SECURING WOMEN’S RESOURCE RIGHTS THROUGH GENDER TRANSFORMATIVE APPROACHES

WOMEN’S LAND RIGHTS IN NIGER

Investing in rural people
ABOUT THE INITIATIVE

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In 2020, the International Fund for Agricultural Development (IFAD) invited a consortium of the Center for International Forestry Research and World Agroforestry (CIFOR-ICRAF), the International Food Policy Research Institute (IFPRI) and the Alliance of Bioversity International, and the International Center for Tropical Agriculture (CIAT) to work with selected IFAD projects to promote and strengthen women’s land rights through the integration of gender transformative approaches (GTAs) in rural development interventions by improving policies, tools and practices.

https://www.cifor.org/wlr
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WHAT IS A SOCIO-LEGAL ANALYSIS?

A socio-legal analysis focuses on reviewing laws in the context of particular social problems that the law aims to address (Schiff, 1976; Creutzel et al., 2019). Findings draw on the analysis of country legal and institutional frameworks that recognize women’s land rights, and information on existing procedures and processes for implementing tenure interventions. These analyses provide the basis for identifying incongruencies, overlaps, and gaps that pose barriers to the recognition and enjoyment of women’s rights to land and productive resources.

BACKGROUND

This series of socio-legal reviews summarizes the legal and policy documents related to women’s land tenure in seven countries: Kyrgyzstan, Uganda, The Gambia, Ethiopia, Niger, Bangladesh, and Colombia. These synthesis documents, part of the IFAD Initiative on Women’s Resource Rights, are designed for researchers and policymakers seeking to improve women’s land and resource rights in these target countries.

THE REVIEW COVERS:

- A general characterization of land and resource tenure systems at national, regional, and local levels
- Existing institutional and regulatory frameworks for land and resource tenure, and the extent to which these are inclusive of women
- Implemented land tenure interventions, and the extent to which these benefit women
- Barriers and constraints affecting women’s ability to access rights
- Mechanisms for dispute resolution, and how these engage women and address their concerns
Introduction

The Republic of Niger is a landlocked country in West Africa that is bounded to the north by Algeria and Libya, to the east by Chad, to the south by Nigeria and Benin, and to the west by Burkina Faso and Mali.

The country’s total land area is 1,267,000 km², over 80 percent of which lies in the Sahara Desert, which covers the sparsely populated northern half of the country (USAID, 2010). In 2020, nearly 20 million Nigeriens, or 83 percent of which lies in the Sahara Desert, which covers the sparsely populated northern half of the country (USAID, 2010). In 2020, nearly 20 million Nigerians live in rural areas. Of this 20 million, the vast majority was concentrated along the northern border where the climate and environment allow for rainfed agriculture (World Bank, n.d.).

The country is divided into 8 regions, 36 departments and 265 municipalities, including 52 urban and 213 rural communities (Boubacar, 2009). The major ethnic groups are Hausa (35%), Djerma also called Zarma (21%), Tuareg (15%), Fulani (7%) and Beri Beri (6%) (USAID, 2010). The Hausa and Djerma are settled agriculturalists residing in southern Niger, whereas the other groups are nomadic or semi-nomadic pastoralists (USAID, 2010). An estimated 80 percent of the country’s population is Muslim and the rest are Christian or retain Indigenous beliefs (Gnoumou and Bloch, 2003). Partly in rural areas, Muslim tradition and Koranic law prevail (Boddart, 2017).

While more than 80 percent of Nigerians depend on agriculture – primarily agro-silvo-pastoral production – less than 0.25 percent of agricultural land in Niger is irrigated (World Bank, n.d.). Pastoral land occupies approximately 62 million hectares in the Sahelo-Saharan transition zone, which spans the pastoral bioclimatic zone to the north and the agricultural zone to the south, between isohyets 100 mm and 300 mm, respectively (Boubakar, 2021).

Drought and climatic instability, as well as the expansion of agriculture amid a rapidly growing population, are fueling deforestation, overgrazing, and soil erosion, impacting food security, and increasing land tenure insecurity (Mamadou and Salam, 2013). If current trends persist, estimates predict that the country will have no more unutilised arable land by 2050, raising fundamental challenges in terms of occupation, land use, and associated natural resources (Boubacar, 2021).

Since 2013, conflicts with Boko Haram and other jihadist groups have disrupted Niger’s development and destabilised the Diffa region in the southeast, with massive and lasting impacts on pastoral farming (IFAD, 2021). The region has had a history of migration by nomadic pastoralists to countries and rising incidents of armed banditry in which entire herds have been stolen and hundreds of villagers kidnapped (International Crisis Group [ICG], 2021). This pastoral crisis is exacerbating tensions among land users in the face of an upsurge in farmland expansion that is reducing space for livestock to graze. It is also exacerbating pastoralists’ impoverishment and creating land use conflict, especially with crop farmers competing for access to the same lands.

Addressing these land conflicts is considered essential to preserve social cohesion and avoid further conflict and instability in the country (ICG, 2021).

Women have traditionally played an important role in agricultural production in Niger. Yet, they face disproportionate barriers to land tenure security due to deeply embedded structural and cultural barriers, such as socio-cultural beliefs and practices, that discriminate against them in land access, inheritance, and control. These barriers have contributed to the drastic decline in the proportion of women in agriculture, from 40 percent to 11 percent between 2006 and 2021 (Moonmart and Doka, 2021). Limited access to and control over land poses a major barrier to women’s ability to access agricultural extension services, and remains a significant challenge for household food security, climate resilience, and gender equality (Issoufou et al., 2020).

