

THE RURAL CODE PROCESS IN NIGER: Toward an Institutional Framework for Natural Resource Management

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This paper is based on three years of involvement by the author in assisting the development of a complete revision of the laws and institutions related to rural development and natural resource management in Niger: the Rural Code. It will focus on the issues motivating Niger's effort to develop and enact new legislation, and on the process Niger has adopted to make this effort different from those of other countries and earlier Nigerien ones. It will also make reference to the interesting cases of Mali and Senegal, countries with similar heritages but different approaches to the problem. The principal lesson is that real, applicable and effective reform of laws and institutions is much more difficult to achieve than people think when embarking on it.

Background

The Francophone Sahelian countries share a common colonial heritage of resource laws. The laws enacted during the colonial period were extremely statist, especially those concerning the management and control of land and trees. Arriving in the underpopulated Sahel, the French recognized only sedentary agricultural land as having a claim on it, and declared that all vacant and unowned land (*terres vacantes et sans maître*) were the property of the state. This meant all pasture, forest and even fallow land. They further observed, or thought they did, rapid deforestation caused by the demand for fuelwood, other wood products, land for

agriculture, and pastoralism; desiring to protect the resources they enacted severe restrictions on access to trees and tree products by indigenous populations.

After Independence, the Francophone Sahelian countries all felt the need to establish the legitimacy of their nation-states. One means by which they did this was to maintain, and in many cases to intensify, state control over natural resources.

Senegal was the first to address the land issue. "Marrying universal socialist principles with traditional African practice," Senegal's National Domain Law declared that all land was owned by the nation (except for the small amount that had been registered in freehold under the colonial Civil Code). The usufruct rights of land users were recognized, however; anyone who maintained mise en valeur (putting in value) could continue to use the land. Rental, borrowing, lending, and sale were strictly forbidden. In addition, in the first attempt at decentralization, the Law placed responsibility for land management in local Rural Councils, elected representatives of a group of villages totaling about 10,000 - 15,000 people. But decentralization proceeded slowly, taking about twenty years to be effective.

The independent states intensified colonial restrictions on access to and use of forests and trees. They expanded the list of protected species, and reinforced the police functions of the Waters and Forests Department. Mali, for example, declared nearly all the nation's land to be part of a public Forest Domain, including individual holdings; permits were required even to debranch most trees on farms as well as in forests.

Meanwhile, both the economy and the ecology of the Sahel were deteriorating. Export commodity prices declined, a series of droughts devastated crop and livestock production, and populations grew rapidly. With survival at stake, there was an increasing incidence of conflicts over access to natural resources. Herders increasingly sought pasture in traditionally agricultural areas, and farmers sought the ability to grow crops near water points that had been established in pastoral areas. Conflict over resources was aggravated by the fact that Sahelian ethnic groups tend to specialize

occupationally; resource conflict and ethnic conflict became indistinguishable.

Sahelian governments were also less and less able to deal with natural resource conflicts. Economic decline led to a scarcity of revenues, and expenditures were increasingly misallocated as the corruption inherent in long-ruling authoritarian regimes set in. The political bankruptcy of most Sahelian governments eventually led to political transitions that redefined the relationship between the state, local communities, and individuals.

Niger's Rural Code Process

Niger, which had done less to modify colonial natural resource legislation than the other Sahelian countries in the 1960's and 1970's, is currently the most advanced in developing a new, comprehensive set of laws and institutions to reflect the new political and environmental realities. Especially after the 1984 drought, it became clear that centralized authority could not deal with the intensifying conflicts over resources. The problems facing Niger (and the other countries) can be categorized as follows:

1. Farmer-herder conflicts. These arose from inadequate livestock corridors in agricultural areas, ambiguities about the date when livestock could enter fields after the harvest, the lack of enforcement of a northern limit of farming, and increasing farmer occupation of land around water points and rivers.
2. Difficulties of pastoralism. The principal issues here were the inadequate definition of who controlled water points and the tendency, aggravated by drought, for ownership of the national herd to be concentrated in the hands of sedentary farmers and urban residents, so that herders increasingly became "pastoral sharecroppers."
3. Tree tenure. Beyond the colonial and postcolonial restrictions on the use of trees, customary rules discouraged tree-planting and maintenance. Claims to land could be based either on cutting trees

or on planting them, but in the latter case communities or traditional chiefs would lose their authority over the land.

4. The concentration of land ownership. Customary elites retained control of most land, permitting tenants to use it in return for tithe payments; this persisted in spite of government attempts to increase land users' rights. In addition, new lands development (elimination of river blindness, irrigation) presented opportunities for urban elites to take control of large amounts of productive land.

5. The degradation of natural resources. Drought and population growth were putting increasing pressure on all types of land: farmland, pasture, and watersheds.

In the early 1980's, President Kountché established the Development Society, a set of regional and local institutions which can be categorized as top-down participatory democracy. But there was some feedback from the local level, and after the 1984 drought the feedback was: solve all these problems.

An Ad Hoc Committee for a Rural Code was established in 1986, and was upgraded in 1989 to a National Committee, chaired by the Minister of Livestock. Beginning in 1989, the Committee and its Permanent Secretariat organized a comprehensive series of regional and subregional meetings to identify the principal problems affecting all parts of Niger and to understand the regional preferences for solutions to these problems.

