

iiied

International
Institute for
Environment and
Development

Dryland Programs

Issue Paper no. 76

**Land tenure
conflicts and their
management in the
5th Region of Mali**

**Idrissa Maïga
and Gouro Diallo**

April 1998



**Land Tenure conflicts and
their management
in the 5th Region of Mali**

**Idrissa Maïga &
Gouro Diallo**

Idrissa MAIGA is the Secretary General of the Research Group, Action for Development (GRAD). He has gained considerable expertise in social studies, participative research methods and animation throughout his career and has been the MARP network co-ordinator in Mali since 1992. He has also been president of the CCA-ONG (Co-ordinating committee of the NGOs' activities in Mali) and has undertaken several studies and workshops at national and sub-regional level on conflict prevention and management, in collaboration with GRAD, IIED, NEF and other international NGOs. He is the Secretary General of "l'Observation National de Prévention et de Gestion des Conflits au Mali".

Gouro DIALLO has a Masters degree in Philosophy from "l'École Normale Supérieure de Bamako", Mali. A consultant in social sciences, he is currently particularly involved in the management of conflict.

Both authors can be contacted through GRAD: Niarcia - Rue 461, Porte 120, Bamako, Mali. Fax: + 223 22 41 31. E.mail: GRAD.MALI@MALINET.ML

CONTENTS

Acronyms	ii
Map	iii
INTRODUCTION	1
INTRODUCTION TO THE MOPTI AREA AND LAND TENURE PROBLEMS IN THE 5TH REGION OF MALI	2
The geographical setting	2
Problems of land tenure	2
THE FORMS TAKEN BY LAND TENURE DISPUTES	5
Activity-related disputes	6
Actor-related disputes	6
CASE STUDIES	7
Conflict between Sossobé and Salsabé	7
The Konio conflict	11
THE CAUSES OF LAND TENURE DISPUTES IN THE 5TH REGION	13
Unsuitable land tenure legislation	13
Legitimate needs of people and availability of natural resources	14
DIFFERENT WAYS OF SETTLING LAND TENURE DISPUTES	15
Settlement by customary law	15
Settlement by State intervention	16
Alternative ways of managing conflicts	17
ACTORS INVOLVED IN CONFLICT RESOLUTION & PREVENTION	17
Farmers' associations	17
The OFM: Observatoire du Foncier au Mali	18
GDRN5	18
The Tabital Pullaku	19
CONCLUSION	19
Failure to settle disputes	19
Possible solutions	21

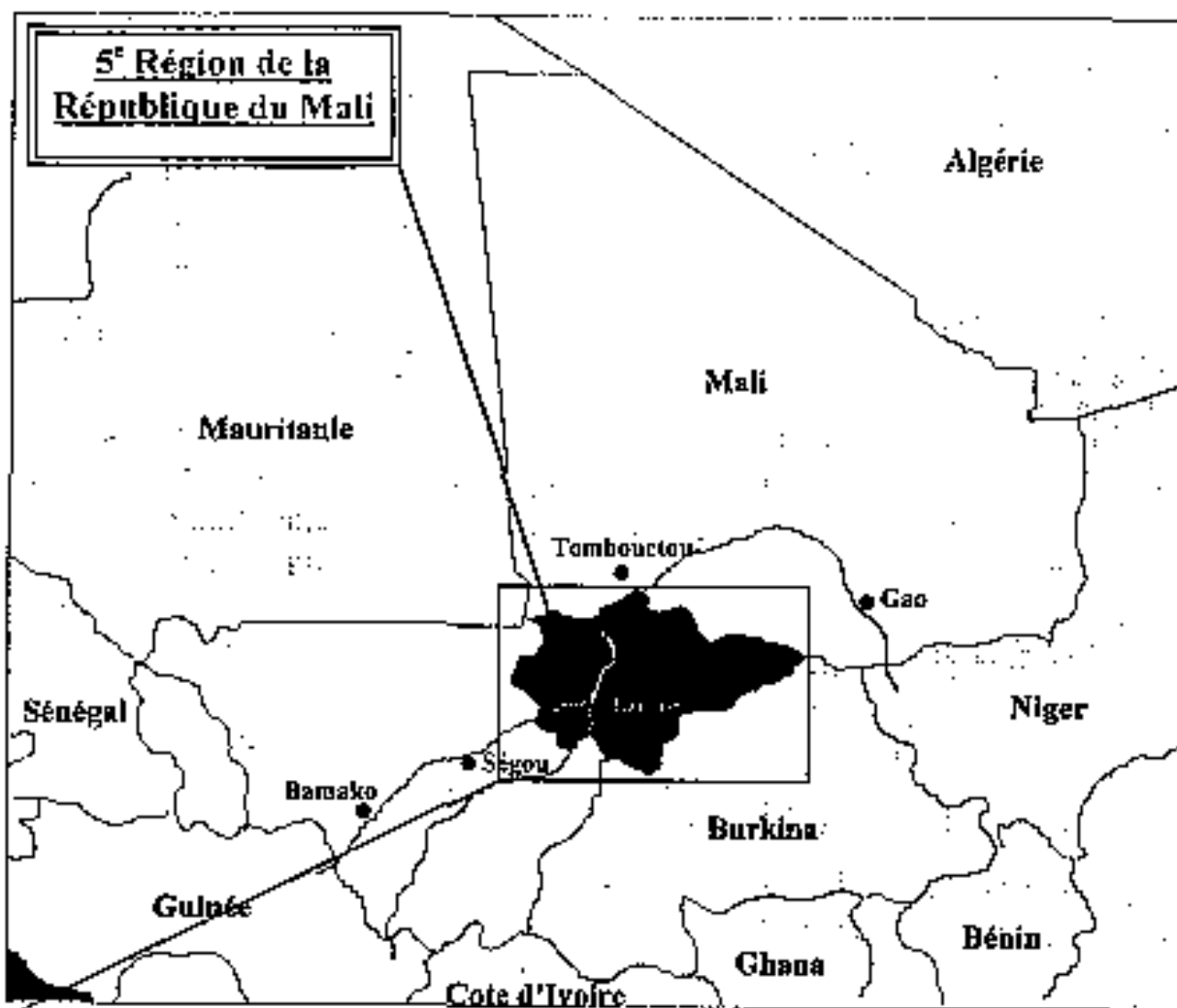
Acronyms

AVES:	Avenir Espaces Société
CARE:	CARE International (American NGO)
CFD:	Caisse Française de Développement
CPPE:	Cellule de Pilotage des Projets d'Élevage
GDRN5:	Réseau Décentralisé de Gestion des Ressources Naturelles en 5ème Région
GRAD:	Groupe de Recherche-Actions pour le Développement
IIED:	International Institute for Environment and Development
MDRE:	Ministère du Développement Rural et de l'Environnement
NEF:	Near East Foundation (American NGO)
OAPF:	Opération Aménagement et Production Forestière
ODEM	Opération de Développement d'Élevage dans la région de Mopti
ORTM	Office de Radio et Télévision Malien
NGO:	Non-Governmental Organisation
SOS-Sahel-GB:	British NGO
UDPM	Union Démocratique du Peuple Malien

