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## Finding justice amidst insecurity: Policy initiatives to strengthen customary justice systems and mitigate conflicts in Central Mali

Insecurity in Central Mali intensifies as radical armed groups compete for territorial control against the Malian army and its international allies. Hidden behind the ongoing armed conflict, the central region of Mopti is also plagued by land disputes and contested grazing and watering rights. The potential of these disputes to feed into the broader conflict is underestimated by the international community, which has not prioritised mediating in these conflicts. Yet, local disputes over resources are not merely individual matters, but rather, as this policy brief will show, destabilising factors for entire communities. These contentions should therefore be awarded a more prominent place in addressing conflict dynamics in Central Mali. This could be achieved by strengthening customary justice systems, which are the main, if not the sole, form of justice accessible to most Malians. These systems could serve as an entry point to mitigating these ongoing conflicts through their ability to mediate in local disputes. This brief provides recommendations for the reinvigoration of these justice systems that could effectively contribute to the diminution of violence and strengthen good governance in the region.

### Introduction

Central Mali continues to see increasing communal conflict and episodes of violence. Whereas the current security crisis unfolded initially in the northern regions, from 2013 it slowly moved towards the centre of the country.<sup>1</sup> The proliferation of radical armed groups such as the *Front de Libération du Macina* (Macina Liberation Front) and

clashes between such groups and the Malian army and its international allies are partially responsible for this intensification of violence. A more comprehensive look at dynamics on the ground reveals, however, that land and resource-related conflicts are at the root of escalating patterns of violence in the region and often act as a conflict multiplier.<sup>2</sup> While local communities

1 Hagberg, S., Koné, Y.F., Koné, B., Diallo, A. and Kansaye, I. 2017. *Vers une sécurité par le bas? Etude sur les perceptions et les expériences des défis de sécurité dans deux communes maliennes*. Uppsala Universitet. 36.

2 Ba, B. and Bøås, M. 2017. *Mali: A Political Economy Analysis*. Norwegian Institute of International Affairs. 2.

have historically competed for access to water, pastures and agricultural land, more permanent seasonal migration, climate change and new practices in the exploitation of natural resources have exacerbated these disputes. This has led inevitably to communal insecurity, with groups competing, more or less violently, for scarce resources.<sup>3</sup> To date, the effect of these disputes on instability in the central Malian region has not been fully explored and thus the international community has not prioritised mediation in the conflicts.<sup>4</sup>

This policy brief will first show how the recent escalation of resource-use conflicts in Central Mali unfolds in the context of a deep crisis of confidence in state institutions and their capacity to provide basic services such as justice and security and protect local populations from drivers of conflict, be it radical armed groups or protracted and recurrent local resource-use conflicts.<sup>5</sup> Second, this brief will argue that, in the institutional vacuum that Central Mali has become, leveraging customary justice authorities at local level could yield effective management of resource-use disputes, preventing their transformation into violent conflict. Finally, by drawing lessons from the Mopti region, the policy brief will conclude with policy recommendations that can be harnessed for the wider central region of the country.

## Coping with conflicts about resource use in Mopti

The region of Mopti is situated at the heart of the Macina region, between Ségou and Tombouctou, and is home to the inland delta of the River Niger. This network of lakes, swamps and channels makes Macina one of the most fertile areas on the continent, and more so in Mali itself. In Central Mali, three main types of production systems co-exist and compete for resources: the pastoralist system, the agricultural system and the fisheries system. Traditionally exploited by Fulani herder communities, Bozo fishermen and Dogon farmers, natural resources in the Niger delta have long been disputed. All three ethnic groups use the river for irrigating fields, watering animals and fishing, while the land is largely used by herders and farmers for pasture and agriculture.

Land tenure in Mali traditionally derives from customary norms such as the *dina*, a set of social rules based on local practices and beliefs originating from the Macina Fulani Empire, under the reign of Sekou Hamadou.<sup>6</sup> The lack of a national legal and institutional mechanism regulating property rights has historically allowed customary conventions to dominate land use and exploitation. Similarly, in response to disputes over land (inheritance, property, boundary delimitation) and other natural resources (mainly related to access) individuals make use of customary justice systems, either to adjudicate a case or to act as a mediator between parties.

