

# **NIGER COUNTRY BRIEF: PROPERTY RIGHTS AND LAND MARKETS**

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## **1. INTRODUCTION**

### **1.1 PURPOSE OF THE COUNTRY BRIEF**

The purpose of the country brief is to determine to which extent USAID's programs to improve land markets and property rights have contributed to secure tenure and lower transactions costs in developing countries and countries in transition, thereby helping to achieve economic growth and sustainable development.

The overall goal of the country brief is to help evaluate the validity of the following proposition:

*A key to sustainable rural development is legally secure entitlement to land on the part of the disadvantaged.*

The general questions the review team will have to answer are the following:

- (1) What evidence is there which will enable an estimate of the overall success of land entitlement projects in reaching their developmental goals?
- (2) How have the policy and institutional factors, which affect the success of these activities, been identified and assessed?
- (3) How have the implementation techniques and approaches affected activity success?

### **1.2 CONTENTS OF THE DOCUMENT**

Section One is the general introduction for this report. Section Two presents a brief background description of the country, its history, its economy, its agriculture and a summary of Niger's land tenure background. The third section presents the evidence of land markets in Niger and contribution of USAID through the Rural Code by supporting LTC technical assistance to the process. The fourth section summarizes the interventions on property rights and land markets; and the fifth section assesses interventions on property rights and land market development. The last section presents the conclusions and recommendations.

## **2. PROFILE OF NIGER AND ITS AGRICULTURE SECTOR AND AGRARIAN STRUCTURE**

### **2.1 GENERAL BACKGROUND OF THE COUNTRY<sup>1</sup>**

Niger is a landlocked Sub-Saharan country bordering Algeria, Libya, Chad, Nigeria, Benin, and Burkina Faso. In addition to the capital city Niamey, the administrative subdivision of Niger includes 7 departments: Agadez, Diffa, Dosso, Maradi, Tahoua, Tillaberi and Zinder. The total area of the country is 1,266,700 Km<sup>2</sup>. Arable land is only 3.94 % and only 660 Km<sup>2</sup> was the estimated land under irrigation. The population of Niger was 7,251,200 inhabitants (1988 census) and is estimated to have 10,639,744 inhabitants in 2002 with an annual rate of increase of 2.7 %. The density of the population is around 10-15 people/km<sup>2</sup> in the northern versus 50-100 people/km<sup>2</sup> in the southern region (Lund, 1993 p. 2). The major ethnic groups are Hausa 56 %, Djerma 22 %, and Tuareg 8%. Muslims are 80% of the population and the remainder are Christian or retain indigenous beliefs.

Until 1995, Niger was administratively divided into 7 Départements, 36 Arrondissements, and 21 Communes: Law No. 64-023 of July 17, 1964 (Ouedraogo et al., 1996 p. 14). Alongside them are traditional subdivisions of the country into 10,000 villages (or “tributes” for pastoralists); 200 cantons (or “groupements” for pastoralists); and 5 sultanates (groupings of several cantons). The traditional system is integrated into the administration, and the chiefs have been auxiliaries of the administration since the colonial era. Law No. 95-005 of February 6th 1995 changed the official administration from two levels to three: the Region, the Department and the Commune. Fourteen regions were created including Niamey, which has a special status. The Départements number 55, the Arrondissements 155, and the Communes 774, of which 156 are urban and 618 are rural.

Niger was a French colony and the official language is French. Niger received its independence from France on November 3<sup>rd</sup>, 1960 with Hamani Diori serving as the first President of the country until 1974 when he was overthrown by a military Coup led by Lt. Col. Seyni Kountché who stayed in power until his death in 1987. Several Presidents have succeeded since then: Ali Seybou (1987), Mahamane Ousmane (1993), Ibrahim Baré Mainassara (1996), Maj. Daouda Malaam Wanké (1999) and Tandja Mamadou (1999).

### **2.2 GENERAL BACKGROUND OF THE ECONOMY AND AGRICULTURE**

The economy of Niger is dominated by subsistence agriculture and animal husbandry, on which 90 % of the labor force depends, , and the export of uranium, which has declined considerably because of decreased world demand. There are other mining activities (iron, phosphates, coal, salt, etc.) of relatively little importance. Niger is one of the poorest countries in the world. The GDP was estimated at \$8.4 billion in 2001 with a growth rate of 3.1 % : agriculture contributes 41 %, industry 17 %, and services 42 %. The inflation rate was estimated to be 4.2 % in 2001.

Niger may be divided in three zones. The Northern zone covers more than half of the country and is mostly in the Sahara desert.. The central Niger is semi-arid and part of the Sahel, defined by annual rainfall between 200 and 600 mm.. It is essentially a pastoral land. In the Southern part of the country where rainfed agriculture is practiced, the annual rainfall rarely exceeds 800mm.