Heads of voluntary organisations involved in conflict resolution

Alamodion:	Daouda Damango (President)
OGOKANA:	Amako Poudiougou (President)
Waldé Kelka:	Bouri DIARRA (General Secretary)
OFM/AVES:	Samba Soumaré (President)
Tabital Pullaku:	Boubacar Dicko (President)

Map of the 5th Region, Mali



INTRODUCTION

Mali is currently undergoing a profound process of transformation, characterised by democratisation and the adoption of a policy of decentralisation, which means giving individual citizens and local communities responsibility for planning and implementing their own development. It is in this context that conflicts of interest regarding natural resources have flared up again.

Natural resources are a matter of vital importance. This is particularly true of land, as ownership or control of it is still a sign of economic power and social standing. For the last ten years or so, the problems rekindled by the years of drought have been exacerbated. At the same time, the large number of parties involved, all with different interests, simply do not see eye to eye on this issue. Whether it be the individual, the community, the institutions promoting development, the courts or the government. The situation is particularly sensitive in the 5th Region of Mali where farmers, herders, forest-users and fishermen must live together. Here, the issue of control over agricultural and pastoral resources is a major concern and there have been armed clashes between groups resulting in loss of human life.

It is in this region that, GRAD, in conjunction with IED, has tried to contribute to finding solutions to land tenure disputes. This publication is a synthesis of two documents produced by GRAD:

▪ *Recherche sur les problèmes fonciers au Mali: Étude des cas de litiges dans la Région de Mopti* [Research into land tenure problems in Mali: Study of particular disputes in the Mopti region]. September 1995. Idrissa Maïga and Gouro S.A. Diallo. This research is concerned mainly with disputes at Sossobé/Salsabé and Konio over grazing areas, which have led to serious conflicts between the communities involved, and

▪ *Atelier de restitution et de réflexion sur les litiges fonciers dans la Région de Mopti* [Workshop for transmission of research results and reflection on land tenure disputes in the Mopti region]. 11-12-13 November 1996. Idrissa Maïga and Gouro S.A. Diallo. This workshop, held at Sévaré in November 1996, brought together twenty-two people from traditional associations, NGOs

and institutions, researchers, jurists, sociologists and administrators. This spread of interests, which gave a broad view of the land tenure question, was intended to open the way for solutions, and create a more effective forum for dialogue at regional level, to assist in the prevention and management of conflict over land.

INTRODUCTION TO THE MOPTI AREA AND LAND TENURE PROBLEMS IN THE 5TH REGION OF MALI

The geographical setting

The Mopti region covers an area of 79,000 km², and has a population of 129,000. From a geographical point of view, the 5th region can best be described as a vast plain which floods each year (*the inland DELTA of the NIGER*). On either side lie the Mema and Seno Mango plains, which are characterised by dunes and sandstone outcrops.

The nature of this inland delta derives from its unusual topography: in this flat, sunken landscape, the Niger divides into many channels, which flow into a vast depression: the basin of lakes Debo and Waladou. A vast area of land (between 35,000 and 50,000 km²) is watered by the river's network of channels. This provides valuable agricultural, pastoral and fishery resources, which all the inhabitants of the region exploit in one way or another.

These natural features determine the wealth of the region, the evolution of diverse production systems, and also the disproportionate number, nature and violence of the conflicts which tend to arise.

Problems of land tenure

As a starting point for examining land management in the Mopti region, it helps to consider the region's historical development. We will therefore begin by studying the nineteenth-century *Dina* regime, knowing that it has had considerable influence on the present system of organisation.

The *Dina* regime

The fact that the land is of value for various different purposes has led to its being densely populated, and it has been dominated at different times by ethnic groups, such as the Bozo, Malinke, Songhai and Fulani peoples.

The dominant people in terms of land occupation are the Fulani, because they were the last to arrive before the French conquest and colonisation, and because of their social, political and religious organisation, known as the *Dîna*. This organisation was imposed under the theocratic rule of Sékou Amadou, and was in force throughout his reign, from 1818 to 1862. The *Dîna* re-cast all the pre-existing forms of social and political organisation, making them subordinate to pastoral priorities. At the same time, there was development from a nomadic way of life to a system of transhumance, as the pastoralists were forced to adopt a more settled pattern of life.

The land tenure arrangements of the *Dîna* did not boil down to a straightforward pastoral system, despite the importance of the pastoral way of life. The essential feature of the land tenure arrangement was a division of the delta as a whole into agro-pastoral territories, known as *leydi*, and the establishment of a dense network of farm plots around the villages and on land above flood level.

Within the grazing lands of the *leydi*, which were divided up among the important Fulani chiefs, were non-pastoral areas exploited by other ethnic groups, who made their living from fishing or agriculture. Each *leydi* had its *jowro*, a representative appointed by the major families, who also had the right to dismiss him from his position, and to whom symbolic dues were paid by the various users, for the right to graze, farm or fish.

From a social point of view, a *leydi* belonged in a general sense to the various social groups involved – pastoralists, farmers and fishermen – but the hierarchical social and political regime in fact gave the Fulani pastoralists the predominant role.

From *Dîna* to modern legal system

The *Dîna* was inaugurated in 1818. Until Sékou Amadou's death, in 1862, and beyond, it shaped the social organisation and physical arrangement of the delta and the surrounding areas, encouraging the foundation of villages and agro-pastoral territories. In 1894, this customary administration was replaced by French colonial government, leading to efforts to change the existing rules.

In 1906, the colonial administration officially recognised the appropriation of the land by the Fulani, thereby upsetting the former situation in which the Fulani simply dominated the social hierarchy. The move was opposed by the other ethnic groups, who were thus excluded from formal rights over land.

