

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

MISSION TO THE REPUBLIC OF NIGER 14 – 24 February 2006

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ON HUMAN AND
PEOPLES' RIGHTS

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INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP
ON INDIGENOUS POPULATIONS/COMMUNITIES:
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TABLE OF CONTENTS

ABBREVIATIONS.....	7
ACKNOWLEDGEMENTS.....	8
PREFACE.....	9
EXECUTIVE SUMMARY.....	12
MAP OF NIGER.....	18
INTRODUCTION.....	19
PREPARATION OF THE MISSION.....	20
CONDUCT OF THE MISSION.....	21
TERMS OF REFERENCE OF THE MISSION.....	22

PART I

BRIEF HISTORY OF NIGER.....	24
GEOGRAPHY.....	25
ECONOMY.....	25
POPULATION AND ADMINISTRATIVE REGIONS.....	27
GOVERNMENT.....	28
LANGUAGE.....	28
INTERNATIONAL HUMAN RIGHTS OBLIGATIONS.....	28
PREVIOUS MISSIONS.....	29
THE PEOPLE.....	29

PART II

INDIGENOUS POPULATIONS/COMMUNITIES IN NIGER.....	33
PROFILE OF THE TUAREG.....	34
PROFILE OF THE FULANI.....	39
PROFILE OF THE TOUBOU.....	42

PART III

ISSUES RAISED DURING THE MEETINGS.....	44
A. THE NOTION OF INDIGENOUS POPULATIONS.....	45
B. POVERTY, LACK OF RESOURCES AND CLIMATIC CHANGE.....	46
C. LAND OWNERSHIP.....	46
D. COULOIRS DE PASSAGE.....	48
E. SLAVERY.....	48
CHALLENGES FACING INDIGENOUS COMMUNITIES IN NIGER.....	49
A. DENIAL OF THE NOTION OF INDIGENOUS POPULATIONS.....	50
B. CLIMATIC PROBLEMS AND CONFLICT.....	51
C. LAND AND WATER PROBLEMS.....	52
D. DECENTRALISATION.....	53
E. SECURITY PROBLEMS.....	53
F. THE PROBLEM OF BORDER CROSSING.....	55
G. LOW LITERACY RATE AND POOR HEALTH.....	55
H. POLITICAL REPRESENTATION.....	56
I. LANGUAGE.....	57
ACTION BEING TAKEN TO ADDRESS THE CHALLENGES.....	58
A. THE RURAL CODE.....	58
B. CRITICISM OF THE RURAL CODE.....	59

CONFUSION IN THE LEGISLATION	60
THE PROMOTION OF SOCIAL COHESION	62
A. THE CURE SALEÉ AND THE GEREWOL FESTIVALS	62
B. THE COUSINAGE À PLAISANTERIE	63
CONCLUSION	63
RECOMMENDATIONS	67

ABBREVIATIONS

ACHPR - African Commission on Human and Peoples' Rights

African Charter - African Charter on Human and Peoples' Rights

ANDDH - Association Nationale de la Défense des Droits Humains

AU - African Union

BCEAO - Central Bank of West African States

CEDAW - Convention for the Elimination of All Forms of Discrimination Against Women

CERD - Convention on the Elimination of Racial Discrimination

CFA - Communauté Financière Africaine

ECOWAS - Economic Community of West African States

GDP - Gross Domestic Product

GNP - Gross National Product

HIPC - Highly Indebted Poor Countries

HIV/AIDS - Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome

ILO - International Labour Organisation

NCHREFF - National Commission on Human Rights and Fundamental Freedoms

NCRC - National Committee of the Rural Code

NGO - Non-Governmental Organisation

OAU - Organisation of African Unity

OCHA - Office for the Coordination of Humanitarian Assistance

PRGF - Poverty Reduction and Growth Facility

PSI - Pan Sahel Initiative

PSRC - Permanent Secretariat of the Rural Code

UNFPA - United Nations Population Fund

WGIP - Working Group on Indigenous Populations/Communities

ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights (ACHPR or African Commission) would like to thank the Government of the Republic of Niger for inviting its Working Group on Indigenous Populations/Communities (WGIP or Working Group) to the country.

The African Commission would also like to extend its appreciation to HE the President of the Republic of Niger, HE the Prime Minister and all the government officials who found time to meet with the delegation of the Working Group of the African Commission in spite of their busy schedule. The African Commission would like to thank in particular, Mr. Garba Lompo, President of the National Commission on Human Rights and Fundamental Freedoms (NCHRFF) for facilitating the mission and ensuring the success of the mission. The Commission is grateful to the authorities for their hospitality and support during the period of the mission.

A special appreciation is extended to members of the Technical Committee established by the Government to assist the delegation. The African Commission would like to thank the Committee for accompanying the delegation throughout the mission to ensure its success.

The African Commission would like to extend its appreciation to the civil society organisations, policy makers, media professionals and other institutions and individuals who found time to meet and share their experiences with the delegation.

The delegation would also like to thank the drivers for their perseverance in driving the delegation thousands of kilometers across the vast country of Niger to meet with relevant stakeholders.

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is a body of the African Union, has been debating the human rights situation of indigenous peoples since 1999, as these are some of the most vulnerable groups on the African continent. Since the 29th Ordinary Session of the African Commission, held in Libya in 2001, representatives of African indigenous communities have regularly attended the ACHPR's sessions and have given strong testimonies about their situation and the human rights violations they suffer from. Their message is a strong request for recognition and respect as well as a call for improved protection of their civil, political, economic, social and cultural rights. It is also a request for the right to live as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions. Indigenous peoples, moreover, wish to exercise these rights within the institutional framework of the nation-state they belong to. The African Commission has responded to this call. The African Commission recognizes that the protection and promotion of the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group then comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one international expert on indigenous issues. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded from <http://www.achpr.org>). The report was adopted by the African

Commission in November 2003, and published in a book format in 2005. The report is the African Commission's official conceptualisation of, and framework for, the issue of indigenous peoples' human rights in Africa.

In 2003, the Working Group was given the mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society and indigenous communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

This report is part of a series of country-specific reports produced by the Working Group, and endorsed by the African Commission on Human and Peoples' Rights. These country-specific reports emanate from the various country visits undertaken by the Working Group, all of which have sought to engage with important stakeholders such as governments, national human rights institutions, NGOs, intergovernmental agencies and representatives from indigenous communities. The visits have sought to involve all relevant actors in dialogue on indigenous peoples' human rights, and to inform about the African Commission's position. The reports not only document the Working Group's visits, but are also intended to facilitate constructive dialogue between the African Commission, the various African Union member states, as well as other interested parties. This dialogue should be undertaken in accordance with the provisions of the African Charter on Human and Peoples' Rights.

It is hoped that, via our common efforts, the critical human rights situation of indigenous peoples will become widely recognized, and that all stakeholders will work to promote and protect indigenous peoples' human rights in their respective areas.

Kamel Rezag Bara

Former Commissioner

Former Chairman of the African Commission's
Working Group on Indigenous Populations/Communities

EXECUTIVE SUMMARY

From 14 – 24 February 2006, the Working Group on Indigenous Populations/ Communities (WGIP or Working Group) undertook a mission to the Republic of Niger. The delegation of the Working Group comprised: Ambassador Kamel Rezag Bara – Member of the African Commission and Chairperson of the Working Group on Indigenous Populations and Communities, Head of Mission; and Mr. Mohammed Khattali – Member of the Working Group. The mission was supported by Mr. Robert Wundeh Eno, Legal Officer of the Secretariat of the African Commission and Secretary to the WGIP.

The conduct of the mission

During the mission, the delegation was received by HE El Hadj Mamadou Tanja, President of the Republic of Niger, HE Hama Amadou, Prime Minister and Head of Government, and HE Lompo Garba, the President of the Commission on Human Rights and Fundamental Freedoms in Niger. The delegation also met and held fruitful discussions with the Minister of Housing, sitting in for the Minister of Justice and Keeper of the Seal and the Minister of State and Adviser to the President of the Republic in-charge of Security. The delegation also held meetings with members of the Commission on Human Rights and Fundamental Freedoms of Niger, the Islamic Council of Niger, the Catholic Mission and CARE International - Niger.

Apart from Niamey, the delegation visited six of the eight regions of the country, namely, Dosso, Tahoua, Agadez, Zinder, Maradi and Tillaberi. During these visits the delegation held meetings with a wide range of personalities, decision makers, development organizations, civil society organizations and representatives of indigenous communities. In these meetings the delegation had frank and open discussions with the stakeholders on the human rights situation in general and the human rights of indigenous communities in particular.

Terms of reference of the Mission

The terms of reference of the mission were *inter alia*, to:

- gather information on the situation of indigenous populations in Niger within the scope of their civil and socio economic enjoyment of their rights
- engage the Government of the Republic of Niger in dialogue on the situation of indigenous populations in particular and its relationship with the African Commission as a whole;
- engage civil society on its role in the promotion and protection of the rights of indigenous populations in Niger; and
- visit and discuss with indigenous communities to understand the problems, if any, affecting the effective enjoyment of their human rights.

The people

Niger is made up of several ethnic groups including the Djerma, Hausa, Fulani, Tuareg, Beri Beri (Kanouri), Arab, Toubou, and Gourmantche. Groups claiming indigenous status in Niger include the Tuareg, Bororo, Wodaabe and Toubou (Teda and Daza). The Bororo and Wodaabe are part of the larger Fulani language and cultural group. They are the groups who most adhere to their traditional nomadic culture and identity.

Issues raised during the meetings

At each meeting, the Head of Mission briefed participants about the African Commission, in particular, the process leading to the adoption of the African Charter on Human and Peoples' Rights in 1981, the establishment of the African Commission on Human and Peoples' Rights, the activities/mandate of the African Commission and the process leading to the establishment of the Working Group on Indigenous Populations/Communities.

In each of the meetings, participants raised various issues on human rights in general and the situation of specific communities or groups in particular. The diverse background of the groups met inevitably meant the delegation would get diverse views on the issues of indigenous rights in the country. Issues raised by participants ranged from the denial of the notion of indigenous populations in the country, poverty, lack of resources, underdevelopment, rapid encroachment of the desert, conflict between herdsmen and farmers, the problem with the *code rural*, traditional leadership, slavery, to the question of land ownership, water points for cattle and the *couloirs de passage* (migration routes for cattle).

Challenges and problems

The indigenous populations of Niger face several problems and challenges. Drought, deforestation, soil degradation, security problems in the region, and exceedingly low literacy are major challenges facing the indigenous nomadic peoples of Niger. But perhaps one of the major challenges is the Government's continued denial of the existence of indigenous populations in the country. The Tuareg, Fulani and Toubou are not considered as a minority or marginalized communities, but rather treated like any other community in the country despite the problems associated with their nomadic lifestyle.

Action being taken to address the challenges

To deal with some of the above problems and challenges, the Republic of Niger has taken certain measures, amongst them, the enactment of the *Code Rural (The Rural Code)*, which is a collection of laws dealing with sectoral issues governing natural resource management.

