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**IMPROVING DEMOCRATIC GOVERNANCE FOR  
SUSTAINABLE DEVELOPMENT:**

**AN ASSESSMENT OF CHANGE AND CONTINUITY IN NIGER**

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## EXECUTIVE SUMMARY

### INTRODUCTION

At the request of USAID/Niger, Associates in Rural Development, Inc. (ARD) undertook a broad-based democratic governance assessment designed to:

- provide data and analysis useful for the completion of a portion of the Country Strategy (CPSP) related to democratization and governance;
- identify governance constraints to progress in sustainable development in both Nigerien society and government;
- suggest areas of long term support through which existing USAID/Niger projects and programs can promote solutions to democratic governance constraints; and,
- suggest a conceptual approach through which USAID/Niger might identify new activities to further democracy and more effective governance.

A detailed scope of work laid out a large number of governance issues to be addressed in the report. To address this scope of work, the ARD team conducted research in Washington and fielded a team of five individuals who undertook a total of 21 weeks of fieldwork in Niger, including approximately 33 days of field work outside of Niamey. The ARD team had the support of a number of Nigerien consultants, including the active involvement of three Foreign Service Nationals, in the conduct of its data gathering and field work activities.

### THE POLICY QUESTION AND APPROACH OF THE STUDY

The approach adopted by the team was based on a policy-oriented use of institutional analysis. The key organizing question of the study was the following, "How do governance behaviors manifest by actors at all levels of Nigerien society affect the capacity of the Nigerien people to achieve sustainable improvements in the quality of their lives, and what can donors, like USAID, do to enhance behaviors which will support that goal?"

The institutional analysis adopted is based on a very simple proposition: the choices people make, including the way they choose to organize themselves to manage their public resources, are rational. Choices are facilitated through an understanding of the rules of the game, i.e., formally or informally institutionalized norms. Since independence in 1960, Nigerien political actors have made these choices according to a set of rules determined by pre-existing political values, by the logic of political action in a one-party state, and subsequently by the logic of political action under a narrowly-based personal regime dominated by military officers. Since 1988 these rules have been evolving, leading to the political transition to a formal democratic system manifest by the free election of a new government under the Constitution of the Third Republic in April 1993.

This study explores how political institutions and behaviors have been affected by the interplay of this new set of democratic rules and older, well institutionalized patterns of political behavior. It explores what the incentives are for political actors to play by the newly adopted democratic rules of the game. It documents the "action tendencies," i.e., the dominant trends in behavior, which seem to be emerging

after one year of formal democratic governance. It explores these trends at a number of levels, ranging from an analysis of the formal constitutional rules established, to the operation of the institutions of national government, to the efforts to "decentralize" government, to the organization and functioning of civil society. It also analyzes the functioning of two important institutions which we call linkage structures, political parties and the media, to learn what their contributions have been to political behavior.

The study starts from an understanding of Nigerien society and political life, and notes how Nigerien political behavior has begun to incorporate a number of political behaviors which, it is posited, constitute the basis of effective democratic governance. Specifically, it asks how Nigerien society attempts:

- to limit abuses of executive power;
- to broaden opportunities on the part of more Nigeriens to participate in national public policy decisions;
- to establish a rule of law under which all Nigeriens, including those in positions of authority, are held accountable for their actions under the same rules; and,
- to make their governance processes more effective and responsive to the interests of the Nigerien public.

Having established the dominant behaviors, the study discusses their implications for the achievement of sustainable development, including the deepening of a pattern of managing public resources which is increasingly democratic.

The study concludes with a strategic approach to determining how donors should support the reform of governance in Niger in the direction of effective democratic governance, what each donor is currently committed to do to assist Niger, and what USAID might do as a function of its current and proposed strategic objectives, program outcomes, and project activities.

## **ANALYSIS AND FINDINGS**

In general, the Nigerien people have taken a giant step in improving their governance patterns in the past four years. It is now widely acknowledged (Carter, Africa Demo; Freedom House, 1994 Report), that Niger must be counted among the "free" societies in Africa which have completed an initial transition to democratic rule. This is in dramatic contrast to its ranking as "not free" or as on an ambiguous path to democracy only a few years ago. In addition, Niger's democratically elected government has been able to agree to and commence implementing some difficult economic reform measures recommended by international financial institutions. The dramatic devaluation of its currency, the CFA franc in January 1994, has also restored considerable confidence in its ability to resume its progress to a sounder economic development base. Together these improvements have fully warranted placing Niger in the category of a "focus" or "sustainable development" country where USAID can maintain and even consider expanding its development assistance program.

It is in this general context that we offer our analysis of specific changes in governance patterns, of the emergence and persistence of political behaviors, and of areas in both government and in the society at large where current patterns seem to limit the deepening and consolidation of Nigerien democracy.

Finally, to the extent that our specific analysis and findings are based on our understanding of what movements toward specific institutional changes and reforms reinforce the prospects for further consolidation of democratic behaviors and practices, this is not intended to hold Nigeriens up against a gold-standard or idealized norm. Rather, we see all societies as evolving political institutions and behavior in a number of domains unevenly and incompletely. The function of this analysis is to point out where certain patterns of behavior may logically limit further governance reforms by failing to provide the proper incentives, or by instead providing perverse or incompatible incentives.