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1. Most data in this section were obtained from the *CIA World Factbook 2000*  
<http://www.odci.gov/cia/publications/factbook/geos/ng.html>

The single growing season is about 90 to 150 days, following which there is a long dry season of 7 to 9 months. Rainfed agriculture is the major cultivation practice, and the main cereal crop is millet, followed by sorghum. The principal river, the Niger, flows across the southwestern region and its seasonal flood contributes to recessionary and irrigated farming along its banks.

Niger as well as other Sahelian countries has been under environmental stress in the last several decades, which has led to severe land degradation. The recurrent droughts of the 1970s and 1980s have disturbed the natural vegetation (FAO, 1986). Variation in rainfall patterns has contributed to land erodability and the reduction of land area suitable for cultivation. With a population growth rate of more than 3% per year (FAO, 1986), marginal lands such as low-fertility land and depressions previously devoted to livestock grazing are put into cultivation. To meet the food demand, farmers have had to clear new lands at the rate of about 4% per year while millet production increases only about 0.1% annually (Gavian, 1993). Conflicts around access to land for cultivation and/or grazing have increased considerably.

### **2.3 LAND TENURE BACKGROUND**

As is true in much of sub-Saharan Africa, land is perceived in two different ways in Niger: the customary view of land as a territory with multiple social links and the Western-inspired state view of land as an economic good. These two views are in many ways contradictory, but need to be understood because they coexist. It is important to understand the implications of their interactions, to analyze them and to understand the logic behind them if there is to be a smooth transition from customary practices to a new system (Mathieu Paul 1996 p. 28).

In many countries in Africa, customary tenure law was based on the notion of the first comer, sometimes called the “right of the axe.” The first occupants of a piece of land are those who have cleared it, thereby putting a “value” on it. These investments are the basis which has given them and their descendants customary ownership rights (Terraciano, 1998 p. 733; Mariko 1991, p. 1). These rights are inherited and passed down most commonly through a patrilineal system. Newcomers have mostly use rights only. Family lands are lands belonging to the founding clans in the village. Each member of the family is a co-owner from birth. In general, parts of these lands are used for common food production for the family needs. However, family patriarchs can distribute part of it to family members. Conflicts arise between family members, for example, when absent members do not get a share of land.

Rural Niger is composed of villages which are grouped into cantons (about 100 to 300 villages form a canton). In the village, there are three different types of lands: individual lands, family lands, and village common lands also known as chieftaincy lands (*terre de chefferie*; Ngaido, 1996). Chieftaincy lands comprise fallow, virgin and cultivated lands. Fallow and virgin lands are used for grazing; however, they are also granted for cultivation by the village chief to newcomers or landless members of the community. These groups acquire use rights which can be passed to their heirs. Long-term utilization of chieftaincy land does not grant ownership. The Diiori regime tried to abolish chieftaincy lands by granting ownership to use-rights holders. However, conflicts exist today as a result of that policy.

### **2.4 LAND CONFLICTS AND RESOLUTION MECHANISMS**

In rural Niger the pressure on the land has led to increasing conflicts among family members, farmers, farmers and herders, traditional chiefs and some villagers (Bruce et al., p. 19). Lund

(1993 p. 7) gives some indicative numbers of land conflicts in the Département of Mirriah: 96 in 1989; 4 in 1990; 0 in 1991; and 20 in 1992. Bruce et al. (1995) reported an article in Sahel Dimanche where two farmers and 102 herders were killed at Toda. This is not new, however: Ngaido (1993) reported a land conflict in 1928 between two cantons Tondikandia and Tagazar in the arrondissement of Filingué causing 4 deaths and twenty wounded.

Many institutions are involved in conflict resolution at the different administrative levels, as are traditional institutions:

Administrative institutions include:

- the préfet,
- the sous-préfet, and
- the chef de poste.

The legal system is formed of:

- the courts, and
- the police through the gendarmerie.

The traditional institutions include:

- the Sultan,
- the canton chief,
- the village chiefs for the sedentary farmers zone,
- and the groupement chiefs or tribute chief for the pastoralist's zones.
- The Alkali, a religious head (Lund, 1993 p. 5).

Chiefs of villages and cantons are very important in conflict resolution. They have considerable power since they have authority under both traditional and formal systems.

By decree N° 62-128 of May 29, 1962 a commission was formed by the Diori regime to identify the chieftaincy land. Members of the commissions included local administrative institutions, chiefs of village and cantons and local elected representatives. Since chiefs were members of the ruling political party, they were very powerful in such commissions and were able to bias the decisions to their benefit (Bruce et al., 1995 p. 21). Responsibility for conflict resolution was given to traditional and administrative institutions by the military government in January 28, 1975. There soon was an impasse, with the administrative institutions adhering to the concept of "land to the tiller," and the traditional chiefs attempting to take the opportunity to control the land. The process failed and in response the government created the "Development Society," a sort of corporatist collective which was put in charge of the management of resources and conflict resolution (Bruce et al., p. 22).

