

**THE DEATH OF CUSTOM: WINNERS AND LOSERS IN  
THE LEGAL TRANSFORMATION OF PERI-URBAN  
LAND IN NIGER**

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## I. INTRODUCTION

The population of Niamey, the capital city of the West African Republic of Niger, is exploding.<sup>1</sup> Since urban residents need houses, large tracts of peri-urban<sup>2</sup> land around the city are being transformed from fields to suburbs.<sup>3</sup> This land transformation is being accompanied by a

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1. Hamadou Issaka, *La Promotion Immobilière Informelle à Niamey: L'Irregularité Comme Réponse à la Crise du Logement*, URBANITES (Nov. 8, 2013), available at <http://www.revue-urbanites.fr/la-promotion-immobiliere-informelle-a-niamey-lirregularite-comme-reponse-a-la- crise-du-logement/> (last visited Sept. 27, 2019) (arguing Niamey has undergone vertiginous growth); see *The World Factbook (Niger) (People and Society)*, CIA, available at <https://www.cia.gov/the-world-factbook/countries/niger/> (last visited Sept. 27, 2019) [hereinafter *Factbook: People and Society*] (estimating Niger's rate of urbanization as 4.27% for 2015-2020, ranking 11th for highest urbanization rate in the world).

2. There is no universally accepted definition of the term "peri-urban." Beacon Mbiba & Marie Huchzeremey, *Contentious Development: Peri-Urban Studies in Sub-Saharan Africa*, PROGRESS IN DEV. STUD. 113, 114 (2002). However, it generally refers to land around the periphery of urban areas that includes elements of both rural and urban use and where farmland is being converted to suburbs. See Achamyeleh Gashu Adam, *Land Tenure in the Changing Peri-Urban Areas of Ethiopia: The Case of Bahir Dar City*, INT'L J. URB. & REG'L RES. 1970, 1970-71 (2014) (arguing peri-urban lands are places just outside municipal boundaries where urban and rural coexist and where farmland is being converted to suburban house plots); Janine Ubink, *Traditional Authority Revisited: Popular Perceptions of Chiefs and Chieftaincy in Peri-Urban Ghana*, J. LEGAL PLURALISM & UNOFFICIAL L. 123, 129 (2007) (defining peri-urban as "approximating a continuum from rural to urban"); see also IGNASIO MALIZANI JIMU, EVERYDAY PRACTICES AND RELATIONS IN PERI-URBAN BLANTYRE, MALAWI 69 (2012) (arguing peri-urban land is usually characterized by "the encroachment of the expanding urban area onto the surrounding rural land . . . affecting the livelihood of small farmers" and where land goes from rural to urban and from customary to statutory tenure).

3. See *infra* Part IV.D.

legal transformation from customary to formal state law.<sup>4</sup> As is true of most legal transformations, this one is producing winners and losers.<sup>5</sup> The winners are those with access to financial, political, and social capital who use their superior strength to take advantage of the new rules.<sup>6</sup> The losers are the peasant farmers and their families who are uprooted from their traditions and their main sources of livelihood.<sup>7</sup>

Under customary law in rural Niger, land is inextricably interwoven with history, identity, and religion.<sup>8</sup> One's access to land depends on membership and good standing in a family, a lineage group, and a village.<sup>9</sup> At the same time, land helps define those institutions.<sup>10</sup> Villagers explain themselves, their family histories, and the linkages between families by recounting stories of ancestors who founded their villages, usually by clearing the land for agricultural use.<sup>11</sup> All males who descend from the original, land-clearing ancestors can claim membership in the lineage and thus present-day access to land.<sup>12</sup>

Rural land in Niger is also intertwined with spiritual beliefs. Land helps bind together the temporal and spiritual worlds.<sup>13</sup> Villages are surrounded by all manner of spirits including the black spirits (*gangi bi*) who controlled the land before humans arrived, and the spirits of ancestors who made pacts with the *gangi bi* that permitted them to inhabit

4. See JIMU, *supra* note 2, at 69.

5. See *infra* notes 276-78 and accompanying text (arguing elites in developing countries always benefit from changes in the law).

6. See *infra* Part V.A.

7. See *infra* Part V.B.

8. See Thomas Kelley, *Squeezing Parakeets into Pigeon Holes: The Effects of Globalization and State Legal Reform in Niger on Indigenous Zarma Law*, 34 N.Y.U. J. INT'L L. & POL. 635, 680-91 (2002) [hereinafter *Squeezing Parakeets*] (arguing land in Nigerien villages is closely connected to spiritual beliefs, history, and community identity); see also PARKER SHIPTON, *MORTGAGING THE ANCESTORS: IDEOLOGIES OF ATTACHMENT IN AFRICA* 117 (2009) (arguing land is tightly tied up with social position and also with "the most intimate, emotionally charged dimensions of personhood and pride.").

9. Thomas Kelley, *Unintended Consequences of Legal Westernization in Niger: Harming Contemporary Slaves by Reconceptualizing Property*, 56 AM. J. COMP. L. 999, 1006-07 (2008) [hereinafter *Unintended Consequences*]; Parker Shipton & Mitzi Goheen, *Understanding African Land-Holding: Power, Wealth, and Meaning*, 62 AFR. J. INT'L AFR. INST. 307, 307 (1992) (arguing land in Africa helps "define personal and social identities"); see SHIPTON, *supra* note 8, at 110 (arguing that, in East Africa, people belong to their land).

10. See *Squeezing Parakeets*, *supra* note 8, at 663 (describing a Nigerien village that traces its history to a group of brothers who dug a well and cleared the bush around it).

11. *Id.*

12. *Unintended Consequences*, *supra* note 9, at 1006-08.

13. See *id.* at 1007 (arguing Nigerien traditional leaders ensure land is used in ways approved by the spirits).

and exploit the land.<sup>14</sup> Those spirits intervene in the daily lives of rural people, sometimes helping them, sometimes harming them.<sup>15</sup>

Rural Nigerien people who lose their land as a result of urbanization lose their connections to these powerful practical and symbolic touchstones that bring order and meaning to their lives, but that is not all they lose. Because most rural Nigeriens rely on subsistence farming, many will also lose their livelihoods.<sup>16</sup> In Niger, there is no equivalent of Detroit or Pittsburg where displaced agricultural workers can find wage labor,<sup>17</sup> so many will simply starve.<sup>18</sup>

This paper explores Niger's peri-urban transition in land use and law. Part II provides background on Niger with an emphasis on the demographics that explain why the country is facing a potentially cataclysmic if slow-moving land crisis. Part III will indulge in a step often skipped by legal scholars and development practitioners: it will explore in some detail the customary law that governs land use in rural areas. Without understanding customary law, one cannot understand the enormity of the loss that will result when fields become suburbs. Part IV will shift the lens to the city and describe the legal and political context that has permitted Niamey's explosive and largely unregulated growth. It notes that when formal state law and customary law bump into one another in peri-urban areas, formal law almost always prevails: the land is irrevocably transformed from a key element of a social, historical, and spiritual complex, into a commodity. Part V describes in detail who wins and who loses as a result of the transformation. The paper concludes that the wealthy and well-connected win, while peasant farmers lose. They lose their livelihoods and, just as important, the cus-

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14. See *infra* note 71 and accompanying text.

15. *Squeezing Parakeets*, *supra* note 8, at 647-48; *Unintended Consequences*, *supra* note 9, at 107.

16. *Factbook: People and Society*, *supra* note 1; see U.N. Exec. Bd. of the U.N. Dev. Programme, the U.N. Population Fund and the U.N. Off. for Project Servs., *Country Programme Document for Niger (2019-2021)*, ¶ 14, U.N. Doc. DP/FPA/CPRD/NER/9 (Nov. 21, 2018) (arguing that a large part of the Nigerien population is dependent on subsistence farming).

17. See Interview with Hamdallaye Canton Chief, Hamdallaye, Republic of Niger (May 1, 2018) [hereinafter Interview with Hamdallaye Canton Chief] (arguing "[i]f peasant farmers sell their land, what will they do? It's not as if there are factories in the city where they can go find jobs"); see also SHIPTON, *supra* note 8, at 33 (arguing that in the U.S. urban employment cushioned the blow from rural land dispossession but that in Africa no such safety net exists).

18. See *infra* Part V.B.2.a (describing the livelihood effects of rural Nigeriens losing access to agricultural land).

tomary law that has sustained their communities through centuries of adversity.

### A. About Niger

Niger is among the poorest, least developed countries in the world.<sup>19</sup> One reason is its paucity of natural resources.<sup>20</sup> It is landlocked and two-thirds of its surface is located in the parched Sahara Desert,<sup>21</sup> a zone unsuitable for agricultural production.<sup>22</sup> The southern third of the country, where most of the population lives,<sup>23</sup> is only marginally more fecund.<sup>24</sup> The soils there tend to be sandy and of poor quality,<sup>25</sup> water-

19. *Human Development Reports: Human Development Data (1990-2017)*, U.N. DEV. PROGRAMME, available at <http://hdr.undp.org/en/data> (last visited Sept. 27, 2019) (ranking Niger as the poorest country in the world out of all 189 countries listed); *The World Factbook (Niger) (Geography)*, CIA, available at <https://www.cia.gov/the-world-factbook/countries/niger/> (last visited Sept. 27, 2019) [hereinafter *Factbook: Geography*] (“Niger is one of the poorest countries in the world with minimal government services and insufficient funds to develop its resource base, and is ranked last in the world on the United Nations Development Programme’s Human Development Index.”).

20. Although Niger’s land is unproductive, it is not completely bereft of natural resources. *Factbook: Geography, supra* note 19 (listing Niger’s natural resources as uranium, coal, iron ore, tin, phosphates, gold, molybdenum, gypsum, salt, and petroleum). It has significant uranium deposits in its northern mountains, the proceeds of which led to a minor economic boom in the 1970s. See also Ursula Meyer, *Négociier l’accès, la propriété et l’autorité publique en marge de la ville : enjeux fonciers à Niamey et production d’Etat au Niger* 108 (2016) (doctoral thesis presented to the Faculty of Geosciences and the Environment, University of Lausanne) (on file with author). But uranium prices dropped in the 1980s as nuclear power fell out of favor in the developed world, and the mines have done little to lift Niger out of poverty. See also Gabriella Körling, *In Search of the State, An Ethnography of Public Service Provision in Urban Niger* 58 (2011) (doctoral dissertation in Cultural Anthropology, Uppsala University in Sweden) (arguing uranium prices fell in the late 1970s). More recently, petroleum deposits have been identified in northeastern Niger. *Factbook: Geography, supra* note 19; Meyer, *supra* note 20, at 120 (referring to a recent increase in mining and oil extraction).

21. U.N. Int’l Human Rights Instruments, *Common Core Document Forming Part of the Reports of States Parties: the Niger*, ¶ 1, U.N. Doc. HRI/CORE/NER/2018 (Mar. 22, 2018) (“Located in the eastern part of western Africa, the Niger is a landlocked country with a surface area of 1,267,000 km<sup>2</sup>. Two-thirds of the national territory is in the Saharan zone.”); *Factbook: Geography, supra* note 19 (“[L]andlocked; one of the hottest countries in the world; northern four-fifths is desert, southern one-fifth is savanna, suitable for livestock and limited agriculture[.]”); Meyer, *supra* note 20, at 91.

22. *Common Core, supra* note 21, ¶ 1.

23. *Factbook: Geography, supra* note 19 (“[M]ajority of the populace is located in the southernmost extreme of the country along the border with Nigeria and Benin[.]”); Meyer, *supra* note 20, at 91 (arguing that 80% of Niger’s population lives in the southern third of the country).

24. *Factbook: Geography, supra* note 19 (reporting that only 12.3% of Niger’s land is “arable”).

courses are rare, and rainfall, upon which most farmers depend,<sup>26</sup> is sparse and variable.<sup>27</sup> These challenging geographic and climatic realities are troubling in a country where most peoples' livelihood depends on agriculture.<sup>28</sup>

Approximately 85% of Niger's population engages in agricultural work and most people depend, at least in part, on subsistence farming for their food.<sup>29</sup> Irrigation is rare, so rainfed agriculture is vital to peoples' survival; however, climate change is resulting in a shrinking of Niger's rainy season, cutting further into agricultural productivity.<sup>30</sup> Due to decreasing yields, most households supplement their livelihood by engaging in animal husbandry,<sup>31</sup> wage labor, and informal small business activity.<sup>32</sup>

Niger's deteriorating agricultural conditions are particularly alarming when one considers how many mouths there are to feed. The country's population growth rate is the highest in the world at 3.9%.<sup>33</sup> In the

25. Ibrahim Yahaya Ibrahim, *Niger in the face of the Sahelo-Saharan Islamic Insurgency: Precarious Stability in a Troubled Neighborhood 5* (Sahel Research Group, Working Paper No. 004, 2014).

26. *Factbook: Geography*, *supra* note 19 (reporting that Niger has only 300 kilometers of waterways, ranking ninety-third out of the 107 countries listed); Florence Bron-Saidatou, *La Gouvernance Foncière au Niger: Malgré des Acquis, de Nombreuses Difficultés 6* (2015) (working paper produced by a coalition of French Development Agencies).

27. Bron-Saidatou, *supra* note 26, at 6; see Ambe J. Njoh, *The role and goals of the state in urban development in Niger*, 30 HABITAT INT'L 540, 545 (2006) (referring to Niger's "low rainfall").

28. *The World Factbook (Niger) (Economy)*, CIA, available at <https://www.cia.gov/the-world-factbook/countries/niger/> (last visited Sept. 27, 2019) [hereinafter *Factbook: Economy*] (arguing that agriculture provides a livelihood for more than 80% of Niger's population).

29. *Factbook: People and Society*, *supra* note 1; see *Country Programme*, *supra* note 16 (arguing that a large part of the Nigerien population is dependent on subsistence farming).

30. *Factbook: People and Society*, *supra* note 1 (arguing that rainfall in Niger is declining); Bron-Saidatou, *supra* note 26, at 8.

31. Bron-Saidatou, *supra* note 26, at 6 (arguing that 43.2% of Niger's population engages in animal husbandry).

32. See THE WORLD BANK, REPUBLIC OF NIGER: PRIORITIES FOR ENDING POVERTY AND BOOSTING SHARED PROSPERITY: SYSTEMATIC COUNTRY DIAGNOSTIC, ¶ 12, Report No. 115661-NE (Nov. 28, 2017) [hereinafter WORLD BANK COUNTRY DIAGNOSTIC].