The consistent message coming back to Niamey was: "we want private property in land." The challenge facing the Rural Code was how to materialize the concept of private property. This is less straightforward than it might seem for several reasons.

First, the content of private property rights is not universal or absolute: many rights are reserved to the state, as well as to other users. Even Western systems of freehold tenure incorporate many restrictions on owners' use rights, both "easements" and zoning regulations. In the Sahel, seasonal grazing rights of pastoralists have been generally accepted even where farmers consider themselves the landowners. Long fallows, a tradition in much of Niger, may revert to community or chiefly control or may remain recognized as the

property of the previous user. These considerations, and many others, must be incorporated into a definition of private property.

Second, it is not self-evident to whom the ownership should be assigned. Under customary law in most of Niger, most land is considered to be owned by a minority of families: the founding lineages of villages, conquerors or those who originally cleared the land. Most farmers do not consider themselves owners, and pay tithes to those whom they do consider owners. Yet the granting of legally-recognized title to customary owners would immediately create a Latin American style agrarian structure; in addition the "modernization" of customary ownership will inevitably change the content of ownership rights. Also, it is reasonably clear that women would be totally excluded from ownership of land unless special care is taken to ensure their access to it.

Third, there are particular problems associated with assigning property rights to what is usually treated as common property: pasture, water points, and forests. Depending on the specific situation, individuals, families, communities, or larger groupings may have legitimate claims to access to such resources. It is not evident that the concept of private property can be sufficiently elastic to cover them.

Given these considerations, what kind of process should a Rural Code have adopted to ensure a set of laws that would be acceptable to everyone, and thus enforceable? Clearly the only way would be an intensively participatory and interactive design, with large quantities of research to inform policy decisions.

As we have seen, that is the way the Rural Code process began. But it quickly faltered, for practical reasons. International donors, especially USAID, the World Bank and the Swiss Cooperation had supported the early phases quite adequately. But as initial funding dwindled, these donors' bureaucracies were unable to renew the financing at a critical stage. Meanwhile, the FAO came forth with money to hire legal consultants. Even though it was recognized as premature, the drafting of the law began before the research program was defined and before the transitional governments' policy positions were clear. The FAO also erred in recruiting legal drafts-

men from the French tradition of positive law. The result was that the process was transformed from what it should have been -- substantially more reflection on the meaning of private property -- into a debate over specific legal provisions. Successive drafts of an Orientation Law (enunciating the general principles of the Rural Code but not the implementing regulations) were presented, debated and rejected in 1990; a final version was submitted to the National Assembly in mid-1991.

Because of the political uncertainty caused by the transition to the Third Republic, the law had to wait until December 1992 to be adopted by the High Council of the Republic, the successor to the National Assembly. While its form has evolved, the general principles remain the same as they have been since the participatory phase ended in 1990. The Law's provisions can be summarized as follows:

1. It regulates land access rights and land management to "preserve among other things the fragile equilibrium of the ecosystem which is seriously threatened by drought and desertification, in order to optimize productive potential and to ensure a solid basis for true social cohesion."
2. It fills institutional and legal vacuums concerning farmer and herder uncertainty about their land rights.
3. It regulates questions about social cohesion, especially about the resolution of land disputes and of the marginalization of groups such as women.
4. It emphasizes the need to increase the security of rural producers and to "raise their creative energies in the service of development," and allows the nation to take advantages of the adaptive responses of society in the perspective of harmonious, long-term development." [quotes from a presentation by the Permanent Secretary of the National Committee for the Rural Code at a Workshop on Natural Resource Management in Niger, Kollo, Niger, September 1992]

Continuing the Process: from Principles to Implementation

Now that the law is passed, the drafting of implementing regulations has become urgent. As news of its passage spreads (it is being translated into several local languages), many individuals, families and communities will be developing strategies to take advantage of the provisions of the law. The number of resource conflicts is likely to increase and therefore mechanisms for their resolution must be put into place.

The key implementation issues, in no particular order of priority, are:

1. the mechanism for registering land ownership rights;
2. policy on who receives ownership rights when there is a dispute between customary landlord and longtime tenant farmer;
3. an operational definition of *mise en valeur* that permits communities or local governments to influence individual land management practices in a positive manner;
4. the institutional structure to carry out (3.), consisting of some sort of elected, representative resource management body;
5. harmonization of Rural Code activities with those of other governmental and nongovernmental institutions with responsibility for natural resource management;
6. an operational definition of pastoralists' rights to pasture and water resources in zones to which they have traditionally been attached.

The Land Tenure Center is currently conducting research that will generate information relevant to the formulation of issues 1., 2., 3., and 6. Its work, which is funded by USAID, is intended to be supportive of the Rural Code's efforts to transform the socioeconomic

relations among the diverse peoples of rural Niger. Beyond the basic field research, LTC will work with the Rural Code to initiate a set of monitoring instruments to enable the evaluation of progress in implementing the Code, and will provide training to Nigerien officials to enhance their ability to analyze resource tenure problems. LTC is pleased to be part of the process, rather than being in the usual position of a research institution: observing from the outside.