Promotion of social cohesion

In a country with about eight major ethnic groups, two major religions and diverse cultures and traditions, lifestyles and customs, it is expected that these differences come into conflict with each other from time to time. The nomadic lifestyle of the pastoralists has always resulted in clashes with the sedentary farmers of the south, for example. However,

the Government and the people have promoted various institutions to promote harmony, respect and social cohesion so as to reduce incidences of violence among communities. Principal among these institutions are the promotion of cultural activities such as the *cure salée*, the *gerewol* and the famous expression of *cousinage à plaisanterie*. Whilst such cultural activities can be helpful and relevant, there is also a need for increased political action in order to improve indigenous peoples' situation in Niger.

Conclusion

The difficulties listed above notwithstanding, the Government has adopted policies and put in place mechanisms to minimise the misery that might be caused by these adverse natural conditions. Through laws and policies, the Government has endeavoured to promote a system of non-discrimination. The penal code also prohibits discrimination and punishes defaulters with imprisonment.

The African Commission recognises that the Republic of Niger has taken several measures to improve not only the rights of access of nomads to water and land resources, but also to empower them politically and through education. Schools have been built in almost all the regions, there are measures to introduce mother tongue education for the first few years of primary school, as well as to encourage pastoralists to diversify.

Recommendations

The African Commission makes the following recommendations, which it hopes will be implemented by the Government of Niger:

- The Government should take action to ensure a process by which the on-going land alienation process of the pastoralists is addressed.
- The apparent contradictions in the provisions of the Rural Code and the Water Code should be addressed to ensure a coherent approach to the land and water problems of pastoralists.

- The Government should set up a fund to help the nomadic population in the country to counter the effects of the poor climate and drought that results each year in the decline in their flocks.
- The Government should consult indigenous nomadic populations on their wishes for their future development, and seek to support them in developing their livelihoods accordingly. If the nomadic population expresses a wish to diversify their activities, for instance by agriculture, then the Government should train these populations in this and provide them with tools and other implements such as seeds, fertilizers, ploughs, etc. Government should also encourage income-generating activities for women, in particular small trade and craft industry.
- The Government should reassess its policy of denying the existence of indigenous populations and take steps to comply with its international obligations regarding the treatment of indigenous peoples. To this end, the Government should also ratify the ILO Convention 169 on Indigenous and Tribal Peoples.
- The Government is encouraged to establish sensitization programmes for the administration, local authorities, judges, police, etc., in order to make them more sensitive to indigenous peoples' rights.
- The Government should intensify its campaign of mobile schools to increase the literacy rate among nomadic populations and introduce incentives such as school feeding, tuition free education, mother tongue education and no uniforms.
- The Government should establish mobile clinics among the nomadic populations in order to ensure adequate access to health facilities.
- The Government should adopt a participatory approach when developing policies with a bearing on indigenous populations, such as the Rural Code and the Water Code which promote the

Government's policies on land, natural resources, and poverty alleviation. The indigenous populations must be properly consulted in order for them to have a say on policies that will affect their lifestyle.

- The African Commission recommends that Niger indicates in its next Periodic Report to it, the measures it has taken to implement the above recommendations, and any difficulties it might be facing in implementing them.

MAP OF NIGER



Introduction

1. The African Commission on Human and People's Rights (ACHPR or the African Commission) was established in 1987 in accordance with Article 30 of the African Charter on Human and Peoples' Rights (African Charter). It is a human rights treaty body charged with the promotion and protection of human and peoples' rights in Africa.
2. The African Charter was adopted by the 18th Assembly of Heads of State and Government of the Organisation of African Unity (OAU) now the African Union (AU) in Nairobi, Kenya on 26 June, 1981. Upon the deposit of the requisite instruments of ratification, the Charter came into force on 21 October, 1986 and the first members of the African Commission were elected at the 23rd Assembly of Heads of State and Government of the OAU in June 1987. The inaugural meeting of the African Commission was held in Addis Ababa, Ethiopia in November 1987.
3. Article 45 of the African Charter provides for the mandate of the African Commission and this includes the promotion and protection of human and peoples' rights, interpretation of the African Charter and undertaking any other task assigned to it by the Assembly of Heads of State and Government.
4. In terms of Article 45 (1) of the African Charter, the promotional mandate of the African Commission shall include *inter alia*, to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views and make recommendations to governments; formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples rights and fundamental freedoms upon which African governments may base their legislation; cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

5. To execute the mandate in Article 45 (1), the African Commission has initiated a number of measures, including the establishment of Special Mechanisms/Working Groups¹. These mechanisms undertake promotional as well as fact-finding missions to Member States of the African Union during the intersession period of the African Commission and submit their reports to the African Commission during its ordinary sessions for consideration and adoption.
6. It is in this light that the Working Group on Indigenous Populations/Communities (WGIP or the Working Group) undertook a mission to the Republic of Niger from 14 – 24 February 2006.

Preparation of the Mission

7. The Secretariat of the African Commission began exchanging *Notes Verbales* with the Ministry of Foreign Affairs and International Cooperation of the Republic of Niger regarding the mission in December 2005. In January 2006, the Government of the Republic of Niger, through the National Commission on Human Rights and Fundamental Freedoms (NCHRFF) in Niger officially agreed to the African Commission's request for its Working Group on Indigenous Populations/Communities to visit the country.
8. The Secretariat of the African Commission prepared a draft programme for the mission which was forwarded to the NCHRFF for input. The programme was amended² with contributions from the NCHRFF, the Government and local NGOs upon the arrival of the delegation in Niger.³
9. The delegation of the Working Group comprised:

1) The Commission currently has five Special Rapporteurs and two working Groups, namely; the Special Rapporteur on the Rights of Women in Africa; the Special Rapporteur on Prisons and Conditions of Detention in Africa; the Special Rapporteur on Human Rights Defenders in Africa; the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and the Special Rapporteur on Freedom of Expression in Africa. The Working Groups are the Working Group on Indigenous Populations and Communities and Working Group/Follow up Committee on the Implementation of the Robben Island Guidelines.

- Ambassador Kamel Rezag Bara – Member of the African Commission and Chairperson of the Working Group on Indigenous Populations/Communities, Head of Mission; and
 - Mr. Mohammed Khattali – Member of the Working Group.
10. The mission was supported by Mr. Robert Wundeh Eno, Legal Officer of the Secretariat of the African Commission and Secretary to the WGIP.

Conduct of the Mission

11. The mission was facilitated by the Commission on Human Rights and Fundamental Freedoms of Niger, a national human rights institution with affiliate status before the African Commission.
12. During the mission, the delegation was received by HE El Hadj Mamadou Tanja, President of the Republic of Niger, HE Hama Amadou, Prime Minister and Head of Government, and HE Lompo Garba, the President of the Commission on Human Rights and Fundamental Freedoms in Niger. The delegation also met and held fruitful discussions with the Minister of Housing, sitting in for the Minister of Justice and Keeper of the Seal and the Minister of State and Adviser to the President of the Republic in-charge of Security. The delegation also held meetings with members of the Commission on Human Rights and Fundamental Freedoms of Niger, the Islamic Council of Niger, the Catholic Mission and CARE International - Niger.
13. Apart from Niamey, the delegation visited six of the eight regions of the country, namely, Dosso, Tahoua, Agadez, Zinder, Maradi and Tillabéri. During these visits the delegation held meetings with a wide range of personalities, decision makers, development organizations, civil society organizations and representatives of indige-

2) The government argued that the original programme targeted specific communities, in particular, the Tuareg and the Fulani, suggesting that these groups were being discriminated or marginalised. To this end the government indicated that the mission should travel across the country to meet all the different ethnic groups so as to have a general idea of the human rights situation in general and the situation of “indigenous populations” in particular.

3) The Government had set up a Technical Committee comprised of a member of the NCHRRF and representatives from the ministries of Justice, Foreign Affairs and Interior to organize the mission and accompany the delegation throughout the mission.

nous communities. In these meetings the delegation had frank and open discussions with the stakeholders on the human rights situation in general and the human rights of indigenous communities in particular.

14. One of the members of the delegation also attended a conference organised by NGOs in the Agadez region of Niger that brought together NGOs working on indigenous issues from the Sahelo-Saharan region of Africa. The member explained the African Commission's involvement in the promotion and protection of the human rights of indigenous populations in Africa.
15. In accepting the mission, the Government indicated that whilst the groups identified by the African Commission as indigenous in Niger are concentrated in specific regions, they could be found in all regions of the country. The programme would therefore be made in a way to permit the delegation to visit all the regions rather than the two regions originally suggested by the Secretariat of the African Commission. The original programme of the delegation was accordingly amended upon arrival in Niger.

Terms of Reference of the Mission

16. One of the tasks of the terms of references of the WGIP is to gather information on the situation of indigenous populations/communities in the respective States of the African Union, and to examine the legislative, constitutional and other provisions and mechanisms put in place to promote and protect the rights of indigenous populations. To this end, the African Commission has mandated the WGIP to undertake research, studies and country visits within Member States of the AU. The general aim of the mission to Niger was therefore to execute the mandate of the WGIP and, of the African Commission. The specific objectives of the mission were *inter alia*, to:

- gather information on the situation of indigenous populations in Niger within the scope of their civil and socio-economic enjoyment of their rights;
- engage the Government of the Republic of Niger in dialogue on the situation of indigenous populations in particular and its relationship with the African Commission as a whole;
- engage civil society on its role in the promotion and protection of the rights of indigenous populations in Niger; and
- visit and discuss with indigenous communities to understand the problems, if any, affecting the effective enjoyment of their human rights.

PART I

Brief History of Niger

17. Long before the arrival of French influence and control in the area, Niger was an important economic crossroads. The empires of Songhai, Mali, Gao, Kanem, Bornu, and the Hausa states, claimed control over portions of the area. Niger remained the exclusive province of the sultans until 1898, when the French stormed the country with all the subtlety and finesse of a sledgehammer, and added yet another name to their list of colonized countries.
18. In the 19th Century, contact with the West began when the first European explorers - Mungo Park and Heinrich Barth – who explored the area searching for the mouth of the Niger River. Although French efforts at pacification began before 1900, dissident ethnic groups, especially the desert Tuareg, were not subdued until 1922, when Niger became a French colony.
19. The passage of the Overseas Reform Act of July 23, 1956, followed by reorganization measures enacted by the French Parliament early in 1957 provided for the creation of governmental organs, assuring individual territories a large measure of self-government. After the establishment of the Fifth French Republic on December 4, 1958, Niger became an autonomous State within the French Community. Following full independence on August 3, 1960, however, membership was allowed to lapse.
20. During its first 14 years as an independent State, Niger was run by a single-party civilian regime under the presidency of Hamani Diori. In 1974, a combination of devastating drought and accusations of rampant corruption resulted in a military coup, which overthrew the Diori regime. Col. Seyni Kountche and a small group of military ruled the country until Kountche's death in 1987. His Chief of

Staff, Col. Ali Saibou succeeded him. In 1993, Niger held its first free and open elections. Rivalries within a ruling coalition elected in 1993 led to governmental paralysis, which provided Col. Ibrahim Baré Maïnassara a rationale to stage a coup and overthrow the Government in January 1996. Baré enlisted specialists to draft a new constitution for a Fourth Republic announced in May 1996. After dissolving the national electoral committee, Baré organized and won a flawed election in June 1996.