33. *Factbook: People and Society*, *supra* note 1 ("Niger has the highest total fertility rate (TFR) of any country in the world, averaging close to 7 children per woman in 2016."); *Country Programme Document for Niger*, *supra* note 16, ¶ 1 ("Niger's annual demographic growth rate is the highest in the world, at 3.9 per cent; its population, currently 17,138,707, will double every 18 years."); WORLD BANK COUNTRY DIAGNOSTIC, *supra* note 32, ¶ 52 (arguing at present, an average Nigerien woman experiences 7.3 live births during her lifetime).

early 1960s, around the time of Niger's independence from France, Niger had approximately 4.3 million inhabitants.<sup>34</sup> By 2012, the population had expanded to 17 million.<sup>35</sup> Estimates put the current population at over 20 million<sup>36</sup> and, if the growth trends continue, 33 million by 2030.<sup>37</sup>

The converging trends of land degradation and population growth means that many more people, almost all of whom need arable land to feed themselves, must crowd onto ever-smaller fields upon which less and less rain is falling.<sup>38</sup> The overcrowding, in turn, exacerbates problems with soil fertility. As the expanding population seeks to feed itself by planting ever-more staple crops, the amount of fallow land decreases, further diminishing the fields' productive capacity.<sup>39</sup> The end result is that contemporary Niger experiences periodic acute food crises and 16.7% of children under the age of five are chronically malnourished.<sup>40</sup>

Rapid, poorly planned and poorly regulated urbanization is exacerbating the crisis in rural land and livelihoods.<sup>41</sup> Although Niger is still a predominantly rural society, its rate of urbanization is among the highest in the world.<sup>42</sup> The challenging demographic and climatic conditions

34. Bron-Saidatou, *supra* note 26, at 4.

35. *Id.*

36. *Niger*, WORLD BANK, available at <https://data.worldbank.org/country/niger?view=chart> (last visited Sept. 27, 2019) [hereinafter World Bank Profile] (reporting Niger's population as 21,602,472 in 2017); *Country Programme*, *supra* note 16, ¶ 1 (estimating Niger's population at 21,466,862 as of 2017).

37. See World Bank Profile, *supra* note 36.

38. *Factbook: People and Society*, *supra* note 1; see also Interview with Former Resident of Goudel, Republic of Niger (Apr. 30, 2018) [hereinafter Interview with Former Resident of Goudel] (arguing the shrinking rainy season will no longer support the best strains of millet, Niger's staple crop).

39. *Country Programme*, *supra* note 16, ¶ 5 ("Niger's challenges also result from population pressure, the adverse effects of climate change, inadequate agricultural practices and resulting land degradation."); Bron-Saidatou, *supra* note 26, at 8 (arguing population pressure is leading to shorter fallow periods and the overall degradation of soils); Interview with Judge, Niamey, Republic of Niger (May 9, 2018) [hereinafter Interview with Judge in Niamey] (arguing that due to population pressure it is no longer possible to let land lie fallow so that it is overcultivated); see generally Interview with Hamdallaye Canton Chief, *supra* note 17 (arguing there is "enormous pressure on land" in Niger).

40. WORLD BANK COUNTRY DIAGNOSTIC, *supra* note 32, ¶ 152 ("[B]eing malnourished is almost normal (44 percent of children [are] stunted)."); see Ibrahim, *supra* note 25, at 5 (arguing acute malnutrition touches 16.7% of Niger's children under age five).

41. Meyer, *supra* note 20, at 90 (arguing rural land loss is causing Nigeriens to seek refuge in cities); see *infra* notes 259-60 and accompanying text (arguing urban expansion in Niger is guided by private interests and poorly regulated).

42. See *Factbook: People and Society*, *supra* note 1 (estimating Niger's rate of urbanization as 4.27% for 2015-2020, which ranks 11th for highest urbanization rate in the world).

described in preceding paragraphs are driving the rural population, particularly young men,<sup>43</sup> towards the city.<sup>44</sup> Further, the lure of the city has been enhanced by the rise of economic liberalization and structural adjustment policies, which have compelled the Nigerien state to withdraw much of its healthcare, education, and infrastructure investment from rural areas.<sup>45</sup> Combined, these factors have led to sizzling growth in Niamey's population.<sup>46</sup> Specifically, in 1977, the capital counted 243,000 residents; by 2000, the number was 650,000; today, estimates run as high as 1.5 million.<sup>47</sup> Because all of these new arrivals need shelter, and because most residential construction in Niger is in the form of one-story,<sup>48</sup> metal-roofed, mud and cement houses surrounded by small walled compounds,<sup>49</sup> the city is gobbling up large swaths of agricultural land each year and irreversibly converting it into suburban house plots.<sup>50</sup>

In sum, Niger is in the midst of a vicious cycle. Due largely to demographic and climatic pressures on agricultural land, ever more people are seeking sustenance in the city. As the city grows, it devours the agricultural land that is the main source of food – even if an increasingly feeble one – for Nigeriens who remain in rural communities. As the following sections will demonstrate, when real estate developers and investors convert fields to suburbs, rural people lose not only their source of food but their way of life: a social and spiritual identity that is rooted in, and to large extent defined by, land.

43. See WORLD BANK COUNTRY DIAGNOSTIC, *supra* note 32, ¶ 40.

44. Issaka, *supra* note 1 (arguing thousands of rural citizens seek a better life in Niamey every year and most have no qualifications); Meyer, *supra* note 20, at 103, 105 (arguing Niger sees spikes in urban population growth at times of famine).

45. Meyer, *supra* note 20, at 110; see Körling, *supra* note 20, at 21 (arguing Niamey is privileged over rural areas in both health and education).

46. Issaka, *supra* note 1.

47. Körling, *supra* note 20, at 77; *Common Core*, *supra* note 21, Table 1 (reporting Niamey's population as 397,437 in 1988, 725,030 in 2001, and 1,011,277 in 2012); see *Factbook: People and Society*, *supra* note 1 (estimating Niamey's population to be 1.214 million in 2018).

48. See Henri Kokou Motcho, *Urbanisation et Rôle de la Chefferie Traditionnelle dans la Communauté Urbaine de Niamey*, 229 LES CAHIERS D'OUTRE-MER, REVUE DE GEOGRAPHIE DE BORDEAUX 73, 74 (2005) (arguing that Niamey's expansion has included few multi-story buildings).

49. See *id.* at 2 (arguing housing density is low in Niamey because most structures are single-story).

50. See *infra* notes 271-72 and accompanying text.

### 1. Existing Customary Land Law in Rural Niger<sup>51</sup>

Customary land law has been remarkably resilient in Niger.<sup>52</sup> In spite of numerous attempts by Niger's government during the twentieth and twenty-first centuries to weaken or eliminate it,<sup>53</sup> most of Niger's rural land is still governed by it.<sup>54</sup> From the perspective of a western-trained lawyer it can be diffuse and confusing,<sup>55</sup> but it must be grappled with if one is to understand the profound legal, social, and spiritual transformation the country is undergoing as urban areas encroach on farmland. The following discussion will introduce a somewhat idealized, archetypal version of customary land law before showing how it has been affected by colonialism, the rise of orthodox Islam, and the pervading influence of globalization and economic liberalism.

## II. THE CUSTOMARY LAW ARCHETYPE

Descriptions of customary land law in Niger tend toward static, archetypal accounts<sup>56</sup> when in fact it is dynamic, variable, and often messy.<sup>57</sup> Still, the archetype is one that rural Nigeriens recount, some-

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51. Custom in Africa is a contested and controversial construct. Scholars generally reject the idea that custom was a static, self-contained body of pristine norms that existed in pre-colonial times. Sara Berry, *Privatization and the Politics of Belonging in West Africa*, in LAND AND THE POLITICS OF BELONGING IN WEST AFRICA 241, 245 (Richard Kuba & Carola Lentz eds., 2013). Instead, they view custom as endlessly dynamic and in recent centuries developed "through interactions between colonial officials and their subjects, each drawing selectively on historical precedents to influence one another and make the best of changing circumstances." *Id.* Colonial governments made attempts to define, and at times manipulate, custom in ways that supported the state's authority. *Squeezing Parakeets*, *supra* note 8, at 652-55. But colonial and post-colonial states rarely succeeded in inventing custom from whole cloth and "have often exercised little real control of it." Shipton & Goheen, *supra* note 9, at 308.

52. See *Squeezing Parakeets*, *supra* note 8, at 656-57; Thomas Kelley, *Apples to Oranges: Epistemological Dissonance in the Human Rights Case Hadijatou Mani v. Niger*, 32 QUINNIPIAC U. L. REV. 311, 336-37 (2014).

53. See Bron-Saidatou, *supra* note 26, at 11-12 (arguing the Nigerien state passed several laws intended to limit traditional leaders' authority over land); *Squeezing Parakeets*, *supra* note 8, at 658, n. 105-06 (arguing Niger's post-independence government passed laws aimed and curbing chiefs' authority over land, all to little effect).

54. *Squeezing Parakeets*, *supra* note 8, at 659-60 (arguing most rural people in Niger base land claims on custom and often have no knowledge and no desire to know what formal state law would say about the matter).

55. *Unintended Consequences*, *supra* note 9, at 1008.

56. See *Squeezing Parakeets*, *supra* note 8, at 653 (arguing the French colonialists in Niger attempted to explain customary law in terms of fixed rules).

57. See Janine M. Ubink, *Tenure Security: Wishful Policy Thinking or Reality? A Case from Peri-Urban Ghana*, 51 J. AFR. L. 215, 231 (2007) [hereinafter *Tenure Security*] (arguing customary law in Ghana is "fluid, relational and negotiable" and "constantly recreated

times wistfully, when discussing their communities' historic relationship to land.<sup>58</sup> Thus, even if it does not provide a perfectly accurate history of customary land law, it reveals much about rural peoples' collective memory and values concerning land.<sup>59</sup>

In rural Nigerien villages, the most enduring and powerful land rights are those of first-comers.<sup>60</sup> Every village has a founding story, often involving brothers or male cousins who left their natal village in search of adventure or due to a rift within their lineage.<sup>61</sup> In some accounts, the men began by capturing slaves and forcing them to dig a well.<sup>62</sup> The well became the symbolic and practical center of the new village.<sup>63</sup> Starting from the circumference of the well, the founders traced pie-shaped lots of land that stretched indefinitely into the surrounding bush.<sup>64</sup> Nobody paid close attention to the claims' outer

and disputed"); SHIPTON, *supra* note 8, at 230 (arguing Kenyan customary land law is endlessly dynamic); *Unintended Consequences*, *supra* note 9, at 1006 (referring to Niger's land use customs as "evolving, fluid, and negotiable").

58. Interview with Village Chief in Gassangourni, Republic of Niger (May 18, 2000); Interview with Yaye Issa and Issafou Lali (May 22, 1996); Interview with Group of Villagers (1996); Interview with Group of Villagers in Fandou-Berri, Republic of Niger (May 17, 2000 (morning)).

59. *See generally* SHIPTON, *supra* note 8.

60. Richard Kuba, *Spiritual Hierarchies and Unholy Alliances: Competing Earth Priests in a Context of Migration in Southwestern Burkina Faso*, in *LAND AND THE POLITICS OF BELONGING IN WEST AFRICA* 57, 60 (Richard Kuba & Carola Lentz eds., 2006) (arguing in a West African context that land rights arise from first-comers who made pacts with local deities); Sten Hagberg, *Money, Ritual and the Politics of Belonging in Land Transactions in Western Burkina Faso*, in *LAND AND THE POLITICS OF BELONGING IN WEST AFRICA* 99, 103 (Richard Kuba & Carola Lentz eds., 2006) (referring to the oldest male descendant establishing land rights by forming an original pact with the spirits); Meyer, *supra* note 20, at 125 (arguing Niger's land law is based largely on "rights of the first to clear").

61. *See Squeezing Parakeets*, *supra* note 8, at 663 (describing the village of Fandou Berri's founding by a famous warrior and his brothers who captured slaves and compelled them to dig a well to sustain the village); *see also* Boureima Amadou, *Aire protégée et construction de territoire en patrimoine: l'exemple de l'île de Karey Kopto (Niger)*, *LES CAHIERS D'OUTRE-MER* 226-27 (2004).

62. *Squeezing Parakeets*, *supra* note 8, at 663 (describing the village of Fandou Berri's founding by a warrior and his brothers who captured slaves and compelled them to dig a well to sustain the village); *Unintended Consequences*, *supra* note 9, at 1027 (describing a similar story regarding the village of Saabu Dey).

63. JEAN-PIERRE OLIVIER DE SARDAN, *LES SOCIÉTÉS SONGHAY-ZARMA (NIGER-MALI)* 663 (1984) (describing the symbolic importance of well digging in Nigerien culture).

64. Interview with Saabu Dey Village Chief and Group of Elders, Saabu Dey, Republic of Niger (Dec. 5, 2003). A somewhat different version of founders' land rights, one I have heard only once, involves founders galloping on horseback, throwing spears into the earth, and vying to knock one another off if there was a disagreement about boundaries. *See*

boundaries because land was an inexhaustible resource.<sup>65</sup> Over time, men would solidify their claims to land by clearing the bush and tilling the soil.<sup>66</sup> Although there seem not to have been hard and fast rules on the matter, leaving the land untouched for too long could weaken a claim of access.<sup>67</sup>

A father could generally expect that the land he controlled would pass to his sons since inheritance passed through the male line.<sup>68</sup> The family land would never be formally divided, but each son would be apportioned a parcel that he would control until he divided it among his own sons.<sup>69</sup> The lineage head, the village chief, the land chief (*laabukoy*), and the heads of families within the lineage would decide how the parcels of land would be divided among young men.<sup>70</sup>

The first-comers formed alliances with the original black spirits (*gangi bi*) who inhabited the bush, and those alliances had to be nurtured and respected by subsequent generations.<sup>71</sup> Because the spirit world, like the temporal world, was dynamic and ever changing,<sup>72</sup> other actors also came to inhabit the spiritual realm, including the spirits of villagers' ancestors.<sup>73</sup> If the spirits were pleased, villagers in the temporal world would prosper in their daily lives.<sup>74</sup> The rains would fall gently and persistently, while locusts and other pestilence would stay away. If the spirits were displeased, villagers would suffer crop failure, sickness, and death.<sup>75</sup>

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Interview with Former Resident of Goudel, *supra* note 38; see also Interview with Judge in Niamey, *supra* note 39.

