

Can research help bridge the gap between local rules and national legal frameworks?

The case of local conventions for natural resource management in the Sahel

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Introduction

In recent years, a growing body of literature has explored the linkages between research and policy processes - particularly how the former can feed into the latter. As a result, earlier assumptions about "benevolent" policy makers waiting for research findings and ensuing policy recommendations to orient their strategic choices have given way to a more sophisticated understanding of the policy process (from formulation to implementation) and of the different factors affecting it. This paper aims to contribute to the debate, focusing on the way and extent to which research can help bridge the gap between local rules and practices on the one hand and national legislative frameworks on the other. In order to do this, it considers the example of "local conventions" in the Sahel - sets of rules and institutions for natural resource management negotiated and agreed by local stakeholders. The paper draws on the experience of several projects implemented by the International Institute for Environment and Development (IIED) and by a range of partner institutions from across West Africa. It does not attempt to assess "impacts", nor to establish causal relations between research activities and policy outcomes; it merely reviews some examples of what can be - and has been - done.

Building on local practice

Across West Africa, natural resource legislation is generally based on European legal concepts that have little relevance to social relations on the ground, where land and other resources are usually held by clans or families and used through complex systems of multiple rights held by different users (herders, farmers, etc). On the other hand, local ("customary" but continuously evolving) land/resource management systems are commonly applied even where inconsistent with legislation, as they are more accessible to rural people. As a result, several legal systems - statutory, customary and combinations of both - coexist over the same territory, resulting in overlapping rights, contradictory rules and competing authorities ("legal pluralism"). This situation creates confusion and tenure insecurity, which in turn foster conflict, discourage agricultural investment and enable elites to grab common lands. It is now widely recognised that the national legal system must build on local concepts and practice, rather

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than "importing" one-size-fits-all models. This entails, among other things, legally recognising local resource management systems, which are the mechanisms through which most rural people gain access to natural resources.

In several Sahelian countries (Mali, Senegal, Burkina Faso, Niger), local conventions constitute an example of such local practice. Broadly speaking, these are sets of rules and institutions negotiated and agreed by local stakeholders with a view to regulating land/resource access and use. This broad definition encompasses an enormous diversity of situations, in terms of resource regulated (from fisheries to agro-sylvo-pastoral resources); of negotiating stakeholders (different resource users - herders, farmers, etc - and/or local customary and statutory authorities); of approaches followed (with emphasis varying from setting detailed rules to establishing management/dispute settlement institutions); and so on. Although oral arrangements of this sort have existed since precolonial times in many areas, the term "local conventions" has been increasingly used in recent years to refer to agreements supported by development agencies and embodied in some form of written document. In this context, the role of development agencies is to facilitate the process through which the different users are identified, brought around the negotiating table on an equitable basis, and supported in the drafting and implementation of the convention.

While an assessment of the effectiveness of local conventions as a tool for natural resource management is well beyond the scope of this paper, their supporters stress the contribution of such conventions to tenure security (by clarifying access and management rules), to peaceful coexistence (by preventing resource conflict and establishing institutions for conflict management), to social inclusion (by creating a regulatory framework where all stakeholders are represented) and to sustainable resource management (as rules formulated in a participatory way are expected to be more likely to be followed by resource users). In agro-pastoral contexts, local conventions may be particularly valuable in reconciling the competing resource interests of herders, farmers and agro-pastoralists, for instance in regulating issues like pastoral mobility and access to water points, dry-season pastures and post-harvest fields. On the other hand, some have raised concerns as to the real degree of local "ownership" of processes facilitated by external agencies, and to the sustainability of the regulatory framework after the end of the development project; to the extent to which some "vulnerable" groups (women, pastoralists, migrants) are meaningfully involved; and to the fact that the agreed rules have no legal value and are as such not legally enforceable.

The latter point is at the heart of the issues examined here. Whether local conventions have any legal value is a controversial issue which divides legal professionals and development practitioners alike. As Djire (2004) points out, the answer is a complex one. On the one hand, local conventions are in line with, and further the aims of national legal principles in several Sahelian countries. First, with rural decentralisation processes underway in