In Niger, land governance is a hybrid of statutory, Islamic, and customary regimes. The Rural Code (1993) was introduced to clarify and harmonise land governance, strengthen rights to land, recognise legitimate claims, and address overlapping or competing rights, with specific affirmative actions to favour women (Benjaminsen et al., 2008; Issoufou et al., 2020). Laws and regulations were established for different rights holders on agricultural, forest, and pasture lands, and for rural and urban lands (Benjaminsen et al., 2008).

Notwithstanding, customary tenure systems continue to predominate, especially in rural areas. Furthermore, local administrative bodies frequently have insufficient resources and capacities to enforce land laws. As described below, in the resulting governance framework, overlapping and often contradictory land tenure systems cause uncertainty. This results in conflicts over resources, undermines land tenure security for rural communities, and poses a particular challenge for women.

This review provides an overview of the existing land governance arrangements in Niger regulating women’s land rights. The first section discusses land tenure systems and institutional arrangements. The second part discusses two different types of land tenure interventions – registration and certification – and the extent to which they have impacted the recognition of women’s land rights. The third part unpacks the predominant barriers to and gaps in recognition of women’s rights to land, while the last part highlights land dispute resolution mechanisms and their implications for women.

Land Tenure Systems and Institutions in Niger

In 1993, the Nigerien government instituted the Rural Code (Principes d’Orientation du Code Rural, Ordinance 93-015 of 2 March 1993) to improve rural land governance (Box 1). The Code seeks to increase rural tenure security and promote improved organisation and sustainable management of land and natural resources by recognising the private property rights of groups and individuals through either customary or formal law. The Rural Code had two explicit objectives related to customary tenure: 1) to unify the sources of land law (statutory law, customary law, Islamic law) in order to limit legal pluralism, and 2) to limit the prerogatives of traditional chiefs in land management.

Under statutory law, ownership and the management of urban and vacant lands are done by the state and communities, with the act of guaranteeing use rights to occupants of state lands (USAID, 2010). The Forest Law of 2004 grants customary use rights to communities for forests located on their land, with modalities for how to collect or harvest forest products (art. 54).

The Pastoral Code of 2010 regulates tenure of pastoral land, which includes pastoral land for transit and other uses. Under the Pastoral Code, pastoralists have a fundamental right of mobility, and state and local authorities are encouraged to create passage corridors and paths for livestock holders (art. 3, 5, 8, 10).

In Niger, rural land is primarily managed under customary tenure systems, based on the respective rules of a range of Indigenous tenure forms (Hughes, 2014). Customary tenure was traditionally based on the right of the first occupant, wherein rights to land are conferred upon those who have first cleared or settled the land (Box 2). For instance, in western Niger, the Fulfulde haujou system predominates. Under this system, land is borrowed from a pool of community ‘chiefancy’ land (terre de chefferie) entrusted to the village chief (Hughes, 2014; Gavian and Faltchamp, 1996). Community members acquire heritable use rights from the traditional chief (Gnoumou and Bloch, 2003).

2.1 OVERVIEW OF TENURE REGIMES

During the 1980s and 1990s, Niger underwent land tenure reforms through the preparation and adoption of the Rural Code. The Rural Code, which involves administrative and territorial decentralisation, allowed for the registration of customary land rights as formal property rights. The aim was to clarify customary rights and integrate customary land tenure into the formal system.

The promise of customary land rights registration created huge popular demand that the state was unable to accommodate, and resulted in an explosion of conflicts among rights holders competing to position themselves as customary rights holders.

As a result of Niger’s pluralistic tenure system and lack of a single, comprehensive land law, land issues are currently addressed on a case-by-case basis dependent upon individual interests, customary law, Islamic law, and national legislation. This patchwork of legal frameworks and differing venues makes the resolution of land disputes a difficult and lengthy process.

To address these and other issues, a ‘national land policy’ (‘The Land Policy’, Politique Foncière Rurale au Niger), inspired by the principles espoused in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), was adopted on September 9, 2021. The National Committee on the Rural Code (CNCR) published an action plan 2021-2027 to operationalise the new policy. The action plan (subprogram 2) explicitly identifies promoting women’s access to land and land tenure security as a programmatic focus and area of intervention.

Sources: Benjaminsen et al., 2008; Diarra and Monimart, 2006; Boubacar, 2021; CNCR, 2021; FAO, 2022.

BOX 1: LAND TENURE REFORMS IN NIGER

During the 1980s and 1990s, Niger underwent land tenure reforms through the preparation and adoption of the Rural Code. The Rural Code, which involves administrative and territorial decentralisation, allowed for the registration of customary land rights as formal property rights. The aim was to clarify customary rights and integrate customary land tenure into the formal system.

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Sources: Benjaminsen et al., 2008; Diarra and Monimart, 2006; Boubacar, 2021; CNCR, 2021; FAO, 2022.
In addition, rights to agricultural land can be acquired by renting fields in exchange for produce, pledging (in which the land user pays cash for temporary cultivation rights), and land purchase, which is increasingly common practice for the most productive agricultural lands of south-central Niger (Ngoáido, 1996; Gnoumou and Bloch, 2003; McCarthy, et al. 2004; Issoufou et al. 2020). It is also common for informal market land transactions to be validated by witness testimony or, in the case of purchase, recorded using written agreements (USAID, 2010).