65. See Meyer, *supra* note 20, at 125 (arguing agricultural land in Niger was historically abundant and "if a man had reason he could simply clear land and benefit from its fruits.").

66. *Id.*

67. *Unintended Consequences*, *supra* note 9, at 1007; *Squeezing Parakeets*, *supra* note 8, at 682, n. 176.

68. *Squeezing Parakeets*, *supra* note 8, at 683.

69. *Id.* at 681, n. 175. Typically, young males would work in their father's fields, and would not be assigned a separate plot until they married.

70. *Unintended Consequences*, *supra* note 9, at 1007.

71. See *Squeezing Parakeets*, *supra* note 8, at 646.

72. See *id.*

73. See *id.* at 646-47.

74. See *id.*; see also Amadou, *supra* note 61, ¶ 56 (arguing villagers in a Nigerien river village, Karey Kopto, appeal to the spirits to ensure good fishing, good harvests, and to avoid sickness).

75. *Unintended Consequences*, *supra* note 9, at 1007; see Hagberg, *supra* note 60, at 99 (arguing earth priests and elders regard the earth "as a divinity and fear that the violation of rituals may endanger not merely the individual's well-being but community life in general.").

Some members of the community were particularly skillful at understanding and addressing the spirits' demands.<sup>76</sup> The land chief, often the same person as the village chief, would ensure that villagers' use of land would not cause offense.<sup>77</sup> In instances where the spirits had been offended, the community could organize a spirit possession ceremony to communicate directly between the realms.<sup>78</sup> During these ceremonies, spirits would inhabit the bodies of certain villagers and speak directly to the gathered throng.<sup>79</sup> Other villagers, referred to as *zimas*, were skilled at summoning the spirits to the temporal world to visit punishments and rewards upon living people or, conversely, to protect threatened humans from harm.<sup>80</sup>

Chiefs in Niger historically played – and still play – important roles in determining access to land.<sup>81</sup> Typically, only direct descendants of a village's founders could vie for the position of village chief.<sup>82</sup> Once selected, he had little prescriptive power and instead acted as first among equals, convening village leaders and lineage heads to form consensus.<sup>83</sup> Niger's history is replete with efforts by the state – at first the colonial regime, later post-independence governments – to manipulate, coopt, or diminish the chiefs and their authority.<sup>84</sup> The position of village chief, has, however, endured and today is an intriguing amalgam.

76. See Amadou, *supra* note 61, ¶ 13 (describing a village chief in southern Niger who descended directly from village founders and who therefore had the ability to “remain in permanent contact with the invisible world,” appease the spirits and protect the village).

77. *Unintended Consequences*, *supra* note 9, at 1007.

78. *Squeezing Parakeets*, *supra* note 8, at 647.

79. I witnessed a spirit possession ceremony in a rural Zarma village in 1987. A powerful storm had blown through the village destroying crops and several grass huts in which villagers lived. An interlocutor explained that participants wanted to know why the damage had been unleashed. When I asked whom they were communicating with, they answered “irikoy,” which translates to “our keeper.” It is the term that most Zarma people use when they referring to God in the Islamic tradition.

80. See Amadou, *supra* note 61, ¶ 19 (describing a *zima* as a priest healer and an ally of the spirits).

81. See *Unintended Consequences*, *supra* note 9, at 1019; see also Meyer, *supra* note 20; see also *infra* notes 171-72 and accompanying text (arguing rural people in Niger still prefer to deal with chiefs on matters involving land).

82. See *Squeezing Parakeets*, *supra* note 8, at 653; Amadou, *supra* note 61, ¶ 12 (arguing the chief of a village in southern Niger represents legitimate authority, that he presides over political and land-related decisions, and that the position of chief is elected from among descendants of the family of the first occupants).

83. See *Squeezing Parakeets*, *supra* note 8, at 653.

84. See Bron-Saidatou, *supra* note 26, at 11 (arguing the colonial and post-independence governments passed various laws intended to diminish chiefs' authority); see also *Squeezing Parakeets*, *supra* note 8, at 658, n. 106.

Chiefs are rooted in tradition and considered, at least in many communities, legitimate sources of authority.<sup>85</sup> At the same time, they act as low-level administrators for the state.<sup>86</sup> They collect taxes, conciliate local disputes, and, crucially, endorse land transactions.<sup>87</sup>

Higher-level regional chiefs, generally referred to as canton chiefs (chefs de canton),<sup>88</sup> also exercised influence over land, but they enjoyed less historical legitimacy.<sup>89</sup> Cantons were geographic regional divisions imported to Niger by the French colonizers.<sup>90</sup> To aid their administration of the vast territory (one they had little interest in except its value in blocking Great Britain's colonial expansion),<sup>91</sup> the French invented chieftaincies to rule over the cantons they had just created.<sup>92</sup> In some instances, the canton boundaries were in approximate accord with the domains of pre-colonial regional chiefs, and the new chefs de canton retained at least some legitimacy in the eyes of rural people.<sup>93</sup> But the French filled many of the chef de canton positions with their own toadies, including some who were said to come from Niger's slave class and therefore lacked legitimate claim to positions of customary leadership.<sup>94</sup>

Rural Nigeriens strongly prefer to resolve their disputes at the family or lineage levels.<sup>95</sup> To involve a chief in a dispute or, worse yet a state institution, is to admit that family patriarchs have failed in their duties.<sup>96</sup> However, where disputes cannot be resolved by lineage heads,

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85. See *Squeezing Parakeets*, *supra* note 8, at 655 (arguing the position of village chief predated the arrival of the French and so its legitimacy survived colonialists' machinations); Abdourahaman Chaibou, *Les Judge, Le Cadis, le Chef et les Autres*, REVUE JURIDIQUE DE SAMAN 5 (1998) (arguing chiefs in Niger act as both legitimate traditional leaders and as low-level agents of the modern state).

86. See *Squeezing Parakeets*, *supra* note 8, at 655 (arguing the position of village chief predated the arrival of the French and so its legitimacy survived colonialists' machinations); Chaibou, *supra* note 85, at 5.

87. See *infra* notes 297-301 and accompanying text.

88. *Squeezing Parakeets*, *supra* note 8, at 654.

89. *Id.*

90. *Id.*

91. See Meyer, *supra* note 20, at 97 (arguing the French occupied Niger to prevent the British from expanding northward from Sokoto (in present-day Nigeria) and to facilitate France's plans to sweep across the continent from Dakar to Djibouti); Körling, *supra* note 20, at 43 (arguing the French's interest in Niger was political and strategic, not economic); *Squeezing Parakeets*, *supra* note 8, at 651-52.

92. *Squeezing Parakeets*, *supra* note 8, at 654.

93. *Id.* at 655.

94. See Meyer, *supra* note 20, at 103 (arguing the first Canton Chief in Niamey was viewed as a French collaborator).

95. *Squeezing Parakeets*, *supra* note 8, at 668.

96. *Id.*

villagers call upon chiefs to conciliate.<sup>97</sup> In deciding among competing access claims, chiefs apply no fixed rules and followed no established procedures.<sup>98</sup> Instead, they gather historical evidence from villagers with the longest memories.<sup>99</sup> Whose ancestor cleared the parcel of land at issue? Did the ancestor give the parcel to another individual, or was it only a loan? Who planted the fruit trees on edge of the parcel or dug the well, since both these actions are strong evidence of access rights?<sup>100</sup> Having brought that history to light, the chief would steer the disputants toward a resolution.<sup>101</sup> Crucially, the resolution often would take account of the interests of the disputing parties, but also of their ancestors (who now live in the spirit realm), the black spirits, and the unborn members of the community.<sup>102</sup>

Chiefs also protected the prerogatives of secondary rights holders in rural land. Although men inherited access to agricultural land, their rights were not the equivalent of ownership.<sup>103</sup> Other members of the community might have durable, enforceable rights to other uses of the same land.<sup>104</sup> For example, women, who are not necessarily from the

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97. Based on many of performing ethnographic research in rural parts of Niger, I can report generally that land disputes arise for various reasons. Villagers might disagree over which founder laid claim to a particular tract of land, or indeed, whether a particular ancestor was or was not among the village founders. They might disagree about boundaries between fields, which typically were (and are) marked by narrow uncultivated strips of land and immovable objects such as trees. Often, especially in more recent times, village disputes involve disagreement over whether founder's lineage gave a field to a late-comer and his descendants (in some instances slaves), or merely loaned it.

98. *Squeezing Parakeets*, *supra* note 8, at 670-71.

99. *See, e.g., id.* at 685-86.

100. Interview with Canton Chief of Koure, Niamey, Republic of Niger (May 3, 2018) [hereinafter Interview with Canton Chief of Koure].

101. I participated in such a dispute resolution gathering in 1986 in the Nigerien village of Fandou Berri. At the time, I was a Peace Corps volunteer living in the village, and to demonstrate my *bona fides*, I cultivated my own half-hectare of millet, the staple crop. Not long before the harvest, a herder's son fell asleep (at least that was his story) and his flock wandered into my field and ate much of my crop. In a country where most people's livelihoods are based on subsistence agriculture, this was a gravely serious matter. The village chief and a respected marabout brought the shepherd's father and uncles to my hut and, after much discussion, agreed that the family would apologize and, after the harvest, give me a quantity of their grain. I agreed that the resolution as fair, but declined to accept the grain on grounds I was collecting a stipend from Peace Corps and could afford to feed myself. In the end, everyone was delighted: harmony was preserved.

102. *Squeezing Parakeets*, *supra* note 8, at 672.

103. *Id.* at 682 (arguing agricultural land in Niger is subject to "overlapping use claims").

104. *See* SHIPTON, *supra* note 8, at 309 (arguing secondary rights holders in Kenya might claim access to thatched grass, fuelwood, wild foods, or sources of water and miner-

man's family unit, might have the right to gather straw to weave into mats as a source of pocket money.<sup>105</sup> They might also have the right to pick sauce ingredients or plant a small garden.<sup>106</sup> Traditional healers might have the right to harvest medicinal herbs.<sup>107</sup> Anyone in the community might have the right to collect fodder after the harvest to feed farm animals.<sup>108</sup> Younger men and slaves associated with the village might also have secondary, contingent rights in the land at issue. These rights are not necessarily secure use rights that would permit them to exclude others, but are culturally enforceable rights to plant and harvest crops to serve their specific needs.<sup>109</sup>

From the existence of these durable, enforceable secondary rights under customary law, it follows that the holders of primary rights – older male farmers – do not have the right to alienate their land.<sup>110</sup> Indeed, how could an elder male presume the right to sell land to an outsider when rights in the land also extend to secondary rights holders, spirits from the past, and the yet- unborn?

If customary law, which includes land law, functioned properly, the village would enjoy *barka*, a term and a concept that does not translate easily into English but includes a spiritual element which connotes general wellbeing and good luck.<sup>111</sup> *Barka* arises when members of the village are living in harmony and the various actors in the spirit realm

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als); see also Lawrence C. Becker, *Land Sales and the Transformation of Social Relations and Landscape in Peri-Urban Mali*, 46 GEOFORUM 113, 122 (2013) (arguing secondary rights holders in Mali might have access to pasture, wood collection, and other economic activities); see also Admos Chimhowu & Phil Woodhouse, *Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa*, 6 J. AGRARIAN CHANGE 346, 347-48 (2006) (arguing secondary rights in land act as "'safety-net' rights" for the community's poor); see also CHRISTIAN LUND, LOCAL POLITICS AND THE DYNAMICS OF PROPERTY IN AFRICA 16 (2008) (referring to the same types of rights in land as "nested hierarchies of estates"); Aparna Polavarapu, *Reconciling Indigenous and Women's Rights to Land in Sub-Saharan Africa*, GA. J. INT'L & COMP. L. 93, 114 (2013-2014) (referring to women's secondary rights in land as "nested" rights).

105. I base this statement on my own observation of women in the Nigerien village of Fandou Berri; see also Polavarapu, *supra* note 104, at 111 (describing women's secondary land rights under customary law in Botswana).

106. *Squeezing Parakeets*, *supra* note 8, at 682.

107. *Id.*

108. *Id.*

109. *Unintended Consequences*, *supra* note 9, at 1007, 1015.

110. *Squeezing Parakeets*, *supra* note 8, at 683; see Hagberg, *supra* note 60, at 104 (arguing those who attempt to sell lineage lands in rural Burkina Faso risk sanction from the spirit world).

111. *Squeezing Parakeets*, *supra* note 8, at 647.

are appeased.<sup>112</sup> So long as *barka* is maintained, the rains will fall regularly, crops will produce generously, and all will be well among the living.<sup>113</sup>

To summarize this archetypal description of customary land law, access rights were based primarily on proving descent from village founders. All male descendants expected ongoing, predictable access to agricultural land. Decisions about which land an individual could cultivate were made by elder males. These elder males included heads of family, lineage heads, and chiefs. Their decisions about access are influenced by the needs of the spirits and of secondary rights holders including women, later born men, and slaves. The man who farmed the plot of land could not be said to own it, because he did not have the right to exclude all others from it. Nor did he have the right to sell it. He could, however, count on primary access to that land during his lifetime, and could presume that his sons would inherit undivided shares of the same land. Village leaders who allowed this system of interlocking, overlapping, nested rights to deteriorate, risked the wrath of the spirits and the loss of *barka*.

#### A. *Complicating the Picture of Customary Law*

If the customary Nigerien land law described in the previous section is an ideal, the contemporary reality can be far more complicated, partly because outside influences have altered rural life and land. Although many rural Nigerien communities still rely on lineage heads and traditional chiefs to determine land rights, the second half of the twentieth century ushered in a profusion of new actors and institutions eager for a role in establishing the rules of the game and determining winners and losers.

#### B. *The Influence of Colonialism*

From the European colonial perspective, Niger was a mostly barren hinterland, so the French did not arrive on the scene until the dawn of the twentieth century.<sup>114</sup> France's approach to colonialism, some-

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112. *Id.*

113. To some skeptics, the notion of *barka* may sound suspiciously close to "harmony." Some commentators have critiqued the "harmony" thesis of African village dispute resolution as unrealistic, even naïve. See *infra* note 345. However, based on my own fieldwork in rural Nigerien villages, I am confident that harmony and good relations between and among families is what they say they are trying to accomplish. *Squeezing Parakeets*, *supra* note 8, at 694.

