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**Fishing rights on
the floodplains of
Gwendégué
Winye country, Central
Western Burkina Faso**

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Contents

1. Introduction	1
2. The different types of fishing in Gwendégué	5
3. Fishing on the floodplains: rules and taboos	6
3.1 The aims of regulation	6
3.2 The basis of rights	7
4. The different types of fishing on the floodplains	10
4.1 Gathering at low water in natural ponds and fishing with hooks	10
4.2 Gathering in artificial ponds and fishing by damming water courses	12
5. From colonial administration to development aid	19
5.1 <i>Bwegedãdara</i> in the Baporo gazetted forest	19
5.2 <i>Busin</i> , "the dam of anguish"	20
6. Conclusion	22
Bibliography	24

1. Introduction

Gwendégué, a region in Central Western Burkina Faso, is home to a series of communities settled in the south-eastern part of the Mouhoun (formerly Black Volta) loop. The area was settled no earlier than the mid-18th century and its current population includes people of diverse ethnic origin (principally Gurunsi – Nuna, Sisala and Puguli, but also Dagara, Bwa, Marka and Fulani) who have gradually come to form a single linguistic and cultural grouping known as the Winye. The region is home to only 19 communities at present, that form a small (around 30,000 people), young ethnic group, united by language and ties with some of the earliest villages (abandoned or still existing) to be established. The group's area of influence also extends over about a dozen neighbouring villages (ethnically Bwa, Marka and Nuna) with whose inhabitants the Winye maintain economic and ritual links and intermarry.

Map 1. Location of the Winye country



Each village in Gwendégué has its own economic model that defines how local natural resources are to be exploited, how the various types of management and usage rights are distributed and the way the various groups can take advantage of these to meet their needs for subsistence and cash. The model seems to depend primarily on the culture that the founders brought with them from their places of origin, on the social composition of the group and the resulting power structure (domination by one or several lineages), on whether or not there are people (*maîtres* – chiefs) responsible for the resources concerned¹ and, finally, on what has happened to the community over its history. One can, however, identify similar characteristics in all the Gwendégué villages studied.

Rights to administer resources are exercised first and foremost by the founding groups or those who can claim to be such (sometimes because they displaced the initial inhabitants). The latter authorize access to production rights² on communal lands and in respect of resources split off from the commons and allocated to indigenous and migrant production units. They will put together a series of assets (stretches of water for fishing, hunting and gathering areas, land, etc.) in order to meet their basic needs, complying with regulations that vary according to the type of activity and type of user. As regards “privatised” resources (i.e. allocated to production units), rights granted may be downgraded if exercising them seems to threaten one of two collective aims deemed to be of higher interest, namely:

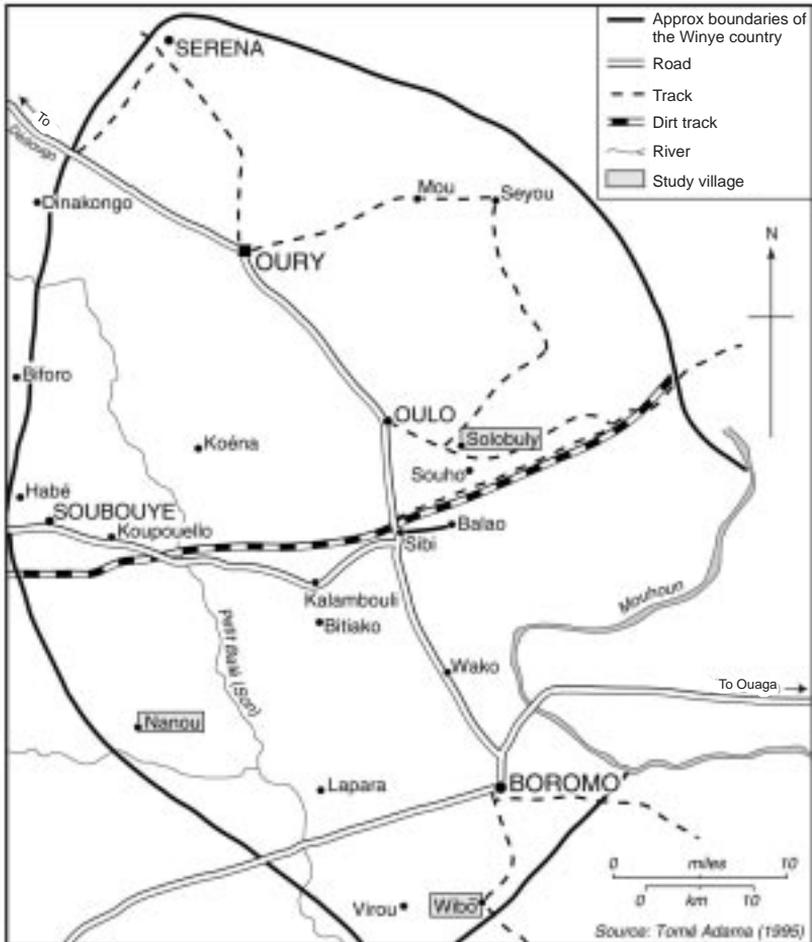
- Increasing the size of the community by integrating “outsiders”, valued either because they represent a substantial demographic contribution, or because they have specific expertise (herders, griots, blacksmiths, etc.). This concept is taking on new meaning and the strength of the community is increasingly seen as synonymous with hosting local development projects (schools, dispensaries, mills, etc.);
- Preserving the physical integrity and regeneration capacity of natural resources, so that groups of rights holders who are not present (either because they have migrated or have not yet been born) when decisions on the allocation of this patrimony are taken may retain their

