

7/2/96

WORKSHOP IN POLITICAL THEORY
AND POLICY ANALYSIS
513 NORTH PARK
INDIANA UNIVERSITY
BLOOMINGTON, INDIANA 47405-3186

Reprint Files - CPR

**LEGISLATIVE REFORM,
TENURE,
AND NATURAL RESOURCE MANAGEMENT IN NIGER:
THE NEW RURAL CODE**

by

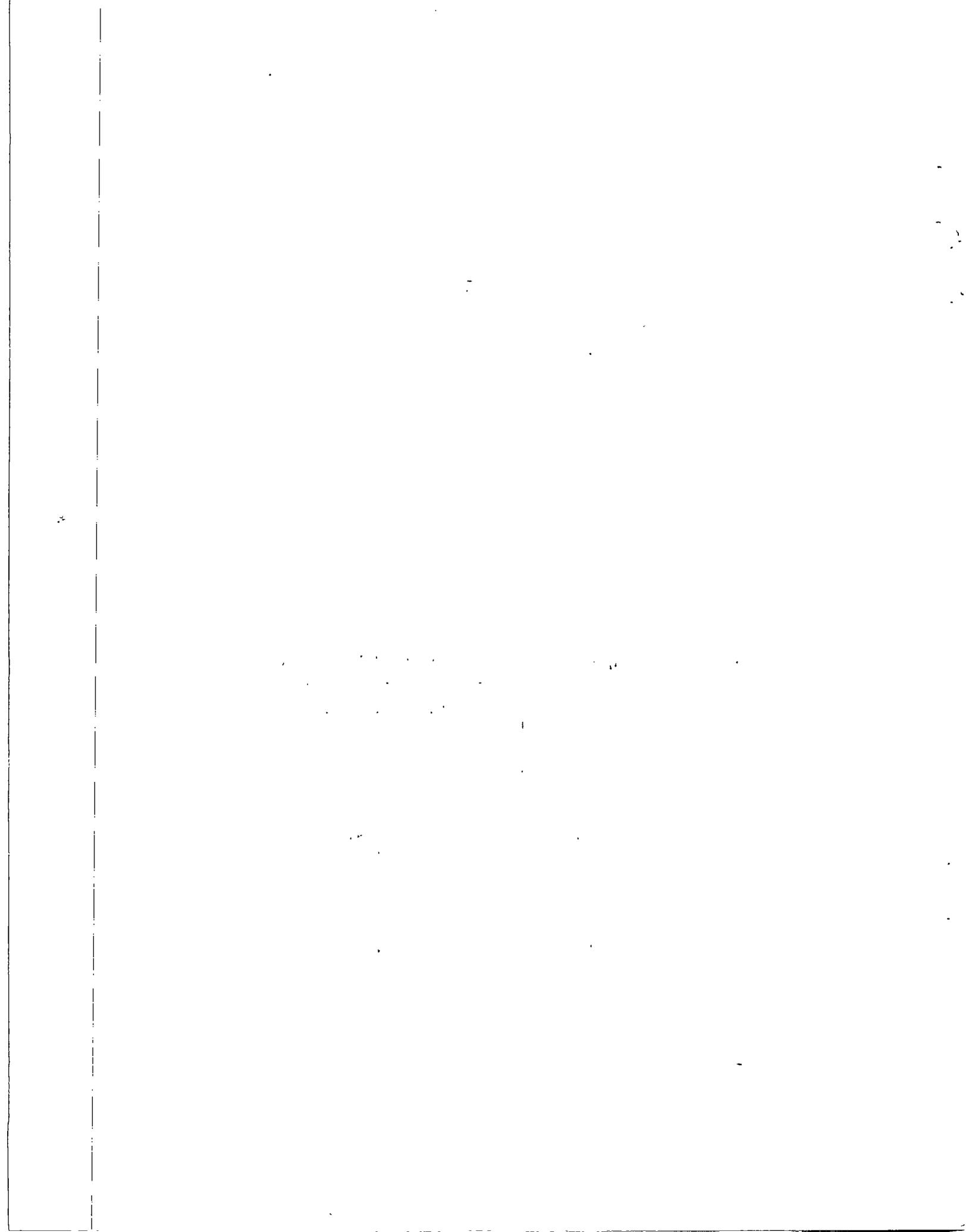
Kent M. Elbow

Paper prepared for the
Comité Permanent Inter-Etats de Lutte contre la Sécheresse dans le Sahel
Support for the paper has been provided by the
United States Agency for International Development

All views, interpretations, recommendations, and conclusions expressed in this paper are those of the author and not necessarily those of the supporting or cooperating institutions.

**Land Tenure Center
University of Wisconsin-Madison**

May, 1996



CONTENTS

BRIEF SUMMARY OF FINDINGS

I. INTRODUCTION

Background and Structure

A Note on the Limited Scope and Specific Nature of the Study

**A Note on the Information Sources Contributing to this Case Study of
Legislative Reform in Niger**

II. SETTING THE STAGE FOR THE RURAL CODE INITIATIVE

A History of Centralization and Introduction of Competing Tenure Systems

The Road to Praia and Decentralization

**The Continuing Dominance of Customary Systems of Tenure and Resource
Management in the Sahel**

Genesis of the Rural Code Project

III. THE POLICYMAKING AND ADMINISTRATIVE ENVIRONMENT IN NIGER, AND THE APPROACH AND METHODOLOGY OF THE RURAL CODE PROCESS

**The Rural Code within the Broader Context of Rural Development, Tenure and
Natural Resource Management and Administration in Niger**

The Unfolding Methodology of the Rural Code

**Summary of Rural Code Methodology and its Degree of Success in Achieving
Objectives**

IV. POLICY CHOICES DEFINED BY THE RURAL CODE PROCESS

Promoting Security of Access Rights to Resources

Conservation and Natural Resource Management

State Institutions, Regional Planning, Private Organizations of Rural Populations,
Credit and Conflict Management

✓ Summary of Rural Code Policy Choices

V. OBSTACLES IN THE WAY OF TRANSLATING PRINCIPLES INTO PRACTICE

Creation of Tenure Management Plans (*Schémas d'Aménagement*)

The Conversion to Private Property

Sustainable Exploitation of Natural Resource Management

Administrative Decentralization

Participatory Associations

The Disconnect Between the Two Prongs of the Rural Code Process:
The Juridical versus the Socioeconomic and Participatory

VI. CONCLUSIONS

ANNEX:

A Tenure and Communications Network for Niger

BIBLIOGRAPHY

BRIEF SUMMARY OF FINDINGS

The Rural Code initiative in legislative reform has yet to find an approach that allows for the marriage of socioeconomic and physical conditions to a flexible and appropriate statutory policy formulation process. This is in spite of explicit recognition on the part of the architects of the Rural Code process that legislation and policy, no matter how *rational*, logical or scientific, are of limited value unless they integrate fully the sociological realities and physical or material limitations of specific settings. Recommendations include a shift in focus from “definitions” to “enablement” and increased emphasis on achieving and institutionalizing multi-directional communication flows.

In spite of its flaws, the Rural Code initiative clearly deserves to be recognized as a courageous effort. The task at hand is unprecedented and vastly complex. Adherents to the Rural Code process themselves realize that the learning process continues and remains, still, far from complete.

I. INTRODUCTION

Background and Structure

The present study was undertaken in response to a request by CILSS¹ addressed to the Land Tenure Center of the University of Wisconsin-Madison to complete a case study of legislative reform in Niger in the area of tenure policy, decentralization and natural resource management. The study was requested in support of a broad and integrated program coordinated by CILSS and designed to follow up the Regional Conference on Land Tenure and Decentralization held in Praia, Cape Verde in June, 1994, and to further the goals articulated during the Praia Conference. Among the strategies promoted in the *Praia Declaration* which aimed to achieve decentralized and participatory management of natural resources in the Sahel was the need to formulate and adopt enabling legislation and supportive policy in each of the nine CILSS-member countries. The objectives of these initiatives would be to empower local populations through, for example, granting legal status and formal decisionmaking authority to local resource management associations. At the same time, the Praia policy platform calls for a high level of knowledge and sensitivity regarding customary tenure and management practices so that they might be integrated into the legislative process.

Among Sahelian countries, the Nigerien tenure and natural resource management legislative reform process is particularly well known. The Niger reform, for example, was cited and discussed by a number of participants at Praia. This Nigerien exercise in policy review and reformulation, underway since 1985, has been attempting to redefine tenure and natural resource management policy through formulation of a comprehensive Rural

¹ Permanent Inter-State Committee for Drought Control in the Sahel, or *Comité Permanent Inter-Etats de Lutte contre la Sécheresse dans le Sahel*

Code. LTC has provided support to the Rural Code process in Niger since 1991 in the form of research and training activities financed through a cooperative agreement with USAID/Niamey.²

The CILSS request for a case study of Niger specified three topics considered to be of interest to CILSS-member countries struggling with their own policy and legislative reforms. These topics included methodology, policy decisions, and obstacles encountered in implementation of the new policies. This report is organized primarily on the basis of these three topics treated respectively in parts III, IV and V. The present section (Part I) contains two brief explanatory notes on the nature and information sources of the study. Section II provides an overview of the contextual and historical issues of natural resource management policy and legislation in the Sahel, and particularly, in Niger. The report concludes by highlighting the critical role of communications in a process of policy reform. A proposed model for a tenure and communications network in Niger is included as an annex to the report.

A Note on the Limited Scope and Specific Nature of the Study

This report is not simply descriptive: it is also an analytical account and thus reflects personal opinion. The topic is such that I believe there is plenty of scope for formulation of reasonable--and possibly contrary--opinions other than those appearing in this report. My primary intention is to synthesize a range of concerns, topics and policies in order to stimulate reflection on a topic of extreme importance and complexity. I have been somewhat selective in what I have chosen to highlight in the report. The reader should be aware that more exhaustive accounts of the Nigerien Rural Code already exist in both English³ and French.⁴

The report does not attempt to formulate comprehensive conclusions and recommendations--both the complexity of the topic and the time limitations of the study work against such conclusiveness. Nonetheless, I will conclude with a general argument that a focus on information flows and facilitation of policy debate at all levels--from the village to the herding camp to the legislative assembly--is the best general approach to the problems at hand. The combination of growing populations and a shrinking natural resource base poses an unprecedented challenge to Sahelian policymakers. The willingness of Nigerien officials to confront the difficult problems of tenure insecurity and natural resource-related conflicts through implementation of the Rural Code process is highly

² In addition, LTC had participated since 1986 during earlier stages of the genesis of the Rural Code project prior to entering into the Cooperative Agreement in 1991

³For a particularly comprehensive outline and analysis of the Rural Code process see Tidiane Ngaido, *Redefining the Boundaries of Control: Post-Colonial Tenure Policies and Dynamics of Social and Tenure Change in Western Niger*, Ph.D. Dissertation, Madison, WI: Land Tenure Center, University of Wisconsin-Madison, 1995. NB: A condensed version of this study is currently being prepared for translation into French.

⁴ The most exhaustive of which is probably Ahmadou Hassane, *Applicabilité du Code Rural au Niger: Nécessité d'une Prise en Compte des Coutumes*, Mémoire de Fin de Cycle, Ouagadougou, Burkina Faso: Institut Panafricain pour le Développement, Direction Régionale Afrique de l'Ouest Sahel, 1996.

admirable. It must be recognized that no pre-packaged solutions are readily available, and choices made in the context of legislative reform in Niger should be seen as courageous attempts to deal with complex situations on the basis of incomplete information and limited human, material and financial resources.

A Note on the Information Sources Contributing to this Case Study of Legislative Reform in Niger⁵

In addition to the research and policy dialogue activities undertaken by LTC in support of the Rural Code process in Niger since 1986, and the stockpile of information collected and disseminated in the course of this research program, the principal investigator for this study spent two weeks in Niger in April, 1996 to explore the themes specified by CILSS and noted above. During this visit a significant number of government administrators and policymakers, researchers, donors, project and NGO representatives and rural producers were contacted and freely shared their time, observations and opinions regarding the Rural Code experience and policies. Especially noteworthy were repeated and lengthy interviews with members of the Permanent Secretariat of the Rural Code in Niamey and representatives of the pilot Land Commission of the Rural Code in Mirria district. In addition, key collaborators at USAID/Niamey and in the USAID-funded Agricultural Sector Development Grant Program, Phase II⁶--a project whose goals include improving the national policy environment regarding natural resource management in Niger through such means as financial and technical support and consultation on initiatives such as the Rural Code--provided rich and relevant observations and guidance to my queries. Finally, documentation of studies, workshops, trainings and policy statements produced at various stages of the nine-year-old process were obtained and examined during travel to Niger.

