

Securing land for herders in Niger

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INTRODUCTION

The notion of “home grazing territory”, and the legal terms governing it, are presented in the supplementary documents of the Rural Code.¹ They have sparked numerous debates and aroused considerable passion among pastoral organisations in Niger, as those in favour of mobility fear that common access to land will be threatened by the creation of “home grazing territories”, and question what rights pastoralists would actually have to these areas.

In fact, the notion that legislators have tried to formalise in these documents is based on a longstanding system of land management. Pastoralists in all areas use various means to develop their lands, without questioning the principles of mobility or reciprocal access to pastoral resources by other groups. This paper describes the strategies used over the last ten years to make their tenure to land and other resources more secure and, by reviewing the law as it stands, asks how best such rights can be reinforced by legislation.

Pastoralists in many areas are mobilising in an attempt to affirm their rights to home grazing territories. Their associations will be involved in consultations about the draft Pastoral Code, which should be written over the next three years, and it is their hope that this opportunity to re-examine weak or contradictory points in the legislation will improve the status of grazing lands.

The ongoing process of decentralisation will have different repercussions on questions of pastoral land use, depending on context. From 2002 onwards, the land tenure commissions, which are responsible for defining pastoral zones more precisely, will be proposing local land management plans, and local people should use this process to make their views heard. The formulation of the new Pastoral Code should draw on the experiences of the land tenure commissions and consultation with stakeholders, and be based on a review of existing legislation.

In order to contribute to the forthcoming debate, this paper will raise certain questions arising from observations made in the field over the course of a three-

¹ Decree No. 97-007/PRN/MAG/LE of the 10th January 1997 defines the status of pastoralist home grazing territories.

year collaboration with AREN.² This was mainly spent with the PAAPB project³ in the north of the administrative district of Dakoro, but also covered other regions of the country. The opinions expressed in this paper are not intended to represent the views of AREN, IIED or SOS-Sahel GB, the author's contractual employer during this collaboration.

RISING TENSIONS OVER THE USE OF COMMON PROPERTY RESOURCES

In most of Niger, the economic development of natural resources is based on rearing livestock, as a large part of the country consists of savannah covered with annual grasses, where poor, erratic rainfall and light soils make farming either risky or impossible. Apart from very localised areas of irrigated farming that extend up to the Saharan regions, agriculture is concentrated in a band along the southern border with Nigeria, Benin and Burkina Faso. This land is also dotted with pastoral areas that are important for the whole national pastoral system, and disputes over access to cultivable land are becoming common between farmers and pastoralists, who are often the most longstanding occupants or users of the land.

A large percentage of the population of Niger have pastoral roots, although they are not always reflected in their way of life. For centuries, predominantly farming or pastoral communities have enjoyed a mutually beneficial co-existence, even though each group uses a variety of profoundly different strategies and priorities to grow crops and raise livestock.

Groups from all ethnic backgrounds that are considered "sedentary" are administered by *Chefs de Canton* (canton chiefs) who are responsible for the management of defined territories, control tenure rights and may also allocate cultivable land. "Nomadic" groups among the Fulani, Tuareg, Toubou and Arabs that have maintained all or part of their capacity to move around are usually administered by *Chefs de Groupement* (chiefs of pastoral groups), whose powers are limited to the people in their charge. They exercise no formal rights over land,

² AREN was set up in 1990, to represent and defend the legitimate interests of herders from Niger in local, national and international debates. Its main activity involves settling land tenure disputes between pastoral and agricultural land users, and promoting dialogue and consultation between different users.

³ Projet d'Appui aux Associations Pastorales de Bermo: Support project for pastoral associations in Bermo.

although they can authorise or refuse permission to sink wells, in the interest of any of their constituents with workings near the proposed site.⁴

Agricultural land is encroaching upon pasturelands, particularly in the south, where strategic pastures for local and transhumant communities are in demand for agriculture, and in areas of low rainfall, where “pioneer” farmers are pushing northwards, despite the very poor soils and uncertain nature of farming in the area.

While population growth has certainly contributed to the increasing amount of land under agriculture, in certain regions this trend is also the result of strategies adopted by the heads of sedentary groups wishing to create new villages. Some analysts identify the politically motivated drive to increase the number of constituents along the northern edges of agricultural areas as one of the underlying causes of disputes over land.

