Housing, Land and Property Mapping Project

Niger

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property ("HLP") within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses. However these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by the international law firm Webber Wentzel for the International Organization for Migration (IOM), using templates developed by the Australian Red Cross and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in-country lawyers and/or country experts.

**Document Change Management**

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Housing, Land and Property Law in Niger

1. Key laws and actors

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| [**Laws**](#Tenure_typologies) | Constitution of the Republic of Niger, 2010  Principes d’Orientation du Code Rural, Ordinance 93-015 of 2 March 1993  Décret nº 97-367PRN/MAG/EL déterminant les modalités d'inscription des droits fonciers au dossier rural (2 October 1997).  Arrêté nº 13/MDA/CNCR/SP portant organisation, attributions et modalités de fonctionnement des secrétariats permanents régionaux du Code Rural 19 Avril 2006)  Ordonnance N°2010-29 du 20 Mai 2010 relative au pastoralisme.  Ordonnance N°96 du 18 avril 1996, portant Code des baux à loyers  Loi 2015-01 du 13 Janvier 2015 portant statut de la chefferie traditionnelle en République du Niger  Loi n°2008-03 du 30 avril 2008 portant loi d’orientation sur l’urbanisme et l’aménagement foncier.  Loi n° 2001-32 du 31 décembre 2001 portant orientation de la politique d'aménagement du territoire.  Loi n° 2017-27 du 28 avril 2017 portant bail emphytéotique  Code Civil, 2005  Loi n° 2008-37 du 10 juillet 2008 modifiant et complétant la loi n° 61-37 du 24 novembre 1961 réglementant I’expropriation pour cause d'utilité publique et l'occupation temporaire  Loi no 2018-74 du 10 décembre 2018 relative à la protection et à l'assistance aux personnes déplacées internes  Loi n° 64-16 du 16 juillet 1964 incorporant au domaine privé de l'Etat les terrains et immeubles immatriculés non mis en valeur ou abandonnés  Loi n° 61-37 du 24 novembre 1961 réglementant l'expropriation pour cause d'utilité publique et l'occupation temporaire  Code General des Impots  Décret N°97-008/PRN/MAG/EL du 10 janvier 1997 Portant organisation, attributions et fonctionnement des institutions charges de l’application des principes d’orientation du Code Rural  Arrêté N°098/MDA/CNCR/SP du 25 novembre 2005 portant organisation, attributions et modalities de fonctionnement des commissions foncières de communes, de villages ou tribus  Décret du 29 septembre 1928, portant réglementation du domaine public et des servitudes d’utilité publique en Afrique Occidentale Française  Décret du 26 juillet 1932 portant reorganisation foncière en Afrique Occidentale Française  Ordonnance N°59-113/PCN du 11 juillet 1959 portant réglementation des terres du domaine privé de la République du Niger  Loi N°60-28 du 25 mai 1960 fixant les modalities de mise en valeur et de gestion des aménagements agricoles realises par la Puissance Publique  Loi N°61-30 du 19 juillet 1961 portant confirmation et expropriation des droits fonciers coutumiers dans la République du Niger  Décret N°71-33/MF/ASN du 16 février 1971, portant transfert et cession d’immeubles au domaine public e privé des arrondissemtns et villes et communes de la République du Niger  Loi N°2004-040 du 08 juin 2004 portant regime forestier  Ordonnance N°92-030 du 08 juillet 1992 portant adoption du document intitule “Principes Directeurs d’une Plitique de Développement Rural pour le Niger”  Ordonnance N°2010-54 du 17 septembre 2010 portant Code Général des Collectivités territoriales de la République du Niger  Décret N°97-006/PRN/MAG/E du 10 janvier 1997 portant réglementation de la mise en valeur des ressources naturelles rurales |
| [**Key government actors**](#Key_Govt_Actors) | Rural land:  Minister of Agriculture and Livestock  National Rural Code Committee (Comité National du Code Rural)  National Permanent Secretariat of Rural Code (Secrétariat Permanent National du Code Rural)  Council of Ministers  Land Commissions of Rural Code at Department (Cofodép), Municipality (CofoCom) and District/TVillage (CofoB) level (assisted by department, municipality and distric/village permanent secretariat)  Local authorities  Canton Chiefs  Village or tribe chiefs  User representatives  Urban land  Ministry of Urbanisation and Development  Regional Land Registries  Local Authorities (Les collectivités territoriales : Région et Commune)  Ministry of Finance (Direction de la Fiscalité Foncière et Cadastrale)  Municipalities |
| [**Shelter cluster**](#Shelter_cluster) |  |

1. [Common types of tenure](#Common_types_of_tenure)

In Niger both land and property can be owned or leased, in urban and rural settings. The majority of the population lives in rural areas and so their land rights are governed by the Rural Code which has formalised rights in terms of customary law. The governance of land and land use rights is overseen by decentralised land commissions. The role of pastoralists is very important in rural land tenure, and such rights are accounted for in theory, although these rights are not always as strong in practice as there is a disconnect between the formal law and how villages are run under customary chiefs. Urban land is governed differently to rural land. The registration of land and property rights is registered in the Land Registry at the Administration of Land Conservation and Land Rights.

The table below summarises the most common types of tenure in Niger.

|  |  |  |  |
| --- | --- | --- | --- |
| **Tenure** | **Commonly Registered?** | **Key Features** | **Title document** |
| **Ownership of rural land** | No  (vacant land by the State or a territorial collectivity)  No  (rural land by individual or community) | Vacant land on which no proof of property right has been established belongs to the State or to the territorial collectives in whose territory they are situated.  Rural land can be owned by an individual or a collective by way of customary or formal, written law. | N/A  Informal agreement (oral agreement, or with witnesses)  Certificate of registration of ownership delivered by the Land Commission  Deed of sale  Property Title |
| **Ownership of urban land** | Yes | Urban land can be owned by private individuals or private enterprises. Nigeriens and foreigners can own urban land. | Notorized sale and purchase agreement  Property Title |
| **Ownership of property (Rural and Urban)** | No  (livestock)  Yes  (buildings and infrastructure) | Ownership of property in relation to land tenure can relate to ownership of livestock or buildings.  Under the Rural Code, livestock capital constitutes moveable property which is subject to exclusive control within the legal framework of the individual and collective property rights. The herd owner is automatically the owner of the right unless an alternative agreement is made. An owner / custodian of livestock has a pastoral right of access and can be liable for any damage caused by his livestock to a third party.  Urban property, such as houses and buildings, can be owned by private individuals, even where the land on which the property is situated is not owned by that individual. | Oral agreement  (livestock)  Deed of sale  (buildings and infrastructure)  Notorized sale and purchase agreement (buildings and infrastructure) |
| **Pastoral right of access** | No | Pastoralists have the right of free access to natural resources, this includes a common use right as well as a priority usage right. All pastoralists have the right to common use of spaces generally reserved for pastures and grazing. | Certificate of registration of land right |
| **Leasehold** | No | A form of land or property tenure where one party to an agreement buys the right to occupy the land or building. | Lease agreement |
| **Emphyteutic lease** | No | A long-term lease, of between 18 to 99 years, on immoveable property and conferring on the lessee, real rights subject to payment of a royalty. | Lease agreement |

1. [Security of tenure of vulnerable groups](#Security_of_tenure_of_vulnerable_group)

|  |  |
| --- | --- |
| [**Women**](#Women) | By law, women have equal rights to land - they can own, buy and sell land - and other natural resources. Women are also represented at every level of the Land Commissions. In practice, however, Nigerien women are among the country's poorest and most vulnerable as under customary law they usually cannot own land and are usually reliant on their male relatives. This means that their legal rights are often not realised in their customary setting. |
| [**Minority groups**](#Minority_groups) | Ethnic minorities have legal rights to rural land use and ownership which are guaranteed in terms of the Rural Code. They, as well as immigrants and stateless persons also have the same rights as any Nigerien citizen in terms of urban land ownership and property ownership. The Nigerien 2010 Constitution guarantees any person a right to property. |
| [**Informal settlements**](#Informal_settle) | Informal settlements exist in Niger. Where land is owned by the Government, it is closely monitored. Occupants of informal settlements do not have legal right or title to occupy the land. Accordingly, either the Civil Code applies or laws regarding expropriation and temporary occupation apply. |
| [**Landless people**](#Landless_people) | Landless persons can own property, as the Nigerien 2010 Constitution guarantees any person a right to property. Furthermore, if landless persons, who are Nigerien citizens, are part of a local community they can be given ownership and land use rights by the chiefs of their village. If landless people are the first community on vacant land that does not belong to the State then they can also be afforded rights to the land by way of the customary rule of right of first occupant. |

1. [Eviction, expropriation and relocation](#Eviction_Expropriation_Relocation)

|  |  |
| --- | --- |
| [**Eviction**](#Eviction) | Niger's Constitution protects an individual's right to housing, and guards against the arbitrary deprivation of property unless such deprivation is preceded by fair compensation and is for purposes of furthering the public utility. Niger is also a State Party to the African Charter, and is bound to protect its people from unnecessary forced evictions. The Rental Lease Code and Niger's Civil Code govern lease agreements concluded between individuals, and set out the instances in which evictions may or may not occur. A lessee is protected from being evicted without compensation or without undue notice under Rental Lease Code. |
| [**Expropriation**](#Expropriation) | The expropriation of land and property is permissible in Niger but only for reasons of public utility and subject to just and prior compensation. Where the State is expropriating land a formal declaration must be made that such expropriation is for public utility, which can include public works, works necessary for the operation of public service, public health and safety work, reforestation and conservation; research and exploitation of mineral resources, works for the transport of combustible gas or hydrocarbons, works of constructions or factories for the use of energy, hydroelectric developments or works related to atomic research; and works associated with town planning and development.  An investigation by a Land Commission must take place in the event of any expropriation where any interested parties can participate. |
| [**Relocation**](#Relocation) | Niger was the first African country to give effect to legislation that specifically protects the rights of internally displaced persons. The Law of 2018 places extensive obligations on the Nigerien government with regards to the relocation of internally displaced persons, and seeks to satisfy Niger's obligations as a State Party to the Kampala Convention. Compensation is provided to persons who are relocated. |

1. Shelter Cluster Key Contacts

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| --- |
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Disclaimer

This report is the result of a desktop review of publicly available information. This report is not legal advice.

Introduction

## **Overview**

The International Organization for Migration (IOM) and its partners are first responders to humanitarian emergencies caused by conflict or natural disasters. Humanitarian assistance falls within IOM’s mandate to support governments in addressing the needs of internally displaced persons (IDPs).