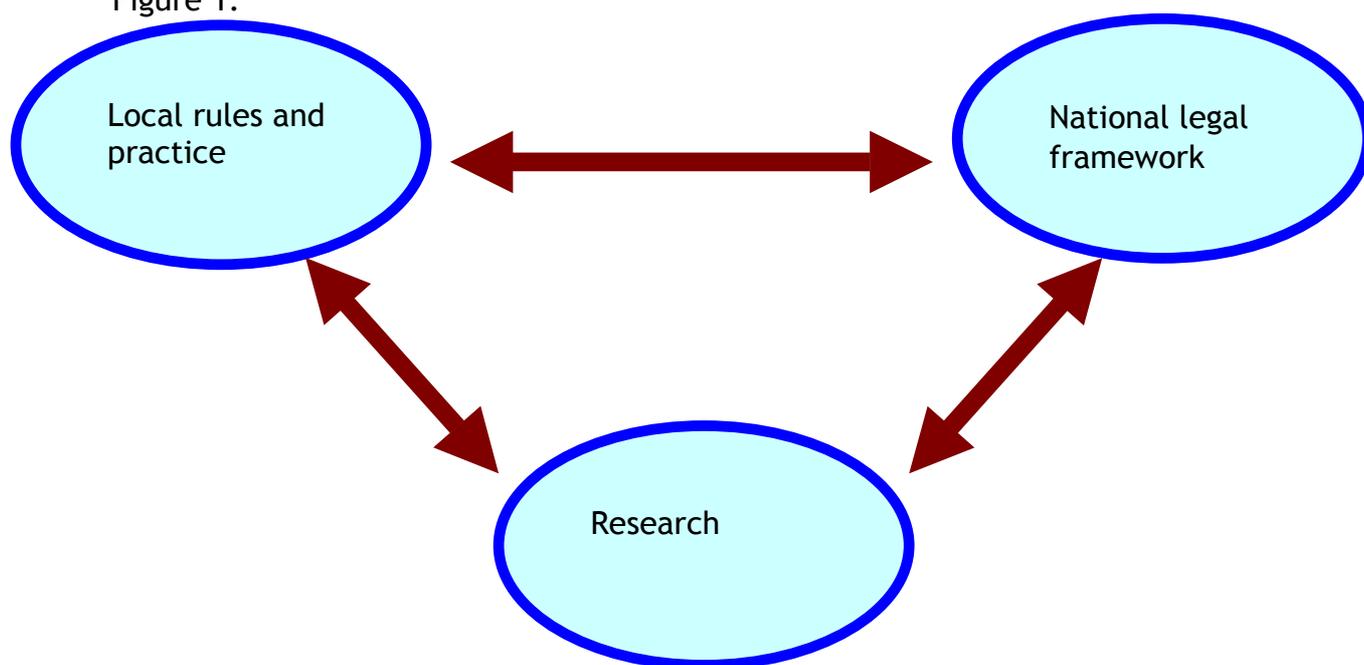
several countries (effective in Senegal, Mali and Niger; to be implemented in Burkina Faso), local conventions constitute a practical tool for the decentralised management of natural resources envisaged by legislation. Secondly, in their attempt to reconcile competing resource uses, particularly pastoralism and agriculture, local conventions further the aims pursued by the "pastoral" legislation adopted for instance in Mali (Pastoral Charter 2001) and in Burkina Faso (Framework Law on Pastoralism 2002). Similarly to local conventions, pastoral laws address issues like herd mobility, and access to water points and to post-harvest fields. On the other hand, the legality of local conventions has been questioned under both public and contract law. Indeed, local authorities usually lack the power to sign agreements on the management of natural resources. When negotiations for such agreements are undertaken by villages, these often lack any legal status and any capacity to set rules applicable to third parties (e.g., on Mali, Djire, 2004). In addition, ownership and management rights over the resources that form the object of such "contracts" are held by the state, not by local users and authorities (Djire, 2004). According to many, this unclear legal status undermines the effectiveness of local conventions, as their rules are not enforceable and are continuously challenged by those who would stand to lose from them.

To sum up, national legal frameworks need to build on local practice in order to effectively respond to local needs; and local rules need backing from national legislation, so as to have clear legal authority. The next section will explore the ways in which research can help facilitate this match.

The role of research

Much of the debate on bridging research and policy focuses on how knowledge generated by research can feed into policy processes. This raises the issue of the legitimacy of "experts" to influence policy, particularly with regard to the role of European researchers participating in national policy processes in African countries. This paper attempts to broaden the research-policy equation to a local practice-research-national policy triangle, with local practice feeding into policy processes and research facilitating such local-to-national inputs (see figure 1 below). In this context, research can play a variety of roles, including: promoting innovation in local practice; and feeding local practice into national policy processes.

Figure 1.



Promoting innovation in local practice

A first broad category of roles that research can play relates to providing support to local practice, particularly by promoting innovation and by developing and testing tools that can be used to accompany local processes. An example of this is the "family portrait", an action-research tool aimed at generating knowledge and at promoting dialogue and trust between communities - a precondition for the negotiation of local conventions. This tool was for instance used in Bankass and Douentza (Mali) within the context of the IIED/SOS Sahel Shared Management of Common Property Resources programme (Bocoum et al, 2003)². The portrait involves in-depth interviews with families from different groups (agro-pastoralists, herders, etc), so as to better understand their complex livelihood strategies; writing up a "portrait" that summarises this knowledge; presenting a "depersonalised" version of such portrait to focus groups of both people belonging to the same social group (to obtain feedback on the "representativity" of the family interviewed) and of other groups (e.g. presenting the portrait of a farming family to a group of herders and vice versa; see Cochrane, 2003). This tool may help communities better to understand the needs of other groups - e.g. farmers better to understand pastoralists' need for herd mobility and access to dry-season resources - thereby fostering mutual understanding and paving the way to mutually agreed solutions such as local conventions.