#### **A. Formal Rules and the Nigerien State**

Nigeriens have made very significant progress in adopting a set of formal legal understandings to govern political behavior in the Third Republic. This has produced a set of rules (a regime) for the conduct of politics which is sharply at odds with those of the First and Second Republics and to the military regime (the regime d'exception). The Nigerien Constitution places a number of important limits on the exercise of executive power. These limits have opened up important opportunities for political actors, including non-state actors, who previously had very little legal authority to act. A careful analysis of the Nigerien Constitution leads to the following observations:

- it retains a heavy bias toward a powerful centralized state;
- it provides for an executive that is more powerful than the legislature or the judiciary;
- it provides the basis for constructing a rule of law and an independent judiciary, but it also allows very little access or recourse to ordinary citizens through appeals to constitutional principles in court processes;
- the constitution and electoral laws provide some potential political representation to minority ethnic groups, which could increase the protection of minorities in law;
- it provides the basis of broadly representative government by assuring the right of multi-party competition coupled with the electoral principle of proportional representation. At the same time, through various devices, including in its highly idealized notion of public interest representation and its banning of ethnic, gender-based and regional parties and associations, it limits the actual opportunity of ethnic minorities or women to gain representation.
- it provides for broad freedom of association and expression, and provides for the establishment of particular institutions (the Supreme Council for Communication, for example) to help guarantee these rights.

At the Constitutional level, then, the Third Republic has emerged as a political system which has greatly improved both political rights and political liberties, compatible with the development of democratic governance practices, while retaining provisions which could limit incentives to broaden participation and effective representation.

## B. Dynamics of State Institutions

In principle, Nigeriens who framed the Third Republic wished to reduce the power of the President and to provide an effective counter-balance in a more powerful legislature and independent judiciary. The reality of how the institutions of the Third Republic have been functioning after approximately 18 months is, however, somewhat less encouraging.

### 1. Legislative Dynamics

Thus far, the National Assembly remains weak as a deliberative and representative body, although there are some indications that its governance role is already expanding. Its weakness has been due in part to practical and material constraints on the possibility for legislators to initiate and draft legislation, to review bills introduced by the government, or to broaden the public debate on these bills by organizing public hearings. The fact that the legislature must depend heavily on the executive branch for information, research and analysis, and that its own technical staff is quite limited, contributes to this fact. On the other hand, the legislative commission system is now functioning, and the Finance Commission gives National Assembly deputies the opportunity to examine all laws which have financial or budgetary implications. Given the absence of an auditor general, and given the fact that it is the Supreme Court, with its own institutional limitations, that is charged with holding government accountable in budgetary matter, the legislature is not yet capable of exercising sufficient budgetary control.

There are also constraints embedded in the legislature's constitutional authority. For example, while the legislature may request that government ministers provide answers to questions, or may establish special commissions on inquiry, it has no power to force the government to cooperate with these efforts.

A principle reason for the weakness of the legislature as a countervailing institution must be traced to the logic of coalition politics, notably the imperative of maintaining a working majority in order to play the game of majoritarian politics. So fragile is the coalition of nine parties, and so vital is it to keep the coalition together in order to distribute virtually all the benefits of victory and control of the state, that deputies have had little incentive, thus far, to vote independently or even to engage in extended debate. This logic of majoritarianism, or winner takes all, has been expressed in the legislature through a series of straight party-line votes, first on internal rules, then on parliamentary immunity, and most recently on the motion of censure. By June 1994, however, the underlying political norm of limitation of victory and of reconciliation was beginning to be manifest in the appointment of members of the parliamentary opposition group to leadership roles in the National Assembly President's Conference as well as to chairmanships of several of the parliamentary commissions. Given the fact that the single most important party in parliament, the MNSD, has been in opposition, this is a significant development in broadening participation in deliberation. As of the time this study was conducted, however, the coalition majority still used its domination of the President's Conference to set the legislative calendar and agenda so as to deny the opposition the possibility of introducing legislation.

Despite the heavy incentive for majoritarian voting thus far, the legislature has been a useful arena for publicly airing complaints against the executive, largely by attacking the Prime Minister and his government instead of taking on the President directly. In this manner, deputies, even from major parties in the majority coalition, have been able to play watchdog functions.

Finally, the concept of representation does not appear to have advanced beyond the traditional view of linkage to power through personal intervention and clientelism, and the value of the legislative

representative in even this capacity has not significantly grown. Despite the maxim, carried over from the Second Republic, that deputies are supposed to be "national" rather than "representatives of local constituencies or interests," most politically involved Nigeriens see their deputies at best as channels for furthering complaints ("doleances") and look to executive branch politicians and administrators, rather than to legislators, for action. This is compounded by the fact that legislative constituencies are so large that few people actually know their representatives. Thus far, there is little evidence that organized interest groups even look to legislators for support, although recent efforts by the unions to draw representatives into a mediational role with government over the strike may constitute a beginning in that area as well.

## 2. Judicial Dynamics

The judiciary is the one national governmental institution in Niger which has been able to maintain considerable legitimacy, even when the principle of "rule of law" was severely weakened by the military regime. In principle, Niger's judiciary should be able not only to play an important role in adjudication and conflict mediation, but in limiting the abuses of executive power and majoritarianism. The Constitution accords the judiciary important authority for furthering the rule of law and establishes the principle of judicial independence. This is reinforced by professional norms, and relatively good salaries, and by the fact that the political "winners" can make no political appointments to the judiciary, making it one branch of government that cannot easily be politicized.

Our study reveals significant limitations on the role which the judiciary can currently play in furthering Nigerien democracy, both at the constitutional level and the level of practical political matters. Because of constitutional limitations, judges and courts are obliged to play a fairly passive role in invoking law or in ruling on the legality of executive action. Only individuals who have been directly injured by such governmental actions have standing in this regard. Coupled with the near total absence of private sector lawyers, this probably unduly limits access of individuals to the legal system, not only as watchdogs, but as complainants. This means that much of the watchdog role for the enforcement of legal limits on the executive behavior must come from only a few groups in civil society, such as human rights groups. Given the extreme paucity of resources available to these groups and the limited number of legally trained specialists who can carry such cases forward, they can play only a limited role in testing the law and in invoking legal limits. Efforts on the part of donors to support the activities of these groups in legal rights education and related matters are laying the foundation for righting this imbalance, but the process will be a long one.

