge of implementing the LOA and is currently monitoring the LOA roadmap leading to the adoption of the forthcoming rural land policy and law. The Permanent Secretariat is supposed to work closely with representatives of the rural sector (chambers of agriculture, peasants, herders, women, etc.). In the process of implementing the LOA, the Permanent Secretariat supervises the work of the Lands Commissions created in 2009 in every region and commune. These commissions are different from the communes' lands commissions—technical working groups that exist within every communal council (*Conseil Communal*).

A separate ministerial department, the *Secrétariat d'Etat chargé du Développement Intégré de la Zone Office du Niger* (SEDIZON) has been created to oversee development of the ON zone. The SEDIZON oversees the ON Director's office that is in charge of allocating lands within the ON and maintaining primary irrigation infrastructure. Many socioeconomic structures intervene in the ON, including the private sector and SEXAGON (the local rice producers' trade union), a principal stakeholder.

The third ministerial department—the Ministry of Housing, Land Issues, and Urban Planning—focuses on urban land tenure. It manages the office that delivers property deeds, has offices in all decentralized *collectivités* (mainly in the regions and *cercles*), and works in collaboration with professional structures such as surveyors and the private sector.

These three “columns” through which land tenure and property rights are managed (depicted by different colors in Figure 1 below) interact rarely apart from at the ministerial level, during interaction at the High Council of Agriculture meetings.

**FIGURE I. INSTITUTIONS INVOLVED IN LTPR REFORM IN MALI**



# 4.0 THE LAND TENURE SITUATION IN MALI

This section describes the principal tenure issues, and causes of land tenure insecurity and inequitable access to land and resources, in the Republic of Mali. Information collected for this section was gathered from both the literature review and discussions with key informants during the two-week mission in Mali. Illustrative examples of tenure problems are peppered throughout these sections to illustrate the depth and complexity of the tenure situation. Section 4.1 describes the *current land tenure situation*, Section 4.2 identifies the *symptoms of tenure conflict*, and Section 4.3 discusses the *most significant causes* of tenure insecurity.

## 4.1 LAND TENURE INSECURITY

### 4.1.1 Tenure Issues Affecting Smallholders

Growing tenure insecurity for smallholder agricultural populations is a result of the inexorable problem of land fragmentation linked to demographic growth. According to GOM statistics, the amount of arable land per household unit is dramatically decreasing across the country.<sup>20</sup> Depending on the total area of land traditionally owned by clans and extended family units, eventually even small-scale subsistence farming becomes impossible on plots of land that shrink with each inheritance. As a result, the rural poor are either forced into other vocations or compelled to migrate to lands traditionally owned or controlled by others. Both options have a negative effect on land tenure security. This phenomenon has led to a situation wherein landless individuals (particularly youth) are migrating at an increasing rate to urban areas in search of jobs.<sup>21</sup> While customary land distribution systems originally worked in favor of improving land tenure security for the rural poor, as they reach and surpass their capacity to support subsistence farming, they will actually worsen land tenure security.

Many senior-level government officials argue that arable land is plentiful in Mali, noting that sufficient underutilized land exists to allow the expansion of large-scale agribusiness investments. For this reason, they note, agribusiness does not pose a threat to smallholder farming. Proponents of agribusiness expansion argue that, since colonial times, smallholder farming has done little to increase overall productivity in Mali.<sup>22</sup> While productivity levels have increased, this has been mostly due to an expansion of area cultivated rather than to any significant increase in average yields (per hectare).<sup>23</sup> In view of this reality, many government policymakers fear that if Mali does not encourage large-scale agribusiness development, it will be unable to maintain even current (inadequate) levels of food security.<sup>24</sup>

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<sup>20</sup> According to government agricultural statistics (cited in Republic of Mali, 2009d), the average area of land cultivated in 2004 by practicing farmers engaged in crop production was 4.7 hectares, with 33% of farmers having less than one hectare and 4% having more than 20 hectares. Land cultivated per inhabitant (farmer or other) stood at 0.47 hectares in 2004 and has been decreasing steadily ever since (to 0.39 hectares in 2008).

<sup>21</sup> Source: International Organization for Migration, 2009.

<sup>22</sup> From 1990-2007 crop production increased by an average of only 3.53%, while productivity gains increased on average only 1.14% per year.

<sup>23</sup> As a general trend, total area of land cultivated has increased steadily since 1990 although with some year-to-year variability. While average yields have increased for cereals in general, the increase in yields is less of a factor contributing to overall increase in gross production (in kg) than is the expansion of land surface cultivated. Source: Republic of Mali, 2009d.

<sup>24</sup> While food security statistics in Mali seem to be improving moderately, in 2004-2006, 10% of the total population was still undernourished. Source: FAO Statistics Division: [http://www.fao.org/fileadmin/templates/ess/documents/food\\_security\\_statistics/](http://www.fao.org/fileadmin/templates/ess/documents/food_security_statistics/).

The tenure assessment mission heard another perspective. Some interviewees suggested that the rural poor view large-scale agribusiness as a threat to their land tenure security and livelihoods. This fear is reinforced by incidences where large numbers of individuals and even entire villages have been displaced by agro-investment projects, often given unsatisfactory or no compensation (see Text Box 2).<sup>25</sup> The rural poor are skeptical of arguments that the expansion of agribusiness will boost productivity, increase national food security, provide permanent wage jobs, build infrastructure, and expand value chain and trade opportunities. This may be because they have not yet witnessed such benefits, though they have experienced some of the drawbacks of agribusiness expansion (displacement, cultural and social upheaval, and dependency on low wage labor jobs). As long as this fundamental disagreement persists, the assessment team fears that resistance and resentment will mark successful expansion of agribusiness in Mali.

#### 4.1.2 Tenure Issues Affecting Women and Youth

Traditionally, women cannot own land in Mali. They are permitted to cultivate or use land temporarily, but land can be taken back from them at any time, thus discouraging women in rural areas from investing in land improvements such as irrigation infrastructure, fencing, or tree planting. To increase their land tenure security, women frequently form associations and request that community land or land owned by a specific owner be allocated to them for their collective use (often for communal gardens or fields). This strategy can provide women with more security but there is a risk that the community or landowner will reclaim the

#### Text Box 2. The Malibya Agriculture Project

Malibya Agriculture is a Libyan company that will produce rice and other agricultural products, all of which will be exported to Libya. The Malian and Libyan governments signed a bilateral investment agreement in June 2009 for an initial 50-year period. The company has obtained 100,000 hectares of irrigated land in the ON around the town of Macina. About 75,000 hectares of that land includes the town of Macina.

Malibya Agriculture has won generous terms. The government leases the land to the company for a 50-year period, renewable up to a total of 99 years; unrestricted access to water is granted from the Macina canal and ground water, for which a fixed, annually negotiated fee is charged; and rights of exploitation are provided to all surface sand, gravel, and ordinary stone for construction purposes. Similar generous conditions apply. The company will pay no land tax, fees, or other payments. The company is under no obligation to hire local employees or to sell any produce locally. The government does stipulate that the company cannot transfer land to third parties, Malian environmental laws must be respected, and Malibya must develop any infrastructure needed for business purposes (including roads), although the GOM reserves the right to also do so if it wishes.

Malibya Agriculture plans to produce 200,000 metric tons of rice each year, with an annual yield of 8-9 metric tons/hectare. The irrigated rice plots will receive water from a 40-kilometer water canal leading from Kolongotomo to the project areas in Boky-Wèrè. In addition, the firm will raise livestock with expected output to be about 25,000 metric tons annually. Construction of agro-industrial processing and packaging plants is expected. The company expects to employ expatriate (Chinese) skilled labor and supervisors, but then engage local farmers as daily labor.

Construction began on the 40-kilometer water canal in 2009 and was controversial. Several villages, croplands, and communal properties (including one cemetery) were adversely affected (destroyed, uprooted, or expropriated). In the village of Kolongotomo alone, only 58 of 150 families affected have been compensated for land and homes expropriated or destroyed. Outstanding claims have not been resolved. Several villages and forested areas have been flooded by ongoing canal works, which has deprived the local population of their homes and valuable resources. Transhumant passageways have been disturbed and rerouted. Villagers are said to be complaining of health issues due to dust pollution caused by construction, traffic, and demolition of housing.

Malibya Agriculture has neither made, nor been required to make any provision to compensate persons displaced or otherwise harmed by their activities. Compensation is to be provided by the GOM.

<sup>25</sup> The case of Malibya is probably the most extreme and most widely contested. Rural populations feel they were not consulted prior to signature of the convention that accorded Malibya 100,000 hectares of land. Initial work on the project (irrigation canal construction) began without having properly informed the local populations. Cash crops, resources, homes, and villages were destroyed with little to no compensation for those affected. GTZ published an excellent case study comparing the Malibya project to the Markala sugar project. Source: GTZ, 2009.

land after improvements have been made or after a growing season is completed. The PNIR project mentioned in Annex III worked with women's groups to help them secure access to land by formalizing the traditional land granting process. This project worked with the entire community and landowners to negotiate access to land for targeted women's groups using the traditional process, but requested that the meeting at which access was accorded be formally recorded in a *procès-verbal*, signed by all village authorities and landowners involved. In some cases, certain individuals were hesitant or refused to sign the *procès-verbal*, while in others, all persons involved were willing to sign.

Public attitude with respect to women's ownership of land in Mali is beginning to change. The Persons and Family Code in Mali has dictated for many years that, in accordance with Islamic law, when a male head of family dies, the majority of his land and belongings are inherited by his sons while one-quarter of it is inherited by his female family members. However, there is presently a movement afloat in Mali to change this practice so that land would be inherited equally among all living male *and female* children. Debate over this proposed change has caused such opposition among the Muslim population (and others) that it has been tabled until a later time.<sup>26</sup> The President of Mali has also recently promised that 10% of state-improved (irrigated) lands will hereafter be allocated to women and youth. Regardless of the fact that "youth" includes boys and young men, this declaration caused a certain degree of consternation among the population as a whole, though, ultimately, it seems to have been accepted.