II. SETTING THE STAGE FOR THE RURAL CODE INITIATIVE

A History of Centralization and Introduction of Competing Tenure Systems

Beginning with the installation of the French colonial administration throughout much of the Sahel during the early 20th century, the state established itself--in legislative terms--as the sole owner of all land that was *vacante et sans maître*. During the first third of the 20th century this phrase was applied to untitled lands with little regard for the customary rights of the resident populations. During this period it was especially difficult for non-French citizens to gain private title to land. However, in 1935 a colonial decree established customary rights as a legitimate basis for the granting of a *concession*--an administrative act granting to an individual or corporation the right to use a particular parcel of land; concessions might eventually lead to acquisition of a private title if certain conditions were

⁵ A formal acknowledgement section is not included in this report. Nevertheless, individuals (they know who they are) contributing views, opinions and information on which this report is based have my sincere gratitude. Thanks also to Mary Hobbs and Kevin Bohrer of the Land Tenure Center who provided comments on an earlier draft of this report.

⁶ *Subvention au Développement du Secteur Agricole, Deuxième Phase (SDSA II).*

fulfilled. However, the burden of proof for establishing customary rights to a particular parcel fell to the local user.

Customary rights were not only recognized but somewhat strengthened in statutory terms with the enactment of decrees in 1955 and 1956 providing for direct registration of customary land rights. In cases of dispute, the burden of proof was now shifted to the state: if the state could not disprove customary claims to a parcel of land, it was obligated to register the land in the name of the claimant. Unfortunately, the enabling legislation necessary to put these decrees into practice was never passed.

Since independence, the pendulum has swung away from private property and toward increased state control or ownership of land throughout the Sahel. The *concession* remained the sole means of obtaining formal recognition of private land rights in Niger (until passage of the Orientation Principles of the Rural Code in March,⁷ 1993 which provided for the conversion of customary rights directly into private, registered rights). A *concession*, by definition, assumes state ownership of land prior to private ownership. In addition, the legal sophistication and complex process for acquiring *concessions* ensured that it was not widely utilized.

Until Independence, the French colonial administration attempted to define rights and management over all natural resources in addition to land throughout francophone West Africa. The ancestor of today's Sahelian forest codes is the colonial decree of July 4, 1935. When the colonial government perceived the threat to the environment posed by the overexploitation of natural resources, its response was to assume the responsibility for managing forest resources. The dual objectives of the French were to conserve forest products such as firewood, charcoal, and lumber, while protecting and restoring the ecologies of degraded regions. The approach adopted by the French under the original decree was to protect resources through the enforced restriction of their use. Access to forest resources was to be regulated through such mechanisms as the creation of forest reserves within which use rights were greatly restricted or suspended, and the compilation of a list of protected tree species which were not to be cut or otherwise mutilated. The 1935 decree vested the forest service with the police powers deemed necessary to enforce the prohibitions established by the decree. The recruitment of forest agency personnel from the military and the *gendarmerie* placed further emphasis on the agency's police role.

It is striking the extent to which the spirit and essential provisions of the 1935 decree survive in the present forest codes of the independent Sahelian states. This early code provided the legal precedent for the state to continue to assume virtually all management rights and responsibilities within the domain of the forests. For example, the forest code currently in force in Niger declares in its first article that all *vacante et sans maître* (unoccupied or untitled) forest land is the property of the state. Although this has begun to change in recent years, contemporary forest codes in Niger and most Sahelian countries maintain an approach based largely on lists of prohibitions that are enforced through a system of fines and permits. Under present-day Sahelian forest codes the state determines

⁷ *Principes d'Orientation du Code Rural.*

and regulates virtually all rights. A reaction against this centralized, *dirigiste* approach began defining itself through policy dialogue and workshops taking place in the Sahel in the course of the past decade and a half. The Rural Code process in Niger along with legislative projects to revise forest codes in a large number of Sahelian states are, in part, the product of a general reevaluation of natural resource management policy in the Sahel.

The Road to Praia and Decentralization

Niger and the countries of the Sahel have an impoverished natural resource base. The bulk of Niger lies in the Sahara Desert, and the majority of the rainfed agricultural areas in the southern part of the country receive significantly less than the 800 annual millimeters received on average in the extreme southwest of the country. Moreover, rainfall distribution patterns vary significantly within and between seasons. Soils are generally poor and vegetation sparse relative to more humid zones. The overall physical environment is best described as fragile and therefore susceptible to shocks introduced through overexploitation or climatic variability.

The modern era of policy reform starts with the drought. The Sahelian drought of the late-1960s and early-1970s highlighted advanced environmental degradation throughout the region. The severity of hardship endured by rural populations due to loss of agricultural produce and livestock prompted mobilization on the part of the international community. Early foreign aid consisted of drought relief, but later moved toward policy interventions in search of long-term solutions. The Inter-State Committee for Drought Control in the Sahel--CILSS--was created in 1973 and has since assumed a key role in policy reform. Paradigms such as Hardin's "tragedy of the commons"⁸ reinforced policy prescriptions favoring either private or state ownership and control of land and natural resources. The limitations to these approaches soon became apparent, and a consensus began to form which was critical of state enforcement of rules, as these had not proven successful in ensuring sustainable exploitation of resources.

A series of CILSS/Club du Sahel-sponsored international workshops, encounters and conferences (Nouakchott, 1984; Ségou, 1989; and Praia, 1994) increasingly emphasized local--though not necessarily individual--control over natural resources. For example, *Gestion du Terroir*, or village-level land use planning, was endorsed in 1984 at Nouakchott and emphasized both local participation in resource management and sustainable use. *Gestion du Terroir* has emerged as a dominant paradigm in the context of development projects in the Sahel. At the same time, integrated management of natural resources (whether soils, pastures, forests or water) has become universally accepted as superior to former sectoral approaches.

⁸ Hardin in his 1968 article of this name assumed that common property was not subject to rights of exclusion or management on the part of any corporate body and therefore would inevitably suffer degradation as demand on the resource increased. Garrett Hardin, *The Tragedy of the Commons*, *Science* 162: 1243-48.

A milestone within this process was the *CILSS/Club du Sahel Regional Conference on Land Tenure and Decentralisation to Achieve Democratic, Participative and Decentralized Management of Natural Resources in the Sahel*, held in Praia, Cape Verde in June of 1994. The conference's emphasis on popular participation in resource management was reflected in the diversity of backgrounds expressed by the 185 participants which included rural producers (farmers and herders), civil servants, elected officials, private business people, donors, journalists, women's groups, researchers and NGOs.

Some of the primary goals emphasized in the *Praia Declaration* include: appropriate and accessible legislation supportive of local rights and resource security; greater knowledge and respect for customary systems of resource management; recognition of the complexity of local tenure systems; flexible legislation at the national level to allow for local specificity and innovation; recognition of rights for a variety of actors such as herders and fisherman as well as farmers; legal protection for marginalized groups; regional planning for environmental protection; improved circulation of information; improved training, consciousness-raising and educational programmes at all levels (from local populations to state agents); development of institutions for conflict resolution; better understanding and integration of NGOs and associations by socio-professional category; and family planning. A number of the working groups at the conference stressed the need for greater availability of credit to local associations, regardless of traditional criteria such as land ownership.

The multi-pronged and multi-disciplinary approach to land tenure and natural resource management in the Sahel articulated in the *Praia Declaration* is the result of many years of research and policy dialogue and represents a departure from single-disciplinary approaches. For example, legislative reform is seen as one piece of a much larger package that includes research, training and education, institutional reform, and broadened access to financial as well as natural resources with an emphasis on marginal groups. One should add, however, that concerning the *Praia* policy platform, in spite of its identification of important issues and its holistic approach, most of the suggested reforms remain at the hypothetical stage and face their true test on the uncertain road toward implementation.

Finally, the key cross-cutting solution offered by the CILSS policy dialogue is here suggested to be found in the theme of increasing flows and circulation of information. The present case study of Niger identifies communication constraints as a limiting factor to popular participation in policy dialogue and implementation. A model of a proposed tenure and communications network for Niger is outlined in an annex to this report to further debate on solutions to this type of constraint.

The Continuing Dominance of Customary Systems of Tenure and Resource Management in the Sahel

Any approach to land tenure and resource policy formulation in Africa needs to recognize a fundamental reality: tenure and management systems currently in existence are

overwhelmingly based on custom. It is generally recognized by policymakers that variations of customary tenure arrangements within countries can complicate policy formulation and implementation. In spite of this recognition there can be a tendency to attempt to override existing variations with a national standard. This case study of legislative reform in Niger suggests that the rigidity of imposed (*replacement*)--as opposed to integrative, socioeconomically-aware and flexible (*adaptation*)--policies,⁹ even if designed to facilitate trends already in motion in the customary context (e.g., privatization of land parcels; or legal sanction of customary authorities' role in conflict resolution), are not guaranteed to accomplish their goals. Material constraints to policy implementation along with resistance on the part of some groups as opportunity sets become modified or unevenly applied across populations can combine to thwart the most well-intentioned objectives.

The guiding principle of "customary" African tenure systems--that rights are based on social identities--continues to survive more or less intact throughout West Africa. Thus one's rights to land are generally a function of family membership and consequent relation to the "founding" family, one's position within the family (e.g., relation to the patriarch), marital status, gender, age, ethnicity, and longevity of residence. Today one witnesses an increasing tension between claims based on social status and those based on political strategic connections or alliances. Thus an individual having been granted land rights by a Canton Chief might become embroiled in a conflict with a family claiming the same parcel based on relations to the village chief or founding family.¹⁰ In the contemporary era ambiguous or opposing policies have likewise created openings for overlapping claims based on differing reference points (i.e., those pitting customary rules against official policy, or those arising from different periods within the longterm context of changing state policies).¹¹

III. THE POLICYMAKING AND ADMINISTRATIVE ENVIRONMENT IN NIGER, AND THE APPROACH AND METHODOLOGY OF THE RURAL CODE PROCESS

CILSS requested the Land Tenure Center to investigate the "methodology" of policy formulation used by the Rural Code (the topic of the present section) in addition to identifying policy decisions (the topic of Part IV) and problems encountered in implementation (the topic of Part V). I have interpreted this part of the assignment as an

⁹ The terminology is from John Bruce and Mark Freudenberger, *Institutional Opportunities and Constraints in African Land Tenure: Shifting from a "Replacement" to an "Adaptation" Paradigm* (Madison, WI: Land Tenure Center), 1992.

¹⁰ An example following this model is described in Mary Hobbs et al., *Regulating Resource Access in Niger: A Village-level Analysis of Conflict Management and the Role of the Tenure Commissions* (Madison, WI: Land Tenure Center; and Niamey: USAID), 1995.

¹¹ This is a central focus of Tidiane Ngaido, *Redefining the Boundaries of Control: Post-Colonial Tenure Policies and Dynamics of Social and Tenure Change in Western Niger* (Ph.D dissertation. Madison, WI: University of Wisconsin-Madison), 1996.

invitation to describe and comment not only on the Rural Code's consciously chosen methods, but also on constraints to methodological innovation. The Rural Code process was not introduced in a vacuum, and like all processes it has in part been defined (not always through conscious choice) as a function of preexisting institutions and procedures.

This section is split into two sub-sections: the first provides a sketch of the preexisting administrative and institutional environment; and the second identifies the articulated or observable choices of policymakers and scholars defining the philosophy, approach and procedures to be employed in achieving the global objectives of improving resource management practices, increasing tenure security, and empowering local populations to manage natural resources.

The Rural Code within the Broader Context of Rural Development, Tenure and Natural Resource Management and Administration in Niger

Policy reform is by no means a straightforward process in Niger given the overlapping jurisdictions of autonomous and often isolated ministerial bodies, subdivisions and inter-ministerial units. This confused environment is further complicated by the fact that reform initiatives, even those with overlapping themes, might be supported by distinct donors, perhaps with divergent development agendas, working in collaboration with different administrative units.

Moreover, a tradition that considers policy reform in terms of drafting elaborate legal codes tends to lock policymakers into a view of legislation as an end in itself. Salacuse, in the course of comparing the French legal tradition to English common law notes: "[m]uch of French law is to be found in codes. The codes are systematic, comprehensive statements of the legal rules governing particular areas of the law."¹² The French approach suggests a primary emphasis on codification of (rational) rules, perhaps to the neglect of practical concerns regarding implementation and socioeconomic content of rules.

There are two central theses in this sub-section. One is that it is difficult to break through administrative constraints given a *dirigiste* legislative tradition and dependence on external support. The other thesis is that the legislation produced often reflects the segmented nature of the administrative units that produced it. The Rural Code initiative--touting interministerial cooperation and a holistic legislative approach--is a self-conscious attempt to overcome such constraints. Following is a description of the administrative and legal environment from which the Code is to emerge.