21. In April 1999, President Baré was overthrown in a coup led by Maj. Daouda Mallam Wanke, who established a transitional National Reconciliation Council to oversee the drafting of a constitution for a Fifth Republic with a French style semi-presidential system. In votes that international observers found to be generally free and fair, the Nigerien electorate approved the new constitution in July 1999. Legislative and presidential elections were held in October and November 1999, in which, Mamadou Tandja won the presidency.

Geography

22. The Republic of Niger covers 1,267,000 square kilometers (490,000 square miles). Landlocked, it is bordered by seven countries - Algeria and Libya to the north, Chad to the east, Nigeria and Benin to the south, Burkina Faso to the southwest, and Mali to the west. Niger is in the heart of the Sahel, the transitional zone between the tropical West African coast and the Sahara Desert. Northern Niger is part of the Sahara, with vast expanses of rocky and sandy wilderness broken only by occasional oases. From north-central Niger to its northeast corner are the Air and Djado Mountains with peaks rising to 1,850 meters (6,000 feet) while partially arable savanna is found south of the 15th parallel.

Economy

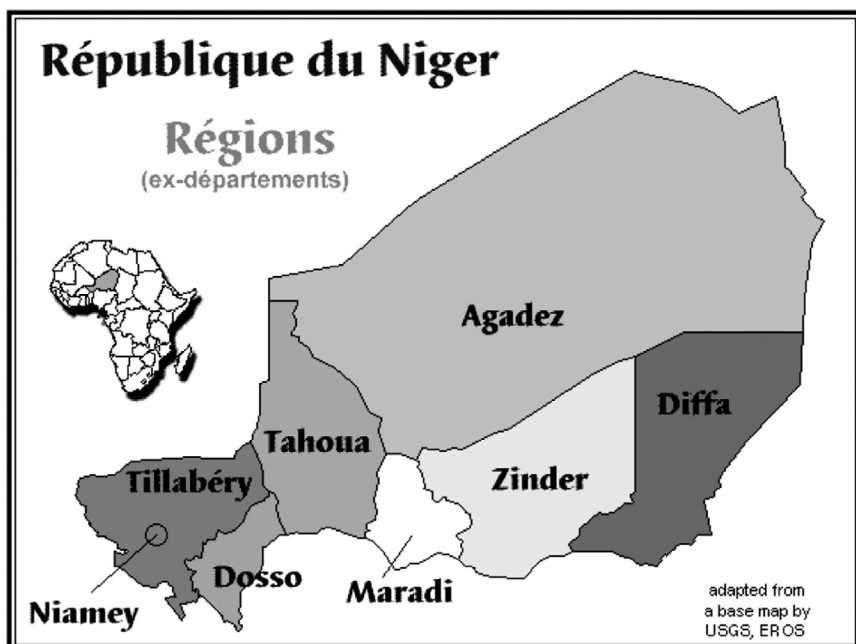
23. It is commonly said that Niger is one of the poorest countries in the world, a landlocked Sub-Saharan nation, whose economy centers on subsistence crops, livestock, and some of the world's larg-

est uranium deposits. Drought cycles, desertification, a 3.3% population growth rate, and the drop in world demand for uranium have undercut the economy. Niger shares a common currency, the CFA franc, and a common central bank, the Central Bank of West African States (BCEAO), with seven other members of the West African Monetary Union. In December 2000, Niger qualified for enhanced debt relief under the International Monetary Fund's program for Highly Indebted Poor Countries (HIPC) and concluded an agreement with the Fund on a Poverty Reduction and Growth Facility (PRGF). Debt relief provided under the enhanced HIPC initiative significantly reduces Niger's annual debt service obligations, freeing funds for expenditures on basic health care, primary education, HIV/AIDS prevention, rural infrastructure, and other programs geared at poverty reduction. Nearly half of the Government's budget is derived from foreign donor resources. Future growth may be sustained by exploitation of oil, gold, coal, and other mineral resources.

24. The economy of Niger is overwhelmingly agricultural, with about 90% of the workforce engaged in farming (largely of a subsistence type). The Hausa, Kanuri, and Songhai are mainly sedentary farmers, and the Fulani and Tuareg are principally nomadic and semi-nomadic pastoralists. The leading crops are millet, sorghum, cassava, cowpeas, peanuts, rice, cotton, and onions. Poultry, goats, cattle, sheep, and camels are also raised.
25. Most of the country's few manufactures are basic consumer goods such as processed food, beverages, footwear, and radios. In addition, peanut oil, ginned cotton, chemicals, and construction materials (mainly bricks and cement) are produced. The mining of high-grade uranium ore began in the early 1970s at Arlit in the Aïr Massif. Small quantities of cassiterite (tin ore), low-grade iron ore, phosphates, natron, salt, and coal are also extracted. The leading imports are textiles and clothing, machinery, cereals, motor vehicles, and petroleum products; the chief exports are uranium ore, livestock products, cowpeas, onions, and cotton. The principal trade partners are European nations (especially France), Nigeria, and Japan.

Population and Administrative Regions

26. With a population of about 11,665,937, as of July 2005, the age structure of Niger was as follows:
- 0-14 years: 47.3% (male 2,811,539 / female 2,704,498)
 - 15-64 years: 50.6% (male 2,890,119 / female 3,009,281)
 - 65 years and over: 2.1% (male 130,953 / female 119,547)
(2005 est.)
27. There are eight administrative units in Niger called regions. These are: Agadez, Diffa, Dosso, Maradi, Niamey, Tahoua, Tillabéri, and Zinder.



Government

28. The Executive is headed by a President who is Head of State. President Tandja Mamadou (since 22 December 1999) is the current Head of State and the Head of Government, Prime Minister Hama AMADOU, since 31 December 1999, was appointed by the President and shares some executive responsibilities with the President. The President is elected by popular vote for a five-year term. The legislature is a 113 member unicameral National Assembly. Members are elected by popular vote for five-year terms. The judiciary is comprised of the State Court or Cour d'Etat and the Court of Appeal or Cour d'Appel. The legal system is based on the French civil law system and customary law.

Language

29. French is the official language, but only about 10 percent of Nigeriens speak it. Many speak Hausa or Djerma, the two main languages used for communication and trade between ethnic groups. Ten languages have official recognition in Niger: Arabic, Boudouma, Djerma, Fulfulde, Gourmantchema, Hausa, Kanuri, Tamasheq, Tasa-wak, and Toubou. Many people in Niger are multilingual.

International Human Rights Obligations

30. The Republic of Niger is a State party to the African Charter on Human and Peoples Rights which it ratified in July 1986. Niger is also a party to several international human rights instruments, including:
- a. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
 - b. The African Charter on the Rights and Welfare of the African Child;
 - c. International Covenant on Economic Social and Cultural Rights;
 - d. International Covenant on Civil and Political Rights;
 - e. First Optional Protocol to the International Covenant on Civil and Political Rights;

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- f. Convention on the Elimination of all forms of Racial Discrimination;
 - g. Convention on the Elimination of all forms of Discrimination Against Women;
 - h. Convention Against Torture; and
 - i. Convention on the Rights of the Child.
31. The country is yet to ratify the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, and the Protocol on the Rights of Women in Africa. It also has not ratified the ILO Convention No. 169 on Indigenous and Tribal Peoples. The country is a member of the United Nations, the Non-aligned Movement, the Francophonie, the African Union (AU), and the Economic Community of West African States (ECOWAS).

Previous Missions

32. Niger hosted the 33rd Ordinary Session of the African Commission on Human and Peoples' Rights in May 2003.

The People

33. Considerable evidence indicates that about 600,000 years ago, humans inhabited what has since become the desolate Sahara of northern Niger. Long before the arrival of French influence and control in the area, Niger was an important economic crossroads, and the empires of Songhai, Mali, Gao, Kanem, and Bornu, as well as a number of Hausa states, claimed control over portions of the area. Nomads traversed Niger more than five thousand years ago, but little is known of their history. The Tuareg came from the north in the 11th century and established a sultanate in Agadez by the 15th century. Niger served as an important trading crossroad for mighty African empires, including the Songhai Empire of Gao in the 16th century. In the 17th century, Djerma settled as farmers near present-day Niamey. Hausaland (southern Niger and northern Nigeria) became the site of a jihad (Muslim holy war) by the Fulani in the early 19th century, which helped ensure Islam's presence in Niger.

During recent centuries, the nomadic Tuareg formed large confederations, pushed southward, and, siding with various Hausa states, clashed with the Fulani Empire of Sokoto, which had gained control of much of the Hausa territory in the late 18th century. Niger is made up of several ethnic groups including the Djerma, Hausa, Fulani, Tuareg, Beri Beri (Kanouri), Arab, Toubou, and Gourmantche.

The Hausa

34. The Hausa constitute over 60% of the total population, or about 6 million people. They live predominately in south-central Niger and tend to be farmers, petty traders, and merchants. Hausa is one of the most important languages in West Africa, largely because Hausa traders - well known for their entrepreneurial spirit - have established a commercial network that stretches across the subcontinent. The Hausa population in Niger represents a northern extension of a larger Hausa population - the heartland of this ethnic group is located across the border in Nigeria, where there are over 20 million Hausa.

The Djerma

35. The Djerma (also called Zarma) are an ethnic subgroup of the Songhai people, whose great kingdom in the 14th and 15th centuries embraced what is now Mali and western Niger. They represent over 2 million people or 22% of the total population. They live in the southwestern part of the country along the Niger River and because Niamey, the capital, is in their homeland, the Djerma constitute the majority of Niamey's over 350,000 inhabitants. Traditionally, farmers and fishermen, the Djerma-Songhai were first to benefit from the French education system, established in the late 1940s. As a result of educational opportunities, the Djerma have had a strong influence in central government with members of its ethnic group tending to become civil servants as the public sector rapidly expanded after independence.

The Fulani

36. The Fulani constitute about 8.5% of the Nigerien population (782,000 people) and like the Hausa, are part of a broader ethno-linguistic group that extends beyond Niger's borders. Most of the Fulani live in the south-central part of the country and combine agriculture with livestock raising. A second, smaller group of the Fulani, known as Wodaabe, consists of nomadic cattle herders who live in the pastoral zone and subsist entirely from livestock raising. Preferring to maintain their nomadic heritage and lifestyle, the Wodaabe are the sector of the population least integrated into modern Niger.

The Tuareg

37. The Tuareg represent another 8% (736,000 people) of the population and are also largely nomadic. Of North-African origin, traditional Tuareg society was quite hierarchical and oriented towards wars and raiding. However, the old social order was largely dismantled by the French after they crushed a series of Tuareg revolts against colonial rule in the 1910s. The slaves of the Tuareg, known as Bouzou or Bella, were liberated by the French and are now sedentary farmers. The devastating drought of the early 1970s that wiped out one half of the national herd, forced many Tuareg to abandon nomadic livestock raising and go to urban centers in search of work. Though literate in their own script (tifinagh), most Tuareg have not had a "modern" education. In Niamey, one can find many examples of their skill as silversmiths and leather craftsmen.

The Kanuri

38. The Kanuri or Beri Beri, represent about 4.3% of the population, or 395,600 people. They live in the southeastern part of the country between Zinder and Lake Chad. Of diverse ethnic origins, the Kanuri's main economic activities include farming, fishing and livestock.