Research can also support innovative local practice by facilitating exchange of experience between practitioners themselves. This can be done for instance through publications written by practitioners (possibly with support from an experienced researcher), addressing issues of direct relevance to

² The family portrait was originally designed by Brigitte Thébaud, who held a training session for project staff on the methodology for developing a portrait.

their work, and posted through a distribution list targeting NGO officials and other practitioners. For instance, Hamilton and Dama (2003) describe the process through which they - as volunteer and director, respectively, at a Malian NGO, with support from IIED - sought to mainstream gender in management committees established by a local convention in the district of Niuro, Mali; and the constraints that such process met, and the approaches it proposed in order to address them. This publication is likely to be of interest for development practitioners grappling with similar challenges elsewhere. Exchange of experience can also be promoted through local, national or international workshops. For instance, within the context of the Making Decentralisation Work programme, IIED and a range of partner institutions held a regional workshop on local conventions in Bamako, Mali, in December 2003. The workshop brought together some 60 between researchers, practitioners and policy makers, and offered the opportunity for exchange of experience between practitioners, as well as for debate on national policy (see below).

Feeding lessons from local practice into policy processes

This section follows the conceptual framework developed by Hesse and Ochieng Odhiambo (2003) with regard to pastoral policy. These authors identify two constraints to appropriate policy and legislative frameworks:

- policy makers' lack of knowledge about local contexts and dynamics, either because little research exists on such issues or because available research has not "filtered down" to those who most need it ("knowledge gap"); and
- imbalances in political power - even if policy makers had perfect information, this alone would not necessarily guarantee "appropriate" policies and laws, as the design of these is essentially a political process aimed at prioritising competing interests, and it is those interests that are backed by political power that tend to prevail ("power imbalance"; Hesse and Ochieng Odhiambo, 2003).

For research to feed lessons from local conventions into national legal frameworks, both types of challenges need to be addressed. The first one requires not only undertaking studies to document best practice (what works where, what doesn't, and why) but also "packaging" them in formats that are accessible to policy makers. This includes accessible publications, policy briefs and workshops (see for instance the above-mentioned workshop on local conventions organised within the context of the Making Decentralisation Work programme). In practice, this may happen in different layers, as groundbreaking but complex studies may filter down to policy makers by feeding into literature reviews, which may in turn provide the basis for policy briefs - a cycle that takes time to unfold.

The second type of challenges requires building the capacity of in-country civil society organisations to participate in policy debates in an effective and equitable manner, and "argue their case" vis-a-vis policy makers - who are meant to be their representatives. Again, the Making Decentralisation Work programme may provide some examples. In Mali, Niger and Burkina

Faso, the programme supported national networks of development practitioners, researchers, activists, government officials, and more generally informed citizens, to share ideas and experience and promote informed policy debates. An evaluation of the programme emphasised that these networks promoted the emergence of a vibrant civil society in those countries. In Mali, for instance, the network specifically set up a working group to share ideas and experience on local conventions, was actively involved in the finalisation of the implementing regulations for the Pastoral Charter, and sought to channel lessons learned from the former activity into the latter. Developing training materials to make research-generated knowledge available to civil society organisations is also key. For instance, within Making Decentralisation Work, ARED, a Dakar-based organisation, with support from a leading pastoral economist, has developed and tested a training module targeting pastoral associations. The module (Thébaud, 2004), available in both French and Pulaar (a language spoken by many pastoral groups in West Africa), builds on the extensive research on pastoral livelihoods conducted over the past decades, and aims to give pastoral associations the self-confidence and analytical skills to "make their case" vis-a-vis policy makers. The module covers a subject of direct relevance to negotiating local conventions, and includes a section specifically discussing national policy and legislative frameworks (Thébaud, 2004).

Conclusion

This paper has explored the ways in which research can help promote synergies between local rules and national legal frameworks, using the case of local conventions for natural resource management as an example. In so doing, it has not purported to establish causal links between research activities and policy outcomes - which would be extremely difficult to do - but simply reviewed examples of what can be done.

The paper has sought to contribute to the ongoing debate on how research can best contribute to policy processes. It has broadened the scope of the analysis from a research-policy relation to a local practice-research-policy triangle. It has suggested that effective communication channels need to exist between local and national levels; that national legislation needs to build on local natural resource management rules in order to be effective; that local rules need backing from the national legal system in order to be enforceable; and that a range of research tools have an important role to play in facilitating these processes.

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