Customary tenure systems recognise collective rural land rights to shared resources for collective use. For example, women’s groups are granted temporary rights to communal land in the off season (limited to one season per year) by village chiefs or local officials. During this time, depending on the agreement, women may plant herbaceous annual crops and make additions to the land such as market garden wells, irrigation canals, and fencing. However, they are prohibited from planting trees, which denote land ownership. This temporary tenure can be revoked upon dissolution of the women’s group or once the agreed-upon time frame has ended (FAO, 2008).

Customary law also recognises the collective use rights of pastoralists, which are generally linked to water-use rights. Traditional authorities recognise the collective use rights of pastoralists that are favourable for women’s land rights, these provisions especially as relates to divorce, custody, and inheritance (CEDAW, 2007).

2.2 INSTITUTIONAL AND REGULATORY FRAMEWORK FOR WOMEN’S LAND RIGHTS

2.2.1 OVERARCHING FRAMEWORKS

The formal legal framework offers a basis for women’s rights in Niger. The Nigerien Constitution guarantees equal rights for all Nigeriens irrespective of gender. Niger has ratified international gender equality instruments including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1999, and the Optional Protocol on Violence Against Women in 2004. Other affirmative measures have been introduced and adopted by the Government of Niger such as the Economic and Social Development Plan (PDES 2017–2021). The goal of the PDES is to promote women’s economic opportunities and reduce gender inequity and inequality. The PDES has defined and framed sectoral policies in the implementation of actions in favour of gender equality (Issoufou et al., 2020).

Clear modalities on land formalisation and proof of land rights are stated in both the Rural Code and the Civil Code (art. 711, 712, 2005). Other affirmative measures have been introduced and adopted by the Government of Niger such as the Economic and Social Development Plan (PDES 2017–2021). The goal of the PDES is to promote women’s economic opportunities and reduce gender inequity and inequality. The PDES has defined and framed sectoral policies in the implementation of actions in favour of gender equality (Issoufou et al., 2020).

2.2.2 MARRIAGE AND INHERITANCE RIGHTS

Niger is formally a secular state, and its constitution affirms human rights protections (art. 10–14) and the separation of state and religion (art. 4). Nevertheless, issues of inheritance, marriage, divorce, and related property rights are largely regulated by Islamic religious norms (Cooper, 2010). Although an amendment to the Civil Code in 2004 provides that customary and/or Sharia law must comply with “rational international conventions, the legislative provisions or fundamental rules concerning public order or personal freedom”, laws and practices that discriminate against women persist, especially as relates to divorce, custody, and inheritance (CEDAW, 2007).

Matters related to marriage and property rights are enshrined in the Civil Code of 2005. Statutory laws, as well as Islamic laws, have provisions supportive of women’s rights to land and property through inheritance, purchase, rental, bequest, borrowing, or land use in exchange for a deposit (Hughes, 2014; FAO-Dimitri, 2008). The Civil Code mandates that both partners must consent to marriage (art. 146) and that marriages must be registered with the official registrar to be valid (art. 165-169, 1394). Civil marriage, customary marriage, and Islamic marriage can all be legally registered (art. 63, 165-169), whereas informal or de-facto unions are not legally regulated (OECD, 2022). Most marriages in Niger are celebrated under customary law and are not registered before the civil registrar (Cooper, 2010).

In both civil and customary marriages, the husband is the head of household (Civil Code, art. 213; OECD, 2022). Under customary law, in cases of divorce or widowhood, a woman cannot become the recognised head of the household (OECD, 2022).

Under the Civil Code, spouses may opt to have a community property regime or a dowry regime (régime dotal) (art. 1391). A marriage based on joint property allows both spouses to administer their property, but in the case of a dissolution or death, a wife can recover her individually owned property (art. 723). A married woman can lay claims only on her marital home as her home in the case of separation (art. 108), and properties before marriage are not considered part of the joint property agreement (art. 1405). Inheritance is recognised by the law, with children or heirs able to inherit within 30 years if property is managed by a third party from the time of death.

Islamic law (Koran, verses 11 and 12 of the Fourth Sura) provides that the woman inherits half of the man’s share, and this applies to all land, including farmland. Inheritance practices that follow Koranic prescriptions endow two-thirds of the land capital to the male child and one-third to the female child. Furthermore, in cases of widowhood, the widow receives one-eighth of the inheritance while the rest is divided among her children. Division of inheritance is strongly influenced by other men in the deceased husband’s family an effort to avoid the loss of family patriarchy to the woman’s family or a third party (a buyer, in the case of sale) (Issoufou et al., 2020).

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BOX 2: LAND ACCESS UNDER CUSTOMARY TENURE SYSTEMS

Niger’s economy is traditionally made up of agricultural and pastoral production systems. The country comprises an agricultural and a pastoral zone, with either activity being dominant depending on the area, although both activities are permitted throughout. In the past, families working under the authority of the head of the family or clan cleared the lands and established water points. When fields were left in fallow, more distant fields (bush lands) were cleared and farmed, and the hamlets that were established for the use of these fields eventually became new villages that recognised the authority of the original head of the family or clan. This agricultural system prevailed for as long as vacant bush lands were available.

In Hauwa communities, agriculture persists on collectively farmed lands, held as collective assets, known as gandu. Household production and consumption units, known as the gida, farm these lands together. Gandu lands are under the control of the male household head or patriarch, who traditionally redistributed agricultural surplus according to merit and to social recognition of women and men. Ceremonies such as the ka koya or tambari provided this public recognition to farmers by conferring women titles such as sarkin noma: “master farmers”. In addition to gandu production, adult women and young men cultivate their own fields (gamana) two or three days a week.