Since the 1970s, agricultural encroachment has pushed pastoralists some 50km northwards as, fearing the outbreak of conflict, they have abandoned dry season wells situated in the middle of fields and villages. Sakabal, in northern Dakoro, is just one example of this trend. Until 1973 it only had one pastoral well; now it is a sizeable village and home to the main regional livestock market, although with little rain, the dunes produce mediocre and unpredictable harvests. In an ongoing process of encroachment, other pastoral wells have been “swallowed up” by fields and villages, and although the north is still more or less unaffected, the fields form a front line only dozens of metres south of the wells. A “modern” Fulani proverb humorously illustrates the way that sedentary communities are increasingly taking over the area: *“Every area cleared of lions by pastoralists is then cleared of pastoralists by farmers”*.

A significant number of pastoralists have to grow crops during the rainy season in order to feed themselves, but as they are not trying to dislodge more longstanding users and secure a long-term monopoly over the area, this type of farming is less contentious. However, events in 1999 showed that it can still cause disputes, as a group of sedentary Haoussa in the department of Maradi took legal proceedings against Fulani agro-pastoralists who had cleared fields in an area that had previously been common pastoral land.

⁴ In some cases, if there is no “formal” group in the region, pastoralists are administered by the canton chief.

Land tenure disputes between pastoral and agricultural users seem to be as much due to lack of proper consultation and weaknesses in current legislation as to population growth. We need to find the means of preserving these pastoral areas, while encouraging consultation and fostering a long-term vision of the common interests of agricultural and pastoral land use systems.

MOBILITY AS A TOOL FOR MANAGING COMMON RESOURCES

Everyone rearing livestock in the Sahel has to contend with the unpredictable supply and spatial distribution of resources, and as fodder production in pasturelands varies considerably from one year to the next, and from one region to another, herds need to be mobile to adapt to changes in the amount of available vegetation and carrying capacity.

Mobile pastoralists build their lives around satisfying the needs of their livestock. The whole family follows the herd, unlike most agro-pastoralists, who live permanently in the villages where they farm, sending only certain family members or particular nuclear families from the group to accompany their herds. Mobility is thus a fundamental aspect of the complex mechanisms for adapting to unpredictable and scattered resources: a positive asset for exploiting resources, it becomes increasingly important as human pressure on the environment intensifies.

The concept of land ownership

According to legislation, pastoral areas are freely accessible and open to common use by pastoralists, but is this actually the case? Do clan groups have customary rights similar to a form of collective ownership, with reciprocal rights of access? And do pastoralists identify with the geographical areas where their wells are located?

The answer to all these questions is a qualified “Yes”. While a true herder would not say, “This valley belongs to my family”, it would be quite normal for him to say, “This is our home”, or even, “This is my home”, implying more personal links with a particular environment, rather than any exclusive right or feeling of ownership. Rather than being based on ownership, the concept of geographical ties derives its meaning from identification with an area, from priority rights established by custom. However, the concept does exist, and all pastoralists, even the most mobile, identify with a particular place that gives them a certain amount

of security in terms of fodder and vital access to water in the dry season. In southern Niger, the geographical reference point, or most frequently used or permanent place of residence, is often the pastoral enclaves where livestock spend the rainy season.

However, it would be wrong to see pastoral areas as open to all comers, and to consider these ties as purely “virtual”. The legislation inherited from colonialism defines pastoral areas as “*vacant land without an owner*”, to which there is free access. According to the lawyers, this highly controversial legal term is only intended to make explicit the lack of formal ownership, and not to deny any rights in reality. The colonial powers, which wanted to marginalise nomadic groups, made a very clear distinction between those who held land and represented the productive population (“black” farmers), and the nomadic Arab-Berber herders, who were deemed to be landless and unproductive (Marty, 1993). This distinction still holds today, as the chiefs of sedentary cantons manage land, while the heads of nomadic groups only manage the people in their constituency.

Although they have less security of tenure than before, pastoralists still exercise rights over certain areas, which are controlled by not one, but several authorities whose prerogatives change according to circumstances. Because of this, local dignitaries, politicians, traders and owners of large herds can only maintain their livestock capital in pastoral areas by calling upon members of communities that have rights of access to resources.

Current legislation decrees that common land is accessible to everyone, although priority rights of use vary according to the distance between this land and private water points on home grazing territories (Thébaud, 1999). These water points are family rather than personal property, even though the ownership deeds are often in the name of an individual, usually a tribal chief or the head of an extended family. The valley bottom in which the water point is located is generally considered to be the home grazing territory of this family, where they enjoy users’ rights and the right to build. However, because it does not have clearly defined limits, this “home grazing territory” does not necessarily include the area served by the well. There are also more flexible rights of access to areas that may be some distance from the territory in question.