Practical limitations are paramount in limiting the role of the judiciary. Judges complain about the severe lack of material resources to support their operations, including the very vital role of investigation in a system which depends on a "judge of instruction" instead of the adversary process conducted by lawyers and prosecutors to bring forward evidence. Judges lack timely access to current law and to legal decisions, weakening their capacity to function well as professionals, and judicial processes are slow, too distant from most people, and too costly in time and travel to serve most ordinary Nigeriens and even most businessmen as well. These practical limitations force judges to be excessively dependent on executive branch support, and with the high level of politicization of the executive, this poses serious problems about the effective independence of the judiciary. There have already been complaints from the media, for example, that political pressure is brought to bear on judges in cases where individuals in the executive branch bring defamation cases against the private sector media, its owners and its journalists. In general, however, the Nigerien judiciary is considered to be relatively free from direct political intervention which is a very hopeful sign for the progressive establishment of a rule of law.

### 3. Executive Branch Dynamics

In creating a semi-presidential regime, the designers of the Third Republic provided the executive with ample authority to dominate all other national political actors. Clearly, the President has far greater powers than does the Prime Minister. Incentives to build and reinforce the powers of the executive and particularly of the President are strong, especially given the norm of coalition political behavior which predominated at the time this study was conducted, i.e., to use the power of the State to allocate as much of the benefit as possible to the winners, to the exclusion of the losers. As long as the winning coalition holds together, the logic on the part of winners will continue to be to maintain and even strengthen executive, and notably Presidential dominance. Only the losers -- those excluded -- have strong incentives to try to limit executive power by, among other means, the invocation of legal and constitutional norms.

Given that the winners have been a very broad and substantially incoherent coalition of nine political parties, there is relatively little internal incentive to resolve difficult and potentially divisive political issues, or to develop a strong and consistent policy based on clear ideological or strategic perspectives. Interministerial coordination and policy implementation is also likely to be weak where different parties in the alliance, sometimes with significantly different positions and interests, hold top positions in different ministries.

Instead, what the holders of executive power share is the common desire to reinforce the power of the central state, to keep the coalition intact, to weaken the opposition. What potentially divides and troubles them are their differential desires (depending upon how they see their base of support) to respond to demands of particular interests, and to address the policy demands of donors in order to keep external resources flowing for allocation and distribution. In such a context, the internal logic of good governance, i.e., of effective decision making, of efficiency, of merit, professionalism and honest management of public resources, cannot be high, nor can the abstract desire to play by constitutional rules which may restrict the winners scope of effective action be strong.

The major limitation on majoritarianism and questionable governance practices is the capacity of factions of the politically involved elite to mobilize "public opinion." Admittedly, both the politically active elite and the tending public are small, but both are important to the survival of the state. Factions involve not only opposition groups, but even groups within the majority which are striving to improve their position. They use Niger's remarkably free media to criticize actions of the executive in ways which often seem irresponsible, but which also seem somewhat effective in cautioning blatant and personal use of state power in ways which violate legal norms. Still, dependence on mobilization of public opinion cannot substitute for a well functioning institutional mechanism to promote political and financial accountability.

As for the administrative apparatus of the executive branch, there is little to indicate that its working rules and dominant behaviors have been altered for the good, thus far, by political democratization. Nigerien bureaucracy still discourages initiative and merit, and rewards seniority and personal loyalty. Managers have few tools available to sanction poor performance, even if they wish to do so. Working rules still favor centralization and extreme hierarchy in administration with little opportunity on the part of subordinates, particularly in the field, to influence implementation. When the bureaucracy does come in contact with the public, the paternalistic notion of guardianship (*tutelle*), in which it is assumed that it is the state which knows best and can best protect the public interest, guiding the people for their own good, still operates as a powerful justification for continued central control. All of this is hardly unique to Niger, but it all negatively impacts, nevertheless, on the effective functioning of the administration.

The logic of majoritarian coalition politics has compounded the problem by emphasizing political party loyalty above professional norms and political work over professional duties. It has also resulted in significant waste of scarce trained manpower as opposition administrators have been excluded from meaningful work, compounded by rapid turnover in personnel following the elections of 1993. In one way, democratic politics has introduced a factor which could conceivably reduce bureaucratic centralization, with greater attention to staffing localized administrations (regions, arrondissements, municipalities) with people from that region or linguistic/ethnic group. Certainly, the new regime did not invent the use of ethnic and regional criteria in the recruitment of administrators. It has, however, made it more explicit and localized. This can give rise to the hope that the administration will be more locally responsive, or to the fear that it will be more easily captured by local interests which are often portrayed as corrupt. Thus far, a battle is still raging between the effort of central political leaders to orchestrate this process to enhance their own and the "public" interest, and local political leaders.

Thus far, as well, the administration has not yet been able to deal effectively with several critical governance issues -- notably with revenue management, with bureaucratic accountability, and with administrative and effective decentralization. In the first two instances, adequate formal rules exist to improve performance, but informal rules and incentives have not yet shifted, and have in fact been negatively affected by the extreme politicization of the bureaucracy. Although politicization has slowed down local tax collection, especially in former MNSD strongholds, the bulk of the revenue problem does not lie here since both accountability and incentives on the part of local traditional authorities to participate in tax collection is still significant. Rather, the problem still resides with control of state employees who are in a position to gain rents because they control and regulate access to scarce and valued resources such as licenses and trade opportunities. Economic liberalization as well as policy conditionalities are already helping reduce these opportunities, but partisan control over unions of state officials and the participation of those parties in the government alliance undercuts efforts to improve accountability at the same time.