In addition, rights to agricultural land can be acquired by renting fields in exchange for produce, pledging (in which the land user pays cash for temporary cultivation rights), and land purchase, which is increasingly common practice for the most productive agricultural lands of south-central Niger (Ngoáido, 1996; Gnoumou and Bloch, 2003; McCarthy, et al. 2004; Issoufou et al. 2020). It is also common for informal market land transactions to be validated by witness testimony or, in the case of purchase, recorded using written agreements (USAID, 2010).

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Customary law also recognises the collective use rights of pastoralists, which are generally linked to water-use rights. Traditional authorities recognise collective lands reserved for grazing, passageways for animals, and public water points, with women having access and use rights. Under customary law, control over land surrounding water points usually sits with individuals and groups who control the water point (Cotula, 2007; Hughes, 2014).

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However, although the majority of Nigeriens are Muslim, customary rules, rather than Islamic law prevail in most areas of the country. Inheritance and other property transfers using the framework of Islamic law generally only take place in urban areas and outlying suburbs, and usually do not apply to farmland (FAO, 2008). Although the law establishes women’s equal rights to own, use, put up for collateral, and make decisions about land (Constitution, art. 17; Rural Code, art. 4), and Islamic law provides for women’s rights to inheritance, in practice, women’s land tenure security and access are severely restricted due to the predominance of customary law, which generally prohibits women from inheriting and owning land (RECA Niger, 2016).

Under custom, land inheritance follows a patrilineal structure and women are expected to marry and relocate to their husband’s land (i.e., virilocality) (Issoufou et al., 2020). Women are typically allowed to use and generate income from the land belonging to their husbands or other male family members (OECD, 2022). In Hausa customs, for example, women have access rights to land through the “gamana” system (Box 2). Male relatives usually allow small plots to women near their homes for use as kitchen gardens (Hughes; 2014; FAO, 2008). Although women commonly access land through marriage, this land is generally of poor quality, and can be taken away from them at any time, such as in the event of a divorce. Women can also access by ways of donations, where a landlord grants some or all farm land to an individual or group without collecting payment. This form of gift giving has become rare due to the commoditisation of land, however (Diarra and Monimart, 2006). More generally, changing tenure dynamics – in particular, increasing land pressures and the related individualisation and commodification of customary land – are eroding women’s access to even marginal lands (Diarra and Monimart, 2006).

Although Hausa women can access the gamana (plot) allocated to them by the land chief, they do not customarily inherit land. To own land, they must purchase it (FAO, 2008; Hughes, 2014). Women or their children are increasingly collecting payment. This form of gift giving has become rare due to the commoditisation of land, however (Diarra and Monimart, 2006). More generally, changing tenure dynamics – in particular, increasing land pressures and the related individualisation and commodification of customary land – are eroding women’s access to even marginal lands (Diarra and Monimart, 2006).

The National Committee on the Rural Code (CNCR) is the central decision-making body associated with the Rural Code. The implementation of the Rural Code has been primarily coordinated through government ministries, the Land Commission (French: Commission Foncière: COFO), and customary authorities (Diarra and Monimart, 2006; Hughes, 2014). In line with Niger’s decentralisation efforts, the Rural Code creates Land Commissions made up of government and municipal departments, customary authorities and civil society members at each level of the department, commune, and village levels. Women are represented at all levels (AUC et al. 2008; Diarra and Monimart 2006).

The Permanent Secretariat of the Rural Code is responsible for developing complementary and supportive policies and laws, creating a resource centre, and evaluating the actions of the decentralised land commissions. At the regional level, land administration executives are responsible for developing land management schemes and supervising and managing land tenure work conducted by the Departmental Land Commission (COFODEP) and Municipal Land Commission (COFOCOM).

Departmental administration responsibilities include issuing certificates for land tenure rights, monitoring land development strategies, and coordinating, monitoring, and training the municipal and village administrators. Municipal institutions are tasked with maintaining the Rural File1 in cooperation with COFODEP, raising awareness about the Rural Code, and coordinating the work done at the village level. Village or tribal level administrators are responsible for identifying common resources, monitoring land development, and addressing issues on land. This administrative mechanism positions local traditional authorities to have recognised roles in the formal framework for land administration (Dеннингер, 2003).

Women’s representation and participation in land governance structures

While men dominate leadership positions at the community, regional, and national levels, there has been some progress towards increasing women’s representation and leadership in land governance in recent years. For instance, there is now a requirement that at least 10 per cent of municipal councillors on municipal land committees be women (Boddart, 2017). In addition, since the establishment of the Land Commission, quotas for women’s representation have supported women’s representation at every level of Land Commission structures. At the municipal level chaired by the mayor, at least one of the three municipal councillors must be a woman, and two representatives must be from women’s groups in order to meet the 10 per cent minimum quotas on women’s representation. The goal is to ensure that land matters are not only regulated by customary authorities, but also by representatives from government and civil society, including women (Diarra and Monimart, 2006).

One study has found that community dialogues and negotiations have been an effective means of increasing women’s representation on local land committees (Mamadou and Salamou, 2013). Women in such leadership positions are then able to advise other women on key land-use issues, including in relation to climate resilience and improved household nutrition and food security. In addition, the Rural Code provides for the establishment of local ‘conventions’, or land use agreements, in communities: negotiated agreements concerning the management of land can be taken up in local and communities, women can take up leadership positions in establishing these conventions (ibid).