1. While hunting chiefs and land chiefs are found everywhere, it is less common to find water chiefs and bush chiefs.

2. As regards the typology of rights, we use the terminology suggested by Schlager and Ostrom (1992), while we refer to Le Roy (1996) for the typology of management methods related to rights.

means of survival. While modernity has been defined by Elster as the system by which “each generation seeks to impose constraints on future generations, while refusing the constraints imposed by previous generations” (1986: 169), customary systems may be defined, conversely, as being based on agreements between two generations (the current generation and its descendants) that are guaranteed by a third generation, the ancestors³.

Map 2. Winye country



3. This concept comes close to the recommendation made by Hans Jonas: “we have to look out not for the right to happiness of future generations but for their obligation to be genuinely human” (1995: 92-93).

With time, these aims may come into conflict. The concern for development may lead to production rights being distributed to indigenous parties and outsiders whose integration is considered desirable, sometimes in contradiction with the requirement to ensure the sustainability of resources. In this case study devoted to management of fishery resources and fishing techniques in three Gwenduégué villages (Wibō in the south, Nanou in the southwest and Solobuly in the North), we shall demonstrate how local institutions are trying, through the establishment of management rules, rights and restrictions, to resolve the potential contradiction deriving from simultaneously taking account of concepts that, although divergent, are all legitimate in respect of possible uses of the resource (as fish may be seen as a local asset, food and a marketable commodity).

2. The different types of fishing in Gwendégué

Until recently, there were two types of fishing in Gwendégué:

1. Fishing in a river (the Black Volta, now known as the Mouhoun), major tributary (the Petit-Balé or Son) or secondary branch of a major tributary (the Lengue), where catching fish by constructing dams is impossible and/or forbidden. These are places where it was traditional to “hunt” fish, with harpoons and canoes, when the shoals came through and where low-water fishing was practised collectively at the beginning of the rainy season and end of the dry season;
2. Fishing on the floodplains, which includes several techniques comparable to those described by Fay (1989b: 222-223) in the central delta of the Niger (Mali):
 - at the beginning of the rainy season, fishing with hooks when the shoals pass through the community’s area;
 - throughout the rainy season, catching fish by damming water courses and using fish traps (*soru*) on secondary branches of non-permanent rivers, preventing the fish from moving on to another fishing ground;
 - at the beginning of the dry season and end of the rainy season, gathering fish from natural stretches of water (low-water fishing in pools or normal river beds) or artificial stretches of water (low-water fishing in the *yombo* – former livestock watering hole – for those who have one).

While fishing on the river has been completely abandoned (although there are still *maîtres d’eau* [water chiefs] responsible for the different portions of rivers), all the other types of fishing undertaken on the floodplains are still practised, with variations depending on the status of water resources: *soru* are still used in the southwest (e.g. in Nanou) and north east (Balao) of Winye territory, but have been completely abandoned in the centre and north (Solobuly and Oury) due to shortage of water. These are the types of fishing we shall now examine.

3. Fishing on the floodplains: rules and taboos

3.1. The aims of regulation

Fishing on the floodplains is a production system organized locally according to three main principles:

- Maintaining appropriate conditions for the reproduction of fish and associated species (crocodiles, turtles, etc.). As noted by Fay (1989a: 172-173), if fish is to be considered as a working resource, there must be an active process of reconstituting its production, which implies taking into account the nutritional and reproductive cycles of fish and prohibiting the most “invasive” fishing techniques at the crucial moments of such cycles;
- Taking account of the economic interests of all the groups living in a given area. Fishery management is a regionally organized system, designed to allow for simultaneous or successive (from upstream to downstream or from downstream to upstream as appropriate) exploitation of the resource by a series of adjacent human settlements;
- Respecting the usual socially accepted method of redistributing the yield within economic units. Such redistribution, whether in cash or kind, is a matter for the head of the production unit who will allocate the earnings in such a way as to ensure the material and social reproduction of the group in his charge. He will also manage his means of production.

These objectives are met by means of a set of specific taboos and rules, which bear witness to a mixed legal system enabling fish to be seen as both a “commercial” and “non-commercial” resource (Ost, 1998: 4). As we have stated above, for local populations, fish is at once an asset, food and a marketable commodity to which people have access because it is necessary for their survival. It is essential that a user should be able to satisfy their consumption requirements without causing a drastic reduction in the quantity remaining available to other users as a whole, whether they be contemporaries (fishermen upstream or downstream from a given fishing site) or only potential rights holders (future generations).

Taboos are partly designed to achieve these aims, as they constitute a way of discouraging⁴ potential users of a resource that, objectively, is readily accessible in most situations. By way of example, for the Winye, going into the water without previously making a sacrifice to the guardian spirits that live there⁵, taking fish from a permanent river by damming its waters and fishing without taking account of temporary restrictions on access⁶ are taboos whose transgression will be punished by various types of misfortune such as serious fishing accidents (being bitten by a snake or crocodile, death by drowning, etc.), a drastic reduction in the resource or a localized drought.