With particular regard to resource-use disputes management, familiarity with local circumstances allows customary chiefs to understand the frame of reference of litigating parties and to mediate disputes by taking into consideration past, present

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3 Insecurity between communities is considered as either an important (22%) or a very important (78%) issue by the civil society of Mopti and Ségou, according to a recent study. See Tobie, A. 2017.

[\*A Fresh Perspective on Security Concerns among Malian Civil Society\*](#). Stockholm International Peace Research Institute. 4.

4 European External Action Service. 2017. [\*L'Union européenne continue à soutenir le Mali dans sa politique de réforme et de rétablissement de l'Etat\*](#). 20 December.

5 International Crisis Group. 2016. [\*Central Mali: An Uprising in the Making?\*](#). Brussels. 4.

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6 Telephone interview with customary chief from Mopti. The Netherlands, The Hague, 9 November 2017. For an overview of customary authorities in Central Mali see Bagayoko, N., Ba, B., Sangaré, B. and Sidibé K. 2017. [\*Masters of the land. Competing customary and legal systems for resource management in the conflicting environment of the Mopti region, Central Mali\*](#). The Broker Online. June.

**Box 1: Dispute mediation by customary justice systems**

Customary authorities are generally elderly men who take on different roles such as a village or community chief, a religious figure such as an imam, *marabout* or *qadi*, or a traditional communicator such as a *griot*. To mediate and resolve disputes, customary authorities use the *dina*, while religious authorities, mainly called to adjudicate heritage disputes, make use of Islamic law in addition to *dina* principles.

The verdicts are the result of extensive consultation processes aimed at establishing consensus. Decisions are not legally binding but are widely upheld on account of the perceived moral authority of the customary leader. Customary justice mechanisms are free of charge and easily accessible to all members of society. An overwhelming majority of people trust customary justice mechanisms, primarily because of their ability to preserve social cohesion within their communities. Their role is perceived as especially important for the maintenance of peace and the continuation of local traditions. In contrast, formal justice is seen as an institution that tears down social fabric and defies traditions and customary values. Rather than resolving disputes, formal justice is believed to complicate social interactions between individuals.

and future relationships in the community. For instance, the majority of property titles are transferred by inheritance, without being registered in writing. To establish ownership, customary chiefs use their extensive knowledge of the community, and consult with both elders who hold *communal memory* and members of the community at large. A village chief from Douentza explains: ‘We know everyone in the village. We know the history of land occupancy, and who’s married to whom. No one can lie with regards to ownership of a certain plot of land. No way.’<sup>7</sup> Overall, user satisfaction with customary justice systems is overwhelming and the preference is to try to ‘manage certain cases at the level of customary justice ... [because] we do not need a French system that divides us more’.<sup>8</sup>

Obstacles do, however, arise from the historical lack of a comprehensive regulatory framework and distribution of roles when it comes to the mediation of land-related disputes. During the decentralisation process in the 1990s, Mali adopted a legal framework for the management and allocation of access

to natural resources which created discord as well as overlap between customary and legal institutions. Ambiguities surrounding exploitation rights and overlapping formal and customary norms have allowed fraudulent actions to take place, such as the arbitrary award of land.<sup>9</sup> Moreover, local communities used to customary management of resources still find it hard to understand the role of central authorities in resource management, especially in the absence of state institutions. Customary authorities alone will be no panacea to ongoing resource-use conflicts in Central Mali, but to date they remain the most knowledgeable and legitimate actors able to mediate these disputes, particularly in the absence of state institutions.

**Conflicts about resource exploitation**

Despite the use of customary principles to manage access to resources, rural land ownership remains an important source of social conflict and rivalries, and most land-related conflicts involve agricultural lands, which are a scarce resource throughout the country. In a mapping conducted in the autumn of 2016 by the Conflict Research

7 Personal interview with customary chief in Douentza. Mali. August, 2016.

8 Goff, D., Diallo, M. and Ursu, A.E. 2017. *Under the Microscope: customary justice systems in Northern Mali*. The Hague. Conflict Research Unit. Clingendael Institute. 19.

9 International Monetary Fund, 2015. *Mali, Technical Assistance Report – Anti-Corruption and Anti-Money Laundering*. July. 14.