Decentralization poses more serious difficulties because even here the formal rules are only now being tentatively put into place, and they confront long standing preferences for centralized control on the part of those who control the state. Decentralization, as well, poses serious problems of uncertainty which, thus far, Nigerien democratic politicians have been anxious to avoid. Uncertainty arises from the fact that meaningful decentralization would give opposition parties, and even smaller parties within the majority coalition, opportunities to win control over councils, council presidencies, and even mayoralties of significant municipalities. Thus far, the response has been a reluctance to hold municipal elections, to redistrict the country, to bring local government closer to the people by extending it beyond the arrondissement level, and to make it more representative by reducing the size of constituencies and perhaps altering electoral rules to make representatives more accountable to specific people. A number of these changes are being considered or are already mandated in broad outline legislation, but there are serious disincentives to their full implementation anytime soon. Not the least of these disincentives is the desire to appear firm against the Twareg rebels who are demanding just such changes (with others that appear significantly less democratic as well). The failure to implement effective decentralization, on the other hand, reduces the government's capacity to improve governance performance in such vital areas as local economic development, service provision and natural resource management.

In the absence of effective decentralization, the role of traditional authorities in territorial administration continues to loom large. Niger's traditional authorities, operating most importantly at the canton and provincial levels, occupy a strange place in a constitutional democratic regime since for some purposes they must be viewed as unelected representatives recruited largely on the basis of birth-right rather than

on the promise of accountability or merit, and on the other hand they have characteristics of agents of the state without the status, protection or theoretical accountability of civil servants. What is notable for the present is that, despite being under heavy attack in some quarters for their support and association with the authoritarian regime and its corporatist mobilization structure -- the Société de Développement --, they emerged from the National Conference and the transition with more powers and roles, particularly in local development and resource management matters. This outcome may be attributed to two things -- the exceptional level of organization and advocacy of the "chiefs" as a "professional" interest group, and the reluctance, thus far at least, on the part of the new regime to decentralize and allow more popularly accountable local institutions to develop and play governance roles. To this must be added the strong and persistent political norm of deference to authority which most Nigeriens, even highly educated and western trained Nigeriens, display for both the secular and religious authority of chiefs.

### C. Dynamics of Civil Society

In general, civil society has been the domain that Niger has changed most dramatically in the past four years. Without question, institutions of civil society have flourished -- they have become much more numerous and diverse as new formal rules of political liberalization and democratization have been put into place, and as a combination of external pressure and internal changes have made the operation of these institutions a practical working reality.

Like state institutions and constitutional principles, civil society can, and in fact must, come to play several roles in the consolidation of democratic governance. It must assist in limiting the exercise of state power to reduce abuses which threaten not only democracy, but ultimately associational autonomy. It must help deepen democratic behavior and beliefs by offering more opportunities for participation in national political life than are available solely from the functioning of state institutions and political parties alone. They can further help support the development of a more democratic political culture by offering opportunities locally to lead, to monitor and control leadership, and to associate across narrow and parochial lines so that attitudes of greater trust, tolerance and mutual interest can eventually emerge. Finally, they can help improve governance by providing greater opportunities for self-governance. This is a great deal to ask of any civil society, much less one that has emerged from decades of suppression in a society which never clearly distinguished the notion of "state" and "society" in its own historic development. Progress, then, must be viewed from this perspective as "developmental," rather than expecting the full blown emergence of a civil society fully capable of performing all of these roles effectively in the foreseeable future.

Having said this, it is obvious that Nigerien civil society is just beginning to emerge and to play some of these roles. At its current stage of development, it is unrealistic to expect that Nigerien civil society can be a significant counterweight to governmental and particularly to executive power.

#### 1. Evolution of Civil Society Institutions

The most important feature of civil society conceptually is that it must involve voluntary association neither mandated from above, nor required by a collective, often ascribed, identity over which the individual or interest group has no control. In Niger, opportunities for association on this basis traditionally were limited to very small and informal associations, usually for informal work arrangements, for friendship or for social activity. While, at this level, association was normally based on at least nominal equality, in virtually every other form of associational life Nigeriens were associated on the basis of hierarchy, power and status inequality. Under both colonial and post colonial regimes,

voluntary forms of association were either openly suppressed or marginalized, even when their function was ostensibly spiritual or recreational, because such associations were seen as potential competitors for power and influence to those fostered by the State. This certainly included cooperatives and other official producer associations. There is ample ethnographic research to demonstrate that this tendency also described many residential associations, such as villages, where people were obliged to settle and become "sedentary" for administrative convenience, whatever their real preferences. Subsequent "development" and "relief" activities, such as reserve grain storage schemes, collective groundnut cultivation, or "village cooperatives" constructed on the model of the residential community as a unit of voluntary cooperation, reciprocity and trust, often encountered sharp resistance or passive neglect because these assumptions were incorrect and the actions they prescribed often were not viewed by "villagers" as in their interest.

In the virtual absence of voluntary associational life, assisting individuals and groups with their life problems, Nigeriens tended to adopt a different voluntary associational model based on individual loyalty and the exchange of unequal benefits. This system, broadly called a system of patron-client relations, was very well developed among most of Niger's societies. While it served to help individuals secure their material well-being, it did little or nothing to limit the exercise of power on the part of superiors, or to enhance the bargaining power of individuals in a similar life or work situation.

The principal exceptions to this rule emerged in urban settings where people began to associate around common occupational and professional interests. The most important of these in Niger were unions and student associations which states attempted, with less than total success, to control membership and often leadership positions. It now appears that a similar development may have been emerging for religious associations in Niger as well. It has only been since the 1980s that these urban associations began to assert some autonomy, often beginning by forming clandestine voluntary associations paralleling the officially mandated ones. Apart from these clandestine groups, the only voluntary associations to emerge in the 1980s were formed and fostered by international non-governmental associations, principally in the context of their work to combat famine and environmental degradation. All other professional groups, including those grouping lawyers, journalists, and "traditional" authorities, were formed and regulated by the state in corporatist fashion. The same was true of categoric associations of women and youth.

