

BRIEFING NOTES

*to improve our understanding
and ability to ask the right questions
and take effective action on land
matters in West Africa*

“Land Tenure and Development” Technical Committee

Are local conventions effective tools for the joint management of natural resources?

by Laurent Granier¹, December 2010

During the last two decades, “local conventions” have increased in the field, and are now considered as promising alternatives solutions for a participatory management of natural resources and land. But, what does the concept “local conventions” mean? What is the contribution of these conventions to the improvement of natural resource and land management? Are they recognized by the law? What are their limitations?

What do local conventions consist of?

First of all, a distinction should be established between the concept of local conventions and two other close concepts: local conventions are neither professional conventions nor collective conventions applying to some professions (such as taxi drivers or fishermen). Similarly, this concept is not synonymous with the *habits and customs* to which laws often refer. It refers rather to agreements entered into by local stakeholders in order to improve the management of the natural resources they use and for which they are responsible.

Local conventions are probably one of the most significant breakthroughs of the past decade in the area of local natural resource management in West Africa.

Negotiated between local stakeholders (professional groups, resource users, customary leaders, local authorities, government representatives, partners, etc.) and adopted in the form of “conventions”, these arrangements define the rules, rights and duties of each party using and managing local landscapes and natural resources. For Moussa Djiré, such an arrangement

“can derive from the wish either to rationalize the development of resources and to stop their degradation or to settle/prevent conflicts related to their development”. While local conventions are often established as part of zoning, space planning and land right clarification operations, their primary goal is to regulate user rights on environment and natural resources. Initiated in the 1990s in Senegal (Bassari region) and Mali (Douentza region), they now exist in countries such as Burkina Faso, Mauritania and Guinea.

Local conventions are “complex management tools”. Their complexity lies in the need to take into account the diversity of stakeholders and to address the complexity of some social, cultural and environmental issues in a comprehensive manner.

An adaptation of a typology of local conventions in Senegal results in the following conclusions:

- Local conventions are **private, public or “hybrid” contracts**. In some cases, they are concluded only between private persons (populations). However, this perspective is quite unusual today. Most often,

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they are rather formally established arrangements binding populations and local representatives of the government. In practice, government representatives only “counter-sign” the convention or “validate” it through an administrative ruling (order, minute), which confers them a “formal” character. Generally, local conventions can be qualified as “administrative” contracts. Therefore, their legality depends on administrative acts issued by the local representative of the government (*Préfet*, etc.), as well as the administrative law judge, in the case of a dispute.

- They are **contracts with various names**: local conventions, local codes, codes of conduct, memoranda of understanding, management agreements, management contracts, territorial charters, management plans, etc. But, now, the term “local convention” has prevailed.
- **People sign a local convention individually or through their representatives**. Sometimes they form management associations which sign it on their behalf. Often, only the elected representative of the territorial authority concerned signs

it. In some countries, the representative of the government (*Préfet*, *Gouverneur*) also signs. Projects, NGOs or private enterprises can also be parties to the transaction.

- Finally, **these local conventions can have various goals**, ranging from the mere management of a specific resource (e.g. a shellfish species), through the management of a specific place (e.g. a pond), an ecosystem (such as an inter-village forest), or some multiple ecosystem such as the mangrove and the estuary of a river, or even the management of an eco-region — a river delta, including ponds, beaches, animal and plant species, etc.

Local convention development processes comprise various phases including consultations, the identification of needs and the negotiations themselves. They are now quite well-documented, depending on countries. There is no single method or process for their development and adoption. These processes are generally quite long and could take many months, or even years. They demand a lot of methodological thoroughness (involvement of representatives of all groups of stakeholders, time needed for internal consultations, etc.).

How useful are local conventions for natural resource management?

The first and most important reason accounting for the interest in local conventions is that they rest upon a critical pillar of the Sahelian culture: consultations and consensus-building among local stakeholders. Were elders not already used to finding consensual solutions to problems arising within the group, in village assemblies and advisory councils, or else under the “palaver tree”? The main difference lies in the current involvement of the government and the fact that conventions are now written. These tools are therefore deeply rooted in Sahelian culture, which is a guarantee of success.