The Australian Red Cross, with technical support from the International Federation of Red Cross and Red Crescent Societies, has provided the research template to which this memorandum responds. This memorandum comprises three main sections:

* The first section, entitled ['Common types of tenure'](#Common_types_of_tenure), provides an overview of the different types of housing and land tenure in Niger. It outlines the methods used to create and transfer tenure and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled ['Security of tenure of vulnerable groups'](#Security_of_tenure_of_vulnerable_group), considers whether, and to what extent, certain groups face legal barriers to accessing land and housing.
* The third section, entitled ['eviction, expropriation and relocation'](#Eviction_Expropriation_Relocation), considers Nigerien law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

## **Background information on Niger**

As a sub-Saharan landlocked country, Niger is surrounded by seven other nations being Algeria; Libya; Chad; Nigeria; Benin: Burkina Faso and Mali.[[1]](#footnote-1) The capital city of Niger is Niamey, and the country is divided into seven administrative sub-divisions being Agadez; Diffa; Dosso; Maradi; Tahoua and Zinder.[[2]](#footnote-2) With a land mass of 1 266 700 km2, Niger's territory is divided into three zones; Northern, Central and Southern. The Northern Zone constitutes more than half of the countries territory and is almost completely covered by the Sahara Desert.[[3]](#footnote-3)

Niger is one of the poorest nations in the world, with a population of approximately 22 772 361 people, who are largely reliant on subsistence farming to survive.[[4]](#footnote-4) As of 2019, 40% of Niger's GDP remained reliant on agriculture, and its economy continues to be inadequately diversified.[[5]](#footnote-5) Niger's natural climate, however, poses an extreme risk to the country's reliance on agriculture and subsistence farming, as Niger continues to experience decreased rainfall, deforestation and rapid desertification.[[6]](#footnote-6) The threats posed by and associated to desertification have even led Niger to incorporate into its Constitution, an obligation on the State and other public bodies to unite in the fight against desertification.[[7]](#footnote-7)

Niger's population is divided along ethnic and religious lines.[[8]](#footnote-8) There are three dominant ethnicities in Niger; the Hausa, the Djerma, and the Tuareg.[[9]](#footnote-9) The precepts of Islam are practiced by 80% of Niger's population, while the remaining 20% practice Christianity or have retained their own indigenous and traditional beliefs.[[10]](#footnote-10)

Niger's socio-economic standing is underscored by a rural population that are plagued by chronic malnourishment and who do not have access to basic amenities such as clean water and sanitation.[[11]](#footnote-11) In 2017, over 1.5 million Nigerien's were affected by food insecurity.[[12]](#footnote-12) By 2019, 41.4% of the population was deemed to live below the national poverty line.[[13]](#footnote-13) Niger's rural population often do not have access to safe, clean drinking water and are forced to rely on polluted pond water to survive.[[14]](#footnote-14)

In 1923 the Nigerien people succumbed to France's control which allowed France to establish an operative administration.[[15]](#footnote-15) In 1960, Niger's first independent president, Hamani Diori, took control of Niger; dismantling France's hold over the nation.[[16]](#footnote-16) Diori established a single-party dictatorship until he was ousted by a military *coup* which saw Seyni Koutche' rise to power.[[17]](#footnote-17) After Koutche's death in 1987, Ali Sebou assumed the reigns of the presidency, until 1993 when Niger held its first democratically contested elections.[[18]](#footnote-18)

Mahamane Ousmane emerged as Niger's first democratically elected president, but was soon ousted by Ibrahim Mainassara in 1996 in another *coup* led by Niger's military.[[19]](#footnote-19) Mainassara was assassinated in 1999, and a transitional government pathed the way to Mamadou Tandja's reign.[[20]](#footnote-20)Tandja managed to grip to power long enough to bring about an element of political stability to Niger, but after Tandja threatened to increase his term of presidency, he was overthrown in another *coup* which led to fresh elections being held in 2011.[[21]](#footnote-21)

Since the 2011 elections, the Nigerien Party for Democracy and Socialism has led Niger, with Mahamadou Issoufou as the leader of the party and president of the country.[[22]](#footnote-22)

Niger's post-colonial existence has been marked by changes in governance and military *coup d'état's.* This has had a drastic effect on legal stability in Niger; and since independence, Niger has enacted seven different or amended Constitutions.[[23]](#footnote-23) The constant change of political power, alongside the divergent legal reforms that each power sought to establish, has resulted in a vague, uncertain system of law in Niger and this should be kept in mind when reading this memorandum.

# **Common types of tenure**

## **Tenure typologies**

### **What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.**

The key pieces of legislation governing land, housing, building and planning are:

* Constitution of the Republic of Niger, 2010 ("**the 2010 Constitution**")
* Principes d’Orientation du Code Rural, Ordinance 93-015 of 2 March 1993 ("**Rural Code**")[[24]](#footnote-24)
* Décret nº 97-367PRN/MAG/EL déterminant les modalités d'inscription des droits fonciers au dossier rural (2 October 1997) ("**Decree on Registration in the Rural File**")[[25]](#footnote-25)
* Arrêté nº 13/MDA/CNCR/SP portant organisation, attributions et modalités de fonctionnement des Secrétariats Permanents Régionaux du Code Rural (27 Avril 2006) ("**Order on Permanent Regional Secreteriats**")[[26]](#footnote-26)
* Ordonnance N°2010-29 du 20 mai 2010 relative au pastoralisme ("**Pastoralism Ordinance**")[[27]](#footnote-27)
* Ordonnance N°96 du 18 avril 1996, portant Code des baux à loyers ("**Rental Lease Code**")
* Loi 2015-01 du 13 Janvier 2015 portants Statut de la chefferie traditionnelle en République du Niger ("**Law on the Status of Traditional Chiefdom**")[[28]](#footnote-28)
* Loi n°2008-03 du 30 avril 2008 portant loi d’orientation sur l’urbanisme et l’aménagement foncier ("**Town Planning and Land Development Law**")[[29]](#footnote-29)
* Loi n° 2001-32 du 31 décembre 2001 portant orientation de la politique d'aménagement du territoire modified by the July 20 2018 Law ("**Orientation of the National Land Use Planning Policy** ")[[30]](#footnote-30)
* Loi n° 2017-27 du 28 avril 2017 portant bail emphytéotique ("**Long-Term Lease Law**")[[31]](#footnote-31)
* Code Civil, 2005 ("**Civil Code**")
* Loi no 2008-37 du 10 juillet 2008 modifiant et complétant la loi n° 61-37 du 24 novembre 1961 règlementant I ‘expropriation pour cause d'utilité publique et l'occupation temporaire ("**Expropriation Law of 2008**")
* Loi No 2018-74 du 10 décembre 2018 relative à la protection et à l'assistance aux personnes déplacées internes ("**Law of 2018**")
* Loi n° 64-16 du 16 juillet 1964 incorporant au domaine privé de l'Etat les terrains et immeubles immatriculés non mis en valeur ou abandonnés ("**Building Development Law**")
* Loi n° 61-37 du 24 novembre 1961 réglementant l'expropriation pour cause d'utilité publique et l'occupation temporaire ("**Expropriation Law of 1961**")
* Code General des Impots ("**Tax Code**")
* Décret N°97-008/PRN/MAG/EL du 10 janvier 1997 Portant organisation, attributions et fonctionnement des institutions charges de l’application des principes d’orientation du Code Rural[[32]](#footnote-32)
* Arrêté N°098/MDA/CNCR/SP du 25 novembre 2005 portant organisation, attributions et modalities de fonctionnement des commissions foncières de communes, de villages ou tribus[[33]](#footnote-33)
* Décret du 29 septembre 1928, portant réglementation du domaine public et des servitudes d’utilité publique en Afrique Occidentale Française[[34]](#footnote-34)
* Décret du 26 juillet 1932 portant reorganisation foncière en Afrique Occidentale Française[[35]](#footnote-35)
* Ordonnance N°59-113/PCN du 11 juillet 1959 portant réglementation des terres du domaine privé de la République du Niger[[36]](#footnote-36)
* Loi N°60-28 du 25 mai 1960 fixant les modalities de mise en valeur et de gestion des aménagements agricoles realises par la Puissance Publique[[37]](#footnote-37)
* Loi N°61-30 du 19 juillet 1961 portant confirmation et expropriation des droits fonciers coutumiers dans la République du Niger[[38]](#footnote-38)
* Décret N°71-33/MF/ASN du 16 février 1971, portant transfert et cession d’immeubles au domaine public e privé des arrondissemtns et villes et communes de la République du Niger[[39]](#footnote-39)
* Loi N°2004-040 du 08 juin 2004 portant regime forestier
* Ordonnance N°92-030 du 08 juillet 1992 portant adoption du document intitule “Principes Directeurs d’une Plitique de Développement Rural pour le Niger”[[40]](#footnote-40)
* Ordonnance N°2010-54 du 17 septembre 2010 portant Code Général des Collectivités territoriales de la République du Niger[[41]](#footnote-41)
* Décret N°97-006/PRN/MAG/E du 10 janvier 1997 portant réglementation de la mise en valeur des ressources naturelles rurales[[42]](#footnote-42)

### **What types of tenure exist?**

The table below provides the types of tenure in Niger:

|  |  |
| --- | --- |
| **Tenure Type** | **Description** |
| **Ownership of rural land** | Vacant land on which no proof of property right has been established belongs to the State or to the territorial collectives in whose territory they are situated.  Chapter III of the Rural Code provides for the types of rural land that are owned by the State:   * reserved land constitutes areas classified in the private domain of the State or of the local authority which are intended to be used for strategic grazing or pastoral development reserves (article 40 of the Rural Code); * protected lands are classified in the public domain of the State or of a local authority for the protection or conservation of one or more natural resources (article 41 of the Rural Code); and * land for restoration or recovery constitutes degraded areas or deteriorating areas and where regeneration is essential. Such land is classified in the public domain of the State for the duration that the necessary restoration is required (article 42 of the Rural Code). This includes land where dangerous landslides could occur, sandy or unstable banks of rivers or mountainous slopes whose reservation would be recognised as essential.   Rural land can be owned by an individual or a collective by way of customary or formal, written law.  Rural land held by the decentralized authorities is granted by the State from its private or public domain according to the law on decentralized authorities. |
| **Ownership of urban land** | Urban land can be owned by private individual or private enterprises. Nigeriens or foreigners can own urban land. |
| **Ownership of property** | Ownership of property in relation to land tenure can relate to ownership of livestock or buildings.  Under the Rural Code, livestock capital constitutes moveable property which is subject to exclusive control within the legal framework of the individual and collective property rights. The herd owner is automatically the owner of the right unless an alternative agreement is made. An owner / custodian of livestock has a pastoral right of access and can be liable for any damage caused by his livestock to a third party.  Urban property, such as houses and buildings, can be owned by private individuals or entities, even where the land on which the property is situated is not owned by that individual. |
| **Pastoral right of access** | Pastoralists have the right of free access to natural resources; this includes a common use right as well as a priority usage right. All pastoralists have the right to common use of spaces generally reserved for pastures and grazing. |
| **Leasehold** | A form of land or property tenure where one party to an agreement buys the right to occupy the land or building. |
| **Emphyteutic lease** | A long-term lease, of between 18 to 99 years, on immoveable property and conferring on the lessee, real rights subject to payment of a royalty. |

* + - 1. **Background to land tenure in Niger**

Land is perceived in two different ways in Niger: the customary view of land as a territory with multiple social links; and the Western-inspired state view of land as an economic good.[[43]](#footnote-43) These two views are often conflicting. An appreciation of the historical background of land tenure in Niger helps to understand the current system.

Since its independence from France in 1960, Niger's successive governments have passed legislation intending to increase land tenure security for the population, support the individualisation of land-use rights, and reduce the power of traditional chiefs. However, the laws have created layers of often contradictory land rights and have been largely unsuccessful at increasing land tenure security for the rural population.[[44]](#footnote-44)

Niger has had seven Constitutions since it gained independence in 1960, with the 2010 Constitution being the most recent.