A further law passed by the French administration 'perpetuated' and 'added' a further twist to this source of conflict. Those who used the land for agriculture were deemed by the administration to have stronger rights of land appropriation to the detriment of the pastoral system of land use and organisation which the previous system used to favour. This created a contradictory situation, as the Fulani groups considered by the administration to have a prior claim by virtue of their ethnic origin, were at the same time prevented from appropriating the land on account of the essentially pastoral nature of their way of life and production.

An essential feature of the *Dina* was that pastoral territories included cultivated areas and fisheries, as well as grazing lands. The originality of this form of organisation was that all the inhabitants of the territory constituted a single management unit, whatever their ethnic background, occupation or social and political status. With the decline of the *Dina*, there emerged a conflict between pastoral interests (based on the *leydi*) and the agricultural village system (based on farm plots). Many of the present conflicts derive from, or are partly explained by, the contradiction between the residual principles of the *Dina* and those inherited from the colonial administration.

The independent Mali government took over the principles established during the colonial period, with few changes. However, not long after independence, the new State proclaimed that grazing lands would henceforth be considered part of the national domain, abolished grazing dues (often without effect, as the *jowro* continued to collect them), and decreed that exploitation of the *bourgoutières*¹ was open to all, regardless of background.

The anarchy which resulted led to the establishment of an annual meeting concerned with setting up *eggirdi* - groups of pastoralists practising transhumance to reduce possibilities of conflict during the movement of herds. The first of these was held in 1966 at Tennenkou, and they have taken place regularly since 1969. Until 1981, the meeting was restricted to members of the administrative and political hierarchy, and representatives of development projects. But gradually, this institution has turned into a wider forum, including herders' co-operatives and the *jowro*, as well as government agencies.

There have also been other changes to colonial legislation, which have served to complicate the situation yet further. The old Chefs de Canton were replaced

¹ Perennial, flood-plain pastures of high productivity and value as a dry season grazing resource.

by Chefs d'Arrondissement², part of whose task was land management and distribution. This brought them into conflict with the *jowro*, who had fulfilled this function under the *Dina* system. Moreover, Malian Law does not recognise the existence of pastoral areas (grazing lands, tracks used for transhumance, stop-overs, etc.). In addition, the timid recognition of customary law in the Land Tenure Code (Code Domaniai et Foncier) does not really allow the courts to take customary law into consideration when settling disputes over land tenure.

Nowadays, the *jowro*, who previously were no more than managers of the land on behalf of their brethren, sometimes act as if they were the real owners, unlawfully exacting dues (*tolo*) of up to 300,000 CFA for the right to graze cattle. In many cases, they are no longer herders themselves, but live off the dues they unlawfully collect. They therefore tend to accept too many animals from outside the area simply for the sake of earning large fees, which creates conflicts with local herders and farmers. As they no longer represent the important families, and therefore have lost their legitimate political standing in the community, their authority is more and more frequently called into question.

THE FORMS TAKEN BY LAND TENURE DISPUTES

Disputes and conflicts arise mainly from claims to ownership of grazing lands and related areas (corridors through which transhumance takes place, stop-overs, rights of precedence), cultivated areas (areas used for growing rain-fed crops in areas not subject to flooding; flood-retreat areas and paddy fields in areas which do flood), and certain wooded areas and lakes. They also arise from a diverse array of arrangements such as share-cropping, sales of land, loans and rights of inheritance.

An attempt to classify land tenure disputes and conflicts in the area concerned can give only a rough idea of the reality, given the complexity of the ecological environment, the diversity of human activities and organisation, and the multitude of combinations which result. A brief description may nevertheless help the reader to get the general picture.

² These titles reflect the French colonial administration, with its hierarchy of territorial units: canton, arrondissement, cercle, région, etc. The old, highly centralised, system is currently being replaced by a system of "decentralised" local authorities.

Although conflicts between arable and livestock farmers (42% of instances) are more often covered by the media because of their greater violence, they are not markedly more frequent than those between arable farmers themselves (40%).

The tendency for disputes to arise does however vary between:

- areas subject to flooding: arable/livestock 34%; arable/arable 41%
- areas not subject to flooding: arable/livestock 48%; arable/arable 39%

We shall therefore make a dual classification, depending on whether conflicts are: a) activity related, or b) actor related.

Activity-related disputes

- **Predominantly agricultural disputes.** These are concerned with demarcation, ownership and inheritance. They are sometimes caused by the disappearance of boundary markers. Loans of land are also an important source of conflict, when the terms of the loan or rights of possession are contested. Conflicts are exacerbated by the vagueness of the customary rules of inheritance.

- **Predominantly pastoral disputes.** Conflicts of this kind arise mainly from challenges to the rules of the *Dîna* regime, which were not complied with during the colonial period, and were further watered down after independence.

- **Disputes over fishing rights.** These are often concerned with boundaries between fisheries, ownership and inheritance.

Actor-related disputes

- **Disputes between individuals.** Individuals may be involved in all types of dispute referred to above.

- **Disputes between village communities.** These are the most frequent, accounting for 53% of all cases. They may be initiated by individuals, who then call on their respective communities and allies for support.

- **Disputes between individuals and communities.** Conflicts of this type were not common in the past, but have become so as people change their

employment and way of life particularly when leaving the public sector. The new arrivals try to demand the same rights as those who are already established, or even try to wrest their privileges from them.

- Disputes between new decentralised institutions. Implementing a policy of decentralisation means establishing new boundaries and redefining the way land is exploited and managed. This inevitably leads to an increase in the number of disputes between communities, and between communities and individual citizens.

CASE STUDIES

Conflict between Sossobé and Salsabé

Historical roots

Four centuries before the *Dîna*, Tukolor cattle herders arrived in the N'gourema area, traditionally the territory of the Traoré Malinke people. As a result of their living together in this way, good relations were established between Sali (Tukolor) and Traoré (Malinke) families, to the point where the Traoré arable farmers decided to let their guests manage the *bourgoutières*, and exercise the headship, provided they changed their name. The Sali therefore became Traoré.

Fifty years before the *Dîna*, there was an incident between the *ardo* (traditional chief, descended from the Sali, who had become Traoré) and a marabout (Muslim holy man) from Sossobé. The *ardo*, who exercised authority over the Sossobé area, went to the place and ordered this marabout Ali N'Gaïta to leave. At this, the marabout is supposed to have risen from the ground on his prayer mat and told the *ardo* take back his land.