Securing access to fodder

Rights of access to forage change over the course of the year. If there is enough surface water, everyone has free access to grasslands in the rainy season, even herds from farming areas or neighbouring countries. In the dry season, well owners have the customary right to authorise or refuse access to water, so access to pasture in a given zone is regulated by access to deep water points.

In theory, home grazing territories represent a secure “home” base and fallback area, particularly for forage in the hardest period from April to June or July. In practice, however, they do not always provide real security or respite. In the central regions, particularly in the pastoral zones of southern Agadez, northern Maradi and north-west Zinder, complementary rights of use for lineage groups and multiple water points serving overlapping areas result in herds congregating where resources happen to be plentiful that year. It also means that all or most herders have the same rights of access, and will experience the same problems if there is a shortage of fodder. After bad rains in 1996, there was a serious shortage of fodder in Tanout in north Zinder the following dry season, and herders withdrew towards Bermo in northern Dakoro, where the situation was “not so bad”. By the time the pastures had regrown in 1997, every herd had been affected by the lack of fodder, those of the pastoralists from Bermo as well as those of their “kin” from Tanout who had taken refuge with them. In 1998, the situation was reversed, and herders from the Bermo region flocked en masse to wells in the Tanout district, deserting their home grazing territories for the first six months of the year. While everyone had lost a lot of livestock by the end of the dry season, the situation would have been far worse if they had not been able to move around in this way

Although the home grazing territories could provide exclusive access to fodder stocks for certain groups, the multiple social links determining access to wells also extend to access to fodder, and the rules of reciprocity effectively rule out the option of reserving fodder for one group while others in the region go hungry. As the example above shows, long-term security is in fact dependent on reciprocal arrangements and the capacity to move around.

In the wetter southern zones, where much of the land is under crops, fodder supplies are more constant from one year to the next. The home grazing territories form pockets of uncultivated land, some protected by their status as classified “forests”, and all theoretically accessible via livestock corridors to local agro-pastoralists and transhumant herders. Many agro-pastoralists with cultivable land bordering on these areas are first occupants, and consider that they have priority

rights these uncultivated pastures. These fallback areas are used in the rainy season and at the end of the dry season, while herds spend the rest of the year grazing fallow areas, fields that have been harvested and the localised gaps between them. These home grazing territories are absolutely vital for livestock rearing in the region, and pastoralists would not be able to survive without them.

WHAT DOES THE LAW SAY?

The Rural Code and its supplementary documents, which have been progressively enforced since 1993, are intended to clarify the standards governing the tenure system at local level. The basic principle behind this attempt to make sense of a jumble of contradictory regulations was to formalise customary laws and grant them the same status as that of substantive law, rather than introducing a whole set of new rules (Lund, 1993).

To a large extent, the decree specifying the status of pastoralists' home grazing territories⁵ recognises the different social, economic and ecological roles of livestock rearing in the Sahel. We believe that the precise categorisation of pastoralists as "*a human and social group that is historically and socially characterised by its mobility, and whose principal activity is rearing livestock*",⁶ is an acknowledgement of the rights of pastoralists and the contribution that their professional skills make to the national interest.

The law is both realistic and prudent, in that it gives a broad definition of home grazing territories and respects the reality of notions of territorial ties, without specifying their dimensions or limits. Furthermore, in a changing context where one of the most effective management tools is the possibility of permanent negotiation between different groups, it makes no attempt to lay down models for rigid territorial units.

As this legislation is the subject of much debate, this paper will consider those elements that are most frequently questioned by associations and various specialists. Readers should note that this does not constitute a value judgement.

⁵ See Decree N° 97-007/PRN/MAG/LE, which determines the status of pastoralists' home grazing territories.

⁶ Article 2.

Priority rights of use

One contradictory aspect of this legislation, which has caused considerable debate, concerns the ambiguous description of the rights accorded to “priority users”.

According to Article 7, priority rights of use do not exclude the rights of third parties to bring livestock onto pastureland and let them graze there. Critics argue that there can be no notion of “priority” without the option to exclude certain parties, otherwise everyone would enjoy the same rights of use. However, granting the right to exclude would have opened the door to abuse, and the least organised and most vulnerable pastoralists would have been the first to suffer. Does this apparent contradiction mean that users are supposed to negotiate access to grazing land? If so, how does the modern legal status of home grazing territories improve on pre-existing rights, which were based on negotiation and the relationships between social groups? Given the difficulty of predicting every possible scenario in national legislation, the law leaves a fair amount of latitude to the land tenure commissions⁷ that are gradually becoming established in administrative districts. They will need to base their proposals for local adaptations to legislation on current local practice, and will also be responsible for defining the local limits imposed upon pastoralists by the recognition of the rights of third parties. As far as we know, the procedure for defining these limits has yet to be specified.