Since 1991 there has been a virtual explosion of voluntary associations, particularly formally recognized associations most of which are urban-based. Fully 61% of Niger's total voluntary associations, and 95% of its recognized indigenous associations, have been formed just prior to or following the National Conference held in mid-1991. In addition to social and religious associations, these associations have included human rights and development groups, gender-based associations, and de facto local development associations started by urban dwellers originally from a particular area or town.

Simultaneously, there has been a dramatic increase in the number of informal associations both in rural settings and in the informal private sector in cities. No systematic survey has been conducted as yet to permit an accurate description of either the range or scale of these groups, but our informal work permitted us to identify the importance of the phenomenon. In the rural sector, many of the new associations are growing out of the work of international NGOs such as IRED, Clusa, Woccu, 6S, etc. Others are building on the experiences of previous development projects, particularly in irrigated agriculture, at times with the support of educated people from the region now working with local people either as informal consultants or in new Nigerien development NGOs.

## 2. Characteristics of Civil Society Actors

For the most part, voluntary associations are organizationally and financially weak, and heavily dependent on external financing for their survival. Reflecting their newness, their management capacities are usually rudimentary and technical skills are limited. Few have permanent office space, communications capability and staff. Relatively few civil society institutions in Niger are truly membership based organizations linking base-level groups to higher levels of association and eventually to a national apex body. In Niger, only unions really fit this description. Few other associations have any real capability to play roles as intermediaries. Most other formal associations are "public interest" groups grouping a small number of individuals who associate around a common issue or need. Internal governance of Niger's embryonic formal associations is not generally very democratic. Unions now retain some national accountability of leadership and do seem to offer some opportunities on the part of member groups to have input in national decisions. Most "public interest" NGOs, on the other hand, appear to be elite-led and often one-person dominated. Even the alternative woman's association, the RDFN, seems to be replicating the model of a centrally controlled association providing little opportunity for local chapters to influence its policies or governance. Interestingly, some of the best organized and seemingly most participatory associations in the country today are Islamic associations which are having a major impact on public policy decision making through broad resistance to government legislation which they do not like.

An additional characteristic of much of Niger's newly created associational life, which is worth noting, is its increasing politicization. To the extent that major urban interest groups have become associated with particular political parties, their capacity to maintain their autonomy, and to play a constructive role in monitoring and dealing with government, once the parties they support either win or lose power is seriously constrained. This tendency toward politicization and loss of autonomy appears to be much less serious today than it was two years ago, offering the prospect that civil society may be able to develop some independent role.

## 3. Behavioral Dynamics in Civil Society

Niger's civil society today operates in one of the most favorable and progressive legal enabling environments in Africa. This is truly one of the remarkable accomplishments of the country's democratic transition. Apart from some restrictions on ethnic and regional association, stemming from fears about its recent history, its laws offer generous tax and customs advantages to NGOs, and make legal registration fairly inexpensive in money and transaction costs. On the other hand, there is definitely the need to complete work on legislation governing cooperative associations and assuring them of their autonomy and legal standing. Draft legislation is highly encouraging in fostering flexible forms of truly voluntary associations and reasonable financial incentives. The framework law for the Rural Code also provides a very valuable legal basis for a variety of rural associations, although the finalization of fully enabling legislation may be able to clarify and specifically authorize certain types of associations which will work on land use, water management, and other natural environment related issues.

To the extent that associational life is authorized and even encouraged by law, it is clear that what Niger has been doing is to establish an alternative set of rules and potential incentives which will do battle with some very deeply ingrained political norms (hierarchy, central "guidance"). It can be expected that many civil servants will view these new developments with suspicion and even hostility. On the other hand, a number of new incentives are emerging which powerfully support some changes in Niger's civil society. Not the least of these is the collapse of the state as the super-client, provider and employer of last resort.

As more trained Nigeriens are forced to seek employment in non-state associations and as more civil servants view this as a possible option for the future, resistance should decline, at least to formal urban-based NGOs. The association of civil society actors with political parties, on the other hand, can go either way. There is, of course, significant danger that these groups will be "re-incorporated" into the state apparatus as their political parties win. Conversely, in the context of vigorous multipartyism, at least some parties will have an interest in defending the interests and autonomy of particular interest groups. What is much less clear is who, in the short term at least, will speak for and defend the interests of rural associational life which is as yet too weak to defend itself.

#### 4. Assessing the Impact of Civil Society

Thus far, the record of Niger's civil society in limiting the exercise of state power is a mixed one. This is due mainly to its newness and its limited capacity. In general, Niger's human rights and legal associational community has made significant contributions in dealing with some human rights problems particularly in the North (DLD and ANDDH), in dealing with the on-going problem of slavery (Timidria), prison conditions (ANDDH), and arbitrary arrest and detention (RIDD-FITILA, and the Association of Women Jurists). There are important issues, however, which they hesitate to take on, such as defense of women's rights particularly against Islamic associations, defense of journalists against a rash of defamation suits, and public sector corruption issues. In addition, no "watchdog" NGO seems particularly interested or capable of taking on the government on issues of constitutional law and interpretation. In the absence of this, and with the narrow basis of standing for individuals in many cases, there is little incentive on the part of government to hold closely to constitutional principles.

