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**LAND TENURE CENTER
COOPERATIVE AGREEMENT WITH USAID/NIGER**

**LAND USE CONFLICTS IN WESTERN RURAL NIGER:
KOLLO AND TILLABERY ARRONDISSEMENTS**

by

Tidiane Ngaido

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UNIVERSITY OF WISCONSIN-MADISON**

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DATA COLLECTION

The data used in this report were collected at two levels: (1) the Tillabery Tribunal, and (2) the *sous-préfecture* of Kollo. In both locations, the approach was to carry on a census of any recorded land dispute. These disputes could have been already resolved or were in process. The objective was to assess the scope of these conflicts, their nature and the parties involved.

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I. INTRODUCTION

"Fallow of Discord" was the title of a recent article in *Sahel Dimanche* (1992) describing land disputes between two neighboring cantons in the Filingué arrondissement, Tondikandia and Tagazar. This conflict, which dates back to 1928, resulted in four killings and twenty wounded. Conflicts among farmers, herders, villages, and cantons have been common in Niger's rural areas in recent years. The literature is replete with studies on the land tenure system in Niger (Raulin 1961, 196?, 1965; Latour Dejean 1973; Mariko 1971, 1985a, 1985b; Keita 1985; Arzika 1985). However, there is little documentation of the nature of land conflicts, the different parties involved, and how they affect the land tenure systems and the development strategies started by the Government of Niger. The aim of this paper is to fill some of these gaps and make a first assessment about the capabilities of a new rural code to address tenure reform and conflict over land access.

Niger, like other Sahelian countries, is struggling to create a rural code as a mechanism for addressing resource management problems that have long hindered the development of the agricultural sector. The rural code is viewed as a way to foster private investment in the land through the legal recognition of customary tenure rights and land registration procedures. Unlike to its neighboring countries, Mali, Mauritania, and Senegal, the Nigerien approach to land tenure problems is original. Instead of promoting a body of laws divorced from existing realities in rural Niger, the proposed rural code recognizes that the only means to bring about the desired outcome of the land law is to elevate traditional tenure rights to a level approximating the absolute ownership formerly claimed by the state.¹

1. Article 27 of the draft "Orientation Law of the Rural Code" stipulates that regardless of the origin of property rights, it grants to the beneficiary the same status. And Articles 37 to 44 deal with the obligation and the duties of a tenant farmer.

The recognition of customary tenure rights is expected to provide incentives for farmers to invest in and develop their lands. This approach to agricultural development of the rural areas is pragmatic, since it takes into consideration the existing rights; but it has many drawbacks that stem from the lack of knowledge of the different issues that affect rural Niger. In a country where the majority of the people are use-right holders (Mariko 1985b; Raulin 1961), the recognition of traditional ownership rights fosters problems between traditional owners and use-right holders, on the one hand, and between resource users, on the other. Also, it poses the problem of defining "traditional ownership rights," since the definition of "traditional" has been muddied by attempts on the part of previous regimes to restructure the pattern of landownership by granting land to use-right holders and tenant farmers.²

2. Use-right holders are the farmers who received land from the village and the canton chiefs. They are subject to tithe payments. They cannot be evicted from the land as long as they fulfill their obligations. Tenant farmers are found on the family lands since their access is not secure and usually does not exceed two to three years to avoid any potential ownership claims. Both the use-right holder and the tenant farmer pay tithe. However, the difference consists of the security of access. If the use-right holder can continue to use the land as long as he pays tithes, the tenant farmer can be evicted from the land he cultivates once the owner needs it. In the different court cases, use-right holders and tenant farmers have been cultivating the disputed plots of land for many years, but their continued tithe payments determined their position vis-à-vis that land.

II. EVOLUTION OF GOVERNMENT POLICIES AND LAND TENURE PROBLEMS

The policies promoted by the Hamani Diori (1960-1974) and the Seyni Kountche (1974-1987) regimes shaped the prevailing land tenure problems in rural Niger. The similarities of these two regimes were: (1) their need for popular support that required them to reduce the social, political, and economic power of traditional chiefs derived from their collaboration with French colonizers; and (2) the steps they took to strengthen use-right holders vis-à-vis the rights of traditional landholders.

To achieve these interrelated goals, both regimes increased the land rights of use-right holders by abolishing tithe payments and by introducing a series of laws, decrees, and *circulaires* that defined the role and functions of local chiefs. These different attempts created the confusion and the problems experienced today in rural Niger. To better grasp the impacts of the attempts to relieve tenant and landless farmers from surplus extraction, we will discuss the two regimes separately.