Formalization of land tenure through land titling has already improved women's access to land in urban and peri-urban areas and might be expected to do the same when ownership of rural lands is eventually formalized. However, this right only improves access to land for women that have the financial means to acquire it. This holds true for youth as well who tend to be less financially able and are disadvantaged by customary land tenure and access practices since elder male siblings control family lands but do not always have the best interests of all siblings in mind.

Even women's *access* to (let alone ownership of) agricultural lands is severely limited by traditional practices. Recent attempts to change legislation constitute significant efforts to address women's inequitable access to land but can be expected to encounter serious resistance. Meanwhile, various approaches to gradual formalization of women's customary rights to land and natural resource use are slowly addressing this inequality in a culturally acceptable way.

#### 4.1.3 Tenure Issues Affecting Migrant Populations

Migrant populations suffer from insecure access to land, largely because they depend on their hosts to allocate increasingly scarce land to them. They have virtually no access to land ownership (other than the option to buy in order to acquire a land title). Sharecroppers, seasonal workers, disinherited youth, and pastoralists-turned-sedentary fall into this category, as do populations that have been resettled, often onto marginal lands and without having received proper compensation.

Pastoralist lands are encroached upon as agriculturalists continue to expand the total area of land cultivated, taking over passageways once reserved for livestock. Although 60% of the nearly 80% of individuals in Mali that derive their livelihoods from agricultural production are involved in animal production, pastoralists are clearly at a distinct disadvantage with respect to access to land and the level of support they receive from the GOM.<sup>27</sup> This is in spite of the fact that, since 1990, livestock production continues to account for a steady 10% contribution to gross national product (GNP), second in the agriculture sector only to crop production, which contributes 20% to annual GNP.<sup>28</sup> Overreliance on increasing agricultural (crop) output to achieve food security, without due consideration of the

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<sup>26</sup> Adamant individuals have even called upon imams to refuse to baptize children of individuals that support this change.

<sup>27</sup> In 2004, livestock and animal production received only 4.5% of all government support provided to the agricultural sector. Further, the Ministry of Livestock and Fisheries received only 1 billion FCFA (of a requested budget of 15 billion) to support a 5-year local milk promotion campaign while the budget for the rice production initiative alone topped \$45 million in its first year of implementation. Sources: Republic of Mali, 2009d and officials within the Ministry of Livestock and Fisheries.

<sup>28</sup> Source: Republic of Mali, 2009d.

needs of pastoralist populations and the contribution they could make to improved food security could devastate the pastoralist way of life.

Pastoralist marginalization is linked to several factors. First, pastoralists are not present year round to protect their interests and livestock passageways. Second, they need access to vast areas of land for relatively brief periods of time, so it would be infeasible for them to obtain exclusive rights to these lands (to improve their land security) via rural concessions or land titles. Third, they rely on the goodwill of the sedentary populations to permit their access to resources that are becoming increasingly scarce.

#### **4.1.4 Tenure Issues Affecting Agricultural Investors**

Land tenure security for agro-investors depends largely on the mechanism used to acquire the land. Most large-scale investors in Mali seek land in the ON where long-term leases are negotiable but land titles (unless under the MCA Alatona project) are not an option. However, investors are required to make significant improvements on the land—usually consisting of tertiary and secondary irrigation infrastructure—to pay annual water user fees and to render the land productive within a prescribed period of time and every year thereafter. While, technically, they should also pay land user fees, these are usually waived to encourage investment. Within the ON, at least 10 Malian individuals or companies have acquired signed contracts to lease between 50 and 500 hectares and at least 12 have registered for access to between 5,000 and 20,000 hectares for agribusiness purposes.<sup>29</sup> The contractual stipulation that investments must be made and that the land must remain productive year after year (legal concept of maintenance of *mise en valeur*) presents a significant risk to land tenure security since, if at any time investors are not able to fulfill these obligations, the ON can reclaim the lands. To date, only a small fraction of lands leased by the agency have actually been improved or put into production.

#### **4.1.5 Tenure Issues Affecting Fishermen**

Rich water resources in Mali, like the inner delta of the Niger River and its tributaries, are critical to productive fishing, which represents the third largest economic activity (in terms of income generation) after agriculture and livestock. While the fisher population is mainly composed of two ethnic groups (the Bozo and the Somono) that have traditionally held priority access to river resources, disputes relating to ownership of water resources and fisheries have become more common as competition for these resources has increased.

## **4.2 SYMPTOMS OF TENURE INSECURITY: CONFLICT AND VIOLENT CLASHES**

Violent clashes rooted in land tenure issues and competition for access to natural resources are not uncommon in Mali. Land conflict is often a symptom of a broader land and resource tenure crisis. Land conflicts are caused by many factors, but are most often instigated by competition for land and access to natural resources. Other causes of land-related conflict include escalated inheritance disputes or contested judicial rulings about land tenure. Conflict over access to land and natural resources typically occurs between agriculturalists and pastoralists, among pastoralists, between indigenous populations and migrant or displaced populations, and among the various users of forest resources.<sup>30</sup>

Conflict between agriculturalists and pastoralists is by far the most common among the types of land-based conflict. Fortunately, conflicts of this nature are usually localized (between individual herders and farmers or otherwise limited in geographic scope), usually only occur during the transhumant period of the year, and rarely lead to the death of persons and/or livestock. However, the frequency and gravity of this type of conflict is believed to be on

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<sup>29</sup> Only three of the latter group have signed contracts or conventions rendering their land transaction official.

<sup>30</sup> In 2004, Friedrich Ebert Stiftung published the findings of a study carried out by ADG, a local NGO, on the prevention and management of community conflicts in Mali. The study identified 500 community-based conflicts and isolated their root causes. Seventy percent of these conflicts were due to competition for access to natural resources. (ADG, 2004).

the rise, reflecting and aggravating underlying tension between these two populations.<sup>31</sup> In the past, clear demarcation and respect for pastoral corridors combined with strong and effective traditional mechanisms for resolving disputes managed to avoid and mitigate conflict more effectively. Today, a general degradation of traditional social systems and growing lack of respect—particularly among younger generations—for traditional means of resolving conflict, renders those means much less effective than they used to be. Meanwhile, population growth, a rapid increase in the area of land under cultivation, increases in the average size of livestock herds, climate change, and desertification all contribute to increased competition for land and access to natural resources. This sets the stage for increased conflict. Each of these contributing factors will be discussed in more detail in the following sections on unsustainable natural resources management and inequitable access to natural resources.

Conflict between indigenous populations and migrants or displaced persons seems also to be on the rise. Migrant and displaced populations include pastoralists who, forced further and further south by desertification and other climatic conditions, are spending a greater part of the year in more rainfall abundant regions of the south. Some of these pastoralists become more sedentary, seek access to agricultural lands, and engage in crop production while still trying to maintain (or reduce) herd size. Others retain their transhumant culture but end up shifting their home base further south to compensate for increasing scarcity of pasturelands, salt deposits, *bourgoutières*, and access to water.<sup>32</sup> Both of these scenarios create added pressure on indigenous agriculturalists that are increasingly asked to share land and resources. Displaced populations include those whose traditional lands have been taken by the GOM and who have been resettled elsewhere. This occurs when the GOM gives or leases vast blocks of land (usually in the ON) to foreign investors,<sup>33</sup> when the government is in need of land for development projects, or due to a natural disaster. Displacement and resettlement into already inhabited areas puts an abrupt, often heavy burden on natural resources in the new host area and can cause significant resentment within the receiving communities, particularly if there are other elements that might fuel this resentment, such as ethnicity.

Conflict among pastoralists mainly results from increasing competition for access to water, pasturelands, *bourgoutières*, and salt deposits. These can sometimes escalate into ethnic disputes or conflict. Conflict among various users of forest resources usually involves a broader spectrum of people and communities since forest resources are gathered or otherwise exploited by a broader population. Disputes typically involve unauthorized harvesting of timber for charcoal production and intra-communal disputes over who has traditional rights to forest resources.

Land inheritance disputes are becoming more frequent as younger generations, particularly in urban and peri-urban areas, seek to formalize their ownership of inherited lands. The general perception of land as a personal asset is growing, even in rural areas, and will only be reinforced by the GOM's formal recognition of customary land rights. As in many other West African countries, rural Mali family lands are usually passed on from father to his eldest brother or eldest son. Family disputes and conflict arise when the eldest son (or another family member given responsibility for the family lands) abuses this power (for example, by selling off some of the land without consulting his siblings). A typical example of this can be found below in Text Box 3.<sup>34</sup> As land is increasingly seen as an asset that may be sold, an increase in the frequency of this type of abuse of traditional rights or responsibilities is to be expected in the future. While examples of this sort are usually resolved within the family unit, they can sometimes escalate to violent conflict or judicial cases.

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<sup>31</sup> During the assessment period, the team learned from several sources about a critical case in Yanfolila (Sikasso region) where a farmer was killed along with over 1,000 head of livestock. The situation has since escalated such that one community in the Sikasso region has declared that they will not allow herders to pass through their territory.

<sup>32</sup> *Bourgoutière* refers to floodplain pasturelands where certain species of plants grow abundantly such as *Echinochloa stagnina*, an important grazing resource.

<sup>33</sup> As in the case of Malibya where 100,000 hectares has been allocated to the Libyans in a zone inhabited by over 75,000 people (including the population of the town of Macina where many people hold formal land titles). Some of the people living in the Malibya zone will be displaced. A second example includes the Markala Sugar Project, under which 1,644 persons will be displaced and resettled elsewhere.

