

**Observations on the State of Indigenous Human Rights in Niger in Light of the
UN Declaration on the Rights of Indigenous Peoples
Niger**

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org

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Executive Summary

Niger's Indigenous population, which includes the Peul (or Fulani), the Tuareg, and the Toubou people, amount to about 18% of the total population. Most of the Indigenous people are livestock herders and therefore lead nomadic lifestyles. Unfortunately, various events have contributed to increasing pressures on scarce resources needed by the nomadic people, including grazing pasture, water, and food. This, along with the lack of respect for Indigenous rights, has led to several violent conflicts between pastoralists and agriculturalists and has further threatened the livelihood of Indigenous Peoples. Niger voted for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. In 2010, the Nigerien government adopted the Pastoral Code under the already existing Rural Code in order to implement specific rights of pastoralists but a majority of the acts have yet to be passed. Future efforts must be made to ensure that this new code is fully implemented and monitored for effectiveness. Furthermore, the government should recognize Indigenous people in the Constitution, ratify the ILO Convention 169. Lastly, the government must address the scarcity of resources available to Indigenous Peoples.

Background

Together, the various Indigenous groups of Niger make up around 18% of the country's population. The Peul, who number over one million, constitute 8.5% of the population and live all over the country. Although traditionally cattle and sheep herders, the Peul are being forced to engage in agricultural activity as a result of harsh droughts. The subgroups of the Peul include the Tolèbé, Gorgabé, Djelgobé and Bororo. Also numbering over one million people, the Tuareg make up 8.3% of the population and sustain their livelihood as camel and goat herders in the North and West. Lastly, the Toubou, who number a little more than 200,000, make up 1.5% of the population and live in the East as camel herders.

Given that many of the Indigenous people of Niger are pastoralists, the Pastoral Code, adopted in 2010, helps to protect the livelihood and lifestyles of the Indigenous groups by affirming that mobility is a guaranteed right of herders and pastoralists and outlawing the privatization of pastoralists' land. Furthermore, the Rural Code, of which the Pastoral Code is a part of, defines the borders for agricultural cultivation to ensure that there is sufficient land dedicated to pastoral activity. The country of Niger has also ratified the *African Charter on Human and Peoples Rights* and is a signatory to the *Convention on the Elimination of all forms of Racial Discrimination*, as well as voted for the UN Declaration on the Rights of Indigenous Peoples in 2007. However, a majority of the decrees included in the Pastoral Code have yet to be implemented and the government has not signed the ILO Convention 169 or recognized Indigenous Peoples in the country's Constitution.

First Cycle UPR Recommendations

During the first cycle of the UPR in 2011, one recommendation was made to Namibia with regards to Indigenous Peoples:

“Implement the recommendations provided by the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights in February 2006.” (Norway)

The Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights made several recommendations to the Republic of Niger in 2006, particularly that they address the land grabbing issue, provide funding to assist with the effects of climate change on Indigenous livelihood, specifically recognize the existence of Indigenous populations, and provide greater resources to promote better health and education. Furthermore, the Working Group recommends that the government take more steps to consult the Indigenous groups of Niger with respect to policies that affect land and natural resources, including the Rural Code and Water Code. Lastly, the Working Group recommends that the government offer support for Indigenous communities should they wish to start engaging in agricultural activity, given the risks involved with the pastoral lifestyle.¹

Unfortunately, the Nigerien government has still not ratified the ILO Convention 169 on Indigenous and Tribal Peoples, which would recognize their existence. Furthermore, the livelihoods of pastoralists are still at risk because of climate change, competing resources, and conflict with neighboring countries, Mali and Nigeria. Strong efforts were made to include the Indigenous people in writing and constructing the Pastoral Code and future efforts to implement the code should follow the same practice. Therefore, the recommendation from Norway as well as the recommendations from the Working Group still remain very relevant to the well-being of the Indigenous people and should be addressed by the Nigerien government.

