

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure and Development” Technical Committee

Decentralized vs. local management of land tenure: The Niger case history

by Adam Kandine¹, December 2010

In West Africa, decentralization of rural land tenure management systems is considered as the way forward by many actors. However, over a decade ago, Niger established through its Land Commission (COFO), an original system for the local management of land issues in rural areas, even before the decentralization process was launched. This brief presents the achievements and difficulties associated with local land tenure management system as established by Land Commissions. It also questions its articulation with the emerging decentralization process.

Achievements and weaknesses of local land tenure management system

In 1993, Niger undertook the reform of its land tenure management system. The objective was to effectively ensure the security of rural producers and create an environment of joint management of natural resources locally. To this end, outreach institutions, namely the Land Commissions (COFO) with the explicit purpose of rural land tenure management were established,

Through their activities, the COFOs have made it possible to reduce and even prevent land conflicts in the major hot spots. They also contributed to provide rural populations with a more equitable and secure access to natural resources.

However, though they are now established all over the country, their performance is mostly limited by weaknesses related to their internal structure and operating procedures. The enforcement of the Rural Code Guiding Principles Act of 1993, in a context of the persistence of customary land tenure management practices constitutes further limiting factors.

● Achievements of the system: the availability of outreach land services at the various territorial scales

The characteristics of the institutional framework of the current rural land tenure management system in Niger are the following:

- more than 3,000 villages and tribes out of 15,000 have grassroots COFOs;
- 145 “communes” out of 265 urban and rural “communes” have communal COFOs;
- all of the country’s 36 “départements” have departmental COFOs;
- each of the country’s 8 regions has a Regional Permanent Secretariat for the Rural Code;
- at the national level, the activities of all the regional and local agencies are coordinated by the National Secretariat for the Rural Code, under the supervision of a National Committee for the Rural Code.

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The COFO is the mainspring of an implementation arrangement for land tenure management system reform. As a joint venture with an equal representation of the central government on the one hand, and local elected representatives, customary authorities and rural producers, on the other hand, the Land Commission is considered as the most appropriate platform for the promotion of decision-making processes that address the land specificity of each locality.

The COFO should, at each territorial level, involve all the key actors of the rural land tenure management system. However, we note the prevalence of government and territorial authorities. This is particularly obvious in the representation of technical services within the COFOs and, above all, in the

The mandates of COFOs are the following:

- > disseminating laws;
- > granting land titles for individual or undivided estates;
- > granting pastoralists' priority rights for the use of entitlements on their usual land;
- > counting, delimitating and marking shared resources (stock passes, pastoral enclaves, as well as pastures, forests, public water points, etc.);
- > certifying land transactions in writing (sale, donation, hiring, lending, customary pledges);
- > preparing and keeping rural records;
- > preparing rural concessions;
- > contributing to land development planning;
- > controlling natural resource development.



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fact that the latter are chaired by the Mayor at the communal level and by the “Préfet” at the departmental level.

COFOs have outreach capacities that apply to all categories of land and natural resources at the local level.

The COFOs carry out all their assigned missions, but, in general, with the financial, logistical and technical support of the projects and programs that assist with the implementation of the Rural Code enforcement process.

A COFO is an autonomous local administrative body. As such, its decisions equate to administrative acts and, therefore, can be subject to administrative appeal before the “Préfet” or to action for abuse of authority before the relevant administrative jurisdictions through legal procedures.

● Weaknesses of the system: how legitimate and sustainable are the COFOs?

COFOs are still limited by quasi-structural weaknesses. Among others, the weaknesses identified relate to the following:

- difficulty in identifying legal representatives, especially those who represent rural producer groups;
- few adequate information and extension tools;
- excessive mobility of some members, particularly the representatives of technical services;
- erratic occurrence of the COFO general meetings;
- limited equipment and operating means.

In addition, though they are expected to be financed through direct contributions from the government’s budget and by territorial authorities, the COFOs are now overly dependent on external support, especially from development projects, which raises the issue of their sustainability.

On the other hand, the ongoing predominance of customary authorities in local land tenure management could reduce the effectiveness of the new local land tenure management system. Indeed, the traditional attributions of customary autho-



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rities in land tenure management are only very marginally challenged in the field, hence the conflict between both parallel land tenure management systems at the local level.

Although they are members of the COFO and therefore involved in its activities, customary authorities still act according to customs and traditions as to land allocation, organize natural resource management and even sometimes levy duties for their sole benefit, royalties on the exploitation of certain natural resources, (natron for example). In addition, customary authorities enjoy important privileges in land conflict resolution. According to the law, any legal procedure related to a land conflict must absolutely be preceded by an attempt at reconciliation before customary authorities. The role of these entities in land conflicts settlement makes them a category of particularly powerful local actors, especially in the current context of resource depletion.