A. THE DIORI REGIME (1960-1974)

The newly independent government inherited a situation in which traditional chiefs and aristocratic families controlled most of the cultivable land (Mariko 1985a; Olivier de Sardan 1984; Raulin 1961). A survey carried out by Raulin in 1960 found that in the *cercle* of Niamey (presently Kollo arrondissement), 340 owners controlled 5,647 rented plots,³ for an average of 16.61 plots per owner. This land concentration suggests that if the newly independent government were to receive any local support and promote agricultural develop-

3. The rent, in western Niger, consists primarily of tithe payments, which amount to one-tenth of the production.

ment, it had to change the prevailing situation by implementing popular ideas expressed by the different laws such as:

- (1) the 25 May 1960 law (*Loi N° 60-28*), which fixes the clauses for developing and managing the state-funded irrigation projects;
- (2) the 25 May 1960 law (*Loi N° 60-29*), which forbade the payment of tithe and *achoura*⁴;
- (3) the 26 and 27 May 1961 laws (*Lois 61-5 and 61-6*), which fixed the northern limit for crops⁵ and considered land north of that limit to be for pastoralism;
- (4) the 19 July 1961 law (*Loi N° 61-30*), which fixed the procedures for confirming or expropriating customary tenure rights in Niger;
- (5) the 12 March 1962 law (*Loi 62-7*), which abolished the tithes levied on the common lands controlled by traditional chiefs; and
- (6) the 29 May 1962 decree (*Décret N° 62-128/PRN/SEP*), which determined the composition and the working of the committees charged with assessing the number of plots controlled by traditional chiefs and the farmers cultivating those plots. The composition of these committees included government agents, deputies, and traditional chiefs.

However, landowners had their own competing logic which in many cases prevailed, as is shown by court records from that time. The nature of these conflicts, displayed in table 1, suggest that all these laws had little impact on the control, both social and economic, exercised by traditional chiefs. Their integration into the government apparatus and their involvement in the state-controlled political party, the RDA (*Rassemblement Démocratique*

4. *Achoura* (the tenth). This is a contract between a landlord and a farmer witnessed by at least two people. The farmer recognize that he does not own the land and that he will tithe one-tenth of his production to the landowner.

5. This limit was meant to separate the different regions of Niger by vocation. Crop production was not allowed beyond that limit. The encroachment of farming on pastoral lands in recent years has resulted in conflicts.

TABLE 1
Evolution of land conflicts in the Tillabery arrondissement, 1968-1992

TYPES OF CONFLICT	1968	1969	1970	1971	1972	1973	1974	1975	1976	...	1987	1988	1989	1990	1991	1992	TOTAL	PERCENT
Boundaries	3	1	2	2	2									1	1	2	14	16
Claims of ownership rights	6	3	4	4	3	13							1			1	35	41
Control over family fields	1		2	3		1		1									8	9
Inheritance	5	1	1	1		1						1				1	11	13
Opposition to development	1																1	1
Opposition to sales	2	1	1		1												5	6
Tithe	3															1	4	5
Withdrawal of use rights		1		1	2	2										2	8	9
Total	21	7	10	11	8	17	0	1	0	...	0	1	1	1	1	7	86	100
Percent	24	8	12	13	9	20	0	1	0	...	0	1	1	1	1	8	100	

Note: The data include only the records from the tribunal of Tillabery.

et Africain), helped these chiefs consolidate their privileges through their local political support (Mariko 1985b).

Depositions taken in a 1988 case, which pitted a village chief against a farmer, illustrate the power exercised by traditional chiefs.

Since my birth in 1918, the disputed plot has belonged to my father. At his death in 1955, my brother and I continued to cultivate the plot. My father was nominated village chief in 1940.

In 1958, the village chief of Sondone claimed ownership of the plot. The claim was rejected by the colonial administration.

In the 1960s, as I did not support the RDA, the village chief introduced the case to the party and the plot was confiscated and held as a plot of the party. After three years, two leaders of the party divided the plot between themselves.

In 1974, following the military coup, I wanted to reintroduce the case, but since one of my uncles was arrested, I postponed bringing up the case.

In 1988, since we had a new democratic government, I reintroduced the case to get back my property that was taken by force all these years ago.

Moreover, the lack of consistency between land tenure laws and court decisions regarding land disputes rendered the situation of landless persons and use-right holders very precarious, since their access continued to be subordinated to tithe payments even though such payments were forbidden by Law 60-29. A pertinent example is the 24 April 1973 court case of the Tribunal of Tillabery which pitted a village chief against a farmer who held a use right:

The plot (in litigation) was granted to me by the village chief X (older brother of my opponent, village chief Y). I used to pay tithe to the village chief X. Later, the tithe was abolished on the lands controlled by traditional chiefs by the commandant of the *cercle* who was a European. Village chief X opposed that decision and we took the case to the commandant of Tillabery. The commandant asked me to pay the tithe to the canton chief who, in return, required us to pay the tithe to the village chief X. After that, the RDA government abolished tithe on the land controlled by the chiefs. Since then, I have not given tithes to anyone. However, even after that, I used to give to village chief X, my former master, a basket of rice each year up to his death. After his death, his brother (village chief Y) wanted to withdraw the plot from my use regardless of the thirty-five (35) years that I have been cultivating the plot.

TABLE 2
Evolution of land conflicts in the Kollo arrondissement, 1980-1992

TYPES OF CONFLICT	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	TOTAL	PERCENT
Boundaries			1		1	4	3		2	9	2			22	15
Claims of ownership rights				1	2	7	10	5	7	14	5	3	6	60	41
Control over family fields						1	1		1	1				4	3
Fishing rights												1		1	1
Grazing corridors								1	1					2	1
Inheritance					2	1	1	6	1	7		1	3	22	15
Opposition to development							1				1	1		3	2
Opposition to sales						1		1	5	2	2			11	8
Rejection of court orders									2		2	2		6	4
Tithe						2		2		1	1	1		7	5
Withdrawal of use rights			1		1		2	1	1				2	8	5
Total	0	0	2	1	6	16	18	16	20	34	13	9	11	146	100
Percent	0	0	1	1	4	11	12	11	14	23	9	6	8	100	
<i># of appointed sous préfets</i>	2	0	1	0	1	1	0	1	1	1	3	1			

The court confirmed the right of the village chief and withdrew the plot from the farmer.