The quality of women’s participation in these governance bodies is still an issue, however, particularly when it comes to decision-making (Diarra and Monimart, 2006). Women councillors often play a symbolic role and are not always aware of land laws, women’s land rights, and their roles in the committee (Diarra and Monimart, 2006; Boddart, 2017). Some elected women do not see the need to prioritise women’s issues or specifically defend their rights. Furthermore, the new municipal councils have generally not been utilised by communities, especially in rural areas, as local people prefer using customary structures in matters related to land.

2.3.2 CUSTOMARY LAW

Where land is managed through customary law, the traditional chieftaincy, organised at different hierarchical levels, is tasked with land-related tasks. For sedentary populations, chiefs at canton, village, and neighbourhood levels oversee land-related matters, whereas for pastoralist groups, this is the responsibility of groups (made up of several tribes) and tribal chiefs. Lastly, in provinces or sultanates – a grouping of several cantons, where land is under customary law – the sultans indirectly administer land-related issues via village and neighbourhood chiefs (bouzas). In the case of land tenure, customary village chiefs, therefore, remain the traditional land administrative authorities in some southern agricultural and pastoral zones (ibid).

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1 The Rural File is the registry used to record and register rural land and property rights.
As noted above, land regulations in Niger recognise the rights for customary land to be recorded in ‘rural registers’ that progressively document all registered land and certificates. The aim is to promote land management that combines customary logic with statutory law, ensures that different land uses coexist, and secures all land users’ rights (Deininger, 2003; ‘Land Tenure and Development’ Technical Committee, 2015, p. 65). Land tenure reform and the creation of the Rural Code accelerated popular demand for land rights registration (Benjaminsen et al., 2008).

The Rural Code (art. 2) establishes two processes and modalities for land rights formalisation in Niger: 1) land registration for a title deed, and 2) issuing of a legally binding certificate (certificat) to individuals by the Chef de canton, while a title of priority right of use can be issued to collective rights holders, mostly in pastoral communities. Typically, when a citizen confers with a Chef de canton, they pay a small fee in recognition of his or her authority. The Chef de canton has an inherited right to receive 10 per cent of the value of the land involved in a transaction (Diarra and Monimart, 2006). Documents issued to landowners (certificate or titles) provide spaces for details of both men and women. Mostly in cases of collective rights, these documents will carry the names of all other members who are joint owners (users) of the property to be registered.

Certification is the most common way that women have formalised a right to their plots of land, though generally low levels of information about land rights and the complex process and limited benefits of registration combined with structural limitations to accessing certification processes continue to limit women’s land ownership (FAO, 2008; Diarra and Monimart, 2006).

This rate of registration does appear to be increasing. While there were only 2,905 land titles registered in Niger (excluding the cities of Niamey and Agadez) between 2000 and 2003, 7,673 land titles were registered in 2009 alone (MCC, 2017). The process in recent years has become more organised and active, with institutional representatives more aware of their roles and responsibilities in land registration (Boubacar, 2021).

The outcome of land registration and certification, particularly for women, has been complex, with specific weaknesses in the mechanisms creating land tenure insecurity (Deininger, 2003). Although the Rural Code includes provisions that are favourable to women’s land rights formalisation, implementation of these provisions has been challenged by persistent customary norms and a lack of clarity among village chiefs and local councils about their roles (Benjaminsen et al., 2008; Diarra and Monimart, 2006).

The 1993 Rural Code aimed to increase women’s and men’s land security by decreasing the influence of village chiefs in favour of individualising and enabling registration of customary land-use rights. As noted above, the decree to directly register customary land rights through the land tenure reform led to a surge in demand for registration and land titling (Cotula et al., 2004). Yet, as of 2004, only 3,100 total sales, gifts, mortgaging, loans, rents and customary freeholds (attribution coutumière) had been processed and recorded by the Land Commissions for the entire country (Benjaminsen et al., 2008; FAO, 2008; Gnonoum and Bloch, 2003).

In the district of Maradi in the department of Zinder, almost 600 demands for deeds were initiated during the first few months after the Rural Code was adopted in 1993. However, five years later (by 1998), fewer than 50 title deeds had been finalised, and villagers stopped requesting title deeds, as they did not believe that the Land Register would deliver them (Benjaminsen et al., 2008).

## 3.3 Progress of Implementation

### 3.3.1 Objectives and Mechanics

In Niger, land registration is implemented by land Commissions established under the Rural Code are tasked with issuing land titles and overseeing land use. Typically, when a citizen confers with a Chef de canton, they pay a small fee in recognition of his or her authority. The Chef de canton has an inherited right to receive 10 per cent of the value of the land involved in a transaction (Diarra and Monimart, 2006). Documents issued to landowners (certificate or titles) provide spaces for details of both men and women. Mostly in cases of collective rights, these documents will carry the names of all other members who are joint owners (users) of the property to be registered.

### 3.3.2 Implementation

The outcome of land registration and certification, particularly for women, has been complex, with specific weaknesses in the mechanisms creating land tenure insecurity (Deininger, 2003). Although the Rural Code includes provisions that are favourable to women’s land rights formalisation, implementation of these provisions has been challenged by persistent customary norms and a lack of clarity among village chiefs and local councils about their roles (Benjaminsen et al., 2008; Diarra and Monimart, 2006).

### 3.3.3 Certification

Certification is the most common way that women have formalised a right to their plots of land, though generally low levels of information about land rights and the complex process and limited benefits of registration combined with structural limitations to accessing certification processes continue to limit women’s land ownership (FAO, 2008; Diarra and Monimart, 2006).