Unit (CRU) of the Clingendael Institute, respondents from Central Mali identified land disputes, including property rights and trespassing, as the main type of conflict affecting their community.<sup>10</sup> Frequent disputes involve the delimitation and inheritance of land plots, and the overlapping interests of competing groups. For instance, farmers (predominantly Bambara and Dogon) accuse herders (mainly Fulani and Tuareg) of not using the designated paths for their animals, which ruin crops as they move through fields; in exchange, herders accuse farmers of encroaching their rights to passage for their animals.

The combined forces of climate change and population growth, due to both southbound migration and demographic factors, have resulted in diminishing natural resources and increased the competition between different groups. For instance, after exhausting all customary and legal instruments, the Dogon communities from Eweri and Fombori, two villages in the centre of Douentza (Mopti), resorted to violence to assert property rights over certain plots of land. This led to several deaths and open conflict between two neighbouring communities, which could hardly be appeased.<sup>11</sup> Such competition is becoming more and more violent, and could potentially be leveraged by radical armed groups.<sup>12</sup> Indeed, in recent months, Fulani herders who have seen their access to land limited in favour of farmers, have taken up arms to fight Tuareg populations vying for the same resources and accused of stealing livestock.<sup>13</sup>

This development is particularly alarming, as similar events that occurred in early 2012 in the northern area of Koro played a direct role in the decision by Fulani groups to arm themselves and later on join the radical groups that occupied Gao.<sup>14</sup> With a number of prolonged, unresolved land and resource-

related disputes, Central Mali presents a fertile ground for newly arrived radical groups to present themselves as alternative justice providers by exploiting 'existing grievances between different ethnic groups, recruiting local residents, inflaming tensions, and supplying weapons'.<sup>15</sup> When involved in communal conflict management, radical actors accompany their rulings with societal impositions, or violence. For instance, in a village in the Mopti region, radical groups have stopped all logging activities under the pretext of redistributing exploitation rights equally to the locals – an initiative particularly welcomed by the population, who perceived that the state was falling short from doing so. But, according to the same account, the redistribution of natural resources came with oppressive impositions: for example, radical groups cut off phone lines and prohibited listening to music and watching television.<sup>16</sup> In the opinion of a civil society activist, radical groups give the impression of equal justice, but that comes at a price.<sup>17</sup>

Other new practices that challenge customary principles have arisen, thereby aggravating the shortage and inadequate management of natural resources. Land ownership used to be transmitted via inheritance, yet evidence from Niono (Mopti) shows that monetary transactions have become the new normal, drastically going against local customs. Here, a plot of land can be sold to both members of the community and outsiders for about XAF500,000 – the equivalent of about EUR760.<sup>18</sup> This practice is becoming more common due to speculation on the part of private entrepreneurs, against whom individual farmers are powerless. In Mopti, foreign companies have expropriated local people from their lands in order to cultivate

10 Goff, D., Diallo, M. and Ursu, A. E. *op.cit.* 36-9.

11 Personal interviews with civil society in Douentza. Mali. August, 2016.

12 Ba, B. and Bøås, M. 2017. *op.cit.* 2.

13 Bagayoko, N., Ba, B., Sangaré, B. and Sidibé K., *op.cit.*

14 International Crisis Group. *op.cit.* 3.

15 Walch, C. 2017. [Fertile Ground? Climate Change and Jihadism in Mali](#). The Broker Online. 30 May.

16 Telephone interview with a forester from Mopti. The Netherlands, The Hague, 9 November 2017.

17 Personal interview with representative of Malian civil society. The Netherlands, The Hague. November 2017.

18 Hagberg, S., Koné, Y.F., Koné, B., Diallo, A. and Kansaye, I. *op.cit.* 28.

rice on a larger scale, a widespread practice from the north to the south of the country.<sup>19</sup>

Moreover, the sale of land is often not recorded in written form, allowing for multiple sales of the same plot. This is increasingly the case in Mopti, where land intended for residential purposes is sold to individuals or companies more than once, thus generating uncertainty around tenure. One case making the headlines in the past few years was the dispute between the property company *Ladia* and the inhabitants of the Mopti neighbourhood *Du Jardin*. The ‘affaire Guitteye’, named after the representative of the company that looted land belonging to the residents, triggered social unrest for many years. The case of expropriation, a common practice throughout the region, was only settled when customary chiefs set in motion a mediation process that resulted in the reallocation of 28 plots of land to residents who had been directly affected.<sup>20</sup>