While the law does not grant exclusive rights to priority users, it does, however, impose upon them certain obligations and responsibilities, such as respecting protected areas of state forest and private property (does this mean farms?) located on their territories. They are also required to protect and maintain water resources and pastures and, finally, to “make productive use ” of their territories. The land tenure commissions are responsible for ensuring that these regulations are properly enforced, and are empowered to impose sanctions, ranging from fines to the withdrawal of priority rights of use.

⁷ The Rural Code provides for the creation of a land tenure commission in each administrative district or municipality. Presided over by the sub-prefect or mayor, these commissions are composed of the heads of municipal technical departments, customary authorities and a representative from farmers’ and herders’ groups. They can act in an advisory capacity and decide on the criteria for productive use of land, the content of land tenure rights and the allocation of rights of ownership. They are also responsible for overseeing the productive use of land, and can transfer the use of land that is not being used productively to a third party (Guidelines to the Rural Code, Edict No. 93-015, of 2nd March 1993).

Legislation stipulates that in no case is priority use a right of ownership, even though, in certain circumstances, ownership may be recognised on a defined basis (the nature of this definition is not specified) if activities require a fixed and permanent settlement. This clause cuts both ways. On the one hand, it could provide a measure of security of tenure over certain physical investments. On the other hand, it could also be misused to legitimise the activities of certain “pastoralist-merchants” that have been trying to force the most vulnerable groups out of particular areas. Over the last few years, traders or “influential figures” have been trying to take over vast tracts of land, using armed force and grazing taxes to exclude customary users from the area. Is there a risk that, under the pretext of making “rational” productive use of the area or using “intensive” stock farming techniques, politically powerful groups could gain exclusive ownership rights over vast areas of land? Pastoralists and their organisations are seriously concerned about the possibility that in an unfavourable political context, the notion of putting home grazing territories to productive use could be used as a pretext for certain kinds of abuse.

Productive use of land

According to Article 6 of legislation determining the status of home grazing territories, recognition of the existence of territory by the land tenure commissions is dependent upon it being put to productive use. Article 12 states that pastoralists must make productive use of their home grazing territory and the areas reserved for their activities, and ensure the protection and rehabilitation of water resources and pastures.

The decree of 10th January 1997⁸ attempts to define what pastoralists could be asked to do in terms of using their land productively, and what would be recognised as productive use. We are mainly concerned with Section 2, which deals with pastoral resources. Although Article 10 initially seems to recognise the use of pastureland and its beneficial effect on the environment, such recognition is apparently qualified by the statement that “*work on water points, pastures and enclosures, in particular, constitutes an activity that makes productive use of livestock capital*”. While developing water points is certainly essential to raise livestock, and is obviously important to herders, we do not know of any examples of “rangeland improvements” that are economically viable, nor of any means of

⁸ Decree no. 97-006/PRN/MAG/LE, of 10th January 1996, sets out regulations for the productive use of natural resources in rural areas.

“enclosure” that have proved useful. This raises the worrying possibility that these sections of legislation be used in the future to withdraw priority rights of use from herders whose territories are coveted by other users. The persistent myth that ranching could be possible and profitable in the Sahel increases the likelihood of this threat becoming a reality.

Article 11 sets out the obligation to contribute to productive use by “*taking every measure to protect water resources, pastures and trees and vegetative cover.*” What are these measures, and who will have the onerous task of defining them in detail? What distinction will be made between pastureland and areas covered by vegetation and trees? Will herders be held responsible for localised erosion along animal tracks, weathering and trees that have died after being cut by smiths or woodsellers? And what about bush fires? Until the nature of these measures is specified, pastoralists are vulnerable to such legal ambiguities being exploited in the interests of other groups.

Article 12 states that pastoralists are responsible for the upkeep of “*areas for common use, particularly paths, livestock corridors, pastures and water points*”. This could help herders in their battles with local administration, provided that it gives them clear legal means of preventing sedentary communities from cultivating pastures and livestock routes. Unfortunately, it is hard to see what current legislation provides in terms of tools to protect pasturelands from agricultural colonisation. Any vacant land is claimed as soon as it is cleared, sown and hoed, and it is only through the mediation of the associations and the goodwill of local administrators that it is occasionally possible to resolve the ensuing disputes.