3.2. The basis of rights

Taking fish is nevertheless permitted since communities must draw their subsistence from the fruits of nature. The activity is subject to a series of rules and there are specific regulations for each type of fishing. Our illustration concerns those governing collective fish gathering at low water in natural ponds (Table 1) (for a description, see below; see also Jacob, 2001a).⁷

Apart from each specific regulation, it is important to analyse the moral principles that justify moving away from the ideal of conserving an intangible common heritage and allow the resource to be developed on the basis of personalized allocation of production and management rights. To identify these principles, it is necessary to compare the content of rights for all fishing techniques found in the area and try to trace the source of their differences. Our methodological approach owes much to the recent thinking of Colin⁸ who, on the basis of his work on tenure rights in the region of Djimini-Koffikro (Ivory Coast), has established a causal link between the origin of the means of production (local perceptions of its “output” ownership) and the type of rights (e.g. production, management, etc.) that are to be exercised over it. In the areas he studied, he highlights for example

4. The same reasoning has been applied to the storage system used by the Winye (cf. Jacob, 1998).

5. On the same subject, cf. Fay (1989b).

6. The sacred pools are placed off-limits when the water ceases to flow and the restriction is maintained until the ritual of shaving the head of the land chief has been performed, usually at the end of the rainy season.

7. The variables used to construct the table are based on Chauveau (1991). Other more specific regulations may be related to the use of a particular stretch of water, e.g. prohibiting fishing by damming the waters of the Lengue, a tributary of the Grand-Balé (to the south of the Wibô village lands), or when the bed of the river is visible; requiring fishermen to fish without turning round; a ban on crossing to the right bank, etc.

8. Verbal communication, Research Unit Workshop 095 “Tenure regulations, public policy and stakeholder attitudes”, Abidjan, 24-26/6/2002.

Table 1. Regulations governing low-water gathering in natural pools

Time Dimension	Regulation of fishing periods (temporary setting aside and lifting the restriction by the land chief responsible for the area after the head-shaving ritual – see note 6 – and a sacrifice on the spot). Limitation of the duration of fishing expeditions (fishermen obliged to enter and leave the water together).
Spatial Dimension	The distribution of fishermen on the banks per village and per family is the same from one season to the next.
Technical Dimension	Regulation of fishing gear (<i>cigui</i> trap used by women and two-handed individual <i>gwāda</i> net used by men).
Information Dimension	The status of the resource is monitored by the <i>sin fellama</i> , members of the council of elders and “envoys” of the land chief who inspect water points and report to him. More or less confidential dissemination of information on the date for fishing in the pond depending on the status of the resource.
Ecological Dimension	Species cohabiting with fish (crocodiles, manatees, turtles, hippopotami) may not be caught.
Ownership Dimension	Fishing rights are only granted to a certain number of people from allied neighbouring communities on a closed list. These rights imply a degree of reciprocity, although each community is free to add to the list of villages that may share its fishery resources, depending on the size of the latter. Individual fishing is still allowed (before the restriction is imposed) provided that the fisherman complies with the ban on selling the fish.
Economic Dimension	Sale of the fish caught is strictly forbidden. Fishermen must redistribute their surplus amongst themselves. The land chiefs currently tend to set fishing timetables in accordance with major market days (so as not to create too much incentive to sell).

the fact that land cleared for cultivation is locally considered to be the property of the person who puts in the necessary effort to establish the plot (meaning that he can dispose of it as he sees fit).

As it happens, in our context, the large variations seen in the content of rights allocated seem to us to be explained by whether or not the local institutions have decided to apply a kind of equivalent of the “Lockian” proposition, depending on the fishing technique involved. John Locke, an English philosopher of the late 17th century, is one of the pioneers of the modern view of ownership rights and the theory of the value of

labour. He was one of the first to suggest that a producer who devotes his efforts to a piece of land should be considered to have a natural right, by reason of this investment, to change its status from communal to private property.⁹ In Gwendégué, whenever the product obtained is considered to be the result of a substantial human investment, this reasoning does apply, with some adaptations relating to what is understood locally by the notion of work and a few slight differences from village to village as regards the practical scope of the principle: does it apply only to the resource or does it also extend to the means used to capture it? The rights consequently enjoyed by fishermen may be characterized as exclusive and strong: they concern a small group (a family unit) that receives a fee when the infrastructure is loaned or outside fishermen are invited in, may possibly pledge the infrastructure, is entitled to sell the fish, etc. Conversely, every time that the notion of labour does not seem to be applicable – either to the place of capture or to the catch – the rights enjoyed by fishermen are inclusive and weak: access to the resource is collective (common), the person in charge of the site cannot receive a fee, the fish is not sold, etc.

However, even when the first scenario applies, there are considerable differences from Lockian perceptions. In the philosopher's understanding, justification by natural right is, in principle, open to anyone who wishes to put in the necessary effort to benefit from it. In most of the villages in Gwendégué, however, with the exception of a type of fishing actually considered to be marginal (see below), not all users are given the opportunity to demonstrate their enthusiasm for work. On the one hand, members of non founder lineages cannot install fishing infrastructure (nor can they own fields in the village or the bush)¹⁰ while, on the other, members of the founder lineage can only do so if they meet very restrictive conditions. Local institutions only grant the right to build structures such as *yombo* and *soru*, i.e. to begin privatisation of the commons, to operators who have previously shown evidence of exceptional initiative, the definition of which varies from village to village. An alternative to this method, seen in one of the survey villages (described below), consists of maintaining the status of commons for the floodplain, the area being managed by specialist personnel (water chiefs) who simply grant temporary loans of individual fishing sites.