Recent or ongoing legislative reform instrumental in tenure and natural resource management in Niger is not strictly speaking limited to the initiative known as the Rural

¹² Jeswald W. Salacuse, *An Introduction to Law in French-Speaking Africa: (Volume I) Africa South of the Sahara* (Charlottesville, VA: The Michie Company), 1969. A particularly insightful analysis of the difficulties of replacing customary law with statutory law in the French tradition is contained in Jean-Philippe Platteau, *The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment* (*Development and Change* Vol 27: 29-86), 1996.

Code, although the reforms noted here are, by their nature, linked to the Rural Code process. However, legislative jurisdictions are often confused and overlapping.

A World Bank project document,¹³ for example, notes that there are five government structures that deal with land tenure issues relevant to natural resource management: the Permanent Secretariat of the Rural Code (Ministry of Agriculture and Livestock); the Interior Ministry; the Ministry of Justice; the Land Use Planning Department (Ministry of Equipment); and the Regional Development Department (Ministry of Finance and Planning). Natural resource management policy originates in the Ministry of Water Works and the Environment. NRM policy also plays a direct role in land as well as in resource tenure. For example, the first article in the current forest code states that untitled forest (*vacantes et sans maître*) belong to the state. While the National Committee of the Rural Code is composed of representatives of these and other ministries, it is, along with its executive arm, the Permanent Secretariat of the Rural Code, formally under the authority of the Ministry of Agriculture and Livestock.¹⁴

The apparent incongruence between ministerial turf boundaries and the crosscutting mission of the Rural Code is due to one of the major innovations of the process: to approach resource management in an interdisciplinary, integrated and participatory fashion. These principles challenge traditional bureaucratic structures and procedures. This “new” approach to resource management is not without its complications. Traditional partitions existing between the various ministries responsible for such policy arenas as land, forest resources, water, community associations and economic interest groups, have not evaporated in the course of the effort toward integrated management of resources. Furthermore, sub-divisions (*Directions*) within Ministries such as Agriculture or Water Resources and the Environment are often structured sectorally as has long been the tradition in Francophone bureaucracies.

Adding to the general administrative untidiness and confusion in instituting an integrative approach such as the Rural Code is a multitude of autonomous policies related to economic interest groups, cooperatives, community associations and non-governmental organizations of all types. Such legislative guidelines, which regulate and define the permissible parameters for rural community organization, involve a second tier of ministerial or sub-ministerial structures. Nonetheless, the Rural Code process explicitly intends to orchestrate the formulation of all policies related to tenure and management of natural resources, in addition to those dealing with rural organization. Viewed in this context, one can easily appreciate the task at hand.

¹³ World Bank, *Staff Appraisal Report (Republic of Niger): Natural Resources Management Project* (Washington: World Bank), 1995:81.

¹⁴ In February, 1996 the Ministry of Agriculture and Livestock combined with the Ministry of Water Works and Environment to form the Ministry of Rural Development, Water and Environment. The World Bank document study referred to above was completed prior to this development, and I treat it here as a formality that has not yet taken practical effect. For illustrative purposes I have retained terminology referring to the ministerial structures existing prior to February 1996, since this is reflected in virtually all available documentation.

Furthermore, the Rural Code is not the only natural resource management and administration policy reform process currently being undertaken in Niger. In September, 1989 an interministerial Sub-Committee for Rural Developpement (SCDR)¹⁵ undertook the task of defining a legally-sanctioned policy framework for rural development in Niger. The efforts of the SCDR resulted in enactment of the *Guiding Principles of Rural Development Policy* in Niger in August 1992.

One might recall the traditional enforcement orientation of the Francophone approach to natural resource management as outlined above. The *Guiding Principles* document represents a striking departure from this tradition. This policy statement specifies four major strategic categories: natural resource management; popular participation and a redefinition of the role of the State; food security; and intensification and diversification of production. The first category--natural resource management--is the definitive domain of the Rural Code, but broader principles established and formalized in the *Guiding Principles*--such as integrated resource management, decentralization of authority, equitable access to natural resources, increasing responsibilities and participation of rural producers, and security of tenure--remain as an umbrella policy to be integrated into all levels of policy and legislative formulation.

It is also important to note that, in broad terms, the Nigerien *Guiding Principles of Rural Development Policy* is very much in line with the policy platform articulated in the Praia Declaration. Particularly noteworthy are the following recommendations cited in the *Guiding Principles* and declared in the policy document to have been formulated in the context of a series of national workshops (the workshops are listed and discussed below):

- the necessity of taking account of existing strategies of rural producers;
- the restoration and preservation of an increasingly threatened environment;
- an interdisciplinary approach emphasizing *aménagement de terroirs* (village-level land and resource use planning)
- the importance of an appropriate and conducive economic and judicial environment.

In addition, the *Guiding Principles* legislation upholds the importance of such strategies as family planning, the availability of credit to rural populations, and regional coordination through resource use planning across areas much larger than village territories, again reflecting concerns identical to those raised at the CILSS/Club du Sahel-sponsored regional conference at Praia. The issue raised here is that this crosscutting piece of legislation is intended to guide (NOT to displace) the more specific--and at present sometimes conflicting--legislation either existing or in the process of reform in areas such as agricultural and livestock production, forestry, administrative decentralization and rural

¹⁵ *Sous-Comité Développement Rural* The SCDR, as was the National Committee of the Rural Code, was attached to the Ministry of Agriculture and Livestock, and was presided over by the Ministry's General-Secretary--at least until February, 1996 (see note 14).

associations. Moreover, natural resource management policy in Niger does not stop at legislation--it also includes "plans" and "programs."

In 1992, the same year as adoption of the *Guiding Principles*, the government of Niger merged the Integrated Program for Natural Resource Management (*PIGRN*) under the Ministry of Agriculture and Livestock and the National Action Plan to Combat Desertification (*PNLCD*) under the Ministry of Water Resources and the Environment to form the National Natural Resources Management Program (*PNGRN*). Another interministerial body, the Natural Resources Management Cell (*C/GRN*--under the umbrella of the Ministry of Agriculture and Livestock and reporting to the Sub-Committee for Rural Development--see above) was named to coordinate the *PNGRN*. The *C/GRN* is responsible for ensuring that the translation of the *Guiding Principles* into projects and activities remains faithful to the intentions of the framers of the policy.

While many plans, programs and legislative reform projects cut across ministries, traditional ministerial jurisdictions are preserved. The Ministry of Water Resources and the Environment retains primary responsibility for water, forest, wildlife and fisheries resources. A revised forest code, for example, has recently been drafted under the auspices of the Direction of the Environment and is intended as a complementary legislative text to the Orientation Principles of the Rural Code. The proposed text presents itself as a mildly reformed successor to the forest code currently in force, which upholds the tradition of top-down, sectoral enforcement previously described. However, the new Code does feature a number of concessions to community tenure and management rights.

Another layer of legislative reform activities in Niger concerns decentralization, one of the fundamental planks of the Praia Declaration. Administrative decentralization in Niger is under the jurisdiction of the Ministry of Territorial Administration and Decentralization.¹⁶ In 1994 legislation sponsored by this ministry was adopted to extend to districts and municipalities the status of legal entities, thus allowing them responsibility over local finances and management of public services and community assets, and requiring them to be represented by elected bodies (District Councils--*CONSARS*--and Municipal Councils). The legislation has yet to be implemented.¹⁷

Decentralization of natural resource tenure and management authority is envisioned to occur through legislative reforms aimed at liberalized regulation of local (e.g., village-level) natural resource management entities. Such entities currently exist primarily as project-initiated resource management committees which rarely conform to existing regulations which might grant legal status. Currently, possibilities for acquiring legal recognition is in place for the following types of entities: *associations* and other non-governmental organizations (defined as not-for-profit organizations and regulated by

¹⁶ *Ministère de l'Administration Territoriale et de la Décentralisation.*

¹⁷ The current military government of Niger, in power since launching a successful *coup d'état* in January, 1996, has scheduled elections for July, 1996. Information is not available regarding the extent to which elections are planned for *départements* and *arrondissements*, or whether territorial boundaries will follow the 1994 guidelines.

Ordonnance 84-06 of March 1, 1984), economic interest groups (*GIE*--defined as "for profit" organizations and introduced, defined and regulated by Ordonnance 92-48 of October 7, 1992 comprising Book I of the new Commercial Code), cooperatives (also assumed to have a "for profit" orientation and regulated by Ordonnance 89-010 of April 7, 1989), and wood marketing associations (*marchés ruraux*--introduced, defined and regulated by Ordonnance 92-037 and the application decree 92-279 of August 21, 1992).

Existing legislation that might allow for devolution of natural resource management authority in Niger to rural organizations originates in a variety of ministerial settings. This category of legislation is on the whole either rigid and hierarchically oriented (as is true of legislation regulating cooperatives--although a less rigid text proposed as part of the Rural Code process is currently under consideration for adoption), very specific to a particular activity (as in the case of the wood marketing associations), or unknown and underexploited among groups organizing for natural resource management (such as the legislation introducing economic interest groups). The Rural Code aims to liberalize cooperative legislation, and has influenced the decentralization process regarding wood marketing associations by sponsoring preliminary legislation which granted priority exploitation rights of forest resources to local communities in May, 1990.

In sum, many legislative and policy projects are underway, along with a number of internationally-supported "action plans" to support improved environmental management in Niger. Initiation and implementation responsibilities regarding these various projects are assigned to particular ministries, departments within ministries, or interministerial committees created for specific purposes. Financial, material and technical support is provided by a variety of donors, each usually targeting a particular sector and collaborating with a specific ministry or department. Separate interministerial bodies have been created to coordinate policy implementation, to define rural development policy, and to formulate resource tenure and management policy. The Rural Code project is at center stage, but the lines of authority and responsibility--and especially those of communication and coordination across units--are not always clear.

Genesis of the Rural Code Project

The CILSS-sponsored international conferences and workshops noted above (Nouakchott, 1984; Ségou, 1989; Praia, 1994) had parallel events at the national level in most Sahelian countries. Among the important encounters that took place in Niger one can cite the National Seminar on Rural Intervention Strategies in Zinder (November, 1982), the National Debate on Desertification in Maradi (May, 1984), the National Debate on Livestock Raising in Tahoua (April, 1985) and Strategies for Development of Livestock in the Pastoral Zone in Niamey (February 1986). Some of the broad recommendations emerging from this series of workshops have been noted above. The recommendations result from a set of concerns--the bulk of which are related to environmental degradation--articulated by one observer (Yacouba, 1995) as the following:

- *decreasing availability of arable land;*

- *loss of soil fertility along with abandonment of fallowing;*
- *colonization of parts of the northern pastoral zone by farmers and a consequent reduction of pasture resources;*
- *uncontrolled and unplanned exploitation of virgin lands;*
- *general environmental degradation;*
- *tenure insecurity;*
- *limited impact of rural development projects and activities;*
- *inappropriateness of natural resource exploitation techniques.*

In light of the above observations it was agreed that there was need for a Rural Code that would take into account socioeconomic considerations in addition to those of a purely development orientation. An informal working committee was named by administrative authorities in 1985 and given responsibility for defining the necessary conditions for elaboration of a Rural Code. In May, 1986 a formal ad hoc committee was designated by legislative decree and assigned the following mandate:

To reflect on the nature of integrated management systems of rural resources and consider how to orient such systems so that they might achieve development goals in a holistic and harmonious fashion;

To propose management regulations and tenure norms conducive to preservation of ecological equilibrium along with profitable returns to investment.

In July, 1986 the approach of the Rural Code process as it was then understood was summarized in a document entitled simply, *Introduction to the Rural Code*.¹⁸ This document prefaces its discussion of the project's "philosophy" with a justificatory list of motivations for the project. In addition to the mostly environmental concerns and a fear of tenure insecurity noted above, the increasing occurrence of conflicts between herders and farmers figures prominently in the *Introduction to the Rural Code* as a primary instigation for the project. Concern is specifically expressed regarding security of access to resources on the part of transhumant herders. Additional concerns listed indicate awareness of and willingness to confront problems related to economic development and the evolving nature of rural societies and social relations. Concerns in this category include:

- *The delicate problem arising from development of sites for dry season gardening (thus excluding other uses of these sites).*
- *The monetarization of the rural economy and the corresponding rise in marketable value of plots stimulating an increase in land transactions (leases, sales, loans, mortgages, etc.).*
- *Structural changes affecting the rural sector (long distance migrations in search of off-farm work and urbanization) resulting from demographic pressure.*

¹⁸ *Note Introductive sur le Code Rural.*

- *Fragmentation of agricultural plots (resulting from inheritance practices and tendencies toward nuclear rather than extended families) and the problem of women's access to land (especially in the case of widows, divorced women, orphans and unmarried women).*

- *Confiscation of some lands by the state for reasons of public utility (classified forests or reserves, irrigation schemes, sub-divisions) and accompanying problems of compensation or subsequent allotting of the land.*

The philosophy of the Rural Code project expressed in the *Introduction* can be outlined through reference to three principles: the equal validity of customary and written law; adoption of an integrated or holistic approach to natural resource management; and the assumption that clarification and protection of individual and collective tenure rights will serve development goals.