Furthermore, the divergence between laws and dispute settlement helped traditional chiefs to consolidate their power by appropriating most of the vacant common lands both at the village level and at the canton level. Their continued control over village and canton common lands strengthened the client-patron relationship with landless and land-short farmers who remained subject to a tithe payment equivalent to one-tenth of their production.

Finally, the Tribunal of Tillabery court records suggest that these laws were never really implemented. If landless farmers reacted to all the government decisions which granted them a certain security of tenure by rejecting tithe payment to traditional chiefs, the latter were able to circumvent the laws and maintain their privileges. The 1973 case discussed above shows that after thirteen years of power, the Diori regime was not able to support landless farmers' claims. Does this suggest that the court system was ignorant about the different laws that gave increased rights to use-right holders by abolishing tithe payments? Does it mean that traditional chiefs were so powerful that they were able to use the "system" to empower themselves and retain the control over vacant common lands?

B. THE MILITARY REGIME (1974-1987)

In his 18 December 1974 speech following the military coup, President Kountche assigned ownership rights to all farmers on the lands they were tilling regardless of the way in which that land was being held:

About plots, the first measure is that from this declaration on, any plot cultivated by a given farmer under any status, stays and remains permanently at the disposal of that farmer, regardless of the previous arrangement that allowed that farmer to acquire the plot.

In taking this decision, we aim toward one goal: to ensure a maximum of security to the farmers on the plots they cultivate which they end up making their only wealth,

without being always able to escape the moods and the abuses of certain grumpy owners, ready to speculate on these same lands which they do not want to develop nor to cease.

In doing this, the military regime intended to resolve all the tenure conflicts that were increasingly paralyzing the agricultural sector. However, the major institutional change introduced by the Kountche regime consisted of giving to local administrations and traditional institutions the power to mediate and resolve land tenure conflicts. The 28 January 1975 ordinance (*Ordonnance N° 75-7*) moved land conflict resolution from the court system to the level of the administration and traditional institutions:

Article 78. The *préfet, sous-préfet, chef de poste administratif*, canton chief, village chief or tribal chief designated by custom, are endowed with the power to conciliate parties in civil customary matters as well as commercial (matters) susceptible of transaction.

The reliance on traditional institutions to resolve land tenure conflicts is shown by the lack of land-conflict records at the court level from 1975 to 1987 in table 1. The devolution of power to resolve land conflicts to local institutions is very important as it reduces difficulties associated with lengthy deliberation in the court system. However, this devolution also caused much confusion. In equivalent cases, different solutions were reached. *Sous-préfets* resolved some of the cases involving owners and use-right holders by granting primary ownership rights⁶ to the landowner and confirming use rights to the farmer under the condition that the farmers continue to pay tithes to the holder of the primary ownership right.

Traditional institutions used the power thus given to them to regain the privileges which they lost during the previous regime, such as levying tithes on the plots they grant on village common lands. This situation led quickly to conflicts between traditional chiefs and

6. Here "primary ownership right" is used as the translation of *propriété à nue* since traditional owners still retained their ownership right.

use-right holders, since the former wanted to reimpose the payment of the abolished tithe. In addition, the heavy reliance of local administrative officials on traditional chiefs to govern helped to enhance the image of traditional chiefs whose authority had been challenged by different government measures since 1960.

To offset the failure of using traditional institutions to oversee the local population, the Kountche government undertook an ambitious institutional reform with the creation in the early 1980s of the Development Society. This institution aimed to replace traditional structures at the local level and participate in the formulation of the development strategies at the local levels.

Even before the reforms associated with the Development Society, Kountche introduced a series of measures including:

- (1) The 16 December 1977 *Circulaire* (N° 8/MI/SG) formally forbade local authorities, administrative as well as customary, to participate in any procedure for resolving litigations over plots.
- (2) The 29 October 1979 Decree (N° 79-165/PCMS) established the National Commission for the Creation of the Development Society (CNSD).
- (3) The 24 April 1980 *Circulaire* (N° 12/MI/SG/CIRC) quoted the president on his speech to the nation which specified that local administrative and traditional authorities should not be involved in any case in land conflict resolution.
- (4) The yearly *Circulaire* (N° 004/MJ/GS) forbade any resolution of land litigation from 1 April 1 to 31 October in each year. In addition, in case of litigation, the plot was to remain under the control of the farmer who had cultivated it the previous year.
- (5) The 1983 act required that everyone be registered in their village of residence. This meant that the farmers are registered in the villages where they have their lands. When the village in which they live and the village where they have their lands are different, this poses a lot of problems such as conflicts between cantons and between villages (*Sahel Dimanche* 1992).