The land legislation relating to rural land that is currently in place is the Rural Code. The strategy of the Rural Code was to build on the traditional system, adapting it to correspond with the formal tenure rights system, rather than vesting all unregistered land to the State.[[45]](#footnote-45) The Rural Code has the following four objectives:

* increase rural tenure security;
* better organize and manage rural land;
* promote sustainable natural resource management and conservation; and
* better plan and manage the country’s natural resources.[[46]](#footnote-46)

As the vast majority of the population live in rural Niger, most land tenure concerns rights to rural land. Two types of land tenure are recognised in rural Niger: individualised ownership rights and a variety of land-use rights. Successive regimes beginning in the 1960s imposed land reforms that granted ownership rights to holders of customary rights to rural land. Chiefs and those with economic and political power obtained ownership rights to land during these years, supported by formal or informal documentation. The land tenure system thus has to be understood through this lens.[[47]](#footnote-47)

Customary / rural land rights and urban land rights are governed differently in Niger. In relation to urban land tenure, the laws in Niger are not always clear and often change. The rights to ownership of urban land are closely linked to urban development by property developers and urbanisation. As information about urban land tenure is less readily available than information on rural land tenure, the sections on urban land tenure in this profile are less detailed.

* + - 1. **Ownership of land**

Article 148 of the 2010 Constitution provides that the natural resources and subsoil are the property of the Nigerien people.

Ownership of land by the State

Article 11 of the Rural Code describes vacant land as those on which no proof of property right has been established. Such land belongs to the State or to the territorial collectives in whose territory they are situated.

Chapter III of the Rural Code provides for the types of rural land that are owned by the State:

* reserved land constitutes areas classified in the private domain of the State or of the local authority which are intended to be used for strategic grazing or pastoral development reserves (article 40 of the Rural Code);
* protected lands are classified in the public domain of the State or of a local authority for the protection or conservation of one or more natural resources (article 41 of the Rural Code); and
* Land for restoration or recovery constitutes degraded areas or deteriorating areas and where regeneration is essential. Such land is classified in the public domain of the State for the duration that the necessary restoration is required (article 42 of the Rural Code). This includes land where dangerous landslides could occur, sandy or unstable banks of rivers or mountainous slopes whose reservation would be recognised as essential.

Any development on the above classified land will be carried out after consultations with and participation by the affected communities. Once such lands are made suitable for cultivation or pastoralism they can be determined suitable for private appropriation after decommissioning (article 43 of the Rural Code).

The Niger General Tax Code provides that the private owned lands of the State and Territorial Collectives are classified in urban, commercial, craft, or industrial concessions (Article 856).

The General Code of Territorial Collectives defines the domains of the public and private territorial collectives. (Articles 281 to 299)

Ownership of rural land by individuals or communities

Article 8 of the Rural Code provides that ownership of rural land is acquired by custom or by written law. Articles 9 and 10 provide for the ways in which ownership of land can take place, according to both customary and civil law. Please see below in this regard.

Article 14 of the Rural Code provides that the owner benefits from the exclusive control of his property, which control must be exercised in terms of the applicable laws and regulations in force, in particular those relating to the development and protection of the environment. Thus, landowners have the right to use the land as they wish, exclude others from the land and lease and sell the land.[[48]](#footnote-48) Everything that unites with the ground, naturally or artificially, whether it be plant cover or various man-made arrangements, belongs to the owner of the soil, subject to third party rights (article 16 of the Rural Code).

Article 17 of the Rural Code highlights the rights of third parties by providing that an owner is obliged to support all the servitudes imposed in respect of third-party rights, particularly those resulting from the right of access to water and pastures.

Also, any user of rural land, water and forests is required by law to manage them rationally. In particular, the owners as much as the tenants, must do everything to ensure the development of the soil. Compliance with these obligations is subject to periodic checks. In the event of non-compliance, the use of the land is temporarily entrusted to a third party designated by the government or results in the loss of use of the p.[[49]](#footnote-49)

An owner may only be deprived of his right of ownership in compliance with the procedures provided for by law, in particular those relating to expropriation for reasons of public utility (article 15 of the Rural Code). This is further confirmed by article 21 of the Constitution which provides that that no one can be deprived of property except when taken for public use and when the landholder is fairly compensated in advance.

Ownership of urban land

In 2006 Sheida ("Cheda") was put in place which refers to the simplified land title process. Since then, there has not been a need for the applicant for a title to provide for the land’s development or to register it at the Land Registry. All the details of the simplified process are specified in the 2006 Finance Law with inputs in the General Tax Code.

The Long-term Lease Law further provides for the rights of developers. Please refer to the section on emphyteutic leases at 2.1(b)(v) below.

Private individuals can own urban land. Full ownership rights are provided to the owner of the land.[[50]](#footnote-50)

Urban land can be acquired by real estate developers and on-sold to individuals or it can be acquired directly by a private individual, who has the right to sell the land to another private individual.

* + - 1. **Ownership of property**

Article 28 of the 2010 Constitution provides that "*any person has a right to property. No one may be deprived of their property except for cause of public utility and subject to fair and prior indemnification.*"

In Niger property can relate to buildings and houses or it can relate to livestock.

Livestock as property

In terms of article 32 of the Rural Code, livestock constitutes moveable property and in terms of article 33, the herd owner is automatically the owner of the right unless an alternative agreement is made.

An owner of livestock can exercise his right directly or transfer to a third party the management or custody of his livestock (article 35 of the Rural Code), i.e. a custodian. The Rural Code applies certain conditions to this relationship, as follows:

* The relationship between the owner and the custodian is governed by a contract between them, subject to certain provisions in the Rural Code relating to obligations of the owner on the one hand and the custodian on the other (Article 36 of the Rural Code).
* The contract must provide valid conditions for remuneration (article 37 of the Rural Code).
* In addition to the obligations contained in the contract, the custodian is obliged to comply with the standards set by the competent authorities for the rational use of pastoral areas and the rights of third parties (article 38 of the Rural Code). Please see the section on pastoral rights of access below.

Article 39 of the Rural Code provides that where damage is caused by the livestock to the environment or the livestock infringe on the rights of third parties, the owner and custodian are jointly liable. If the damage results from the owner's fault, it alone bears the final weight of the repair. If it is the custodian's fault then the owner has a right of recourse against the custodian.

Buildings and houses

Individuals can own buildings and houses on land, even if the land on which the property is situated, is not owned by the individual.

Both title and deed registration over immoveable property is required at the Land Registry. This process is provided for more fully at 2.2(a)(vii). The information recorded by the immovable property registration agency and the cadastral or mapping agency is not kept in separate databases.[[51]](#footnote-51)

It should be noted that not all privately held property rights are formally registered at the Land Registry. The law does not require that all property sale transactions must be registered at the Land Registry to make them opposable to third parties.[[52]](#footnote-52)

In terms of articles 753 to 756 of Niger Tax Law, registration is only mandatory in cases of transfer of property or concession of state owned lands, or when customary regulated land is the object of a written contract for the first time. Registration is the only way for the sale of a property to be enforceable against third parties.

The General Code of Territorial Collectives defines the public and private territorial collectives (Articles 281 to 299).

* + - 1. **Pastoral rights of access**

The rights of pastoral groups in Niger are of particular importance. Pastoral livelihood systems have developed to cope with and adapt to climate uncertainty in drylands. Such systems are based on mobility and depend on flexibility in land use and management with the need to negotiate the use of land on a seasonal basis with other users.[[53]](#footnote-53)

Article 23 of the Rural Code provides that pastoralists have the right of free access to natural resources.

Land use rights among pastoralists are directly linked to water-use rights. Individuals and groups who control access to a water point exercise *de facto* control over access to surrounding land.[[54]](#footnote-54)

Pastoralists have a common use right as well as a priority usage right. All pastoralists have the right to common use of spaces generally reserved for pastures and grazing (article 24 of the Rural Code). Paths, transhumance tracks and passage corridors are classified in the public domain of the State or local authorities and pastoralists have a right to also use such paths (article 25 of the Rural Code).

Although pastoralists have the above rights, they are required to respect private property and protected areas in accordance with the regulations regarding movement and the right to graze cattle (article 26 of the Rural Code). Pastoral communities are also required to contribute to the improvement of the pastoral areas by ensuring the protection and rehabilitation of water resources, pastures and vegetation. Local authorities monitor compliance with such protection measures (article 27 of the Rural Code).

Article 28 of the Rural Code provides that pastoralists may be granted a right of priority use over resources located on their home soil. The priority usage right does not exclude the exercise of the norms and customs common to pastoralists in the management and operation of grazing areas, in particular third party access to water points and the right to travel and graze.

Pastoralists, either individually or collectively, cannot be deprived of their priority use right unless such deprivation is for public utility. Where such deprivation takes place the pastoralists must be fairly compensated (article 31 of the Rural Code).

In 2010 the Pastoralism Ordinance was passed, which defines and specifies the fundamental principles and the rules governing pastoralism in Niger. The Pastoralism Ordinance sanctifies the mobility of pastoralists, nomadic pastoralists and transhumance as a fundamental right recognized and guaranteed by the State and local authorities. The modes of access and rights over pastoral land resources in the public domain of the State or local authorities are governed by pastoral traditions. A cattle owner can, by written or verbal contract, entrust the exploitation or the cattle management to a shepherd or keeper. The Pastoralism Ordinance provides that pastoralists have an obligation to monitor and control their animals and the exercise of their rights is subject to the obligation to preserve the environment.[[55]](#footnote-55) The Pastoralism Ordinance thus further secures and sets out the rights already afforded to pastoralists in the Rural Code

* + - 1. **Leasehold**

Ordinary lease agreements

Ordinary leases between private individuals and between private individuals and enterprises are common in urban areas in Niger.

Leases are governed by the Rental Lease Code and Chapter 2 (Lease of property/assets) of Title 8 (Lease agreement) of the Civil Code.

Articles 7 to 11 of the Rental Lease Code provide for the responsibilities of the lessor during the lease:

* to deliver the rented property to the lessee in good condition;
* to guarantee against defects or defaults of the rented property;
* to maintain the property for the use for which it was rented;
* to provide the lessee with peaceful enjoyment of the property; and
* to make any repairs which may become necessary

Article 12 to 14 of the Rental Lease Code provide for the lessee's primary obligations:

* to use the property for the purpose it was intended for;
* to look after it;
* to pay the rental price on the agreed terms;
* to undertake urgent repairs which cannot be deferred until the end of the lease; and
* to return the property in good condition and in the state it was received.

Articles 11 and 15 of the Rental Lease Code provide that the lease agreement is terminated by the loss of the property rented; or by the default of either party.

The Civil Code also provides for urban leases:

* of different kinds of moveable and immoveable property (article 1713);
* the articles of the title "of the marriage contract and the respective rights of the spouses," relating to leases of property of married women, are recognised (article 1718);
* the lessor may, depending on the circumstances, terminate the lease if the lessee uses the leased property for a use other than that for which it was intended, or which may result in damage to the lessor (article 1729);
* the lessor is not obliged to guarantee the lessee against disturbance by a third party (article 1725);
* the lessee will be liable for any damage caused by a fire, unless the lessee can prove that it was caused by fortuitous event, a construction defect or is a fire on a neighbour's property (articles 1732 to 1734);
* the lessee is liable for any damage caused by a sub-lessee (article 1735);
* notwithstanding the death of the lessor or of the lessee, the lease agreement remains in full force and effect (article 1742).