First, the *Introduction* identifies the need to harmonize oral and written rules--that is, to coordinate customary and statutory law. The subsequent elaboration of this objective clearly takes customary law as the starting point and declares that "the Code must therefore assume an evolutionary and dynamic character which leads to a process of flexible, voluntary and progressive transformation of the conditions of production, as well as of the [lifestyles] of populations (emphasis in original)."¹⁹ The suggestion is that development can and should proceed, but not at the cost of undermining existing socioeconomic elements. The method eventually chosen is the transcription of customary rights, i.e., their conversion into written rights.

Second, the *Introduction* supports an integrated approach to natural resource management. The Rural Code aims to replace existing texts regulating not only land use and access, but also natural resources such as forests, water points and pastures. The method chosen to do so is the collection, analysis and reformulation of legislative texts.

Third, the *Introduction* treats development and clarification of tenure rights as flip-sides of the same goal. The approach is to identify, define and protect rights from the level of the individual to the family to the regional administrative collective. While the "development" emphasis is to result in rational management of resources, the "tenure" approach is to ensure justice and social harmony. Significantly, the *Introduction* notes that true participation in the process will avoid the chronic problem of non-application of state codes and regulations that are not compatible with socioeconomic norms and customs. This principle provides the rationale for what could be taken as the overall approach (methodology) chosen for the process to formulate a rural code in Niger.

It is the dual role of the Rural Code--to secure rights and achieve economic development--that justifies the two defined axes of the project: one juridical and the other socioeconomic. It is here that the methodology of the project is finally articulated in its

¹⁹ *Note Introductive: 6.*

broad outlines. The methodology logically consists of two trajectories: the first is to collect, analyse and eventually reformulate the texts regulating tenure rights, management of natural resources, conflict resolution and related themes; while the second consists of the analysis--and eventual integration of this analysis into the Rural Code process--of existing social, tenure and production practices in rural settings. The second is strikingly reminiscent of the recommendation of the Praia Conference to better understand and take account of customary systems of resource tenure and management. I suggest, however, that at the time of the drafting of the *Introduction to the Rural Code* (1986), the “principle” of sociological awareness had yet to evolve (and, as of the time of this writing, still has not) into a clear “methodology” defining how the goal is to be achieved. However, the *Introduction* provides a hint.

The *Introduction* upholds the principle of participatory and decentralized involvement in the Rural Code process. The document notes that implementation of this approach is compatible with the Development Society--the then-existing government-ordained hierarchical network of cooperatives, youth groups and state officials through which participatory development was to be achieved. One might suspect that the Development Society was to provide the mechanism (“method”) envisioned by policymakers involved in the early stages of the Rural Code process to achieve a decentralized and participatory process. If this is the case, such an expectation was not destined to be satisfied given the demise of the Development Society along with the military government in 1991. Thus, while elements (e.g., the collection and analysis of current texts; initiation of studies) of a methodology have been clear and explicit at least since 1986, a methodology to ensure the participatory and sociologically-informed character of the process has of necessity emerged in a more ad hoc fashion.

The Unfolding Methodology of the Rural Code

In my view, the deceptively complex nature of the Rural Code’s dual purpose: development-encouraging legislative reform in tandem with and based on a sociologically-informed quest for tenure security--is at the heart of subsequent difficulties faced in developing a workable methodology and subsequent implementation of the Code. This is not to suggest that the dual purpose is either incorrect or unworthy of praise. This view requires some elaboration.

The *Introduction to the Rural Code* declares that the Rural Code project is not to be an intellectual exercise. It is not a project to be appropriated by experts. One is obliged to consider the subsequent history of the Rural Code process to see that this declaration has not been completely successful. Documentary records reveal the heavy participation of international legal experts in the defining stages of the Rural Code process which featured a strong emphasis on the “juridical” prong of the mission noted above. Among the contributors and documents produced one notes Alain Rochegude, *Les aspects juridiques du code rural: rapport préliminaire de mission*, 1987; Monique Caverivière, *Problématique et Premières Propositions d’Orientation*, July, 1989; Marc Débène, *Rapport de Mission*, September 1989; Etienne Le Roy, *Evaluation de la Politique*

Foncière: Rapport de Mission, February/March, 1990. These international experts contributed significantly to the form and content of the *Orientation Principles of the Rural Code*, enacted in 1993 (although there was also, sporadically, a public airing process in place to allow for discussion of the evolving principles--see below). International experts have also played a significant role in studies or actual draft proposals of some of the application texts currently under consideration for enactment (Messanvi Foli, Gerti Hesseling). Nigerien experts have contributed additional draft proposals of supplementary texts (Hamidou Arouna Sidikou, Eliane Alegbada). Such input has been strong enough to prompt the observation of Peter Bloch in 1994²⁰ that the role of foreign experts has perhaps been too influential in the process, particularly regarding the drafting of legislative texts. Bloch recommends a better utilisation of researchers and technical advisors.

As noted above, the second prong of the Rural Code process as stated in the introductory document is that of focusing on awareness of socio-cultural conditions, practices and preferences. Two strategies were followed to accomplish this goal: 1) activities were undertaken in support of the declared "iterative" nature of the process; and 2) beginning in 1990, a formal research program investigating various aspects of tenure and natural resource management in Niger was initiated and executed by the Land Tenure Center.

1) Activities in support of the "iterative" process include:

- In 1987-88, at a relatively early stage of the Rural Code process, a campaign²¹ was initiated by the National Committee of the Rural Code to collect and centralize information regarding tenure and natural resource management systems, customary practices, conflict resolution institutions and procedures, production systems, and characteristics of rural organizational structures originating in the various regions and sub-regions of Niger. A survey instrument (*Aide-Mémoire*) enumerating the types of information sought was circulated to regional working groups, composed of farmers, herders, representatives of non-governmental organizations and rural development projects, and technical agents. The regional working groups had been established in view of collecting the information, then synthesizing and formalizing the information into *monographies*, or regional profiles. The *monographies* were presented and reviewed in the course of regional workshops that took place simultaneously in each of the seven departmental capitals in October, 1989 in preparation for the national workshop in Guidiguir (see below).

²⁰ Peter C. Bloch, *Attentes et Contraintes du Code Rural* (présenté à l'Atelier-Bilan sur le Code Rural, Dosso, Niger, 31 August - 3 September), 1994.

²¹ The campaign is described in Moustapha Yacouba, *Processus d'Elaboration du Code Rural au Niger: Contraintes et Perspectives* (Niamey: Secrétariat Permanent du Code Rural, Ministère de l'Agriculture et de l'Elevage), 1995: 3-4.

- The contents of proposed texts were, on a number of occasions, discussed in public fora--for example, during national workshops held in Guidiguir, 1990, Dosso, 1994, and Maradi, 1995.
- The framework policies (formalized in the *Orientation Principles*) were "popularized" (widely diffused through various media and means) following enactment of Ordonnance 93-015 in March, 1993.
- Translations of the *Orientation Principles* into five local languages were completed and distributed.
- Training sessions of RRA/PRA--or MARP (*Méthode Accélérée de Recherche Participative*)--participatory research methodologies were offered at a number of levels and to various target groups, including the members of the two pilot land commissions established in March, 1994.

2) Research projects undertaken by the Land Tenure Center²² to illuminate practices and problems in natural resource management at specific sites include:

Temporal Change Analysis Around the Village of Karé Kopto and Parc National du W (Stephen J. Leisz: January 1993)

Land Use Conflicts in Western Rural Niger: Kollo and Tillabery Arrondissements (Tidiane Ngaido: April 1993)

Access to Resources in the Téra Arrondissement, Niger: Background and Recommendations for Rural Code Reform (Annmarie Terraciano: June 1993)

Tenure Relations in Three Agropastoral Villages: A Framework for Analyzing Natural Resource Use and Environmental Change in the Arrondissement of Boboye, Niger (Lynne (Loofboro) Heasley: June 1993)

Implementing the Rural Code: Perceptions and Expectations in Rural Niger (Ngaido: November 1993)

Contested Terrain: The Changing Politics of Land Use in Téra, Western Niger (Terraciano: May 1994)

²² This is not to suggest that participation of the Land Tenure Center in the Rural Code process was limited to research projects. LTC provided, for example, the translations of the *Orientation Principles* into five languages referred to above, and contributed to training of key personnel in MARP methodologies as well as in theories and practices regarding land tenure and natural resource management in Sahelian countries. In addition, LTC helped to facilitate conferences, served as a liaison between the Permanent Secretariat of the Rural Code and USAID, and drafted a preliminary monitoring and evaluation study. See Lake and Gage, 1995 for a complete account of LTC contributions to the Rural Code process.

The Politics of Mamure: A Case Study of Agropastoral Production Systems in Southwestern Niger ((Loofboro) Heasley: 1994)

Regulating Resource Access in Niger: A Village-Level Analysis of Conflict Management and the Role of the Tenure Commissions (Mary Hobbs, Fati Alfari, Aicha Mamadou, Ahmed Youssouf and Sidikou Aboubacar: 1995)

Redefining the Boundaries of Control: Post Colonial Dynamics of Social Change and Resource Management in Western Rural Niger (Ngaido: 1996)

In broad terms, Lake and Gage sum up Land Tenure Center research undertaken in support of the Rural Code process as follows:

Four important themes have emerged from LTC research projects which will prove valuable to policymakers and donor agencies: 1) the influence of social position on an individual's access to land and natural resources; 2) the importance of the integration of agricultural and pastoral economies; 3) the effects of the contradictory national legislation on rural land users; and 4) the difficulty of identifying "traditional" land tenure systems in Niger.

Of the themes noted, only the second has figured in policy statements and legislative documents produced in the course of the Rural Code process--and the theme of integrated management of natural resources was well established as a basic principle of the process *since well before initiation of the LTC research program.*²³ This observation suggests a "disconnect" between the juridical and the sociological prongs of the approach adopted by the Rural Code--a conclusion that is of central importance to the present report.

Summary of Rural Code Methodology and its Degree of Success in Achieving Objectives

Since its inception, the Rural Code process has stated unambiguously that its approach is two-pronged: juridical analysis and reform along with socioeconomic research and integration of the latter process into the former. The juridical analysis has consisted mostly of expert investigation and assessment of existing legislative texts and proposals primarily by foreign experts. The socioeconomic research has consisted of academic studies along with an attempt to clothe the juridical review and reform process in "iterative" dress. While it appears that the academic studies have remained parallel to (rather than integrated into) the juridical reform process, the appropriateness of the qualifier "iterative" as applied to the reform process is a matter of debate. A study was undertaken in late 1995 to assess the environmental education and communication aspects of the Rural Code process in Niger. The study identified weaknesses and flaws in the communications capabilities of the process as a whole that cast serious doubt on its success in achieving even a moderate

²³ See, for example, *Note Introductive sur le Code Rural*, 1986, or Rohegude, 1987. The principle has survived intact, and became legislatively sanctioned with enactment of the *Principes d'Orientation* in March, 1993.

level of "popular participation." In spite of the best intentions and efforts, the generalized sectoral orientation of the existing administrative and institutional environment, the reality of seemingly unlimited heterogeneity in everything from custom to ethnicity to ecological and production systems, along with limitations of human, material and financial resources, have provided serious obstacles to incorporating true popular participation, and integrating localized customs into centralized legal reform.

IV. POLICY CHOICES DEFINED BY THE RURAL CODE PROCESS

The most accurate, complete and centralized source of information regarding policy choices made in the course of the Rural Code process is the document entitled *Orientation Principles of the Rural Code (Principes d'Orientation du Code Rural)*, enacted as law in March, 1993. The process for formulation of this law included:

- consultancies performed by international legal scholars to evaluate existing tenure and natural resource management policies and legislation in Niger;
- regional information gathering and synthesis into profiles (*monographies*);
- regional and national workshops attended by a range of administrators, technical agents, policymakers, legal specialists, rural producers, and representatives of NGOs and donors; and
- legal drafting by national and international specialists taking into consideration information gathered at the regional level (the *monographies*) and concerns raised at workshops.

Guiding the process was a consensus that Nigerien land and natural resource law--which consisted of four competing systems identified as customary, Islamic, colonial and post-independent--was hopelessly complex and needed to be standardized and simplified.²⁴ The *Principles*, therefore, aim to clarify rights and thus increase the security of rights-holders.