<sup>34</sup> This case study was documented by M. Djiré (2006).

### **Text Box 3. Eldest Brother Harms Family with a Land Sale in Banko**

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

Zantigui (a fictitious name) is the eldest of six brothers who, collectively, inherited about 30 hectares of arable land. Two of the brothers live in Bamako and the other three live abroad. Zantigui farms about 10 hectares with his sons and nephews. One of the brothers living in Bamako farms one hectare. The rest of the family land is lying fallow or loaned to acquaintances. Zantigui wanted to sell part of the land, but was sure that his brothers would oppose the idea, since their father had warned them against this temptation. Without informing his brothers, Zantigui sold 12 hectares to people from Bamako for CFA 300,000 per hectare, totaling CFA 3,600,000. He used some of the proceeds to improve the living conditions of his family, and invested the remainder in farm equipment. Zantigui fenced off a plot beside the river and started growing intensive commercial crops in a small garden. When the brothers learned what Zantigui had done, they objected strongly. Family unity was maintained only through the mother's mediation, and helped by the passage of time.

The sale has had collateral effects: two landless families who were farming part of the land in question were evicted and four hectares of wild trees were uprooted, which will likely lead to a loss of income for the women who once gathered shea nuts in this zone.

## **4.3 ROOT CAUSES OF LAND TENURE INSECURITY AND INEQUITABLE ACCESS TO NATURAL RESOURCES**

The root causes of land tenure insecurity in Mali are diverse in nature, anchored in the complex interface between age-old customary tenure practices and newer statutory law; the lack of effective institutional structures to support policy development and implement appropriate administrative procedures; and environmental factors such as unsustainable land and resource management, climate change, and demographic pressure. This section presents a summary of the major forces that contribute to tenure insecurity in Mali.

### **4.3.1 Demographic Growth**

Demographic growth in Mali varies from between 2% and 3% annually, depending on the source cited.<sup>35</sup> If maintained at this rate, a 3% growth rate will lead to a population increase from approximately 13 million people (presently) to over 20 million in 2025, and to over 34 million in 2050.<sup>36</sup> Demographic growth, more than any other factor, will have a profound impact on access and management of land and natural resources. As noted in the previous section, customary land inheritance practices and large family size have contributed to the fragmentation of cultivated lands, forcing landless youth to migrate to urban areas in search of work, or to other rural areas where their access to land is severely limited. In the context of exponential population growth and a limited resource base of arable land and sufficient water, sustainable natural resource management becomes an absolute requirement for national food security.

### **4.3.2 Unsustainable Land and Natural Resources Management Practices**

Mali's natural resource base is under pressure from not only demographic growth, but as a result of unsustainable resource management practices. Mali's enormous land mass generates the false impression that the country possesses ample land and natural resources to support its population over the long term. While Mali covers a vast expanse of 124 million hectares (1.2 million km<sup>2</sup>), over 60% of this area (74.8 million hectares) is comprised of

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<sup>35</sup> World Bank (2010) cites 2.36% in 2008; Central Intelligence Agency (2008, retrieved 2010) cites 2.61% in 2010.

<sup>36</sup> Source: Population Reference Bureau, 2010.

desert or semi-desert lands. Only 44 million hectares (or 35% of total land mass) are suitable for agricultural or livestock production, and forested land constitutes only 5.5 million hectares (less than 1% of land mass). Total irrigable land represents less than 5% of arable land in Mali. Among the 44 million hectares suitable for agriculture or livestock production, only 11.5 million hectares are suitable for crop production. The rest is comprised of pasturelands (30 million hectares) and reserves. Cereal production accounts for the greatest percentage of agricultural lands cultivated (among the 11.5 million hectares cited above), totaling 3.5 million hectares in 2007. The rate of total land area cultivated has been increasing steadily (for example, by 45% from 1990 to 2007), while yields have climbed only modestly. Livestock production has also expanded. The total number of head of cattle, sheep, goat, other ruminants, and average herd size have increased steadily from 1990 to present.<sup>37</sup> All of these factors place increasing pressure on natural resources and lead to increased competition for them.

Unsustainable use of croplands has led to diminished land fertility, soil degradation, and erosion. While numerous GOM and development assistance programs have promoted sustainable agriculture production and improved natural resource management, these efforts have been insufficient to counter widespread unsustainable resource use. The complex processes of environmental degradation of the resource base, like those of desertification, are putting pressures on the pastoralist sector. On one hand, sedentary agriculturalists are encroaching on traditional pasture lands and livestock corridors; but on the other, pastoralists are migrating southward in search of permanent new grazing areas. Traditional sedentary agricultural as well as pastoralist livelihood practices are in flux as a result of a degrading resource base, which is further impacted by climate change. While Dutch and German assistance have been particularly keen to assist the pastoralist populations by encouraging sustainable management of pasturelands and water sources, the positive impacts are small when compared to the serious depletion of natural resources driven by growing competition for these resources.

The GOM has long embarked on policies to render irrigable land more productive (particularly in the ON zone) with the mission to improve agricultural productivity. The environmental and social impacts of these interventions have not been fully calculated. Investors and government have rarely undertaken in-depth studies to evaluate the efficiency of their planned irrigation systems or assess the potential impact on water availability for other users. Poorly planned exploitation of key water resources (such as the Niger River and its tributaries) could lead to devastating effects on communities that rely on those resources. Should these communities have to migrate from their traditional lands; this will create added pressure on land and resource management in receiving areas.

Under customary tenure regimes, forest resources are governed by local rules of access and control. Women in particular often derive part of their income from collecting forest products such as shea nuts, *néré*, gum arabic, palm nuts, baobab, and tamarind. Traditional management practices have limited overexploitation to a certain extent, but increasing demand for tree crop products has led to their depletion in some areas.<sup>38</sup> Traditional rights of access are sometimes severely constrained in situations where agro-investors are granted leases—giving them near total control over the land and its associated resources. For instance, when an investor obtains a land title or lease, this often limits or eliminates the access of local populations to such resources. This can seriously affect women's ability to generate household income. Forest land is also affected when pastoralists are forced off traditional livestock grazing routes as agriculturalists begin to cultivate lands that fall within the centuries-old transhumant passageways.

Historically, water resources have been shared and managed under customary tenure practices by fishing and agricultural populations living along the major water courses of the country. Increased pressure on these resources as a source of both subsistence and income generation has complicated management practices and led to an

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<sup>37</sup> All statistics are drawn from Republic of Mali, 2009d (see Bibliography) and verified in meeting with Federation of Inter-professional Groups within the Livestock Value Chain in Mali (FEBAVIM).

<sup>38</sup> A study in the village of Beledugu showed that wild fruits, nuts, and leaves accounted for over 60% of household food intake during the height of the 1988 lean period (May–October): "Ten or so years later, most species which, at one time, had been used as a food source are disappearing from village lands, a trend which has become irreversible for want of proper land use planning." Source: *afrol News*, 2010.

increasing number of disputes over access. Existing legislation does not adequately address how various water resources should be managed.

### **4.3.3 Climate Change**

Increasingly, Malians are acknowledging that climate change may be contributing to the transformation of livelihood systems of pastoralist and sedentary populations. While not yet documented in extensive detail, climate change may be leading to changes in weather patterns, shortened growing seasons, and changes in local flora. Climate change may be exacerbating desertification,<sup>39</sup> affecting the grazing patterns of pastoralist populations, and contributing to declining agricultural yields. Each of these factors directly affects access to and competition for land and other natural resources. In the absence of significant efforts to counteract these negative effects, climate change will exacerbate competition for access to natural resources.

### **4.3.4 Coexistence of Customary and Statutory Land Tenure Systems**

Customary tenure systems and practices in Mali have existed for centuries and will continue even as the influence of statutory systems expands. In traditional rural contexts, customary systems provided security based on known social rules, practices, and norms that weighed heavily on tightly knit communities. Today, the power of traditional authorities to manage the access, use, and transfer of rights to land and other natural resources is breaking down in the face of imposed statutory law, urbanization, and globalization. Even though laws and policy aim to provide security based on legal and judiciary systems and endeavor to take into account customary tenure practices, the interface is often difficult and contentious. To date, statutory systems are more widely accepted and employed in urban and peri-urban Mali. While in rural areas, customary tenure traditions are still employed even though they are affected, to varying degree, by broader exogenous factors. For the vast majority of people, some form of customary land distribution and management practices still constitute the norm.

As noted previously, the Malian statutory framework consists of at least eight instruments to formalize rights pertaining to access to land. These range from written documentation of a customary transfer of land to a legal title to land sanctioned by the state (see Annex IV). While each procedure provides the holder a certain degree of security with respect to land ownership and rights, the perceived degree of security will depend greatly on other elements, many of which are still deeply entrenched in customary practices. These include the holder's social status (family lineage), ethnic group, economic status, political or religious clout, and other factors.

The transition of customary to statutory tenure systems could put collective management of village lands in jeopardy. The ownership and management of collective assets, like village forests, community gardens, pasturelands, reserve areas, and even cemeteries have not been adequately addressed in statutory legislation. The formalization of customary practices must also take into account the important matter of secondary rights. Since women, in particular, rarely own or have free access to land, they often must seek usufruct rights through male family members. In the event of the death of or divorce from their husband, these secondary rights may be eliminated. As Mali develops and codifies its land tenure policies, it must address this important source of land tenure insecurity.

### **4.3.5 Lack of Awareness of Land Tenure Legislation and Formalization Processes**

The tenure assessment team recognizes that producer organizations, herders, and women's groups are eager for tenure reform and is encouraged by the new land policy initiatives, such as the recent policy and laws recognizing customary tenure.<sup>40</sup> Civil society organizations are staying abreast of and informing their members about land

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<sup>39</sup> Between 2000 and 2005, the average annual deforestation rate in Mali reached 0.76% per annum. From 1990 to 2005, 10.7% of the forest cover was lost (approximately 1,500,000 hectares). Source: Mongabay.com, 2010.