114. *Squeezing Parakeets*, *supra* note 8, at 651 (arguing France occupied Niger late in the colonial period, mainly to prevent Great Britain's colonial expansion in West Africa).

times referred to as “direct rule,”<sup>115</sup> assumed that their colonial subjects were uncivilized but that they could aspire – with sufficient tutelage – to evolve into civilized Frenchmen.<sup>116</sup> One aspect of civilized life was private ownership and titling of land, which the French set about establishing in Niger.<sup>117</sup> By the close of the colonial period in 1960, however, they had made little progress.<sup>118</sup>

The fact was that although France claimed to practice direct rule, Niger was mostly an afterthought and so they limited their investment by settling for what the eminent anthropologist, Sara Berry, has drolly referred to as “hegemony on the cheap.”<sup>119</sup> When it came to land, that meant introducing the Code Napoléon, including individual ownership and registration of land, but doing little to enforce it beyond Niamey.<sup>120</sup> It also involved declaring that all “unoccupied” land, which the French meant all land not subject to individual ownership, belonged to the state.<sup>121</sup> Once again, however, the vast majority of the population simply ignored that rule and went on with their lives as before.<sup>122</sup>

By the time of Niger’s independence in 1960, the land-related aspects of France’s civilizing mission had affected rural people in three limited respects. First, it had introduced the concept, if not the reality, of individual ownership and titling of land.<sup>123</sup> Rural people became vaguely aware that individual ownership of land was a possibility,<sup>124</sup> even they viewed that possibility with disinterest or revulsion.<sup>125</sup> Second, the French, who felt the need to provide housing for colonial offi-

115. *Squeezing Parakeets*, *supra* note 8, at 652.

116. *Id.*; see Paul D. Ocheje, “In the Public Interest”: Forced Evictions, Land Rights and Human Development in Africa, 51 J. AFR. L. 173, 185 (2007) (referring to France’s “civilizing mission” when it came to urban planning).

117. See Ambe J. Njoh, *Urban Planning as a Tool of Power and Social Control in Colonial Africa*, 24 PLAN. PERSP. 301, 306 (2009) (arguing it was French colonial practice to decree that the Civil Code would apply in land matters and that their motivation was to “legitimize their land entitlements” and commodify land).

118. Njoh, *supra* note 117, at 309; Hagberg, *supra* note 60, at 101.

119. SARA BERRY, NO CONDITION IS PERMANENT: THE SOCIAL DYNAMICS OF AGRARIAN CHANGE IN SUB-SAHARAN AFRICA 23-24 (1993); *Squeezing Parakeets*, *supra* note 8, at 651.

120. Njoh, *supra* note 117, at 306.

121. *Id.*

122. *Id.*

123. Meyer, *supra* note 20, at 100.

124. See *Squeezing Parakeets*, *supra* note 8, at 682-83, n. 177 (recounting a village elder’s recollection that views about ownership of land began to evolve starting in 1960s).

125. See *id.* at 681-82 (quoting a rural farmer saying, “nobles do not divide their lands.”).

cials as well as Nigerien functionaries that worked for the government, had begun seizing peri-urban farmland and subdividing it into house plots.<sup>126</sup> At the time, that activity affected relatively few rural Nigeriens, but it set the stage for the rampant rural land loss which is happening today.<sup>127</sup> Third, they created the quasi-traditional position of canton chief, which added powerful new actors to the governance of rural land.<sup>128</sup> Otherwise, the French impact on land law and land use was minimal.<sup>129</sup>

### C. *The Influence of Islam*

The rise of Islam in Niger, particularly the recent surge of fundamentalist Islamic practice, has had more impact on customary land law than the French ever achieved. Trans-Saharan traders introduced Islam to West Africa in the eighth century.<sup>130</sup> In the mid-fourteenth century, Mansa Mousa, the ruler of the West African Mali Empire, made the Islamic pilgrimage to Mecca and wowed the world with his vast wealth.<sup>131</sup> But Islam spread slowly through West Africa, mainly along trade routes.<sup>132</sup> Niger – a territory always off the beaten track – was late to adopt the religion in its more orthodox forms.<sup>133</sup>

Well into the twentieth century, most rural Nigeriens professed Islam and adhered strictly to its Five Pillars<sup>134</sup> but blended Islam with pre-Islamic spirit beliefs. Throughout my many visits to rural Niger over the past thirty years, pious Islamic friends have adjured me not to whistle, never to say nice things about a baby's appearance, never to enter the

126. See *infra* notes 208, 210 and accompanying text.

127. See *infra* text accompanying notes 261-68.

128. See *supra* text accompanying notes 92-94.

129. Njoh, *supra* note 117, at 306.

130. See *Squeezing Parakeets*, *supra* note 8, at 648.

131. Al-Umari, *Chapter Ten: The Kingdom of Mali and What Appertains to It*, in *CORPUS OF EARLY AFRICAN SOURCES FOR WEST AFRICAN HISTORY* 252, 269-72 (N. Levtzion & J.F.P. Hopkins eds., 2011).

132. *Squeezing Parakeets*, *supra* note 8, at 648.

133. See *id.*

134. Thomas Kelley, *Exporting Western Law to the Developing World*, 39 *GEO. WASH. INT'L L. REV.* 321, 339 (2007) [hereinafter *Exporting Western Law*] (arguing most Nigeriens practice the Five Pillars of Islam, which are: 1) the declaration of faith that there is only one God (Allah) and that Muhammad is God's messenger; 2) the performance of five daily prayers; 3) the giving of alms to the poor and needy; 4) fasting during the month of Ramadan; 5) making the pilgrimage to Mecca, if one is able).

bush before sunrise, and not to build a hut on the foundation of recently deceased ancestor's home, all to avoid agitating the spirit realm.<sup>135</sup>

Although it is true that until recently Islam has been a “stain not always deep”<sup>136</sup> in Niger, that situation is changing. In recent decades, Niger's supple blend of Islam and spirit worship has come under pressure from conservative Islamic influences emanating from the Arabian Peninsula.<sup>137</sup> Young men in particular are increasingly attracted to what Nigeriens refer to as “reformist” Islam, partly because it is presented by its promoters as a truer, purer, unsullied version of their religion and, at least according to some commentators, because it condemns Nigerien customs surrounding bride price payments, which place insuperable financial burdens on young men and sometimes prevent them from marrying.<sup>138</sup>

This gradual but persistent rise of orthodox Islamic beliefs in Niger has led to three relatively recent changes in customary land law. First, and most simply, it has introduced Islamic religious leaders as an additional cadre of non-state actors willing to help settle land disputes.<sup>139</sup> By the 1980s, village patriarchs' and village chiefs' efforts to mediate land questions in rural communities routinely involved local Islamic marabouts as part of the process.<sup>140</sup> In some intractable land disputes, it

135. See *Squeezing Parakeets*, *supra* note 8, at 650, n. 70. In an interesting sign of Niger's syncretic religious practices, when villagers feel the need to protect themselves from vengeful spirits, or to provoke the spirits into harming their rivals, they consult an Islamic *marabout* for charms and incantations rather than visiting a *zima*, who was the traditional interlocutor to that realm. Amadou, *supra* note 61, ¶ 19; see *supra* note 80 and accompanying text (explaining the powers of *zimas*).

136. JEAN ROUCH, *LA RELIGION ET LA MAGIE DES SONGHAY* 59 (1954) (“[c]n fait, l'islam n'est q'une teinture plus ou moins profonde.”).

137. See Hagberg, *supra* note 60, at 115 (arguing orthodox Islam disapproves of land priests, particularly any ritual addressed to land spirits). Ibrahim, *supra* note 25, at 9 (arguing Niger is undergoing an “emerging Islamic revival” that includes the growth of Islamic ascetic practices in daily life”). I have witnessed significant changes in Islamic practice during my thirty years of visiting rural Nigerien villages. To take only a few examples, village Islamic leaders no longer permit post-harvest tom-tom dances or traditional games of chance. Village women cover their heads or wear veils much more frequently than in the 1980s and 90s. Finally, villagers feel constrained when mentioning or invoking the spirits, though they still come into conversation regularly.

138. See Interview with Young Man Working in Auto Parts Store, Niamey, Republic of Niger (Mar. 4, 2009) (arguing “Izala” Muslims are popular among young men in Niamey because they condemn bride wealth payment).

139. See *Squeezing Parakeets*, *supra* note 8, at 668 (describing a land-related dispute in a rural village where the local *marabout* helped mediate).

140. *Id.*

is now common for one or both parties to seek a ruling by a regionally prominent Islamic sheik<sup>141</sup> or to a national Islamic association.<sup>142</sup>

Second, land-related nostrums in the Koran have led rural residents to a gradual acknowledgement, if not yet acceptance, of individual ownership and inheritance of land.<sup>143</sup> The Koran calls for male descendants to share equally in land and female descendants to receive half-shares.<sup>144</sup> Thus far, no one I have encountered in rural Niger has suggested abandoning the customary law that permits only men to inherit land; however, Islamic law, perhaps in combination with the French colonial legacy, has nudged rural people closer to the view that land is something to be owned and inherited individually without the mediating influence of traditional leaders.<sup>145</sup>

Finally, the spirits, including the original *gangi bi* land spirits and the spirits of ancestors, today play a diminishing role in determining land use and outcomes. It is not that rural people believe there are no spirits; rather they believe that Islam is ascendant and that the spirits therefore have less power than they once did.<sup>146</sup>

#### D. *The Influence of Economic Liberalization*

Notions about individual ownership of land, registration of land rights, and the possibility of land sales, were pushed upon rural Nigeriens with much more force starting the late 1980s and 1990s with the rise of global liberalization.<sup>147</sup>

141. See *Exporting Western Law*, *supra* note 134, at 324-27 (describing an incident where disputing parties brought the matter to a prominent Islamic figure).

142. See generally Meyer, *supra* note 20, at 48 (arguing various Islamic actors, including the Islamic Association of Niger, sometimes "act in place of the state" in resolving land disputes). See Interview with Village Chief and Group of Elders, Saabu Dey, Republic of Niger (Dec. 18, 2003) (recounting an instance where parties to a land dispute swore oaths before officials of the Association Islamique du Niger); Interview with President of the Islamic Association, Cadis, and Chef de Canton's Secretary, Say, Republic of Niger (Feb. 25, 2004) (describing the procedure when disputants swear before the religious leaders from the Association Islamique du Niger).

143. See Ali Abd Al-Kader, *Land Property and Land Tenure in Islam*, 5 ISLAMIC Q. 4, 5 (1959) (noting that both the Koran and the actions of the early Muslim state show "an express emphasis and encouragement of land ownership.").

144. See *Mirath*, ENCYCLOPEDIA OF ISLAM (P. Bearman et al. eds., 2d ed. 2005).

145. See *Squeezing Parakeets*, *supra* note 8, at 683 (arguing rural farmers' understanding of the land they cultivate is "unsettled" and combines communal tenure with French and Islamic notions of ownership and inheritance).

146. See *id.* at 649 (arguing rural Nigerien people feel free to blend Islam with spirit worship so long as the Muslim God is supreme); see also Interview with Former Resident of Goudel, *supra* note 38 (arguing the spirits do not like modernity and are losing power).

147. *Unintended Consequences*, *supra* note 9, at 1019-20.

In Niger's case, the liberal agenda included, among other features, the passage of a comprehensive land reform law known as the Rural Code and overall government decentralization, both of which have affected land rights and laid the groundwork for the transformation of peri-urban land from communal custom to individual ownership.<sup>148</sup>

The story of liberalization in Africa is long, complicated, and in some respects tragic,<sup>149</sup> but a summary version must suffice here. When the Berlin Wall fell in 1989 and the Soviet Union collapsed, the United States became, at least temporarily, the world's only superpower.<sup>150</sup> If poor countries in the Global South wanted help paying their bills, they could no longer count on playing the U.S. and the Soviet Union off of one another.<sup>151</sup> They would have to agree to economic and political reforms dictated by the U.S., its allies, and the international financial institutions they controlled.<sup>152</sup> Those policies collectively became known as the Washington Consensus.<sup>153</sup>

The Consensus was geared toward shrinking and democratizing the state and allowing the free hand of the market to work its magic.<sup>154</sup> Governments across Africa, if they wished to benefit from the Global North's economic largess, were compelled to slash civil service rolls, eliminate regulations, privatize state-owned industries, roll back subsidies, and commit to free and fair elections and democratic governance.<sup>155</sup> Another key tenet of the Washington Consensus was the need to privatize, title and register land.<sup>156</sup> Based on the writings of the Peruvian economist Hernando de Soto, the assumption was that poor countries such as Niger remain poor because its citizens lack secure

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148. *Id.* at 1019-20.

149. *Id.* at 1021 and n. 131; *infra* notes 164-73 and accompanying text; *Unintended Consequences*, *supra* note 9, at 1029.

150. See generally *Unintended Consequences*, *supra* note 9, at 1029 (arguing the introduction of Western land laws and anti-slavery laws to Niger was causing Niger's customary slaves to lost access to agricultural land).

151. See Thomas Kelley, *Beyond the Washington Consensus and New Institutionalism: What is the Future of Law and Development?*, N.C. J. INT'L L. & COM. REG. 539, 542 (arguing after the fall of the Berlin Wall Western nations interpreted their Cold War victory as proof of the value of unregulated free markets).

152. See *Unintended Consequences*, *supra* note 9, at 1001 (arguing after the fall of the Berlin Wall, African countries could no longer play "the Western and Eastern blocs off of one another.").

153. *Beyond the Washington Consensus*, *supra* note 151, at 542; *Exporting Western Law*, *supra* note 134, at 328.

154. *Beyond the Washington Consensus*, *supra* note 151, at 542.