A common practice in conflict resolution in Niger is to ask the parties to swear an oath on the Koran. People willing to swear an oath on the Koran are considered to be telling the truth, because they believe that lying under the oath on the Koran has severe supernatural consequences (Lund, 1993 p. 16). According to Bruce et al., (1995) this system favors the landowners. Tenants and rights users are hesitant to swear an oath on the Koran because they

generally obtained their rights from State policies rather than from the customary law that is increasingly interwoven with Islamic law.

With the creation of Land Commissions under the Rural Code (see Section 4 below), some villagers thought that the commissions should deal with the resolution of conflicts, however this is not their responsibility. This position was confirmed by the Rural Code assessment team report (Ouedraogo et al., 1996). Conflicts need to be solved at the level of villages and then, in case of unsuccessful resolution, the case may be investigated at a highest level such as the canton, and later the tribunal if a solution is still not found.

### **3. EVIDENCE OF LAND MARKETS IN NIGER**

The Agriculture Sector Development Grant (ASDG II) was a \$28.2 million grant by USAID to Niger between 1990 and 1998 to assist the Government of Niger for sustainable agriculture production and increased rural incomes. Land issues were a minor component of the ASDG II. Through this project, the Land Tenure Center of the University of Wisconsin assisted the Government of Niger in the development of a complete revision of the laws and institutions related to rural development and natural resource management in Niger through the Rural Code (Bloch 1993).<sup>2</sup> Registration of rights to land was part of the Rural Code, and was put under the responsibilities of the Land Commissions to be installed in Arrondissements and Communes.

The Land Commissions are in charge of supervising land ownership and the recording of land rights. Two pilot Commissions were created in 1994 to test the process, and a third in 1995. Ouedraogo et al. (1996) reported on the early work of the first two Commissions. The results were:

- In the Arrondissement of Mirriah (in the east-central Département of Zinder), information regarding the Rural Code was disseminated in 16 cantons and two groupements. Villagers applied for their land to be registered in only 7 cantons. The number of applicants in each canton are the following: Mirriah (305), Hamdara (87), Guidimouni (85), Baban Tapki (17), Gouna (70), Tirmini (2), and Droum (20), for a total of 586 applications for registration.
- In the Arrondissement of Mainé-Soroa, dissemination of information regarding the Rural Code covered 45 villages of the canton of Mainé and 20 villages of the canton of Godoumaria. At Mainé-Soroa, only 1700 villagers applied to register their land, from 25 villages of Mainé. Nobody requested registration from the canton of Godoumaria.
- The information was also given that copies of all reports on solved conflicts should be given to the commissions: The commission of Mirriah received 300 reports, of which 37 in written in the Arabic alphabet. More than 100 reports were received at the commission of Mainé-Soroa.
- None of the commissions has confirmed land rights, registered them, or delivered a registration certificate.
- For common resources such as grazing land and buffer zone land, both commissions did not go further than the inventory.

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2. LTC's project operated from 1991 to 1995.

- None of the commissions has received a request from a group of pastoralists for the delimitation of their resource use rights areas “zône d’attache.”<sup>3</sup>
- None of the commissions has established criteria to evaluate what is called “Mise en valeur,” or value put into the land.
- Many questions were raised by the evaluation team regarding how to implement land registration, including:
  1. Which institution will deliver the attestation of rights when there is no contestation of land ownership?
  2. What are the procedures to deliver the certificate (attestation d’inscription)?
  3. What information should be included in the files of individual records of land rights?
  4. Whose name will be recorded for rights to communal property (e.g. buffer zones; pastures; water points)

According to Bloch (1993), during the process of preparing the Rural Code many Nigeriens were aiming for private property in land, by which they meant freehold ownership. Given the current system of land use in Niger, this presents several problems:

- Herders have customarily held rights to use agricultural land for grazing on crop residues at any time other than when crops are growing. This principle became enshrined in law during the Diori regime.
- Fallow land may in certain circumstances be reappropriated by the chief for use by the community or the land user.
- The customary role of landowners is to manage the land on behalf of their lineages, which after several generations comprise many families. Should the lineage head be given title to all the land, or should other lineage members receive it as well?
- What status should be assigned to common land such as forests, pastures, wells, waterways, etc.? Chiefs are the customary owners of this land.