The lack of consistency in the decisions taken by the administration led to a situation of confusion. It was difficult to know who had the authority to address land issues. During that period of confusion, even the national gendarmerie granted titles of ownership rights.⁷ In addition, the 14 April 1982 speech to the nation of President Kountche, which reduced the workweek to five days and incited government agents to become involved in agricultural production, fostered an increased demand for agricultural land. The decisions in the speech were confirmed by the 29 April 1982 Decree (82-64/PCMS/MFP/T) (Sidikou 1982).

7. *Attestation (S/N en date du 26/5/1982) issued by the Brigade territoriale de la Gendarmerie in Niamey.*

III. CONFLICTS, LAND FRAGMENTATION, AND EROSION OF SOCIAL RELATIONS OF PRODUCTION

The changing social, political, economic, and environmental conditions challenge the structures that traditionally controlled land and labor in rural areas. In Niger, growing land-use conflicts constitute an interesting example of the breakdown of the social relations of production. To understand some of the changes in rural Niger, the Kollo arrondissement, created by Ordinance N° 80-38 of 11 September 1980 to replace the Niamey arrondissement, will be considered. Kollo represents a very interesting example due to its diverse population and the lack of centralized traditional institutions like those that existed in the sultanate of Damagaram in Zinder or under the Djermakoï of Dosso. The lack of centralized institutions, the heterogeneity of the population, and the proximity of Niamey are factors that make resource management very conflict-ridden since each group has its own resource management system.

A. LAND CONCENTRATION AND LAND CONFLICTS

In the Kollo arrondissement, the pattern of holding land inherited from the colonial period was characterized by strong disparities in landholdings. Mariko (1985b, p. 23) noted that 80 percent of the rural population were holders of insecure use rights. This skewed land distribution sustained a high level of tenancy.⁸ Table 3 displays the distribution of owners and rented fields. A comparison of these data collected in 1960 with land conflict data collected in 1992 shows a higher level of conflicts (26) in some cantons such as Hamdallaye and Lamordé, mainly inhabited by Peulhs.

8. Tenancy refers to both use-right holders and tenant farmers since both lose their use-rights once they fail to pay tithes.

TABLE 3

Distribution of owners, rented plots, and conflicts in the Kollo arrondissement

CANTON	NUMBER OF OWNERS ^a	NUMBER OF RENTED PLOTS ^a	AVERAGE OF RENTED PLOTS BY OWNERS ^a	DISTRIBUTION OF CONFLICTS (1980-1992) ^b
Fakara (Dantchandou)	24	404	16.83	18
Hamdalaye	8	131	16.38	26
Karma	43	687	15.98	17
Kouré	72	1127	15.65	24
Lamordé	63	1371	21.76	26
Liboré	20	243	12.15	8
Namaro	68	1024	15.06	10
Ndounga	14	188	13.43	7
Saga (Kirtachi)	28	472	16.86	15
TOTAL	340	5647	16.61	151

Source: a. Henry Raulin, July 1961.
 b. Data collected at the *sous-préfecture* of Kollo.

The *Contribution de la Cellule Sous-régionale de Kollo sur l'Elaboration du Code Rural* in 1989 found that Kirtachi and Lamordé are the cantons with the largest average landholdings. The smallest landholdings are found in the canton of Liboré, with a maximum of 4.3 hectares, and the canton of Ndounga, with a maximum of 6 hectares. Also, the same disparities are found regarding the parties in conflicts. This part will be discussed later that we retain that the canton of Kirtachi and Kouré, with, respectively, 8 and 7, have the highest number of conflicts among family members; the cantons of Hamdalaye and Karma have the highest number of conflicts (7) involving owners and tenants; and the cantons of Hamdalaye and Lamordé have the highest number of conflicts between chiefs and farmers.

Land concentration is an important variable explaining land disputes, since lands are controlled at two levels: at the first level, there are virgin and fallow lands controlled by

traditional chiefs; and at the second level, there are lands controlled by aristocratic families (Raulin 1961). This feature of land control is very important in our case, since it determines the nature of the conflicts and the parties in conflict. Table 4, for example, shows that among the 102 land conflicts, 37 involved family members, 36 involved owners and tenants, and 29 involved chiefs and use-right holders.

TABLE 4
Land concentration and land conflicts in the Kollo arrondissement

CANTON	PLOT SIZE OF HOLDINGS		CONFLICT AMONG			TOTAL NUMBER OF CONFLICTS (1980-1992) ^b
	Minimum (ha) ^a	Maximum (ha) ^a	Family members (1992)	Owners and tenants (1992)	Chiefs and farmers (1992)	
Dantchandou	8	15	2	4	3	18
Hamdalaye	9	15	2	7	6	26
Karma	6	15	1	7	2	17
Kirtachi	13	27	7	1	5	24
Kouré	4.5	11	8	4	4	26
Lamordé	17	32	6	6	6	8
Liboré	1.5	4.3	3	2	1	10
Namaro	7	25	5	4	1	7
Ndonga	2.3	6	3	1	1	15
TOTAL			37	36	29	151

Source: a. *Contribution de la Cellule Sous-régionale de Kollo sur l'Elaboration du Code Rural.*

b. Data collected at the *sous-préfecture* of Kollo.