The *ardo* was so impressed by this levitation that he renewed the marabout's permit to occupy Sossobé Togoro and asked him to return to earth. The marabout therefore stayed at Sossobé Togoro, which is now one of the districts of Sossobé.

After Sékou Amadou had seized power (1818), the same marabout approached him to ask for grazing rights for his herds. Sékou Amadou called a meeting at Hamdallye of the four *jowro* responsible for administering the Sossobé area, and asked them to find a solution to the marabout's grazing problem. They

granted the marabout the right to graze his herds in their area. The concession made to the marabout was, however, simply a right of use.

The present Sossobé group consists of descendants of the marabout, whose ancestors were there before the *Dina* regime, which had granted them a right of use over the grazing lands and *bourgoutières* of Sossobé. Today, the Sossobé people are mainly livestock herders, but they also engage in fishing, agriculture and hunting, while the present Salsabé group consists of herders known as Torobés, who are descendants of the Sall.

The difficult relations between these two communities over several centuries arise from the fact that the Sossobé people had been granted only a right of use to the *leydi* of Salsabé under the *Dina*, rather than rights of ownership. The distant cause of this conflict lies in the difficulties inherent in interpreting customary land tenure arrangements particularly from previous centuries, in accessing the *tarikhs* (documents) of the *Dina* regime, and in the common confusion in distinguishing between rights of use and ownership.

The situation created by Sékou Amadou was almost bound to lead to conflict, as Salsabé feared that the Sossobé area had been effectively amputated from its territory, while Sossobé took advantage of the right of settlement granted by Sékou Amadou to assert yet stronger claims.

More recent history

On 15 January 1936, a bloody conflict broke out between Sossobé and Salsabé over a flood-plain grazing area known as Towndé-Djolel. The event caused great upset in the region, where the institutions of the *Dina* regime had always been regarded as sacrosanct.

The colonial administration tried to resolve the problem. An administrative ruling was given on 11 March 1936 and confirmed by a court ruling on 11 May 1939. The ruling states:

"Having heard the explanations of both parties... This document has been drawn up publicly and accepted by the two Chefs de Canton: In accordance with a very ancient usage having the force of customary law, each year when the water level falls, the Canton of Salsabé shall have first right of grazing over the land situated at the south-western border of the village of Djolel. Once this herd has passed through, the herds of the Canton of Sossobé Togoro shall be entitled to the same right of use. The Bendi of Folokowel marks the limit of the area on which the Canton of Salsabé has first right of grazing."

This agreement was soon challenged by the descendants of the Chefs de Canton who signed it: the Salsabé people reckoned themselves to be sole owners, while the Sossobé brandished a *tarikh* dating from the time of the *Dina*, claiming that it made them the sole owners. Thus, provocation's continued on either side, and neither administrative authorities nor courts intervened to demand that the parties respect the rule of law. As a result, the conflict continued below the surface until it broke out again in 1993.

The dispute also became tied up in politics. After independence, the PSP had a majority in one camp, the RDA in the other, which only exacerbated the division between the two communities. The division continued even after the creation of a single political party, the UDPM. At this time, it was agreed that the Djolel area would be treated as a buffer zone. As the time of the crossing of the river drew near, security forces were drafted into the area to prevent clashes. They were always in attendance at sensitive times to dissuade the parties from conflict, until March 1991, when the UDPM regime fell from power.

The most recent conflict

In 1993, conflict began with a minor incident, when the Sossobés attacked some supporters of the Salsabés who had passed through the area. The latter reported the matter to the administrative authorities (Commandant de Cercle/Area Commandant and Gouverneur/Governor), but they failed to take any measures. The Sossobés, for their part, are said to have sent emissaries, and addressed letters, to several levels of the administration, right up to the Minister for Territorial Administration and Security, to give warning of possible impending conflict. As none of these authorities took the necessary action, provocation followed provocation, until the bloody clashes of 7 December 1993.

In the news bulletin of 8 December 1993, ORTM listeners were informed that conflict had broken out between the Sossobé and Salsabé groups as a result of land tenure disputes, and that 29 people had been killed and 42 injured. According to various sources, including the gendarme who was sent to the scene, the Fulani people of Sossobé had been occupying the disputed grazing area since 4 December. On the 6th, the gendarme had tried to calm the two groups, who were already armed with guns, spears and knives, and seemed set on a show-down. On the 7th, the Salsabés tried to drive off the occupiers, who fired the first shots. A clash was then inevitable, and turned into a blood-bath.

Naturally, the accounts given by both Sossobés and Salsabés differ from this official version of the story.

- The Sossobés claim that they kept their animals in check 23 days longer than in other years, before sending them into the *bourgoutière*. In addition, they claim they only introduced their cattle into the *bourgoutière* after the authorities had sent two policemen, at their request. They say that the Salsabés fired the first shots in the presence of these policemen, killing one Sossobé. This provoked a reaction on the part of the young Sossobés, and then it turned into a free-for-all.

- The Salsabés, on the other hand, claim that the Sossobés arrived with a gendarme and a member of the Republican Guard, and sent a delegation asking them to come. When they arrived at the place, the Sossobés, who were waiting in ambush behind their cattle, began to fire on them.

Lessons to be learned from this conflict

These two versions of the story tend to show that a clash could have been avoided, if only minimum security arrangements had been made. The underlying problems were known, and local, regional and national administrators had been informed several times. But such security measures could only, at best, have prevented the conflict, which would have continued below the surface. Under the UDFM regime, this area had been kept under surveillance each time the flood waters receded. Not until two years after this surveillance ceased did the conflict break out.

Confusion over rights of use, priority and ownership in this area has bedevilled relations between the two communities since the time of the *Dina*, continuing during the colonial regime, and since Independence. The current administration, for its part, has never been able to resolve the issue and impose a lasting settlement.

Most important is the lack of any framework for dialogue between the communities, within which differences might have been smoothed out and mutual concessions made. This would have made it possible to avoid the conflict, and achieve better management of the resources in each of their respective territories on which both groups depend.

The Konio conflict

This was a conflict between two village communities: on the one hand, the Bambara village of Noïna, whose inhabitants live mainly by agriculture; on the other, the village of Sirabougou-Peulh, where the people are mainly pastoralists.