In other words, granting private ownership rights to customary landowners would not simply privatize the land, it would also upset the complex network of interdependencies that have been created around land. The Rural Code claimed to be based on tradition, but it was a reinvented, and significantly altered, tradition.<sup>4</sup>

Given the complexities of these questions, Bloch suggested that implementation of the Rural Code principles would require an intensively participatory and interactive design with a strong involvement of research to better inform decision-makers and communities to find acceptable solutions. This is in fact the Rural Code was being implemented in its first years. Unfortunately, funding from donors such as USAID and the World Bank became unavailable at the critical

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3. The zône d’attache or terroir d’attache is a concept based on the primacy of a group of herders that has priority rights of access to a territory and concomitant management responsibilities. The right to exclude others is not clearly defined under the concept.

4. The title of a seminar presented at the Land Tenure Center in 1994 by Bloch, Ngaido, Terraciano, and Lynne Loofboro Heasley was “Reinventing Tradition: Codifying Custom in Rural Niger.”

stage of the process (Bloch 1993 p. 117), and subsequent political turmoil put the project on the back burner.

## **4. INTERVENTIONS ON PROPERTY RIGHTS AND LAND MARKETS**

### **4.1 THE COLONIAL REGIME**

Before Independence in 1960, the French colonial administration in Francophone West Africa tried to define the rights to and management of land and natural resources. During the colonial era, it was difficult for non-French citizens to obtain title to land. Later on, customary rights were accepted as a legitimate grounds for receiving the right to a concession, while all vacant land was considered as State-owned. In 1955-56, customary rights were strengthened with the passing of a decree providing for direct registration of customary land rights, but the enabling legislation was never passed (Elbow, 1996).

During the period of French control, chiefs were used as colonial auxiliaries. At Independence, a survey carried out by Raulin in 1960 (cited by Ngaido, 1993 p. 3) gave the following statistics: for the Kollo arrondissement of Niamey, 5,647 rented land parcels were owned by 340 people; if each family renting land had an average of two parcels that would imply that landowners represent not much more than ten per cent of the population . Ngaido concluded that the government of newly independent Niger had a strong incentive to implement land reforms to gain popular support as well as to promote agricultural development and resource conservation (Ngaido, 1993 p. 4).

All postcolonial governments in Niger have implemented land tenure reforms. These various attempts reflect the importance of this issue for the governments, for local people and for all those involved in development activities. The consequences of the various interventions had varied and profound impacts on communities, their land tenure and their resource management. The various measures have had particular impacts on land conflicts due to the ambiguity and confusion that have characterized post-colonial policies, laws, decrees, ordinances, and arrêtés (Lund 1993 p. 3; Terraciano 1998 p. 751).

### **4.2 THE HAMANI DIORI REGIME**

Since independence, land policy reforms in Niger were designed to increase the security tenure rights of tenants and use-right holders (Bruce et al., 1995 p. 19). From 1960 to 1974, the Hamani Diori regime made the first reform attempts through a series of laws to reduce the power of the traditional chiefs. The laws passed then include:

- Law N° 60-28 related to state funded irrigated projects;
- Law N° 60-29 which forbade the payment of tithe; Laws N° 61-5 and 61-6 which sets a northern limit for cultivation, dividing the country into two zones: the agricultural zone controlled by canton chiefs and the pastoral zone controlled by pastoral groups. While the interaction of agriculture and grazing was recognized in the agricultural zone, in pastoral zone agriculture was not permitted;
- Law N° 61-30 fixing procedures for expropriation of customary rights;

- Law N° 62-7 which eliminated chieftaincy lands and granted ownership rights to those who are cultivating those lands and alleged state ownership over all lands;
- Decree N° 62-128/PRN/SEP related to the composition of committees in charge of the inventory of land control by traditional chiefs and used by farmers.

These reforms undermined the functioning of local institutions and created two types of secure tenure: landownership and secure use rights (Bruce et al., 1995 p. 19). By eliminating the tithe payment, which symbolized non-ownership, the state was granting stronger rights to use-rights holders and tenants; however, the law did not give them full ownership rights because the beneficiaries were not allowed to sell, rent or even divide the land among heirs (Ngaido, 1996). The laws have, however, had little impact on traditional chiefs (Ngaido, 1993 p. 6; Lun, 1993 p. 4). The chiefs were influential in the party in power, and they were a part of the institutions in charge of implementation of the different laws. It was therefore easy to avert their applications and enforcement. Landless people and use rights holders under the Diori regime continued to pay tithe even though it was forbidden by laws, since they were not enforced nor admissible in courts