<sup>40</sup> Such optimism was also expressed by rice producers within the ON zone when questioned about plans to offer land titles under the MCA Mali Alatona project. See Millennium Challenge Account Mali, 2007.

legislation and administrative practices.<sup>41</sup> For instance, the civil society groups CNOP and AOPP have played a critical role in helping representatives of rural organizations to consolidate their inputs and concerns around land law reforms in Mali. Civil society groups have been instrumental in organizing the *Etats Généraux du Foncier* meetings. Unfortunately, civil society typically has limited resources and is unable to support awareness-building activities and events critical to building trust that set the stage for public discussion and popular approval of legislative decisions.

The GOM has tried to engage the urban and rural public in the development and review of legislation, but in general, the majority of rural stakeholders are not adequately informed, nor involved. Lack of awareness of the various legislative tools available and the processes that must be undertaken to secure land tenure is caused by several factors cited in various interviews conducted with both government and stakeholder representatives in Bamako. The high costs of awareness building and education of the general population is a major constraint compounded by the reality that awareness campaigns must plan for communication in several local languages. Translation time and costs are significant deterrents to mounting such awareness campaigns, especially when the nature of the information can change rapidly as tenure debates advance or policy and laws are introduced. In addition, total adult literacy rates hover around 23%, severely limiting the capacity of written communication to raise awareness and educate.<sup>42</sup> Rural radio programming is probably the most effective means of communicating with the rural population, but it is expensive and time-consuming to translate broadcast materials into multiple languages. Also cited was the delicate nature of the information and the potential impact it may have on rural populations (unrest) and land management practices in the interior of the country as people learn of, interpret, and implement tools and processes independently (without much direction or follow up). In addition to lack of knowledge, costs associated with tenure formalization were also cited as a deterrent, as was lack of proximity to government offices authorized to administer land titling.

#### **4.3.6 Lack of Good Governance and Competence within the Land Administration System**

Demand for land administration services is extremely high in urban and peri-urban areas where there is a rush to acquire land or formalize ownership via land titling. Land titling procedures are expensive, complicated, heavily bureaucratic, and poorly understood by the general public. Opportunities for corruption abound. Ensuring fair and just land management requires loyal adherence to the principles of good governance.

Lack of good governance within the formal land administration system negatively affects tenure security. Heavy bureaucracy and the complexity of the formalized land titling system combined with the fact that the general population is poorly informed of the official processes for acquiring land titles create a great deal of confusion and open the door to corruption. The case study presented in Text Box 4 illustrates these points.<sup>43</sup> In addition, some civil servants and private service providers (real estate agents, lawyers, etc.) that facilitate titling are themselves not sufficiently aware of the necessary steps involved in titling, nor are they adequately trained in how they must be carried out. As a result, in urban and peri-urban areas, the rush to formalize land tenure and to acquire land formally has led, at its worst, to the issuing of multiple land titles for the same plot of land. This is not rare. Judicial courts in Bamako are said to be completely backlogged with legal cases of this nature. Land title holders and seekers are aware of this potential threat to their tenure security. In addition, the fact that the government reserves the right to expropriate land needed for government purposes or public good (such as infrastructure projects) presents a minimal but still looming risk to tenure security for urban and peri-urban landowners.

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<sup>41</sup> These include, among others, the Permanent Assembly of Chambers of Agriculture in Mali (APCAM), CNOP, AOPP, the National Federation of Rural Women of Mali (FENAFER), and FEBAVIM.

<sup>42</sup> As cited on UNICEF website (2010).

<sup>43</sup> This case study was documented by M. Djiré (2006).

#### **Text Box 4. Subdivision of the Nienguen Koro and Nienguen Coura plain: An irregular administrative act leads to insecurity of land tenure**

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

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

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

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

Land reform and administration requires an array of technical and managerial competencies that are not adequately present within the appropriate policy and administrative offices in Mali. Qualified resource persons able to design viable land tenure reform are limited in number and scattered throughout various levels of the GOM and among private consulting partners. In addition, the local governments that will be responsible for land administration once decentralization has gone into effect do not possess the broad range of technical and managerial skills necessary to fulfil the responsibilities that will be thrust upon them. Finally, the land administration procedures and tools currently employed (for example, titling procedures and documentation) are not feasible in view of the country’s vast area and limited financial resources.

#### **4.3.7 Lack of Widespread Political Will for Tenure Reform**

Official documentation on land issues and discussions with top officials reveal the need for land tenure reform. Several GOM officials interviewed cautioned that the volatile nature of land issues, if left unaddressed, could erupt into public unrest. While this concern helps to foster political will, the topic’s sensitivity makes political leaders cautious about making tough decisions, especially just prior to and during election periods. The Head of State *has* made several bold declarations; for example, he has tried to introduce controversial legislative change regarding access to land for women (and youth). This, accompanied by his call to establish a Land Tenure Observatory and an Agency on Land Tenure Management, illustrates political will within the Office of the President. However, such conviction does not appear to be as strong or evident among political leaders at lower levels where it is critical to implementation.

#### **4.3.8 Slow Decentralization of Land Management Responsibilities**

Mali has embarked upon an ambitious process of decentralization that will devolve administrative and budgetary management authority from the central government to local government, reaching to the commune level. Land legislation dictates that decentralized government entities will have increased responsibility for land use planning; cadastre development and management; issuing of land concessions, leases, and titles; and dispute resolution. As a result, no matter how effective (in theory) land legislation may become, its effective implementation is highly dependent upon the degree to which decentralization has been achieved in each commune and the capacity of decentralized structures to fulfill newly acquired responsibilities. Since existing structures at the regional, *cercle*, and

commune level have not, hereto, held many of the responsibilities that will be delegated to them, the need for substantial capacity building is high and will take time.

### **4.3.9 Land Expropriation**

The GOM reserves the right to expropriate land from traditional users, even title holders if necessary, in pursuit of the public good. Expropriation can be used by the GOM to accommodate development activities, such as the recent airport expansion project for which many were displaced. Expropriation is also practiced within the ON to allow for agribusiness activities. While the GOM and/or contracted investors should be held responsible for compensation and resettlement of affected populations, in reality this is not always practiced due to lack of adequate resources or the fact that these issues are not adequately addressed prior to drafting the contractual agreements. This situation puts displaced populations at a distinct disadvantage with respect to lost assets (homes, crops, gardens, etc), land tenure security, and access to land in areas where they are resettled, if they agree to go elsewhere. Several large land acquisitions negotiated within the ON with large foreign investors illustrate this point. Malibya (allocated 100,000 hectares), Groupe Tomota (100,000 hectares), SOCIMEX SA (10,000 hectares) and N-SUKALA (20,000 hectares) have already begun or plan to undertake activities that will directly or indirectly affect hundreds of thousands of individuals. While each company is expected to provide compensation for land, crops, homes, gardens, and communal spaces expropriated, initial observations do not indicate that this is the case. Unfortunately, this assessment found that records of the number of families or individuals directly affected by incoming agribusinesses and documentation regarding to what extent they are compensated (or not) are either not documented or not broadly circulated. The case of Malibya, which is constructing a 40-kilometer irrigation canal that passes through several villages and croplands (and a cemetery), is somewhat of an exception. In this case, the public has been informed that in one of the affected villages, Kolongo, 58 families (among 150 affected) have received compensation for land and homes expropriated. Unfortunately, Kolongo is only one of many villages affected by the Malibya activities, and Malibya is only one of approximately 40 sizable land allocations accorded within the ON, for the most part, to private investors.<sup>44</sup>

### **4.3.10 Poor Land Market Performance**

Land markets in urban and peri-urban areas are growing at a phenomenal rate. The rush to formalize ownership or to acquire land legally is such that established systems for responding to this demand are presently overwhelmed. This leads to shortcuts and oversights and creates opportunities for corruption. Land titling procedures are complex, ill defined, and not widely understood by all those who are expected to carry them out, much less so by the public seeking these services. The complexity of the titling system and length of time it takes to advance through all the prescribed steps in the procedure can sometimes lead to ill-advised expediting that jeopardizes the validity of the titling transaction.

Inability to access financing based on customary land tenure and user rights also contributes to poor land market performance as it makes it difficult for the rural poor, or even groups of individuals, to plan for and engage in larger-scale agribusiness activities. This is unfortunate as these are people who have the know-how to cultivate the land, and given some additional technical services and strong group coordination, could expand into agribusiness activities. Rather, it is the economically privileged, civil servants, and employed urban dwellers that have access to financing but do not necessarily have the knowledge needed to engage in agribusiness activities.

While massive acquisition of rural lands—particularly in the ON, through long-term leases or by signed agreements with the GOM—aims to facilitate agribusiness development, it is unclear whether many of the investors that have come forward are genuinely interested in establishing a viable agribusiness or if they are merely engaging in

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<sup>44</sup> Source: La Via Campesina, 2009.

speculation or leasing with the intent to sublet (although this practice is not formally recognized by the ON). Control against speculation is virtually nonexistent.

The success or failure of statutory land titling in urban and rural areas and land acquisition practices in the ON will, to some degree, set the stage for the peoples' acceptance or suspicion of, and level of interest in, formalizing land tenure agreements. With this in mind, if the GOM wishes to continue to promote agribusiness development alongside smallholder production, it is critical that the rural population benefit from piloted agribusiness activities, whether through compensation, job creation, or other benefits. It is also critical that land titling in urban, peri-urban, and rural areas be increasingly perceived as a viable means of securing land tenure.

# 5.0 SUMMARY OF STUDY TEAM FINDINGS AND RECOMMENDATIONS

The USAID tenure assessment team recaps the key findings and presents recommendations based on the literature review and the views of many different actors interviewed Bamako, Mali during the two-week presence in country.