Another dangerous conflict related to inheritances is emerging at village level because customary justice does not traditionally address the distribution of property to those who have left the community and later returned. This is a significant problem as, with the rising interest of foreign companies to invest in agriculture on a large scale in Central Mali, many residents who left for larger urban areas in search of a better living have returned to their communities of origin claiming ownership over land in order to lease or sell it to these emerging stakeholders.<sup>21</sup>

Disputes around resource exploitation rights are further amplified by development programming that lacks conflict sensitiveness. For example: government policies encourage settled livelihood systems that increase the demand for agricultural land, with a consequent reduction in grazing land, to the disadvantage of nomadic pastoralists; likewise, development interventions put a higher emphasis on agriculture programmes, again at the expense of pastoralist activities.<sup>22</sup>

Current issues around the exploitation of resources do not affect individuals exclusively, but rather challenge entire production systems. If these conflicts are not mediated by taking into account the competing interests of *strategic groups*<sup>23</sup> (e.g., farmers and herders), they will continue to arise on an individual basis between members of these groups, given their concurrent interests and the scarcity of resources. Against this background, natural resources in the Macina region are under increasing pressure, often leading to conflict dynamics.<sup>24</sup> These tensions are further aggravated by recent social developments. Seasonal migration, an age-old phenomenon, is now on the increase and becoming more permanent due to the impact of widespread conflict and climate change on grazing lands and water availability in more northern regions. This drives herding and fishing communities southwards to more densely populated regions, where resources are already subject to intense exploitation and contended rights.<sup>25</sup>

19 D’Almedia, C. 2016. [Foncier rural: l’épine malienne](#). Journal du Mali. 11 August.

20 Radio Saghan Mopti. 2014. [Fin du litige foncier entre Vieux Guitteye et les riverains du quartier dit du jardin à Mopti](#). 4 July. Telephone interview with customary chief from Mopti. The Netherlands, The Hague, 9 November 2017.

21 Personal interview with Malian civil servant. The Hague, The Netherlands. December 2017.

22 Bagayoko, N., Ba, B., Sangaré, B. and Sidibé K., *op.cit.*

23 The term encompasses ‘actors who defend shared interests in the appropriation of resources’ and was coined in Bierschenk, T. and Olivier de Sardan, J. P. 1997. ‘Rapid Collective Inquiry for the Identification of Conflicts and Strategic Groups’. *Human Organizations*. 56(2). 240.

24 Bagayoko, N., Ba, B., Sangaré, B. and Sidibé K., *op.cit.*

25 Mitra, S. 2017. [Mali’s Fertile Grounds for Conflict: Climate Change and Resource Stress](#). Clingendael Institute. 4.

## Customary solutions for customary problems

To address some of the new practices and to harmonise formal legal and customary legal systems, the Malian National Assembly adopted the *Loi portant sur le Foncier Agricole* (Legislation on the land tenure regime, from here on referred to as Law 2017-01) in April 2017. This law provides clearer guidance to customary chiefs, reducing arbitrariness and enabling the formalisation of their decisions. Consequently, this law has the potential to curb one of the main flaws identified by many Malians, namely chiefs' lack of enforcing power and the absence of written records of their decisions.<sup>26</sup> Indeed, one of the most evident weaknesses of customary justice in relation to property disputes is the 'lack of written evidence, everything is oral, no enforcement power, no obligations', according to one interviewee.<sup>27</sup>

Moreover, the law bridges many gaps between formal and customary systems. Our previous research on customary justice in Mali revealed that collaboration with formal authorities and the justice system is not a well-established practice but is becoming more common. About half of the 25 chiefs interviewed throughout the country would like to strengthen collaboration with formal branches of justice and law enforcement.<sup>28</sup> In fact, customary chiefs from Mopti reported that a number of land-related disputes were more successfully solved through cooperation with formal institutions before Law 2017-01 was adopted.<sup>29</sup> Moreover,

even if a case reaches the police or formal justice system, customary chiefs advise the parties and support them in the proceedings. A magistrate's assistant from the Mopti tribunal explained that, ideally, all land and heritage disputes should be resolved by customary authorities. When land-related disputes come before magistrates, they try to send the parties back to customary authorities and ask them to resort to formal justice only if they are dissatisfied with the customary authority's decision.<sup>30</sup>

When appropriately trained and supported, customary authorities are an indispensable ally in mitigating resource-use conflicts in Central Mali. However, there is still a long way to go to allow customary systems to address resource-use disputes in a way that prevents the escalation of conflict dynamics.