According to Article 14, livestock owners must “*ensure that their assets are used rationally, in a way that respects the environment and the rights of third parties*”. What criteria are used to judge such *rational use*? Pastoralists in Niger use their livestock in a highly productive way, providing a living for a significant proportion of the population, and we have yet to find any examples of more rational management that have produced better results in this environment. The overwhelming majority of pastoralists live or survive with fewer livestock than the estimated viable threshold of 3.5 TLU per person.⁹

9 Surveys of 1,805 people conducted by AREN in the departments of Maradi and Zinder indicated an average of 1,77 Tropical Livestock Unit (TLU) per person.

Article 15 tackles questions relating to possible directives on “destocking” as a response to climatic factors or the need to protect the environment. However, we should remember that price fluctuations on the livestock and cereal markets and livestock mortality rates are factors that prevent livestock numbers rising to levels that could harm the environment.

Finally, Article 16 states that the productive use requirement also applies to herders who raise animals for other people, while the owners of these livestock are absolved of any such responsibility. How will these penniless herders, whose only resource is their ability to raise livestock for urban owners, find the means to invest in *productive use*? The future Pastoral Code will hopefully address this question, in consultation with pastoralist associations. With reference to Article 14 on *rational use*, it would also be good to compare the structure of the herds belonging to herders who live off their livestock with that of the large herds owned by traders and local dignitaries, who use the tribal home grazing territories and wells of their shepherds to build up their capital.

In conclusion

Although these questions have sparked debate and misunderstanding between herders’ organisations, experts and legislators over the last few years, there are some important positive aspects to the law that could lead to legislation that meets the needs of herders. These include a concern to not compromise local strategies, and recognition of the need to leave sufficient leeway for the evolution of endogenous land management systems. The current experiences of existing land tenure commissions, and moves by the State to consult an increasing number of actors are encouraging factors, which should enable pastoralist associations to feel cautiously optimistic about the next stages of the process.

STRATEGIES USED BY MOBILE PASTORALISTS TO SECURE HOME GRAZING TERRITORIES

Over the last ten years, mobile pastoralists in certain regions of Niger¹⁰ have started marking their home grazing territories by building small infrastructures or more or less permanent dwellings that enable them to carry out community-based activities. Although certain projects do give localised support to pastoralist initiatives, this phenomenon has gone largely unnoticed until now, and is particularly remarkable among the Wodaabe Fulani, who have no alternatives to herding, and who value their mobility more than any other group of pastoralists.

Since the last major drought, a number of the Wodaabe have survived by becoming shepherds for livestock owners or starting to farm small fields, generally located in the south, where an increasing number of new farming villages are springing up. It is not unusual for families to have fields more than 30 km south of their home grazing territory, although they generally stay on the move with their small herds, continuing to participate in seasonal clan movements. They do this to maintain family ties and because they want to stay mobile, but are mainly prompted by necessity. There are families in every tribe without enough livestock to provide a living, and their only options for survival involve some kind of social disruption. Apart from the seasonal work available to women along the coast, these families either have to move to urban areas to find jobs, or go south and earn a more sustainable living as agro-pastoralists.

Over the last ten years, the Wodaabe have also had to face up to the drawbacks of their very flexible way of life, which, while well adapted to herding, leaves them ill-equipped to deal with the market, the administration or other nomadic ethnic groups. Years of armed rebellion have left them politically weakened, and with many wells serving overlapping areas and more land going under the plough, they now need to “mark” and maintain a permanent physical presence in their home territories in order to stake an unambiguous claim to the land.

It is difficult to know whether this kind of territorial marking is a consequence of disseminating information about the supplementary texts of the Rural Code, particularly legislation on home grazing territories. However, this is most unlikely,

¹⁰ The accounts and analyses in this section are the result of collaboration between the PAAPB project, which works with about forty associated pastoralist groups supporting activities to secure territory in north Dakoro, and observations and discussions conducted by the author and AREN in other regions of Niger.

given that very few herders are aware of the existence, let alone the content, of these laws. Their strategy for development is a response to other, more concrete and real concerns, such as:

- the use of visible and physical means to register their permanent occupation of territory, now that the seasonal journey to the well is not enough to affirm their rights;
- guarding the well against competing groups that could damage it, and affirming priority rights of use over the well and the resources that it serves;
- responding to economic developments and fluctuations in the terms of trade by stocking cereals and additional feed for livestock;
- encouraging members of the group who do not have any livestock, who are a burden on the overall economy of family groups, to settle in the home grazing territories, where they can help in various ways;
- settling several members of the group in a place where they will be able to represent the group in negotiations and legal matters, and develop a relationship with local administrative bodies.
- encouraging people to educate their children. This is only possible if they can grow up within their original social environment, rather than in an environment that marginalises herders. It is becoming possible to set up schools on these sites.