B. EVOLUTION OF LAND CONFLICTS IN THE KOLLO ARRONDISSEMENT, 1980-1992

The Kollo arrondissement is composed of nine cantons. Each canton has its own territory composed of many villages and each village is controlled a village chief. The role

of these village chiefs has been ambiguous regarding their role within their communities and the administration. The challenge for the different regimes was to achieve a balance between the power to be held by traditional institutions and that held by local government agents who were to implement government policies.

This search for a balance of power, as discussed previously, fostered the introduction of different institutional reforms that were meant to support Niger's agricultural development policies. The quest for balance in many cases can be assessed as a failure and a cause of discord in rural Niger. Table 2 shows the evolution of land conflicts in the Kollo arrondissement from 1980 to 1992.⁹ The data show an increase from 2 conflicts in 1982 to 34 conflicts in 1989. Among these 34 conflicts, 14 were due to claims over ownership rights, 9 were conflicts over boundaries, and 7 were concerned with inheritance.

This steady rise of conflicts resulted mainly from the confusion created by government measures that tried to implement reform by the back door but still relied on traditional chiefs to oversee rural areas. The decision of the Kountche regime in 1977 to withdraw from local administrative and customary authorities the power to resolve land conflicts (16 December 1977, *Circulaire* N° 8/MI/SG) furthered the existing confusion.

The difficulties faced by government institutions are expressed by the number of appointees in the Kollo arrondissement from its creation in 1980 to 1992. In twelve years, the arrondissement had twelve *sous-préfets*. There were yearly changes from 1987 to 1989, and in 1990 three *sous-préfets* were appointed in the same year.

Furthermore, the demise of the military regime in 1987 incited many people, especially those who felt they were cheated by the resolution of their disputes, to use this situation of confusion to reject established court orders since the colonial period or during the

9. The data include only the conflicts that arrived at the level of the *sous-préfet*. It is quite certain that there were more conflicts resolved at the family, village, and canton levels which the data did not capture. However, the data highlight the magnitude of these conflicts.

Diori regime and later during the military regime, and to hope for a fair conciliation with the new government.

C. LAND USE CONFLICTS AT THE CANTON AND VILLAGE LEVELS

Faced with the reforms of the Diori regime (Laws 60-29 and 62-7) that abolished the privileges they enjoyed during the colonial period, traditional chiefs integrated themselves into the government apparatus and participated in state-controlled political structures (RDA). They thereby maintained their privileges through local political support (Mariko 1985a; Robinson 1975). Nonetheless, the social relations of production based on surplus extraction from use-right holders were being challenged. Table 5 shows that there were 29 cases of disputes between chiefs and use-right holders, among which 13 were claims of ownership, 2 were refusals to pay tithe, and 4 were threats to withdraw use rights. Another important type of conflict revolves around plot boundaries (25% of the conflicts involving traditional chiefs).

TABLE 5
Land use conflicts at canton and village levels

KOLLO ARRONDISSEMENT	CANTON/ CANTON	VILLAGE/ VILLAGE	VILLAGE CHIEF/FARMER	CANTON CHIEF/FARMER	TOTAL
Boundaries	3	12		1	16
Claims of ownership rights			6	7	13
Control over family plots			1	2	3
Inheritance	1	2			3
Opposition to development		1			1
Opposition to sales			2		2
Tithe			2	1	3
Rejection of court orders			3		3
Withdrawal of use rights			3	1	4
TOTAL	4	15	17	12	48

Government policies encouraged use-right holders to challenge the system of surplus extraction. Many use-right holders refused to pay for their access to a plot with either produce or labor, arguing that these obligations had been abolished by the state, which is the sole owner of village's common lands. The refusal of use-right holders to pay tithes could have been sustained by the government if its real goals were, as stated earlier, to relieve landless and land-short farmers from the domination of traditional leaders and to provide them with secure access to the lands they cultivate.

The village chief wants to withdraw the plot that was cultivated by my grandfathers in the common lands of our village. My grandfathers and father had always paid tithe as customary. The custom of our region is to give tithe to the village chief for the plots cultivated in the village common domain. He can distribute but cannot withdraw the use right [Tribunal of Tillabery (Hearing 3/19/92)].

This case shows the responses of use-right holders who readily challenged traditional relations of production. However, in most cases the measures taken by the Nigerien government were against the interests of use-right holders. For example, in 1975, a few months after the military seized power and granted ownership rights to tenants on the lands they cultivated, the government introduced Ordinance N° 75-7, on 28 January 1975, to vest traditional chiefs with the power "to conciliate parties in civil customary and commercial matters." Therefore, the chiefs were able to regain authority and strengthen their client-patron relationship with landless and land-short farmers who were required again to pay a tithe equivalent to one-tenth of their production.

In addition, the shift of the village chieftaincy from an inherited function of single-family control to a nominated position¹⁰ encouraged village chiefs to seek short-term gains.

10. The 14 May 1984 *Arrêté* (N° 048/MI/DAPA) stipulates in its Article 4 that: "to nominate a village, tribal or ward chief, the *sous-préfet* or the mayor should, to begin with, try to obtain a consensus between candidates for the nomination of one of them. For lack of consensus, the *sous-préfet* regarding village or tribe, and the mayors regarding the ward, nominate the candidate they feel is the most valuable."

Consequently, the primary concern of village chiefs became to rent as much land as possible on village commons. The shift also reduced the capacity of the village founding families to maintain their organization, since most of their lands fell under the control of village chiefs. This confusing situation made it difficult to distinguish between family lands and village common lands.