### 4.3 THE KOUNTCHÉ REGIME

The regime of Hamani Diori ended in a military coup in 1974. The military regime that took power led by Seyni Kountché tried, also without success, to improve land tenure security in order to increase agricultural production. The new President tried to resolve the unclear status of tenant farmers and use-right holders by proclaiming “land to the tiller.”<sup>5</sup> Subsequently Ordinance N° 75-7 of January 28, 1975 was issued, clarifying that land belongs to the tiller no matter how he acquired it (Ngaido, 1993 p. 8). This ordinance decided the resolution of land conflicts at the level of the administration and traditional institutions instead of the court system (Ngaido, 1993 p. 8). The difficulty with many institutions involved in land conflict resolution is the lack of clear guidelines, which meant that each institution had its own criteria, and even then did not apply them consistently. For instance various interpretations were given by Lund (1993) regarding how long a use-right holder must occupy the land before he cannot be evicted. Some cases showed that an eviction would be disallowed after 10 years of use. The duration required to gain an ownership right is 30 to 40 years for the prefect of Matameye and 2 to 50 years for the chef de canton in Matameye. Traditional chiefs used their new power to gain what they had previously lost. Faced with rising rather than falling levels of conflict, the Kountché regime finally introduced new institutional changes with the creation of the so-called “Development Society” a sort of corporatist collective with branches at all levels of society. A series of circulars were issued, removing the administrative as well as the traditional institutions’ power to solve land conflicts. But the Development Society failed to materialize, and as a consequence none of the rural institutions was legally in charge of conflicts resolution. In reality, many institutions continued informally to solve land conflicts (Lund, 1993 p.5). The fact that no institution has the formal responsibility for conflict resolution under Kountché’s regime has ironically increased the number of local institutions dealing informally with conflict resolution.

While the decree attempted to provide ownership to the landless, it has opened more conflicts. At the end of the military regime in 1990, former landowners and chiefs attempted to deny ownership rights granted from the application of “land to the tiller” decree from tenants farmers

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5. Kountché’s phrase, delivered in a radio address, was “la terre appartient à celui qui la cultive.”

and use right-holders (Ngaido, 1996; Terraciano, 1994). In addition to the fact that these policies have induced conflicts, they have disturbed the traditional social relations of production and weakened the ability of local institutions to enforce resource management, creating sometimes a situation of open access (Bruce et al., 1995).

Since Independence, therefore, many attempts were made but land conflicts continue to increase and the traditional chiefs remain undefeated. It is in such a context the discussions on the Rural Code began to increase security of land tenure, to increase investment, to improve agriculture, to promote sustainable use of natural resources, and to reduce the desertification in Niger.

#### **4.4 THE RURAL CODE**

After the great Sahelian Drought of 1984, it became clear the centralized management of natural resources was no longer a viable alternative. Niger was facing the following situation:

- increased conflicts between farmers and herders over access to resources
- the practice of pastoralism was more and more difficult since transhumance corridors were increasingly under cultivation
- Tree planting is discouraged by customary rules
- The concentration of the land in traditional leaders' hands had not abated.

In 1986, with Kountché still in power, the government realized that it would have to take a more systematic approach, the development of comprehensive legislation and new institutions to regulate rural socioeconomic relations. After seven years and a regime change, the Rural Code, *Principes d'Orientation du Code Rural*, Ordinance (93-015) of March 2, 1993, was promulgated.

The stated objectives of the Rural Codes are to:

1. Provide tenure security to rural operators;
2. Organize and manage rural land,
3. Promote better natural resources and conservation practices;
4. Help to plan and manage countrywide uses of natural resources.

The institutions of the Rural Code are at both national and local levels. At the national level was created the National Committee of the Rural Code, which is assisted by the Permanent Secretariat of the Rural Code. At the local level are Land Tenure Commissions in each arrondissement and also in each Commune (Ouedraogo et al., p. 13-14). The objectives of the Rural Codes are to:

1. Provide tenure security to rural operators;
2. Organize and manage rural land,
3. Promote better natural resources and conservation practices;
4. Help to plan and manage countrywide uses of natural resources.

The philosophy of the Rural Code of Niger is very different from those of other countries who assign property rights of all land, or all unregistered land, to the State. The strategy selected was to build on the traditional system, adapting it to correspond with the formal tenure rights system

(Lund 1993). The Nigerien formula is more realistic and pragmatic compared to other African countries such as (Burkina Faso, Ivory Coast, Mauritania) (Ouedraogo et al., 1996 p. 10; Ngaido, 1993). It declares the equality of existing land tenure systems, without making distinctions between customary and formal systems involving land registration and titling. Ngaido (1993 p.1; 1995 p. 2) raised some concerns, however:

- Since most people are use-right holders, it means that the recognition of the traditional ownership will benefit the minority who are the traditional landowners
- Another problem is how to define traditional tenure rights, given that the policies of the successive Nigerien regimes have clearly transformed “customary” practices.

#### **4.5 PROBLEMS FACING THE RURAL CODE**

Gado (1996) indicates that many farmers have a misunderstanding of the attributes of the Rural Code. Some believe that a simple oath of ownership in the presence of a witness could be considered as sufficient proof for the Commission to grant a certificate of ownership, or that the Commission could attribute land and/or allow access to protected areas. In addition, there are socio-cultural barriers inhibiting the process of land registration. One of these inhibitors mentioned by Gado is the cultural concept of land having a secret value, in other words that it has secrets linked to the people to whom it belongs. The registration process alienates such a relationship. The second obstacle is the fact that land does not belong to individuals in customary law. Rather, it belongs to a lineage and the community as a whole knows it. Therefore, people feel, there is no need for documentation establishing ownership.