Since the time of the *Dina*, the village of Noïna had owned a piece of land for grazing its milk cattle, known as the *harima*, which was a kind of communal grazing area. Over the years, much of it had been taken into cultivation for growing crops. On 20 August 1982, an administrative decision was taken to withdraw this piece of land from the village of Noïna and make it a livestock raising area in conjunction with the ODEM. This decision was respected until 1993.

In 1982, the villagers of Noïna had accepted the loss of this piece of land, because it was a time of drought and the flood waters were not reaching a level which would make it profitable to grow crops on this land. When more favourable conditions returned, they decided to retrieve their land for cultivation. Of course, the Fulani livestock farmers did not accept this and pointed to the 1982 agreement, to which the village of Noïna had given its assent.

The herdsmen decided not to respect the plots now being cultivated and destroyed crops of millet and rice by letting their cattle roam among them. Even Fulani people from the Séno area came and grazed their cattle on the fields, from July to November. The Noïna farmers then decided to enter into negotiations to work out a compromise for the coming dry season, but before a solution was found, a number of them occupied the disputed area and began preparing the soil. The Fulani then reported the matter to the authorities.

The administration sent warnings to both communities, ordering them to avoid provoking each other. Several meetings were organised to achieve a reconciliation. Finally, a joint delegation from Sirabougou-Peulh and Noïna went to the main town of the district (Chef-lieu de Cercle) to let it be known that they had arrived at a compromise, and that they agreed to share the plot of land between the two villages.

Meanwhile, the livestock belonging to Sirabougou and to the Fulani people from the Séno area occupied and began grazing the whole area. The arable farmers could not contain their anger and, to the consternation of observers

and the administration, conflict broke out during the night of 26/27 July 1994. Eight people were killed and 21 injured.

Analysis of the Konio situation

The fact that a piece of land which had belonged to the village of Noïna for almost 160 years was taken away from the local arable farmers and granted to herdsmen – even within the framework of a national project (ODEM), even after negotiation and with the agreement of the arable farmers themselves – was bound to lead to future disputes, if not open conflict. It would also appear that the conflict was exacerbated by political pressures from the capital, motivated by electoral considerations.

The conflict therefore stemmed from an initial misjudgement on the part of the administration, followed by inadequate measures to prevent the conflict, once the dispute was identified as potentially explosive. However, it should also be pointed out that problems arose because the local authorities were not truly representative or, at least, because people were unwilling to submit to their decisions, as is evident from this account. On two occasions, the inhabitants of the two villages acted contrary to the will of their respective authorities, when their leaders were negotiating a settlement, or had already ratified it. On the first occasion, the arable farmers began working in the fields while discussions were going on between the village authorities. On the second, the herdsmen signalled their disagreement with the agreement negotiated by invading the whole area.

At the present time, the two communities have arrived at a semblance of understanding, without outside intervention. The Chef d'Arrondissement for the Konio area is responsible for maintaining this precarious peace by visiting the two communities regularly, but the tension is still evident and there could be an outbreak of violence at any time, unless the matter is settled once and for all in court.

THE CAUSES OF LAND TENURE DISPUTES IN THE 5TH REGION

At the Sévaré workshop, in November 1996, a working party drew up a list of the causes of land tenure conflicts:

- inheritance;
- conflicts between the generations;
- private investment in property held formerly under common ownership (with the intention of appropriating such property);
- the shrinking area of useful land available;
- historical rivalries;
- the damaging role sometimes played by political and administrative interests, and by intermediaries;
- the break-down of social hierarchies;
- the increase in types of production system;
- poor knowledge of the environment and how it works, on the part of certain organisations (NGOs, project managers, the State, etc.);
- refusal to carry out court rulings.

Unsuitable land tenure legislation

As we saw in the cases of Sossobé/Salsabé and Konio, land tenure legislation in the 5th region is subject to controversy, misinterpretation and confusion. The *Dina* regime, though it undoubtedly worked well during the life-time of its creator, who could re-interpret the spirit of it and make changes as and when necessary, subsequently proved inadequate, as it has been unable to adapt to encompass the changes which occurred over the years.

As we have seen, in most disputes the parties refer to the traditional law of the *Dina*, but about which the judges have no written material to guide them. In any case, in considering those times, we may well question the wisdom of Sékou Amadou in granting rights to the Sossobé over an area that was already occupied, without establishing clearly which group wielded ultimate control. How could so enlightened an administrator have taken a decision which was so likely to contain the seeds of future misunderstandings? Perhaps we are unaware of some of the circumstances.

Furthermore, the guarantors of this ancient order have lost much of their authority, because they have deviated from their original role. The system has

become corrupt due to the exaction of unlawful payments by the *jowro*, as they have been tempted to make money out of their position, to the detriment of sound management of herd movements and reasonable stocking rates.

The changes introduced by the colonial administration also sowed confusion, and the Mali government has since aggravated the situation by decreeing that grazing areas should be open to all comers. At present, the administration is very cautious regarding conflicts such as that between the Sossobé and Salsabé and never really gets involved in settling disputes, because the legal instruments at its disposal are so weak.

Legitimate needs of people and availability of natural resources

Successive droughts have had a considerable impact on land tenure issues throughout the Sahel, particularly as some groups have migrated from one area to another and others have adopted new ways of exploiting the environment. A large number of pastoralists are now practising agriculture as well as raising livestock, the management of livestock within sedentary systems has increased; while there has been a decrease in the number of wild animals which were valued as game.

At the same time, the productivity of grazing land has decreased, as has the quality of the forage produced. Cattle herders have migrated to more southerly, agricultural areas, while there has been a contrary, anarchical tendency to transform traditional grazing lands into fields for growing crops.

In addition, the population has practically doubled since independence, while increases in cereal production have failed to keep pace. Because of the shortage of land, when land tenure conflicts arise, there is no "safety valve" in the form of virgin lands to clear or fresh grazing areas to move into - not even areas of lesser quality or in less desirable locations. Land - formerly abundant - has now become scarce. The struggle for land tenure rights has become a struggle not for the best lands, nor for the social status attaching to land ownership, but simply for survival.

These factors have also led to a reappraisal of the traditional land tenure systems, which in some cases are no longer adequate for managing the new situations that have arisen but nevertheless tend to stand in the way of change. There is now a pressing need for a reorganisation of the traditional land tenure systems.