The role which organized urban NGOs have played in promoting participation in policy has been very limited. No NGO currently takes on the task of monitoring and publicly reporting, much less assessing government performance, on a range of public issues. With the assistance of international NGOs, Nigerien NGOs have begun to get involved in advocacy for legislation in such areas as family code, cooperative law, credit union law, and national environmental policy. Unfortunately, these associations are not, in general, membership associations linking to the base and mobilizing a great many Nigeriens for political action. The Nigerien associations which the international NGOs support, thus far, have very limited capacity in analysis and policy formulation. Private sector associations, thus far, also reveal no capacity to get involved in decisions most directly affecting them such as trade, investment, taxation and tariffs.

Slowly, some base-level civil society actors are beginning to offer some experience in democratic decision-making at the local level, which over time can become the basis of a greater understanding of the rules of democratic processes at the national level. But even where local associations are not democratically managed, voluntary membership itself can constitute a powerful lesson and restraint on abuses of authority by local leaders.

Slowly, as well, Niger is beginning to develop some experience in local self-governance through its newly empowered civil society. Density has not yet reached the point where this has yet become a major feature of society, and capacity to manage will clearly need to be built up over time. This will probably require the continued active presence of international NGOs for some time in order to build a critical base of self-governance capability.

## GOVERNANCE IMPLICATIONS AND RECOMMENDATIONS FOR USAID IN NIGER

### **A. A Strategic Approach to Supporting Democratic Governance**

Having been requested to review and comment on the Mission's newly proposed strategic objective (SO) for democratic governance, we have framed our general recommendations in terms of a modified D/G SO and a corresponding set of programmatic (project) outcomes (POs) which cut across the development sectors currently being supported.

#### **1. Promoting Democratic Governance from the Ground Up**

Promotion of democratic governance is often viewed as something to tag on to a mission's activities, at best, a set of activities that may help to stimulate or reinforce some part of an emerging national democratic process, but that does not seem related to USAID's fundamental development tasks and specific strategic objectives. In this study we have argued for a concept of democratic governance that is embedded in the way people at all levels of society -- at the local self-governing level as well as the central state -- manage public resources. We have identified a number of governance patterns and trends in Nigerien society, within central government, in proposals for and actions to decentralize government, and in the broader society. This analysis has led us to a number of conclusions about where the opportunities exist and where the most serious constraints are to be found.

Nigerien society today still bears the marks of a highly centralized state which, while appearing powerful relative to civil society, is nonetheless limited in its capacity to govern Nigeriens in a creative and responsive way that promotes public welfare. We note three major asymmetries in power relationships and expressed as gaps in Niger's governance pattern: (i) a gap within authority patterns of the central state, i.e., between executive power and deliberative (legislative) and adjudication (judicial) processes; (ii) a gap between central and local government which limits the effective decentralization of authority and the appropriateness of governance decisions; and (iii) gaps between state power and the people, or civil society.

The gap between the state and civil society development has not only compromised broad-based economic growth and environmental management, it has resulted in only the most marginal involvement of the vast majority of Nigeriens in public decisions. The era of democratization has changed that! Opportunities now exist that greatly expand the effective power of Nigeriens over their lives; eventually, they should be able to play more significant roles in the development activities which directly effect their welfare and in the broader political system. For the moment, political parties contribute little to this empowerment of most of the people. The media, while a very bright spot in the national-level democratic discourse, has yet to serve the rural mass well.

Based on this analysis, how should USAID/Niger prioritize its actions in the area of supporting democratic governance? Our study identifies a number of opportunities in specific areas, but for us the overwhelming need and opportunity is in supporting associational life, particularly local-level associational life. This proposition embodies a way of looking at "democracy support" that links it to an overall approach of promoting empowered participation throughout Nigerien society, primarily by supporting rural voluntary associational life. Without a viable and growing associational life at the base and a growing horizontal network of these associations, there is little reason to "do democracy" for most of the people of the country. For most people, democracy will have meaning and relevance related to particular

functions and interests that they attempt to pursue in order to improve their lives and those of their families.

## 2. Why a Strategic Objective for Democratic Governance

The Mission's newly formulated program goal is cast in terms of creating an environment for and increasing **empowered participation among Nigeriens** at all levels as a means of promoting sustainable improvements in their social and economic welfare. From our perspective then, the entire program's success can also be portrayed in terms of progress made in promoting a system of democratic governance. Our conclusion is that broadening participation and the basis for voluntary association, which, at a minimum, implies the capacity for some meaningful action outside the control of the central state makes the most sense at this stage in Niger's evolving democracy.

USAID/Niger's proposed democratic governance strategic objective is:

**Increased Awareness of and Active Commitment to Democratic Principles of Governance.**

We think this SO should be re-formulated for the following reasons:

- (i) The SO does not clearly connect to either participation or empowerment, major emphases of the Mission's new country program goal; and,
- (ii) It does not make clear which aspects of democratic governance are most critical for USAID to support in order to increase the effectiveness of its current and proposed program portfolio.

The assessment team thus proposes the following modification to the Mission's SO:

**To expand empowered participation on the part of all Nigeriens, particularly with regard to their capacity and opportunity to undertake self-governance, and to participate in the political process beyond the local level.**

We have broken this SO up into a number of discrete project outputs (POs) which form the basis of our general set of recommendations. We believe that this SO is intimately tied to the Mission's overall goal, and that it addresses both the concerns of those involved at the sectoral and project level, and those concerned about trying to influence the broader macro environment. We also believe that this SO starts from where Niger is at now, in terms of our analysis, and offers some significant promise of assisting in promoting both a more effective governance structure and a more democratic one (over the long term).

This SO and the corresponding set of POs outlined below do not address all the constraints and opportunities identified in our analysis, nor advance all the possible recommendations which flow from them. Rather, we have developed the following set of recommendations based on our understanding of the Mission's desire to increase the impact of its **current and proposed** programs and projects. USAID/Niger may want to weigh how some of the additional issues raised, but not recommended for consideration, might either fit into the SO and POs proposed here, might better be handled by other donors, or might be the subject of another activity which is projectized. Specifically, we refer to the absence, at this point, in recommending a discrete program of assistance for state institutions, particularly the national assembly and judiciary. While the following recommendations do propose some very limited

support to these two state institutions, it is only insofar as it contributes to the strengthening of voluntary associational life and emerging civil society, primarily at the local level.