The *Principles* (Ordonnance 93-015 of March 2, 1993) are limited to the establishment of a policy framework. The implementing regulations, institutions, procedures and sector-specific guidelines are to be contained in a series of application decrees or complementary texts. The texts thus far identified²⁵ are to define, clarify and regulate the following topics: *mise en valeur* (development); Rural Code institutions; cooperatives; land commissions;

²⁴ This view, as well as the following account four-part classification of the *Orientation Principles of the Rural Code*, is found in Moustapha Yacouba, *Processus d'Elaboration du Code Rural au Niger: Contraintes et Perspectives* (Niamey: Secrétariat Permanent du Code Rural, Ministère de l'Agriculture et de l'Élevage), 1995.

²⁵ Regarding at least the first five topics listed here the process of developing the complementary laws is well underway: studies have been completed and drafts have been submitted as proposed texts and subsequently examined in a national forum. These texts are currently before the legislature pending adoption.

terroirs d'attache (home territories of herding populations); conservation and exploitation of forest resources; decentralization of forest management authority and legal status of forests; protected areas; conservation and exploitation of wildlife; aquatic life and fisheries; application of the water code; expropriation for reasons of public interest; rural property and exploitation contracts; rural concessions (administrative acts granting longterm use rights); land use planning (*schémas d'aménagement fonciers*); protected areas; conflict resolution; rural registry; and public rural development and dry season cultivation.

Yacouba (1995) classifies the contents of the *Principes* into four categories: promoting security of access rights to resources on the part of rural producers (the *focal point* of the Rural Code); conservation and natural resource management (including both obligations and rights); organizational structures and administration of rural populations; and regional planning. Crosscutting the categories is a preoccupation with achieving "rational management" and progress in "development" regarding exploitation of natural resources.

Promoting Security of Access Rights to Resources

The clear and overriding policy choice upheld in the *Principes* in agricultural areas is the preference for exclusive private and individual rights to land and resources. Property rights to agricultural lands are specified in articles 14-16:

Article 14.- The property owner enjoys exclusive decisionmaking authority regarding his property within the framework of laws and regulations in force, notably, those regarding *mise en valeur* (development) and environmental protection.

Article 15.- The property owner cannot be deprived of his rights except in cases of overriding public interest, and then only according to legally defined procedures.

Article 16.- Except in cases of third party rights, all that is attached to the ground, whether naturally or artificially, whether consisting of vegetation or constructed by the hand of man, belongs to the owner of the soil.

Holders of private rights are to be determined on the basis of statutory or customary law. In this process oral attestation is to be of equal validity to written law. The general thrust of the new policy is to strengthen customary claims of ownership relative to use right claims of tenants, thus reducing the security of the latter.²⁶ More broadly, official policy favors a resurgence of the influence of rural customary elites who had been disfavored and weakened during the Kountché regime (1974-1987). A separate piece of legislation defining the status of the chieftancy in Niger (Ordonnance 93-028 of March 30, 1993) grants legal recognition to "traditional" chiefs and integrates them into the official Nigerien administration. The same legislation recognizes the customary chiefs as the legitimate managers of the lands within their cantons. Ngaido (1996) argues that

²⁶ Ngaido, *Boundaries of Control*, 1996.

Ordonnance 93-028, along with the power to reconcile disputes granted by the Orientation Principles of the Rural Code and confirmed by ordonnance 93-028, has set the stage for an active campaign on the part of customary officials to regain power lost during the Kountché regime. Use right holders, no matter how longterm or well-established, are likely to see their security diminish relative to customary rural elites should current policies become widely applied.

Holders of exclusive property rights to agricultural parcels also have certain obligations regarding land use and exploitation practices. These obligations are specified in the *Orientation Principles*. Farmers must allow herder access to water and pasture where rights to do so exist (article 17). Farmers must exploit their holdings for agricultural production in the interest of development, and specially designated *land commissions* (discussed below) are to monitor periodically the status of land use and whether this obligation is met (article 18). Following three years of disuse (defined either as lack of production or mismanagement) of the land the Land Commission may temporarily transfer use rights to a third party (article 19). The proposed complementary text on the topic of *mise en valeur* (development) upholds lack of adoption of environmentally sound practices as cause for temporary transfer of use rights to a third party.²⁷ Article 20 specifies that a holder of use rights is subject to the same requirements of *mise en valeur* as is the owner of a parcel.

Ordonnance 93-015 specifies the nature of rights held by transhumant or semi-transhumant livestock producers as well as of agricultural producers. Article 4 of the Principles establishes that *[n]atural resources are part of the national heritage. All Nigeriens retain equal rights of access without regard to sex or social origin*. The corresponding rights (to exclusive private property in agricultural settings) in non-agricultural areas exploited by herding populations are defined in the concept of *terroir d'attache*, or “customary” territories of herding groups. These are defined areas in which the production system of livestock raising qualifies the producer to *priority access rights*. That is, customary herding territories are reserved for pasture or exploitation of water sources. They are not--at least not in the initial stage--the exclusive property of either individuals or groups, but rather, a de facto open access resource to all who own or manage domestic livestock. The law does, however, provide for the possibility of eventual private title to be awarded to a defined group claiming as property pasture land found in its customary territory in cases where the group’s “activities require fixed and permanent settlement within a delimited area” (article 28).

Conservation and Natural Resource Management

This topic was a primary motivation to undertake the project to formulate a Rural Code, and underlies much of the content of the *Principles*. The first article of the framework law establishes the integrated perspective regarding agricultural, silvicultural and pastoral

²⁷ Projet de décret portant réglementation de la mise en valeur des ressources rurales (Secrétariat Permanent du Code Rural, Ministère de l'Agriculture et de l'Elevage), N.d.

activities represented by the favored regional planning perspective, and upholds the importance of environmental protection alongside the promotion of human wellbeing. Article 6 adds, "All persons engaged in rural activities must contribute to the *mise en valeur* of the national natural heritage. This *mise en valeur* includes rational management of resources that assures their protection and optimal use." The proposed application text on the topic of *mise en valeur* takes the concept well beyond its traditional development orientation, and expands the required environmental protection measures established but undeveloped in the *Principles*, as well as the accompanying sanctions in cases where resources--even private ones--are not adequately protected.

The proposed revision of the forest code, also currently holding the status of a proposed complementary text to the framework law of the Rural Code, echoes article 6 (see above) of the framework law in its article 3, "The State, territorial collectives, rural operators, individually or collectively, must contribute to the *mise en valeur* of the national heritage composed of forest resources. This *mise en valeur* includes the rational management of forest resources that assures their protection and optimal use." The national heritage composed of forest resources includes both state (classified and protected domains) and private forests (article 27 of the proposed text). In addition, the proposed forest code retains such traditional forest legislation principles as: vacant (untitled) land belonging to the state or local administrative unit (article 20); classified and protected forests (articles 27-36); protected species of trees (articles 58-59); and the possibility of requiring a property holder to undertake restoration activities (article 64). On the other hand, the proposed forest code includes some innovations relative to traditional forest legislation in the Sahel, of which a partial list includes: required formulation of management plans for all forests to be established by the state forest service in collaboration with local populations (article 48); to coordinate forest management plans with regional plans (*Schémas d'Aménagement Foncier*, articles 48-49); to provide for the possibility of state subsidies in cases of individual or collective initiatives that promote the *mise en valeur* of forest resources (articles 55-56); to encourage and support local communities to organize on the basis of exploitation of forest resources existing on their village (*terroir*) land (article 57).

State Institutions, Regional Planning, Private Organizations of Rural Populations, Credit and Conflict Management

Book III (beginning with article 109) of the Orientation Principles addresses the topic of rural institutions and organizational structures. A number of texts have already been drafted (and are currently awaiting enactment) to provide details and application guidelines on these topics, notably those addressing: *institutional attributes and guidelines for application of the Orientation Principles of the Rural Code; cooperatives; and mise en valeur.*²⁸ The general principles, however, are clearly established in the framework law, and unless otherwise stated, references to specific articles appearing below are from the Orientation Principles of the Rural Code (Ordonnance 93-015).

²⁸ See list of proposed supplementary texts currently in draft form in Bibliography.

Article 109 lists the three objectives of the ensemble of the guidelines contained in Book III as:

- the guarantee of the rights of interested populations;
- the exploitation and rational management of agricultural, silvicultural and pastoral resources;
- the management of rural conflicts.

While rural populations are to be “administered” by “decentralized and deconcentrated public authorities,” they are allowed to group themselves into legally-recognized private organizations (article 110). Regional planning is the responsibility of government administrative units at the level of the region, with contributions from district level land commissions. Specific topics beyond state and private institutions addressed in Book III include securing of credit by rural populations and conflict management procedures.

State Institutions and Regional Planning

The structure and attributes of public administration of rural populations are specified in articles 111 to 139. The institutional structures envisioned in the Orientation Principles indicate the central and guiding role of the state in natural resource management in Niger. The central policymaking body is the National Committee of the Rural Code in Niamey, while policy coordination is primarily handled at the level of the executive body of the NCRC--the Permanent Secretariat of the Rural Code. As noted above, the NCRC is an interministerial body attached to the Ministry of Agriculture and Livestock.

In global terms, decentralized structures of the state are charged with assuring appropriate and effective *mise en valeur* of natural resources. To this effect an institutional structure is ordained to be composed of land commissions (*commissions foncières*) and permanent secretariats of the Rural Code (*secrétariats du Code Rural*) at the level of each district (*arrondissement*) (article 112). Permanent Secretaries of the Rural Code are also to exist at the regional level (*département*) and in municipalities (articles 122-123). The complementary text on *mise en valeur* currently before the national legislature would extend the institution of Land Commissions to the Canton and even the village levels (article 42 of the proposed text).

In procedural terms, local government units are to provide a tenure management plan (*Schéma d'Aménagement Foncier*) at the level of each region (*département*) and a rural registry of rights (*dossier rural*) at the level of each district. Police powers for enforcement and maintenance of the administrative system and its regulations are to be retained by the decentralized structures of the Ministry of Interior (*Préfets, Sous-Préfets, Chefs de Poste Administratifs et Maires*--article 113).

The institutional centerpiece of the Rural Code in terms of policy implementation is the Land Commission in each district composed primarily of state officials. The Land Commission is presided by the *Sous-Préfet* and includes members representing seven governmental technical services. The commission also includes at least one representative

of each of the following four categories of rural populations: farmers, herders, women and youth.

The Permanent Secretary of the Rural Code at the district level²⁹ (who is also a member of the Land Commission) is in charge of managing the rural tenure registry in which individual and group rights are recorded. In addition to a written description of each right and registration of the identity of the rightholder, the registry (*dossier rural*) is to consist of a graphical representation of the range (*l'assiette*) and location of rights to rural natural resources (article 130).³⁰

The Land Commission is also charged with monitoring farmer respect of *mise en valeur* guidelines for rational exploitation and development of natural resources. As noted above, the notion of *mise en valeur* adopted in the Orientation Principles, and greatly reinforced in the proposed complementary text on the topic now before the national legislature, includes adherence to ecologically sound natural resource management practices. Such adherence is to be evaluated by the Land Commission, which is authorized to temporarily withhold or transfer use rights to particular parcels in cases of inappropriate management practices (article 121).

A regional planning (*aménagement du territoire*) approach is indicated in the Orientation Principles through required formulation of a tenure management plan (*schéma d'aménagement foncier*) to be implemented in each region. These plans consist basically of zoning regulations indicating appropriate (allowable) activities at specific sites across the region. The plans are to be completed in a participatory manner, e.g., they are to be discussed at public hearings (article 128). The plans are also to take account of impact studies on proposed zoning decisions. The rural registries noted above also constitute a tool for regional planning insofar as they detail existing rights and indicate use patterns of particular resources at specific sites.

Private Organizations

Rural associations may take the following forms: cooperatives, NGOs, economic interest groups, women's groups or youth groups. Laws regulating each of these types of rural associations already exist in Niger.³¹ Such laws are generally regarded as too restrictive and projects are underway to liberalize them. A proposed complementary text to the Rural Code, for example, allows greater freedom and independence to cooperatives than in the past.

²⁹ In the two existing Land Commissions this is a post held by the district forest agent in one case and the district livestock extension agent in the other.

³⁰ The exact form the graphical representation is to assume is unclear in the Orientation Principles, but a study on the topic of a rural registry was underway in Niger at the same time that information was being collected for the present report. A legislative text is expected that will clarify these questions.

³¹ As was discussed above in the section entitled: *The Rural Code within the Broader Picture of Rural Development Policy*.

Nevertheless, “conditions of rural associations, notably those governing their creation, their classification and their procedural regulations, are specified by law (article 144, emphasis added).”³² Existing legal texts defining and regulating permissible types of rural associations (including the yet-to-be-enacted complementary texts on cooperatives) tend to be quite elaborate and specific in specifying goals, principles and procedures of the various types of associations. Failure to adhere to the legal guidelines, or to officially register the association with the Ministry of Agriculture and Livestock, is met with penal or fiscal sanctions (see, for example, article 20 of proposed law governing cooperatives).