The Civil Code also provides for farm leases:

* the lessor can terminate the lease over rural land if the lessee does not comply with the terms of the lease, or abandons the land and this causes damage to the lessor (article 1766);
* the lease over rural heritages (includes rural land and any other component of one's heritage related to rural land exploitation), terminates automatically upon the harvest (articles 1774 and 1775);
* the lessee may request a rental rebate if there had been a crop loss; and the rebate, if any, will be determined by the length of the lease and the extent of the crop loss (articles 1769 and 1770);
* the outgoing farmer must ensure that the accommodation and other facilities are suitable for the incoming farmer (article 1777).

Emphyteutic lease

The Long-term Lease Law, passed in 2017, governs the long-term lease of immoveable property, defined as land and property incorporated therein, together with movable property, and rights relating thereto. It does not specify the types of parties that can enter into a long-term lease, i.e. a private individual, an enterprise or a public entity.

Articles 3 to 5 provide for emphyteutic leases, which is the lease of immoveable property for between 18 years to 99 years, in urban or rural areas, subject to the payment of a royalty. It can only be validly granted by those who have the right to alienate property and the lease agreement must conform with the Civil Code as applicable to leases. It confers real rights on the lessee, which may be mortgaged but also ceded and seized in the prescribed forms for the seizure of immoveable property.

The long-term lease holder can acquire active servitudes for the benefit of the immoveable property and encumber it with passive servitudes, with notification to the owner and for the duration of the lease.[[56]](#footnote-56)

The Long-term Lease Law provides as follows:

* the lessee may not apply for a reduction of the royalty because of partial loss of income or the accidental deprivation of a harvest (article 6);
* the lessor may apply to court for the termination of the lease on grounds of the following violations by the lessee: non-payment for two consecutive years, non-performance of the conditions of the contract, damage to the property (including negative environmental impact) (article 7);
* the lessee remains responsible for the payment of the royalty and other obligations, even when abandoning the property (article 8);
* the lessee may not make any changes to the property that diminishes its value; and he may not destroy or claim for improvements made that increase the value of the property (article 9);
* the lessee is liable for all contributions and charges on the property, but is not responsible for its the loss in the case of force majeure or pre-existing construction defaults (article 10);
* the lessor should make known the right of the lessee, in the event of expropriation due to public utility (article 13).

### **Which, if any, of these types of tenure provide a high degree of security of tenure?**

### Ownership rights always provide for the highest degree of security of tenure. In theory, holders of pastoral rights of access should also enjoy a high security of tenure, however, should there be corruption within community authorities that control rights over land in communities, the security of tenure of land rights are diminished.

### In urban areas, registered ownership of land or property enjoys a high security of tenure.

### **How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**

As noted above, the majority of the population live in rural areas.

Rural

Section 2.1(b) sets out the three types of land tenure that are recognised in rural Niger:

* individualised ownership rights;
* land use rights; and
* emphyteutic lease rights

Rural lands are managed by customary institutions that hold lands according to a variety of indigenous tenure forms.[[57]](#footnote-57)

Urban

The registration procedure in the land register was established by the decree of July 26, 1932, which reorganized the land ownership system in French West Africa and it has been amended various times.

Niger has eight major cities, with Niamey as the main urban centre and the capital city[[58]](#footnote-58) In Niamey the demand for housing far outweighs the supply. There is a government drive to grow and urbanise cities, but such urbanisation is moving at a slow pace.[[59]](#footnote-59)

The government has made progress in developing an institutional and legal framework for urban development, see the Urban Planning and Development Scheme (SDAU), as expressed in the reference urban plan (PUR), a National Urban Development Strategy (SNDU) in 2004, and a law providing guidance on urban land planning and development established the decentralization of jurisdiction in urban planning (2010). However, this framework has not been efficiently implemented due to certain constraints such as the lack of sufficient political will, a lack of partners to facilitate implementation, poor management of urban areas and inadequately prepared subdivision plans.[[60]](#footnote-60)

The use of urban land in Niger is often closely related to town planning and urban construction and development.

The main tool used by the authorities to regulate urban land tenure is the Land Register via the Land Registration Authority. Its organisation and procedures are governed by the Niger Tax Code. Other legislation that govern urban land in Niger include the following: Town Planning and Land Development Law; and Regional Orientation of the National Land Use Planning Policy.

The Urban Planning and Land Development Law sets out the basic rules and procedures in urban planning and operational planning as well as urban land use control. Two types of urban planning rules characterize urban planning (article 4 of the Town Planning and Land Development Law):

* zoning which consists of dividing the area into different functional zones; and
* the town planning by-law which sets the rules applicable to the land included in the various zones.[[61]](#footnote-61)

These rules relate in particular to the nature of the land use and the density of the constructions accepted in the different zones. Three types of planning rules characterize operational town planning:

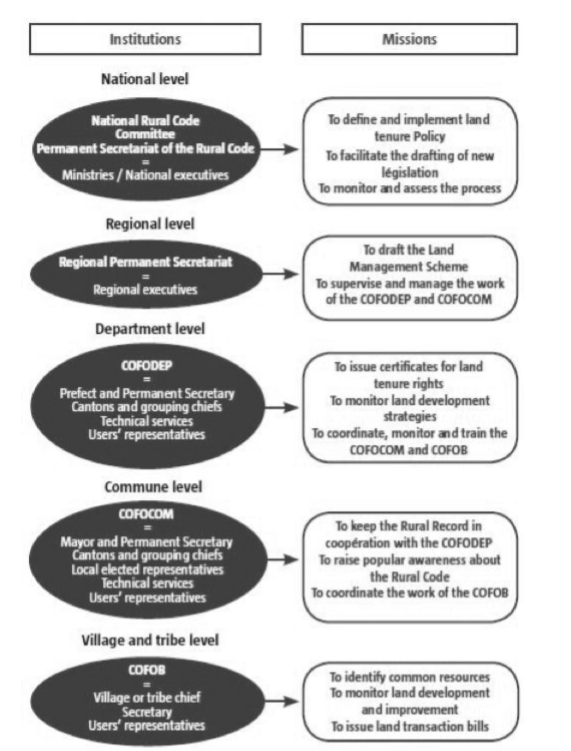
* the division of the space according to established standards or ratios of development, as well as guides for plantations to be preserved or created;
* the implementing regulations for the development plan for the area in question, which is considered when it is necessary to supplement the town planning rules in force; and
* the specifications which determine the contractual relationships of developers and purchasers of plots or buildings within the framework of the implementation of the town planning operations concerned. [[62]](#footnote-62)

On July 20, 2018, the Niger Government adopted a bill amending the 2001 law on the Orientation of the National Land Use Planning Policy to ensure that:

* the 2001 law conform with the National Policy for Regional Planning;
* skills are transferred from the State to the collective territories in accordance with the General Code of Collective Territories;
* climate change, risks and disasters management and policies are considered;
* aspects of the development plan of the WAEMU region are considered.
  + 1. **What are the main government and non-government bodies (e.g. representative bodies) that administer or deal with housing, land and property?**

Rural land

The infographic below provides a useful illustration of the different levels of authorities that are required to implement the Rural Code.



*Source: Jamart C, "Rural Code of Niger: Educational Kit" (2010) from Oliver Hughes "Literature Review of Land Tenure in Niger, Burkina Faso, and Mali: Context And Opportunities" (Catholic Relief Services, 2014)*

The administration of rural populations falls to decentralised and deconcentrated public authorities that exercise their powers with technical assistance from the State, public establishments and the Chamber of Commerce of Industry, Agriculture and Arts. The purpose of the rural authorities is to manage and control the development of agricultural, forestry and pastoral resources. To do so, they must create in each territorial entity, administrative and technical services necessary for the exercise of their powers, which includes the Land Commissions (Department, Municipality, District / Village) and the Permanent Regional, Department, Municipality, District/Village Secretariats of the Rural Code. Local authorities are responsible for land management in their areas and must ensure the development and management of such land in accordance with any applicable regulations in the area. (Articles 111, 112 and 116 of the Rural Code)

The local authorities can grant individuals the use of state property (as per conditions in the Rural Code) and must ensure that the property's use conforms to relevant rules.

The Rural Code establishes institutions at a national and local level.

*National Level*

The following institutions are at the national level:

* The National Committee of the Rural Code (Comité National du Code Rural)
* The Permanent National Secretariat of the Rural Code (Secrétariat Permanent National du Code Rural).[[63]](#footnote-63)

The National Committee of the Rural Code is the central decision-making body responsible for the implementation and monitoring of the Rural Code. The National Committee is under the authority of the Minister of Agriculture and Livestock (articles 122 and 123 of the Rural Code).

The National Committee of the Rural Code is assisted by the Permanent National Secretariat of the Rural Code as it is its executive body. The latter is responsible for developing policies and projects that complement and support the Rural Code, create a resource centre, and evaluate the work of the decentralised Land Commissions. (Article 9 to 11 of the Decret N°97-008/PRN/MAG/EL du 10 Janvier 1997)

In each Department, Municipality, and District/Village of Niger, a Land Commission and a permanent secretariat are established. [[64]](#footnote-64)

*Regional Level*[[65]](#footnote-65)

There are eight Regional Permanent Secretaries of the Rural Code (Secrétariat permanent régional du code Rural). They implement and control the application of the Rural Code at local level; and in particular, draw up a Regional Land Development Plan for their region by collecting and maintaining the necessary information.

The Department, Municipality and District/VillageLand Commissions are under their authority; and in turn, they are under the authority of the President of the Regional Council and have to report to the National Permanent Secretary (article 124 of the Rural Code and 2 of the Arrêté N°13/MDA/CNCR/SP du 19 avril 2006).[[66]](#footnote-66)

*Department, Municipality and District/Village Level:*

The Land Commission exists at the department, municipal and district/village level. There are 36Department Land Commissions (Commission Foncière Départementale, CoFoDép) in Niger; 265 Municipal Land Commissions (Commission Foncière Communale, CoFoCom), under the authority of the President of the City Council; and more than 15,000 Base Land Commissions (Commission Foncière de Base, CoFob) (district / village level), each under the authority of the Village Chief.

Each Department, Municipal or District/Village Land Commission has a permanent secretary, which is the administrative body and technical staff of the Department, Municipal and Base Land Commission.

The Land Commissions are in charge of supervising land ownership and the recording of land rights.[[67]](#footnote-67)

Article 118 of the Rural Code provides for the persons who make up a Land Commission, which includes:

* The permanent secretary of the Rural Code;
* The heads of the following municipal or district technical services:
  + Planning;
  + Environment;
  + Fauna, Fishing and Fish Farming;
  + Breeding;
  + Agriculture;
  + Cadastral and areas; and
  + Agricultural Engineering;
* One representative per rural group of farmers, breeders, women and young rural people;
* A representative of other municipal or district services to address the agenda concerned;
* Relevant customary authorities as required to address the agenda concerned; and
* Any other person whose presence is deemed necessary.

