

PAPER N°4 : THE RURAL CODE : LEGAL AND INSTITUTIONAL FRAMEWORK

The Rural Code is a key element of the Nigerien national policy on rural land tenure and the management of natural resources. It hinges on a legal system (composed of all the rules and regulations concerning land tenure and natural resources management) and an institutional system (a group of institutions that implement and monitor those rules). The two systems apply at different levels, from the local level to the national one.

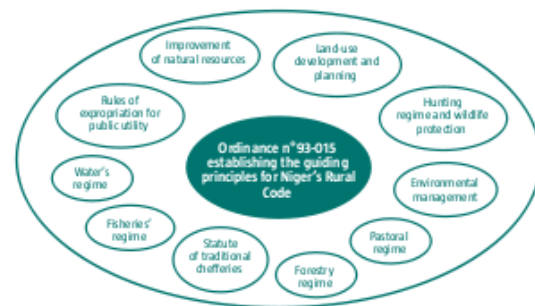
LEGAL FRAMEWORK

The Rural Code consists in a series of legal texts : the 1993 ordinance (ordonnance cadre) containing its guiding principles, and sector-specific legislation. (see opposite diagram)

Sector-specific rules and regulations were drafted step by step from 1993 until now, and complemented the global structure. It is actually an unfinished process : additional legislation is being discussed and will supplement existing rules and regulations to fuel, enhance and strengthen the

Rural Code. The drafting of the Rural Code is therefore an ongoing process.

To meet the objectives established by the Rural Code (see paper #3), these rules and regulations promote a number of principles and define standards that apply to the management of various rural and agricultural resources.



Niger's Rural Code legal system
Source : Rural Code Permanent Secretariat

Category of Resources	Guiding Principles and Established Standards
Natural resources in general	<ol style="list-style-type: none"> 1. Natural resources constitute a shared national heritage. All Nigeriens can access it, without discrimination. 2. Rights to access and use natural resources are equally protected whether emanating from positive law or customary law. 3. All Nigeriens engaged in rural activities must contribute to the improvement and development of the natural patrimony. This entails a rational management of resources (protection and optimization). 4. The organization of rural areas and resources is defined by competent authorities, in consultation with concerned population groups.
Agricultural rural land tenure	<ol style="list-style-type: none"> 1. The agricultural zone is the part of the national territory located south of the limit for cultivation as defined by the 1961 Law. The private property system applies to this area. 2. Land property can be acquired through custom or positive law. When no ownership rights can be established, the land is considered vacant and belongs to the State or to decentralized local institutions. 3. Tracks, transhumance routes and cattle corridors as well as pastoral enclaves are considered State land, and herders breeding livestock within the agricultural zone can access them freely. 4. After the fields' opening day (determined every year by the governor in accordance with harvest times for the different rain-fed crops), livestock may pasture freely in the agricultural zone. 5. Owners of farmland holdings have exclusive control over their estate, and exert it within the established legal framework (especially the rules and regulations regarding the development of rural areas and environmental preservation).

* (1) The home grazing territory (*terroir d'attache*) is defined as the territorial unit set and observed by custom and/or legal texts on which pastoralists usually reside for a large part of the year. It is the territory to which they remain attached when they move (for transhumance or migration for instance).

Pastoral rural land tenure	<ol style="list-style-type: none"> 1. The pastoral zone is the part of the national territory located north of the limit for cultivation defined by the 1961 Law. It belongs to the State. 2. The rights of pastoralists (who own or keep cattle) include free access to natural resources in the pastoral zone. They hold a common use right for this zone. 3. It is forbidden for pastoralists to grow crops within the pastoral zone, except for subsistence farming. They should keep a nomadic approach to such farming activities in order to avoid future attempts to alienate the land. No compensation can be claimed for any damage caused by animals to this type of fields. 4. Pastoralists may be granted a priority use right over natural resources located on their "home grazing territory" (terroir d'attache⁽¹⁾).
Water	<ol style="list-style-type: none"> 1. Water is a strategic resource and constitutes State property. Rivers, lakes, ponds, sources and groundwater are therefore considered State property. Rainfall water or ponds created by rainfall water on a private land estate are not considered State property. 2. Anyone has the right to use and dispose of the water considered State property. 3. Access to public wells built by the State or local institutions is free for all. In the case of a "private" well, priority use of the water is granted to the person who dug the well, but access remains non-exclusive. 4. No well engineering nor hydraulic works can be engaged within the national territory (whether in the agricultural or pastoral zone) without the authorization of competent authorities. <p>WANT TO LEARN MORE ? <i>Watch the film "From conflict to consultation: The Rural Code experiment in Niger"</i></p> <p>To learn more about access to water in the pastoral zone and conditions for wells engineering, watch bonus #3, "Watering places, a key issue in the pastoral zone".</p>
Forests	<ol style="list-style-type: none"> 1. Are considered forest all areas presenting a dense growth of trees, shrubs and other non-agricultural plants. 2. The following customary rights apply to forest reserves : rights to collect firewood, to remove timber when needed for the manufacturing of farming tools, to pick up fruits and medicinal or food plants. There are rules and regulations over pasturing and animal transit. 3. All other forests (non-reserve) are considered "protected forests". Customary use rights include : farming, pasturing and picking forest products.
Wildlife and halieutic resources	<ol style="list-style-type: none"> 1. Hunting, whether customary or commercial, is subjected to the obtaining of a hunting license. 2. Fishing activities are also regulated : it is compulsory to hold a fishing license or a customary use right over fishing resources.

INSTITUTIONAL FRAMEWORK

Institutions that implement the Rural Code and monitor the enforcement of established standards operate at all levels, from the village level to the national level. Each institution has its specific competences and prerogatives, and participates in a global system based on subsidiarity.