155. See *Exporting Western Law*, *supra* note 134, at 327-28.

156. *Unintended Consequences*, *supra* note 9, at 1002.

rights in their own land.<sup>157</sup> The Nigerien farmer with no formal deed to the land he tills cannot pledge it as collateral to buy fertilizer or a tractor and thereby intensify his investment.<sup>158</sup> As a result, he sits on an under-exploited pile of “dead capital” and remains mired in poverty.<sup>159</sup> The key to unlocking prosperity in poor countries, therefore, was the reform and formalization of land rights,<sup>160</sup> which would allow property owners to “revive their ‘dead’ capital and generate surplus value from their assets.”<sup>161</sup>

To summarize in one sentence the results of the Consensus economic policies – including land titling – they inflicted significant pain and suffering on poor people in the Global South while producing few of the advertised economic benefits.<sup>162</sup> Nevertheless, Niger was an early and enthusiastic adopter Consensus policies, including land titling.<sup>163</sup>

In 1993, in keeping with the Consensus and just as the country was embarking on its first experiment with democratically elected government, it adopted a comprehensive new set of land laws, referred to as the Rural Code,<sup>164</sup> aimed at bringing order and consistency to what aid experts and central government officials viewed as the country’s confusing jumble of land customs and practices.<sup>165</sup> It was an enormously ambitious scheme that can only be summarized here. It envisaged the creation of a series of land commissions at various levels of government and procedures by which those who control land could obtain and register individual title to it.<sup>166</sup> In theory, the Rural Code and its administrative processes took a culturally sensitive approach to land reform in that

157. *Id.*; see Tor A. Benjaminsen et al., *Formalization of Land Rights: Some Empirical Evidence from Mali, Niger and South Africa*, 26 LAND USE POL’Y 28, 29 (2008) (arguing De Soto’s book THE MYSTERY OF CAPITAL gave direction to an entire new movement in law and development); see generally HERNANDO DE SOTO, THE MYSTERY OF CAPITAL, WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (2000).

158. *Unintended Consequences*, *supra* note 9, at 1002.

159. DE SOTO, *supra* note 157, at 163.

160. See generally Benjaminsen et al., *supra* note 157, at 29.

161. *Unintended Consequences*, *supra* note 9, at 1002.

162. See *Exporting Western Law*, *supra* note 134, at 328-29 (arguing the track record of Washington consensus reforms “has been poor”); see also *Unintended Consequences*, *supra* note 9, at 1002-03 (arguing studies of privatization find that “few of the predicted economic benefits actually materialized.”).

163. See *Unintended Consequences*, *supra* note 9, at 1021 (arguing Niger launched a “full scale land reform effort” that aimed to “convert Niger from customary land tenure to a Western system of freehold ownership and titling.”).

164. CODE RURAL [C. RURAL.] [RURAL CODE] art. 93-115 (Fr.).

165. *Unintended Consequences*, *supra* note 9, at 1022.

166. See Meyer, *supra* note 20, at 249-50.

it claimed that communal rights and secondary rights – the sort of customary land rights described in Part III.A., above – were eligible for registration and protection.<sup>167</sup> However, as the Rural Code began to roll out, it became abundantly clear that government agents were intent on registering land in the names of individuals, not groups, as part of an overall effort to comply with Consensus dictates and “modernize” Niger’s land laws.<sup>168</sup>

Several excellent articles and books have been written about Niger’s attempts at land law reform.<sup>169</sup> The short version is that in more than two decades, the reforms have had limited effect.<sup>170</sup> Peasant farmers find the process of land registration cumbersome and expensive, and they still generally prefer to deal directly with traditional chiefs.<sup>171</sup> The chiefs, who receive prestige and money by recognizing land claims and conciliating land disputes, encourage the view that nothing has changed, that other local political actors such as mayors and councilors are impotent, and that the Rural Code’s land commissions are a waste of time.<sup>172</sup> Even where farmers are motivated to formally register their lands – and some are, particularly where there are disputes over access or the threat of state expropriation – the government often lacks resources and personnel to maintain the necessary registers.<sup>173</sup>

The Influence of Government Decentralization emerged as Niger’s government began implementing the Rural Code the early 1990s. It

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167. See *Unintended Consequences*, *supra* note 9, at 1021.

168. *Id.*; Chimhowu & Woodhouse, *supra* note 104, at 347 (arguing land registration schemes in Africa claim to register group rights but usually aim for individualized ownership “formalized in a written title to physically-demarcated land”); see also Lorenzo Cotula et al., *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues*, IIED 13 (2004) (arguing Niger’s Rural Code purports to respect customary rights but places the new land system firmly under the control of non-customary actors); see also *Tenure Security*, *supra* note 57, at 222 (arguing titling schemes in the African context often ignore secondary rights holders).

169. See CHRISTIAN LUND, *LAW, POWER, AND POLITICS IN NIGER: LAND STRUGGLES AND THE RURAL CODE IN NIGER* (1998).

170. Bron-Saidatou, *supra* note 26, at 25 (arguing less than 3% of parcels of eligible land have been registered in Niger).

171. Cotula et al., *supra* note 168, at 12; Andrew R. Falk, *Ahead of the Curve: Promoting Land Tenure Security in Sub-Saharan Africa To Protect the Environment*, SEATTLE J. SOC. JUST. 1, 35 (2016) (arguing titling schemes in sub-Saharan Africa are often “arduous and expensive”); see Meyer, *supra* note 20, at 251.

172. Meyer, *supra* note 20, at 252 (arguing canton chiefs use their customary authority to block or authorize land transactions even though they have not formal authority under the Rural Code).

173. See Cotula et al., *supra* note 168, at 5 (arguing implementation of Niger’s Rural Code has been slow due to lack of resources).

simultaneously dove into government decentralization, which is another aspect of the standard consensus liberalization package.<sup>174</sup> Lawmakers hoped these two reforms would mesh seamlessly and that the new procedures for registering rural land would be carried out by grassroots officials, including locally elected councilors and mayors whose positions were created by the new decentralization legislation.<sup>175</sup> That was not how things turned out.<sup>176</sup>

The theory behind decentralization was that if responsibility for revenue collection and service delivery were pushed down from the central government to locally elected officials, there would be greater accountability and efficiency.<sup>177</sup> Decisions on whether to invest in road maintenance or the construction of markets would be made at the local level and local people would hold their officials – local councilors and mayors whose offices had been created by the decentralization legislation – accountable for results.<sup>178</sup> If local leaders spent public money unwisely or irresponsibly, or more to the point, if tax revenues disappeared as a result of corruption, local voters would know it and would elect new local representatives.<sup>179</sup> Likewise, decisions about land ownership and registration, whether in rural or urban areas, would be most accurately and efficiently carried out by local governments and local officials.<sup>180</sup> After all, they would be closest to the facts on the ground and they would be accountable to local land users.<sup>181</sup>

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174. Meyer, *supra* note 20, at 110 (describing decentralization as one of the “watchwords” of democratization in Niger).

175. See Cotula et al., *supra* note 168, at 12 (arguing countries in sub-Saharan Africa attempted to decentralize control over land within the broader context of political decentralization).

176. See *infra* notes 183-86 and accompanying text; Njoh, *supra* note 27, at 549 (arguing that decentralization in Niger never really materialized).

177. See Körling, *supra* note 20, at 105 (arguing that aid agencies promoted decentralization as bringing governmental administration closer to the people and increased accountability, transparency, and efficiency, but that it just made local level governance more complex).

178. *Id.* at 113 (a goal of decentralization was that citizens would see where their money was going, thereby legitimizing taxation).

179. See *id.* at 106 (arguing decentralization in Niger was supposed to create accountability, transparency, and efficiency). Interview with Former Mayor of Niamey Commune 5, Niamey, Republic of Niger (May 2, 2018) [hereinafter Interview with Former Mayor of Niamey] (arguing “it’s harder to see corruption when it’s farther away”).

180. See Interview with Former Mayor of Niamey Commune 5, *supra* note 179 (arguing land conversions were better managed by local commune governments, as opposed to the CUN government, because they were more accountable to local residents).

181. *Id.*

More than twenty years in, most observers judge decentralization to be a failure both in rural areas and in Niamey.<sup>182</sup> One problem was that, the scheme gave local governments major responsibility for service delivery – including responsibility for implementing the Rural Code’s new land registration procedures – but virtually no resources with which to achieve those tasks.<sup>183</sup> Also, central government actors who had long enjoyed unquestioned authority were reluctant to surrender their prerogatives, including the rent seeking opportunities that go along with controlling finances, so they simply delayed and obfuscated when it came to devolving power to lower levels of government.<sup>184</sup>

In the end, all that decentralization accomplished was to add a low-level, comparatively powerless set of government actors to an already crowded and chaotic institutional matrix.<sup>185</sup> Before decentralization, a jumble of customary chiefs, Islamic religious leaders, and representatives of the central government vied with one another for legitimacy and power in both rural and urban areas.<sup>186</sup> Decentralization laws added local councilors and mayors to the mix, a group that brought no historical legitimacy and no additional resources with which to entice adherents.<sup>187</sup> They ended up being easily out-competed by central government authorities, who never removed their fingers from the purse strings, and by traditional chiefs, who either isolated them by convincing rural people to ignore them, or coopted them by having their own relatives run for local office.<sup>188</sup>

The failure of decentralization has contributed to an atmosphere of “general dysfunction”<sup>189</sup> when it comes to land registration in rural areas.<sup>190</sup> Because there are no resources to create and maintain cadastral

182. Körling, *supra* note 20, at 106-07 (arguing that in many areas decentralization simply made things more complicated by adding to the already confused jumble of political actors involved in land and the delivery of government services).

183. *Id.* at 107-08; Cotula et al., *supra* note 168, at 5. Njoh, *supra* note 27, at 540.

184. Körling, *supra* note 20, at 110 (arguing the subdivision of land was a “valuable resource” and “source of illicit enrichment” for governmental actors, and that the central government officials won the struggle against local governments).

185. *Id.* at 106; *see* Meyer, *supra* note 20, at 24-27, 30-34 (arguing numerous Nigerien institutions vie with one another for authority over land transactions).

186. *See* Meyer, *supra* note 20, at 24-27, 30-34.

187. *Id.* at 224, 251 (arguing the institutions of the state lack legitimacy in land matters, that people still turn to chiefs instead of local officials); Bron-Saidatou, *supra* note 26, at 20 (arguing commune level governments in peri-urban areas lack the power the money to control land matters).

188. Körling, *supra* note 20, at 106, 119-20.

189. Bron-Saidatou, *supra* note 26, at 21.

190. *Id.* at 24.

systems at the lower levels of government, and because there is constant competition from other actors, precious few parcels of rural land are actually being registered in rural areas.<sup>191</sup>

In spite of these institutional failures, the Rural Code (including its plans for titling and registration of land) and government decentralization have in combination affected land and land use in peri-urban areas in two respects. First, they have helped spread the word about the concept of individual ownership and registration of land. Although land ownership is not an entirely new concept, having been introduced to rural communities by the French and by the rise of “reformist” Islam, until recently it has been more of a rumor than a reality.<sup>192</sup>

### *E. The Death of Customary Law in Peri-Urban Niamey*

Peri-urban development around African cities tends to follow major paved roads that lead to the countryside, and eventually link to other major cities and towns.<sup>193</sup> Since 1986, for more than thirty years, I have regularly traveled on Niamey’s Filingue Road, which heads east-northeast out of the capital toward the town of Filingue.<sup>194</sup> Therefore, I have had a consistent reference point by which to track Niamey’s growth. As late as the mid-2000s, the Filingue Road had one gas station across from the Wadata Market, in what was the edge of the city. Drivers, including me, often filled up there before leaving town and venturing into the bush. There was sporadic development along the road beyond the gas station, but few permanent structures. As one exited the city, the landscape quickly turned to millet fields and tree nurseries. The first village, Saga Gourou, approximately ten kilometers from the Wadata gas station, looked and felt as if it belonged to a different world, a rural world.

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191. *Id.* at 24 (estimating that 3% of rural land in Niger has been registered under the Rural Code).

192. See *Unintended Consequences*, *supra* note 9.

193. See Janine M Ubink, *Courts and Peri-Urban Practice – Customary Land Law in Ghana*, U. GHANA L.J. 25 (2002-2004) (arguing development of peri-urban areas in Ghana follows main roads because that is where electricity is most commonly available).

194. I base my description of the Filingue Road, officially named RN 25, on decades of observation. I served as a Peace Corps volunteer in Niger from 1986 to 1988 and was posted in a village approximately fifty kilometers east-northeast of Niamey in the general direction of the town of Filingue. I regularly rode a motorcycle to and from Niamey along that route. In late 1990s, when I began performing ethnographic legal research in the same zone, I regularly traveled the Filingue Road in public transportation. Still later, when I had a Fulbright Scholarship in Niger from 2003-2004, I drove a private vehicle out the Filingue Road several times each week to perform fieldwork. I have continued to visit that zone regularly, most recently in May of 2018.

When I drove out of Niamey along the Filingue Road in 2018, I counted eleven gas stations beyond my old fill-up spot.<sup>195</sup> The road was lined with commercial buildings, compounds, and, behind that commercial strip, residential neighborhoods as far as the eye could see. The rampant development has engulfed the village of Saga Gourou. Clearly, something dramatic is happening to land around Niamey.<sup>196</sup>

### III. HISTORY OF LAND IN NIAMEY AND ENVIRONS

The city of Niamey was, to a large extent, a colonial creation.<sup>197</sup> Before the French arrived at the turn of the twentieth century, there were several villages along the banks of the Niger River, in the area of present-day Niamey, but no significant cities or towns.<sup>198</sup> During the early years of their colonial project in Niger, the French vacillated between Zinder and Niamey as their center of activity.<sup>199</sup> But Niamey had attractive views of the Niger River and an airy plateau where the colonial overlords could build their offices and residences. In 1926, the French established a permanent capital there.<sup>200</sup>

The airy plateau favored by the French was located between two villages that became important actors in the story of Niamey's peri-urban land transformation. To the west, and somewhat upriver, was the village of Goudel.<sup>201</sup> To the east, and somewhat downriver, was the village of Gamkallay.<sup>202</sup> Historically, their fields were divided by a watercourse and gully that now bisects Niamey.<sup>203</sup> Today, both former villages are considered neighborhoods of the capital city.<sup>204</sup>

195. See Interview with Hamdallaye Canton Chief, *supra* note 17 (describing development along the Filingue Road between Niamey and Hamdallaye).

196. Much of this description, including the presence of the eleven gas stations beyond Wadata, can be verified on Google Maps. The first village, Saga Gorou, is not identified by name but you can see the settlement on the satellite version.