DIFFERENT WAYS OF SETTLING LAND TENURE DISPUTES

Settlement by customary law

The system was described in some detail earlier, but it may help to summarise its jurisdiction and mode of operation. It involves a large number of actors: village headmen, religious leaders, village councils, the *jowro*, family councils, neighbours and gatherings of elders, who refer matters to one another and hold a series of consultations. All the parties have plenty of opportunities to set out their version of the facts, in the different gatherings. A wide variety of evidence is gathered and compared. Mediation and negotiation are the principal ways of tackling the issues, but arbitration may be essential, if negotiation does not lead to a satisfactory outcome.

Settlements arrived at by customary procedures are not formalised by written resolutions. The future application of the resolutions taken, and the fulfilment of oaths, is therefore dependent on the fact that they have been witnessed by the parties involved. In the 5th region, the *tarikhs* are sometimes invoked. These are documents which were written in Koranic Arabic under the *Dina* regime. They give rise to a number of problems:

- Interpretation. In the case of the Sossobé/Salsabé conflict, the *tarikh* invoked did not make clear whether the right granted to Sossobé in respect of the disputed area was only a right of use, or if it was a right of ownership.
- Reliability. Nothing prevents the party towards whom the text is unfavourable from denying its authenticity.
- Unsuitability. Even if they are agreed to be authentic, and can be interpreted clearly, they still reflect a division of land suited to the populations living in the region in the 19th century. Since that time, ways of exploiting resources, population density, and the social and cultural complexion of the region, have changed enormously.

"Customary law" nevertheless remains an important instrument, with many advantages. It is easy and economical to access, and settlements can be achieved quickly. The way in which a settlement is reached is suited to the social, historical and cultural realities of the region and involves the whole community in finding a solution. The decisions taken often reflect a collective intellectual effort to solve the problem submitted to local authority. An absence or paucity of written documents (such as the *tarikhs*) has not

prevented some very ancient land tenure systems from continuing right down to the present day, with all their advantages and defects.

In a society where the literacy rate is low and oral history continues to be a vital force, this way of proceeding enables everyone to take part in the debate. This is not the case with modern systems of law, based on written texts whose real meaning even educated individuals sometimes have difficulty in understanding. Of course, customary law, like any other form of authority, runs the risk of being dominated and manipulated by family or clan interests, and so losing its representative character.

Settlement by State intervention

In most cases, this method is adopted when customary law has not yielded the desired results, for one of the parties at least. Two State institutions play their part: the Administration and the Courts, involving Chefs d'Arrondissement, Commandants de Cercle, Governors, Ministers and Judges.

The procedure is as follows. When a complaint is made to the administrative authorities, the parties are summoned to appear and there will be an attempt at reconciliation, in collaboration with the customary authorities. If this is not achieved, the matter is passed on to the courts. The courts will make rulings and judgements, and will try to ensure that they are enforced.

This procedure has its advantages, in particular the fact that the solutions arrived at will be recorded in writing, and therefore are not subject to subsequent re-interpretation, and that decisions are given substance, i.e. can be enforced by the agents of the State.

On the other hand, there are many disadvantages. Firstly, the settlement procedure is very slow, and too expensive for plaintiffs lacking financial resources. Also, the fact that the matter has reached this stage is a sign that social relations have effectively broken down, not being sufficiently healthy to enable the parties to effect a settlement themselves. A further factor is that assessors unfamiliar with the social realities of a given area sometimes fail to understand the internal mechanisms of the conflict they are expected to deliberate on, and there is always the danger of corruption or political manipulation.

Alternative ways of managing conflicts

Efforts are now being made to establish alternative institutions or mechanisms to support customary and state procedures. These procedures involve NGOs, voluntary associations and resource persons, as well as the State. The mechanisms vary considerably, but generally aim to sensitise and inform all the parties involved, bring in outsiders with relevant skills, organise a forum for reconciliation, and offer impartial, mediation.

Such initiatives are generally respectful of the opinions of the parties, and of their customs. They are also simple and relatively cheap. In this way, it is still possible to achieve what is required by the customary mechanisms, i.e. lasting solutions based on consensus and the maintenance of good social relations. However, the absence of legal recognition means that any solution arrived at by this procedure continues to be somewhat fragile.

ACTORS INVOLVED IN CONFLICT RESOLUTION AND PREVENTION

Farmers' associations

Farmers' associations, whether traditional or modern, may also have a part to play in addressing land tenure disputes.

For instance, the Ogokana, in the Koro district, are active in protecting the environment and guarding against unlawful exploitation of their woodlands. Their competence overlaps with that of the Forestry Department, which has been run down a great deal since independence.

In the Douentza district, the Waldé Kelka Association involves fifteen or so villages in managing the resources of 110,000 hectares of forest. Its role is to protect the forest and manage its resources for the benefit of all the member villages, but it also gets involved in settling conflicts. One of its organs is a "conflicts committee", which can refer matters to the general assembly, or ultimately to the courts, if the decision made by the general assembly is not accepted.

In the Bankass district, the *Alomodiou* continue to have a certain legitimacy with the general population, although their authority has been seriously challenged, first by Islam, then by the colonial regime and the Malian State.

They help to achieve reconciliation in land tenure disputes relating to damage to crops by animals, long-standing loans of land and inheritance, and are also responsible for policing the bush and preventing fires and damage to trees.

The OFM: Observatoire du Foncier au Mali (Malian Land Observatory)

In 1994, the Government of the Republic of Mali set up the OFM to promote a just society which takes into account the capacity of the people concerned to manage their future. The OFM's aim is to improve the flow of information on land matters to decision-makers and people involved, and help them sharpen their thinking about land tenure problems and options, and the mechanisms for preventing and settling conflicts.

To this end, the OFM collects data and monitors changes in the land tenure situation, under the supervision of the planning and statistics department of the MDRE. A project has been set up in collaboration with a private body, the Association Avenir Espaces Société (AVES), to undertake research in the field of land tenure and decentralisation. On behalf of the OFM, AVES carries out the following tasks:

- identifying land tenure situations and highlighting mechanisms likely to generate conflicts in the regions of Mali-Sud, Office du Niger and OAPP areas, and in the agro-pastoral areas of the 5th and 7th regions;
- providing users with support and advice on request, in particular the original funder of the OFM, the CFD.