Although it has been our understanding that the Mission does not want or anticipate a stand-alone, multi-component D/G project as undertaken by USAIDs in other African countries, we believe that our analysis, including the conceptual approach used, provides the necessary data and analytic framework to fashion an activity which includes support to the state sector. With this in mind, we now turn to the set of project outputs-cum-general recommendations which support our proposed strategic objective.

## **B. Program Outputs and General Recommendations**

In reviewing each of the six proposed project outputs (POs) which follow, we provide a discussion in terms of (i) the purpose being addressed; (ii) the set of activities and implications arising from the recommendation; and (iii) a brief summary of possible impact measurements.

### ***P.O. 1: Increase the density of voluntary local associations***

**Purpose Addressed:** In and of itself, an increase in both the numbers and diversity of associational life is a condition to be valued in the development of a pluralist democracy. Civil society's landscape should be populated by a wide range of associational forms that have a multiplicity of interests and a range of capacities. Some will pursue narrowly defined group interests, others may, over time, identify their own interests with those of the larger community within which they operate. Density and diversity in associational life provides individuals with a choice among competing interests and thus decreases the possibility of cleavages building up around single issues or affiliations which are often found to be sensitive or contentious.

**Activities and Implications:** The actions required to achieve this PO are within the current Mission portfolio: to maximize the formation of and work with voluntary local associations in health, including family planning extension, credit and credit management, natural resource management, and disaster mitigation. While increasing the density of voluntary associations is to be encouraged as discussed above, there are obviously a number of "operational" problems that must be dealt with as a result. The primary issue concerns the ability of USAID, or any donor for that matter, in selecting good investments among the many new associations, NGOs, etc. that have and continue to enter the civil society arena. The second issue concerns the means (mechanism) for providing assistance to these small-scale, local level and non-USAID registered associations.

**Measuring Impact:** This should be a fairly straightforward undertaking. We can simply count the number of new associations supported through USAID-financed activities, and, over a period of time, ascertain the total number of survivors. To do this, a good base-level associational inventory must be done (we have proposed such a Nigerien-led study in Annex 4 of this report). It might also be possible to count the total number of associations of these types because of the presumption that there will be some synergism and spontaneous associational formation as a result of USAID interventions.

**P.O. 2:** *Increase the capacity of these voluntary local associations to manage their affairs in a way which broadens participation and which increases the accountability of leadership and members.*

**Purpose Addressed:** PO 2 refines the notion of democratic governance to three basic principles: a) self-governance capacity; b) broadened opportunities for participation; and c) leadership accountability. Niger's blossoming base-level voluntary associations are very early in the development of internal management capacity and working rules for inclusion, exclusion and resource control. This PO addresses the basic need of Nigerien society for a growing democratic governance base by focusing efforts on fostering the capacity of voluntary associations to undertake the specific governance functions associated with the expansion of rural economic interest groups for credit and savings, the extension of health and family planning service, and environmental action.

**Activities and Implications:** To achieve this objective USAID should focus in all its work with local associations, including primary cooperatives, credit unions, NRMs, user groups, and possibly base-level health management units, either directly or through PVOs/NGOs, on capacity building and skill transfer. Two other principal capacity building dimensions in addition to administration and financial management are: (i) strategic planning and management looking at among other issues, internal governance structure, long-term planning and sustainability; and (ii) technical expertise in such sectoral pursuits as micro-enterprise both on-farm and off-farm activities, natural resource protection and management, and primary health care provision and management.

**Measuring Impact:** Capacity building or institutional development is no longer considered an open-ended process or domain. Particularly in the area of indigenous NGO capacity building, a great deal of work has been done by USAID and U.S. PVOs to establish benchmarks and indicators for measuring the effectiveness of capacity building interventions. It should not be difficult, therefore, to establish a set of management skills and practices, and internal rule designs and enforcement practices on which data could be collected from a sample of associations. The baseline study discussed above could also be used to establish the starting point for local associational capacity.

**PO 3:** *Increase opportunities for Nigeriens to participate in the democratic governance process beyond the local self-governing level by promoting horizontal information sharing (among local associations) and by encouraging the formation of horizontal networks and secondary level associations.*

**Purpose Addressed:** Horizontal association is a prerequisite for effective growth in the capacity of voluntary associations beyond the local level and for participation in the political process in ways that enable members to defend their associational interests, to engage in democratic processes and, eventually, to assume responsibilities in the area of civic action, including policy formulation and advocacy. Our study reveals that in Niger horizontal networks and associations are in their most preliminary stage. The promotion of networking and federating will not only accelerate the sharing of information and lessons learned relative to USAID's sectoral interests, but will constitute the basis for the growth of rural-based civil society.

**Activities and Implications:** Attainment of this PO will in many cases require an additional perspective for project managers. One of the major conclusions of our analysis is that the previous corporatist structuring of associational life in Niger not only inhibited horizontal linkages from developing internally, but also isolated Nigerien voluntary associations from their counterparts in the subregion who, for the

most part, have built up far greater experience as civil society actors. Thus, our recommendation that both internal and external networking figure prominently in a Mission strategy.

**Measuring Impact:** Possibilities include: (i) the number of exchanges or contacts that take place between Nigerien voluntary associations, including the number of exchanges initiated by local associations themselves; (ii) the number of exchanges that take place between Nigerien voluntary associations and counterparts within the subregion; (iii) the existence and frequency of written or other media-communicated information across groups, particularly looking at the increase in "associational" media forms that develop; and (iv) the increase in the number of secondary associations that are created from horizontal collaboration among primary level associations and their various stages of institutional development.