197. Meyer, *supra* note 20, at 93.

198. See *id.* (arguing in pre-colonial days, present-day Niamey was away from major trade routes and a "zone of refuge" for diverse peoples).

199. Njoh, *supra* note 27, at 546. Meyer, *supra* note 20, at 99 (arguing the city of Zinder, located in eastern Niger, was a city of longstanding political and economic importance).

200. Meyer, *supra* note 20, at 99.

201. *Id.* at 94.

202. *Id.*

203. See *id.* at 96 (arguing Gamkalle and Goudel originally controlled the land that later became Niamey and that the dividing line between them was the ravine of Gunti Yena, a stream that enters the Niger River).

204. Based on personal knowledge, Gamkalle and Goudel are not the only villages incorporated into Niamey over the decades. For example, Gaway, a pre-colonial fishing

The French set about transforming land law in their new colony, but as discussed in Part III, they made little progress in rural areas.<sup>205</sup> The vast majority of Niger's people simply ignored the putative changes in land law and went on with their lives as before.<sup>206</sup>

But this was less the case in and around Niamey. By the 1950s, the colonial regime was beginning to carve up rural land on the city's outskirts – largely in what had been the agricultural fields of Goudel and Gamkale – to produce subdivided residential parcels, mostly for civil servants and veterans who had regular salaries.<sup>207</sup> Because the French did not recognize customary claims, they simply requisitioned what they considered empty land and dedicated it to their preferred uses.<sup>208</sup>

The colonists' subdivision of land around Niamey for residential purposes was slow and steady until the late 1950s,<sup>209</sup> when it began to accelerate as a result of economic growth, high birth rates, and two great droughts in 1972-73 and 1983-84.<sup>210</sup> Rural people were being pushed by crisis but also pulled by opportunity as pre- and post-Independence governments focused their limited resources on developing schools, health care facilities, and other infrastructure in cities.<sup>211</sup> The rapid growth in urban population outstripped the government's ability to convert land from farms to house plots,<sup>212</sup> and the result was the appearance of informal, mostly unplanned neighborhoods around Niamey's periphery.<sup>213</sup>

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settlement on the banks of the Niger River, was displaced during the 1970s to make room for the present-day Hotel Gawaye. The government moved Gawaye's residents across the Niger River to a newly settled area called Haro Banda and compensated them by granting them multiple subdivided house plots. Another village, Saga, had much of its territory expropriated by Niger's government to build Diori Hamani Airport on what was then the outskirts of the capital. Today, Niamey has grown around and beyond the airport and Saga is considered a suburban neighborhood.

205. See *supra* notes 120-22 and accompanying text.

206. *Id.*

207. Meyer, *supra* note 20, at 105; see Körling, *supra* note 20, at 73 (arguing that since the colonial period urban planning in Niamey has focused on subdivision of land, but that the planning has always fallen behind actual expansion).

208. Meyer, *supra* note 20, at 3; see Interview with Former Gamkalle Resident and His Friend (May 5, 2018) [hereinafter Interview with Former Gamkalle Resident and His Friend].

209. Motcho, *supra* note 48, at 2 (describing Niamey's rapid population growth during the late colonial and early independence periods and rising demand for parcels of land).

210. Meyer, *supra* note 20, at 109.

211. Ocheje, *supra* note 116, at 187.

212. Körling, *supra* note 20, at 73.

213. Meyer, *supra* note 20, at 107 (arguing some of the informal neighborhoods were later formalized while others were not).

When the French colonialists departed in 1960 and the post-independence government took control, little changed, at least in the realm of law.<sup>214</sup> The newly independent country declared that the French Civil Code would continue to be the law of the land,<sup>215</sup> and the vast majority of Niger's citizens continued to ignore that formal law, just as they had under the French.<sup>216</sup> In Niamey, however, the post-independence government held more sway than in rural areas and was able, at least to a certain extent, to continue the colonial land practices and policies.<sup>217</sup> Particularly during the reign of Sayni Kountche, a military dictator who ruled from 1974-1987, the Nigerien state carried on with expropriating significant tracts of land on the periphery of the city, all by military decree, and dedicating it to providing housing for the city's growing population.<sup>218</sup> As was true during colonialism, much of the land was taken from farmers from the villages of Gamkale and Goudel.

*A. Decentralization Struggles Lead to Chaos in Urban and Peri-Urban Land Management*

Fundamental changes in land law, changes that have profoundly affected the lives and livelihoods of people living in peri-urban zones, did not accelerate until the 1990s, the era of economic liberalization, democratization, and government decentralization described in Part III, above. Niger, whether by choice or compulsion, fully implemented Washington Consensus reforms including land law reform and government decentralization. While those policies had comparatively little impact in isolated rural areas,<sup>219</sup> they began to alter peoples' lives in peri-urban zones around the capital.

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214. Njoh, *supra* note 27, at 547, 549; Meyer, *supra* note 20, at 107.

215. Njoh, *supra* note 27, at 550.

216. Njoh, *supra* note 27 (Niger's post-independence governments periodically issued decrees and passed laws attempting to reform land practice. For example, in the 1970s, the military regime of President Sayni Kountche decreed a new policy of *mise en valeur*: the notion that henceforth all rural land would "belong" to those who were farming it). *Squeezing Parakeets*, *supra* note 8, at 685. Many said that in fact this policy was Kountche's attempt to remove or at least weaken chiefs' power of land tenure matters. *Id.* In the end, it really did not matter, since resilient rural Nigeriens largely ignored that policy too.

217. Meyer, *supra* note 20, at 107.

218. Meyer, *supra* note 20, at 3 (arguing Niger's post-independence governments seized his family's lands without compensation and dedicated them to Niamey's Green Belt); *Squeezing Parakeets*, *supra* note 8, at 138 (arguing the Kountche regime also continued the expansion of the colonialist's Green Belt).

219. *See supra* note 216.

The land transformation in and around Niamey began in earnest as an indirect result of government decentralization. In 2002, Niamey's central government, the Urban Community of Niamey ("CUN") was divided into five separate local governments, known as communes, each with significant responsibility for providing municipal services.<sup>220</sup> Importantly, each of the urban communes had the authority to subdivide and sell land on its periphery.<sup>221</sup> The communes quickly realized that the central government was going to do little to help pay for governmental services,<sup>222</sup> and that converting peri-urban land from farms to house plots was a source of desperately needed revenue.<sup>223</sup>

The communes quickly realized that the central government was going to do little to help pay for governmental services,<sup>224</sup> and that converting peri-urban land from farms to house plots was a source of desperately-needed revenue.<sup>225</sup> Not incidentally, subdividing and selling land also created rent-seeking opportunities for commune officials, of which they took full advantage.<sup>226</sup> With these dynamics at play, the ur-

220. Meyer, *supra* note 20, at 227.

221. Meyer, *supra* note 20, at 111.

222. *Squeezing Parakeets*, *supra* note 8, at 682; Cotula et al., *supra* note 168 (arguing Niger's Rural Code purports to respect customary rights but places the new land system firmly under the control of non-customary actors); *Tenure Security*, *supra* note 57, at 222 (arguing titling schemes in the African context often ignore secondary rights holders); Chimhowu & Woodhouse, *supra* note 104, at 347 (arguing land registration schemes in Africa claim to register group rights but usually aim for individualized ownership "formalized in a written title to physically-demarcated land"); Njoh, *supra* note 27, at 540 (arguing the decentralization that was supposed to accompany the Rural Code "never really materialized"); Meyer, *supra* note 20, at 224, 251 (arguing the institutions of the state lack legitimacy in land matters, that people still turn to chiefs instead of local officials); Bron-Saidatou, *supra* note 26, at 20 (arguing commune-level governments in peri-urban areas lack the power the money to control land matters).

223. See Interview with Former Mayor of Niamey Commune 5, *supra* note 179 (arguing the communes produced revenues from developing peri-urban land and spent it on service provision); Meyer, *supra* note 20, at 227; Körling, *supra* note 20, at 109 (arguing zoning power appeared to the commune governments as a "golden opportunity" to produce revenue).

224. See Körling, *supra* note 20, at 108 (arguing commune governments were given much responsibility for service delivery but few means to raise funds).

225. Meyer, *supra* note 20, at 227 (arguing that subdividing land provided revenues to commune-level governments).

226. See Körling, *supra* note 20, at 81 (arguing that the process of subdividing land is complicated and corrupt); Issaka, *supra* note 1 (arguing that in the 1990s the communes were practically the only ones subdividing land around Niamey and that corruption had been at the heart of the system).

ban communes enthusiastically dove into the business of converting farmland around the city into subdivided house plots.<sup>227</sup>

During this period, however, there was growing tension between Niamey's newly empowered commune governments and the CUN. From the CUN's perspective, the communes squabbled with one another, refused to collaborate, and prevented the CUN from playing its rightful role as coordinator.<sup>228</sup> From the communes' perspective, the CUN simply did not want to relinquish its centralized power.<sup>229</sup> By 2011 the struggle between Niamey's communes and the CUN was over and, for political reasons beyond the scope of this article,<sup>230</sup> the CUN had reasserted control of city government, including the development of peri-urban land.<sup>231</sup> The CUN's inability to handle the volume of land transactions and the entry of private developers to the market conjunctively catalyzed chaos in peri-urban land development.<sup>232</sup>

### *B. Enter the Private Developers*

Before the CUN mayor's office could bring order to peri-urban land development, it was overtaken by the arrival of private land developers in the market.<sup>233</sup> Legal changes in the late 1990s authorized private development,<sup>234</sup> but its influence was not felt until the mid-2000s when a governmental decree definitively removed the state's monopoly and made it possible for anyone possessing peri-urban land to subdivide and sell it.<sup>235</sup> The idea was to unburden the government from constantly having to search for resources to carry out necessary improvements for the process of converting agricultural land to house plots: the provision of roads, public buildings, water, electricity, and other infrastructure.<sup>236</sup> The effect, however, was to permit private actors, particularly those

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227. Meyer, *supra* note 20, at 233.

228. *Id.* at 227.

229. Interview with Former Mayor of Niamey Commune 5, *supra* note 179.

230. In brief, Niger experienced a coup d'état in 2010 and the military government preferred to govern the city by naming its own top officials. See Meyer *supra* note 20, at 228.

231. *Id.* at 113.

232. *Id.* at 228 (arguing the CUN mayor's office attempted to centralize all land-related record-keeping, resulting in boxes of disorganized records piled high in the corridors, complete lack of file verification, and some parcels being sold multiple times).

233. *Id.* at 229.

234. Issaka, *supra* note 1 (arguing many private developers entered the Niamey land market after legal reforms in 1997); Meyer, *supra* note 20, at 118.

235. Meyer, *supra* note 20, at 227, 229 (arguing private developers were not fully able to participate in development of peri-urban land until a government decree in 2000).

236. *Id.* at 229.

with working capital, to suddenly and entirely take over land development on the edge of the city.<sup>237</sup> There has been a boom in the development of peri-urban land since 2010,<sup>238</sup> and every new subdivision around Niamey has been undertaken by private developers.<sup>239</sup>

Most of the leading private actors have been individuals who, through personal contacts and prior experience, know how to navigate the tortuous bureaucratic process involved in converting farmland into suburbs.<sup>240</sup> Some acquired their knowledge by working on the inside of the state bureaucracy and their core expertise is keeping up on the constant modifications to the arcane procedural requirements.<sup>241</sup> Others have become powerful private actors because of family ties to chiefs in the peri-urban zones.<sup>242</sup> They use their connections to identify potential sellers of land and to negotiate with lineage heads.<sup>243</sup> The former group of intermediaries are familiar with the corridors of power and the constant flux in the rules, while the latter keep tabs on who owns which lands and who might be convinced to sell.<sup>244</sup> The most effective of the middlemen combine both competencies.<sup>245</sup> They propose their service directly to customary owners, offering the enticing possibility of selling their land without having to engage directly with the distasteful, even dreaded, government bureaucracy; and often offering better terms than those offered by commune-level mayors' offices (before municipal government was re-centralized) or the CUN (before it was squeezed out of the game).<sup>246</sup>

The entrance of private developers into peri-urban land markets have led to the emergence of symbiotic, mafia-like networks between the private actors and government officials.<sup>247</sup> The developers, many of whom have grown vastly wealthy, grease the necessary palms in the state bureaucracy to ensure their development plans are approved,<sup>248</sup>

237. *Id.* at 235, 238.

238. *Id.* at 242.

239. Issaka, *supra* note 1 (arguing private developers have become more powerful actors than government); Meyer, *supra* note 20, at 229.

240. *See* Meyer, *supra* note 20, at 236.

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *See* Meyer, *supra* note 20, at 239.

246. *Id.* at 237.

247. *See id.* at 241.

248. *See* Körling, *supra* note 20, at 80, 91 (arguing the sale of peri-urban house plots is the source of corrupt practices, that Niamey city hall is a "locus of negotiations and ac-

whether or not those plans comply with state requirements, or the best practices for infrastructure, public space, and the like.<sup>249</sup> In recent years, the developers' corrupt influence is rumored to go even deeper and higher.<sup>250</sup> Some have become so wealthy that they are able to pour vast amounts of money into electoral campaigns to ensure the election of officials who are sympathetic to their projects.<sup>251</sup> Once this is accomplished and their friends are in office, the tortuous governmental regulatory and permitting processes become crystal clear and streamlined for the politicians' patron but remains tortuous and opaque for the patron's competitors.<sup>252</sup> It is common knowledge in Niamey that these relationships reach the highest levels of government, which means no bureaucrat, at any level of the state apparatus, can safely impede the private developers' plans – whether for corrupt or legitimate public safety reasons.<sup>253</sup>

As in rural areas,<sup>254</sup> in peri-urban zones there is an ongoing struggle over who has formal authority to authorize the transition from farmland to suburban house plots.<sup>255</sup> Chiefs in peri-urban zones vie with formal CUN officials, who in turn vie with various central government ministers and their underlings whose portfolios touch on land development.<sup>256</sup> But since the entrance of wealthy, politically connected private developers onto the scene, the contest for formal authority matters

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cess," and that government officials are typically bribed by offering them plots in the subdivisions they authorize); *see also* Interview with Former Mayor of Niamey Commune 5, *supra* note 179 (arguing "[t]he only way to move a [housing] project forward is to engage in corruption" by paying ministry officials).