## Policy initiatives to strengthen customary justice

Our recent field research shows that customary systems maintained their legitimacy to a great extent, and that people attribute any ineffectiveness to a lack of resources (training, state support) rather than unwillingness. Dispute-settlement mechanisms have continued to operate and not only enjoy significant credibility among much of the population, but also tend to continue generating justice outcomes aimed at reconciliation and based on mutual respect.<sup>31</sup>

However, in spite of their reliability, the only enforcement mechanism available to customary authorities is their capacity to cultivate a good reputation and maintain constructive relations with the community. In this sense, it might be convenient to carefully and gradually enhance the effectiveness of dispute resolution, taking into account the strengths of customary

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26 Goff, D., Diallo, M. and Ursu, A. E. *op.cit.* 39.

27 *Ibid.* 37.

28 *Ibid.* 13.

29 A villager from Dembéré (Mopti), for example, had made a complaint to the mayor over the damaging of his crops by herds owned by his neighbour. The mayor called upon the Amirou (village chief) to help resolve the dispute. Initially, the victim had asked for a compensation of XAF1,000,000, but during the mediation process before customary authorities the parties agreed on reparation of XAF300,000. Interviews with a magistrate's assistant. September, 2016.

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30 Personal interview with civil society in Douentza, Mali. August, 2016.

31 Bagayoko, N., Ba, B., Sangaré, B. and Sidibé K., *op.cit.*

**Box 2: Role of customary authorities in the new land tenure regime**

Village chiefs are put in charge of every land transaction whose ownership is not formally registered, including donations and loans for use. Every transaction authorised by a traditional chief is then filed with the municipality and legalised by the mayor. With regard to property regulations, customary ownership not registered with the municipality becomes permanent after 20 years of continuous use of the land by the same individual. Additionally, every holder of customary ownership over a parcel of land is entitled to the formalisation of his or her property rights by the municipality, but only after the village chief grants approval. Customary rights are recognised, preserved, and can be transformed into ownership rights in favour of their holder in accordance with the regulations. Most importantly, no agricultural land title can be established without verifying precedent customary agricultural land rights. Finally, the law regulates cattle drive, grazing, and fishing rights. In case of conflicts arising from land disputes, every village will have its own 'Village Land Commission' entitled to attempt mediation of any dispute before referring it to formal justice. Ultimately, the success of the law lies in the implementation capacity of customary and administrative authorities. On the one hand, customary authorities need to become aware of their key roles in land and resource management; on the other hand, municipalities must be trained and adequately resourced to formalise customary decisions.

systems and also addressing their weaknesses. For example, customary justice leaders typically do not make written records of their decisions, which is perceived as weakening their enforceability. While parties might agree to comply with a customary verdict immediately after its issuance, disputants might deviate from its implementation at a later stage. In such cases, the parties have no written record to prove the settlement of the dispute, the agreement to comply with the decision and so on. Whereas titles of customary ownership can be filed with the municipality under Law 2017-01, it is just as important that the results of dispute adjudication be treated in the same manner.

Some additional steps that could be taken include the following:

**1. Create awareness about new laws**

Even if new laws confer duties on customary actors, they are only somewhat aware of them, partly due to illiteracy, partly due to a lack of dissemination. It is thereby crucial to disseminate summarised and simplified versions of key legislation. In this regard, radio campaigns that target these authorities and explain their new responsibilities and how the law relates to customary principles could significantly add to their knowledge.