This strategy seems to be the result of a growing awareness of the problems that may arise from not having a “geographical base”, and the need to adapt their way of life and production to a changing socio-economic context. There have been some notable changes in many home grazing territories in northern Dakoro since 1993, usually heralded by the appearance of storage warehouses and a few members of the group settling in the area on a permanent basis. Measures to help regenerate the forest have been enforced in some territories, *Euphorbia balsamifera* is being propagated to stabilise dunes in others, and 143 nomadic children are attending school in three sites in the administrative region of Bermo.

Many pastoral groups are applying for funding to set up service centres in home grazing territories, anticipating that some of their members will take up permanent residence there. This strategy has been adopted by most of the groups of transhumant herders affiliated to AREN, from the borders of Mali across to Chad. Concerns about security of tenure are never far from the surface, even if they are rarely explicitly expressed.

STRATEGIES USED BY AGRO-PASTORALISTS TO PRESERVE HOME GRAZING TERRITORIES IN SOUTHERN NIGER

Since 1991, AREN and its decentralised network of local leaders have been at the forefront of the administrative and legal battles waged by herding communities seeking to preserve livestock corridors and the pasturelands they serve in southern Niger. One of the main motives for joining the association is the opportunity to join forces with others who want to preserve the pastoral use of natural resources and organise initiatives to voice their concerns.

While their livestock have remained mobile, herders in predominantly agricultural regions now live in villages rather than encampments, and home grazing territories are more collective concerns than those in the pastoral areas of northern Niger. Over the last thirty years, pasturelands in the regions of Gaya, Matameye and Say have contracted to islands of virgin territory in a sea of deforested millet monoculture. In such cases, home grazing territory is generally perceived not as a secure area, but as the key element of the annual fodder supply system. For half the year, from the end of the dry season in April to the end of the harvest in October, it is often the only area accessible to livestock, and its gradual disappearance under the plough means that herders must either move on or become full-time farmers raising just a few domestic animals.

This is where modern law fails those administrators who are trying to settle disputes. Herders under the protection of *Chefs de Groupement* are unable to contest the allocation of cultivable land within their home grazing territories, even if they have sunk wells in the territory at their own expense, or, as is often the case, they are the first occupants of the land. At the moment, the only line of defence against agricultural encroachment in these areas is the good sense of the local administration and the will to avoid violent conflicts. In the meantime, herders are negotiating with “sedentary” communities, in order to block even the smallest new fields being cleared.

With land still falling under the axe and the plough, herders have embarked on a campaign of administrative harassment, writing to the authorities, besieging offices, submitting complaints, and paying for expensive fora so that stakeholders can get together and discuss their concerns. This strategy has won them some respite, but boundary markers can be removed, agreements change with new administrations and governments, and signed undertakings are not valid forever. As the pressure caused by this constant insecurity of tenure mounts, legal provisions that would permit the implementation of sustainable agreements and

reinforce the land tenure status of pasture areas are awaited with a mixture of hope and impatience.

ENCOURAGING PERSPECTIVES

The implementation of a very wide-ranging process of consultation at local level is evidence of the strong political will that exists in Niger to find solutions and facilitate consultation among local stakeholders. Land tenure commissions have started work in some districts, using an experimental and open approach, and the local administration is much more willing to settle disputes. Provisional solutions have been found for a number of situations, thanks to undertakings made by administrators with the support of civil society groups, who are now playing a recognised role in the process. As administrators and customary chiefs are restricted to playing a conciliatory role, the responsibility for settling disputes in cases where there is no conciliation rests with the Law.

Pastoralists and their associations hope that, when it is unveiled after three years in the writing, the new Pastoral Code will provide clear means of settling disputes and address questions not covered by existing legislation, particularly the Rural Code.

We would like to raise some questions that could be useful in consultations on future legislation. Assuming that the staged preparation of the future Pastoral Code will be an iterative process, these questions are addressed as much to pastoralist organisations and development partners as to legislators. They concern two concepts we believe to be essential: pastoral areas, and their productive use.

Pastoral areas

Definition of pastoral areas

Current legislation uses a variety of terms to denote pastoral areas, ranging from “vacant land without an owner” and “pastoral lands”, “pastoral zones” or “pastoral spaces” to “pastoral areas”. It would surely be useful either to define these spaces more clearly, using a broad denomination that allows some leeway for considering different situations or, if we are going to carry on using some of the existing terms, to define exactly what they mean.