9. See the chapter on ownership in his *Second Treatise on Civil Government* (1689). See also Ost, 1995.

10. The same reasoning applies to access to rights to irrigation water in Morocco (on this subject, see Mathieu et al., 2001).

4. The different types of fishing on the floodplains

Two major types of fishing can be distinguished on the floodplains:

- Fishing in natural stretches of water, inhabited either by known guardian spirits or by unknown (and therefore potentially dangerous) spirits, access being communal to the first and free to the second (but at the fishermen's own risk);
- Fishing in stretches of water created artificially through structures such as dams, to which access is private and whose construction and ownership are reserved, depending on the village, for families who are deserving, elected or quite simply willing and able to undertake this activity.

4.1. Gathering at low water in natural ponds and fishing with hooks

Gathering at low water in natural ponds is undertaken on stretches of water that people discovered when the village was founded and in respect of which no further investment has been made. Consulting sooth-sayers enabled the first inhabitants to identify the guardian spirits living there, to ascertain whether they were favourable to their settlement and to find out the types of sacrifices that would enable them to live in harmony with the spirits, or even to receive gifts from the latter.¹¹ These ponds come under the religious command of a given land chief, but no human group may consider that it exercises functional ownership rights over them, as witnessed by the following points:

- The land chief may not take a fee when people from outside the group are associated in fishing from these ponds;
- The production rights granted (access rights, rights to use the resource) tend to favour the widest possible groupings:
 - the status of these stretches of water is that of regional commons, whose management fits the characteristics of "external priority con-

11. A large percentage of children are said to be "gifts" from the spirits of the water. The earth needed to build their personal altars (*maō*) will therefore be dug out near the ponds.

trol" (Le Roy, 1996: 75). The fish gathered at low water is an asset over which some known groups (residing in different villages), bound by ancient agreements to provide mutual aid in wartime and in exploiting natural resources (particularly by collective hunting using beaters), exercise "rights of common" (Hochet, 2003: 42);

- fishing undertaken in these ponds is preceded by a sacrifice that renews the original agreement with the guardian spirits (*genii loci*) and ensures the protection of the fishermen, by totally eliminating the risks they run when they want to go into the water. Consequently, any possibility of referring to Locke's natural right is excluded and the fish may not be sold: "*Fish that is caught by physical effort can be sold because it is the fruit of individual effort beset by risk (e.g. accident, snake or crocodile bite). Conversely, in the sacred ponds, attacks are impossible because a sacrifice has been made to prevent them, so the fish cannot be sold.*" (Ivo, Wuobessa, land chief, Siby, 22/2/02);
- finally, the yield is subject to redistribution rules, as also applied to the cultivation of collective fields, in that the head of the production unit provides the tools, in this case the two-handed *gwāda* net. The entire catch is brought to the head of the economic unit, who will manage it in accordance with the interests of the group in his charge. The largest fish caught will be dried, smoked and preserved. They will be used as food for visitors, to provide sustenance for labour from outside the family (cultivation societies) or to make gifts to families with whom it is wished to establish alliances. The remainder will be shared among the members for family consumption. Mothers are free to manage the fish caught by their daughters, whom they provide with the traps (*cigui*) that women use in such circumstances.

Conversely, fishing with multiple hooks attached to a narrow net – practised over several hours when the shoals come by as the water begins to rise – is open to anyone who wants to take the risk of going into the water without a prior sacrifice. This is fishing "with effort" (*baritōnō*) in stretches of water that are ordinarily appropriated but to which access is free when the first rains come. In view of the effort and the risks involved, it is permissible for the catch to be sold without trouble and for the money to be retained in full, for their own personal use, by the people who caught the fish. The same goes for all the opportunistic expeditions organized by small groups of individuals who enter stretches

of water without making any sacrifice and will, for example, use the *five* technique to catch fish (damming the waters and beating with sticks or rolled bundles of straw in the normal bed of the river), as do people from Boromo in the secondary branches of the Mouhoun at low water. The earnings from these activities are sometimes compared to those that young unmarried men derive from their individual fields in the bush (*cincao*). Such income is considered to come from ad hoc, marginal practices that nevertheless provide a welcome margin of individual freedom for those who undertake them.

4.2. Gathering in artificial ponds and fishing by damming water courses

Fishing in the *yombo* is in every way comparable to the low-water gathering previously described, except that it is set aside here for a group made up of descendants of the ancestors who dug a livestock watering hole that has gradually become a refuge for fish.

Soru consists of building (or rebuilding) an earth dam over a wooden frame, set up in the bed of a non-permanent river before the beginning of the rainy season. As the earthmoving work for building is substantial, the farmer will resort to family labour power. Baited fish traps are placed at the bottom of the dam. Since the current will change direction in the rainy season and depending on whether the water is rising or falling, while the fish never change their behaviour (always swimming against the current), the traps are arranged on both sides of the structure so as to maximize the catch. We shall explain how farmers have access to the *soru* in our three survey villages.