The Toubou

39. The Toubou is another nomadic community in Niger that faces similar conditions as the Tuareg and Fulani as a result of their nomadic lifestyle. The Toubou of Niger (1.2%) are spread out between the area north of Gouré, north of Guigmi and Kaouar. They form a small minority and are supposed to have originated in the rocky regions of Tibesti.

PART II

Indigenous Populations/Communities in Niger

40. Groups claiming indigenous status in Niger include the Tuareg, Bororo, Wodaabe and the Toubou (Teda and Daza). Bororo and Wodaabe, are two names for the same group of people, who are also part of the larger Fulani language and cultural group. They are the groups who most adhere to their traditional nomadic culture and identity.
41. In its Report adopted by the African Commission at its 34th Ordinary Session in November 2003, the Working Group on Indigenous Populations/Communities recognises, amongst others, the Tuareg and the Fulani as indigenous in the Republic of Niger. This report will predominantly focus on these two groups, but other indigenous populations will also be included in the report where relevant. The Working Group uses two main criteria in identifying indigenous populations – originality and self-identification.
42. Given the extensive and complicated history of human migration within Africa, being the “first peoples in a land” is not a necessary pre-condition for acceptance as indigenous peoples. Rather, indigenous identity relates more to a set of characteristics and practices than priority of arrival. For example, in the case of Niger, several populations of nomadic peoples such as the Tuareg and the Fulani now inhabit areas in which they arrived comparatively late; their claim to indigenous status (endorsed by the African Commission on Human and Peoples’ Rights) is based not on first arrival, but rather on their socio-political and economic marginalisation and exclusion as nomadic peoples in states and territories dominated by sedentary agricultural peoples.

43. The concept of 'indigenous peoples' in Niger is therefore not linked to any notion of 'first peoples' or anteriority of occupation. As with other groups, such as the Maasai, the classification of the Tuareg and the Fulani as 'indigenous peoples' is linked to a number of other factors, among them:
- i. commitment to a nomadic pastoralist culture and identity;
 - ii. marginalisation from the dominant political and economic system as a result of non-agricultural economic base and traditional cultural identity; and
 - iii. claim to specific territory – including a close relation between culture and particular biodiversity / ecological specificity
44. Their claim for collective rights as indigenous peoples therefore arises from their marginalisation as nomads, first under colonialism and then later by independent states, all of which are dominated by sedentary agricultural peoples living in the South of the country.

Profile of the Tuareg

45. Most historians consider the nomadic Tuareg as the first inhabitants in the Sahara region. In the 11th century, Tuareg migrated from the Sahara Desert to the Air region of Niger, where they later established a state centered at Agadez. Agadez was situated on a major trans-Saharan caravan route that connected North Africa with present-day northern Nigeria. In eastern Niger, Bilma, a salt-mining center, was on another important trans-Saharan route that linked North Africa with the state of Bornu (located in present-day north eastern Nigeria). In the 14th century the Hausa (most of whom lived in what is now northern Nigeria) founded several city-states in southern Niger. In the early 16th century, much of western and central Niger came under the Songhai empire (centered at Gao on the Niger River in present-day Mali), and after the fall of Songhai at the end of the 16th century eastern and central Niger passed to Bornu. In the 17th century, the Djerma people settled in south west Niger near the Niger River. In the early 19th Century, the Fulani gained control of southern Niger as a result of the holy war waged against the Hausa by the Muslim reformer Usuman dan Fodio.

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46. Tuareg history begins in northern Africa where their presence was recorded by Herodotus.⁴ Many of them slowly moved southward over the last 2,000 years in response to pressures from the north and the promise of a more prosperous land in the south. Today, many Tuareg live in sedentary communities in the cities bordering the Sahara that once were the great centers of trade for western Africa. Although most Tuareg now practice some degree of Islam, they are not considered to be Arabs.
 47. Historically, Tuareg society was divided between those who tended the land and those who did not. At one time, tilling the land was considered the work of the lower classes, while the upper classes reaped the benefits of trading. Usually groups of sedentary Tuareg would pay allegiance to a locally appointed headman, who in turn would report to the noble who considered the village his domain. As time has passed, however, these sedentary farmers have been able to accumulate wealth while the trans-Saharan trade routes diminished in importance.
 48. Within their society, the main division is between the noble class (Ihaggaren or Amaher) and the vassal classes (Imrad). In the past, each of the noble tribes with its respective vassals formed a political unit, under a chief whose authority was symbolized by a drum. The drum chief held supreme political and judicial authority in the drum group, and it was he who had to regulate all relations between nobles and vassals within that unit.
 49. The Tuareg, despite their remarkable cultural and linguistic unity are split into several tribes in Niger, the main ones of which are the Kel-Aïr, living mostly in the Aïr; the Kel-Gress, today concentrated in the Madaoua and Konni regions; the Iwilli-Minden, who live in the Azawak region; and the Immouzourak, with Tanout as their stronghold. They speak their own language, Tamasheq, with its own unique alphabet, Tifinagh. The Tuareg are part of the indigenous Amazigh peoples (generally known as the Berbers). They live mainly in southern Algeria, northern Mali and in Niger, with pockets of them found in Libya, Burkina Faso and Mauritania. Their

4) Herodotus of Halicarnassus (Greek) was a historian who lived in the 5th century BC (484 BC-ca. 425 BC). He is known for writing *The Histories*, a collection of stories on different places and people he learned about through his travels.

precise numbers are not known but estimated at between 300,000 to 3 million. The southern Tuareg of Niger probably number about 736,000.

50. There are more than 60 different clan groups within the Tuareg world. Some groups are regularly transhumant with their livestock. Some groups are more urban based. A few groups have become horticulturalists in the area of the Niger River. Gender relations are more equal in Tuareg society than among agriculturalists. Women play a key role in maintaining cultural heritage and language. Blacksmiths form a particular class of people within Tuareg society and are associated with silver-smithing, trade and dance performance.
51. Grouped into independent federations, the Tuareg are divided into northern and southern groups. These groups are stratified by social class, which is determined by matrilineal descent. They are divided into nobility, upper classes, and lower classes. Nonetheless, the Tuareg share one worldview, value system, and culture.
52. Amongst the Tuareg are groups of people who are the descendants of slaves. These people are usually of some other origin and culturally integrated into the Tuareg language, culture and economic network. They are referred to as *Bella*.⁵ It is not clear that Bella groups have an organised civil society and how they feel about Tuareg organisations. Both the Amazigh Commission and the leading Tuareg associations have denounced any form of slavery.
53. Before the arrival of the Europeans, most Tuareg were nomadic stockbreeders, with large herds of camels, cattle, sheep and goats. Many Tuareg remain nomadic, moving their herds between dry and rainy season pastures, according to the quality and distribution of rainfall. Rainfall is irregular, and persistent vegetation cannot generally exist outside river valleys and depressions. Pasturage is either very sparse or very scattered, so that people are continually breaking up into small and highly mobile camp units. They move at intervals of between a week to a month, always within the territorial limits of the tribe.

5) The delegation was informed that the term "*Bella*" is a pejorative Djerma word meaning *lower class*, and that in the Tuareg vocabulary there was no such word. In a meeting with Tuareg NGO representatives in Agadez, the claim of slavery within the Tuareg society was refuted. They claimed there were only vestiges of slavery.

54. Unfortunately, the drought of recent years and the resulting reduction of grazing land, coupled with the development of mining in the Agadez region, are slowly but surely inducing the Tuareg to lead a settled life. Many engage in market gardening in the oasis and seek temporary employment in the mining areas.
55. Most of the emerging civil society in Tuareg culture is focusing on poverty alleviation and the ability to help nomads survive and remain mobile. Some groups feel that globalisation and government hostility necessarily requires sedenterisation. Others feel that this is a form of assimilation that will destroy Tuareg society.
56. Like the Fulani, the Tuareg claim to 'indigenous peoples' status arises not from being the first in the territory. It arises from the specificity of their nomadic lifestyle and heritage and the consequent marginalisation from the emerging nation-state, first by the French colonial system and later by the modern Niger State.

The Tuareg rebellion

57. After independence, the situation of the Tuareg in Niger did not improve, as they remained physically, politically, economically, and socially isolated from the new country's centers of power in the south. Governments dominated by the Djerma/Songhai ethnic groups since 1946 had subordinated the Tuareg and prohibited the public use of Tamasheq, the Tuareg language. Tuareg were also drastically affected by the desertification of the Sahel during the droughts of 1968-74 and 1984-85, with the resulting diminished sources of goods and income from trading. Many were forced to migrate to cities, where they were culturally and economically alienated. Completely impoverished, many lived in refugee camps outside of major cities in Niger and Mali. Others migrated to Algeria and Libya.
58. In the 1980s the Government promised resettlement projects if the Tuareg would return from Algeria and Libya. Those projects never materialized, and the Tuareg who returned found instead a hostile

political climate throughout the region. When they spoke out about their dissatisfaction, they were met with repression at the hands of State authorities. The Government refused to assist the drought-stricken Tuareg regions, while they expropriated humanitarian assistance funds designated for the Tuareg by external donors, failed to inform the international community of the gravity of the situation, and in general ignored Tuareg needs, while directing most development funds to projects affecting non-Tuareg populations.

59. Dissatisfaction with the Government, which had been building for the last several decades, erupted in the form of Tuareg insurgency in the spring of 1990. In April and May of 1990, Nigerien officials arrested hundreds of Tuareg for attacks on official buildings. Several dozen people were killed in fighting, and the violence escalated from there. Government officials saw the Tuareg as a security threat, while the Tuareg feared torture and execution by the Government.
60. According to Tuareg activists the conflict was around the northerners' frustrations over the abuse of power by southern elites. They claimed the north was being drained of resources and corruption was widespread in Government. The Government had extracted great wealth out of the uranium price boom, and failed to translate this into any sustainable development in the north. When this was combined with heavy handed attempts at controlling the people in the Tuareg region, it led to full scale conflict. The conflict was bloody, involving extreme human rights abuses, and was for the most part ignored by the world media.
61. Tuareg people were hunted down, executed publicly in Gao. There were eyewitnesses to extreme use of torture, executions and mass burials. Tuareg people had to flee all urban areas. Some ended up in Burkina Faso.
62. The armed conflict ended in 1995-96, with the signing of peace accords in both Niger and Mali. The refugees returned but little effort was made by either Government to help people resettle or address any of the concerns that led to the original conflict. The Niger Government has included a small group of rebels in the Government.

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63. Some progress has been made in implementing certain provisions of the peace accord, such as a limited reintegration of former rebels into the police and military. As an example of the Government reintegration plan, in 2003, many of the Republican Guard members were former Tuareg rebels. Consistent efforts at negotiation, some efforts at reform and transnational support for peaceful change all mitigate against another Tuareg rebellion in the near future.
 64. What is clear however is that the origin of the conflict has not been addressed. The economies of the north are vulnerable. At the heart of the 1990 Tuareg uprising was the protection of Tuareg culture, and the nomadic way of life, which sustains that culture. Thousands of Tuareg affected by drought were forced to abandon their nomadic lifestyle.
 65. By early 1997, all major Tuareg factions claimed to be committed to a peaceful resolution of their differences with the Government. Yet claiming the Government had not fulfilled its obligations, and that the Government had launched a massive military assault on Tuareg strongholds in the Lake Chad region, the Tuareg resumed their armed struggle against the Government in September 1997. Following a month of heavy fighting the Government recommitted itself to peacefully resolving the dispute. After creating a new timetable for disarming and integrating Tuareg into Niger's military and police forces the country was relatively stable for the rest of 1997 through 1998.
 66. In a nutshell, many of the grievances that sparked the 1990 uprising have not yet been resolved. The Niger Tuareg still want greater regional autonomy in addition to increased funds for development projects and increased economic opportunities. Cultural grievances, especially regarding language, are also still salient.