**PO 4:** *Increase opportunities for Nigeriens to participate in democratic governance matters by expanding the knowledge of local level association leaders and membership concerning their legal rights and obligations; and those of intermediary specialized civic organizations that work to advance the interests of local self-governing associations.*

**Principle Addressed:** This PO promotes civic education, but civic education targeted to specific legal and political rights, and processes of functional utility to potentially interested associational members. With the relatively rapid accession to a pluralist democratic system, Nigeriens have witnessed a corresponding proliferation in new laws which, among other legal areas, govern the nature, formation, and operations of voluntary associations. Broad-gauged or generic civic education programs probably have little relevance to the immediate needs and interests around which most local voluntary associations are formed. To support those more specialized and formal civic organizations that have been established to limit the states exercise of authority, and specifically its abuse of power, continued use of 116(e) funding would complement the types of local association support recommended here.

**Activities and Implications:** As USAID works through its projects with associations in specific sectors, it should consciously incorporate into its projects this kind of educational information focused on understanding rights, laws and processes pertaining to the groups' primary goals and orientations such as the establishment and management of rural credit and savings institutions; the establishment and management of decentralized health services and health resources; and the creation of local level associations involved in the management and development of actions to deal with environmental degradation, such as forestry and irrigated agricultural resources. USAID actions should not only support this kind of targeted civic education for members, but it should consider as a corollary measure enhancing the analytic capacity and communication skills of members of the private, associational and public media.

**Measuring Impact:** This PO will primarily be measured in terms of outputs, (e.g., number of training activities undertaken by intermediary civic organizations with primary level associations; the number of media articles that deal with specific sectoral legal issues or associational rights) but with decent base level data, it would be possible to measure increases in knowledge and understanding in areas of specific rights at the level of different population groups.

**PO 5:** *Improve opportunities for democratic participation in voluntary associations by improving the legal basis for the growth of local-level association life.*

**Principle Addressed:** Creating a legal or enabling environment which favors associational formation at all levels is the objective of this PO. Specifically, we are proposing discrete assistance to concerned state

institutions and agencies that are responsible for the drafting, passage, execution, and interpretation of laws pertaining to the legal environment which promotes associational growth. While our analysis portrays and concludes a relatively favorable legal environment related to formal association and NGO registration and official recognition at the national level, this particular PO, as part of our overall strategic approach, targets the local associations and their legal rights and obligations which are just beginning to be defined under such laws as the Rural Code and decentralization law.

**Activities and Implications:** We propose a set of activities to deal with issues that have emerged as constraints in our analysis, and which do not all fit neatly in to specific sectoral portfolio, activities or concerns. These include: support for the refinement and passage of specific legislation concerning the standing and viability of local voluntary associations at levels below the arrondissement; support for harmonizing various laws governing associational rights, and in particular the rural code provisions, with laws affecting associations in the codes on forestry, water, livestock, cooperatives, and credit unions; support for improving knowledge of associational laws on the part of judges and particularly justices of the peace; and specific support could be considered to increase the capacity of parliamentary commissions to deal with public (civic actor) input on legislation that affects associational rights in a variety of ways.

**Measuring Impact:** Here the impact must be measured in terms of the development and promotion of the formal rules and their harmonization, not in terms of their direct impact on associational proliferation (see above). A study of perceived problems and constraints, as part of a follow-up to the base-line associational inventory, could provide some impact data at the level of the effect of legislation.

**PO 6:** *Improve opportunities for democratic participation in voluntary associations by supporting the capacity of the informed public (organized in associations with expressly civic purposes) to have some influence on the deliberation and application of these laws.*

**Principle Addressed:** A pre-requisite to the development and maintenance of associational rights is a growing demand for those rights with some groups performing a watchdog function over the law's creation and application, and over the general maintenance and development of a rule of law culture. This cannot be done solely or even primarily by the kinds of associations and members we have been discussing above. It requires a growing set of civic actors. Ideally, primary level associations which regroup around shared interests and needs into higher level regional or national federations (e.g., cooperatives, credit unions, water user and logger associations) would undertake this advocacy and lobbying function for their local level members.

**Activities and Implications:** USAID should continue to support such civic actors as human rights groups, associations of lawyers and legal experts, and urban-based development NGOs that wish to get involved in issues of rights of citizens to popular choice and enhanced government accountability, free expression, as well as freedom of association. It should at the same time, pursue activities which support the creation and capacity building of higher level federations as proposed in PO 3 above.

**Measuring Impact:** At a very basic level, the easiest means for measuring impact of USAID support would be to look at the number of advocacy and lobbying contacts that occur between NGOs and civic organizations with concerned agencies of the state. Next, a means for determining whether these actions have actually led to the drafting and passage of relevant legislation; or, whether civic organization oversight of the state's enforcement of current legislation leads to interventions being taken to curb state abuse of authority when its actions are found to be inconsistent with the intent of a specific law.

***The Specific Issue of Women:***

Many donors now target their associational and organization activities specifically at women and there are good historic reasons for doing so, and good evidence from field experiences to confirm the wisdom of this approach in terms of its outcomes.

The question is how should this be handled in USAID/Niger's SO and POs. There are two options: (i) attention to women can be handled as a specifically separate PO, or it can be embedded in all of the POs noted above (mainstreamed). We have opted for recommending the latter course, although this means that a special effort must be made to assure that women are free to organize, that their organizations will get the targeted attention of projects and not simply pass through "village development committees" which are invariably male run. In some instances, such as the CLUSA credit cooperative scheme, women are already a targeted group. Efforts to extend health and family planning services below the Rural Dispensary level should also carefully target women as a separate activity.