In most villages, *yombo* and *soru* fishing is not accessible to everyone, quite simply because not everyone is permitted to install the required infrastructure. One of the conditions for acquiring this type of infrastructure is the ownership of cattle, this being a prerequisite for the *yombo*, which starts out as a livestock watering hole. However, this is not just a logical prerequisite. Winye society encourages keenness at work and offers many incentives to those who, by creating a large and dynamic production unit, are able to transform several years of good harvests into property accumulation which must imperatively take the base form of a herd of cattle. Amongst the Winye, cattle have tradition-

ally been – and are even more so today – the privileged means of expressing the wealth of an economic unit.¹²

Owning cattle is so much prized locally that it is considered to relieve its owner or owners (ownership of cattle originally meant collective ownership by the production unit made up of uterine brothers¹³) of the obligation to obey the restrictions to which ordinary people are subject. They may, for example, replace the hut made of branches that is the usual shelter for those cultivating fields in the bush with a house made of *banco* (mud and straw):

“A farm that has been able to buy cattle is not subject to the prohibition on building a house in the bush. Anyone who has been able to purchase an ox from the fruit of his labour is a real hero. He does honour to the earth and the latter will not punish him.”

(Sougué Karfo, Boromo, 2/10/02).

Protected by the earth, i.e. invulnerable to aggression from sorcerers, owners of livestock may also achieve social and symbolic independence through such ownership.

4.2.1. Soru in Solobuly

In accordance with these perceptions, setting up a *soru* in northern villages (Habé, Solobuly, etc.) is subject to the sacrifice of an ox at the altar of the earth or at the site of the future fishery. Owning and sacrificing cattle provides legitimacy for activities that the earth would normally condemn¹⁴:

“You give an ox in order to have two things: ownership of the site – property that will be exclusively reserved for you and your descendants – and the opportunity to sell the fish. If you do not do that and you nevertheless set up a soru, the earth will punish you with death, when the flood retreats, for theft of natural resources.”

(Gnamou Jimissoro, Solobuly, 24/5/02)

12. For a very similar example from Tanzania, see Gudeman (1986: 110-128).

13. This is still the case in Nuna, Lobi and Goin society according to Delisle (1996: 11).

14. In Solobuly, the sacrifice of an ox is preceded by that of a white cock and accompanied by the gift to the land chief of 3,000 cowries (FCFA 1,500 at the current exchange rate) and a jar of millet beer. In Habé, the sacrifice of an ox is preceded by that of a white cock and the gift to the land chief of 6,500 cowries (FCFA 1,750) and a jar of millet beer (Mien Wuobikri, Solobuly, 5/11/02).

In Solobuly, the result of owning cattle, sacrificing them in the case of a *soru* and the work subsequently put into building the structure is a system of “absolute internal control” (Le Roy, 1996: 75) over the resource and infrastructure for the rights holders: the descendants of the group of uterine brothers who dug the first *yombo* or set up the first *soru*. The infrastructure is commonly compared to fallows (*yoru*), i.e. fields cleared and cultivated regularly by a group of common ancestry who may, as a result of the work of clearance, lay claim to usage and management rights over the area in question. The group may freely sell the fish and receive fees when a borrower uses the fishing site¹⁵, or when it invites fishermen from outside to participate in gathering in its stretch of water. It may, finally, pledge the structure. In the case of both *yombo* and *soru*, when the fish is sold, the income is reinvested to achieve objectives of common interest or distributed in accordance with prevailing social relationships. When the structure is pledged, this happens because the production unit or the lineage segment is experiencing serious difficulties.¹⁶

“The fish from our yombo is sold when the catch is good. It is not sold otherwise. Sale takes place on the same day the fish is caught. The men who want to buy first, followed by the women and then the remaining fish is sold by the children around the village. The money is shared between the men: even male babies have a share (perhaps 5 or 10 francs). In years when the catch is not good, the fish is not sold but shared amongst heads of family for consumption. The women may fish in this yombo. They take the fish back to their homes. Only the men’s catch is pooled for sale. The money is not shared out equally: for example, 1,000 francs may be given to the old-

15. A fee is demanded in exchange for the loan of the *soru*, unlike the loan of a field in the bush, probably because the *soru* serves above all to earn money, whereas the field in the bush serves above all “to feed one’s belly”: “If the *soru* is lent, the borrower will go to see the owner with the money he has earned. The owner will deduct the allowance of (...) for the effort of visiting the *soru* from that sum. He will give this amount to the borrower and then divide the remaining sum into two: perhaps one-third for himself and two-thirds for the borrower.” (Boudo Bambou, water chief, Nanou, 68 11/02). In the inner delta of [the Niger in] Mali, Fay (1989b: 225) speaks of dividing the earnings into three: one-third “for the water” (i.e. for the owner), one-third for the dam and one-third for the traps.

16. Amongst the Winye, pledging is a “distress” transaction that only occurs in cases of extreme need (particularly when the oldest brother who manages the asset finds himself without support). Anyone who pledges his structure retains the possibility – both for himself and his descendants – to retrieve it by paying the exact equivalent of the amount borrowed. As Cubrilo and Goislard (1998: 338) put it, the means of production is not so much pledged as used as collateral. It should be noted that communities who practise pledging of fishing structures or use them as collateral – especially those in the north as we have said – also do this with the permanent fields (*kātogo*) around the villages. In the south, neither permanent fields nor *soru* are pledged.

est and 250 francs to the youngest members. Here, most yombo may be pledged¹⁷" (Tomé Jomo, Solobuly, 15/6/02)