Credit

Establishment of a rural credit system is declared in article 145 of the Orientation Principles. Credit to be used in the production and marketing of agricultural products is to be made available to the types of legally registered private associations noted above.

Conflict Management

Conflicts resulting from contested access to natural resources are to be conciliated at the level of traditional authorities: first within the village or herding camp and later, if needed, at the level of the Canton or herding *groupement*. If resolution of the conflict cannot be achieved at these levels, the conflict is to be ruled on by judiciary authorities.

Summary of Rural Code Policy Choices

The Rural Code has opted for a “rational” and monitored approach to tenure and natural resource management in Niger. Permissible resource use is to be defined (zoned) according to production system (particularly agricultural, silvicultural or livestock). Establishment of zones and boundaries is to take place in a participatory manner. In agricultural zones rights are to be defined and registered to specific individuals or groups, while in regions zoned for non-sedentary livestock raising priority rights are reserved for all who practice this form of production. In agricultural settings, land holders are encouraged to register their holdings. Customary claims are to receive equal weight to statutory claims in determining ownership, and existing use rights receive little or no protection relative to ownership. Those claiming particular rights to pasture resources are also provided the possibility of registering these rights (article 30). Resource use and access is to be monitored by a multi-tiered institutional network put into place through the Rural Code process. Production and conservation principles (broadly grouped under the term *mise en valeur*) are to be established, and non-adherence to these principles is to be subject to sanctions imposed by the state. Conflicts over resources are to be conciliated according to customary rules, institutions and authorities, or in cases of non-resolution, to be adjudicated within the state judiciary.

A number of assumptions are implicit in the policy options outlined above. Among the most important are that:

³² *La loi précise le régime des groupements ruraux notamment leur mode de création, leur statut-type et leurs règles de fonctionnement* (article 144).

- zones designated for particular production systems, and the boundaries between them, can be fairly agreed upon through a participatory process;
- it is ecologically feasible and desirable to permanently fix boundaries between agricultural, forest and pastoral zones;
- individual or group owners to agricultural parcels either exist or can be identified through a process of sorting out and ruling on competing claims whether based on customary or statutory law; and
- administrative capacities either exist or can be created to accomplish the formulation and application of regional management plans, formulation and maintenance of rural registries, widescale monitoring of resource use and exploitation, monitoring of rural associations, and imposition of legal sanctions.

V. OBSTACLES IN THE WAY OF TRANSLATING PRINCIPLES INTO PRACTICE

Although the Rural Code process is at least ten years old at the time of this writing, the first two "pilot" land commissions are barely two years old, having been officially put into place in March, 1994 (field work for this report was carried out in April, 1996). A third pilot commission joined the original two commissions in the early months of 1996 (official date of creation: December 1995) and is seated in the district of Gaya--but it is not yet fully functional. Institution-building, as has proven to be the case with policy formulation, will certainly be a lengthy process in Niger.

It was not until June, 1994 that members of the original two pilot land commissions participated in a two-week training program addressing such topics as contents and maintenance of a registration system, survey methods, satellite imagery, aerial photos, self-evaluation of the land commissions, and participatory research methodologies. As noted above, the land commissions are designated by the Orientation Principles of the Rural Code as the primary institutional mechanism for implementation of its policies. The relatively short history of the land commissions--as well as of the additional decentralized institutions of the Rural Code not yet in place such as Permanent Secretariats at the regional level--limits possibilities for these institutions to provide an empirical focal point of all points discussed below. Nevertheless, even the brief history of the land commissions, supplemented by interviews of a variety of actors and socioeconomic information supplied through various research projects, provides revealing clues that are woven into the following discussion of problems encountered or expected in the Code's implementation.

A rather mundane, but critical, category of constraints does not easily fit under the titles below. One notes here the fact that all members of the Land Commission have full-time occupations in addition to undertaking commission work. Ready availability and continuous commitment is, therefore, far from certain in the case of most commission

members. Moreover, lack of training, materials and logistical support--such as adequate means of transportation--hamper the accomplishment of duties and tasks assigned to the commission in the Orientation Principles.

Creation of Tenure Management Plans (*Schémas d'Aménagement*)

The Departmental Director of Agriculture in Zinder speaks for many government decisionmakers in proclaiming:

...the traditional complementarity between agricultural production and nomadic herding has broken down as populations grow and individualism takes hold. Now we need to define distinct zones for herding.

The tenure management plan is a graphic display to be formulated at the regional (*départemental*) level on the basis of information submitted by the land commissions. This display will depict zones designated for agricultural versus livestock production. In agricultural zones, the management plans will designate cattle trails and pastures amid the agricultural plots.

The Land Commission of Mirria has worked hard to identify the cattle trails and pastures of the district. cursory examination of the "development plan" currently being compiled with Danish financing in the regional capital of Zinder reveals significantly more cattle trails and pastures in Mirria district than in any other district of the region. (Trails and pastures are not yet geographically specific on the Zinder plan, but are depicted by symbols vaguely attached to areas within districts.) It seems likely that this is due to the fieldwork of the Land Commission in the district of Mirria as opposed to indicating a true and pronounced difference between the amount of pasturelands in Mirria as compared with neighboring districts.

The commission has compiled a list of 13 trails and 14 pastures, many of which are referred to locally through use of proper place names. On March 25, 1996 the Permanent Secretary of the Commission addressed a letter to the Sous Préfet requesting markers and paint sufficient to place one marker every 200 meters for a distance of 50 kilometers. The Permanent Secretary admits that the boundaries of the pastures are either unknown or subject to disagreement in virtually all cases. Nevertheless, as is stated in the letter to the Sous Préfet, the markers will be placed with *the participation of representatives of both farming and herding populations*. The Sous Préfet had not yet acted on the request as of late-April. Once the materials arrive, the marking of boundaries cannot be expected to take place without challenges and disagreements in this region of overlapping production systems.

Traditionally in Niger boundaries between pastoral and agricultural space have not been fixed and permanent. The clearest example of overlapping rights to the same space is the exploitation of post-harvest stubble for cattle feed. On a macro-level one notes the movement of farmers north in times of abundant rainfall and the movement of herders

south in times of drought. A strict zoning between the two activities will obviously reduce the flexibility enjoyed to present. An additional problem is the movement of people between the two production systems: herders settling into farming and farmers investing more in livestock production. Opportunities for such shifts will be reduced once physical boundaries are defined to partition the production zones.

Hobbs (1995) describes a tenure conflict in Guidan Roundji, Niger which centered on the question of whether the rights enjoyed by a formerly herding population (Peul) to a specified piece of land were for exploitation of pasture only or could be extended to cultivation. The policy orientation of the Rural Code would require that the conflict be resolved either through designation of the area as pasture (in which case the Peul farmers would be required to cease farming) or as private farming land on the basis of customary claims (in which case the customary claims of the earlier-arrived sedentary populations would presumably prevail, and the Peul farmers would be required not only to abandon their farms but would also most likely be banned from exploitation of the area for pasture since it would now be private farmland). The problem, then, is not just one of fixing boundaries, it is also one of loss of flexibility across time, space and production choices.

In some districts of Niger, generally those to the north of the predominantly agricultural regions, large areas will be identified on the tenure management plan as "customary herding territories" (*terroirs d'attache*) or expanses of land reserved for priority use of herders (similar to the zoning of cattle trails and pastures in the agricultural regions). A national federation of Nigerien herders (la Fédération Nationale des Eleveurs du Niger) has recently been created to protect the rights of herders. The president of this federation states that any attempt to set boundaries around herding zones would be extremely contentious. The federation president argues that herding populations have long established rights to large--mostly northern--regions in which settled farming populations have established themselves at the invitation of the herding groups. These settled populations are increasingly asserting exclusive rights to land the herders claim as their own. Any attempt to create territory homelands that do not include such lands currently under cultivation would be met with resistance. The president continues, "the herding populations can live with state assertion of property rights to lands exploited by herders, what they cannot live with are claims of private property rights to the same lands on the part of farmers."

The tenure management plans will, therefore, create both winners and losers.³³ Boundaries are certain to be hotly contested, both at a macro- and a micro-level.

³³ This recognition, often expressed using the same terminology employed above ("winners and losers"), as applied to the Rural Code process has become almost a cliché. While the idea is applied here to the struggle between groups associated with distinct production systems--herders and farmers--it is more frequently cited in the context of establishing private ownership to agricultural parcels (discussed below). See, for example, Bloch, 1994; Ngaido, 1996; and Christian Lund, *Law, Power and Politics in Niger: Land Struggles and the Rural Code* (Roskilde, Denmark: Roskilde University), 1995.

The current feeling among policymakers and administrators in Niger is that something has to be done to manage the increasing numbers and severity of conflict between farmers and herders. This feeling is well-founded. The choice to zone lands according to production system is, perhaps, as cogent an approach as any other. But is it realistic in view of existing constraints? What is clear is that the zoning project envisioned will be an immense and delicate task requiring technical (surveying, cartographic, information management), extension and adjudication skills in copious supply, and that the means at hand to accomplish it are not substantial. Even if the technical problems are solved, the plans are likely to face resistance on the part of some groups. And once the plans have been produced, how will they be diffused, maintained, up-dated, standardized and enforced? A lengthy process of trial-and-error will more likely provide the answers to such questions than a logical and rational application text produced in advance of the plans themselves.

The Conversion to Private Property

The policy choice of promoting exclusive private property to agriculturally productive land and associated trees modifies, in many settings, customary seasonal rights to the same parcels historically shared between farmers and exploiters of pastoral or forest resources. This policy also motivates individuals to claim exclusive ownership rights to plots to which rights may formerly have been less than exclusive, thus producing multiple claimants to individual parcels. For example, within customary law, established use rights may be pitted against rights based on first occupancy, historical conquest or nobility. According to one researcher, the policy of privatization in Niger has already resulted in a race to “[g]et customary [rights] in your land recognized before your neighbor does...”³⁴ Another researcher points out that for over 30 years state policies in land tenure and management have been shifting from one position to another, thus rendering customary systems confused and contentious.³⁵

The expected result that latent or potential conflict will be forced out into the open does not go unperceived by policymakers. Many decisionmakers argue that exclusive rights need to be assigned as an incentive to agricultural investment and development. Others add that as difficult as it may be to identify individual and unique owners for each parcel today, it will be much more difficult in the future once demographic pressures and environmental degradation have heightened resource conflict even more. Customary authorities, such as the Chief of the Canton of Mirria, express the urgency of definitively settling questions of ownership by drawing attention to the inordinate and increasing amount of time spent conciliating the same conflicts as well as new ones year after year. Such arguments for definitive clarification of rights are certainly not without merit. But the

³⁴ Lund, *Law, Power and Politics in Niger*, 1995:110. This finding of Lund was anticipated by an earlier observer of the Rural Code who apparently sensed a certain complacency and feeling of accomplishment on the part of participants at the high-visibility national conference on the Rural Code at Guidiguir in 1990 in noting, “[i]n effect, Guidiguir is more the opening shot in the struggle for control over rural resources than it is a conclusion of any sort” (Asif Shaikh, *Economic Issues Affecting Natural Resources Strategy Options in Niger: Implications for the ASDG II Agenda* (Annex to ASDG II Project Document. Washington, D.C.: International Resources Group), 1990.

³⁵ Ngaido, *Boundaries of Control*, 1996.

process through which rights are to be clarified (a lead role is to be played by the Land Commission), including the norms chosen for clarification (a heavy emphasis on privatization on the basis of customary claims), is crucial. If some groups are perceived to be favored over others, lack of participation on the part of aggrieved populations could render the policy application process unsustainable.

Additionally, one needs to approach policy implementation with a realistic sense of scale of reforms vis-à-vis available resources. The total population of Mirria district is nearly 500,000. Although the Land Commission considers the response to the invitation to apply for private land title to be nearly overwhelming (over 1,000 have applied), the number of applicants represents a small percentage of the active farming population of the district. It was not possible to discover the identity of applicants in the context of the current study, but one notes that elsewhere in the world when similar projects to register land have been initiated it is most often individuals enjoying privileged access to power, resources or information who participate.

Popularization of the policies of the Rural Code has at best been uneven--the Land Commission consists of a handful of individuals serving a vast population. Reportedly, whole groups of villages remain untouched by the process. In addition, understandings of the policies vary with the audience. The Permanent Secretary cited the example of a village that was repeatedly visited by the Land Commission but failed to submit any applications. Eventually it was discovered that a few former residents of Sudan had effectively voiced their suspicions of the registration policies gained from earlier experiences in the neighboring country to the general village population. The suspicion was that registration of parcels was to be the mechanism through which the state would eventually steal the villagers' land. Even if such misperceptions are eventually corrected, they create a window of opportunity for those who see it in their interest to fill such vacuums caused by non-participation in the land registration process.