Land Commissions implement the Rural Code at the local level and are given both advisory powers and decision-making powers (article 119 of the Rural Code). Land Commissions have the responsibility to verify and confirm land rights and to record land and ownership rights. They are also responsible for educating the local public about the Rural Code. The district land tenure commissions are responsible for ensuring that land is being put to productive use and are empowered by law to withdraw land if they consider it is not. [[68]](#footnote-68)

As part of its advisory powers, the view of the Land Commission must be requested for all questions relating to:

* the determination of the content of the development of land in the district and the municipality; and
* the procedure for developing rural concessions which may lead to the acquisition of ownership of land granted (article 120 of the Rural Code).

The opinion of the Land Commission may be requested by any person who is party to a contract in which the ownership and operation of a property are split.

As part of its decision-making powers, the Land Commission has the power to recognise and establish the content of land rights as well as the transformation of rural concession rights into property rights. Where conflicts between rights over rural resources exist and cannot be resolved, the Land Commission can determine the base of each right and assign an amount of compensation to those rights (article 121 of the Rural Code).

The Land Commission has a general power to control land development of the district. It can transfer the use of undeveloped land to a third party. The decisions of the Land Commission are administrative acts. They can be the object a hierarchical administrative appeal addressed to the Prefect of the department and an appeal for excess of power, according to legal procedure (article 121 of the Rural Code).

The Decree on Registration in the Rural File, at article 17 provides that where there are disputes over registration of a right in the Rural File, such disputes are made to the Land Commission.

While Land Commissions have been established in all areas, many are not functioning.[[69]](#footnote-69)

Requests for deeds have overwhelmed the land administration institutions, which already suffered from poorly educated staff and lack of capacity. Land Commissions are charged with determining land ownership and recording land rights but are hampered by lack of training, capacity, and funding to execute their duties.[[70]](#footnote-70)

The Land Commissions have no authority to adjudicate land disputes and competing land interests, and can only register undisputed claims.[[71]](#footnote-71)

*The Land Development Plan*

The Land Development Plan is developed by the Regional Permanent Secretariats in conjunction with the department, municipal or district land commissions and local authorities. It must be based on impact studies and a public inquiry with rural populations.

Each Land Development Plan is adopted by decree taken by the Council of Ministers after consulting the local authorities and the Economic, Social and Cultural Council. Administrative authorisations for the use of space and access to agricultural, forestry and pastoral resources must comply with the prescriptions of the Land Development Plan (articles 127, 128 and 129 of the Rural Code).

Urban land

The primary bodies that govern urban land tenure are the local authorities (Les collectivités territoriales: Région et Commune) and the Ministry of Finance (Direction de la Fiscalité Foncière et Cadastrale). The municipality, through the municipal council, ensures the elaboration of local development plans and schemes in accordance with the Department's policy, in particular in relation to the allotments. The Ministry of Finance secures the right of ownership of properties through its cadastral register, which lists the registration of properties as well as all transfers of real rights concerning them.

The Land Registry deals with the registration of land and property rights. Urban land management is overseen by the Ministry of Urbanisation and Development. While the Region determines the vision and approach of development programmes, such programmes are implementation by the Ministry.

## **Documenting tenure**

* + 1. **What statutory instruments or legal documents (e.g. title deeds or leases) are used to create or transfer tenure?**

The table below identifies various statutory instruments which are required for the creation of land rights:

|  |  |
| --- | --- |
| **Statutory Instrument** | Description |
| **Rural File** | A file held by each Land Commission which contains a record of:   * the rights that are held by persons in the rural area controlled by the Land Commission. Such record contains the details of the individuals; * an overall graphic document of rights that are held and have been recognised by the Land Commission. |
| **Rural Land Register (*dossier rural*)** | A document containing tenure information of rural land. Such document includes details of ownership of land, loan arrangements, property rights to land or individual fields, common property resources and forest reserves. |
| Certificate of registration of ownership | This certificate is the written proof of the existence of a registered ownership right over land that has been registered in the Rural File. |
| **Certificate of registration of land right** | This certificate is the written proof of the existence of a land right that has been registered in the Rural File, which is enforceable against property. Such certificate does not constitute a title of ownership. |
| **Non-encumbrance certificate** | A certificate that can be obtained from the Land Registry which indicates all historical information on the property since registration. This will include any rights held over a property, such as mortgages and liens. This certificate is typically used where a sale of urban property takes place. |
| **Agreement of Sale** | An agreement of sale between two persons indicating that the sale of land or a land right is transferred from one person to another. An agreement is indicative of the intention of the parties to the agreement but is different from a deed of sale. Such document is not mandatory for transfer of ownership or rural land rights to take place. |
| **Deed of Sale** | A formal document drawn up by a notary indicating the sale of a land right which is used to register the right in the Rural Land Register (in the case or rural land) or with the Land Registry (in the case of urban land). Such document is not mandatory for transfer of rural ownership rights or a rural land use rights to take place. |
| **Land title** | An administrative document issued by the land conservation administration which certifies that a person owns a given piece of land or building |
| **Land Development Plan** | A Land Development Plan exists in each region of Niger. Any administrative authorisation by a Land Commission for the use of space and access to agricultural, forestry and pastoral resources must comply with the prescripts of the Land Development Plan in the region. |
| **Lease** | A contractual agreement whereby the lessee pays the lessor for the use of his/her property |

***Rural tenure***

* + - 1. **Types of rural tenure transactions**

The main avenues for acquiring land rights in rural communities include:

* inheritance;
* borrowing fields in exchange for rent paid in the form of a symbolic payment of produce;
* pledging, in which the user gives a cash loan in return for cultivation rights for the duration of the loan; and
* land purchase, which is becoming more common in south-central Niger, where the most productive agricultural land is located.

Land transactions often take place on the informal market and are validated through witnesses or, in the case of land sales, often by written agreements. [[72]](#footnote-72) With the adoption of the Rural Code demand for tangible, written evidence of rights increased.

The Rural Code declares equality of existing land tenure systems without making distinctions between customary and formal systems involving land registration and titling.[[73]](#footnote-73)

* + - 1. **Statutory instruments established by the Rural Code**

The Rural Code created a Rural Land Register (*dossier rural*) which brings together tenure information, from loan arrangements, or property rights to individual fields, through to common property resources and forest reserves. Certificates and other proofs of tenure arrangements may be issued at community level by village-based land tenure commissions, then compiled for the dossiers, which in turn contribute to a regional land management plan.[[74]](#footnote-74)

Article 112 of the Rural Code provides that in order to exercise their powers of guaranteeing land rights, each territorial rural authority must develop and maintain a Land Development Plan in each department and a Rural File in each municipality. A Land Development Plan, which draws on the input of rural populations and which is adopted by the Council of Ministers, specifies the areas allocated to various rural activities as well as the rights exercised there. Authorisations for the use of agricultural, forestry and pastoral land and resources must comply with the prescripts of the Land Development Plan.

Article 130 of the Rural Code provides for the Rural File which must exist in each municipality and must contain the following two documents:

* An overall graphic document of the rural area on which appears the basis of land rights, after recognition made by the Land Commission; and
* A file consisting of the individual files opened by holders of rights. These sheets must indicate the holder's full identity. Each individual file must include the following: details of the department or municipality concerned and of the canton / grouping / village or tribe concerned, as well as the department or municipality concerned and of the canton / grouping / village or tribe concerned; as well as the full identity of the holder of the right and of its beneficiaries and elements of identification of the property. (article 27 of the Decree on Registration in the Rural File)

According to articles 133 and 134 of the Rural Code, each entry in the Rural File is provided with a certificate of registration, which is written proof of the existence of a land right. The right is enforceable against property, but it is not a title of ownership.

The 1997 Decree on Registration in the Rural File provides for the registration procedures of land rights in the Rural File. To register a right in the Rural File, the Land Commission must do the following (articles 11 to 13; and 20 to 22)

* examine the application within a reasonable time;
* visit the claimed area and/or property and take measurements, draw up a sketch and identify the neighbouring owners,.
* verify the applicant and the nature of the right likely to be registered;
* hear the customary authority of the area in which the land or building is situated.

At the end of this process, the Land Commission issues a certificate of registration to the right holder which is signed by the President and the Permanent Secretary of the Land Commission at the level of the department or municipality. The certificates may contain different information, depending on how the right was transferred and what right has been established, information such as, rental amount, duration of lease, right to plant trees or dig a well, the donor/seller of the property, etc. The registration of a right in the Rural File constitutes an administrative act by the Land Commission. (articles 23 - 25, 29)

The holders of rights over natural resources in terms of the Rural Code may request from the Land Commission that their rights be registered in the Rural Land Register. (article 2 and 3) Where the use or enjoyment of a natural resource is transferred to a third party, in in terms of the Rural Code, such transfer will automatically be registered in the Rural File by the Land Commission. (article 6)

* + - 1. **Documentation for registering a right of ownership of rural land**

Ownership of a right to rural land can take place through customary law or through formal written civil law principles.

Article 9 of the Rural Code provides for the way in which customary ownership of rural land takes place, which includes:

* the acquisition of rural land ownership by succession from time immemorial and confirmed by collective memory;
* the allocation of land to a person by the competent customary authority; and
* any other mode of acquisition provided by local customs.

Customary property gives the holder full and effective ownership of the land.

In areas where Land Commissions are functional, they determine ownership rights through survey and oral testimony. If there are no objections, the rights are recorded in the Rural Land Register and the landowner is given a property-ownership registration certificate that varies depending on whether the land was acquired by inheritance, gift, purchase, or allocation, as provided for in detail in 2.2(a)(ii) above.[[75]](#footnote-75)

Article 10 of the Rural Code provides for the way in which ownership of rural land takes place according to civil, written law. The private acquisition of rural land can take place by one of the following acts:

* registration in the land book;
* the authentic instrument;
* the certified registration in the Rural File; and
* by private deed.

Article 13 of the Rural Code provides that land rights are proven by the means of proof recognised by civil law.

The certificate of registration in the Rural File is the proof of the existence of a land right, which is enforceable against property (article 134 of the Rural Code) but it is not the title to the property concerned (article 28 of Decree on Registration in the Rural File).

The title to rural land can only be granted by the Administration of Land Conservation and land rights. The procedure for registering rural land is the same as registering a title for urban land. Please refer to 2.2(vi) below for this procedure.

Articles 737 to 751 of the General Tax Code provides for a procedure for confirming customary land rights which enables a land title to be established.

Registering a formal property transaction in Niger requires four procedures, costs 11% of the property’s value, and takes an average of 35 days. Steps include:

* checking the ownership of the property at the Land Registry;
* requesting a notary to draft the sales deed;
* registering the new ownership with the tax authorities; and
* transferring the property title within the Land Registry.[[76]](#footnote-76)
  + - 1. **Documentation for registering a pastoral right of access**

A pastoralist has two options for obtaining written proof of their land right:

* apply to the competent Land Commission for registration of the right in the Rural File; or
* apply for a certificate written and signed by the *Chef de canton*.[[77]](#footnote-77)

Article 30 of the Rural Code provides that rural pastoral rights that belong to a community or an individual can be registered in the Rural File at the request of the interested parties or their legal representatives. The process for registration of a right in the Rural File is provided at 2.2(a)(ii) above.

* + - 1. **Practical issues with documenting rural tenure rights**

Many Land Commissions are constrained from functioning fully, which results in some Nigeriens being prevented from registering their land or property rights, which in turn culminates in unresolved disputes over land.