"Fish from the soru is eaten when the quantity of fish is low. When there is a lot, the fish is sold. The money is used for the family's needs (health-care, weddings, purchasing items to sacrifice, transport and so on). I (the compound head) am the one who orders expenditure. A woman may not approach our soru. That is forbidden. Women do not know about fishing techniques and setting up the soru. Some families have two or three soru. They earn money and use this to purchase family assets such as cattle and sheep. The money from the sale is kept safe by a trustworthy woman from the family who sells the fish. A productive soru can bring in between FCFA 25,000 and 50,000 a year. I have obtained several sheep with that money. However, there are years when the soru does not produce anything. You need to know how to make the traps and the dam. To rebuild the dam, you have to ask people to contribute labour and you have to prepare millet beer and food. A well-made dam should last three years." (Zango Pangatié, Nanou, 19/7/02)

4.2.2. Soru in Wibõ

In the south of Winye country, for example in the village of Wibõ, the model of legitimate access to fishing by damming the water (*soru*) is not based on merit but on initiation or collective procedures. Unlike communities in the North, here we have single lineage communities, enjoying a certain abundance of water and therefore of wildlife, the latter very often being protected by taboos: for example, one may not kill crocodiles or turtles.¹⁸ In these circumstances, only those who have had a revelation (a gift or purchase of a fetish related to water) and/or those who, by reason of kinship, may be part of a network of water chiefs (their uterine nephews for instance) may install a *soru*. This is the only way that individuals, usually adult men in charge of production units, may be considered as possessing the necessary aptitude to conduct this type of activity and that they can get hold of the "medicines" enabling them to accomplish it successfully. Such medicines (whose recipes are secret) are needed for the fisherman to ward off the crocodiles (because

17. This does not, however, apply to *yombo* that have been colonized by beneficent spirits to whom sacrifices will be offered.

18. These taboos are related to the local perception of personality. In the south, many individuals have doubles who are crocodiles or turtles, something that is much less common in the north of Gwendégué.

he is not entitled to kill them) that are reputed to break the dams but also to protect himself against snakebite and any other danger connected with water.¹⁹ As each individual is destined to undertake an activity that could be said to add the finishing touches to his personality, the site for building the dam will readily be granted by the land chief after the sacrifice of a white cock and the *soru* will soon become an integral part of the activities in which members of the family farm are reputed to excel and which will, for example, form the basis on of praises sung by the griots. As result, it is unthinkable that the site should be pledged.



Photo: Robert Cassan

In Wibō, the legal system governing *soru* and *yombo* can be described as “exclusive internal control” (Le Roy, 1996: 75). The group may freely sell

Photo: Robert Cassan



the fish from the *soru* and levy fees when a borrower uses the latter or when it invites fishermen from outside to take part in gathering from the *yombo*, but it may not pledge the structures. Mention should also be made of a variation, in comparison with northern villages, as regards the possible use of the resource caught in the *yombo*. Although there are differences concerning

production rights almost from one *yombo* to the next, it is in the south that we find the largest number of restrictions on selling fish gathered at that site as well as a general ban on pledging the structure. In this context, the status of fishing in the *yombo* seems to be very similar to that of low-water gathering in natural ponds, the notion of labour leading to the creation of the structure not being considered relevant:

19. There are similar medicines to keep away evil spirits and allow bush land to be brought under cultivation.

"If the yombo has been invaded by fish, this is by luck, so it is normal that it should be forbidden to sell the catch, in order to safeguard that luck." (Sougué Karfo, Boromo, 11/5/02)



Photo: Robert Cassan

Photos show low-water fishing in a sacred pool at Wibö

4.2.3. *Soru* in Nanou

There is a third system of access to the *soru*, used in particular in the village of Nanou (southwest Gwendégué), which is characterized by several factors that differentiate it from other communities:

- It is a multi-lineage village which has no less than five families of water chiefs²⁰, each of them coming under the authority of one or other of the two lineages of land chiefs who share the customary management of the whole territory. This situation is exceptional in Gwendégué, as natural resources are usually managed by the land chiefs alone, in the absence of specialist personnel;
- These water chiefs share the management of an extremely large fishing ground, including both areas of floodplain and the use of a substantial part of a permanent river, the Petit-Balé.

In Nanou, access to the *soru* is open to everyone, i.e. heads of production units coming from both founder and non-founder lineages. Unlike what happens in the other communities surveyed, the village does not make exceptions to the communal system for users endowed with a particular ethos but gives specialist institutions (the water chiefs), present throughout the territory, the job of regulating access to the means of production. Here, the water chiefs form an intermediate level between the land chiefs (holders of religious command over the area) and economic agents and they are the ones who, unlike the users elsewhere, are considered to be the functional owners of the floodplain and the structures built upon it.

20. Most of these families had been water chiefs in villages that no longer exist.

They simply loan these to producers who want to conduct the activity. Their status entitles them to make a charge on the resource caught or sold:

"I am the water chief for the east and south of the Petit-Balé and its tributaries. Our boundaries run from the small bridge at the entrance to the village up to the tarmac road and from the tarmac road up to the Petit-Balé. I allocate places on the soru. All the soru on my territory are loans. In principle, all the soru belong to me but the fishermen have usage rights. Every year, I receive shares of the fish and the money from fish sales. Nowadays, some people do not comply with this any more."

(Tien Jissié, water chief, Nanou, 2/10/02)

Of course, whenever specialist personnel are in charge of one or several resources (the question also arises in connection with land chieftaincies²¹), there are also risks that these people will try to extend the range of legal "states" over which they claim to exercise their authority so as to increase their income. In more ancient times, probably in view of the abundance of resources, some water chiefs did grant exclusive rights to producers (including the right to pass on to their descendants) over fishing sites in exchange for money.