But the problems associated with creating a viable system of privatized rights to land are not restricted to considerations of justice and conflict management. Technical and material constraints are perhaps even more binding. The Land Commission of Mirria had received in excess of 1,000 applications for eventual title to agricultural parcels by April, 1996. The applications consist of the rudimentary information requested by the commission for this purpose: name, date, identification number (assigned according to chronological order of registration), village, village sub-section (if applicable), type of soil (sandy or valley-bottom), indication of geographical location in relation to the village, and information on how the parcel was acquired. The Permanent Secretary of the Land Commission states that this information serves the purpose of protecting rights until a land title can be issued.

The applications for title have been submitted following the popularization campaign of the Land Commission during which the functions of the Land Commission and the principles of private land registration were explained in villages throughout the district. Applications had been accepted, therefore, over the approximately 18 month period ending in late-April, 1996. However, the means to process the applications, which would

consist of sophisticated adjudication, land surveying and information management methods and mechanisms, is entirely lacking. According to members of the Land Commission, as well as to representatives of local rural elites such as the Canton Chief, disillusionment with the process is growing as applicants see no signs of progress toward receiving titles. Expectations have been raised but will remain unsatisfied for the foreseeable future.

Sustainable Exploitation of Natural Resource Management

It was stated above that the parts of the Rural Code policy explicitly oriented toward environmental goals retain the rule-enforcement approach of traditional Sahelian forest codes, although with some new twists. Examples include the expansion of the concept of *mise en valeur* to include ecological criteria requiring sound resource management practices, and the proposed forest code upholding such traditional elements as strong police powers of forest agents, detailed lists of rights and responsibilities to be applied within each of a variety of forest “zones” or classifications, and lists of protected species of trees. History has shown that such detailed regulations have been unevenly or arbitrarily enforced as a result of the lack of human, material and financial resources. This constraint has not been alleviated.

Administrative Decentralization

One cannot avoid once again referring to the lack of means available to enforce policy in the case of the 1994 legislation intending to further administrative decentralization. Regardless of the fact that this reform would be viewed by supporters of the Praia Declaration as a step in the right direction, lack of resources as well as political instability³⁶ have obstructed implementation of this policy. One notes as well the delays in augmenting the number of Land Commissions charged with much of the implementation of the Rural Code beyond the original two.

Participatory Associations

While the principle of free association is declared, the tradition of centralized control of local associations in Niger may be difficult to overcome rapidly. Legal projects to liberalize civil associations exhibit tendencies to over-define (in terms of structures, rules and regulations) and over-categorize (in terms of legally recognized types, e.g., cooperatives relative to NGOs relative to economic interest groups, etc). This realization prompts the following remark included in a study on decentralization in Niger: *it is necessary that the State avoid considering rural organizations as tools with which to achieve the political [I would add “economic”] management of society.*³⁷

³⁶ For example, the implications of the military coup of January, 1996 for implementation of the 1994 legislation are not yet fully understood.

³⁷ Sabou et al, *Gestion Décentralisée des Ressources Naturelles: Orientations et cadre juridique pour une gestion local durable des ressources naturelles au Niger* (Niamey: Subvention du Développement du

The Disconnect Between the Two Prongs of the Rural Code Process: The Juridical versus the Socioeconomic and Participatory

The as yet unanswered questions here include:

How can research help to guide the policy formulation process?

What are the means through which popular and representative participation can be achieved?

How can policy dialogue be institutionalized?

There are no easy answers to these questions, as evidenced by the inability of the Rural Code process to implement fully this declared approach. Research studies are completed but receive limited distribution and less debate. Training in participatory research (MARP) methodologies is provided to members of the Permanent Secretariat of the Rural Code and of the Land Commissions, but no projects employing such methodologies are organized. National and regional workshops, conferences and seminars are organized, but the settings are dominated by central government officials and experts while contents are pre-determined and little subject to redefinition. Such settings are not conducive to participation on the part of the rural populations in general, nor are they necessarily conducive to the active participation on the part of the rural elites whose representatives are invited to attend. Policy is formulated and then "popularized"--rather than the reverse. Progress of the Rural Code process tends to be measured in terms of quantitative accounts regarding pieces of legislation enacted and institutional units put into place.³⁸

VI. CONCLUSIONS

The Rural Code has thus far expended serious efforts in a search for detailed solutions to wide-ranging problems. To a degree, the quest for written and legislated policy has superceded that for creation of truly enabling legislation and a matching institutional environment. A useful gauge in estimating progress toward integrating popular participation into the Rural Code process might be consideration of the appropriate balance between the *popularization* of legislation versus the *legislating* of popular will and flexibility. In this light, the current project to formulate legislation which would recognize a variety of village-level natural resource management committees formed in the context of various projects (such as *gestion du terroir* committees) is a very positive step.³⁹

Secteur Agricole, Deuxième Phase (SDSA II), Sous-Comité Développement Rural, Ministère de l'Agriculture et de l'Élevage, 1995:54.

³⁸ See, for example, the tenor of Yacouba's explanations regarding why the "process" is behind schedule. Yacouba, *Processus d'Elaboration du Code Rural au Niger*, 1995:12-13.

³⁹ This prescribed piece of complementary legislation to the Rural Code appears to entering its pre-study phase as of April, 1996.

The Nigerien experiment in legislative reform also suggests that over-reliance on imported formulas, such as those advocating straightforward land privatization and registration accompanied by regional land use zoning, along with rapid installation of institutions to administer and manage these strategies, are problematic in Niger and probably throughout the Sahel. Such policies cannot automatically be applied to customary institutions and practices, in spite of official willingness to do so. Niger does not need to look back too far into its own history to find examples of institutional engineering initiated with the ostensible objective of broadening popular participation in policy formulation (e.g., *Samariya* during the Diori administration or the *Development Society* under Kountché) that fell far short of goals. One might add that the traditional enforcement orientation of the forest service has failed to protect and preserve the biomass of the country. In addition to socioeconomic factors, implementation of the new policies (also armed with plenty of sticks to kick in where carrots fail) faces severe shortages of human, material and financial resources.

But perhaps the biggest obstacle to formulation and initiation of new, innovative and enabling policies consists of constraints to free-flowing, multidirectional and undistorted information between--and among--policymakers and rural producers. Facilitation of information flows could be part of a policy package and approach which emphasizes enabling principles over legislated and detailed regulations.

Enablement, however, should not be addressed solely in terms of legislative reform efforts. I believe that finding the answers to the three questions⁴⁰ posed above would go far toward achieving conditions promoting tenure security and broad-based participation in natural resource management. I include, therefore, as an annex to this report the outline of a proposed model for achieving such conditions in Niger. A tenure and communications network would aim to institutionalize multi-directional dialogue and broad-based participation in an open policy formulation process. This model, or something like it, would serve not to replace legislative reform, but to complement it.

⁴⁰ How can research help to guide the policy formulation process? What are the means through which popular and representative participation can be achieved? How can policy dialogue be institutionalized?

ANNEX

A Tenure and Communications Network for Niger

The term and the idea of a "tenure network" come from the CILSS policy dialogue. Prior to the *Praia Conference on Land Tenure and Decentralization* of June, 1994 there was discussion of the creation of "tenure observatories" which was later modified to the idea of a "tenure network." The observatory idea grew out of comparisons to the early warning system of potential problems of food security maintained by sophisticated surveillance technologies centered at stations such as AGRHYMET (Niger) or the Centre de Suivi Ecologique (Senegal). The shift to "network" signals a realization that in the context of tenure monitoring, as compared to climatological and production monitoring systems, the site-specific capital expenditure requirements are relatively modest. The "network" emphasizes the circulation and exploitation of information as much as its collection, which does not require satellites and ground infrastructures that would necessarily be grouped into some sort of "observatory."

The Nigerien initiative known as the *Rural Code* has received much attention from neighboring countries. The initiative is attempting to introduce policies to secure rural producers' rights to resources through their clarification and registration, and in this process customary rights are accorded equal weight to statutory rights. This approach, which encourages individual or family claims to private ownership, is complicated by the predominance of systems of multiple or overlapping rights to many resources. The fear, expressed within Niger as well as at regional fora such as the Praia Conference, that individual claims of exclusive rights to particular resources in an environment of growing populations and a shrinking resource base holds the potential for violent conflict has led to suggestions for creation of a monitoring system.

Following is the vision I would like to put forth in the context of creating a tenure network in Niger, which might eventually serve as a model that could be applied more widely throughout the Sahel or elsewhere. I will briefly describe the form a tenure network might take, and then describe its functions and methods.

The core of the Niger tenure network would be seven teams of two facilitators each located throughout Niger at, for example, departmental capitals (Niger is currently divided into seven administrative *départements*) A national coordinator would be based in Niamey. The facilitators would need to be motivated and competent individuals who are at ease in communicating at both the village and the higher administrative levels. Alternatively, individuals might have specialized skills, with some team members possessing superior abilities in village contexts and others in more administrative environments. A university degree, or even the *bac* (a rough equivalent to a high school diploma) would be much less important as selection criteria for facilitators than: 1) ability to communicate (orally and in writing) in French and in one or more local languages, 2) possession of organizational and facilitation skills, again, both within village and administrative settings, 3) familiarity with rural life in Niger, and 4) cheerfulness,

dynamism, interest in the issues and a willingness to learn. In Niger, there is no shortage of such individuals. The national coordinator on the other hand, would be expected to possess certain formal credentials, such as an appropriate university degree and a particular level of relevant experience.

The network would not stop at this core. The entire initiative would be based on tying existing projects, governmental services, research institutes, NGOs and other organizations into a common effort to broaden participation in policy dialogues on issues affecting rural populations. Implementation of the network would by no means be straightforward: although the mission to broaden participation is one on which most organizations dealing with rural policy would agree, the effort to institutionalize collaboration will doubtless be complicated and difficult.

To begin, however, the collaboration could involve such elements as the offer of desk space by a regional office of a NGO or governmental service to the regional agents of the tenure network "core" personnel; the sharing of information or materials such as office supplies; or help with transportation. In addition, the organizations involved in issues of rural policy might each designate a resource person to participate in a small regional working group in order to promote debate of tenure issues and rural policy. The working group would be coordinated by the regional core team of the tenure network. Each resource person would be responsible for keeping the rest of his/her organization informed of the activities and discussions of the tenure working group. The working group itself might take the lead in disseminating information and initiating awareness activities for the benefit of rural populations, other institutions and the general public.

Thus composed, the tenure network would serve four basic functions: 1) information collection (a sub-category of which would be identification of existing sources of relevant information), processing, analysis and diffusion; 2) stimulation of debate through the creation of fora in which the policy dialogue might be furthered at the village level as well as at governmental and non-governmental levels; 3) research into tenure and local land and resource administration systems; and 4) monitoring and evaluation of evolving tenure situations and policy implementation such as reforms based on the Rural Code.

Information collection would be the responsibility of the two-person teams under the direction of the national coordinator. The first step would be the identification of local sources of relevant information. A rich source would be past or present development projects that have collected information on tenure systems and natural resource management in the various regions of Niger. Some of the information is written and stored in archives, some is accessible through interviews and conversations with local project personnel and government officials and technical agents. Often such information has been relatively underexploited. Moreover, in most cases there has been little attempt to assess available information at the regional level in any comprehensive manner.

One should be mindful that available information is likely to be spotty and difficult to compare across situations since it would have been collected for varying purposes in

different settings and contexts. This stage of information collection should be viewed as a preliminary attempt to understand local tenure and management systems. Part of the responsibility of the core network personnel would be to assess the relevance of local information and sources and put selected materials into some type of summary format. This step could serve as a starting point for discussions on relevant topics, but would also circulate throughout the network. One could also introduce non-local case materials that might spur further debate.

The information exploitation/circulation function blends into the stimulation-of-debate function by providing it with substance. It should not be forgotten, however, that a major source of the "substance" for debate will be national policy--legislation, legislative projects or other statements of policy--that should be explained and discussed at all levels, including the village level. An effort at legal education should figure prominently here, and the network could play a major role in this. This flow of information and debate to the most local levels is the best insurance that regional or local concerns will be expressed in the application of government policy, since awareness will breed readiness to defend local practices and conditions where appropriate, while at the same time well-formulated policies can be adapted to the locality in a planned and reasoned fashion. It should be emphasized that the debate ought to be nurtured within administrative fora as well as at the village level, and that an effort should be made to provide linkages between the two.

The third major function of the tenure network is that of research. The research methodology would be rapid rural appraisal. The core personnel of the network would be trained in this approach. Periodic RRA exercises would rotate among administrative departments in order to eventually cover each of the major regions of Niger. Network personnel would be joined in RRA implementation by local administrators, technical agents, NGO representatives and researchers. Thus reinforced, two, or even three, RRA teams of 8-10 members could function simultaneously in each case to increase the number of research sites within each region. The greater advantage of local participation in RRA exercises, however, is the increased contact and understanding between local authorities and rural populations that would result--an positive effect that reflects the overall goals of institutionalized policy dialogue in the form of a tenure network.

