

PAPER N°7 : SHORTCOMINGS OF THE RURAL CODE AND CHALLENGES FOR THE FUTURE

The Rural Code helped developing a more collegial and participatory policy on land and natural resources in Niger, offsetting the power of customary chiefs, and lessening land disputes. It also led to the development and strengthening of broader development strategies at the national level. However, the Rural Code also has some shortcomings, and the whole process is far from being successfully achieved. Though most stakeholders agree that the principles of the Rural Code represent a positive step forward, many expressed reservations regarding their implementation. What are really the conditions on the field? What are presently the main shortcomings of the Rural Code?

THE CHALLENGE OF POPULARIZING THE RURAL CODE

One of the main current shortcomings of the Rural Code is that it's still very little known in Nigerien rural areas. In 2010, only 3 000 grassroots land commissions had been established on a total of 15 000 villages or tribes, which means only 20% are covered. Hence it is not surprising that there is little dissemination of the principles of the Rural Code at the grassroots level among users of land and natural resources.

Furthermore, the very high illiteracy rate⁽¹⁾ impedes the rural population's access to legal texts. These texts are written in French and use complex legal terminology : they are difficult to understand even for people who can read and write. In short, popularization, education and training efforts directed at the population in order to disseminate and clarify the key provisions of the Rural Code must be maintained and intensified. Although forums were organized in some places, and despite the existence of a few radio programs that broadcast the principles of the Rural Code in local languages in the rural areas, the challenge of popularizing the Code remains to be taken up.

This entails consequences on the very functioning of the existing Cofos. For instance, land transactions are rarely written. Even when a customary ownership certificate is issued, it can soon become obsolete if successive transactions on the same land are not registered consistently. The Rural Code's objective is not systematic securitization, but the failure to follow up on documents that were issued, and the fact that most land transactions are kept secret (specifically loans and pawning) sparks disputes among the different land users.

WHAT KIND OF DOCUMENTS DO LAND COMMISSIONS ISSUE ?

1. Documents that legally recognize a number of existing customary rights (for instance, a document recognizing customary land tenure on a field).
2. Documents that secure land transactions (sales, loans, pawning, inheritance, etc.).

WANT TO LEARN MORE ?

Watch the film "From conflict to consultation: The Rural Code experiment in Niger"

To learn more about problems related to the issuance of documents by Cofos, and the disputes spawned by the secret aspect of most land transactions, watch the interview with the Dan Kadé village chief (19'35).

Finally, it is important to keep in mind that some of the eastern and northern regions of Niger are very isolated. Some areas of the desert are considered no-law zones and are controlled by militia who seat their power on illegal activities (illegal drug trade, migration networks, etc.). In other areas, societies that are hardly reached by "modernity" prevail (with residual forms of enslavement, traditional justice, etc.). While they represent only a small part of the country's global population, these regions will probably long resist the implementation of the Rural Code.

THE CHALLENGE OF COLLEGIALLY AND REPRESENTATIVITY WITHIN LAND COMMISSIONS - LIMITS TO THE PARTICIPATORY APPROACH IN FORMULATING STANDARDS

In theory, the Rural Code was designed through a participatory approach, with the organization of national forums that brought together representatives of all land users. In reality, civil society did not exist in any organized form in Niger when these large-scale national discussions took place⁽²⁾. Traditional chefferies were therefore the key participants in drafting guiding principles for the Rural Code, while most associations started working in the 1990's and got involved only in its implementation, and the formulation of sector-specific rules and regulations that complemented the 1993 ordinance.

Actually, the influence of traditional chefferies still prevails in the institutional system established by the Rural Code. Although land commissions were meant to be representative organs in which the power of customary

chiefs would be balanced by the participation of other stakeholders, it appears that villagers still turn to religious and customary leaders first for any issue related to land tenure and natural resources. At village and tribe level, institutional stakeholders (technical services, users representatives, etc.) are neither integrated into the social fabric, nor clearly identified by the local population, and they enjoy very little authority in the decision-making processes within Cofos... when these decisions are not merely imposed by the sole traditional authorities. Since village and tribe chiefs always chair grassroots land commissions, and as long as they are officially in charge of land dispute conciliation, it seems that the Rural Code system ironically leads to an institutionalization of customary authorities, dressing them in democratic clothes.

The representativity of land commissions as well as the collegiality principle that they are supposed to promote thus face serious challenges. Representativity issues appear at different levels. At the department level, authority generally lies with the prefect, who chairs the Cofos. In the end, land commissions are supposed to bring together various users' representatives, and in particular women and youth representatives. In practice, when those representatives exist, they are often merely here for show, and have no say in the matter.

THE CHALLENGE OF FINANCIAL SELF-SUFFICIENCY

The lack of resources to ensure that land commissions can effectively operate is another crucial challenge. Commune land commissions, created with the 2004 decentralization reform, already exist in about 80% of Nigerien communes (there are 210 of them today, out of a total of 266 communes), but they suffer from a serious lack of resources to support the decentralization policy. Consequently they lack basic material, office buildings and equipments, but also funding to carry out awareness raising activities or field visits.

Department land commissions and grassroots land commissions experience the same situation. They cannot count on any resource from the state to perform their activities, and end up fully dependent on bilateral cooperation projects or development strategies managed by international NGOs. Most activities focusing on the identification and marking of resources could not be engaged without these external supports, and almost none of the forums organized for awareness-raising were funded with public money. This situation obviously seriously challenges the independence of land commissions, but also their durability. What becomes of land commissions when funding comes to a halt? What kind of follow-up can they provide for activities they completed? How can they plan ahead for other activities?

WANT TO LEARN MORE ?

Watch the film "From conflict to consultation: The Rural Code experiment in Niger"

For a concrete example of the financial dependency of Cofos to development projects, listen to the Permanent Secretary of the Dakoro Cofos (18'25).

It is worth highlighting that financial dependency is a crucial and global issue for Niger, not only for land commissions. However, although they are confronted to the State's extreme financial incapacity, potential self-financing options are rarely discussed on the field. In the long term, the lack of commitment from the State and a failure to consider potential self-financing strategies may seriously put at risk the independence and durability of the Rural Code's institutional system. Most of the time, it seems impossible for land commissions to actually foresee a strategy that would allow them to work with no external financial support. Whether at the department level, commune level, or village and tribe level, the idea of a tax that would help securing at least part of the Cofos' activities is widely rejected by administrative and customary authorities. In the short term, such tax raising could jeopardize their popularity. Officially though, they put forward reasons such as extreme poverty, the lack of education, the lack of understanding of the benefits that could come from local taxes, and technical obstacles to actually collect such taxes, specifically from transhumant pastoralists. However, it seems necessary to look into this idea in order to ensure in the relatively near future that the institutions of the Rural Code can perform their missions efficiently.

* (1) More than 72% of men aged 15 to 24 are illiterate in Niger, a rate that reaches more than 88% for women.

* (2) The associative system could only develop when the first democratic government came to power in the 1990's, and the trade union system remains until now in embryonic stages .