This rate of registration does appear to be increasing. While there were only 2,905 land titles registered in Niger (excluding the cities of Niamey and Agadez) between 2000 and 2003, 7,673 land titles were registered in 2009 alone (MCC, 2017). The process in recent years has become more organised and active, with institutional representatives more aware of their roles and responsibilities in land registration (Boubacar, 2021).
Although progress has been made on land policies in Niger, interventions remain weak. The inefficiency of land institutions coupled with a lack of information on land tenure interventions make it difficult to assess how much progress has been made thus far.

Women’s land rights are primarily constrained by three types of barriers, discussed in this section:

1. Policy incoherence and policy-implementation gaps
2. Overlaps and contradictions among multiple tenure systems
3. Normative constraints

4. POLICY INCOHERENCE AND POLICY-IMPLEMENTATION GAPS

Land tenure interventions on titling registration and certification are mostly hindered by institutional, legal, and operational shortcomings related to ineffectiveness of implementing institutions and the lack of harmonised texts on land and other resources (Table 2). Land Commissions face difficulties determining and recording land ownership and rights due to insufficient training, capacity, and funding (Benjaminsen et al., 2008). Very few government officials and support staff were dedicated to the task of registering demands and resolving disputes; and those assigned to these tasks, including volunteers, were inadequately trained to do so (Diarra and Monimart, 2006; Benjaminsen et al., 2008). It was initially unclear, even to land administrators, which rights in the customary bundle of rights could be registered, which opened doors for land grabbing (Benjaminsen et al., 2008; Boubakar, 2021).

Originally conceived as a simple reform, the registration process stirred up old and new conflicts (Benjaminsen et al., 2008). A complex tenure system had been reduced to simplified categories of primary rights holders, who claimed exclusive rights to land, and weaker groups of secondary rights holders (Boubakar, 2021). Institutional competition emerged between rights holders likely to benefit from the reform and others who relied on undocumented means to secure land, such as informal agreements for land recognition (Benjaminsen et al., 2009). Land claims by men, sedentary agriculturalists, and ‘first comers’ held more weight than claims by women, transhumant cattle herders or ‘late comers’. Insufficient or lacking working tools such as GPS receivers for land registry and transportation further impeded the implementation of land reforms (Issoufou et al., 2020).

The Land Commissions found it challenging to clearly differentiate between urban and rural lands (Benjaminsen et al., 2008), and implementation of the Rural Code was affected by the lack of harmonisation of land texts, which raises confusion on what text is applicable (Benjaminsen et al., 2008). For example, the Pastoral Code aligns with the Rural Code in determining the legal status of rural water supplies and enabling pastoralists’ mobility by legitimising herd access even to private water sources provided that the load capacity of the infrastructure allows it (art. 27, 30 and 31). However, the Pastoral Law seems to have raised conflicts between pastoralists and farmers favourable the needs of crop cultivators (Quan and Toulmin, 2004). Ambiguities or conflicting laws have encouraged encroachment by farmers into herding zones and their assertion of secure, exclusive ownership rights, including to clear land for agriculture, thereby cutting off livestock access to water resources, with profound environmental and livelihood implications (Quan and Toulmin, 2004). Pastoral herders who have historically relied on established secondary rights to stubble, water, and pasture resources, are thus impeded by crops planted in former cattle tracks and by the privatisation of previously common grazing lands as they attempt to move their animals seasonally (Benjaminsen et al., 2008; Boubakar, 2021).

5. OVERLAPS AND CONTRADICTIONS AMONG MULTIPLE TENURE SYSTEMS

Overlaps and contradictions among multiple tenure systems hinder implementation in the management of grazing, agricultural, and water resources.

6. NORMATIVE CONSTRAINTS

Normative constraints raise confusion on what text is applicable (Benjaminsen et al., 2008; Issoufou et al., 2020). Ambiguous position of local chiefs vis-à-vis the state. Contradictions between customary systems and the Rural Code make implementation difficult.
The diversity of land tenure systems in Niger has blurred the distinction between customary and statutory land laws, resulting in conflicts among different groups (pastoralists and agriculturalists), with nuanced implications for women in pastoralist communities (Cotula, 2007; Hughes, 2014). The lack of a single land law makes it challenging to handle conflicts between pastoral and agricultural communities. Although formal policies (Rural Code) and religious texts are more favourable to women’s land rights (Mamadou and Salou, 2013), customary law remains the best-known and most frequently applied system (FAO, 2008).

Regarding land rights formalisation, the position of the local chief vis-à-vis the state is ambiguous, as roles are not clearly defined. This makes it difficult for them both to address questions that fall under their respective jurisdictions (Diarra and Monimart, 2006). Similarly, her access to land and credit during her marriage depends on the stability of her marital relationship; and in the event of a divorce, separation, or widowhood, she may lose her access to land under customary law (Issoufou et al., 2020).

Some religious practices, such as seclusion or confinement, which confine women to a domestic space and prevent her from leaving the home, result in women’s inability to work outside the house and limit their access to land and other productive resources (Diarra and Monimart, 2006). Some women also withhold from demanding their property rights because they are unaware of the statutory land laws or afraid of retaliation by men and families (FAO, 2008).

Access to Justice and to Land Dispute Resolution Mechanisms

Although general statistical data is lacking on rural land conflicts in Niger, land is often cited as the primary source of conflict in the country. The majority of land conflicts take place in rural Niger, where increasing pressure on land has led to an increase in disputes among family members, farmers, farmers and herders, traditional chiefs, and villagers (Gnoumou and Bloch, 2003).