The succession of land policies since Independence created multiple sources of conflict between landowners, tenant farmers, use-right holders and herders. These conflicts have rendered the implementation of the Rural Code difficult, because in order to register a parcel, any conflicts must be resolved and all parties must agree upon the resolution. The Rural Code does not have specific provisions for the resolution of ownership disputes generated from past tenure rights granted by governmental policies; even though articles 20, 21 and 22 address issue regarding tenants farmers and use-right holders. There is no clear statement canceling any of the past policies that have led to overlapping tenure rights. In addition to ownership issues, technical aspects such as land demarcation and mapping hinder the land registration process. Little progress has been made regarding land registration since the implementation of the Rural Code.

Lund (1993) raises many issues. Rural people are moving quickly in response to what they know about the Rural Code, and are not waiting passively for it to become effective. There are intense struggles for resource control and this is creating even more insecurity. There is a power struggle in rural areas, and there will be loser and winners. The implementation of Rural Code will probably increase existing social differentiation processes and conflicts among farmers, between farmers and herders, and between the new democratic institutions and traditional institutions.

#### **4.6 THE LAND COMMISSIONS**

Land Commissions are the instruments at the local level for the implementation of the Rural Code. The Commissions are responsible for the verification and confirmation of rights to a given land parcel, and for recording land ownership rights. A graphical representation of the property is

drawn to situate the land. They have also the responsibility to disseminate information so that the activities of the Commissions and the provisions of the Rural Code are known by rural people.

The Land Commissions aim to promote decentralized management of land, to secure land rights, and encourage sustainable land use practices for rural investors on land (Ouedraogo et al., p. 17). A total of 57 land commissions were planned: 36 in arrondissements and 21 in communes. Danida has financed two commissions: Mirriah in the Department of Zinder, and Mainé-Soroa in the Department of Diffa. Belgium has financed a third at Gaya in Department of Dosso. The World Bank was planning in a near future to finance three commissions as part of its Natural Resource Management Project. Belgium is planning to finance an additional 4 to 5 Commissions. In two to three years it was expected to have 11 Commissions (Ouedraogo et al., p. 58). There is no available documentation about progress on this front; there is information only on the early activities of the first two.

## **5. ASSESSMENT OF INTERVENTIONS ON PROPERTY RIGHTS AND LAND MARKET DEVELOPMENT**

Development projects, particularly those affecting rural land use and land legislation, conservation projects, etc., can increase social inequalities, change power structures, and create pressure on resources. Terraciano (1998 p. 727) indicated that more attention should be paid to social and political arrangements at the level of the village, and considers that the postcolonial reforms in Africa have been political and ecological disappointments: in Niger, agricultural production has declined since 1960; degradation has worsened; and conflicts over land are increasing.

A common denominator of all of Niger's land policies since independence is the ineffectiveness of the implementing institutions. During the Diori regime, institutions in charge of identifying "terres de chefferie" were rendered ineffective because of the inclusion of the traditional chiefs whose were in most cases the owners of the land in question. To counterbalance them, the regime assigned conflict resolution to the courts, but this only led to stalemate. Subsequently the military regime entrusted land conflict resolution to customary and administrative authorities. Again there was a problem, because customary authorities considered this an opportunity to recuperate their social image and regain control, while administrative authorities were concerned about the application of "land to the tiller policy." The tensions between the two groups led to the creation of the "Development Society," which never really functioned. Even though the Rural Code was empowered by these experiences, its implementation has left farmers disappointed. One farmer expresses himself as follow: "Nous ne comprenons pas pourquoi la nouvelle commission ne règle pas des conflits. En outre, on nous a dit que la commission peut livrer des attestations de propriété en présence de témoins.... Ce n'est pas ce qui se passe; les personnes qui ont des bonnes relations avec le pouvoir passent par ses personnes pour régler leur problème... Mon voisin qui a assisté à une des réunions de la commission m'a dit qu'il s'agit des mêmes personnes, l'autorité est toujours présente, tous les chefs de service aussi; dans de telle réunions que veux -tu qu'un paysan dise devant le sous-préfet, le chef de canton? Bref pour nous les choses n'ont pas changé."<sup>6</sup> (Gado, 1996. p.128).

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6. "We don't understand why the new commission doesn't settle conflicts. Also, we were told that the commission can issue certificates of property if a witness is present... That's not what happens; people who have good relations

A Rural Code evaluation workshop was held in August 1994 at Dosso. Among the difficulties of the Rural Code listed during the workshop was the shortage in human and financial resources. As a consequence, activities such as the completion of the Complementary texts of the Rural Code were still not achieved eighteen months after the Ordinance was promulgated.