## 5.1 STUDY TEAM KEY FINDINGS

### 5.1.1 Negative Impact of Population Growth and Climate Change on Access to Land and Natural Resources

Demographic growth in Mali is approximately 3% annually. Population growth maintained at this level will lead to an increase in Mali's present estimated population of over 13 million, to over 20 million in 2025, to over 34 million in 2050. This, probably more than any other factor, will have a profound impact on access to land and natural resources. Climate change is expected to exacerbate the complex processes of desertification; the conversion of land into desert-like conditions is now expanding at a rate of 0.76% per year.<sup>45</sup> Changes in weather patterns will gradually contribute to the emergence of altered farming and pastoralist systems. For instance, changing transhumant patterns will lead to increased competition for natural resources. Expected declines in rainfall in semi-arid parts of the country will negatively affect agricultural production by shortening and potentially eliminating entire growing seasons. Further analysis is certainly needed on the anticipated effect of expected changes in the physical environment and their long-term impact on land tenure institutions, norms, and practices.

### 5.1.2 Fragmented Legislation on Resource Tenure

While efforts over the past 10 years to develop sound land legislation (*Code Domanial et Foncier*, Agricultural Orientation Law, and current efforts to define the Agricultural Land Policy and Law) are to be applauded overall, the resulting legislation (policies, laws, codes, and decrees) is fragmented, lacks overall coherence, and is sometimes contradictory. Development of the country's General Land Policy is ongoing in parallel with the development of the Agricultural Land Policy and Law. In the absence of adequate communication and consultation between teams of individuals and stakeholders working on these policies, public policy on land may diverge and necessitate continual revision of guiding legislation.

### 5.1.3 Recognition of Customary Land Tenure Practices and the Transition to Statutory Tenure Systems

Recognition of customary land tenure and property rights within the emerging statutory system is an initial step toward improving land tenure security in Mali, especially for rural smallholders and some marginalized groups. However, the GOM, in collaboration with a wide range of stakeholders, must now develop supporting legislation, systems, and processes that translate policy into administrative practices leading to improved tenure security, particularly for rural populations. In addition to the development of clear and detailed legislation and administrative decrees, following through on this policy orientation will require building extensive countrywide awareness and

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<sup>45</sup> Average rate of desertification from 2000-2005. Source: <http://rainforests.mongabay.com/deforestation/2000/Mali.htm>.

education campaigns targeted to rural landowners and users. Considerable investment must also be made to build the capacity of decentralized services to oversee and implement the new legislation.

#### **5.1.4 Lack of Collaboration between GOM Ministries Involved in Land Tenure Policy and Legislation**

GOM ministries, offices, and departments have a keen interest and a mandate to move forward on developing and implementing new land policies and legislation. Coordination across these ministries and departments is assured by the Council of Ministers through various sector-specific councils. At any one time, numerous well-intentioned initiatives are underway to advance tenure legislation and improve land services at various levels. This requires improved coordination across GOM ministries. Land legislation and management is an extremely complicated and delicate subject in any country. Approached within the Malian context, where decentralization has only recently been undertaken, inter-sectoral coordination is particularly challenging.

#### **5.1.5 Inadequate Consideration of Rural Land Tenure Issues in Current Land Legislation**

The CDF almost exclusively addresses land tenure and administration in urban and peri-urban lands. Although the Code does state that customary land rights are to be recognized, there is no explicit explanation of how *rural* lands are to be managed and *how* customary rights will eventually be respected within the context of modern legislation. In response to this ambiguity, some stakeholder groups such as CNOP, AOPP, and APCAM have advocated for increased clarity and specific legislation that focuses on land management in rural areas. This effort has led to the current initiative to develop an Agricultural Lands Policy and Agricultural Land Law whose content, in theory, will be absorbed into the General Land Policy the GOM is presently developing.

#### **5.1.6 Insufficient Involvement of Key Stakeholders in Formulating Land Policy and Administrative Practice**

Interests and concerns of rural landowners and users have not been systematically addressed nor, arguably, adequately accounted for in recent land policy and legislation. The reasons for lack of systematic public participation are common to many West African countries: lack of (rural) public awareness, information, and education pertaining to ongoing efforts to develop land policy and legislation; lack of funds to support the involvement of the rural population; logistical challenges faced when organizing and coordinating rural public involvement; and, perhaps to some extent, reluctance on the part of some policymakers to actively solicit stakeholders' input since this may delay or complicate progress.

The GOM has allocated and leased vast areas of arable or irrigated rural lands to foreign countries, political allies, and agribusinesses without prior consultation with the resident rural populations. This in itself is an indicator of limited consultation with the broader base of stakeholders and raises concerns that the interests and concerns of the rural populations are not adequately considered.

#### **5.1.7 Land Tenure Security and Formalization of Ownership**

In urban and peri-urban areas, there is a rapidly growing movement toward formalization of land ownership. Acquisition of land by obtaining titles to rural concessions is increasingly the norm. In the past, land acquisition was dictated by customary practices. Today, at least in urban and peri-urban areas, land purchases depend almost entirely on one's ability to pay for official papers. The emergence of the urban and peri-urban land market is thus dominated by the more economically privileged. This creates opportunities for those with little access to land held under customary laws, such as women, migrants, and younger siblings to purchase land as long as they have the financial means. However, markets dominated by the wealthy pave the way for inequitable access to land ownership and natural resources, putting the poor who constitute 59% of the population in Mali at a distinct disadvantage.<sup>46</sup> If land

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<sup>46</sup> Source: Republic of Mali, 2007.

titling and management are to become the responsibility of decentralized entities (as is planned in the long term), one might expect that local land markets dominated by a wealthy landed elite will similarly emerge.

### **5.1.8 Awareness, Capacity Building, and Good Governance in Land Acquisition**

The rush in urban and peri-urban areas to formalize land ownership rights is currently overwhelming an already complex land registration system. Judicial systems are increasingly called upon to resolve legal cases resulting from poorly understood, inadequately implemented, and heavily bureaucratic titling processes. Furthermore, these processes are sometimes compromised by a lack of good governance or transparency within the land administration system. These circumstances actually compromise the public's overall confidence in land administration as a whole, thereby partially defeating the overall purpose of formalization: to increase land tenure security in order to encourage investment in view of broader social and economic development. As such, broad-based public awareness of formalization processes, capacity building of system administrators, and good governance throughout the system must accompany formalization of land tenure if the latter is to achieve its intended objectives.

### **5.1.9 Vulnerable Populations and Tenure Insecurity**

Pastoralists, women, youth, and migrants constitute the four main sub-sets of the rural population in Mali that are most vulnerable with respect to access to land and natural resources.

Pastoralist populations in Mali are among the most vulnerable in the country. The very existence of their way of life is increasingly undermined, primarily by rapidly expanding surfaces of cultivated land, encroachment on livestock passageways once reserved for transhumant pastoralists, and climate change, leading to desertification that pushes pastoralists further south in search of better pasturelands and access to water.

Customary tenure puts women, youth, and migrants at a disadvantage with respect to land and access to resources. Women are simply not permitted to own or control land as this presents a risk to the patrilineal land inheritance system practiced throughout the country. Land ownership or access to resources on the part of male youth depends upon the degree to which male elders act in the best interests of the entire family. Efforts to safeguard the *family's* best interests are gradually waning, particularly in urban and peri-urban areas where land is now seen as a *personal* good and a valuable commodity. As customary tenure rules seek to protect the rights of (most) indigenous populations, migrants also have extremely limited access to land and resources. While land titling can be used to open the way for these populations to own land, it can only be effective if potential buyers have the economic means to do so, or if the buyers are provided with such means (i.e., access to credit is improved/expanded). In effect, the poor remain vulnerable due to the lack of capital to purchase land in emerging land markets—in these cases, primarily women, youth, and migrants.

### **5.1.10 Coexistence of Agribusiness Alongside Small-scale Farming**

The feasibility of agribusiness developing alongside smallholder farms is a contested issue in Mali. In general, those at the highest levels of the GOM, educated urban dwellers and the financially secure, seem to agree that Mali can improve its food security through the concurrent promotion of agribusiness alongside improved small-scale farming. Those in favor of large-scale agribusiness development argue that Mali possesses adequate land and natural resources to support both user groups. For the most part, the rural farming population does not appear to share this belief.<sup>47</sup> Rather, they see agribusiness and foreign investment (involving land allocation in its various forms) as an encroachment upon, or violation of, their customary land ownership and rights. Furthermore, rural communities are concerned that the establishment of these agribusiness ventures will lead to expropriation of their lands and possible displacement to less desirable areas. Rural populations fear that this sequence of events would entirely exclude them from the option to formalize their customary land rights. They see agribusiness development as a threat to their

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<sup>47</sup> This view is based on general impressions gathered during discussions with the various Malian government officials and stakeholders met during the course of the mission (see list of persons met in Annex II).

household food security and fear not only that land assets would be expropriated from local communities, but that newcomers' agribusinesses would export the majority of their agricultural produce overseas to home markets. These opposed visions of the role of agribusiness ventures in rural development and their role in national food security sets the stage not only for a divisive national debate, but as the foundation for resistance and conflict against future externally financed agricultural investments.

### **5.1.11 Lost Opportunities for Agribusiness to Contribute to National Food Security**

To date, those that promote large-scale agribusiness as an essential strategy to enhance food security base their arguments mostly on theory rather than on proven examples in Mali. Several large-scale agribusiness ventures either are planned or are well underway. Each will affect national food security differently. Unfortunately, few agribusinesses investors have ensured that their activities—in design and in practice—will not adversely affect indigenous populations. Until now, it does not appear that surplus production will be sold within Mali, nor will planned new ventures generate much local employment. The GOM possesses the authority to impose certain standards on interested investors to protect indigenous populations and ensure that new business activities serve Mali's greater public interests by improving national food security, creating local jobs, developing infrastructure, and using natural resources in a sustainable manner. However, judging from the approved projects to date, it seems that the government has not yet capitalized on these opportunities. Moreover, large areas of land within the ON have been leased to elite city-dwellers for agribusiness purposes, but often lay uncultivated for years. This underutilized land contributes nothing to food security or economic growth. Land speculation may indeed be the central intent rather than agricultural production.