Securing rights over pastoral areas

Many of the concerns of herders and their representatives arise from the fact that current legislation does not accord any clear status to pastoral areas, which would protect them from private interests or agricultural clearance. This was the main issue ten years ago, and still seems the most urgent priority today for those who fear for the future of pastoralism in Niger, although opinions differ on the manner in which the problem can best be addressed.

For some years now, projects and the government have prioritised local level consultation between users and actors on this issue, and several local initiatives have succeeded by using consultation to develop management plans and clear visualisation techniques to reach a generally accepted consensus on the boundaries of pastoral areas.¹¹ Opinions vary about this approach, and particularly about its long-term objectives, but as the various initiatives are either ongoing or only recently completed, it is too early to judge their long-term viability.

The municipalities will have to identify and implement *Schémas d'Aménagement Foncier* (land tenure development plans) as part of the process of decentralisation. At the moment, some projects and associations are responding to local emergencies by trying to set boundaries for pastoral areas in order to prevent them from being cleared for agricultural use. This is sometimes done at the request of herders and their representatives, but is generally a response to the fact that these areas are under threat, and that the potential risk of disputes and serious conflict is increasing rapidly. The aim is not to separate livestock rearing and agricultural activities, but to clarify the area reserved for each activity during the rainy season, and to maintain strategic fodder stocks for the dry season. Those in favour of this approach see it as a vital prerequisite for ensuring that different users will be on an equal footing in subsequent consultations. It is also sometimes presented as a permanent improvement that will help prevent conflicts in the long term, and enable each activity to develop in its own right. Some people therefore hope that by formalising this process, the law will provide more protection for pastoral areas than it does at present.

Others contest this approach, arguing that it is too “development oriented” or “mapped out”, although they do recognise that it could provide a short-term

¹¹ For example: *Africa 70 and COFO in Myrhia, AREN and the Swiss Cooperation in Gaya, the work done by PASEL-Maradi rehabilitating the international livestock route, the SOS-Sahel Takieta Project, the CARE 36 project in Babanrafi Forest near Madarounafa, and the collaboration between AREN and PGRN in the pastoral zone of Dogon Douchi, etc.*

solution to a number of existing problems. Their main concern is that activities will be polarised in precise zones, thereby removing the flexibility that different systems need to adapt to future changes in human or climatic conditions. For example, boundary markers could be perceived as real barriers, and the negative effects of banning further land clearance could compromise access by herds to cultivated areas after the harvest. Different users may have various reasons for wanting to change the areas allocated for agricultural or pastoral use in a given zone, such as population movement, larger herds, land becoming impoverished, etc. There are also fears that local capacity to consult and adapt to changing circumstances would be paralysed by arrangements that are too rigid or formal.

Between these two rather simplistically presented alternatives, there are various shades of opinion and methods of looking at the problem, plus a whole raft of questions that require closer attention:

- Which land tenure statute could offer inclusive protection for pastoral areas? Would it be comparable with land being classified in the national interest?
- Certain land tenure commissions and local development projects are physically demarcating and mapping these areas in order to define their status. Is this a useful exercise?
- Is it necessary to create title deeds for these pastoral areas and call into question free access? Who would hold these title deeds: the municipalities or the groups of pastoralists who consider these areas as their home grazing territories?
- How can the notion of a title deed be reconciled with the notion of undemarcated pastoral areas?
- How can the current flexibility of access to agricultural areas by livestock after the harvest be maintained?
- How can livestock belonging to villagers and urban owners still have access to pastoral areas during the rainy season?
- How can one legislate and assign clearer rights over pastoral areas without threatening the capacity for mobility needed to cope with variations in fodder production, or the capacity to make the best use of pasturelands?
- How can pastoralists in pastoral zones be granted access to cultivable land without compromising their priority rights of access to pasturelands?

- Herders from Niger use grazing lands in the bordering countries of Mali, Burkina Faso, Benin, Nigeria and Chad. How can the principle of reciprocity be maintained, and transhumant herders from other areas be guaranteed rights of access to pastoral areas?

There does, however, seem to be a general consensus on one point: the importance of reviewing the land tenure status of pastoral areas in order to increase their value in subsequent consultations between users and, above all, to ensure that the land use development plans drawn up by future municipalities will maintain them as such.