Local conventions have been (re)engineered through research programs and the works of anthropologists (Olivier Barrière in Senegal, Mike Winter in Mali), seeking how to combine traditional modes of joint management of natural resources — which persisted in practice — with the so-called “modern” legal systems.

The second reason involves quite a significant number of field experiences which showed that, due to their emergence from the bottom, these tools helped address the concerns and meet the needs of communities in a better way.

The third reason for the success of local conventions relates to decentralization, or rather to the difficulty to decentralize... Indeed, at a time when a government is transferring (not without difficulty) its old “privileges” to lower levels of authority, the role of local conventions is to “oil” the process of gradual transfer of such responsibilities. In gathering government representatives,





decentralized authorities and local populations around the same negotiated instrument, local conventions help create an environment of trust.

If we only refer to the theory of decentralization laws, the onus is on the elected local authorities alone to make decisions for the public interest, in a democratic and transparent way. Local conventions ensure the participation of populations in the development and enforcement of natural resource management regulations.

Legal status of local conventions: from legitimacy to legality

Local conventions quite clearly tend to shift from the status of legitimate tool to that of legal tool.

In the mid-1990s, at least the laws on decentralization, agriculture, environment and pastoralism created favorable conditions for the development of local conventions, when they did not

formally focus on them. The philosophy of decentralization laws and some provisions such as “natural resource management consultation platforms” in Senegal or in Mali offered decentralized authorities the opportunity to develop and manage their forest estates through a management contract, a concession or through the statutory channel. The debate then revolved around the legitimacy or legality of local conventions.

Local conventions, it has to be stressed do not have the same legal value across countries. For instance, in Mali, the government (through a judge, a *Préfet*, etc.) is a party to and a signatory of the convention, while in Niger, local conventions are more legitimate than legal, as government representatives are rather reluctant to recognize them. In Burkina Faso, the legislature has enshrined local conventions in the new Rural Land Law (2009) whereby they are called “local land charters”. In Mauritania, a decree stipulates that “local conventions are authoritative

instruments binding direct users before municipal and administrative institutions”. In addition, the land code states that “on request and subject to the approval of the agency in charge of forests, local authorities can entrust the management of natural resources or forest patches to persons or a legal entity under a local convention”.

In countries that have not formally enshrined them in the law (such as Senegal), there is a strong pressure on the government to legalize local conventions.

Constraints to and prospects for the development of local conventions to ensure secure, democratic and sustainable access to land

Despite their importance, local conventions still face many constraints: their development process is complex and sensitive. It is critical to ensure that the legal powers of local authorities are enforced in order to ensure the involvement of all the stakeholders to avoid “taking short cuts,” establishing sanctions that would be incompatible with the legal system of civil and criminal liability, and encroaching on the powers of government agents, but rather to draw on their assistance...

The consultation processes used to develop them also have limitations. This is due to the underestimation of power relationships and interests at stake. Who is actually legitimate as a negotiator? Do some stakeholders really defend the interests of those they pretend to represent? Do some powerful people not use these processes to “infiltrate” local decision-making in order to selfishly serve their interests? Are some potential or vulnerable users, or some who were absent during negoti-

ations, not excluded *de facto* from the list of beneficiaries? Does the exacerbation of autochthony not raise problems of equity and equality between citizens in some cases? For all these reasons, many local conventions may be disregarded after their adoption.

Another critical limitation of local conventions is related to their compatibility with privatized land tenure systems, as well as with their “public estate nature”. Thus, if the private owner refuses to be a party to the local convention, he cannot be forced to abide by it. Similarly, the government (or the local authority) would tend to disregard any convention relating to an estate under its responsibility but to which it is not a party.

Finally, by virtue of the existing positive law, the onus is on local authorities to regulate the use of natural resources in the general interest, through their deliberations. There still remains the question of whether local conventions, but also all the participatory and com-

munity-based local processes in Africa, are but a confidence-building stage leading to representative democracy, or if they are a phenomenon announc-

ing deeper changes in land and resource governance policies that culminate in the development of a new type of participatory democracy. ●

FOR FURTHER INFORMATION

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ORIGINAL VERSION IN FRENCH “Les conventions locales, des outils efficaces de gestion concertée des ressources naturelles?”, translated by Lara Colo.

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