## **5.2 STUDY TEAM RECOMMENDATIONS**

The Mali assessment team presents below recommendations expected to have the greatest potential for enhancing land tenure security, increasing the access of vulnerable populations to natural resources, encouraging increased investment in agricultural production, and improving food security. The team acknowledges here constructive suggestions elicited during the course of the mission in Mali.

### **5.2.1 Strengthen Legal and Regulatory Framework Governing Land Tenure**

- Provide direct technical support/advisory services to key ministries involved in land legislation.
- Support improved coordination across various ministries involved in legislation development.
- Support dialogue around legislative reform, ensuring that all stakeholders are consulted and their concerns and interests are considered as policies and legislation are developed.
- Support widespread awareness building and information campaigns focusing on the evolving status and content of land policies and legislation.
- Facilitate coordination between GOM units/ministries/offices, civil society organizations, and donors regarding their actions relative to land legislation and management.
- Provide technical support to decentralized structures in charge of land management and administration.
- Assist in coordination and collaboration along vertical lines within ministries involved in land administration and management.

### **5.2.2 Improve Land Administration**

- Support the establishment of decentralized land management structures proposed in the LOA and in other legislation as it is developed.
- Build the capacity of the decentralized land administration and management structures, particularly with respect to areas such as democracy and good governance, understanding and implementing existing land legislation, conflict mitigation and resolution, and public awareness and education.
- Support widespread land tenure awareness and information campaigns focusing on:
  - GOM's position with respect to customary rights, plans for formalizing these rights, and the pros and cons of the transition to modern land management systems; and

- Options for formalizing land tenure in urban, peri-urban, and rural settings and the processes for obtaining, for example, a lease contract, rural concession, or land title.
- Support the design of efficient and cost-effective land registration with access to and input from decentralized government agencies:
  - Assist the GOM in developing a system for how land registration is designed and implemented efficiently and cost-effectively.
  - Pilot test registrations which could lead to cadastres in a few selected communes to identify proposed systemic strengths and weaknesses, create best practices, and identify implementation issues.
- Introduce and support means of recording land transactions at the village level and build local capacity to maintain these records and communicate them to authorities at the commune level.
- Support villages and/or communes in documenting local customary law, rules, and regulations regarding land tenure and access to natural resources in preparation for the gradual transition to more formalized, statutory land tenure systems.
- Support the development of local, communal, and inter-communal agreements regarding shared land rights and use of natural resources.

### **5.2.3 Support Equitable Access to Land and Resources**

- Assist the GOM and stakeholders to develop policies and administrative practices to harmonize customary and statutory land tenure systems.
- Build general awareness of processes for formalizing customary rights (once developed).
- Assist in securing and formalizing communal access to large blocks of land for vulnerable groups.
- Build the capacity of rural populations at risk of displacement by incoming agribusinesses to negotiate their fair treatment/compensation where appropriate.

### **5.2.4 Strengthen Land Use Management**

- Support small-scale irrigation outside the ON to directly benefit the poor and improve household and national food security.
- Assist villages and community groups holding customary land to negotiate win-win public-private partnerships with potential agro-investors, while attracting more socially responsible investment.
- Support land and resource use mapping at the local level and design mechanisms to feed this information into commune and regional mapping exercises.

### **5.2.5 Improve Conflict and Dispute Resolution**

- Train decentralized land administration and management structures in conflict management and resolution. Emphasis should be placed on applying traditional best practices in conflict resolution and training in alternative dispute resolution.
- Work with GOM to develop a legal framework pertaining to compensation when land is expropriated and to design systems for delivering compensation when due.
- Work with GOM and stakeholders to address increasing conflict between agriculturalists and herders.

### **5.2.6 Support Agribusiness Development within the Office du Niger**

- Provide technical support to the ON administrators in charge of managing land issues within the MCA-Mali Alatona project zone.
- Work with ON officials and appropriate GOM authorities to build their capacity to negotiate with large agribusinesses and foreign direct investors to ensure that signed contractual agreements are in the best interests of the Malian people and support national food security.
- Work with producer's and women's associations to help them engage in joint, large-scale agribusiness activities. Assist them in obtaining formally recognized access to larger areas of land.

- Work with banks and microfinance institutions to improve access to credit for medium-sized Malian-owned agribusiness activities, in conformity with the Organization for the Harmonization of Business Law in Africa (OHADA).
- Work with financial institutions to develop new loan products to support agricultural investments.
- Build the capacity of large producer and other stakeholder organizations (AOPP, FEBEVIM, FENAFER, and others) to mobilize members, and advocate for and create conditions for more socially responsible agribusiness investment.

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# ANNEX II. LIST OF PERSONS INTERVIEWED

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2	Mr. Manda Sadio Keita	<i>Charge de Mission-Cellule Ag et Envir</i>	Primature	6673 9099	
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7	Modibo Traore	Accelerated Economic Growth Team	USAID		<a href="mailto:motraore@usaid.gov">motraore@usaid.gov</a>
8	Dr Daouda Diarra	<i>Secrétaire Permenant du Comité Executif du Conseil Supérieur de l'Agriculture - Charge de la Loi d'Orientation Agricole</i>	Ministry of Agriculture	2022 0194 6682 1818	<a href="mailto:daoudadiarradr@yahoo.fr">daoudadiarradr@yahoo.fr</a>
9	Moussa Djire	<i>Faculte Science Juridique Specialiste Foncier</i>	University of Bamako Faculté des Sciences Juridiques et Politiques	2023 9932	
10	Mr. Fousseini Mariko	Director	Cellule de la Planification et de la Statistique (CPS)	6675 5077 2021 5920	

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24	Jon Anderson	Director MCC	MCC	Secretary 6675 1302 Nyadia Gouka	
25	Mr. Nango Dembélé	Director	PROMISAM II	7631 7199 2022 3419	<a href="mailto:dembele@msu.edu">dembele@msu.edu</a>
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29	Dr. Sangare Coumba Toure	<i>Conseiller Technique</i>	Ministere de la Promotion de la Femme	2022 6660	<a href="mailto:sikadia2002@yahoo.fr">sikadia2002@yahoo.fr</a>
30	Dramane Coulibaly	<i>Chargé du Transfere de Competence aux Collectivités</i>	Ministère de l'Administration Territoriale	7605 8890 6320 0439	
31	Bakari Bagayogo		Ministère de l'Administration Territoriale	7605 8890 6320 0439	
32	Mme. Sissoko Hawa Cisse	<i>Conseiller Technique, Point Focale LOA</i>	Ministry of Livestock and Fisheries	6678 6979	
33	Mamadou Coulibaly	<i>Point Focal, Charte Pastorale</i>	Ministry of Livestock and Fisheries	6678 6979	
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36	Mme. Goundo-Kamissoko	President	Federation des Femmes Rurales du Mali (FENAFER)	7622 6705	
37	Mr. Rene Alphonse	<i>President, Federation des Eleveurs</i>	APCAM	7611 8154	
38	Cheick Bougadariy Bathily	Assistant to Res Representative FAO	FAO	2022 3713 6678 6979	<a href="mailto:cheick.bathily@fao.org">cheick.bathily@fao.org</a>
39	Mr. Modibo Bah	<i>Chargé des questions foncieres</i>	FEDEVIM - Federation des Groupements Inter-Professionelle de la Filière Betail au Mali	6676 5511	
40	Barra Djagande	Secretary	FEBAVIM		
41	Mamadou Coulibaly	Secretary General	Ministere des Domaines et de l'Etat et des affaires foncieres	2023 6781	<a href="mailto:madoukoman11@yahoo.fr">madoukoman11@yahoo.fr</a>
42	Idrissa Haidara	<i>Conseille technique Charge des Affaires Domanials et Foncieres</i>	Ministere des Domaines et de l'Etat et des affaires foncieres		
43	Mamadou Kante	Director	PGP 2	2029 7207	
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48	Amadou Camara	Agro Economiste Charge de Programme	MCC Mali	6675 7626 2070 2751	<a href="mailto:camaraa@mcc.gov">camaraa@mcc.gov</a>
49	Tigan Blaine (conference call)	AFR/SD, Climate Change Advisor	USAID DC		<a href="mailto:tblaine@usaid.gov">tblaine@usaid.gov</a>
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# ANNEX III. RECENT DONOR SUPPORT TO TENURE REFORM

**The World Bank.** In the 1990s, the World Bank supported a land observatory that aimed to understand land tenure issues in Mali and how they impact productivity and economic growth. Funding for the observatory phased out in 1998. From 1998 to 2007, a separate World Bank project that supported the financial sector focused on helping Malian banks find appropriate mechanisms that would enable them to accept land titles as collateral to secure loans for agricultural investment. Under the current Growth Support Project that began in 2005, the bank conducted a review of the *Code Domanial et Foncier* and is encouraging the GOM to facilitate the transformation of customary land rights to statutory law by reducing formalization fees and streamlining the administrative systems involved.<sup>48</sup> The bank has also supported LTPR-related activities through other programs. Under the National Program for Rural Infrastructure (PNIR) 2001-2005, the World Bank promoted formalization of rural land ownership (through titling) of large and smallholder irrigated areas totaling 2,400 hectares within the ON. As a follow-on to PNIR, the World Bank is presently developing a project to support rural development and agricultural productivity that will include a component focusing specifically on access to rural lands for agribusiness activities and small-scale farming. The new project will cover five of Mali's eight regions, assist in small-scale irrigation, and improve access to finance for agribusiness development (mainly to establish irrigation infrastructure).