The Pastoral Code

While the Pastoral Code was an achievement for Indigenous peoples with nomadic lifestyles, the implementation process of the code has been very slow. As of 2015, only two acts have been passed, and these acts pertain mostly to procedural matters rather than the true issues regarding pastoral rights. Moreover, seven acts have still not been drafted and five are in the process of being written.² The implementation of the entire code is important to ensure that both the Indigenous people of Niger and their pastoral lifestyle are recognized by the government. During the 2012 Sahel food crisis, pastoralists received less aid and were overall, “marginalized from the 2012 emergency response both due to a badly adapted response and a response which was out of sync with the needs of these groups”.³ For one, their nomadic habits did not correspond well with stationary refugee camp settlements, which meant that they usually remained outside of the camps. Moreover, government aid distribution efforts did not account for the mobility of Indigenous people. This incident exemplifies the dangers of not explicitly

¹ To see the full document and recommendations, see the Report of the African Commission’s Working Group on Indigenous Populations/Communities: Mission to the Republic of Niger. (2006).

² See “Implementation of the Pastoral Code continues to drag on” in 2014 Yearbook Article: <http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2014/NigerIW2014.pdf>

³ International Working Group for Indigenous Affairs. “The Indigenous World: Niger”. (2013). <http://www.iwgia.org/images/stories/sections/regions/africa/documents/2013/Niger.pdf>

recognizing Indigenous Peoples and their lifeways and pushing a development agenda without respecting the right to Free, Prior and Informed Consent as well as the right to culture.

Challenges of Pastoralists

The nomadic pastoralist lifestyle has become increasingly difficult for Indigenous Peoples in Niger. For one, climate change is making it increasingly difficult for nomadic groups to find grazing land and drinking water while recurrent droughts have also taken their toll on the Indigenous communities. An elder from the WoDaaBe (Bororo) group describes how droughts have forced many WoDaaBe youth to leave their pastoral lifestyle to migrate to the city in search for work. These migrant workers say that their lives in the city are, “difficult and demanding, emphasizing especially the absence of family and kin and the longing for the pastoral life in the bush.”⁴

In addition, violence is an ongoing and prominent threat to herders, especially given the competition over land and the lack of clear land rights. In October of 2013, the Fulani Indigenous group in Boboye were attacked by Zarma agriculturalists. The conflict occurred because the mayor of the neighboring town Ngonga had placed a ban on pastoralists and sent youths to confiscate the Fulani’s livestock, to be returned only if the pastoralists paid 15,000 CFA per head of cattle. As a result of the violence that ensued, four Fulani died, several livestock were lost, and over one hundred houses were burned down. Of the 10,000,000 CFA that was promised by the government to those who had lost houses, only 10,000 CFA was actually paid to each Fulani.⁵ A similar incident occurred in June of 2012 when a conflict between pastoralists and agriculturalists led to 5 deaths, 14 injuries, and the destruction of 44 houses. The fighting occurred in a Zuzu Peul camp in Koygolo.⁶ These acts of violence occur because the lack of a working justice system pushes groups to defend themselves, which easily escalates into violent conflicts, for which, again, there is no justice.⁷

Conflict in neighboring countries, Mali and Nigeria, has also proved to be a threat to the pastoralists and their livelihood. For instance, the French military intervention in Mali made it difficult for nomadic Indigenous people to move freely and securely through Mali. This led to an over-concentration of pastoralists in areas along alternative, safer routes, putting more strain on the already scarce supplies of water, pasture, and food. The same has occurred in the southern regions of Niger, particularly near Lake Chad, as increased activity from the Boko Haram in Nigeria have prevented pastoralists from migrating southwards into Nigeria as they fear being arrested by Nigerian officers. The influx of refugees from these countries as a result of the conflict only adds to this problem. For instance, the number of refugees in the Diffa region has

⁴ *A Difficult Time: Migrant work and the WoDaaBe in Niger*. Cultural Survival. (2001).

⁵ International Working Group for Indigenous Affairs. “The Indigenous World: Nigeria”. (2014). <http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2014/NigerIW2014.pdf>

⁶ International Working Group for Indigenous Affairs. “The Indigenous World: Niger”. (2013). p. 361-362. <http://www.iwgia.org/images/stories/sections/regions/africa/documents/2013/Niger.pdf>

⁷ International Working Group for Indigenous Affairs. “The Indigenous World: Nigeria”. (2014). p. 368.

grown to about 100,000 and Nigerien pastoralists must compete for important resources.⁸ Furthermore, some young pastoralists have engaged in rebel groups in Mali and many people in Niger have trouble distinguishing between these rebel members and regular Indigenous pastoralists, which has led to greater stigmatization and violence against Indigenous people.