Legal institutions are represented by the courts and police (through the gendarmerie). Customary chiefs hold the power to mediate customary conflicts. This mediation authority is a traditional role, which is recognised under the law. Traditional or customary authorities relevant for land dispute resolution include the sultan, the canton chief, village chiefs (for sedentary farmer zones), Tribute Chief (pastoralists zones), and the religious head (the Allal). Village and canton chiefs play significant conflict resolution roles as they operate under both traditional and formal systems (Gnoumou and Bloch, 2003).

Matters relating to customs fall into two groups: 1) persons and the family, which concerns all disputes relating to the family, marriage, divorce, filiation, successions, gifts and wills, as well as legal actions taken by the State. 2) disputes related to the ownership or possession of unregistered immovable property and the rights thereto. In these matters, custom constitutes the common law (Boubacar, 2009).

By leading to an increase in land conflicts, pressure on land makes the adjudication authority of customary leaders – the first authorities to intervene in land conflict management – all the more important. Mediation by customary chiefs is mandatory before recourse to the courts (Bron-Saitdout, 2015). As the number of land transactions increases, so does the role of customary authorities, who are usually involved in guaranteeing that a prospective seller is the owner of land, and who serve as witnesses to and participants in land transactions (Bron-Saitdout, 2015).

There is a need for more research regarding land disputes resolution for women. Little information is available in the literature regarding gender outcomes in land dispute and land settlement. One study found that the continued co-existence of statutory, customary, and Koranic systems creates difficulties, particularly in the administration of land by the Land Commissions (Bron-Saitdout, 2015). Although the legislative framework establishing the Land Commissions is based on formal equality between women and men, Land Commissions are run by men who seem to be unaware of or unconcerned with gender and land issues and who sway more towards customary norms (Bron-Saitdout, 2015). There is some evidence that women and their heirs are increasingly invoking Koranic law in bringing inheritance claims over agricultural land, with some positive outcomes for women (Diarra and Monimart, 2006).

The constitution recognises both formal and customary institutions in the settlement of a land dispute. Disputes over land that is registered or governed by the provisions of the Civil Code are addressed by the civil courts, while customary land disputes, which make up the majority of land disputes, are handled by the judge in charge of customary affairs. This judge is also responsible for hearing other types of cases such as matrimonial disputes or small civil and commercial claims.

Different procedures arbitrate disputes between herders and farmers through a Joint Conciliation Commission2 at the village, district, province, and sultanates levels (Rural Code, art. 66). Land Commissions, though tasked with identifying and recording land rights and registration, do not have authority to receive or resolve competing land claims (Gnoumou and Bloch, 2003; FAO, 2008). Such claims need to be resolved before the land can be registered. These challenges increase tenure insecurity for women and other vulnerable groups, who often lack the means to pursue cases of competing land claims (Gnoumou and Bloch, 2003).

Organic Law No. 2004-050 of July 22, 2004, establishes the organisation and jurisdiction of rural land courts (les tribunaux du foncier rural) to handle rural land disputes. According to article 88 of the 2004 Law: “The rural land courts hear: (i) cases concerning ownership or possession of real estate and the rights arising therefrom where the dispute relates to an immovable registered in the Rural File; (ii) cases concerning customary ownership or possession of land (fields) and the rights to land not registered in the Rural File; (iii) cases concerning disputes relating to access to rural land resources (water point, pasture or grazing areas, corridors, etc.); and iv) in general, all disputes relating to possession and ownership ...” Unfortunately, the courts have yet to be effectively implemented and implementing legislation has not yet been adopted (Saadou, 2014).

Conflict resolution is mostly done by administrative institutions such as the Divisonal Officer (préfet), the Senior Divisional Officer (sous-préfet), and the Head of the Unit (chef de poste).

Some women also withhold from demanding their property rights because they are unaware of the statutory land laws or afraid of retaliation by men and families.

2 Inter vivos gifts are those that a person receives from another person while they are still alive.

2 For example, see: Analysis of conflict factors in Niger, UNDP and High Authority for the Consolidation of Peace, Niger Research Office Hombori, October 2014.

3 The Joint Conciliation Commission is tasked to clarify issues in disputes between herders and farmers and bring them on mutually acceptable terms.
This review of tenure dynamics in Niger, with an emphasis on women’s rights to land and resources, highlights that the implementation of the Rural Code has created conflicts resulting in primary and secondary rights holders benefitting unequally, with persistent implications for women’s land tenure security. The process of implementing the Rural Code and related reforms has been hindered by inefficiencies of land administration and a lack of clarity between functions of state and traditional authorities. Social norms and religious customs also present obstacles to women’s ability to exercise their rights to land.
Key Regulations in the Analysis of Women’s Land Rights in Niger

**Environmental Management Framework Law (Law N°08-56 of 29 December)**

- **ARTICLE 1, 3, 9, 12, 15, 48, 51, 54**

**Civil Code**

- **ARTICLE 108, 124, 127, 150, 153, 140, 148, 228, 243, 637, 639, 666, 695, 703, 704, 712, 723, 785, 1384, 1385**

- Establishes that a married woman has only her marital home as her home and in case of any separation both spouses should be treated equally. The law also prohibits co-habitation relationships except in special conditions. Marriages are recognised under civil and customary/traditional regimes with only the man having rights to administration in customary marriages.