**Food and Agriculture Organization.** While FAO itself was not invited to participate in the local, circle, and regional level meetings on the *Etats Généraux du Foncier* held in 2008-2009, they did support the professional meetings organized on this subject, held in Bamako in November 2009. FAO recruited five highly qualified Malian consultants to help prepare for and participate in these professional meetings and elicit fruitful discussion among all those attending. FAO plans to provide similar support to discussion and planning for the establishment of a land observatory that the President of Mali has endorsed. In addition, FAO will be directly involved in the development of the agricultural lands policy currently being drafted. In recent years, FAO has supported the development of many small-scale, community-managed irrigated perimeters outside the ON. This includes a sizable project currently operating in Mopti and Gao (2007-2011). Access to land has not been an obstacle for the beneficiaries of these FAO-supported activities, mostly because FAO has worked only with community groups that were able to obtain permission to use land and resources without having to push for land titles or long-term leases. However, the FAO does recognize the need for formalization of land tenure rights, particularly in the ON where large areas of land are allocated to singular entities (surpassing what individual communities are able to manage).

**US – USAID.** The *Programme de Gouvernance Partagée II* (PGP II) currently supports the GOM's decentralization initiative by building the capacity of local collectivities (particularly the communes) in areas such as financial management, communal planning and budget development, and administration. PGP also works with civil society groups to improve internal governance, build their capacity to develop carefully planned development projects for donor support, and work more effectively with each other and with their respective communes. Under a macro-policy component included in the first phase of the project, PGP worked with the National Assembly, the High Council of Territorial Collectivities and members of the group of technical and financial partners (PTF) to develop the LOA. Although PGP II no longer includes the macro-policy component, the work at the commune level puts the project in a good position to support the implementation of land tenure legislation and the establishment and capacity building of the communes and

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<sup>48</sup> *Projet d'Appui à la Croissance*, presently based within the Ministry of Industry.

various committees that are envisioned. PGP II is already working with communes to help them manage natural resources and to assist them in the development of inter-communal natural resource management agreements. In addition, PGP II presently works with the *Commission Domaniale et Foncière* that will need to work in collaboration with the LOA-prescribed *Commission Agricole Foncière*. Finally, PGP II is working with targeted communes (82 in total) to develop a Food Security Plan to identify feasible and practical actions that can be undertaken to improve food security at the local level.

**US – Millennium Challenge Corporation/Millennium Challenge Account (MCC/MCA).** The MCA Mali Alatona Irrigation Project is one of few projects experimenting with land titling in irrigated and irrigable areas within the ON. The five-year project began in 2007 has identified 22,440 hectares of land in the ON, of which 14,000 hectares are irrigable. The project's six components focus on roads development, irrigation infrastructure, land law education, resettlement and social infrastructure, technical agricultural services, and financial services. The land law education component builds awareness among the rural population of the advantages of formal land ownership (tenure security and access to credit) and educates people about customary land rights and the fact that the GOM has stated that they are to be respected. The irrigation component includes establishment of the infrastructure necessary to irrigate targeted areas. A total of 5,000 hectares will be irrigated by the end of the MCA Compact in 2012. MCA plans to make available 800 concessions of five hectares each. The first two hectares will be issued under a land title, one of which will be located near the irrigation canal, allowing the plot to be irrigated throughout the year, while the other will be further from the canal and receive water only in the dry season. The remaining three hectares will be sold to the user over the course of a 20-year period with the land title being issued to the buyer after complete payment is made. For each concession issued, women will be accorded 500 m<sup>2</sup> for communal gardening that will be located close to the village. They will receive a land title for this area, issued in the name of the community group. Attribution of the irrigated plots will be done by random choice by a selection committee.

It is still too early to evaluate or fully appreciate the effects and potential of the Alatona Irrigation Project. While many sing its praises and have high hopes that it will lead to great increases in production and improved land tenure and food security, others still perceive it as a threat to smallholders and family farms. At this time, it is unclear what will happen after 2012 when the infrastructure component of the project is completed (roads and irrigation) but “soft” support (technical agricultural services, financial services and resettlement and social infrastructure) will still be necessary (for many years).

**France – The Agence Française de Développement (AFD)** is the most active among bi-lateral assistance partners supporting land tenure and property rights in Mali over the past 20 years. The AFD worked with the World Bank in the 1990s to support the Mali Land Observatory and has been actively providing LTPR support in Mali ever since. AFD supported development of the LOA and assisted the GOM in developing an action plan or roadmap (*feuille de route*) for the development of an Agricultural Lands Policy and, subsequently, the development and adoption of an Agricultural Land Law. Presently, AFD is funding two studies that will inform development of both the Agricultural Lands Policy and Law. These include a diagnostic study of agricultural land regulations (*Etude diagnostic sur le foncier agricole*) and a study of the Framework for Agricultural Lands Legislation and Regulation. These reports will be available in mid-June of this year and a presentation of their findings and recommendations will be made to technical and financial partners shortly thereafter. The AFD is also implementing an Economic Development Project within the ON (*Project d'appui au développement économique de l'Office du Niger* [PADON]) that aims “to improve water service and waterworks management to enable extension of services; improve conditions for development by securing technical and economic aspects of agriculture; and strengthen oversight for the development of the Office of Niger area.” The project works in collaboration with the Chamber of Agriculture in Segou to ensure that smallholders' concerns and demands are taken into account when decisions about land allocation and use are made. AFD recognizes that land tenure insecurity and lack of access to land titles are limiting agricultural investment. In an effort to address this, they may add (to an extension to PADON) a component that would introduce co-financing to support agricultural investment. This would be jointly funded by AFD, BNDA, and local farmers. Plans for the extension of PADON are currently being developed.

**Germany** - Recent German support to LTPR in Mali has focused more on natural resources management and capacity building of decentralized government services than direct support to land legislation, policy development, and implementation. The GTZ/DED-supported Communal Land Asset Management Project implemented from 2003-2008 was designed to develop a reliable land information system, assisting six targeted communes in efficient and sustainable management of their land resources. The project was, in general, successful and led the way to the development of the Program to Support Local Government (PACT). A 12-year project that began in 2002 and is funded by GTZ, PACT focuses on local capacity building, natural resource management, and land management at the local level (primarily for communes). Under the land management component, PACT is developing simple tools to be used by commune-level administrators to increase land tenure security. PACT also recently carried out a study on harmonizing customary and statutory land tenure that proposed ways in which customary land rights could be secured within a statutory rights system. In the agriculture sector, German support targets perimeter irrigation that necessitates some involvement in land tenure issues. The *Programme d'appui au sous secteur de l'irrigation de proximité*<sup>49</sup>, also supported by GTZ, is currently developing a national community irrigation program that will include a land tenure management component and should be operational within the coming year.

**The Netherlands** - The Netherlands has directly and indirectly supported LTPR activities in Mali through various organizations. The Netherlands Development Organization (SNV) has been particularly active supporting producer organizations such as CNOP, AOPP, and FEBAVIM to help them mobilize their members to prepare for and engage in the process of the 2008-2009 meetings on the *Etats Généraux du Foncier* and to ensure that their concerns and recommendations will be taken into account in the elaboration of the Agricultural Land Policy and Law. Noting some confusion between the foreseen options for land ownership as put forth by the Ministry of Agriculture (in the LOA), as opposed to what is recognized by the Ministry of Lodging, Land, and Urbanism (as defined in the Code), the latter ministry asked SNV to organize a meeting between with smallholders to clarify understanding of the existing and proposed land tenure options. This meeting was held in late 2009 immediately prior to the *Etats Généraux du Foncier*. Clearly, there are still some issues to be resolved across the various ministries involved in the development and implementation of land legislation. In addition to its work in Mali, SNV has also supported regional studies on Land Management (in Mali, Ghana, Niger, Burkina Faso and Benin) and is engaged in discussions and planning at the regional level.

**Switzerland** - *La Coopération Suisse* is actively addressing pastoral issues in the Sikasso region through assistance to stakeholders in the adoption of local bylaws (*schéma pastoral*) that will regulate the mobility of cattle while avoiding negative impact on farming activities. *La Coopération Suisse* is also supporting the Permanent Secretariat of the High Council on Agriculture in charge of implementing the LOA by carrying out a pilot project in the Sikasso region wherein they are experimenting with initial implementation of the LOA-prescribed Communal Lands Commission. Results of this pilot activity are forthcoming.

**Donor Collaboration** - Donor collaboration is an important objective of many of the different groups of technical and financial partners (PTF). There are separate PTF groups for particular technical areas or sectors. For example, groups exist for activities carried out within the ON, for the agriculture sector, and for the governance sector. Since activities that relate to LTPR are usually included, if at all, under agriculture or governance projects/programs, and broad-scope land projects/programs are rare, there is no PTF for the land "sector." As such, donor collaboration on land-related issues is fragmented and revolves around specific major activities such as the *Etats Généraux du Foncier*. Several of the donors or international organizations that one could consider to be involved in LTPR activities are actually more interested in natural resource management or the plight of pastoralists. This is the case for organizations such as Helvetas, *Groupe GLD*, Norwegian Church Aid, *La Coopération Suisse*, *Action Contre la Faim*, Oxfam, and the NearEast Foundation, all of which support land management, at least indirectly.

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<sup>49</sup> Program for Support to the Local Irrigation Sub-Sector.