Productive use of pastoral areas

“Environmentally friendly” herders

A good deal of past and ongoing research confirms that pastoral areas in the Sahel are shaped by an unstable balance between livestock and vegetation,¹² and that the animals are the first to suffer when this equilibrium is broken, because indigenous plants are adapted to survive periods of drought. In fact, livestock have a beneficial impact on many aspects of the Sahelian ecology, and may actually help improve pastureland and increase the diversity of flora by dropping different kinds of seed in their dung as they move from one area to the next.

By consuming all the dry straw left after the growing period, livestock also help reduce the frequency and ferocity of bushfires in the Sahel. As all residual fodder needs to be eaten, overgrazing is not an issue in this environment in the dry season, while herd mobility in the rainy season gives the grass a chance to regrow and encourages biodiversity. Pastoralism is the most “environmentally friendly” form of land use, in that it makes little human impact on the environment and gives wild fauna the greatest opportunity to survive in the area. Having been ravaged by major bushfires and lost some of its original flora, the Sahel could hardly be called “virgin” territory, but in terms of nutritional potential for livestock, and thus humans, it is more productive than unexploited land. Should we not, therefore, accord greater value to this balance and the beneficial effects of livestock on the

¹² Miede, 1991, 1994; Ellis and Swift, 1988; Westoby, 1989; De Leeuw, 1990; De Ridder, 1990; Abel, 1990 Behnke and Scoones, 1992; Thébaud, Miede and Grell, 1995; Denève, 1994; Hammel, 1991.

Sahelian environment? And should we not also consider the fact that rearing livestock is the only way that humans can make productive use of most of the natural resources in the arid Sahelian savannah?

How useful is the notion of productive use?

The only significant activity involved in the productive use of pastoral resources must surely be grazing by livestock. But what is the underlying objective of this notion of “*productive use*”? Is it the vision of a more “modern” and productive form of livestock rearing than currently exists? And “for whom” is this productive use considered necessary? If it is for primarily social considerations, then surely its direct beneficiaries and agents should be the millions of pastoralists that live off this activity, those whom legislation on home grazing territory labels as “traditional” pastoralists. If we accept the argument that there is a balance between livestock and vegetation, and that it is in the long term national interest to maintain this equilibrium, could the concept of “environmentally friendly” productive use of the common heritage become a central issue, which in itself justifies clearer land tenure status?

CONCLUSION

After ten years spent preparing this legislation, some of which has been adopted, and much of which has been called into question, it seems that past experience has provided few real answers, and that the issue remains as difficult and sensitive as ever. If one were to compare what the law is trying to do with local realities, one might question whether land tenure legislation can in fact provide any real solutions.

The insecure legal status of pastoral areas constitutes a threat to the systems presently used to rear livestock, and “pastoral” opinion often counts for little in consultations about natural resource management, where it is outweighed by the more conspicuous and legally fortified agricultural interests. Moves that have been made to protect pastoral zones seem to have been based more on a common desire to avoid conflict, or on mutual interests revealed in the course of consultations, than on recognition of pastoralists’ claims and questions of rights of access.

This certainly supports the idea that consultation is the only means of finding sustainable solutions to the problem, but we need to ask whether this is actually

possible, and whether the two different types of user “still” have any common interests important enough to avoid a strategy of exclusion. In many cases, it is hard to see what interest those colonising land could have in backing off, and what they have to gain from consultation, since they have the upper hand, and since the claim they stake by clearing land for agriculture is often seen as definitive.

This raises the question of whether the legal process is the most efficient way of preserving the livelihoods of minorities and a system of land use that is vital to maintain the socio-ecological balance of the country.

Appropriate solutions for the protection of common property pastoral zones will perhaps arise from systems that combine considerable consultative power at the local level with a legal framework. One would think that one of the aims of the future Pastoral Code would be to provide this type of structure for land ownership surveys, but it is precisely this legal framework that is at issue. What would it cover, and how would it really work at local level, in terms of the balance of power among local populations, given that “agricultural interests” have the majority in most communities?

This is what is currently being discussed as a priority issue in Niger. Over the course of 2001, ideas will doubtless evolve and debates become more extensive, but it would be risky to predict any trends in forthcoming solutions. We believe that it is essential for herders to maintain some room to manoeuvre in terms of mobility and preserving pastoral areas, even though natural resource management will soon have to be organised on a more formal basis at municipal level. In many cases, the notion of home grazing territory may well be the most accurate reflection of the legitimate aspirations of pastoral groups, and it must therefore be revised and refined if it is to provide a useful tool for land ownership surveys and act as an effective accompaniment to the process of decentralisation.

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