249. *See* Körling, *supra* note 20, at 90; *see also* Interview with Former Mayor of Niamey Commune 5, *supra* note 179.

250. *See* Interview with Former Mayor of Niamey Commune 5, *supra* note 179 (arguing the land system around Niamey is "full of corruption," that faulty development plans are routinely approved by corrupt CUN officials, and that the office of Niger's president overrules decisions by lower-level government offices that might block development plans).

251. Meyer, *supra* note 20, at 241.

252. *Id.*

253. *See id.* at 244-45, 259; *see generally* Interview with Former Mayor of Niamey Commune 5, *supra* note 179 (arguing his private business was suffering because those in political power were steering business away from him).

254. Meyer, *supra* note 20, at 225.

255. *Id.*

256. *Id.* at 211, 225, 256 (arguing the Ministries of Environment, Urbanism, Cadaster, and Education all have claims to authorize peri-urban land transactions, but that Urbanism is the most powerful so private developer with clout skip the other ministries and go straight to Urbanism).

less<sup>257</sup> because the private actors simply push aside the competing organs of the state and carry out their development plans in whatever way will maximize their profits.<sup>258</sup> The state has become one actor among many, and in most instances it not the most powerful one.<sup>259</sup> The result, discussed in more detail in Part V., below, is that it has become “impossible to manage the peri-urban land for the good of all, especially for the lowest level of society.”<sup>260</sup>

#### IV. THE CURRENT SITUATION

Today, land in the vicinity of Niamey is coveted and the market is frenzied.<sup>261</sup> Although the large private developers described above are dominant players and reap the greatest rewards, it seems that everyone with capital to invest is jostling to get into the game.<sup>262</sup> Business people who have no background in land development and whose main activities focus on general commerce or transportation, are buying up empty lots in the fast-spreading peri-urban neighborhoods with an eye toward flipping them or developing them.<sup>263</sup> Those with sufficient means purchase the lots in large quantities,<sup>264</sup> often in cahoots with government

257. See Issaka, *supra* note 1 (arguing the developers and their highly placed patrons in central government succeeded in pushing the lower-level commune governments out of the way even though they were supposed to have authority over subdividing land); see also Meyer, *supra* note 20, at 225.

258. Meyer, *supra* note 20, at 224; Interview with A Highly Placed Official in Niger's Ministry of Environment and of Durable Development, Niamey, Republic of Niger (May 11, 2018) [hereinafter Interview with Official] (arguing the rise of private developers means no one is taking account of the public interest and it is now all about generating profit).

259. Meyer, *supra* note 20, at 225.

260. *Id.*

261. See Issaka, *supra* note 1 (employing the French term “*combat foncier*,” meaning “land combat,” to describe the real estate market in peri-urban areas around Niamey).

262. See Interview with Retired Office Worker, Niamey, Republic of Niger (Apr. 28, 2018) [hereinafter Interview with Retired Office Worker] (describing his purchases of various empty house lots in towns near Niamey); see also Interview with Two Real Estate Developers, Niamey, Republic of Niger [hereinafter Interview with Two Real Estate Developers] (Apr. 30, 2018) (discussing where one developer was a former lawyer and the other was until recently a “documentary filmmaker” and still had that profession on his business card).

263. See Interview with El Hadji Merchant, Niamey, Republic of Niger (May 4, 2018) [hereinafter Interview with El Hadji Merchant] (describing a merchant with no development experience revealing his plans for developing recently purchased peri-urban land); Interview with a Businessman, Niamey, Republic of Niger (May 4, 2018) (describing an uneducated businessman with no prior experience in land development revealing his participation in a large peri-urban social housing development); Interview with Two Real Estate Developers, *supra* note 262 (describing two principals of a social housing project, one a former lawyer, the other a documentary film maker).

264. See, e.g., Interview with El Hadji Merchant, *supra* note 263.

officials with whom they split the profits when prices rise.<sup>265</sup> While others purchase large tracts of agricultural land located far from the city;<sup>266</sup> and some plan to subdivide the land quickly and sell to smaller-scale speculators.<sup>267</sup> Others intend to sit on the distant land until the fast-expanding city approaches their holdings and pushes the value upward.<sup>268</sup>

Poor urban Nigeriens are nowhere to be seen in this scramble for peri-urban land. The government, with the support and advice of aid agencies, has begun in recent years entering into public-private partnerships to establish new *logement social* (“social” or “affordable” housing) in peri-urban zones.<sup>269</sup> However, in spite of the “social” moniker,

265. Meyer, *supra* note 20, at 225.

266. See Interview with Two Real Estate Developers, *supra* note 262 (describing a housing development located approximately thirty kilometers from Niamey); Interview with El Hadji Merchant, *supra* note 263 (describing his purchase and conversion of land approximately twenty kilometers outside of Niamey).

267. See Issaka, *supra* note 1 (arguing many speculators have entered Niamey’s land markets); Cotula et al., *supra* note 168, at 27 (arguing many urban elites are speculating in peri-urban land markets).

268. See Interview with El Hadji Merchant, *supra* note 263 (arguing he will leave much of his recent peri-urban land purchase “in reserve” to allow prices to rise). Major business actors are not the only ones fueling the red-hot peri-urban land markets. Peri-urban land is one of Niger’s few investment opportunities, so many salaried employees (primarily civil servants) are purchasing multiple undeveloped plots in recently subdivided neighborhoods outside of town, often while living in small, rented lodgings in the city. Meyer, *supra* note 20, at 233. In fact, it is rare that the first purchaser of a newly subdivided plot actually constructs a house and moves in. *Id.* Most initial buyers are investors and often it is the second or third purchaser who constructs a residence. *Id.* at 234 ((offering an example of one house plot in a peri-urban neighborhood that originally was purchased for 60,000 CFA (approximately \$110 at current exchange rates), that changed hands twice, and eventually sold for 2 million CFA to the person who constructed a house)).

269. See Alexandra Biehler, Armelle Choplin, & Marie Morelle, *Le Logement Sociale en Afrique: Un Modele a (Re)inventer?* 1, 1 (May 18, 2015), available at <https://www.metropolitiques.eu/Le-logement-social-en-Afrique-un.html> (last visited Sept. 23, 2019) (arguing NGOs and international agencies have supported social housing); see also Meyer, *supra* note 20, at 240 (mentioning social housing in Niger and arguing it does not benefit the poor). Based on personal observation, these social housing neighborhoods are popping up like mushrooms in rural areas around Niamey. Because they are being developed well outside the boundaries of the city, they can be a startling, incongruous sight as one drives through the bush. The completed neighborhood can include hundreds of residential units, typically a mix of one-, two-, and three-bedroom cement, metal-roofed houses, each with a small, walled concession surrounding it, all packed closely together. See Interview with Two Real Estate Developers, *supra* note 262 (describing a social housing site under construction approximately thirty kilometers from Niamey). They often are completely surrounded by agricultural fields where farmers go about their traditional routines of planting and cultivating subsistence crops and husbanding their animals. See *id.* (describing a new social housing site next to what appeared to be a millet field).

little, if any, of the resulting housing is within the means of poor people.<sup>270</sup>

From the perspective of an academic studying land in Niger, this is a fascinating transitional moment in which the rules governing peri-urban land and land use are changing rapidly. But from the perspective of farmers living in peri-urban zones this transition signals and end to a way of life. Whether their land is purchased by a developer, or condemned by the state, once official title has been printed and properly registered, the purchaser's rights are secure and the rural people, along with their rural beliefs, rural ways of life, and rural livelihoods, are out of the game. The transition to suburbs is irreversible<sup>271</sup> and the land becomes a commodity like oranges on special in Niamey's Petit Marche.<sup>272</sup>

## V. SUMMARY

Niamey was created during the colonial era on land expropriated from the nearby villages of Gamkale and Goudel. As the city's population steadily grew, the colonial government expropriated and subdivided land on its periphery—land that the French considered vacant—to provide residences for its functionaries. Once the land was subdivided, it was subject to the Code Napoléon. However, the scale of this conversion was modest; most rural people were unaffected, and their lives continued as before.

Niger's post-colonial governments carried on in a manner similar to the French. As Niamey's population growth accelerated, the state expropriated and converted larger swaths of surrounding land, primarily still from the domains of Goudel and Gamkale. At times, population

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270. Interview with Two Real Estate Developers, *supra* note 262 (in a typical social housing project, the government and private financial institutions combine forces to make mortgages available to prospective purchasers. The banks agree to loan money at comparatively moderate rates of interest and the government agrees to deduct the monthly payments directly from the borrowers' paychecks. This means, of course, that only Nigeriens with regular paychecks, or who live overseas – together a wafer-thin slice of Niger's population – can take advantage of the programs); *see* Körling, *supra* note 20, at 79 (arguing Niger claims that provision of housing for the poor is a key to poverty reduction but in fact has provided exceedingly little that is accessible to the poor).

271. *See* Interview with Two Real Estate Developers, *supra* note 262 (arguing that once they have formal title in hand, they have no fear that farmers will be able to challenge their ownership of land).

272. Meyer, *supra* note 20, at 235; *see* Interview with Former Gamkalle Resident and His Friend, *supra* note 208 (arguing that "land has become money"); Interview with Insurance Executive, Niamey, Republic of Niger (May 5, 2018) (arguing "land was religious; now it is money.").

growth outstripped the government's ability to subdivide land, and so informal settlements began to appear on what had been agricultural land.

Starting in the 1990s, democratization, economic liberalization, and decentralization, combined with accelerating population growth in Niamey, led to a dramatic increase in the city's expansion and an accompanying flood of land conversions from fields to suburbs. Various sources of authority—the CUN, central government ministries, local government officials, and chiefs—vied with one another for authority over peri-urban land transactions and attendant spoils. However, beginning in 2010, most of the governmental actors were shoved to the side by the entrance of private land developers, who formed mafia-like networks in cahoots with high government officials. Suddenly, all limits to peri-urban land development vanished and a scramble for profits ensued. Developers and speculators began purchasing, subdividing, titling and registering formerly agricultural lands at a blistering pace, sometimes scores of kilometers outside the city. The private developers had no reason to care about poor people which included the peasant farmers selling their ancestral lands. The government of Niger claims they provide “social housing” to meet the needs of the poor, but in fact only comparatively well-off Nigeriens are eligible to participate.

The next section explores who wins and who loses as a result of Niger's peri-urban transformation.

## VI. WINNERS AND LOSERS WHEN PERI-URBAN LAND IS TRANSFORMED FROM CUSTOMARY TO FORMAL

The physical and legal transformation of peri-urban land around Niamey produces winners and losers.<sup>273</sup> In general, the winners are those with power and wealth who take advantage of the transition to increase their bounty.<sup>274</sup> The losers are peasant farmers whose livelihoods

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273. See Hagberg, *supra* note 60, at 102 (arguing peri-urban land sales always produce winners and losers and that rural people are usually the losers); see SHIPTON, *supra* note 8, at 144 (arguing early practitioners of land privatization and titling in Kenya, which was a precursor to such efforts across sub-Saharan Africa, assumed “energetic or rich Africans will be able to acquire more land and bad or poor farmers less, creating a landed and landless class” and that “[t]his is a normal step in the evolution of a country.”).

274. See Mbiba, *supra* note 2 (arguing local elites including officials, politicians and traditional authorities often control land entitlements); Falk, *supra* note 171, at 1 (arguing land tenure reform always ends up redistributing land from the poor to the rich); see also Polavarapu, *supra* note 104, at 98 (arguing that in Botswana land tenure security is enjoyed only by the “rich and legally adroit”); Cotula et al., *supra* note 168, at 3 (arguing “elites claim land that isn't theirs when they know registration is coming.”).

disappear and who forfeit the historical and spiritual foundations that until now have provided order and meaning to their lives.<sup>275</sup>

### A. *Winners*

Among scholars, it is a generally accepted nostrum that legal transformations in poor countries benefit elites.<sup>276</sup> The reason is obvious: elites are better positioned to shape the details of the new legal rules to serve their own interests.<sup>277</sup> Once the new rules are in place, they have the necessary knowledge, capital, and connections to consolidate their advantages before less informed societal actors become aware of the shift.<sup>278</sup> The transformation of land law in peri-urban Niger is a case in point.<sup>279</sup>

#### 1. *Private Real Estate Developers and Investors and the Government Officials with Whom They Collaborate*

Private developers have emerged as the biggest winners in the conversion of peri-urban land. At the top of the developer pyramid are the leaders of the mafia-like networks that have infiltrated and dominated all levels of the state apparatus, and who have amassed fortunes by converting large swaths of agricultural land into house plots.<sup>280</sup> But those land kingpins are not the only private real estate actors who have thrived as a result of the transition.

Lower tiers of private developers have gotten into the game. Companies are forming in Niamey to build the social housing developments around the city's periphery.<sup>281</sup> Some complain that their profit

275. See Interview with Hamdallaye Canton Chief, *supra* note 17 and accompanying text; see also Cotula et al., *supra* note 168 and accompanying text; see also Falk, *supra* note 171 and accompanying text.

276. See Körling, *supra* note 20, at 78 (arguing in Niger urban policy and investment always serves elites); SHIPTON, *supra* note 8 (arguing when land is converted from customary control to freehold title, "the best-informed and best-connected people" benefit); *Tenure Security*, *supra* note 57, at 222.

277. See Njoh, *supra* note 27, at 542 (arguing changes in zoning laws usually protect the rights and privileges of the wealthy).

278. See JIMU, *supra* note 2, at 7 (arguing that in African contexts urban actors seeking land can take advantage of the poverty and ignorance of rural sellers).

279. See Njoh, *supra* note 27, at 542; see *supra* Part V.B.

280. See Issaka, *supra* note 1 (arguing certain private developers of peri-urban land have become more powerful than governmental actors).

281. *Id.*

margins are thin. However, the recent profusion of these project indicate that they are generating profits.<sup>282</sup>

A third tier of wealthy elites benefit from the conversion of peri-urban land. These are the wealthy El Hadji merchants from the city who until now have had few options for diversifying their investments within Niger.<sup>283</sup> They are moving into land speculation, buying large tracts of undeveloped agricultural property, sometimes twenty or more kilometers from the city.<sup>284</sup> Different merchants employ different strategies. Once they have established titled ownership of the land, many subdivide it into plots even if they intend to sit on it until Niamey grows closer and the value of the plots increases.<sup>285</sup> Some intend to sell the plots piecemeal to other smaller investors, or even to potential residents.<sup>286</sup> Still others have grander plans to move into the business of real estate development by constructing the social housing projects described above.<sup>287</sup> Whatever the details of their development strategies, wealthy businessmen based in the capital are mobilizing to take advantage of the shift to private ownership of land.