# ANNEX IV. LAND TENURE INSTRUMENTS

## VARYING DEGREES OF RURAL AND PERI-URBAN LAND TENURE SECURITY

Land tenure security in rural and peri-urban areas in Mali is influenced by a wide array of factors. Options for securing or improving one's land tenure rights or user rights to land and natural resources differ in different parts of the country depending, for example, on whether the land is State, community, or privately owned; local customary laws that define and regulate “ownership” and access to natural resources; and established land use classification systems (legal and customary). Eight formal instruments are commonly used and recognized at various levels. While each provides a certain degree of security with respect to land tenure and property rights, the actual level of security provided also depends greatly on extraneous or circumstantial factors that frequently come into play. These include, among many others factors, social status and connections, economic power, and even political affiliation. As such, it would be extremely difficult, and arguably of little use, to try to rank the level of security that each provides.

### 1. *Contrat d'exploitation* (Contract for exploitation of land and resources)

The *Contrat d'exploitation* is a formal contract that is renewable for up to three years. It is exclusively established between the Direction of the ON and an independent smallholder seeking to cultivate a relatively small parcel of irrigated land within the ON. To obtain a *Contrat d'exploitation* the smallholder must approach the nearest ON representative to request land allocation and to be registered on the waiting list. Plots are contracted out for one year (renewable) based on certain conditions explained in the contract. Typically, the user must pay an annual water user fee (fixed per m<sup>2</sup>) and must cultivate the land. If the person fails to do either, the ON can evict the user and contract the parcel out to the next person on the waiting list. However, to avoid losing their access to highly solicited irrigated plot(s), contract holders that are having difficulty paying the water user fee or are unable to cultivate their plot(s) according to contract specifications often enter into private negotiation with third party individuals—frequently relatives or friends—who are willing to pay the water user fees and able to put the plot to productive use until the contract holder is ready and able to meet his contractual obligations. This type of arrangement is purely informal, goes unrecognized by ON officials, and has a significant influence on the waiting time prior to initial plot allocation. While the *Contrat d'exploitation* provides a certain degree of security with respect to the user's right to cultivate irrigated land within the ON, it is still somewhat of a risky proposition given that that user must abide by the terms of the contract, or lose access to the plot(s) occupied.

### 2. *Permis d'exploitation* (Permit for use)

The *Permis d'exploitation* is available to smallholders that have successfully completed three consecutive years under the *Contrat d'exploitation* within the irrigated areas of the Office du Niger. The *Permis d'exploitation* allows the user to continue working the land indefinitely as long as he/she continues to pay the water user fee and cultivate the land in an agriculturally productive manner. The person wishing to upgrade his/her status from a *Contrat* to *Permis* must request this action before the nearest ON representative. The only difference between the *Contrat d'exploitation* and the *Permis d'exploitation* is the period of time during which it is valid and the transferability. Once the *Permis d'exploitation* is obtained, it is maintained even if land occupation/agricultural activity on the plot(s) is passed on to other family members (for example, through inheritance).

### **3. Permis d'habitation (Permit for housing)**

This type of permit is issued by the State (represented by an ON official) to allocate small areas of non-irrigated land within the ON to individuals. It is intended for habitation purposes only. Similar to the *Contrat* and *Permis d'exploitation*, the user must apply directly to the local ON representative in order to obtain this permit. The *Permis d'habitation* is now issued by the communes.

### **4. Bail avec promesse de vente (Lease with promise to buy)**

This type of lease is issued for a maximum of 10 years, usually for industrial purposes. Being that the end objective of the lease is the actual purchase of the land, it is not applicable within the ON. Rather, it can only be used when dealing with State or privately owned lands where the prospective buyer is a Malian citizen (as Malian territory cannot legally be sold to expatriates). In this case, a lease is drafted and signed between the lessee and the holder of the land title. The lease with option to buy is conditional and must clearly state any investments that must be made, and during what time period, in order to maintain validity of the lease. Once the lessee satisfies the investment (and any other) conditions imposed, he/she is accorded the option to buy the land at a negotiated price (established per m<sup>2</sup>). As with any other formal land purchase, the plot must first be surveyed and formally recorded in the lands register before the purchasing procedure (*procès verbal*, payment, etc.) can proceed. Thereafter, an official land title can be issued to the purchasing party. *Bail avec promesse de vente* is typically only used in peri-urban (and urban) areas. The lessee (prospective buyer) carries significant risk, especially throughout the period during which he/she is making investments, before fulfilling all terms of the lease.

### **5. Bail ordinaire (Ordinary lease)**

This can be administered by the State (or the ON representative) within or outside the ON, or by a private owner (title-holder) outside the ON. Within the ON it is used to lease out irrigated or non-irrigated lands. Under this type of lease, the lessee enters into contractual agreement with the State (or ON representative) or with a private owner outside the ON to lease the land for a maximum of 30 years. The lessee must make certain investments on the land as stipulated in the contract and must pay water user fees (in ON or other irrigated areas where this applies). In theory, the lessee is also obliged to pay a small land user fee. However, to encourage investment, the GOM typically waives this fee. If the leaser does not pay the water user fees and/or does not make the agreed investments, the State can take back the land (and the lessee may forfeit any investment and fees paid). The annual cost of the lease is determined on a case-by-case basis. Ordinary leases are generally more costly than the *Bail emphytéotique*, which is similar but stretches over 50 years rather than 30. The ordinary lease is most commonly used in irrigated perimeters within the ON, but can also be employed in non-irrigated areas within the ON. In the later case, the lessee is expected to establish its own irrigation improvements and the annual cost of the lease may be less expensive (per m<sup>2</sup>). At any time, if the leaser does not abide by the agreements in the lease, the State can take back the land.

### **6. Bail emphytéotique (Long-term lease)**

This type of lease is similar to the ordinary lease in that it is issued by the State (or ON representative) within or outside the ON for irrigated or non-irrigated perimeters, but the duration of this type of lease extends to a period between 30 and 50 years. Like the ordinary lease, the *Bail emphytéotique* specifies certain conditions that must be met, usually citing the establishment of irrigation or other productive infrastructure. Here too, the lessee must pay water user fees (regardless of whether the area is located on State or privately irrigated lands) and, in principle, land user fees. However, as with the ordinary bail, land user fees are almost never collected. In addition to user fees, the lessee pays a negotiated annual rental fee based on a fixed price per m<sup>2</sup>. Unlike the *Bail ordinaire*, *Bail emphytéotique* can be used as collateral to obtain financing at banks and other financial institutions. While this is a significant benefit to the lessee, he/she still carries the risk that investments will not lead to anticipated, productive gains, and that any default on the conditionality of the lease (or of a loan accessed at the bank) may lead to the State (or the bank) taking back the land.

## **7. Titre Foncier (official, legally recognized title to land)**

Land titles can only be obtained outside of the ON either from private owners holding a viable land title or from the State selling state-owned private lands. Official land titles can only be acquired by Malians and are generally only encountered in urban and peri-urban areas (though in theory it can be acquired in rural areas as well). In order to obtain a *Titre Foncier*, the property must first be registered in the lands register. If not already registered, this requires a full investigation by the appropriate authorities during which previous use and legal and customary ownership rights over the parcel in question are verified. To do this, the appropriate authority must issue an announcement in the gazette requesting any rights holders to come forth within 30 days. If any legitimate rights are claimed, then the prospective buyer must enter into negotiation with the rights holders and the rights holders must denounce, give away, or “sell” their rights to the prospective buyer. Only then, supported by adequate documentation (such as the *procès verbal de concession des droits*) can the land be registered in the name of the prospective buyer and a land title may be processed. From a purely theoretical and legal perspective, the land title is clearly the most “secure” option for prospective investors, owners, and resource users. However, prospective title seekers face significant insidious risks throughout the titling process and even after it has been obtained. These risks stem mostly from systemic dysfunction, lack of adequate and thorough documentation throughout the process, and lack of good governance in administering the necessary processes. As a result, judicial courts are backed up with numerous cases where, for example, two or more individuals actually hold an “official” title for the same plot of land. The increasing number of such cases constitutes serious concern and compromises the level of land tenure “security” that a land title would normally offer.

## **8. Décision de concession rurale (Administrative decision regarding a rural concession)**

This is sometimes sought out in order to formalize the transfer of customary rights to land and resources to another individual (or group). It serves those who wish to render inheritances official or to parcel off land to fellow family members, and is only used in rural areas where customary land tenure and property rights are beginning to overlap with the introduction of more formalized systems (described above). Although concession is not an unusual practice, it is rarely recorded in written form. In order to formally (legally) transfer one’s customary rights, the person transferring the rights first requests that a *Concession Rurale* be issued by the Prefet, Sous-Prefet, or Governor, depending on which official has authority over the land in question. The official must then post an announcement in the paper, allowing the public 30 days to come forth with any customary (or legal) claims to the land in question. The official must also order a full investigation of existing land and natural resources rights pertaining to the land area in question. Once all viable claimants have been identified (after 30 days), negotiations to transfer the customary rights are carried out. If all parties are in favor of the transfer and agree to any conditions set forth, each party signs the minutes of the meeting indicating their agreement. The minutes of the meeting are also signed by the local officials or State representative(s) administering over the land in question. The Prefet, Sous-Prefet, or Governor then issues the *Décision de concession rurale*, which constitutes a provisionary (temporary) title. Once the *Décision de concession rurale* is issued, the holder of the rural land plot must then take over payment of any water user and land user fees. The new concession holder is also required to make productive use of the land. Once these conditions are met, any time thereafter, the recognized land “owner/user” can seek out a land title (*Titre Foncier*).

## **Other large block land attribution mechanisms**

In addition to land titling and leasing arrangements described above, the GOM has also employed decrees, conventions, and bilateral agreements to attribute large blocks of land within the ON to development partners and foreign investors. Examples include agreements made with Libya (Malibya, 100,000 ha), the US (MCA-Mali, 14,000 ha), l’EUMOFA (11,288 ha), and the Chinese (N-SUKALA, 20,000 ha). These attributions have been the subject of much debate and discussion among a wide range of stakeholders.

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