ABSTRACT FROM AN INTERVIEW WITH MR ABDOUL KARIM MAMALO, PERMANENT SECRETARY OF THE RURAL CODE FROM 2000 TO 2010

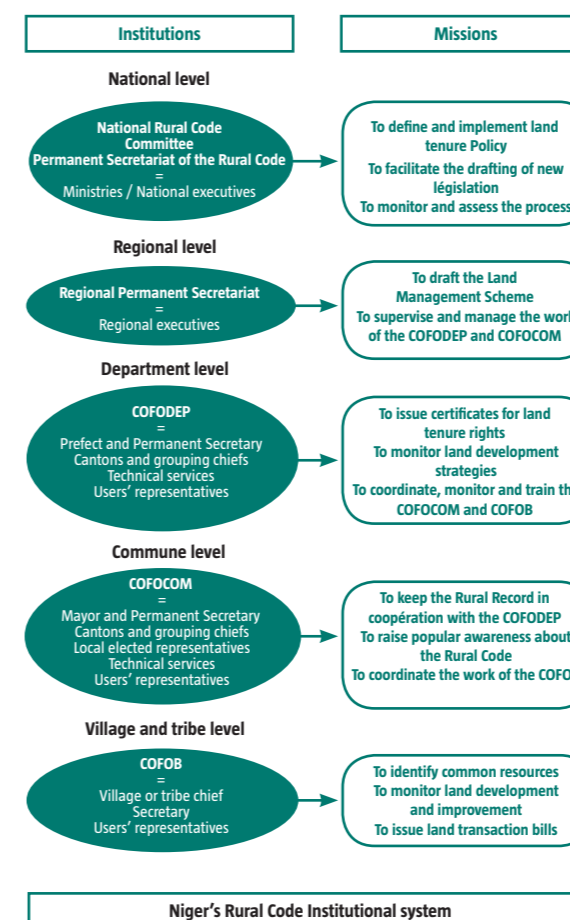
"The CofobOs operate essentially at the community level : they control cattle corridors, access to watering places ... and deliver land tenure certificates, especially in the case of donations, sales, inheritance, renting or customary pawning of land. It's a job that only grassroots land commissions can perform. The CofocomOs on the other hand delineate corridors, watering places and forests, and they manage the marking and registration of these resources into the Rural Record. So basically they assume all missions that could not be performed by CofobO. Cofodeps not only supervise the work of CofocomOs and train CofobOs and CofocomOs members, but they also deliver land titles. That is because the Cofodep has the operational capacities [...]. They have the capacities to use technological tools, to use GPS and work on georeferencing, and they have maps that can lead the Cofos to take possession of a land title. At the regional level, it's a different job. The region supervises the whole system at the regional level. It also gets involved in drafting land management schemes. So as you can see, depending on the level the missions are completely different, but it's the addition of all these mission that defines the Rural Code."

At the national level, the National Committee of the Rural Code defines global policy guidelines for the State in terms of rural policy. It is chaired by the Ministry of Agriculture and includes other ministries involved in the management of land and natural resources (Ministries in charge of livestock production, environment, land management and planning, home affairs, etc ...). Its mission is to develop, popularize and monitor the Rural Code's guiding principles. Its executive organ is the Permanent Secretariat of the Rural Code, chaired by the Permanent Secretary and composed of various experts (legal experts, agronomists, cartographers, etc ...). At the regional level, the main missions of the Regional Permanent Secretariats are to supervise, support and train land commissions at department and commune levels, and to draft the future Land Management Scheme (Schéma d'Aménagement Foncier - SAF). They were established quite recently but operate now in all 8 regions of Niger.

Department land commissions (Commissions foncières départementales, commonly called Cofodep) issue the bills certifying land tenure rights, and monitor land development and improvement strategies. They also support commune land commissions (Commissions foncières communales - Cofocom) and grassroots land commissions (Commissions foncières de base - Cofob) in their activities. Department land commissions exist in all 36 departments of the country. Commune land commissions were created in the context of the 2004 decentralization process. Their role is to keep the Rural Record in cooperation with the Cofodep, and to increase public awareness of the Rural Code. Finally, grassroots land commissions operate at village or tribe level, delineate common resources, monitor their development and deliver transaction deeds. In 2010, about 20% of Nigerien CofobOs are operational.

WANT TO LEARN MORE ?
Watch the film "From conflict to consultation: The Rural Code experiment in Niger"

To learn more about the missions and practical work performed by Cofos, you can watch the Cofodep at Madarounfa (located in the agricultural zone) as it takes a field visit in order to enforce established boundaries between a pasturing area and a cattle corridor. (15'30). You can also watch an interview with the permanent secretary of the Cofodep at Dakoro (located in the pastoral zone) : he explains how they worked on marking pastoral routes (10'07).



At each level, institutions must be representative of the population. The main goal for Cofos is to mediate and conciliate local stakeholders in the event of a dispute over land or natural resources. Hence they must be inclusive and participatory structures. For instance the Cofodep brings together traditional leaders (canton or grouping chiefs) and representatives of resource users, under the auspices of the prefect. The Cofocom is chaired by the Mayor and also brings together representatives of users along with local elected representatives, technical services from the commune and traditional authorities. Finally, the Cofob is chaired by village or tribe chiefs, and involves only users' representatives (livestock producers, farmers, women, youth, etc.).

In some areas, land commissions of different levels are inexistent or unable to complete their missions. However, the Rural Code is meant to be an ongoing process, and despite the difficulties met by Cofos (see paper #7), they can already claim numerous achievements. (see paper #6).