Profile of the Fulani

67. This term refers to transhumant Fulani/Peul/Fulbe (equivalent terms). These Fulfulde speaking people have apparently occupied the Sahara for over 6,000 years. They seasonally migrate across West

Africa with their livestock. They hold strongly to their traditional value system and avoid involvement in political activities. Their civil society is very weakly organised. They have increasingly been associating with Tuareg initiatives to fight poverty and help nomadic peoples represent their issues. It is important to emphasise that few Bororo groups have yet affiliated to the indigenous peoples' movement. Some Fulani are sedentary and not in a vulnerable situation relative to their nomadic neighbours.

68. The Fulani, together with their herds, are concentrated in the Dosso-Agadez-Maine-Soroa triangle. Some have also settled in the west, around Téra, Say and Niamey and they predominate in certain parts of Maradi, Tessaoua, Mirriah and Magaria districts, where they live alongside Tuareg and Toubou.
69. The Fulani people are the largest nomadic group in the world. Along with the Tuareg, they are the two largest nomadic groups in Niger. Like the Tuareg, they also have long-standing customs and traditions which are very much alive today. But in spite of their great concern to maintain their specific social structure, they have often come under the influence of neighboring populations so much so that the Fulani in one area may differ slightly from those of another, depending on where and with whom they live. Ethnic unity, however, has never been destroyed.
70. Within this major category there are the Bororo Fulani, living in the Dakoro-Tanout region, who are all nomadic herders spending the entire year seeking good grazing. They practice the cult of beauty and pay great attention to bodily care, expending considerable effort on enhancing the attractiveness of their faces, adding sparkle to eyes and teeth. They have an amazing taste for decoration, though it is mainly the men who spend most of their time in such pursuits. Clothing, on the contrary, is relatively scanty, though here again the taste for decoration is apparent in the amount of jewelry worn: earrings, intricate hairstyles interwoven with coins, bead necklaces and multicolored charms. Every year the Bororo organize a traditional and colorful festival known as the Gérewol, which is the occasion for celebrations, engagements, 'kidnappings of wives', and baptisms.

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71. As an indigenous group the Fulani actually contain a large number of people from diverse groups who were conquered and became a part of the Fulani through the spread of Islam.
 72. The original Fulani however are of North African or middle eastern origin. They are known as “white people” to many Africans. The first group of people in West Africa to convert to Islam through jihads, or holy wars, they were able to take over much of West Africa and establish themselves not only as a religious force but also as a political and economical force. Through their nomadic lifestyle, they established numerous trade routes in West Africa.
 73. The most important object in Fulani society is cattle, and there are many names, traditions, and taboos concerning cattle. The number of cows a person owns is a sign of his wealth. This has caused significant conflicts between the Fulani and other ethnic groups. The reason for this is that the cows will many times go into the fields and eat the grain of local farmers. The Fulani are increasingly forced to settle in farms and villages, and this puts them at risk of losing their livelihoods and identity as nomads.
 74. The Fulani normally raise large amounts of cattle and have therefore settled in large plain areas of Mali, Niger, Burkina Faso and Guinea. The Fulani hold to a strict caste system. The 4 caste subdivisions are the nobility, merchants, blacksmiths, and descendents of slaves of wealthy Fulani.
 75. The two most significant factors in Fulani political systems are cli-entage and competition. In order to gain political office a Fulani man would have to compete among his fellows for the right to rule. He could show his political favour by demonstrating that he had a large following in the form of individuals and families. By agreeing to become the client of a powerful man or family, a subject would offer tribute in the form of gifts and political support in exchange for the security of knowing that a person with political power would be looking out for the interests of the subject.

76. Fulani religion is largely, if not wholly, Islamic. Although there are varying degrees of orthodoxy exhibited throughout Fulani society, most adhere to at least some of the basic requirements of the religion. It is usually the case that the wealthy and powerful are among the most religious, while those who have fewer resources are less likely to observe their religion so strictly.
77. Like the Tuareg, the Fulani claim to 'indigenous peoples' status arises not from being the first in the territory. It arises from the specificity of their nomadic lifestyle and heritage and the consequent marginalisation from the emerging state, first by the French colonial system and later by the modern Niger State.

Profile of the Toubou

78. The Toubou are another nomadic community in Niger that faces similar conditions as the Tuareg and Fulani as a result of their nomadic lifestyle. The Toubou of Niger (1.2%) are spread out between the area north of Gouré, north of Guigmi and Kaouar. They form a small minority and are supposed to have originated in the rocky regions of Tibesti.
79. The Toubou are subdivided in two separate people, the Teda and Daza. They are believed to share a common origin, but speak now two distinct if clearly associated languages, Tedaga (Téda Toubou) and Dazaga (Daza Toubou). Of the two the Daza are the numerous, being app. 310,000 persons, while the Teda are only 42,000.
80. The majority of Toubou live in the north of Chad around the Tibesti mountains ('Toubou' means 'man from Tibesti'). Numbering roughly 350,000, they are Muslim. Most Toubou are herders and nomads, though many are now semi-nomadic. Their society is clan-based, with each clan having certain oases, pastures and wells.
81. Toubou life centers on their livestock (their major source of wealth and sustenance) and on the scattered oases where they or their herders cultivate dates and grain. In a few places, the Toubou (or more often members of the Haddad group who work for them) also mine salt

and natron, a salt like substance used for medicinal purposes and for livestock.

82. The Toubou family is made up of parents, children, and another relative or two. Although the husband or father is the head of the household, he rarely makes decisions without consulting his wife. When he is absent, his wife often takes complete charge, moving family tents, changing pastures, and buying and selling cattle. Although Toubou men may have several wives, few do. Families gather in larger camps during the months of transhumance. Camp membership is fluid, sometimes changing during the season and almost never remaining the same from one season to the next.
83. The ownership of land, animals, and resources takes several forms. Within an oasis or settled zone belonging to a particular clan, land, trees (usually date palms), and nearby wells may have different owners. Each family's rights to the use of particular plots of land are recognized by other clan members. Families also may have privileged access to certain wells and the right to a part of the harvest from the fields irrigated by their water. Within the clan and family contexts, individuals also may have personal claims to palm trees and animals. Conflicts are resolved in several settings. Murder, for example, is settled directly between the families of the victim and the murderer. Toubou honor requires that someone from the victim's family try to kill the murderer or a relative; such efforts eventually end with negotiations to settle the matter. Reconciliation follows the payment of the *goroga*, or blood price, usually in the form of camels.

PART III

Issues Raised during the Meetings

84. At each meeting, the Head of Mission briefed participants about the African Commission, in particular, the process leading to the adoption of the African Charter on Human and Peoples' Rights in 1981, the establishment of the African Commission on Human and Peoples' Rights, the activities/mandate of the African Commission and the process leading to the establishment of the Working Group on Indigenous Populations/Communities.
85. After explaining the mandate of the Working Group and the purpose of the mission, the Head of Mission then informed participants that the delegation wanted to know whether there were incidences of marginalization, discrimination, exclusion or any form of human rights violation based solely on the fact that certain individuals, groups or communities were from a particular indigenous community, or from an ethnic, linguistic or cultural background, or because they lived a particular lifestyle.
86. Commissioner Rezag Bara urged participants to be frank and open so as to assist the delegation gather as much information as possible to enable it make an informed assessment of the situation of indigenous populations in the country and formulate appropriate recommendations to the Government.
87. In each of the meetings, participants raised various issues on human rights in general and the situation of specific communities or groups in particular. The diverse background of the groups met inevitably meant the delegation would get diverse views on the issues of indigenous rights in the country. Issues raised by participants ranged from the denial of the notion of indigenous populations in the country, poverty, lack of resources, underdevelopment, rapid encroachment

of the desert, conflict between herdsmen and farmers, the problem with the *code rural*, traditional leadership, slavery, the question of land ownership, water points for cattle, the *couloirs de passage*, etc.

a. The Notion of Indigenous Populations

88. The notion of indigenous populations seems to be a very sensitive, if not a taboo subject in Niger. Government officials as well as some NGOs frowned at the notion and questioned why the delegation thought some people were indigenous while others were not. In Dosso, Tahoua, Agadez and Zinder, NGOs wanted to know the African Commission's definition of indigenous populations and the criteria used in determining indigenous populations in the country. Most members of civil society in the country claimed the use of the word *indigenous*, in its meaning in the French language, was offensive to Niger culture and tended to divide the Niger people. It is important to point out that the meaning of "indigène" in its meaning in French is widely perceived as pejorative, if not insulting. They were in favour of phrases such as pastoralists, ethnic communities, local inhabitants or minorities, rather than indigenous populations.
89. The non-acceptance of the notion of indigenous populations finds strong expression within the Government as well. According to the Government, all the citizens of Niger are one and there was no reason to speak of some being indigenous as this would create a sense of separation and bring back the memories of the Tuareg rebellion. The Government noted that it didn't want the problems of the country to be dealt with on ethnic lines but rather in a holistic manner, as one people.
90. The Government believes the notion is foreign to Niger as the citizens are one and indivisible and were promoting a system of high social cohesion. According to the Government, no group can claim to be indigenous and any such claim is a recipe for social disintegration. Nevertheless, there are groups in Niger which identify themselves as being indigenous, and who find this term appropriate for advancing an improvement in their human rights situation.

b. Poverty, Lack of Resources and Climatic Change

91. It was the view of most of the organizations, including government officials that the problems associated with inter-community conflicts were caused by poverty, lack of resources and the underdeveloped nature of the country. The NGOs believed that because the country is poor and underdeveloped, coupled with the high poverty rate amongst its citizens and the scarcity of resources, there was competition for the limited resources available. This competition has been made worse by the worsening climatic condition that has resulted in rapid desertification over the years. Both grazing land for cattle and agricultural land for food crops have drastically been reduced, water points and fresh grass have become more and more scarce. This phenomenon accounted for the many conflicts that had pitted herdsmen and farmers over the years.

c. Land Ownership

92. The problem of land ownership was raised in almost all the regions the delegation visited. It was indicated that the Fulani are the most affected due to their lifestyle. The delegation was informed that across the country and in the Diffa region in particular, the Bororo herdsmen are usually deprived of their land by other sedentary groups, including other groups such as the Toubou and Fulbe. Being nomadic pastoralists, the Fulani leave with their cattle in search for pasture and water in far away places and can sometimes be away for more than a year. According to the NGOs, when the Fulani leave their usual place of residence in search of pasture, their land is usually occupied by the more dominant sedentary groups who later claim the land to be theirs. When the Fulani return they find themselves without land. This has always resulted in conflict between the Fulani and their sedentary neighbours. Local authorities have been made aware of this development but no steps had been taken to remedy the situation. The *Association Nationale de Défense des Droits de l'Homme* (ANDDH), a local NGO with branches across the country, has taken the matter to the traditional courts, but no solution has been found to the problem.