In 1996, another important assessment of the Rural Code was conducted by a group of expert consultants. The comments below are largely based on the implementation from 1992 to 1994 of the two pilot Land Commissions, plus an assessment of performance at the national level.

The actions of the Permanent Secretariat of the Rural Code in charge of the dissemination of the Rural Code was reported as follows:

- 5,000 copies of Ordinance 93-015 were printed and disseminated;
- the ordinance has been translated into 7 national languages
- a large press campaign (radio, TV, newspapers) was implemented;
- organization of 11 regional workshops starting in 1993;
- various conferences on the topic.

The numbers above may appear to indicate successful dissemination of information related to the Rural Code, but there has been no evaluation of implementation and its impacts (Ouedraogo et al. p. 37). Dissemination of the information on such an important issue as the Rural Code should have been conducted carefully, with careful monitoring. If the wrong information reaches people, they will take measures to block or circumvent the system. This seems to have been the case in Niger: informal news related to Rural Code traveled much faster than formal news or institutional development. The information was circulated by opponents as well as proponents so many villagers distrusted the Rural Code and feared for their land tenure security. The rumors also appear to have favored an acceleration of land clearing by some villagers to support claims of their land rights.

The experts expressed the following critiques regarding the Land Commissions (Ouedraogo et al., 1996 p. 4):

- the majority of the members of the Commission are staff of technical institutions, which minimizes rural representatives' roles. Besides this quantitative underrepresentation of rural people, their qualitative representation was also questionable. It was unclear how representatives were selected and how well they understand their roles.
- The Office of the Public Domain (theoretically responsible for managing State land) is not represented since this office does not have representatives at local level.
- The heads of the Commissions (Permanent Secretary) are heads of governmental institutions, which implies a bias.

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with the powers take advantage of their position to solve their problem. My neighbor, who attended one of the commission meetings, told me that it's always the same people, the authorities are always there, all the agency heads as well; in a meeting like that what do you think a peasant can say in front of the sous-préfet, the canton chief? In short, for us things haven't changed."

- Governmental institution staff are transferred frequently, which is a risk for the stability of the Commissions for which they are members.
- There was no apparent need for a Permanent Secretary.<sup>7</sup>

The location of the Land Commissions at the arrondissement and commune level was also criticized. The suggestion is to establish them at the village or canton level to make them better able to take actions on land use control and registration of land rights, and to promote sustainable natural resource management.

Among technical difficulties mentioned by the experts was the absence of the implementing regulations of the Rural Code, which were supposed to bring significant clarification. For instance, it was not known in detail how the Land Commissions were to conduct the identification, confirmation and registration of property rights. It was also unclear what type of graphical representation to use to locate the property.<sup>8</sup> Another difficulty was the problem of funds for the operation of the commissions.

The assessment team concluded that in practice, the institutions of the Rural Code at the national level are not functioning at all (Ouedraogo et al., 1996 p. 14). As a consequence, at the local level the institutions are probably also in similar situation. There is even a danger that the local Commissions continue to be active while they don't have any assistance or control from the national level. The local Commissions may continue to implement other agendas than the goals of the Rural Code, either deliberately or by ignorance.

In the report of the Commission of Mirriah it appears that the Commission visited 575 villages. In fact they did not. Instead, they organized two types of meetings. First, chiefs of villages met the Commission at the canton level where the information related to the Rural Code was passed to them. Chiefs were supposed to disseminate the information received to their villages. When the second round of field trips was organized to evaluate the chiefs' work, the Commission members discovered that village chiefs did not disseminate the information to the villagers (Ouedraogo et al., 1996 p. 33). The issue of information is paramount in rural areas. Local institutions have little capacity; they rely on superficial actions; and they consider that sufficient to inform rural people.

The assessment team recommended that there be no involvement of the Land Commission in conflict resolution. This recommendation is very appropriate given that the Commissions do not have the capacity to deal with their existing mandate, and that they would just add one more institution to the large number already involved, ineffectively, in conflict resolution.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

The history of land tenure reform in Niger is a history of conflict. While land conflicts occurred prior to Independence, their number and intensity have increased since then, due to rising rural population, the deteriorating natural resource base, and, tragically, also due to government

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7. Other remarks were part included in the evaluation report: the communication was found to be very weak between the land commissions and other institutions in the arrondissement. Examples were given of institutions in the same building or just nearby and these institutions were not informed regarding the land commissions of the Rural Code.

8. The implementing regulations were finally issued in 1997, after the evaluation was completed.

policy. Each regime has attempted to solve the problem of tenure security engendered by inequalitarian control of land, and in all cases their efforts have worked in the opposite direction. The most recent campaign, to design and implement a Rural Code that would enhance the chances of rural peace and prosperity, has not succeeded any better than its predecessors did, in spite of its participatory process and innovative provisions.