The OFM has also co-operated with the Cellule de Pilotage des Projets d'Élevage (Pilot Body for Livestock Farming Projects) (CPPE). The purpose has been to examine how best to support multiple use rights over resources, and thereby promote the co-existence of such activities as fishing, grazing, agriculture and the gathering of wild produce. It also aims to answer various requests for support at the regional level and assist local authorities in taking decisions, particularly those linked to the process of decentralisation.

GDRNS

The Réseau de Gestion Décentralisée des Ressources Naturelles en 5ème Région (Decentralised Network for the Management of Natural Resources in

the 5th Region) is a grouping of NGOs set up to take initiatives in the management of natural resources in the region, frequently involving issues of land tenure. The size of the Network and the close involvement of its members with local communities means that it has a very important role to play in devising strategy to prevent conflicts.

The Tabital Pullaku

This is an association of friends of Fulani culture. One of its aims is to make an active contribution to "conferences on *bourgoutières* and transhumance", to keep a close watch on social and land tenure conflicts in the region, to heighten livestock farmers' awareness of sensitive issues when bringing animals into the delta, to reduce tensions, and keep a record of conflicts in the region.

CONCLUSION

Failure to settle disputes

The case studies presented in this paper highlight a number of mechanisms which tend to hinder the settlement of disputes and lead on to conflicts of varying seriousness. When a dispute occurs, the parties concerned first have recourse to customary law. If this fails to achieve a solution which satisfies all parties, they take the matter to the Administration, and it is then passed on to the Courts.

The resolutions arrived at under customary law often lack clarity, as does the information on which it has to draw. Oral tradition suffers from a certain weakness of the collective memory, which tends to be drawn on one-sidedly, according to the interests of the moment. The authenticity of the few existing documents – the *tarikhs* – is easily called into question. In the conflict between Sossobé and Salsabé, we discovered a major confusion between "right of use" and ownership, which neither the collective memory nor the *tarikhs* could shed light on.

Another factor is that customary land tenure law has not kept pace with demographic growth, movements of population and changes in ways of exploiting natural resources. At the same time, those responsible for applying customary procedures are often no longer representative of the populations of

the area over which they are meant to wield authority. Some *jowro* have ceased to be livestock farmers, or they exercise power to their own financial advantage. In some cases, the dominant families which hand on this office have become a minority in a given territory, so they are unrepresentative and do not command respect. It may happen that the customary authorities cannot offer the degree of competence required by the antagonists. It may also be the case that people no longer respect the decisions of those who represent them in negotiations, as we saw in the Konio case.

The Administration, for its part, is often in an uncomfortable position. Its role boils down to trying to reconcile the parties by putting pressure on the customary leaders, who may have already exhausted their powers to conciliate and play for time, or committing the case to the Courts. The Courts will, in turn, give the Administration the task of applying clear-cut rulings, with the danger of drawing down the anger of one or other of the parties.

As we saw in the case histories of Salsabé/Sossobé and Konio, the administration's efforts have only complicated the dispute. We also saw how the administrative authorities several times shrank from exercising their responsibility and lacked decisiveness, not responding to the many appeals made by the antagonists, who finally took the law into their own hands with disastrous results.

We also saw how the administration's efforts to prevent a conflict from breaking out achieved no lasting result, despite surveillance over several decades. Two years after the security forces were withdrawn, in 1991, from the area disputed by Sossobé and Salsabé, the conflict which had lain dormant since 1939 erupted with great violence.

Present efforts to foster the process of decentralisation are being slowed down by the existence of potentially serious land tenure disputes all over the country. Does going through with the process of decentralisation mean completely re-thinking the way in which boundaries to land are established – re-negotiating, case by case, the ownership and management rights of each grazing area, each field, each *bourgoutière* or paddy field, between communities, villages, families, *eggurdi* and individuals? The likelihood of errors and misjudgements, leading to an enormous increase in the number of potential conflicts, does not bear thinking about.

The Courts, for their part, are at present a last resort, a solution which does not really satisfy anyone. The judicial instruments available are extremely ineffective, and hardly ever enable a judge to achieve a satisfactory settlement

in a land tenure dispute. All the modern jurist has to work from is the oral tradition of the customary authorities, the evidence given by witnesses, and the *tarikhs*. In most cases, there is a danger that a court ruling will only fuel the dispute, and enforcement raises further problems. Once a ruling has been handed down, it must be implemented, if necessary, by force. And, of course, it is not in the interests of the Administration to have to enforce rulings which will earn it the opprobrium of a whole section of the population, especially when the elements on which the ruling was based were, to say the least, shaky and open to dispute.

What the Courts really need is a reliable tool, in the shape of a Pastoral Code, taking into account every type of case and giving them the means to do their work properly. However, given the complexity of the social fabric of the region, and the difficulty in establishing a clear and undisputed picture of the present rules as enshrined in customary land tenure law, one may legitimately wonder if it is possible even to imagine a Pastoral Code of this kind. It would inevitably involve laying down subjective rules likely to push certain groups and individuals to extremes, and creating a situation which would inevitably exacerbate existing conflicts.

Possible solutions

The workshop for transmission of research results and reflection on land tenure disputes in the Mopti region, held in November 1996, resulted in a number of recommendations. Some underlined the importance of pressing ahead with decentralisation, as a way of imparting dynamism and responsibility to the local structures managing natural resources. Others were concerned with land tenure legislation, and the need for it to adapt to the realities of the situation. It was also thought desirable that jurists and administrators be trained in these matters, and in the management of conflicts. The workshop recommended that legal procedures be simplified, together with the application and enforcement of rulings for settling disputes.

However, most of the recommendations highlighted the need to create room for dialogue, to make information available to the various parties involved, and to promote alternative ways of settling conflicts. Thus, it was recommended that the OFM be strengthened, and that funding agencies be more closely involved in supporting efforts to prevent and settle conflicts. The workshop thought it desirable that research be given greater prominence, and that it serve the needs of different groups. The idea of a conflict-focused early warning system was mooted.

Neither of the systems of land tenure legislation - customary or judicial - is on its own capable of settling all disputes, as both have been overtaken by changes in agricultural practice, in social organisation, demography and customs, and by the loosening of ancestral customary bonds, which for many have changed out of all recognition. Improvements in customary law can no doubt be expected, and the creation of more effective judicial instruments, but the workshop participants did not believe these could be introduced quickly, or that they would lead to real solutions. Rather, the participants stressed the need to deepen and capitalise on other types of knowledge, and make them available to the people concerned.