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93. The NGOs indicated that there was a general conception amongst the sedentary population that nomads, especially the Fulani, have no right to land because they are never in a fixed area. In the Dosso region for example, the delegation was informed that there was a general conception that because the Fulani were nomadic, they had no right to land in any particular area.
 94. Commissioner Rezag Bara encouraged the NGOs to seize all the domestic legal and administrative processes, and if a solution is not found, the matter could be brought to the African Commission.
 95. The inability of local authorities to prevent the seizure of Fulani land by other dominant sedentary groups helps to endorse this conception. To this end, dominant groups such as the Hausa and Djerma have always seized land presumed to belong to the Fulani for generations.
 96. Another area of concern was the plight of the "Mohammad Arabs" found in the Diffa region along the border with Chad. It is believed that the Mohammad Arabs crossed into Niger from Chad in the 1980s. Upon their arrival they are said to have antagonized the relationship between the Toubou and Fulani in order to find a place for themselves in the community. They succeeded in pitting these two communities against each other and found a place to settle. However, after more than twenty five years of staying in Diffa, the residents of Diffa are beginning to reject them for not being Niger citizens. They therefore have difficulties accessing land and other natural resources for their herds.
 97. The lack of resources and the continued clamour for scarce resources in this region is a potential for serious crisis which some politicians have exploited. There were reports of conflicts between the Kunari and the Toubou in the region.

d. Couloirs de Passage

98. The migration route through which the herdsmen move their herds in search of water and pasture is a passage route, of about 50 meters wide, that the nomads rely on when moving their cattle. Water supplies and the quality of the grass on the migration route as well as the health conditions of the animals are key factors for the herdsmen.
99. The delegation was informed that in Niger, these migratory routes, commonly referred to as *couloirs de passage* were the main source of conflict between farmers and herdsmen. Farmers said the conflicts usually occur because the herdsmen do not respect the conditions of the *couloirs de passage*, noting that when a couloir de passage is established, it is done with the agreement of both parties and a period is usually set for nomads to pass with their herds, usually after harvest, but in some cases nomads try to pass with their cattle before the period set. This results in the cattle destroying the crops of farmers which ultimately leads to conflicts.
100. The President of the *Association d'Eleveurs* (Cattle Breeders' Association) noted that the corridors were too small and the greatest problem facing herdsmen was keeping their cattle without sufficient pasture and water to feed them with. On his part, the President of the *Union de Cooperatives d'Agriculteur* (Association of farmers' cooperatives) argued that the corridors were large enough (there are about 12 corridors in the country each about 50 meters wide) and noted that the problem was lack of sensitization. He said those nomads who were sensitized knew when to take their herds through the corridor while those who were not sensitized usually took their herds through the corridor at any time causing massive destruction to crops. He said there were insufficient measures taken by the herdsmen to prevent the destruction of their crops by cattle.

e. Slavery

101. Another issue that was raised in almost all the regions, sometimes in relation to the situation of indigenous populations, was the ques-

tion of slavery in Niger. The delegation was informed that the practice of slavery was still common in the country and that there were about 400 people being held as slaves in the Dosso region alone. TIMIDRIA, a local NGO campaigning for the abolition of slavery in the country, indicated that villages were divided between nobles and serfs and that the slaves were rejected in society and deprived of land. It was also indicated that the Dosso Municipality had appointed a certain lady to represent her village, but she was rejected by residents of her village because she was considered a slave in the village.

102. In Tahoua, the delegation was informed that there were some areas where people considered as slaves could not go to graze their animals and that some of them were usually prevented from participating in elections. It was further indicated that in the district of Dabala, in the Tahoua region, a man beat up a woman he considered his slave and he was sentenced to only five days imprisonment.
103. It is worth noting that slavery has been abolished in Niger but some human rights NGOs say that the laws prohibiting it are seldom enforced. The 2005 report of the US State Department notes that the labour code prohibits forced or compulsory labour, except for legally convicted prisoners, and slavery is prohibited. However, the report continued, there were reports that such practices occurred. A traditional form of caste-based servitude was still practiced by the Tuareg, Djerma, and Arab ethnic minorities, particularly in remote northern regions and along the border with Nigeria.

Challenges Facing Indigenous Communities in Niger

104. The indigenous populations of Niger face several problems and challenges. Drought, deforestation, soil degradation, militarization of the region, and exceedingly low literacy are major challenges facing the indigenous nomadic peoples of Niger. But perhaps one of the major challenges is the Government's continued denial of the existence of indigenous populations in the country. The Tuareg, Fulani and Toubou are not considered as a minority or marginalized com

munities but rather treated like any other community in the country despite the problems associated with their nomadic lifestyle.

a. Denial of the Notion of Indigenous Populations

105. There is no indication that the Government has any deliberate policy aimed at jeopardizing the activities of indigenous communities. However, by rejecting to recognize the indigenous communities, the Government also fails to realize the peculiar difficulties associated with their lifestyle as indigenous peoples and as such cannot adopt appropriate policies to deal with those difficulties.
106. There is no indication that the Government has deliberately failed to provide social services including education, and health care in certain regions because of their lifestyle. Most indigenous and especially pastoral communities are communities on the move and these movements affect the development, especially educational development of their children. Some parents, especially in the Fulani groups, place very little value to education and politics. As a result, there are fewer formally educated Tuareg and Fulani than there are in sedentary groups such as Hausa and Djerma. The Government is trying to promote mother tongue education especially for the first three years of education, and is promoting the use of national languages in non-formal education. However, these programmes are still being developed and have not been implemented.
107. In the political arena, nomadic communities such as the Tuareg and Fulani are also less represented than their sedentary counterparts. With the rapid decline in grazing land and changing climatic condition, many nomadic communities are abandoning their pastoral lifestyle into tertiary activities and some joining politics. In the case of the Tuareg, many of them were incorporated into Government as part of the 1995 peace agreement and this spurred their interest in politics. As a result there are Tuareg in the National Assembly, as leaders of political parties and most of the Councils in the Agadez region are headed by Tuareg. Through political participation, they can be able to improve their conditions of living.

b. Climatic Problems and Conflict

108. Economic and ecological factors are among the greatest challenges facing the nomadic peoples in Niger. Continued desertification in the Sahel threatens the limited grazing land under their control. Ecological factors have sparked a scarcity in grazing areas and water sources leading to conflict between herdsman and other communities. Land use conflicts between farmers and herders have always resulted in deaths and injuries. This is confirmed in the 2005 report of the US State Department which noted that disputes between herders and farmers over land tenure and grazing areas resulted in deaths during 2005, and on May 6, in western Dosso region, such a dispute resulted in 11 deaths and 12 injuries and on June 3, in a village in Tillaberi region, riots erupted over the sale of subsidized food.
109. In the worst clash between Hausa and Fulani communities since 1991, 11 Fulani were killed and 30 wounded near the village of Fassi in the Gaya district, Dosso region in the South West of Niger, when Hausa farmers attacked Fulani herdsman who were grazing their herds on their fallow fields. Most had their throats slit or were burnt alive. Dozens of animals were also slaughtered. Scarcity of grazing land has also resulted in fighting among the pastoral/nomadic communities themselves. In 2002, fights over control of these resources broke out between the Tuareg and Toubou communities in which many Toubou were killed, and in October of 2003, the Toubou killed six Tuareg in reprisal killings for the 2002 violence. In November 2005, the Government's High Commission for the Restoration of Peace hosted a reconciliation forum in Tesker for the Tuareg and Toubou communities, which resulted in a reconciliation agreement. The forum was in response to the 2003 violence between the two communities.
110. Pastoralists in Niger have experienced debilitating and recurring droughts since the 1970s. Periodic droughts take a heavy toll on the animals. During droughts, animals die from thirst, hunger, and exhaustion. Drought also has a toll on the pastoralists - it causes social and economic ruins. Hunger, poverty, diseases, and destitution leave

the pastoralists at the mercy of the sedentary society, they are some times displaced or become overly dependent on international relief handouts. Droughts make rain-fed farmers to expand their farms into cultivable pastoral land, thus displacing the pastoralists.

111. During droughts, farmers in Niger have changed from mono-cropping to multi-cropping, while herders have kept goats and drought-tolerant animals in place of cows. Despite steps by the pastoralists against human and natural disasters, drought and desertification continue engulfing pasture tracts. Pastoralists who are incapable of coping with drought-related stresses, or who are unable to absorb the effects of localized catastrophes 'bottom out' to become urban migrants looking for tertiary occupations. As drought sweeps away pastureland, pastoralists abandon herding and switch to farming or full- or part-time wage labouring.
112. Currently, with the constant drought and poor climatic conditions resulting in the loss of most of their cattle, most nomadic communities, especially the Fulani and the Tuareg, tend to develop economic activities less prone to climatic risks, like agriculture, gardening, the craft industry, tourism, etc. They cultivate primarily millet and sorghum. The craft industry in Agadez has made considerable strides thanks to the increase in tourist activities in the region.

c. Land and Water Problems

113. Access to, and rights to land, is a major problem for nomadic populations in Niger. Especially the Fulani people experience land dispossession due to their mobile nomadic lifestyle, as sedentary groups seize their land during the seasons the Fulani migrate to other areas. A key problem is the widespread conception that nomads, especially the Fulani, have no rights to land because they are not sedentary. This conceptualization of who is entitled to land rights discriminates against nomadic populations, and ignores the dynamic inherent in pastoralism whereby sufficient access, and rights, to land is a necessary precondition. The result of such land dispossession is further impoverishment of these communities.

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114. Water is another key issue for pastoralists. Access to water on the migratory route is fundamental for the survival of the nomadic populations and their animals. There is however strong competition between different groups at water points, resulting in difficulties in accessing water points for nomadic peoples. The Water Code mainly secures access for sedentary communities, as it does not take into account the specific way of life of pastoral peoples, and gives no recognition to the controlled access system developed by pastoral communities, including access to traditional wells.

d. Decentralisation

115. Decentralisation can work well for pastoral and agro-pastoral communities. But if they are to benefit, local communities have to appropriate the process and build their capacities to influence local government decision-making processes particularly over land and other natural resources. To do this, they need a thorough understanding of the key legal provisions within decentralisation, pastoral and other sectoral laws. More importantly, they have to understand the issues at stake, develop the capacities to hold local government to account over the manner in which local affairs are managed, and articulate a vision for pastoralism in a manner that can be understood and accepted by policy makers.

e. Security Problems

116. While most of the conflicts over the past years could be associated with access to resources, water points, land resources, grazing land, destruction of crops, etc., a new challenge for peace and tolerance in Niger and most of West Africa has come with the US Pan Sahel Initiative (PSI). Since November 2003, the United States of America has been conducting a military and political campaign in the Sahara that potentially threatens the lives and livelihoods of the indigenous peoples of the region. The stated aims of the PSI are to fight against Al Qaeda affiliated terrorist training allegedly taking place in several Saharan states. PSI is intended to improve the military and border-security capacity of West African states. The initiative is rekindling

conflict between State authorities and indigenous nomads who need to travel long distances and sometimes cross borders with their livestock.