The key institution established under the Rural Code is the local Land Commission, whose principal duty is to register rights to land in order to formalize tenure. There is a serious paradox facing the Commissions, as their early work demonstrates. Given the endemic situation of conflicts, it is not always clear whose rights should be registered, or even which rights should be registered (as in the case of communal or State property). Yet the Commissions are neither authorized to or capable of adjudicating conflicts, and the existing conflict resolution institutions have demonstrated their inability to perform adequately for more than forty years. It is clear that even if external funding resumes and the Commissions become operational, they will be able to accomplish little until the country's conflict-resolution infrastructure is overhauled.

In conclusion, Niger's post-Independence attempts to increase land tenure security have created new problems while failing to solve its old ones. This is ascribed to the inability of each successive government to follow through on its policy declarations with real action, as well as to the partial nature of those policies that were too narrowly focused on "ownership" issues rather than on the development, management, and investment in, the country's land resources.

### ***Recommendations***

- Evaluate the impacts of the Rural Code and the pilot Land Commissions, and identify any problems that have arisen in the villages in order to improve the prospects that future intervention will be effective.
- Analyze the strengths and weaknesses of different approaches to conflict resolution, and develop a system that represents the interests of all strata of rural society. Endow it with the legitimacy, integrity, transparency and resources that it would require, all of which would be substantial.
- Recognize the interrelation among conflicts, land tenure reform and overall rural development, and therefore coordinate, much more closely than in the past, donor, government and NGO support to the Rural Code institutions on one hand and the natural resource management institutions on the other.
- Transform the current sporadic (on-demand by individuals) approach to registration of land rights into a semi-systematic approach. A desirable way to do this would be to require the Commission to register all land parcels in a given village simultaneously, but only upon the village's request.
- Prior to registration, ensure that local conditions concerning lineage land, seasonal herder access rights, and communal land (which vary subtly and sometimes significantly from place to place) are well understood, i.e. make the procedures even more flexible than they already are in the Ordinance
- Prior to registration process, find viable answers to the following questions: Are the costs reasonable and affordable? Are mechanisms for conflicts resolution in place.

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## **APPENDIX I. SELECTED INDICATORS**

CIA World Factbook 2002 (<http://www.odci.gov/cia/publications/factbook/geos/ng.html>)

**Climate:** desert; mostly hot, dry, dusty; tropical in extreme south

**Land use:** arable land: 3.94% ; permanent crops: 0% ; other: 96.05% (1998 est.)

**Irrigated land:** 660 sq km (1998 est.)

**Population:** 10,639,744 (July 2002 est.)

**Population growth rate:** 2.7% (2002 est.)

**Birth rate:** 49.95 births/1,000 population (2002 est.)

**Death rate:** 22.25 deaths/1,000 population (2002 est.)

**Infant mortality rate:** 122.23 deaths/1,000 live births (2002 est.)

**Life expectancy at birth:** total population: 41.91 years

**Ethnic groups:** Hausa 56%, Djerma 22%, Fula 8.5%, Tuareg 8%, Beri Beri (Kanouri) 4.3%, Arab, Toubou, and Gourmantche 1.2%, about 1,200 French expatriates

**Religions:** Muslim 80%, remainder indigenous beliefs and Christian

**Languages:** French (official), Hausa, Djerma

**Literacy:** total population: 15.3% ; male: 21.2% ; female: 9.4% (2002)

**GDP:** purchasing power parity - \$8.4 billion (2001 est.)

**GDP - real growth rate:** 3.1% (2001 est.)

**GDP - per capita:** purchasing power parity - \$820 (2001 est.)

**GDP - composition by sector: agriculture:** 41% ; industry: 17% ; services: 42% (2000)

**Distribution of family income - Gini index:** 50.5 (1995)

**Inflation rate (consumer prices):** 4.2% (2001 est.)

**Labor force - by occupation:** agriculture 90%, industry and commerce 6%, government 4%

**Industries:** uranium mining, cement, brick, textiles, food processing, chemicals, slaughterhouses

**Agriculture - products:** cowpeas, cotton, peanuts, millet, sorghum, cassava (tapioca), rice; cattle, sheep, goats, camels, donkeys, horses, poultry

**Exports:** \$246 million (f.o.b., 2001 est.)

**Exports - commodities:** uranium ore 65%, livestock products, cowpeas, onions (1998 est.)

**Imports:** \$331 million (f.o.b., 2001 est.)

**Imports - commodities:** consumer goods, primary materials, machinery, vehicles and parts, petroleum, cereals

**Debt - external:** \$1.6 billion (1999 est.)

**Economic aid - recipient:** \$341 million (1997)