Second, while customary principles and authorities may be able to adapt to tackle new disputes and implement Law 2017-01, it might take a long time for this to become a widespread practice. Broadcasting information about customary mediation could enhance the standardising of practices and could operate as a tool for sharing knowledge about customary justice, not only to local populations but also to formal justice actors who might not be familiar with customary practices and principles. Moreover, supporting the engagement of these actors in organised dialogues such as justice summit events or smaller gatherings, both at national and local levels, could enable them to come to a better understanding of one another's methods and find new ways of working both together and separately.

**2. Train customary actors**

In order to improve access to justice in the short term, the training of customary chiefs is a priority. One of the main flaws of these systems, widely identified by respondents and academics alike, is the lack of training for customary chiefs. Most have not had any formal education and they receive guidance on how to adjudicate disputes from chiefs that preceded them. Many among the people interviewed would like these actors to receive training, including in their own traditions, conflict resolution methods,

human rights, technology and science, and war crimes. Customary chiefs expressed the same wish. It would be advantageous for donors to build on this existing momentum for change to ensure that customary actors can continue to expand their knowledge of dispute resolution and maintain social cohesion within their communities.

Rather than engaging in well intended but ultimately not durable international training initiatives, it is recommended that organisations solicit ideas and engagement from local communities and from authorities with a presence in central Mali to better understand what their current needs are and what specific training would enhance the ability of these systems to mediate and prevent conflict. For starters, those seeking to strengthen these systems could provide literacy training and support capacity development in mediation techniques and citizens' rights. Albeit some chiefs may already have substantive experience, training in mediation and reconciliation techniques based on traditional principles delivered, for example, with the assistance of more experienced peer customary authorities, could result in more effective and more sensitive dispute resolution and might eventually lead to more uniformity throughout these regions.

### 3. Protect customary authorities

In Central Mali, the resistance of chiefs to the demands of radical actors has resulted in their abduction or murder by presumed jihadist groups who maintain control over the territory and target those who do not abide by their dictates or who inform the government of their activities. Physical threats are also perpetrated by Malian armed forces (Forces Armées Maliennes – FAMA) who have arbitrarily detained village chiefs during military operations in the centre of the country.<sup>32</sup> As of late, customary chiefs have become the target of parties in conflict, and fearing for their lives, several have fled to Bamako – leaving strained populations with no access to justice whatsoever. But the presence of customary chiefs in

their local communities is fundamental to the resolution of communal conflicts, especially given the absence of state institutions.

Thus, it is of utmost importance and urgency to ensure their permanence in these central regions by guaranteeing their safety. The effective protection of customary authorities in the ongoing armed conflict requires stronger partnerships between the Malian state and its international allies in order to identify various protection needs and who is best placed to address them. An initial step that the UN Stabilisation Mission in Mali (MINUSMA) and other foreign military interventions could take would be to strengthen their approach to the protection of customary authorities to the same extent as civilians and promote the role of 'Protection of Civilians Officers', instrumental figures in developing an improved and shared understanding of protection needs.

### Final remarks

Investing in conflict prevention in Central Mali is not only a question of rule of law or access to justice but also an issue of profound political importance. This policy brief has shown the potential of customary authorities to deflate conflicts over access to and use of resources, and to mediate them at local level. However, as in most fragile states where communities tend to be disconnected from one another, customary justice mechanisms in different villages have unique characteristics. Accordingly, each of them would need to be approached in a context-specific way, including in terms of their connection to politics and corruption. Political economy analysis of local justice sector dynamics could also assist in making informed decisions about the best entry points from all levels to ensure inclusive engagement.

Perhaps a more structural concern that requires further investigation is the resurgence of resource-use conflicts, even after their settlement by customary authorities through reparation and reconciliation. This is symptomatic of the fact that disputes are mediated on a case-by-case and individual basis, not taking into account interlinked disputes and other

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32 Human Rights Watch. 2017. [Mali: Unchecked Abuses in Military Operation](#). 8 September.

potential conflicts. The lack of enforcement powers by customary authorities who cannot legally compel disputants to implement their decisions is another detrimental factor. Therefore, it is crucial that under Law 2017-01 municipal authorities continue collaborating with customary systems to monitor the implementation of verdicts. Finally, it must be recognised that it would be impossible to remedy all the weaknesses of customary justice systems in the short run. Yet, as has emerged from this policy brief, further engagement with these systems must be an essential part of any multi-pronged effort to address the multilayered conflicts that are plaguing Mali.

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