While the Rural Code allows for formal registration of some categories of customary rights to land, it cannot account for historical patterns of landholdings. As a result, layers of rights and disputes have arisen as various interests seek to register rights to the same land. A simplification of a complex composite tenure system created categories of primary right holders and weaker groups of secondary right holders; and those who lose rights tend to be women, pastoralists, and other less powerful groups. [[78]](#footnote-78)

***Urban Tenure[[79]](#footnote-79)***

* + - 1. **Documentation for registering urban land ownership**

Individuals or companies can own private land. Private land is often developed by developers and then on-sold to private individuals. Such developments often take place in terms of the Long-Term Lease Law, discussed at 2.1(b)(v). An owner of urban land will get a title to the land. The owner of the land has full ownership rights to the land once the transfer is made.[[80]](#footnote-80)

As long as urban land is not owned by the State or local authorities, it can also be owned by any individual. The process of acquisition is governed by the Niger Tax Code.

An owner of land will receive a land title issued by the land conservation administration. Before 2006, the development and registration of the value of the land were prerequisites to getting a land title. However, this made the application process very cumbersome and has since been removed. Three categories of person can apply for a land title: owner of the land, beneficiaries of the land or the owner's creditor. The process followed by the land registrar is as follows:[[81]](#footnote-81)

* ensuring the identity of the applicant;
* ensuring the existence of the land (or building); and
* checking if any third party rights may exist on the land.

To apply for the land title the applicant must present the following:[[82]](#footnote-82)

* a valid identity document,
* the original of the deed of transfer, whether by cession or of customary possession. All the deeds of ownership prior to this registration will be considered null and void; and
* the site plan which is a document issued by the Cadastre documentation service and which highlights the geographical position of the plot.

The Land register contains two relevant aspects in relation to a piece of land:

* a unique identification number and its demarcation on a map;
* the registration of all the rights relating thereto, namely the rights of ownership, use or easements (rights of way).

Land titles relating to both urban and rural land can only be issued by the administration of Land Conservation and Land Rights.

* + - 1. **Documentation for registering urban property ownership**

Individuals can own property in urban areas. The process for sale and registration of such property is as follows:[[83]](#footnote-83)

* *Buyer obtains a non-encumbrance certificate at the Land Registry -* The buyer should perform a due diligence before entering into a sale agreement with a property owner. The information on the property can be obtained from the Land Registry by requesting a non-encumbrance certificate *(certificat d'état droits réels)*. The buyer and the seller would typically use a Notary to carry out this search. It is mandatory to provide the original of the title and not a copy.
* *A notary drafts and notarises the sale agreement* - The law requires that the sale agreement be notarised. The notary first verifies the origin of ownership and the authenticity of the title deed before proceeding to the drafting stage of the deed of sale. The notary will draft a preliminary sale and purchase agreement and will take the parties’ final details, whereafter agreement will be signed and notarised.
* *Register the deed with the tax authorities* - By law the parties have a maximum of one month to register the deed with the Tax Authority (*La Recette des impôts de la Direction de la Fiscalité Foncière et Cadastrale*). The tax authority has discretion over the declared price and may exercise a pre-emptive right of the State. (Art. 503, 504, 505 of the General Tax Code)
* *Transfer of the property title with the Land Registry -* Simultaneously with registering with the tax authorities, the notary must present the original property title of the seller at the Land Registry (it will be returned to the owner on the same day) together with a request of transfer of property. The transfer will be done after a due diligence check; and an additional slip (“*bordereau analytique*”) will be inserted in the property title, reflecting the name of the new owner and the details of the deed of sale. The property title will then be passed to the buyer.

***Leasehold***

A lease agreement can exist in both urban and rural settings. Article 1714 of the Civil Code confirms that a person can rent by way of a written document or verbally.

In terms of a verbal lease agreement, if there is a dispute as to rental on a lease which has already started, and there is no receipt of rents paid, the owner will be believed on oath. The tenant can request an estimate by experts as to what the price should be and the expert will be at the tenant's expense if the expert’s estimate exceeds the price that the tenant declared.

A written lease automatically terminates at the end of the fixed-term period without notice needing to be given. (article 33 of the Rental Lease Code)

Leases are to be formally registered according to articles 403 to 411 of the General Tax Code, but the oral or written agreements are enforceable contracts between the parties.

### **What non-legal documents or actions (e.g. verbal agreements or handshakes) are used to create or transfer tenure?**

### As an informal land market exists alongside the formal land market in Niger, transfer of tenure takes place between individuals without any formal legal documents or actions.

### The transfer of land or land rights by customary means may be oral, without any formal documentation; and this is formally recognised as a legal action by the Rural Code.

## **Customary ownership**

### **Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (e.g., constitution, national legislation?)**

The Rural Code formally recognises and allows the registration of customary rights to land. It provides that land ownership or a right to land is legally recognised whether it is created through formal written law or through customary law. It should be noted that it also provides women and men with equal rights to land and other natural resources.[[84]](#footnote-84)

Further, the 2015 Law on Traditional Chiefdom governs the status of the traditional chiefdom, i.e. the institution which brings together all the traditional chiefs. The customary and traditional communities, integrated into the administrative organisation of Niger, are administered, as the case may be, by sultans, provincial chiefs, cantonal chiefs, group chiefs, sector chiefs, village chiefs, tribal chiefs, chiefs of chiefdoms, district chiefs or heads of fractions. They participate, together with the administrative districts and local authorities, in the organisation and administration of Niger. The traditional chief is an agent, actor and development partner and thus fully associated with all development actions affecting his community such as: health, hygiene, sanitation and public health; reforestation and agroforestry; agricultural and pastoral production; and any other development operation initiated within its entity. Traditional chiefs have powers to organize his customary and traditional community and to reconcile parties, particularly in matters of land transactions.[[85]](#footnote-85)

### **What are the sources of customary rules?**

The sources of customary rules in Niger depend on the ethnic group to which the customs belong. Many customary laws derive from by Islamic law (*sheri'ah*) but there is much diversity among the rules of different ethnic groups.

### **What are the customary rules governing housing, land and property?**

Indigenous / customary tenure systems are influenced by Islamic law (*sheri'ah*); however there remains a great deal of diversity among ethnic groups about practices such as inheritance, individual versus family tenure, and women's rights of access and ownership. There are also significant differences between the tenure practices of historically cultivating and pastoral peoples. Where there is an overlap in the guiding principles, tenure rights are generally determined by the local, continually evolving, rules.[[86]](#footnote-86)

Under various Nigerien ethnic groups, land does not belong to individuals but to a lineage in the community as a whole, known by all and not established by a paper record.[[87]](#footnote-87)

Customary law and traditional practice provide that rural land in Niger can be acquired under the principle of the right of first occupant. If a village is established in a previously unoccupied area, the village chief of the first occupants has the power to grant use-rights to newcomers.[[88]](#footnote-88) This is the principal means of legitimizing tenure rights.[[89]](#footnote-89)

Village chiefs are central to the customary land tenure system. A chief's moral power is derived from his position as the senior member of the family that originally cleared the land for the village.[[90]](#footnote-90)

Rural Niger is composed of villages which are grouped into cantons (about 100 to 300 villages form a canton). In the village, there are three different types of lands:

* individual lands;
* family lands; and
* village common lands also known as chieftaincy lands.[[91]](#footnote-91)

Chieftaincy lands are held and managed by the chiefs, on behalf of the group, and comprise of fallow, pasture and cultivated lands. Fallow and pasture lands are used for grazing; however, they can also be granted by the village chiefs for cultivation to newcomers or landless members of the community. These groups acquire use rights which can be passed to their heirs.[[92]](#footnote-92)

Long-term use of chieftaincy land does not result in ownership of that land. The Diori regime (1960 to 1974) tried to abolish chieftaincy lands by granting ownership to use-rights holders. However, conflicts continue because of that policy.[[93]](#footnote-93)

A variety of land transactions and tenure arrangements exist and continue to evolve in Nigerien agricultural communities. These include:

* a loan, whereby land is loaned, commonly to newcomers and junior family members, and payment is the form of annual rental or harvested produce;
* a pledge, whereby land is made available against a monetary loan, and once the landowner repays the loan, they can reclaim the land;
* a sale, whereby agricultural land is sold, which has become more common. [[94]](#footnote-94)

Traditionally, customary land transactions are validated through the use of witnesses rather than written contracts or formal registration. [[95]](#footnote-95)

Traditionally, there existed a decisive split between pastoralists and the cultivators. However, this is changing as various ethnic groups are engaged in both activities. For pastoralists, it is the control of water that gives control over pastoral land. The land tenure arrangements among pastoralists can be divided into two major types:

* The first is where there is a regular transhumant circular movement that corresponds to the cyclical appearance of the rainy season. In the dry season herd movement is organised around a series of wells that have been put in place by the group. This type is found primarily among the Tuareg (and other Tamachec speakers);
* The second is most commonly represented by the Fulbe-speaking Wodaabe, nomadic cattle keepers who were able to move into areas under Tuareg control after the French established their rule. In general they would migrate along an east-west axis, which crossed the traditional Tuareg routes. [[96]](#footnote-96)

### **What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?**

### The Rural Code elevates the status of customary ownership of land to have the same status as traditional legal ownership. In reality, certain customary rights to land have been given this same status but others have not. Often the customary land rights of women, pastoralists or less powerful groups are not given priority by Land Commissions and village chiefs. Also, many individuals are unable to register their customary land rights because of the ill- or non-functioning of the Land Commissions; and priority is given to individuals and the rights of those who are formally registered.

## **Informal settlements**

### **What are the locations and boundaries of informal settlements?**

### Informal settlements exist in both urban Niger, such as in the capital city of Niamey and in rural Niger.

### Nigerien government land and property is closely monitored; and where informal settlements are established on such land, people tend to be moved off the land.[[97]](#footnote-97)

### **What kind of tenure arrangements are in place in informal settlements?**

### In the case of informal settlements, the occupants are considered without legal right or title to occupy the land. In this case, either the Civil Code applies or laws regarding expropriation and temporary occupation apply.

### If the informal settlement is on State or Local Authority land, expropriation may be instituted. If the informal settlement is privately owned land, the owners may apply to court for an eviction order.

# **Security of tenure of vulnerable groups**

## **Women**

### **Can women legally own, rent or inherit land and housing?**

### In terms of the Rural Code women and men have equal rights to land and other natural resources.[[98]](#footnote-98) Women are also represented at every level of the Land Commissions. Thus, under the Rural Code women can own, buy and sell land. Furthermore, any land or property rights guaranteed by the Constitution are guaranteed to all persons.

As aforementioned, under the Civil Code a married women has the full capacity of rights in relation to leasing but her exercise of them can be limited by the marriage contract or by law. However, the rental lease does not distinguish between the type of tenants; and married women's rights are not different to those of men.

### **In practice, do they? If not, why not?**

### Despite the land and property rights afforded to women by law, in practice, women (particularly rural women) often do not own any land or property rights.