21. For example, the Winye in the south consider that asking for an ox in exchange for installing a *soru* is proof above all of the "greed" of the land chieftaincies in the north. On accusations of "greed" between the various land chieftaincies in Winye country, see Jacob, 2001b & 2001c.

5. From colonial administration to development aid

Forms of local recognition of production areas and the authorities who manage them depend, as we have seen, on one distinguishing criterion: whether or not it is possible, in a given case, to apply Lockian reasoning. Simplifying in the extreme, we may say that these forms of recognition allow areas and activities to be divided into two major groups: areas split off from the communal system where activities are conducted that include the sale of produce and the possible pledging of the production structures (a fishing site or a pond) and common areas from which these activities are excluded. However, if Lockian reasoning is genuinely at the heart of the principle of obtaining rights in Winye country, it should be identifiable not only in the initial pattern of distribution of resources and ways of using them but also in all situations of innovation that create new production structures and thereby new potential rights. We shall take two examples, one dating from the colonial period and the other related to a recent development programme, to show that this logic persists and that producers constantly seek to update the rights they possess over nature, depending on the transformations they bring about.

5.1. *Bweguedādara* in the Baporo gazetted forest

In 1926-1929, the colonial administration requisitioned the Winye of Boromo to construct the first bridge over the Mouhoun. Repeatedly digging out earth for the earthworks gradually formed a depression that filled with water and eventually with fish. As of 1937, the pond created in this way was included in the Baporo gazetted forest. The Winye did not apparently have any problems of access to fishing in that stretch of water until 1984. At that time, the government of Thomas Sankara set up a prison camp in the area, with the camp's boundaries encompassing the *Bweguedādara* pond. Worried about their access rights to the pond, the Winye took action. As they were dealing with an administration that could easily be swayed if ritual obligations were invoked, they used the pretext of an imperative duty to make sacrifices in that place so as better to defend it. Although this sacrifice was initially a ruse, intended to invert the balance of power in their favour, the declarations (for domestic consumption) made by the leaders involved in this affair leave no doubt about the manner in which they justified their prerogatives over the resource, putting forward

as an argument the effort put in by their ancestors who had dug out the earth. Initiating a levy is proof of ownership or at least of shared joint ownership, unavoidably in this case, with the government.

5.2. *Busin*, “the dam of anguish”²²

In 1996-1997, on the initiative of an Austrian NGO, the population of the village of Virou in the south of Winye country was mobilized to supply the labour and some of the funding needed to increase the capacity of one of its sacred pools by constructing a dam downstream of the latter. Before the operation, this pool formed part of a regional network of stretches of water subject to a system of external priority control, in respect of which the members of a set of neighbouring villages jointly hold rights to gather fish, without being allowed to sell it (see above). As soon as they had agreed to this investment effort, the villagers of Virou wanted to change the rules of access to the pond and to alter its status so that it became private property, reserved for the satisfaction of their needs alone, rather than a communal asset. Although this claim was legitimate at first sight, since it was based on a recognized register of justification, it nevertheless encountered opposition from the inhabitants of the neighbouring village, Wibõ, who complained about this breach in reciprocal access rights to the ponds in the two villages. During the 1999 dry season, when the latter sought to resume the tradition of gathering fish, as the dam was once again operational, they ran into the opposition of their “hosts”. They could go into the water and make some catches but would find these taken away from them when they came out of the water by the men from Virou. Things got heated and the matter was brought before the préfet who, in accordance with “administrative custom” (Lund, 2001) established in the region, referred the problem for solution to inter-village discussion. Of particular interest here is the argument put forward to justify changing rights over the dam and bring about its removal from the regional commons, perfectly illustrated by comments from one of the elders from Virou that we questioned:

“Troubles about fishing between Wibõ and Virou are examples of bad neighbourliness that need to be corrected. The community provided physical effort to build the dam, so the fruit of that effort (fish) should be reserved for the village that put in the effort. The idea of collective fishing

22. The words come from Mien Dakin, a member of the Council of Elders of Virou, worried about the quarrels provoked by the dam (Virou, 16/4/01).

no longer exists. This is what each village needs to understand. They have to abstain from going fishing in each other's waters before making arrangements on a new basis. My wish is to see tempers calming down and, sooner or later, villages again going fishing together in both natural ponds and those created by damming." (Mien Libi, Boromo, 18/5/02)