- In a marriage which is based on joint property, the spouse can make decisions if the spouse opts to remain in that marriage only in the case where one person is dead and allowed as successor to the deceased. Should there be a dissolution of marriage, the spouse can request recovery of what they owned individually.

- Upon death, the heir will be allowed to inherit property and anyone who had managed the property in his absence will be obliged to return it to the heir in instalments on revenue distribution. In the case where persons who have inherited property transfer the property, the spouse can request recovery of what they owned individually.

- Establishes that a minor can only get married if there is consent from both parents but where there is disagreement between parents an alternative must be sorted.

- If a spouse contracts a second marriage, a divorce can be declared. Further, any new marriage can only be done by a woman within 90 days of dissolution of the previous marriage. Once a divorce has been initiated, any contract on property transfer made by the man during this period is null. The law further upholds that such transaction violates the right of the woman.

- Guarantees tenancy arrangements with tenancies on usufruct or utilization for living and use rights. Further stipulates the lessor can lease his or her land provided there is an agreement between the lessor and the lessee and that if it does not affect the public in case of use and makes all necessary provisions to protect the lessor.

**Forest Law**

- **ARTICLE 4, 5, 12, 15, 48, 51, 54**

- Defines forests and forest resources and classifies forest into state forests, local authority forests, and private forests.

- Instructs the administration in charge of forest to work with other services and institutions for measures to implement the national forest plan.

- Recognises the exploitation of forest resources for commercial or non-commercial purposes as well as those harvested by individuals at forest owners who have permits. Also grants customary uses rights (e.g. conventions gathering, grazing, gathering of forest products) to communities in forest locality in their land with specifications on what to be collected or harvested from the land.

- Authorised by: Ministry of Forestry, Local Authorities, Swan foresters, local nature protection brigades

**Constitution of Niger, 2017**

- REVISED IN 2017

- **ARTICLE 8, 22, 28, 29**

- Recognises equality regardless of gender, social status, race, or religion.

- Prohibits all forms of discrimination concerning women, young girls and handicapped persons and sets measures to fight against violence against women and children in public and private life. Further establishes penalties to ensure the participation of women in national development.

- Any person has a right to property. No one may be deprived of their property except for cause of public utility and subject to a fair and prior indemnification.

- Establishes the rules concerning matrimonial regimes, inheritance, and gifts; the procedure according to which customs will be declared and brought into harmony with the fundamental principles of the Constitution, and the right to transfer property.

**PASTORAL CODE**

- **ARTICLE 1, 5, 10, 17, 18, 19, 27, 44, 60, 66**

- Recognises mobility as a fundamental right of pastoralist, nomadic pastoralists and transhumant persons by both the State and local authorities. The law further prohibits local concession. It renders the mobility of pastoralists and their flocks.

- Establishes that all pastoral resources are subject to national inventory and their registration in the rural file, while granting priority right of occupation, management, and enjoyment on their home natural resources.

- Creates the management of public wells for pastoral areas in the capacity of project owner. Also recognizes the diking of wells by the individuals or communities in pastoral areas.

- Grants free access to surface waters in the public area of the State to livestock farmers and their animals. Further allows for leasing free management and concession of waters, within public domain of the State.

- Urban planning must set measures for waste management and waste generation that cross within urban zones and to other countries. Further recognises the collection of straw in pastoral areas and its storage far from the homes without proper protection as prohibited.

- Establishes procedures for resolving disputes between herders and farmers through joint committees at the level of villages, districts, tribes, groups and pastoral, gourpous, and regions.

- Authorised by: State and local authorities; Land Commission; National Permanent Secretariat of the Rural Code; Municipalities; Village heads; Joint Conciliation Commission; Courts.
These regulations were retrieved from the following sites:

- Lanklinks: https://www.land-links.org/country-profile/niger/
- FAO: FAOLEX Country Profiles
- FAO: FAO Gender and Land Rights Database

Key Legislation
- Civil Code, 2005
- Niger’s Constitution of 2010 with Amendments through 2017

Policy Documents
- Loi cadre relative à la gestion de l’environnement.
- Loi n°98-56 du 29 décembre 1998

Sectorial Laws
- Loi cadre relative à la gestion de l’environnement. Loi n°98-56 du 29 décembre 1998
- DECRET No 27-066/PR/MA/EL du 02 octobre 1997 déterminant les modalités d’inscription des droits fonciers au Dossier Rural.
The Center for International Forestry Research (CIFOR) and World Agroforestry (ICRAF) envision a more equitable world where trees in all landscapes, from drylands to the humid tropics, enhance the environment and well-being for all. CIFOR and ICRAF are CGIAR Research Centers.

Climate change, biodiversity loss, environmental degradation, and malnutrition. These four interconnected global crises have put at stake the wellbeing of our planet for years. Fueled by COVID-19, their impact on agriculture, landscapes, biodiversity, and humans is now stronger than ever. Reversing this negative trend is a challenge, but also an opportunity for bold choices and integrated solutions. Established in 2019, the Alliance of Bioversity International and the International Center for Tropical Agriculture (CIAT) was created to address these four crises, maximizing impact for change at key points in the food system.

The International Food Policy Research Institute (IFPRI) provides research-based policy solutions to sustainably reduce poverty and end hunger and malnutrition in developing countries. Established in 1975, IFPRI currently has more than 600 employees working in over 50 countries. It is a research center of CGIAR, a worldwide partnership engaged in agricultural research for development.

### INITIATIVE CONTACTS

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