This research model is designed for standardization of information categories across regions in order to have a basis for regional comparison. Some of the standardized topics would include: compilation of local tenure portraits indicating composition of local rights systems, problems of access to resources and resource management practices; local practices involving contractual arrangements; major sources of conflict over resource access and methods of conflict resolution in place; issues of comparative access to resources by gender; local organizational and authority structures; local-state relations; farmer-herder relations; project interventions (such as those based on the *gestion du terroir* or village land-use planning approach); and tenure issues surrounding non-land resources (e.g., trees) where relevant. This list of topics is by way of example, since the research focus would be sharpened on the basis of further discussion, as well as following

exploitation of some of the information sources in the course of fulfilling function #1 discussed above.

The research function of the tenure network will serve to fill in gaps and update available secondary sources. Most importantly it would provide a reliable and comprehensive package of information by region, and allow for comparison among local systems of natural resource access, management structures and rules. Such information should be the basis for and catalyst of policy debate at all levels, leading to eventual policy formulation. In summary, both the research and information circulation functions of the tenure network would feed into the policy debate.

An additional forum for debate would be established by staging regional workshops following each RRA exercise at which research findings would be presented and their relevance would be discussed by regional authorities and representatives of local NGOs, rural producers and other relevant groups. These workshops might offer regionally-applicable recommendations on issues pertaining to rural resource management policy.

Finally, all three functions of the tenure network discussed above would contribute to the development of a monitoring and evaluation system in order to keep abreast of ongoing situations such as evolving tenure patterns, local reactions to policy implementation, or budding conflicts. Efforts toward the identification and definition of the precise objectives of the M&E system, proposed adjustments allowing for site-specificity, and choice of indicators to be adopted for such a system would be a primary responsibility of the national coordinator of the tenure network. In formulating the M&E system, the national coordinator would rely on information generated in performing the various functions of the network outlined above.

The model of a tenure network in Niger provides a vision of the institutionalization of a broad-based policy dialogue on tenure and natural resource management issues. The vision and goal entail the smooth and steady progress of Nigeriens toward social, environmental and development goals by guaranteeing secure access to continual and constructive interaction with each other.

BIBLIOGRAPHY**LEGISLATION**

Loi 74-07 du 4 Mars 1974, fixant le régime forestier.

Décret 74-226 du 12 Août 1974, fixant les conditions de l'application de la loi 74-7 du 4 Mars 1974 fixant le régime forestier.

Ordonnance 74-16 du 23 Août 1974, modifiant et complétant la loi 74-7 du 4 Mars 1974 fixant le régime forestier.

Arrêté 048/MAG/EL/CNCR du 16 Mai 1990, détaillant les droits d'usufruit accordés aux communautés villageoises qui participent à la gestion des ressources naturelles de leurs terroirs.

Ordonnance 92-030 du 8 Juillet 1992, relative à l'organisation de la commercialisation et du transport de bois dans les grandes agglomérations, et la fiscalité qui lui est applicable.

Ordonnance 92-037 du 21 Août 1992, portant adoption du document intitulé *Principes directeurs d'une politique de développement rural pour le Niger*.

Décret 92-292/OM/MF-P du 25 Septembre 1992, sur les organisations non-gouvernementales.

Ordonnance 93-014 du 2 Mars 1993, portant code de l'eau.

Ordonnance 93-015 du 2 Mars 1993, fixant les principes d'orientation du code rural.

Ordonnance 93-028 du 30 Mars 1993, portant statut de la chefferie traditionnelle du Niger.

Loi 94-028 du 21 Octobre 1994, déterminant les principes fondamentaux de la libre administration des arrondissements et des communes, ainsi que leurs compétences et leurs ressources.

Loi 94-029 du 21 Octobre 1994, déterminant le Régime de tutelle applicable aux arrondissements et communes.

Arrêté conjoint 406, MAG/EL/MH/E du 29 Novembre 1995, portant création et organisation d'une Cellule chargée de la Gestion des Ressources Naturelles (Cellule GRN).

DRAFT TEXTS AND PRELIMINARY STUDIES OF PROPOSED LEGISLATION

Projet de décret portant organisation, attributions, et fonctionnement des institutions chargées de l'application des principes d'orientation du Code Rural.

Projet de décret portant réglementation de la mise en valeur des ressources rurales.

Projet de loi portant régime des coopératives.

Projet de décret déterminant les modalités d'application de la loi portant régime des coopératives rurales.

Projet de décret fixant le statut des terroirs d'attache des pasteurs.

Projet de loi fixant le régime forestier, Avril 1996.

Termes de référence pour une étude préparatoire sur le dossier rural.

BOOKS AND ARTICLES

Adelski, Elizabeth and John Lichte. *Rural Households' Knowledge and Use of Natural Resource Management Practices: A Pilot Survey in the Tillaberi, Tahoua, and Maradi Departments of Niger (Contract No. DHR-5438-Q-00-1091-00, DESFIL: Development Strategies for Fragile Lands)*. Niamey: USAID. (March 19) 1996.

Bloch, Peter C. *Attentes et Contraintes du Code Rural (présenté à l'Atelier-Bilan sur le Code Rural, Dosso, Niger, 31 août - 3 septembre 1994)*. Niamey: Secrétariat Permanent du Code Rural, Ministère de l'Agriculture et de l'Élevage.

Bruce, John and Mark Freudenberger. *Institutional Opportunities and Constraints in African Land Tenure: Shifting from a "Replacement" to an "Adaptation" Paradigm*. Madison, WI: Land Tenure Center. 1992.

Comité ad hoc chargé de l'élaboration d'un code rural. *Note Introductive sur le Code Rural*. Niamey: Ministère des Ressources Animales. 1986.

Caverivière, Monique. *Code Rural: Problématique et Premières Propositions d'Orientation*. Niamey: Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. (Juillet) 1989.

Débène, Marc. *Rapport de Mission (25 Septembre/1er Octobre 1989)*. Niamey: Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. 1989.

- Diallo, Mahamadou A. *Problématique de la Décentralisation et Gestion des Ressources Naturelles au Niger*. Niamey: Subvention du Développement du Secteur Agricole, Deuxième Phase (SDSA II), Sous-Comité Développement Rural, Ministère de l'Agriculture et de l'Élevage. N.d.
- Elbow, Kent. *Report on the CILSS/Club du Sahel Regional Conference on Land Tenure and Decentralization to Achieve Democratic, Participative and Decentralized Management of Natural Resources in the Sahel (June 20-24, 1994, Praia, Cape Verde)*. Madison: Land Tenure Center, University of Wisconsin. (August) 1994.
- Elbow, Kent. *Training to Achieve Participatory and Sustainable Development: Building on Lessons from the Sahel*. Paper presented to the Sub-regional Workshop on Land Tenure Issues in Natural Resource Management, March 11-15, 1996, Addis Ababa, Ethiopia. Madison, WI: Land Tenure Center. 1996.
- Guindon-Zador, Evelyne. *Environmental Education and Communication Assessment: The Rural Code Process in Niger*. Washington, DC: GreenCOM; and Niamey: USAID. (December) 1995.
- Garrett Hardin. *The Tragedy of the Commons*. Science 162 (December 1968): 1243-48.
- Hassane, Ahmadou. *Applicabilité du Code Rural au Niger: Nécessité d'une Prise en Compte des Coutumes (Niger)*. Mémoire de Fin de Cycle. Ouagadougou, Burkina Faso: Institut Panafricain pour le Développement, Direction Régionale Afrique de l'Ouest Sahel. (Février) 1996.
- Hobbs, Mary et al. *Regulating Resource Access in Niger: A Village-level Analysis of Conflict Management and the Role of the Tenure Commissions*. Madison, WI: Land Tenure Center; and Niamey: USAID. (November) 1995.
- Lake, Amy and Jim Gage. *The Land Tenure Center's Contributions to the Rural Code in Niger under the USAID/Niger and Land Tenure Center Cooperative Agreement (No. 624-0265-A-00-2009-00: 31 December 1991 to 22 December 1995)*. Madison, WI: Land Tenure Center. (August) 1995.
- Lund, Christian. *Law, Power and Politics in Niger: Land Struggles and the Rural Code*. Ph.D dissertation. Roskilde, Denmark: Roskilde University. (July) 1995.
- le Roi, Etienne. *Projet de code rural du Niger: Evaluation de la Politique Foncière*. Rapport de Mission, 28 février au 6 mars 1990 Niamey: Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. 1990.
- Ngaido, Tidiane. *Redefining the Boundaries of Control: Post-Colonial Tenure Policies and Dynamics of Social and Tenure Change in Western Niger*. Ph.D dissertation. Madison, WI: University of Wisconsin-Madison. 1996.

- Platteau, Jean-Philippe. *The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. Development and Change Vol.27: 29-86*. 1996.
- République du Niger. *Actes du Séminaire (Séminaire National Guidiguir, 28 Janvier au 07 Février 1990--Edition Provisoire)*. Niamey: Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. 1990.
- République du Niger. *Compte Rendu de l'Atelier Bilan sur le Code Rural (Dosso, Niger, du 31 Août au 3 Septembre 1994)*. Niamey: Secrétariat Permanent, Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. (Septembre) 1994.
- République du Niger. *Rapport d'Activités de la Commission Foncière de Mainé-Soroa*. Niamey: Secrétariat Permanent, Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. (Juin) 1995.
- République du Niger. *Rapport d'Activités de la Commission Foncière de Mirria*. Niamey: Secrétariat Permanent, Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. (Juin) 1995.
- République du Niger. *Compte Rendu du Séminaire de Formation Approfondie des Membres des Commissions Foncières de Mainé-Soroa et Mirriah (Zinder du 12 au 23 Juin 1995)*. Niamey: Secrétariat Permanent, Comité National du Code Rural, Ministère de l'Agriculture et de l'Élevage. (Juin) 1995.
- République du Niger. *Manuel sur les Espaces Verts*. Niamey: Direction de l'Environnement, Ministère du Développement Rural, de l'Hydraulique et de l'Environnement. 1996.
- République du Niger. *Manuel sur la CES/DRS*. Niamey: Direction de l'Environnement, Ministère du Développement Rural, de l'Hydraulique et de l'Environnement. 1996.
- Sabou, Ibrahim et al. *Gestion Décentralisée des Ressources Naturelles: Orientations et cadre juridique pour une gestion local durable des ressources naturelles au Niger (version finale)*. Niamey: Subvention du Développement du Secteur Agricole, Deuxième Phase (SDSA II), Sous-Comité Développement Rural, Ministère de l'Agriculture et de l'Élevage. (Août) 1995.
- Sala Assane, Amadou. *Bilan de la mise en oeuvre des recommandations du séminaire de Kollo (Février 1994) et préparation de la table ronde des ONG--rapport définitif*. Niamey: Ministère des Finances et du Plan, Direction des Services d'Appui au Développement Local et Régional, et Ministère de l'Agriculture et de l'Élevage, SDSA II. (Septembre) 1995.

- Salacuse, Jeswald W. *An Introduction to Law in French-Speaking Africa: (Volume I) Africa South of the Sahara*. Charlottesville, VA: The Michie Company. 1969.
- Shaikh, Asif M. *Economic Issues Affecting Natural Resources Strategy Options in Niger: Implications for the ASDG II Agenda*. Annex to ASDG II Project Document. Washington, D.C.: International Resources Group. (April 12) 1990.
- Wild, Paul and Carol. Draft Report of Short Term Consultants to Assist with Review of Lessons Learned in Natural Resource Management in Niger. Niamey: Agriculture Sector Development Program Phase II. (April 8) 1996.
- World Bank. *Staff Appraisal Report (Republic of Niger): Natural Resources Management Project*. Washington: (Africa Region, Central Western Africa Department, Agriculture and Environment Division) World Bank. (November 7) 1995.
- Yacouba, Moussa. *Processus d'Elaboration du Code Rural au Niger: Contraintes et Perspectives*. Niamey: Secrétariat Permanent du Code Rural, Ministère de l'Agriculture et de l'Élevage. Août, 1995.
- Yacouba, Moussa. *Code Rural et Gestion Communautaire des Ressources Naturelles (Atelier sur le Rôle des Communautés à la Base dans la Gestion des Rôneries de Gaya, 27 au 30 mars 1996)*. Secrétariat Permanent, Comité National du Code Rural, Ministère du Développement Rural, de l'Hydraulique et de l'Environnement. Mars, 1996.
- Yacouba, Moustapha et al. *Atelier de Restitution sur la Gestion des Terroirs et le Développement Local au Sahel: Compte-rendu des travaux*. Niamey: CILSS/Club du Sahel. (30 mai - 2 Juin) 1995.