Table 2. Summary of perceptions relating to fishing on the floodplain

Types of fishing	Gathering in the sacred ponds	Gathering in artificial ponds (<i>yombo</i>)		Fishing with traps and damming the water (<i>soru</i>)			Fishing with hooks / <i>fwe</i>
		North	South	Nanou	Solobuly, Habé	Wibō	
Geographic Situation	Throughout Gwendégué						Variable depending on opportunities
Status of the area used	Communal	Private. Descendants of a group of uterine brothers	Private. Descendants of a group of uterine brothers	Communal. Managed by the water chiefs Loaned for use by producers (1)	Private. Descendants of a group of uterine brothers	Private. Descendants of a group of uterine brothers	Freely accessible area
Notion of work taken into consideration	No	Yes	Yes	Yes	Yes	Yes	Yes
Charging of fees	No	Yes	Yes	Yes	Yes	Yes	Yes
Type of control	Priority external control	Absolute internal control. Pledging possible sale of fish	Exclusive internal control. No pledging possible, no sale of fish	Exclusive internal control	Absolute internal control. Pledging possible	Exclusive internal control. No pledging	No control over fishing areas. Sale of fish
Origin of the right of ownership	No ownership (religious control by the land chief)	Merit (possession of oxen)		Election (water chiefs)	Merit (possession of oxen)	Election	No ownership
Distribution of the product	Subsistence depending on the aims of the production unit	Cash according to hierarchical relations within the family	Subsistence according to hierarchical relations within the family	Cash distributed according to hierarchical relations within the family and/or invested depending on the objectives of the production unit (fee payable to the water chief in Nanou)			Cash individual earnings
Period of use	Dry season	Dry season		Rainy season			Dry season Beginning of rainy season or dry season (<i>fwe</i>)

(1) We have seen that there were nevertheless, in Nanou, some *soru* that users could consider as "removed" from the common property system.

(2) Some prerogatives bear witness to the existence of the notion of control amongst the Winye. They speak of "*libe kone*", which we might translate as "the things (goods) that flow from established prerogatives – through inheritance, custom, etc.". However, this concept remains vague. The Winye apply the term *libe kone* equally to the chicken that has to be sacrificed by the land chief before setting up a *soru* (as religious chief, this chicken is due to him), the money that must be given to the owner of masks so that he may allow them to go out (on the occasion of a funeral, for example) and the inheritance, of the *soru* or the village field (*kātogo*) acquired by a group of uterine brothers, by their descendants.

6. Conclusion

Each community in Gwendégué seems to abide by general principles, particularly as regards the necessary balance to be maintained between using and preserving the resource. To some degree, all Winye villages hold common beliefs about the dangers of fishing in unknown waters and share the same rules on not damming permanent water courses, rights of common over natural ponds, banning the sale of the fish caught there, etc. The risk of negative externalities is too important here for each village to have an independent resource management policy. On the other hand, each community seems to be relatively free to adopt a property rights system, individualized and market-based to a greater or lesser degree, for the resources and fishing infrastructure constructed “by effort” and of strictly local interest (particularly the *soru* and *yombo*). Are some of the systems less equitable than others? If we leave aside the example of Nanou where, as we have seen, everyone (“outsiders” as well as founders) has open access (subject to approval by the water chiefs) to rights to fishing in ponds created by damming, we see that elsewhere such access is set aside for certain indigenous parties, on the basis of merit (Solobuly) or because they have had a particular revelation (Wibō). Such conditions, which are quite restrictive at the outset, do not however come into conflict with the very general principle on which we laid emphasis at the beginning, according to which society seeks to give each indigenous production unit a sufficiently varied range of assets to provide it with a minimum basis to organize its livelihood.²³ We see for example that the Yao lineage segment known as *jawuba* (“the great court”), the first to settle on the Wibō farmland, was made up around 1910 of three production units each formed of a group of sons of one of the wives of the founding ancestor. Apart from their land in the village and bush, all of these units had one or two *soru* in favourable areas. In the multi-lineage village of Solobuly, there were around 10 *soru* divided between the various major production units making up the four lineages that had jointly founded the community. Units made up of members of non-founder Winye or “outsider” (particularly Nuna) groups who, in this

23. The production unit headed by the land chief, which has to cope with much expenditure in cash and kind, also has assets. So long as he remains in power, the land chief has the use of a permanent field in the village and one or several *soru*.

context, have no rights to set up *soru* borrow fishing infrastructure from indigenous parties if they want to take up this activity.

Fishing on the floodplains, which provided an appreciable intake of proteins and source of money for the production units until the 1970s²⁴, has suffered a considerable although unequal decline in different zones. There are two reasons for this decline: (1) development of the Sourou Valley in the 1980s and 90s that caused a drop in water level downstream in the Mouhoun and its tributaries, particularly in Gwendégué; and (2) the introduction into the area, as of the 1980s, of cotton production. The latter caused the break-up of large ancient production units, drove people to search high and low for cash (breaking various restrictions on selling fish, refusing to pay fees due to the water chiefs, etc.), and led to production on a more individual basis, making it difficult to build certain production structures (particularly *soru*). Can what is left be safeguarded or made more secure? In Burkina Faso, although the law on agrarian reform, enacted in 1984, makes the State the sole owner of the nation's land, no policymaker can afford to ignore the fact that there are lineage or family rights over bush and village lands. Tenure of water does not enjoy such "protection". In official discourse, water very often appears, contrary to land, as the forgotten natural resource, the one which, provided that it is exploited rationally, will constitute tomorrow's development lever. It is seen as a freely accessible good, a raw material awaiting development, a new campaign for small-scale village irrigation or a slogan from some minister trying to promote dry season cropping. In this context, customary systems can only be considered "secure" insofar as they are not affected by development projects²⁵ or are situated too far away from the "major works" (e.g. construction of roads, development of rice production, building a dam) periodically launched by the government of Burkina Faso to be victims of their negative externalities.

24. See quotes in the chapter devoted to the Solobuly *soru*.

25. We have seen in particular how the Austrian NGO that supported the construction of the dam in Virou was responsible for long-term destabilization of the relationship between two villages who had traditionally exercised rights of common over their respective ponds, because it was unaware of those rights.

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