117. Regional experts think the US strategy could backfire. Stephen Ellis, an Africa expert at the University of Leiden in the Netherlands, said he was concerned that the US-led crackdown on terrorism could simply fuel existing tensions in the region, noting that “initiatives such as this threaten the Tuareg’s very means of living...life in the desert has been very difficult, especially since the 1973/74 drought. People have been obliged to live from other revenue sources such as tourism, State subsidies and banditry”⁶.
118. Although peace deals were reached in 1995 and hundreds of Tuareg rebels were drafted into the government security forces, the lot of the Tuareg people has not improved significantly and tensions remain more than a decade later. According to the Office for the Coordination of Humanitarian Assistance (OCHA), “the peace agreements signed after the Tuareg rebellions were not respected, reintegration was not implemented, the political systems did not take into account the aspirations of the inhabitants,”⁷ said de Lys, an OCHA representative.
119. Some analysts warn that a line must be drawn between these domestic upsets and the international militancy of groups like Al Qaeda. They point out that it is tempting for African governments under domestic pressure to cast their home-grown problems as part of the global war on terror: “There is a risk of confusing Tuareg claims motivated by economic and political discontent with armed movements following ideological militancy”; “One should not mix up the Tuareg with the terrorists”; “The Tuareg are opposed to religious fanaticism. They are Muslim by conformity, not by conviction.” Tackling more fundamental problems in the region, like food, water and jobs, would therefore prove a better use of time and money by the US.

6) Famine Not Fanaticism the Real Enemy in West Africa, *IRIN News Report*, October 20, 2004.

7) *Ibid.*

f. The Problem of Border Crossing

120. While there had been major problems with transhumance and caravan trade during the colonial period, national independence led to increased difficulties for the pastoralists. Among other things, it became more difficult to cross borders, due to strict control, with much paperwork and intimidation. The Tuareg community for example, which dominated the Sahara areas before the colonial period, has seen its territory drastically reduced, the territory they formerly controlled is now being shared by at least three nation-states (Algeria, Mali, Niger). The Tuareg have become largely minority in these countries accounting for only 8% of the population in Niger.
121. Tuareg herdsmen who used to move with their herds across these territories without difficulties, now find it very difficult to do so due to the principle of the sanctity of borders used by all the nation-states to deny them the right to associate with their kin who find themselves in different nation-states. Because of the sanctity of borders, Tuareg who usually have no identity cards or travel documents, suffer harassment when they cross borders with their herds. They are often searched and sometimes beaten, imprisoned and bribes are often solicited from them, and failure to pay leads to the loss of resources.
122. This has been going on for a long time and has become the order of the day for all indigenous African peoples who find themselves in different political divides of African states. Their rights are continuously violated, yet they are not aware of the circumstances leading to their being in different political boundaries.

g. Low Literacy Level and Poor Health

123. Another major challenge facing the indigenous and nomadic populations in Niger is the high rate of illiteracy among indigenous communities compared to that of the dominant sedentary communities such as Hausa and Djerma. Education serves as the springboard for social and economic changes. A nation looking for a lasting economic success must raise the literacy of its citizens. According to the 2005

report of the United Nations Population Fund (UNFPA) and the Population Reference Bureau, illiteracy rate, for males of 15 years and over is 73% and 79% for females within the same category; and illiteracy for the age group 15 – 24 is 64% for males and 83% for females. These figures are national averages and among indigenous populations they are much higher.

124. The political scene in Niger is therefore dominated by the Djerma and Hausa ethnic groups due to their higher educational level, which has helped them occupy key positions within the Government and the public service. Tuareg, Fulani with low educational background do not fit in the political and administrative machinery of the country, and are relegated to the background. The Tuareg rebellion does however seem to have brought Tuareg to the limelight of Nigerien politics, as some of them have been appointed in key Government positions and some are members of parliament or leaders of political parties. This is however not the case with the Fulani and Toubou communities.
125. The Government's education and health care programmes for minorities were at the same level as for the rest of the population. It supported the 1995 peace accord calling for special development efforts in the north where the Tuareg population is dominant. However, nomadic people, such as Tuareg and many Fulani, continued to have less access to Government services. Due to their nomadic lifestyle, children have difficulties in attending sedentary schools and the community as a whole experience hardship in accessing hospitals, clinics and other social services as they are not readily available on their migratory routes. Access to water is likewise very difficult.

h. Political Representation

126. The Hausa and Djerma ethnic groups make up approximately 56 percent and 22 percent, respectively, of the country's population. These two groups also dominate Government and business. Tandja Mamadou is the country's first president who is neither Hausa

nor Djerma; however, Tuareg, Arabs, Fulani, Toubou, and Kanouri have few representatives in the Government, and many of these ethnic groups asserted that the Hausa and Djerma groups discriminated against them.

i. Language

127. Article 3 of the 1999 Constitution provides that all communities comprising the nation of Niger shall enjoy the freedom of using their own languages in respect of each other. These languages shall have equal status as national languages. The law shall determine methods of promoting and of formalising the national language. The official language shall be French.⁸
128. The Government has a programme to encourage national languages and has actually encouraged the teaching of mother tongue for the first three years of primary education. The Government has encouraged the broadcasting of news and information in national languages and has encouraged the opening of community radios. There are about 114 community radios in the country, most, if not all of them broadcast in local languages.
129. The problem is that there has been no support for this policy as no infrastructure has been put in place to put this into practice. French is still the language of instruction in all schools at all levels. Through the mobile schools, the Government is trying to follow nomads with children to ensure that the latter get education.
130. In Niger, people are generally multilingual, being able to understand and speak more than one language. The two principal languages spoken are Hausa and Djerma. The fact that there are two main languages encourages people to integrate, but at the same time could lead to the gradual extinction of other languages because the two main languages are those of the two dominant groups – the Hausa have economic power while the Djerma have political power and control the military and the civil service. Even though it is not a government policy to see the domination of one language by another.

8) Article 3, Constitution of the Fifth Republic of Niger. Adopted on 18 July 1999, promulgated on 9 August 1999.

er, the demographically dominant position of these two groups, coupled with their political and economic power could lead to the rapid expansion of these languages at the expense of the others.

Action being taken to address the challenges

131. To deal with some of the above problems and challenges, the Republic of Niger has taken certain measures, amongst them, the enactment of the *Code Rural* (the Rural Code).⁹

a. The Rural Code

132. Since 1985, Nigérien authorities have undertaken a legislative reform process concerning land and natural resources. The commitment of the authorities was confirmed on May 29, 1986, when an ad hoc committee was established to develop a Rural Code. In July 1989, the ad hoc committee was replaced by the National Committee of the Rural Code (NCRC) in order to give further strength to the structure. The operational structure of the NCRC exists through the Permanent Secretariat of the Rural Code (PSRC).

133. Specifically, the Rural Code governs access rights to land and land management; fills the institutional and judicial gaps, notably the uncertainty of farmers and herders as to their rights over land; poses concrete questions regarding social cohesion, notably those that pertain to cultural barriers, to litigation and to the diverse methods of appropriating land; and, places the emphasis on the necessity of securing rural producers and to build their capacity to creatively develop their surroundings. The process of establishing the Niger Rural Code, (a collection of laws dealing with sectoral issues governing natural resource management), informing the population about it, creating the policy framework around it, and setting up the implementation mechanisms took 18 years (1986-1998). These laws do represent a major step forward towards securing better livelihood opportunities for pastoral and agro-pastoral communities in these areas.

9) Ordonnance N° 93-015 du 2 mars 1993 fixant les Principes d'orientation du Code rural.

134. The pastoral laws include positive features to protect nomads. There are provisions, for example, giving herders rights over the common use of rangelands, priority, but not exclusive, rights over resources in their “home areas” as well as rights to compensation in the event of losing their lands to public interest needs.¹⁰ These provisions are an enormous improvement on past legislation which, not only failed to recognise pastoral land use, but also gave priority land use rights to agricultural production, to the detriment of pastoralism. The legal recognition of the right of herders to move with their livestock in search of pasture and water coupled with legal provisions to protect grazing lands and livestock corridors from agricultural encroachment, and to secure herders’ access to key strategic resources such as wetlands in dry lands is therefore very positive.

b. Criticism of the Rural Code

135. The Rural Code has tried to define what constitutes the productive use of natural resources by listing “positive” and “negative” land use activities.¹¹ Most of the “positive” actions involve some form of physical or material investment (e.g. planting trees, establishing private forests, fencing off land)¹² which are heavily skewed towards the agricultural and agro-forestry sectors. Furthermore, the responsibility for establishing whether land is being put to productive use is confided to local land boards, unelected bodies largely composed of civil servants (rarely aware of the complexity of pastoral systems and the interface between livestock and environment),¹³ which only have one pastoral representative.¹⁴ These boards have the power to withdraw access to pastoral land if they consider it is not being put to good use.¹⁵

10) Rural Code Niger (Art. 28. 31)

11) Décret N° 97-006/PRN/MAG/EL du 10 janvier 1997 portant réglementation de la mise en valeur des Ressources Naturelles Rurales.

12) Ced Hesse, ‘Managing the range: whose responsibility, whose right?’ A paper prepared for the regional workshop on “Les approches de la gestion des pâturages et les projets de développement:quelles perspectives?” organised by the Service Allemand de Développement au Niger in collaboration with SNV, ILRI, IRD, AREN Université de Niamey, RDP-Livestock Services, CNRDD and the World Bank, 2-6 October 2000, Niamey, Niger.

13) Ced Hesse and Brigitte Thébaud, Is pastoral legislation disempowering pastoralists in the Sahel?, *Indigenous Affairs* no. 1, 2006.

14) Articles 118, 120, 121 of the Ordonnance N° 93-015 du 2 mars 1993 fixant les Principes d’orientation du Code rural defines the composition of the *Commissions Foncières*.

15) Articles 49 and 50 of the Décret N°97-006/PRN/MAG/EL du 10 janvier 1997 portant réglementation de la mise en valeur des ressources naturelles rurales.

136. These provisions weaken rather than strengthen pastoralists' tenure rights, particularly over high-value resources such as wetlands in dry land areas that are critical to the survival of pastoralism in the country. Pastoralists have little control over the process and are highly dependent on local government officials and technical officers who do not necessarily have a sound grasp of the dynamics and rationale of pastoral systems, and who are frequently vulnerable to political manipulation by powerful groups.
137. Many pastoral communities have a high rate of illiteracy. Education is hardly prioritized and as a result they hardly make informed input on policies and legislation affecting their lives. This has severely undermined the policy and legislative making process. The process of policy design is essentially controlled by the State. Citizens are rarely invited to participate, and if they are, as was the case with the design of the new pastoral law in Niger, insufficient attention is paid to creating the conditions for their effective participation. Not only is the process rather mechanical and driven by central concerns with very short deadlines, but citizens themselves lack the skills to debate the issues and provide alternative policy options backed by strong arguments.
138. This lack of knowledge was demonstrated during the mission. Apart from the government authorities and two NGOs in the capital which made reference to the Rural Code, none of the other participants in the other six regions visited by the delegation referred to it, even though, the Rural Code is supposed to be the basic document regulating their activities.

Confusion in the Legislation

139. There appears to be confusion in the application and/or interpretation of the Rural Code and the Water Code in Niger relating to land and water rights respectively. The Rural Code as earlier noted, governs all resources and socio-economic activities in rural areas, including rangelands and water points, while the Water Code governs water resources only.