### Niger’s rural women are among the country’s poorest and most vulnerable groups. Under customary law women can own land by donation, sale or heritage but their husbands and male relatives usually own the agricultural land that they cultivate. In some instances, organized groups of women access pieces of land during the second cropping season.[[99]](#footnote-99) In some traditional groups, such as the Hausa, women cultivate their own fields and commonly inherit land. Most of Niger’s population is Muslim, and Islamic Law accords women the right to inherit property (in shares half the size of male relatives).

### Women thus have little economic power, are almost entirely dependent on the land for their livelihoods, and their ability to access land depends on their relationships to male family members.[[100]](#footnote-100)

### **Indigenous groups**

### **Is indigenous customary ownership (or custodianship) of land legally recognised?**

### Indigenous customary ownership of land is legally recognised. The Rural Code's aim is to formally recognise indigenous customary ownership of land.

### **Does customary ownership provide indigenous people with a high degree of security of tenure?**

### In theory, customary ownership should provide indigenous people with a high degree of security of tenure. However, in practice this is not always the reality.

### **If not, what are the barriers to indigenous people living on or owning their land?**

### Since Niger gained independence in 1960 there have been multiple regime changes and multiple laws passed that apply to land and property rights. These laws have often been conflicting which has left a system that does not always function as it should. The multitude of land laws has created confusions over land rights that need to be registered and who hold what land rights.

### While the Rural Code attempts to fully formalise customary land rights, the structures that it has put in place, i.e. the Land Commissions, are overwhelmed. This means that rights that should be registered or recognised often takes long to get recognised. This has resulted in many competing, unresolved land rights claims over the same land.

Furthermore, the Government's definition of rational and productive pastoral land use is an area of major concern. The Code Rural has defined what constitutes the productive use of natural resources by listing “positive” and “negative” land use activities. Most of the positive activities involve some form of material or physical investment (e.g. fencing), which favour more intensive forms of livestock keeping. Problematically, most district level land tenure commissions are largely composed of civil servants, who are often not aware of the dynamics of pastoral systems, with only one “seat” reserved for a pastoral representative. Such issues weaken pastoral tenure rights, particularly over high-value resources such as wetlands in drylands, areas that are critical for the survival of pastoralism in the Sahel.[[101]](#footnote-101)

### Although customary chiefs were fully included in the Code Rural, in part to contain anticipated resistance to a reduction in their influence, some of them have tended to sabotage the new local organisations, by continuing old systems of land distribution and social control, or by blocking decisions and guidelines in the making.[[102]](#footnote-102)

### **Is there conflict between indigenous groups regarding land ownership?**

### Conflict over land is very common in Niger.[[103]](#footnote-103) The growing population, soil degradation, and competing land uses have increased the pressure on Niger’s agricultural and pasture land.[[104]](#footnote-104) Three types of land conflict are common:

### intra-family conflicts;

### conflicts between pastoralists and sedentary farmers; and

### conflicts between villagers and traditional chiefs over access to and use of land.[[105]](#footnote-105)

### **If so, to what degree? Are there mechanisms for resolving these conflicts?**

### The Rural Code does not have specific provisions for the resolution of ownership disputes generated from past tenure rights granted by governmental policies; even though articles 20 to 22 address issues about tenant farmers and use-right holders. There is no clear statement cancelling any of the past policies that have led to overlapping tenure rights.[[106]](#footnote-106)

### In practice, multiple institutions are involved in dispute resolution, including:

### local administrative institutions;

### the formal court system; and

### traditional institutions (including village and canton chiefs).

### Chiefs of villages and cantons are very important in conflict resolution. They have authority under both traditional and formal systems.[[107]](#footnote-107) Parties also approach administrative forums or the formal courts with land dispute conflicts[[108]](#footnote-108).

## **Minority groups**

### **Can minority groups (i.e. ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**

Ethnic minorities have legal rights to real land use and ownership which are guaranteed in terms of the Rural Code. Please see above. They also have the same rights as any Nigerien citizen in terms of urban and rural land ownership.

Article 28 of the 2010 Constitution provides that "*any person has a right to property. No one may be deprived of their property except for cause of public utility and subject to a fair and prior indemnification.*"

In addition, according to theExpropriation Law of 2008 when a person's land or property is to be expropriated; the calculation of compensation to be paid to that person cannot be based on discriminatory elements such as nationality, ethnicity, religion, culture or gender. If one cannot discriminate based on ethnicity, then it follows that non-nationals as well as persons from all ethnic groups are able to own land or enjoy land rights in Niger.

Article 42 of the Constitution provides that nationals of other countries benefit from the same rights as Nigerien nationals within the conditions as determined by the law. Therefore, all foreign nationals will be afforded the same rights as Nigerien citizens unless such a right is specifically excluded in terms of legislation.

Foreign persons are able to own both land and property in Niger which means immigrants and stateless persons technically have the same rights to land as Nigerien nationals. Article 28 of the Constitution provides for "any" person to own property. They can also enter into a contract of lease.

### **If so, are they subject to special conditions or restrictions?**

### See 3.2(a) above.

### **In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

The Nigerien government has conceded that certain elements of customary law in Niger tend to discriminate against "*certain segments of society"*.[[109]](#footnote-109) However, the researchers have not come across any authority that suggests that minority groups, other than foreign nationals, are practically excluded from owning land. Foreign nationals, as stated in 3.2, can own land, a house or rent land from the Nigerien government or private Nigerien citizens.

* 1. **Landless people/squatters** 
     1. **Do landless people/squatters have rights to land and/or housing (e.g., adverse possession)? If so, are those rights respected?**

As stated above, Niger is vastly rural whereby lands are ordinarily grouped into cantons. Cantons are made up of a collection of villages.[[110]](#footnote-110) The lands owned in these cantons are divided into three categories; individual lands, family lands and village common lands.[[111]](#footnote-111) The village common lands are usually guarded over or owned by the traditional authorities and are colloquially known as *chieftaincy lands.[[112]](#footnote-112)* Please refer to 2.3(c) in this regard.

In the past, chiefs were only empowered to grant landless persons the right to use chieftaincy lands.[[113]](#footnote-113) Therefore, landless persons who had been granted a right to use the land did not own the land and had no lasting title to the land but had the right to use the land. This denied many landless people, as well as newcomers to an area, the option to own land in terms of the customs which governed the land.[[114]](#footnote-114) However, this changed with the passing of the Rural Code which gives chiefs the authority, as holders of a real right in land, to grant ownership rights to otherwise landless persons.[[115]](#footnote-115)

Furthermore, customary law in Niger follows the principle of the right of first occupant. If a village is established in a previously unoccupied area, the village chief of the first occupants has the power to grant use-rights to newcomers. In this way, landless people are able to attain rights to land

While chiefs now have the authority to grant ownership rights of land to ordinarily landless persons, it seems that landlessness continues to rise in Niger and is a growing concern in the country's fight against poverty.[[116]](#footnote-116) As of 2019, the World Bank noted the "*emergence of a landless class"* which according to the World Bank contributes to increasing levels of poverty and presents a challenge to poverty reduction.[[117]](#footnote-117)

# **Eviction, Expropriation and Relocation**

## **Evictions**

### **Are there laws or regulations prohibiting forced evictions?**

Article 28 of the 2010 Constitution protects the right to housing by providing that all individuals have the right to own property and cannot be deprived of that property unless such deprivation is preceded by the payment of fair compensation and is for public utility purposes. See par 4.2(a) below for a detailed discussion on the expropriation of property in accordance with the Constitution and other relevant laws.

In addition to Niger's constitutional obligations, it is a State Party to the African Charter on Human and People's Rights ("**African Charter**"), binding it to the decision of the African Commission in the case of *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria, African Commission on Human and People's Rights* (2012) where the Commission interpreted the right to adequate housing in the African Charter to prohibit forced evictions.[[118]](#footnote-118) Evictions, in terms of the African Charter, are only permissible by State Parties in exceptional instances, after they have explored all available alternatives to eviction and have consulted the affected parties.[[119]](#footnote-119)

The Rental Lease Code and The Civil Code govern evictions between individuals who have entered into a lease agreement. Article 1743 of the Civil Code provides that if the lessor sells the leased property, the buyer cannot evict the farmer or the tenant who has an authentic lease or whose date is certain unless such right is reserved by the lease contract. Article 1744 of the Civil Code provides that if it was agreed during the lease that in the event of a sale the buyer could evict the farmer or the tenant, and that no stipulation was made on damages and interests, the lessor is bound to compensate the farmer or the tenant. Article 1748 provides that in that situation, the buyer has to give the tenant a notice depending on his time of occupation in the leased property. With regard to a farmer, the buyer has to inform him at least a year in advance. Article 1745 of the Civil Code continues by providing that if it is a house, apartment or shop, the lessor pays, as damages, to the evicted tenant, an equal sum at the price of the rent, during the time which, depending on the use of the premises, is granted between leave and departure. Article 1746 of the Civil Code stipulates that in the case of rural property, the compensation that the lessor must pay to the farmer is one third of the lease price for all the time remaining. Under special rules for urban leases in the Civil Code, article 1752 provides that the tenant who does not furnish a house with sufficient furniture can be evicted, unless he gives sureties to show he is capable of making the rent.

There are specific provisions relating to facilities or factories where a property is sold to a buyer during the lease. Article 1748 of the Civil Code provides that in the case of factories or facilities, if the buyer wants to use the faculty through the lease, he is required to notify the farmer on the rural property at least one year in advance. Article 1749 of the Civil Code offers protection to farmers or tenants by providing that farmers or tenants cannot be evicted unless they are paid by the lessor, or in default, by the new purchaser, for damages and interest. However, if the lease was not created by an authentic instrument, or has no fixed duration, the buyer is not liable for any damages (article 1750 of the Civil Code). The purchaser with a buyback agreement cannot use the faculty to evict the lessee, until, by the expiration of the fixed time limit for the remedy, he becomes the unencumbered owner (article 1751 of the Civil Code).

Over and above the Constitution, the relevant laws that govern the expropriation of property and the Civil Code, two other laws enacted in Niger need to be scrutinised when it comes to evictions. These are the Long-term Lease Law and the Building Development Law.

The Long-term Lease Law regulates the lease of buildings, in instances where the lease of the building constitutes a "long-term lease" as defined. Article 2 describes a "lease" as the rental of a building for purposes of turning over a profit, whereby article 3 requires the lease to have been granted for a period of between 18 years and 99 years. Article 13 of the Long-term Lease Law provides that buildings subject to a long lease may be expropriated, but only in instances where the provisions and procedures of the Expropriation Law of 1961 have been complied with.

While the expropriation of buildings subject to a long-term lease in terms of the Long-term Lease Law are safeguarded by the provisions and procedures of the Expropriation Law of 1961, the same cannot be said for land or buildings that are owned but not sufficiently developed, in the eyes of the law.

The Building Development Law governs registered buildings and land that has not been sufficiently developed within 10 years of date of last transfer. In terms of article 1 of the Building Development Law any land or building that has not been developed within 10 years of the date of last transfer are deemed vacant and ownership automatically vests in the domain of the State without the State being liable to compensation. Furthermore, article 1 transfers the aforementioned land or building free of any charge or debt.

### **In practice, are those laws adhered to?**

The laws under the Civil Code in relation to evictions of lessees are generally adhered to.

While forced evictions are widespread on the African continent,[[120]](#footnote-120) there was no evidence readily accessible to the researchers that suggest that the Nigerien government has been responsible for forced evictions contrary to the African Charter or the provisions of the Long-term Lease Law.