Plaintiff: The village chieftaincy is not the property of the family of We do not want the lands of our great-grandfather to stay in the hands of the defendant who is not an heir.

Defendant: The domain was in the hands of Halibou until his death, thereafter Adwal, thereafter Bagna, and then I. All were village chiefs like me. For twelve years now, the domain is under my control. I do not know the exact number of the plots. There are more than a hundred. All the descendants of . . . have plots that I grant them upon their demand and I rent the remaining of the plots. The tithes collected from that rent belong to me. Only the descendant of the founding family elected as a village chief can claim for the control of the domain [Tribunal of Tillabery (Hearing 02/24/71)].

The tribunal decided to maintain the disputed lands under the control of the village chief to avoid creating any precedent that could lead the founding families of a village to challenge the authority of village chiefs over common lands. The plaintiff based his claims on the fact that his family had founded the village and had always monopolized the function of village chief. The village chief (defendant), who was not from the village's founding family, believed that his function granted him the right to control village common lands. However, the village chief recognized the right of the founding family, since he always granted them plots to cultivate upon their request without tithe payment.

Finally, two decades of drought destroyed most of the trees that had served as landmarks, making difficult the delimitation of plot boundaries. This situation of confusion was worsened by the 1983 *circulaire* that required people to register in their village of residence. The 1983 decision was demanded by the chiefs who felt that it was difficult to oversee the activities of their subordinates in their villages, since many farmers lived outside

the village in which they had their lands. As a result, village chiefs expropriated the holdings of some landowning farmers not living in their villages. This allowed the chiefs to expand the lands under their control and to reinforce their domination over use-right holders. The following court cases exemplify the authority exercised by village chiefs over use-right holders:

The rice plot that I am cultivating was loaned to me by the village chief Tirefiri six years ago. I also had a millet plot loaned by the village chief of Baben Baokere. To my real surprise, the two plots were withdrawn by the village chief of Tirefiri because I did not support him for his election. I decided to leave his village and he withdrew these plots [Conciliation by the *Sous-Préfet* of Kollo, 12/01/82).

My father lent the plot to the father of the defendant who was my opponent for the election of the village chief and who still harbors resentment against me following my nomination. I want to take back the plot and give it to my children who have reached majority of age [Tribunal of Tillabery (Hearing 03/24/71)].

The conflicts between chiefs and their subordinates show clearly that government policies and drought conditions played an important role in challenging the traditional relations of production.

D. LAND USE CONFLICTS AT THE FAMILY LEVEL

Conflicts at the family level account for 51 percent of the total recorded conflicts in the Kollo arrondissement from 1980 to 1992. The importance of these conflicts is a good indication of the types of changes affecting rural families. There are two levels at which the changes in the social relations of production can be perceived. The first level of changes pertains to the attitudes of members of landowning families regarding the management of their common holdings. The second level of changes concerns the relations between landowning families and their tenants.

The challenges faced by landowning families revolve around management and control of family land and labor resources. How and by whom family lands are managed will determine the level of cohesion within the family and the potential conflicts that may affect the reproduction of that family. Increasingly, family members are demanding the division of family lands. Table 6 shows that conflicts over inheritance account for 49 percent of family members' conflicts, and claims of ownership for 27 percent.

TABLE 6
Land use conflicts at the family level

KOLLO	FAMILY MEMBERS	TENANT AND OWNER	HEIRS AND GUARDIANS	TOTAL
Boundaries		1		1
Claims of ownership rights	10	27	2	39
Control over family plots	1			1
Inheritance	18			18
Opposition to development	1	1		2
Opposition to sales	7		2	9
Tithe		4		4
Withdrawal of use rights		3		3
TOTAL	37	36	4	77

The demand for division of land among family members reveals the breakdown of traditional family structures. Why are family members driving for land fragmentation? Is the family incapable of supporting its members? Is it the result of increasing land values due to government policies that are leading all the members to demand their shares? Under these conditions, what are the chances of persistence and reproduction of the social relations of production?

Competition among cousins over family lands constitutes another aspect that highlights the changes affecting family cohesion. For example, the following case describes a family member who would rather see the disputed plot given to a tenant than to his cousin.

I do not oppose that the plot be exploited by a tenant. However, I refuse that my cousin gives the plot to his brother who have already enough land while I do not. The brother was a herder and when he came back and asked for land to cultivate, he was granted a plot. He does not even cultivate the whole plot [Tribunal of Tillabery (Hearing 03/21/70)].

Furthermore, conflicts over claims of ownership indicate that the family is not securing the welfare of migrant family members. Many migrant members or members whose parents migrated during the colonial period had difficulty in obtaining access to cultivable plots upon their return.

I was in Ghana for 30 years and when I came back, I demanded a plot to cultivate on the family common domain. The defendant [his patriarch] refused to grant me a plot [Tribunal of Tillabery (Hearing 03/20/73)].