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140. The Rural Code states that herders have a right to use rangelands in common and have priority rights in their home areas. This includes both land and water rights. Outsiders may gain access to water and grazing resources on the basis of negotiations with the right holders. These provisions imply that the creation of modern wells must be associated with priority rights on water and grazing resources, and that open-access wells are possible only in no-man's-land situations or on transhumance routes.
141. On the other hand, the principles underlying the Water Code are:
- Access to water for livestock is open to all, including outsiders such as transhumant herders;
 - Construction of water points with an output equal or exceeding 40 m³ per day must be authorized by the regional administration and follow a set of rules;
 - Public water points have to be managed by Management Committees, formally established by the administration and composed of a President, a Secretary-General, a Treasurer and one person responsible for the hygiene of the well and its surrounding area. The total number of Committee members should not be greater than nine persons; and
 - Management Committees are responsible for the general maintenance of the wells and the collection of users fees.
142. Such principles have created a number of problems. The Water Code does not establish a functional link between access to water and access to grazing, as if these resources were independent from each other. The role of Management Committees is limited to the surveillance of the water infrastructure, excluding the use of grazing resources or control over the number of livestock using the well. Their capacity to control access to water and grazing resources is limited. When problems arise, the regional administration intervenes and, if necessary, closes the well. The Water Code gives almost no recognition to the controlled access systems developed by pastoral communities, and traditional wells are not even mentioned. The texts do not take into account the specific circumstances characteris-

ing pastoral life. For instance, mobile communities are not always in a position to maintain their members around the well throughout the year, and the election of additional treasurers and committee members would often be necessary. But the law allows only nine members.

The Promotion of Social Cohesion

143. In a country with about eight major ethnic groups, two major religions and diverse cultures and traditions, lifestyles and customs, it is expected that these differences come into conflict with each other from time to time. The nomadic lifestyle of the pastoralists has always resulted in clashes with the sedentary farmers of the south, for example. However, the Government and the people have promoted various institutions to promote harmony, respect and social cohesion so as to reduce incidences of violence among communities. Principal among these institutions are the promotion of cultural activities such as the *cure salée*, the *gerewol* and the famous expression of *cousinage à plaisanterie*. Whilst such cultural activities can be helpful and relevant, there is also a need for increased political action in order to improve indigenous peoples' situation in Niger.

a. The *Cure Salée* and the *Gerewol* Festivals

144. Every year as the rainy season draws to a close in September, Fulani and Tuareg pastoralists leave their traditional grazing areas with their livestock and head for the plains of Ingal in search of the region's fertile land and salt water, believed to be a natural cure for animals. The area around Ingal is particularly rich in pasture lands and salt water, which is necessary for the animal's health. This seasonal pilgrimage of nomadic pastoralists and their livestock to the healing waters of Ingal is called the *cure salée* (literally: the salt cure). It is this reunion of the Tuareg and Fulani that is celebrated during a week of festivities in Ingal, including the *tinde* - a camel dance, traditional singing and dancing, camel races and beauty contests.

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145. The Fulani manifestation of the cure salée is called the gerewol. Every year during the end of the rainy season, the Fulani/Bororo meet after one year of transhumance to celebrate gerewol. Like the cure salée, the gerewol takes the form of a series of dances, in which young men parade their beauty before the women of the tribe, who select the most appealing, judging them on their looks alone.
146. During these festivities, the Government of Niger takes advantage of this concentration of the nomadic population and sends officials to broadcast health messages, education messages, and also engage in the vaccination of their animals. This event has been turned into a national festival organized by the Government and attracts nomads from neighbouring countries and tourists from across the globe.

b. The Cousinage à Plaisanterie

147. Perhaps the most effective 'institution' in Niger to promote social cohesion is the long established practice of *cousinage à plaisanterie*. This long-established tradition allows different ethnic communities, to insult one another in a joking manner, without hurting each others' feelings. It is considered in Niger as an excellent means of dealing with inter-ethnic problems and has helped to make the society of Niger one of the most tolerant and has promoted peaceful coexistence.
148. Other cultural activities of a national character include *inter alia*: the national youth festival, the national traditional fighting championships, the Hotoungo, the Gangui and the Gossi. The Government believes these ceremonies help bring together peoples of different ethnic groups in the country and through their interaction they strengthen their relationship thus building social cohesion, a development less likely to cause conflicts.

Conclusion

149. This report presents a narrative account of discussions between the delegation of the African Commission's Working Group on Indige-

nous Populations/Communities and major stakeholders working on human rights and indigenous issues in Niger.

150. With a 3.3% population growth rate, Niger has one of the highest growth rates in the world. The agricultural and livestock sectors are the mainstay of all but 18% of the population. Fourteen percent of Niger's GDP is generated by livestock production - camels, goats, sheep, and cattle - said to support 29% of the population. The 15% of Niger's land that is arable is found mainly along its southern border with Nigeria. Rainfall varies and when insufficient, Niger has difficulty feeding its population and must rely on grain purchases and food aid to meet food requirements.
151. A country considered one of the poorest in the world, Niger is inhabited by eight major ethnic groups most of them depending on livestock production for survival. The poor climatic condition - rapid desertification, poor rainfall - has resulted in reduction of grazing land, water points and agricultural land for both peoples and animals resulting in some cases to open conflicts.
152. These difficulties notwithstanding, the Government has adopted policies and put in place mechanisms to minimise the misery that might be caused by these adverse natural conditions. Through laws and policies, the Government has endeavoured to promote a system of non-discrimination. Article 8 of the 1999 Constitution provides that "the Republic of Niger shall be a State founded on law. Equality shall be assured to everyone under the law without distinctions as to sex or social, ethnic or religious background. All beliefs shall be respected and protected. No religion or belief shall claim political power or interfere in affairs of the State. The dispensation of any divisive propaganda of a regional, racist or ethnic character, and any display of racial, ethnic, political or religious discrimination shall be punishable by law. While within the territory of the Republic, foreigners shall benefit from the same rights and liberties as citizens of Niger, according to conditions determined by law". The penal code also prohibits discrimination and punishes defaulters with imprisonment.

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153. The African Commission is of the view that the problem is not the quality of laws put in place or the institutions established but rather, the extent to which these measures improve the lives of the people. Has the Rural Code, for example improved the condition of living of the people, especially the nomads? Has it helped reduce conflicts between nomads and sedentary farmers? Were the people properly consulted in the development of the policies? Has there been an attitudinal change in the conduct of the people? These are some of the questions that the Government and policy makers have to answer to determine the success of their laws. These are some of the questions that the African Commission is seeking answers to when it undertakes a mission to Member States of the African Union.
154. The African Commission recognises that the Republic of Niger has taken several measures to improve not only the rights of access of nomads to water and land resources but also to empower them politically and through education. Schools have been built in almost all the regions, and there are measures to introduce mother tongue education for the first few years of primary school, as well as to encourage them to diversify.
155. Access and rights to land, does however, remain a central difficulty for nomadic populations in Niger. A key problem is the widespread conception that nomads have no rights to land as they are not sedentary. This conceptualization discriminates against nomadic populations, and ignores the dynamics inherent in pastoralism whereby sufficient access and rights to land is a necessary precondition for their livelihood. It is therefore important to take measures to alleviate this situation.
156. Similarly, water rights are also of much importance to pastoralists. Access to water on the migratory route is fundamental for the survival of the nomadic populations and their animals, and it is thus necessary to ensure that pastoralists have access and rights to water.

157. The lack of resources and rapidly declining grazing land occasioned by poor climatic conditions can be said to be one of the primary causes of inter-community conflicts in the country. The competition for meagre resources for both human and animal survival would render laws put in place redundant. It would be difficult, for example, for herdsmen to sit back and watch their herds die of thirst and hunger simply because the law has set a period for them to take their herds to wetlands for pasture. Urgent measures should be taken to stop the rapid desertification and boost agricultural and grazing land, otherwise this competition will continue and it will be difficult to abate conflicts.
158. Although the new pastoral laws – the Rural Code and the Water Code - bring innovations to the management of pastoral resources in Niger, they contain many conceptual and practical problems, which ultimately risk further marginalizing pastoral people, depriving them of their land and resources, and exacerbating conflict between different groups of users. The Rural Code process has serious implications on the lives of rural producers.
159. Currently, as they stand, the pastoral laws, by seeking to control the conditions of access to resources through complex, bureaucratic and technical procedures controlled by the State and/or local government disempowers pastoral communities. The pastoral communities neither entirely understand nor have any control over these provisions and, in many cases, they are unaware of them. Policymaking is a complex, highly dynamic and politicised process. Pastoralists, through their associations, have to develop the skills to operate in this ever-changing environment and develop the necessary “leverage” to ensure that improved knowledge and understanding is actually used to improve policy and legislation in support of pastoralism as a livelihood system.
160. The origins of the Tuareg rebellion can be traced to the policies that excluded nomads from governance and policy-making. Other major factors included the vulnerability of nomads during bad drought years, widespread corruption in the Government, police and mili-

tary, as well as 'racial' conflict rooted in historic inequities. The African Commission notes however that, today, there are still unresolved tensions in the region. There has been symbolic representation of nomads in the political systems but there has been no serious effort to address the issue of creating substantive democracy that meets the needs of nomads and sedentary peoples, and the economic marginalisation of the north.

161. From the above, the African Commission adopts the following recommendations:

Recommendations

- The Government should take action to ensure a process by which the on-going land alienation process of the pastoralists is addressed.
- The apparent contradictions in the provisions of the Rural Code and the Water Code should be addressed to ensure a coherent approach to the land and water problems of pastoralists.
- The Government should set up a fund to help the nomadic population in the country to counter the effects of the poor climate and drought that results each year in the decline of their flocks.
- The Government should consult indigenous nomadic populations on their wishes for their future development, and seek to support them in developing their livelihoods accordingly. If the nomadic population expresses a wish to diversify their activities, for instance by agriculture, then the Government should train these populations in this and provide them with tools and other implements such as seeds, fertilizers, ploughs, etc. Government should also encourage income-generating activities for women, in particular small trade and craft industry.

- The Government should reassess its policy of denying the existence of indigenous populations and take steps to comply with its international obligations regarding the treatment of indigenous peoples. To this end, the Government should also ratify the ILO Convention 169 on Indigenous and Tribal Peoples.
- The Government is encouraged to establish sensitization programmes for the administration, local authorities, judges, police etc. in order to make them more sensitive to indigenous peoples' rights.
- The Government should intensify its campaign of mobile schools to increase the literacy rate among nomadic populations and introduce incentives such as school meals, tuition free education, mother tongue education and no uniforms.
- The Government should establish mobile clinics among the nomadic populations in order to ensure adequate access to health facilities.
- The Government should adopt a participatory approach when developing policies with a bearing on indigenous populations, such as the Rural Code and the Water Code which promote the Government's policies on land, natural resources, and poverty alleviation. The indigenous populations must be properly consulted in order for them to have a say on policies that will affect their lifestyle.
- The African Commission recommends that Niger indicates in its next Periodic Report to it, the measures it has taken to implement the above recommendations, and any difficulties it might be facing in implementing them.