The increase in foreign conflict has also forced the Nigerien government to allocate more funds to national security, taking away from funds that provide support and social services for Indigenous people. It has also diverted attention away from Indigenous issues, such as the implementation of the Pastoral Code, as the government is more focused on security at its borders. Therefore, the government must dedicate more attention and financial resources to addressing the violence and instability faced by the Indigenous people of Niger.

Land Grabbing and Extractive Industries: Right to Free, Prior and Informed Consent

Land grabbing has also been a prominent issue with over seventy cases of it having been identified thus far. The Nigerien pastoral association, AREN, has been successful in mobilizing around this issue and the instances of land grabbing are being investigated. However, reparations for land grabbing must still be addressed. Tuareg groups living near uranium mines were not adequately consulted as to profit sharing models. Uranium mining in Nigeria is dominated by foreign companies, particularly from France and China, who are becoming rich at the expense of the Nigerien people. The process of Uranium excavation extremely detrimental to the surrounding environment, and exposes the nearby Indigenous Peoples to harmful radiation. In fact, it was found that radiation levels were 500 times higher than normal near uranium mines and that radioactive material had found its way into Indigenous groundwater and soil.⁹ The Indigenous pastoralists of Niger have expressed concern that they lack participation in decision-making regarding extractive industry projects like mining and dams, highlighting as well the negative impact of damming on their access to water.¹⁰ Tuareg people already face higher rates of poverty and, “the current prime minister’s Tuareg ancestry should not distract from the fact that the community lacks genuine political representation in the capital.”¹¹ The Nigerien government plans to spend \$2.5 billion to develop the North, where the Tuareg reside, and it is important that the government is held accountable for these promises and that they effectively address these mining issues. The Tuareg and other surrounding Indigenous people should be consulted and should receive fair compensation for allowing uranium extraction to occur on their lands.

⁸International Working Group for Indigenous Affairs. “The Indigenous World: Nigeria”. (2015). http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2015/Niger_IW2015_web.pdf

⁹ Porter, Sébastien. *The exploitation of natural resources and land grabbing*. Africa Europe Faith and Justice Network. (2015).

¹⁰ “Study on the resilience, traditional knowledge and capacity-building for pastoralist communities in Africa”. United Nations: Economic and Social Council: Permanent Forum on Indigenous Issues. (2013). p. 7-8.

¹¹ Elischer, Sebastian. “After Mali Comes Niger: West Africa’s Problems Migrate East”. (February 12, 2013). *Foreign Affairs*.

Recommendations for this UPR Submission:

Cultural Survival urges the Government of the Republic of Niger to:

1. Ratify the ILO Convention 169 and recognize the rights of Indigenous Peoples in its constitution.
2. Ensure that the nomadic lifestyle is not threatened by the encroachment of agriculture by reinforcing the laws stated in the Pastoral Code and by pushing forward to draft and pass the remaining ten Acts. Furthermore, the government should make sure that rural people know and understand the policies dictated in the code and that there are systems set up that can monitor and evaluate the implementation of the code.
3. Follow through with the investigation of crimes against Indigenous people to ensure that proper justice is served and there is no further retaliation and violence.
4. Provide support to address the lack of sufficient resources faced by nomadic people as well as the overcrowding in some areas due to the abundance of refugees. Furthermore, provide support and resources should pastoralists wish to diversify into other industries.
5. Ensure that future extractive industry does not proceed in Indigenous territories without their Free, Prior, Informed Consent.
6. Ensure that Indigenous Peoples are appropriately compensated for existing extractive industries operating on or near their lands, and that adequate compensation is determined in consultation with Indigenous Peoples through their established representative institutions.
7. Adopt a national action plan on its implementation to ensure Indigenous peoples' effective and politically meaningful participation in the decision-making process and equal representation in the governance of the country as provided under UNDRIP and ILO Convention 169.
8. Implement the World Conference on Indigenous Peoples Outcome Document, beginning with drafting a National Plan of Action to achieve the ends of the Declaration
9. Invite the Special Rapporteur on the Rights of Indigenous Peoples to make an official visit to Niger.