In this case, the patriarch refused to grant land to a returned migrant family member. Does it mean that migration results in a loss of access to land in a system where (1) redistribution of land and security of tenure of family members were the factors that ensured family cohesion, and (2) migration was a means by which families adjusted to external pressures that challenged their reproduction? Or does this highlight the failure of the migrant to fulfill his duties to the family by not providing labor and not sending remittances to help sustain the family while in migration? Does this failure account for the patriarch's refusal to grant him a piece of land? These are grand questions that require more research for better understanding the reason for this refusal. Nevertheless, the following two cases illustrate partly the social relations between childless patriarchs and their extended family members.

In case 1, a nephew was compensated by his uncle (patriarch) for taking good care of him:

My uncle . . . whom I supported during all his life, gave me his private plots as recognition before his death in front of his wife and other witnesses. The plots he gave me are not part of the family lands that are under the control of my second uncle. My second uncle refuses to allow me to cultivate these plots [Tribunal of Tillabery (Hearing 02/23/71)].

The new patriarch may have been reluctant to grant land privately owned by the deceased patriarch because he did not want to lose control over his nephew's labor. Indeed, acceding to this grant of land to his nephew would mean that the nephew will not depend on him to get land and may withhold his labor from supporting family food production.

In case 2, the patriarchs sold the family plots because their nephews did not want to support them:

I sold the plot because they [his nephews] refused to take care of me even though I am their only remaining uncle [Tribunal of Tillabery (Hearing 03/26/70)].

The defendant, our uncle, sold one common family plot for 39,000 francs. I want to work the plot and I am asking for the invalidation of the sale and the division of the family lands between the different right holders.

These cases are typical examples of the changes affecting family organization. Under normal conditions, the patriarch, even if he is childless and incapable of working, will be supported by family members. In this family, because family members did not support the patriarch, he sold a plot to support himself. Then the question becomes, to what extent does the patriarchs have the right to act as such? And who is to judge the validity of the patriarch's claim of nonsupport?

The interest of these two cases lies in their emphasis on family self-support. It is not the support of an individual, in this case, the patriarch, that is important but the support of this form of family organization. Social reproduction requires that family members abide by

the rules that maintained family cohesion and allowed this form of family organization to persist. Therefore, family members enjoyed their rights of access to family lands only if they participated in the processes of reproducing the family social relations of production.

In addition, the increased land values in Kollo arrondissement due to urbanization in Niamey led to a drive for land division among family members on the commonly held family lands and to the claims of common ownership rights for any known family ties. Many people, with remote family ties to certain landowning families are claiming some sort of ownership rights.

Finally, the government's decision to grant to tenants the lands they were cultivating affected the family adversely, since tenants refused to pay tithe or provide labor. I will not elaborate on this issue, since I have already discussed the effects of government policies on traditional institutions. However, it must be noted that the loss of land by the family reduces its capacity to maintain the family organization and to satisfy the needs of its members. The question we may pose, then, is how do family members, those who stay, view land reform attempts regarding the rights of migrant family members? Will they use these policies as justification to withdraw the rights of those absentee owners? What are the conditions under which a returned migrant can claim his traditional ownership rights over family lands?

IV. AMBIGUOUS RIGHTS AND CONFLICT RESOLUTION

Throughout this paper, there has been an emphasis on lands controlled by traditional chiefs and by aristocratic families. If the boundaries of these lands were obvious in 1960, they are ambiguous in 1992. Indeed, beyond population growth that induced fragmentation of family lands, government reform policies rendered the definition of ownership and control very blurry. As a result, the same plots of lands are being claimed by different people. Indeed, for the traditional owner who rented his field to a tenant farmer, his continued receipt of tithe gives him a *de facto* claim of ownership; on the other hand, use-right holders, supported by government measures which gave them a claim to the land they were tilling, consider the rented field as theirs. These two opposing claims are not easily reconciled.

Attempts made by the Kollo's *sous-préfets* to resolve these conflicting claims were to grant a primary ownership right to the traditional owner of the land and a secure use-right that allows the tenant to use the land as long as he wants under the condition that he pays tithe to the primary right holder. This solution is questionable, because the mere fact of giving tithe invalidates any claim of ownership right according to custom. Also, this form of conflict resolution further confuses the rights over that land.

In addition, shifting cultivation has contributed to the confusion over landownership. Indeed, the succession of rights over a piece of land results in a pattern of ownership or control that is difficult to clarify. For example, lands that were never cultivated are under the control of the canton chief. If a plot of that land is granted to a tenant farmer, he pays his tithe to the canton chief. However, once he leaves the plot following a loss in its productivity, the plot once again becomes part of the common village lands under the control of the village chief. Subsequently, after a few years of fallow, the same plot can be allocated to another tenant farmer, but this time the tithe is paid to the village chief. These different

rights over a single plot show the difficulties in defining ownership rights, since the farmer who first cleared and cultivated the land can always return and claim an ownership right over the field he cleared and cultivated for many years. This situation is exemplified in the following court cases:

We have been occupying these plots of Sabara Bandou for 54 years. It used to be a dense forest. We stayed 7 years in this location and we dug 2 wells. We live side by side with the inhabitants of Gammo. As is customarily done, when a plot is old [unproductive] we leave it and clear a new one. It is following that we left Sabara Bandou and settled in Tondiganney. Last year, people from Gammo wanted to cultivate those lands. We opposed it [Niamey Tribunal (Case N° 15, 02/24/1966)].