## **Expropriation**

### **Are there laws or regulations permitting the government to expropriate land?**

As stated in 4.1(a) above, article 28 of the Constitution affirms that all people have the right to own property in Niger. Article 28 elaborates on this right by stating that expropriation of property is permissible only when initiated for reasons of public utility, whereby the person from whom the property is expropriated is compensated by way of prior and fair indemnification.

Article 28 of the Constitution is supplemented by the Expropriation Law of 1961 which has been amended by the Expropriation Law of 2008. The Expropriation Law of 1961 is discussed below, alongside the amendments made by the Expropriation Law of 2008. Therefore, where the Expropriation Law of 2008 is referenced, it can be accepted that that specific article of the Expropriation Law of 1961 has been amended and replaced by the Expropriation Law of 2008.

Article 1 of the Expropriation Law of 2008 describes expropriation as the procedure by which the State may compel any person to transfer property, for the purpose of public utility, but subject to just and prior compensation. Article 1 requires the State, as the expropriator, to establish a resettlement plan for persons affected by the expropriation, in instances where the expropriation will lead to the displacement of a specific population of persons. Furthermore, article 1 requires a formal declaration to be pronounced by the State stating that the pending expropriation is in the public utility.

Article 2 of the Expropriation Law of 1961 lists the activities which may be declared as in the furtherance of public utility as *inter alia*:

* all public works;
* all works necessary for the operation of public services;
* all public health and safety works;
* measures undertaken to address reforestation and conservation of forests and soil;
* all works connected with the research and exploitation of mineral resources;
* all works intended for the transport of combustible gas or hydrocarbons;
* works of construction of factories for the use of energy sources;
* hydroelectric developments or works related to atomic research; and
* works associated with town planning and development.

Chapter 2 of the Expropriation Law of 1961, with the amendments affected by the Expropriation Law of 2008 requires an extensive investigation to be led by a Land Commission prior to the expropriation taking effect. Article 9 of the Expropriation Law of 2008 governs the formation of the Land Commission, and requires its composition to be made up of the following persons:

* The Head of the Domain Service;
* The Mayor of the municipality, when the land to be expropriated is located within the jurisdiction of the municipality;
* One or two deputies of the Region, appointed by the President of the National Assembly;
* One person responsible for the Town Planning Service;
* One person responsible for the Housing Service;
* One representative of the Land Commission; and
* The Head of the Canton, when the land to be expropriated is located within the Head's administrative area.

All interested and affected parties are able to raise their concerns with the Land Commission prior to an agreement being settled by the Land Commission; and in terms of Article 12, have any decision of the Land Commission reviewed by a Tribunal Judge of first instance.[[121]](#footnote-121)

### **If so, are those laws or regulations applicable in the event of a disaster?**

The 2008 Expropriation Law does not specify the cases of “force majeure" or "emergency”. All the expropriation procedures are decided by the authorities and are defined by them and follow a process governed by the above law.

## **Relocation**

### **Are there laws or regulations governing relocations?**

Niger took the unprecedented step to give effect the Law of 2018[[122]](#footnote-122), which sought to satisfy Niger's obligations in terms of the Kampala Convention, which Niger ratified in 2012.[[123]](#footnote-123) (See 4.3(b) for a detailed discussion on the Kampala Convention). Niger was the first African country to enact legislation that specifically protects the rights of internally displaced persons ("**IDPs**").[[124]](#footnote-124) Article 2(1) of the Law of 2018 describes IDPs as persons who have been forced to abandon their homes as a result of armed conflict; situations of violence or human rights violations; and/or natural or man-made disasters, but have not crossed the Nigerien border into another country.[[125]](#footnote-125)

The Law of 2018 places a number of obligations on the Nigerien government to protect and assist IDPs. Articles 6 - 11 are of considerable importance and are outlined below:

* Article 6 requires the Nigerien government to prevent the violation of human rights where an armed conflict takes place, or in instances of widespread violence;
* Article 7 obliges the Nigerien government to take the necessary precautions and measures to reduce the risk of internal displacement as a result of natural disasters;
* Article 8 extends the obligations envisaged in article 7 to any person or body that is undertaking development projects;
* Article 9 requires the Nigerien government to explore all available alternatives to internal displacement in instances where the situations described in articles 6 - 8 arise. If internal displacement is unavoidable, article 9 requires the Nigerien government to mitigate the effects of internal displacement;
* Article 10 affords all Nigerien citizens the right to be protected against arbitrary displacement from their home or usual place of residence; and
* Article 11 affords all IDPs the right to seek refuge within, or outside of the borders of Niger; and states that all persons who sought refuge outside the border of Niger should be allowed to return to Niger without hindrance. Also, article 11 directly deals with relocations, as it affords IDP's with the right to be protected from the forcible relocation to any territory where their life, security, liberty or health is endangered.

The Law of 2018 goes further regarding the protection of IDPs who are under the age of 18, disabled, pregnant, women-headed households, or elderly. Article 19 establishes a special right to assistance, whereby the aforementioned groups of people have their specific needs in terms of their health, nutrition and education taken account when the State is to provide them with assistance.[[126]](#footnote-126) Article 19 further requires the best interest of the child to be taken into account when assistance is to be provided to IDPs.

The best interest of the child principle is reinforced by Article 30(2) - (4) which make it a crime to:

* recruit internally displaced children for purposes of compelling them to take part in hostilities;
* abuse and exploit internally displaced children; and
* forcibly recruit internally displaced persons for purposes of exploitation in any form, sexual slavery or for human trafficking.[[127]](#footnote-127)

Article 30(1) makes it a crime to restrict the free movement of IDPs; and any person found guilty of a crime stated in Articles 30(1) - (4), such a person is liable to be sentenced for a minimum period of 15 years in jail and may also be fined a minimum of two million Niger Francs.

Over and above the Law of 2018, the Expropriation Law of 2008 also applies to relocations, and protects persons who are relocated as a result of their land being expropriated for public utility reasons. Article 1 of the Expropriation Law of 2008 requires the State as the expropriator, to establish a resettlement plan in instances where the expropriation will lead to the displacement of a specific population of persons. Furthermore, Article 13*/Bis* of the Expropriation Law of 2008, as discussed in 4.4(a) below, requires compensation to be paid to persons who have been displaced and/or relocated as a result of having their property expropriated.

* + 1. **Are there any other laws or regulations (i.e., human rights instruments) that are applicable to relocations?**

Niger has signed and ratified the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("**Kampala Convention**").[[128]](#footnote-128)

The Kampala Convention has a number of objectives, in terms of which it aims to prevent internal displacement occurring due to conflict or other disasters, and to protect and assist people who have been internally displaced in Africa. The Kampala Convention holds both State Parties as well as international organisations accountable in the provision of aid to IDPs.

1. **Obligations of international organisations**

The Kampala Convention places a number of obligations on international organisations that carry out aid missions in the jurisdiction of State Parties. In particular, article 6 requires international organisations and humanitarian agencies to comply with international law and the domestic law of the relevant State Party; while being bound to the principles of humanity, neutrality and impartiality.

1. **Obligations of State Parties**

Article 3 and 5 set out a number of obligations for State Parties to the Kampala Convention, the most notable being the following:

* Article 3(1)(j) which requires State Parties to *"ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organisation and personnel";* and
* Article 5(1) which provides that "*State Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind."*

Accordingly, the Niger government is bound to facilitate an environment where humanitarian organisations are allowed to operate proactively and freely, while taking on the primary duty to protect and assist internally displaced persons located within the confides of Niger's borders.

In the context of relocations, Article 11 is extremely important as it requires State Parties to *inter alia:*

* promote conditions for the relocation of internally displaced persons on a sustainable basis;
* enable internally displaced persons to make informed decisions regarding their relocation, return and/or integration; and
* take appropriate measures to restore the lands of communities who have a special dependency or attachment to the land from which they were displaced, upon their return to such land.

Article 11 should be read alongside Article 12. Article 12 requires State Parties to provide appropriate remedies to persons affected by displacement. Article 12(2) requires State Parties to establish a legal framework for just and fair compensation and similar reparations to internally displaced persons. Article 12(2) requires that the calculation of compensation must conform to international standards. In respect of displacements caused by natural disasters, Article 12(3) establishes a positive duty on State Parties to assist IDPs affected by natural disasters, failing which State Parties become liable for damages.

## **Compensation for Expropriation and Relocation**

### **Are there laws or regulations providing compensation for people who are** Yes. As stated in 4.2(a) and 4.3(a), the Constitution, the Expropriation Law of 1961 and the Expropriation Law of 2008 require prior and fair indemnification to be made to persons affected and/or relocated by the States decision to expropriate property or land.

Further to 4.2(a) and 4.3(a) above, Article 13/*Bis,* Article 13/*ter* and Article 13/*quarter* of the Expropriation Law of 2008 are important to note as these sections govern the manner in which persons affected by expropriation are to be compensated.

Article 13/*Bis* deals specifically with instances where persons are displaced by expropriation and it requires the following guiding principles to be at the forefront of the process of determining compensation:

* through a process of consultation all affected persons must participate in the procedures that will determine their subsequent compensation and/or relocation;
* the affected persons must not be discriminated against on grounds of nationality, ethnicity, politics, religion, culture and/ or gender when determining the compensation payable to them,
* the compensation and relocation process must be fair, transparent and respectful of the fundamental human rights of the affected persons; and
* the affected persons must be compensated at the replacement cost of the expropriated property, without taking depreciation into account, prior to the expropriator taking possession and ownership of the expropriated property.

Article 13/*ter* and Article 13/ *quarter* elaborate on the guiding principles provided for by Article 13/*Bis*.

According to Article 13/*ter*, the calculation of compensation is made according to the type of loss suffered due to the expropriation, for example:

* If concessions, dwellings or buildings are lost as a result of the expropriation, the compensation amount is based on the replacement cost of the relevant asset;
* If crops are lost as a result of the expropriation, the compensation amount is based on the market price of the crop at the time of expropriation; and/or
* If sophisticated private buildings are expropriated, such as hotels, the compensation amount will be based on a case-by-case estimate.[[129]](#footnote-129)

Article 13/*quarter* establishes the forms of compensation as follows:

* Compensation *in kind,* which *inter alia* includes compensation in the form of alternative land, relocation, construction materials, seeds and the provision of means of production;
* Compensation *in cash*, paid for and calculated in local currency; and/or
* Compensation in the form of *assistance*; whereby the affected persons will be supported economically through the provision of *inter alia* technical assistance and transport allowances.

### **In practice, are these laws or regulations adhered to?**

The abovementioned laws are adhered to, in general, by the government of Niger. It must be noted that the government is not obliged to provide any compensation when an eviction, expropriation or relocation takes place between private parties. The evicted, expropriated or relocated party can refer the case to the appropriate jurisdiction. The government is only bound to compensate when it is itself the source of the eviction, expropriation or relocation under the Expropriation Law of 2008.

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1. **Glossary of abbreviated and defined terms**

(SDAU) Urban Planning and Development Scheme

(PUR) Reference urban plan

(SNDU) National Urban Development Strategy

(CoFoDép) Commission Foncière Départementale

(CoFoCom) Commission Foncière Communale

(CoFob) Commission Foncière de Base

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