The local land tenure management system was expected to be consensual in order to help the COFO address the

concerns of all categories of actors of decision-making processes. But, the COFO seems to be powerless in terms of adjudication of land concessions to some categories of people, including foreign private investors.

According to the law, the COFOs should provide advice all along the rural concession adjudication process that may give rise to the acquisition of an ownership right. In practice, the COFOs are only “informed” or “notified” of the requests of businessmen, politicians or foreign investors. This is all the more unfortunate, given that actors usually require large areas of rural land, especially in pastoral areas.

The most illustrative case is that of the recent adjudication, in 2006, of three rural concession deeds in the Niger River valley (Dosso region), to two groups of investors from the Kingdom of Saudi Arabia, on a total of 15 922 hectares of land. The COFOs of the region were seldom involved in the adjudication process, though they are in charge of recording of the said concessions in their respective rural re-

gisters and providing guidance on the possible adjudication of a final concession deed.

The local land tenure management system in the context of decentralization

Decentralization reforms are actually embodied in the 2003 laws, which governed the organization of the first local elections in 2004. According to these laws, there is now a reallocation of developmental decision-making powers between the government and territorial authorities. This reallocation of powers takes the form of a transfer of part of the government’s authority to territorial authorities. Decentralization has made addressing the land tenure issue and natural resource management one of the main pillars of sustainable local development.

A major challenge related to the local development process is to effectively meet the increasing demand for rural producers’ land securing through the establishment of a consistent system involving territorial authorities.

● Towards the harmonization of local actors’ interventions

An analysis of the provisions of the decentralization laws shows that, on balance decentralized entities have very little capacity in land tenure management. Indeed, legal provisions on the transfer of responsibilities are very restrictive. It simply stipulates that the government can transfer responsibilities related to the “territorial authorities’ land estate”. In other words, territorial authorities are empowered only in respect of public estate, excluding any capacity for the management of private land rights. However, this legislative stance makes sense only as

specialized institutions (resulting from the Rural Code) were created to manage private land rights in rural areas.

The alignment of the Rural Code process and decentralization reform appears to depend on a confirmation of the independence of COFOs from territorial authority bodies.

● Confirmation of the autonomy of COFOs

Rural land tenure management was entrusted to Land Commissions in order to establish a local system that can escape the vagaries and difficulties associated with administrative reforms. A comparative analysis of the provisions concerning land tenure management by decentralized local entities and the responsibilities of COFOs reveals that the laws and regulations on decentralization do not cause any disruption in the mandates of COFOs whose function consists in ensuring the sound management and the security of the rights of rural stakeholders. Meanwhile, the local communities, which own estates, develop and manage land according to the regulation in force.

The conclusion that can be drawn from the approach adopted in Niger is that decentralization does not neces-

sarily translate into the decentralized management of land tenure. This experience rather illustrates the search for coherence and synergy between

territorial authorities and local institutions, as COFOs were established by the government and existed before the decentralization process started. ●

FOR FURTHER INFORMATION

About land tenure management by land commissions

>> MALAM KANDINE A. and MAMAN SANI S., *Étude sur la viabilité et la participation des organisations communautaires aux activités des COFO à travers les expériences de Gaya et de Mirriah*, Bureau de la Coopération Suisse, octobre 2002, p. 49-51.

>> MERLET M., HERAULT D., YACOUBA M. and HASSANE A., *Contribution à l'élaboration d'une stratégie de sécurisation foncière des différents usagers des ressources naturelles*, "Appui au Plan national de l'Environnement pour un développement durable", DAP-PNEDD, Haute Tarka et Téra Nord, PNUD, décembre 2001.

The land tenure vs. decentralization question

>> *Étude sur "L'opérationnalisation des transferts de compétences"*, pour le compte du Haut Commissariat à la modernisation de l'État (HCME), octobre 2006.

>> *Étude sur la problématique du domaine foncier des collectivités*, Haut Commissariat à la Modernisation de l'État (HCME), rapport final août 2006.

>> MALAM KANDINE A. and HERAULT D., *Rapports institutionnels entre les structures de mise en œuvre du Code rural (COFO et SP) et les collectivités territoriales (Communes)*, DANIDA, octobre 2004.

Legislative and statutory instruments

>> *The 22 legislative and statutory instruments of the Rural Code are available on the following website: www.hubrural.org/spip.php?article1746*

ORIGINAL VERSION IN FRENCH "Gestion décentralisée ou locale du foncier? Le cas du Niger", translated by Lara Colo.

These pedagogic factsheets were produced with the support of the Technical Committee on "Land Tenure & Development" and the "Land Tenure Policy Elaboration Support" mobilizing project financed by the Agence Française de Développement. These factsheets can be downloaded in their entirety from the www.foncier-developpement.org web portal.