They also emphasised the importance of creating forums for dialogue, where the communities themselves, with the help of various outside agencies, could meet, argue and hopefully achieve consensus and lasting solutions through dialogue. In the context of these forums, those with judicial, customary and administrative competence could make a useful contribution.

In a setting of this kind, research could progress, ideas could germinate and be shared, and mechanisms for settling disputes could emerge, thereby preventing violent developments. From such concerted efforts on the part of all the parties involved, continuing over a number of years, it could be that the shape of the ideal judicial instrument, now lacking, could emerge and be given firmer shape.

BIBLIOGRAPHY

Alhassane, Ag.M., C. Coulibaly, G. Drabo, 1995. Nord du Mali: de la tragédie à l'espoir. L'histoire politique de la rébellion, les choix de développement et la problématique des réfugiés. ACORD - NOVIB - OXFAM/UK, July 1995.

Arbres, Forêts et Communautés rurales: Gestion alternative des conflits. Spécial No.7, March 1995.

Atelier de Concertation des ONG et associations nigériennes de défense des droits de l'homme sur la prévention et la gestion des conflits au Niger. Niamey, 29, 30 and 31 May 1995, IRED/SEAG/SYNERGIES AFRICA.

Bertrand, M., 1992. Le Mali, femmes et conflits de cours urbaines. Histoire de développement, No.20, December 1992.

Çauris hebdo No.96, 21 to 28 September 1995.

Charancle, J.M.B. (VSF), and O. Maïga. (GRAD), 1995. Régénération des ressources naturelles renouvelables et conflits fonciers dans le cercle de Tombouctou. PVO/NGO/NRMS, 1995 project.

CILSS/OCDE, Rapport final de la rencontre régionale de Ségou sur la gestion des terroirs sahéliens, 21-25 May 1989. Expériences d'une concertation. Club du Sahel, October 1989.

CILSS/OCDE, Regional conference on the land tenure problems associated with decentralisation in the Sahel, Praia (Cape Verde), 20-24 June 1994. Conference proceedings, September 1994.

Diallo, Y., 1993. Etudes sur la responsabilisation des institutions locales traditionnelles dans la gestion des ressources naturelles renouvelables. Possibilités institutionnelles et juridiques: cas des "Alamodiou". February 1993.

Genèse de la question touarègue au Niger. International congress on anthropology and perhistoric archaeology, 17-19 September 1993, pp. 78-86 (Nouvelle revue anthropologique).

Hesseling, G. and B.M. Ba, 1994. Le Foncier et la gestion des ressources naturelles au Sahel. Résumé de la synthèse régionale: Expériences, contraintes et perspectives. Regional conference on the land tenure problems associated with decentralisation in the Sahel, Praia (Cape Verde), January 1994.

Institut Panafricain pour le Développement / Programme Arbres, Forêts et Communautés rurales (FAO): Etude sur la gestion alternative des conflits liés à l'utilisation des ressources naturelles, bilan national du Mali. Bamako, August 1995, 56pp.

Konate, A.B. and M.M Tessougue, 1996. La gestion des ressources naturelles renouvelables. Volume II. Analyse institutionnelle. SOS-Sahel-GB, January 1996.

Le Bris, E., E. Le Roy and P. Mathieu, 1991. L'appropriation de la terre en Afrique Noire. Manuel d'analyse, de décision et de gestion foncières. pub. Karthala, 1991, 359pp.

Le Démocrate Malien: La Décentralisation? Special edition, July 1995:

Le Roy, E., A. Karsenty and A. Bertrand, 1996. La sécurisation foncière en Afrique. Pour une gestion viable des ressources renouvelables, pub. Karthala, 1996, 388pp.

Maiga I., 1996. Etude comparative sur le rôle des associations et des autres institutions dans la prévention des conflits dans la région de Mopti. NEF, November 1996.

Maiga, I., 1996. Etude sur la prévention et la gestion des conflits. CECI/PDDP, September 1996, Mali.

Niang, M., 1996. La gestion des conflits fonciers au Sénégal (les villages traditionnels de la région de Dakar, la zone de Niayes et le delta). Dakar, 30 September 1996.

Organisation spatiale et rapports fonciers dans le droit traditionnel. Cas de la région deltaïque. Boubacar Ba, rural land tenure lawyer, November 1995.

Pleah, C., and I. Maiga, 1989. Etude sociologique de la mise en eau des lacs Daouas. Comité pour Léré, November 1989.

Sanago, N.N., 1995. Quelle place pour les institutions locales de gestion des ressources naturelles? June 1995.

Thomson, J. and C. Coulibali, 1994. Décentralisation au Sabel. Regional conference on the land tenure problems associated with decentralisation, Praia (Cape Verde), January 1994.

Toure, M.D., A. Kanoute and I. Sangare, 1993. Analyses institutionnelles. Prise de responsabilité des institutions paysannes dans la gestion des ressources naturelles renouvelables. Etude de cas des "Ogokana" de Koro, "Alamadiou" de Bankass et "Waldé Kelka" de Douentza. CARE, SOS-SAHÉL-GB and NEF, November 1993.

Traore, S and KA Alioune, 1996. Etude sur la gestion alternative des conflits en zone sylvo-pastorale Nord Ferlo. Rapport définitif. PAPF, PRASET (GTZ) and PAPEL, January/February 1996.

Zarina (J. William), 1990. La résolution des conflits en Afrique. pub. l'Harmattan, Paris, February 1990, 269pp.

ied

International
Institute for
Environment and
Development
Drylands Programme

The Drylands Programme aims to contribute towards more effective and equitable management of natural resources in semi-arid Africa. It has built up a diverse pattern of collaboration with many organisations. It has a particular focus on soil conservation and nutrient management, pastoral development, land tenure and resource access. Key objectives of the programme are to: strengthen communication between English and French speaking parts of Africa; support the development of an effective research and NGO sector; and promote locally-based management of resources, build on local skills; encourage participation and provide firmer rights to local users.

It does this through four main activities: collaborative research, training in participatory methods, information networking and policy advice to donor organisations within the framework of the Convention to Combat Desertification.

International Institute for
Environment and Development
3 Endsleigh Street
London WC1H 0DD
UK

Tel: +44 (0)20 7325 2117
Fax: +44 (0)20 7325 2826
E-mail: drylands@ied.org

ISSN 1357-8312