The plot that I inherited from my grandfather is my property. I always cultivated the plot. The plot was not productive and I left it fallow for ten years. During all that time no one cultivated the plot. I wanted to cultivate the plot again and . . . opposed it claiming that the plot belongs to his father [Tribunal of Tillabery (*procès verbal de conciliation du 19/04/1992*)].

Furthermore, drought conditions have led to sales and pledges¹¹ of land to cover taxes and family food requirements. These types of land alienation constitute a source of conflict, as shown in following court cases.

Our dispute evolves around one plot. This plot was divided in three parts. The first part was pledged by my father in 1935 for 35 francs. The second was pledged by my brother about the same time for 30 francs for the sustenance of the family. The third part I pledged to the father of the defendant for 50 francs in 1932 to pay the taxes of my family. Since then, it is the family of the defendant who cultivates these plots. Last year, when I decided to reimburse the loans and repossess my land, the defendant opposed it [Tribunal of Tillabery (Hearing 05/13/68)].

I come regularly to Karebangou and I always found the disputed plots cultivated. I asked the reasons why the family . . . was cultivating my plots and the answer was that I left the village without paying taxes and the plots were pledged to pay taxes [Tribunal of Tillabery (hearings of 05/14/68)].

11. Pledge of land was a current practice during the colonial period when farmers were required to pay their taxes regardless of their production or drought conditions. The practice consists of giving your land to the moneylender until you pay back the debt. During all that time the plot that is pledged is cultivated by the lender.

Finally, one of the main problems in defining ownership rights over a piece of land is the use of swearing on the Koran by government agents as a means to determine the real owner. As a result, the traditional owner can always claim his ownership. The tenant farmer, however, feels that the ownership rights he acquired from government reforms do not allow him to swear on the Koran for real ownership over the disputed plot. As such, in most dispute cases use-right holders refused to swear and the disputed plots were given back to the traditional owner. In few cases where they retained the use of the plots, they were subjected to the payment of a tithe. The procedure of swearing on the Koran is pertinent in determining landownership but does not address the question of equity. This is to say that government institutions should go beyond the recognition of ownership to assess the amount of land held by the owner and decide whether to grant that plot to the tenant or, alternatively, another plot from the village common lands.

The difficulties in clearly defining ownership rights of many plots of lands demonstrate the persistence of traditional mechanisms of land and labor control. This persistence is a challenge to development policies and is increasingly fostering new forms of social relations and land disputes. Table 1 shows that in the arrondissement of Tillabery, from 1968 to 1973, 33 cases were adjudicated, among which 26 (79%) of the claims of ownership opposed use-right holders and traditional chiefs (canton chiefs and village chiefs). In all these cases, the use-right holders were required to pay tithe to these chiefs. Furthermore, 6 cases of withdrawal of use rights were recorded from that same period.

V. CONCLUSION: THE NEW RURAL CODE AND THE CHALLENGES OF LANDHOLDING PATTERNS

The rural code committee is inheriting a difficult situation. The question is not whether to recognize traditional ownership but rather which “traditional ownerships” are to be recognized: traditional ownership as defined before the colonial period, during the colonial period, during the Hamani Diori regime, or during the Kountche regime?

Also, an important issue faced by the code pertains to maintaining the flexibility of ownership rights in distinguishing different agricultural lands and the types of tenure that are to be promoted. For example, under a system of shifting cultivation, where fallow is a mechanism of land conservation and village common land a way to alleviate land shortages, granting private rights means reducing the possibilities for farmers to get land if there is a loss of productivity of their plots.

In addition, the tedious task will be to find proofs of ownership, since these ownership rights are not written records. In cases where people who were present during an important land allocation are not now available, it becomes difficult to determine who has a valid claim to a parcel of land. These difficulties may be the reason the Koran has been used to determine ownership. Thus, the code has to consider any form that is already accepted by the rural population, because they already internalize and abide by these rules. Such a strategy would make the task of determining ownership easier, even if some adjustments need to be made regarding the question of equity.

The challenges facing the rural code are numerous. I have tried to highlight some of the ongoing changes in rural Niger to recenter the debate from the formulation of a body of law to the difficulties of implementing them. The main challenge for the rural code will be to take a different path than preceding laws have done.

Furthermore, as noted by Peter Bloch, “The legal recognition of customary ownership rights changes the content of these rights, essentially by removing the reverse obligations.” The removal of these social obligations affects the cohesion of the social structures. This was obvious in the different conflicts we discussed as attempts of the Nigerien government to increase tenure rights affected the relations between traditional chiefs and use-right holders, between family members, and between landowning families and tenant farmers.

To clearly see the impact of the rural code in rural areas, there is a need to collect data on and assess the different types of land conflicts that have been affecting rural Niger. This will help determine the regional patterns of land conflicts. Furthermore, in so doing, the rural code committee will be better armed for understanding how those conflicts were resolved and finding ways by which to resolve any new conflict. These data are needed because it is the only way by which the committee will be able to monitor the impact of the law and to depict any new form of land conflict.

Hence, the role of the rural code resembles the role of the *mai gida*¹² in his family. Will the rural code act as the *mai gida* in maintaining peace and promoting an efficient and equitable system that will foster rural participation in development strategies?

12. *Mai gida* refers to the patriarch or head of household.

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