These private developers become so successful partly by collaborating with government officials who can claim formal authority over land transactions. There is still lively competition among the governmental actors to determine whose authority will prevail, but as the competition plays out it is clear that many are prospering. They formed corrupt symbiotic relationships that strengthened their claims to authority over government institutions and, simultaneously, produced significant private wealth.<sup>288</sup>

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282. See Issaka, *supra* note 1 (arguing corporations have entered the land development market and have made substantial profits).

283. *Id.*; Interview with El Hadji Merchant, *supra* note 263.

284. See Interview with El Hadji Merchant, *supra* note 263 (describing his speculative investment in peri-urban land outside Niamey).

285. *Id.*

286. *Id.*

287. *Id.*

288. It should be noted that there is another class of people, who will be mentioned only in this note, that both win and lose as a result of the symbiotic relationship between major real estate developers and corrupt governmental officials. They are civil servants of moderate means who are searching for housing in the vicinity of Niamey. They are winners because the entry of private developers on the peri-urban scene has increased the number of houses and house plots available for purchase. See Meyer, *supra* note 20 (arguing Niger's efforts to create housing and financing for civil servants has worked). They are losers because the resulting neighborhoods and houses are often poorly planned and constructed; see also Issaka, *supra* note 1. Because the developers are in cahoots with the government officials, they can maximize profits by making roads too narrow for fire trucks, eschewing

Amidst this struggle for legitimacy and advantage among multifarious organs of the state apparatus, traditional chiefs – historically a resilient and adaptable group<sup>289</sup>— have found opportunities to enhance their power and wealth.<sup>290</sup> With peri-urban land in high demand and ambiguity concerning which state actors have the power to convert land from farms to suburbs, rural Nigeriens have turned to chiefs, who retain much of their customary authority over land in spite of the state's efforts to weaken it.<sup>291</sup>

Traditional chiefs' approaches to peri-urban land transactions are as variable as those of the state. Some village and canton chiefs expand their pocketbooks and their power by taking an active role in facilitating the transfer of agricultural land to urban investors or developers.<sup>292</sup> In a typical transaction, a developer from the city will approach a traditional chief whose rural domain is twenty or more kilometers from the edge of Niamey's existing suburbs.<sup>293</sup> The chief will act as a broker, identifying a family patriarch willing to sell a large tract of family land; sometimes with, sometimes without the extended family's informed consent.<sup>294</sup> The chief may take a finder's fee that includes cash or a percentage of the house lots to be developed.<sup>295</sup> In other instances, chiefs simply sell

drainage infrastructure, and failing to reserve space for public utilities. *Id.* With regulators looking the other way, they also save money and increase profits by constructing homes using substandard materials. *Id.*

289. See *Squeezing Parakeets*, *supra* note 8; see also *Unintended Consequences*, *supra* note 9.

290. See *Courts and Peri-Urban Practice*, *supra* note 193, at 28 (arguing in villages chiefs are major actors in converting peri-urban land from agricultural to residential and that they often are the prime beneficiaries); Benjaminsen et al., *supra* note 157, at 31 (arguing land shortages combined with increasing desire to formalize land rights has provided a financial boon to traditional chiefs).

291. See Cotula et al., *supra* note 168, at 12 (arguing land titling schemes in Africa did not work well, which led to increases in chiefs' power over land).

292. See Interview with Retired Office Worker, *supra* note 262 (recounting his purchase of plots of land that were endorsed by canton chiefs).

293. Interview with Two Real Estate Developers, *supra* note 262 (arguing their social housing project, located approximately thirty kilometers outside Niamey, began with a purchase of land from farmers); Interview with Former Mayor of Niamey Commune 5, *supra* note 180 (arguing most peri-urban land sales begin when a buyer approaches the head of a family).

294. See *Courts and Peri-Urban Practice*, *supra* note 193, at 37 (arguing chiefs in Ghana sometimes connive with family elders to sell land out from under the control of extended families).

295. Interview with Retired Office Worker, *supra* note 262 (arguing that when land is subdivided, the chiefs always get their cut and providing the example of Niamey's Haro Banda neighborhood, where 20% of all the newly created plots were divided among chiefs and government officials); see also Motcho, *supra* note 48, at 7 (arguing chiefs have be-

large tracts of undeveloped “chief’s lands” to investors even though customarily they are guardians of that land and not owners.<sup>296</sup>

Even chiefs who do not take an active role in selling or developing peri-urban land benefit from the transactions, at least in the short term. When investors or developers arrive in the village and come to agreement with a family patriarch, the chief, for a fee, will create a written document referred to as a *detention coutumiere* (customary holding).<sup>297</sup> That document represents the developer’s or investor’s first step in the long and tortuous process (one that is simpler for the land development kingpins with political connections)<sup>298</sup> of obtaining full, individual ownership and registered title over the land.<sup>299</sup> In theory, the chief investigates the transaction before granting the *detention coutumiere*, ensuring that the seller has a legitimate claim over the land and that the seller’s family, many of whom may claim primary or secondary rights in land,

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come central actors in suburbanization and that they profit by, among other things, receiving compensation in the form of parcels).

296. See Bron-Saidatou, *supra* note 26, at 10, 27 (arguing under customary law chiefs are guardians of undeveloped land, not owners); see also Interview with Canton Chief of Koure, *supra* note 100 (claiming – incorrectly – that in pre-colonial Niger all land “belonged” to canton chiefs and that in recent time some village chiefs have claimed ownership of land, obtained title, and sold it to developers); see also Interview with Official, *supra* note 258; see also *Courts and Peri-Urban Practice*, *supra* note 194, at 30 (arguing chiefs in Ghana wrongly claim they have the right to displace individual users of land and either sell it or lease it to strangers); see Joseph Blocher, *Building on Custom: Land Tenure Policy and Economic Development in Ghana*, YALE HUM. RTS. & DEV. L.J. 166, 168-69 (2006) (note) (arguing chiefs sometimes sell land “out from under” users); see Cotula et al., *supra* note 168, at 27 (arguing chiefs sell land they do not own).

It should be noted that at least some chiefs take a hard line against the sale of peri-urban land to outsiders.

For example, the *chef de canton* of Hamdallaye, a town a half-hour drive out of the Fillingue Road from Niamey, claims he has steadfastly refused to authorize sales of customary agricultural land to investors or developers. See Interview with Hamdallaye Canton Chief, *supra* note 17. He also uses his traditional authority and prestige to prevent his subjects from circumventing his authority and seeking authorization from the local mayor’s office. *Id.* However, this reluctance to permit land conversion appears not to be well grounded in formal law and is the exception rather than the rule. See Interview with Canton Chief of Koure, *supra* note 100 (arguing that he lacks authority to prevent land sales); see Interview with Former Mayor of Niamey Commune 5, *supra* note 179 (arguing canton chiefs lack authority to block land sales, even in rural areas).

297. See Körling, *supra* note 1 (mentioning *detention coutumere*, and arguing chiefs often charge 5000 FCFA to issue certificates of sale for village land).

298. See generally Meyer, *supra* note 20; see also Körling, *supra* note 20; see also Interview with Former Mayor of Niamey Commune 5, *supra* note 179.

299. See Bron-Saidatou, *supra* note 26, at 24 (describing the process of formalizing land).

approve of the sale.<sup>300</sup> However, as described in Part V.B.1. below, the sales often proceed without the extended family's knowledge or acquiescence.

Whether or not the chief thoroughly vets the land sale, he receives his fee and thus becomes a short-term winner in the conversion of land from fields to suburbs.<sup>301</sup>

### C. Losers

#### 1. Immediate Losers: Secondary Rights Holders

When a land developer or speculator purchases a plot of agricultural land located in a peri-urban area – usually from a family patriarch or chief<sup>302</sup> – the complicated customary law bundle of nested, contingent, secondary rights that heretofore determined access to that land<sup>303</sup> instantaneously vanishes.<sup>304</sup> Rural people who depend on secondary rights in land find themselves with nothing.

Women in rural communities are a prime example.<sup>305</sup> Among rural Nigeriens, women do not customarily have the right to inherit or control agricultural land, however, this does not mean that they entirely lack

300. Meyer, *supra* note 20, at 190; *see generally Squeezing Parakeets, supra* note 8; Interview with Canton Chief of Koure, *supra* note 100 (arguing chiefs preside over historical examinations to determine who has rights to agricultural lands).

301. *See* Meyer, *supra* note 20, at 190, 252 (arguing chiefs extract fees for approving land sales); Körling, *supra* note 20, at 125. Although the chiefs are “short-term” winners, one can speculate that their authority, which is practically and spiritually rooted in the community's lands, will wither as the chiefs convert the community land to individually owned parcels. *See generally Squeezing Parakeets, supra* note 8; Becker, *supra* note 104; SHIPTON, *supra* note 8; *Unintended Consequences, supra* note 15.

302. *See Courts and Peri-Urban Practice, supra* note 194, at 37 (arguing chiefs in Ghana sometimes connive with family elders to sell land out from under the control of extended families); *see also* Interview with Former Mayor of Niamey Commune 5, *supra* note 179; *see also* Körling, *supra* note 20, at 106 (arguing land sales on the edge of the city usually start when a buyer approaches the head of a family).

303. *See Squeezing Parakeets, supra* note 102, at 682; SHIPTON, *supra* note 8, at 309; Becker, *supra* note 104; Chimhowu & Woodhouse, *supra* note 104; Polavarapu, *supra* note 104; *Unintended Consequences, supra* note 9, at 1007, 1015.

304. *See* Chimhowu & Woodhouse, *supra* note 104, at 347-48 (arguing land titling often extinguishes secondary “safety-net” rights such as wood gathering); *see also Tenure Security, supra* note 57, at 222 (arguing titling schemes often ignore secondary rights holders); Cotula et al., *supra* note 168, at 18 (arguing land titling often leads to loss of secondary rights by women and pastoralists); Polavarapu, *supra* note 104, at 114 (arguing that “nested rights” disappear when land is turned into a commodity).

305. Polavarapu, *supra* note 104, at 99-100.

rights in the lands controlled by their fathers, husbands, or brothers.<sup>306</sup> As described above, women normally enjoy the right to enter land to harvest medicinal herbs, collect straw, or plant a small garden.<sup>307</sup> These rights in land are not merely at the sufferance of their husbands and male relatives; they are part of a finely-honed, well understood cultural and spiritual complex.<sup>308</sup> If a male to denies or violate a woman's customary rights, he will bring shame on himself and his family, and the spirits tied to the land may sanction him.<sup>309</sup>

Later-born men can be frozen out when their older brothers or uncles sell the family lands.<sup>310</sup> As described in Part III. A., the family patriarch typically acts in the role of caretaker or trustee for the extended family's lands.<sup>311</sup> This means that a later-born man must seek the patriarch's approval before clearing or cultivating a new plot, but it does not mean that the patriarch in any sense owns the family lands.<sup>312</sup> However, if the patriarch sells the land to an outsider, the land becomes governed by state law, not customary law. Thus, the later-born man's access rights suddenly disappear,<sup>313</sup> whether or not the patriarch decides to share the financial proceeds from the sale.<sup>314</sup>

Customary slaves, a group most Nigeriens prefer not to discuss,<sup>315</sup> also lose their culturally enforceable secondary rights in land when it is sold to developers or investors. It is beyond the scope of this article to discuss the complicated bundle of Nigerien social categories inexactly

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306. See Polavarapu, *supra* note 104, at 111 (describing women's secondary land rights under pre-colonial customary law in Botswana); see *Squeezing Parakeets*, *supra* note 8, at 682.

307. *Squeezing Parakeets*, *supra* note 8, at 682.

308. See *Squeezing Parakeets*, *supra* note 8, at 683; see also Hagberg, *supra* note 60, at 104 (arguing those who attempt to sell lineage lands in rural Burkina Faso risk sanction from the spirit world).

309. See Hagberg, *supra* note 60, at 10 (arguing earth priests and elders regard the earth "as a divinity and fear that the violation of rituals may endanger not merely the individual's well-being but community life in general.").

310. See *Unintended Consequences*, *supra* note 9, at 1007 (arguing younger men in Nigerien villages have limited rights to land access and are subject to the demands of the greater group and village Elders).

311. See *id.*

312. See *id.*

313. See Chimhowu & Woodhouse, *supra* note 104, at 347-48; see also *Tenure Security*, *supra* note 57, at 222; Cotula et al., *supra* note 168, at 18; Polavarapu, *supra* note 104, at 114.

314. JIMU, *supra* note 2, at 363 (arguing some sellers of customary land spend the proceeds on frivolity).

315. See *Unintended Consequences*, *supra* note 9, at 1012 (arguing Nigerien government officials deny that slavery exists in Niger).

lumped together under the English word “slave” or the French word *esclave*.<sup>316</sup> It must suffice to say that under Nigerien customary law, slaves have a culturally enforceable right to demand of village founders the use of sufficient agricultural lands to feed themselves and their families.<sup>317</sup> In some villages, slave lineages have been cultivating tracts of land for generations, land they do not control, but to which they have culturally enforceable access rights.<sup>318</sup> Under custom, a patriarch that unceremoniously ejected a slave from agricultural lands would bring shame on his lineage.<sup>319</sup> If, on the other hand, the patriarch sells the family land cultivated by the slave, the culturally defined and enforceable rights described above simply vanish.<sup>320</sup> Once the transaction is complete, the legal context instantaneously morphs: customary law holds its relevance and “ownership” instantaneously vests in the individual who holds the piece of paper reflecting title.

## 2. Long Term Losers

### i. Those Who Depend on Customary Land for Livelihoods

For secondary rights holders, the loss resulting from the legal conversion of land from custom to formal state law are sudden and dramatic. For primary rights holders, the losses become apparent over time.

Imagine, for example, a village patriarch in a peri-urban zone sells all or much of his family’s ancestral lands to a developer or speculator. Assume he obtained some form of permission from the sale from all or most of the heads of household in his lineage, though that is not always the case.<sup>321</sup>

Assume also that he receives a large amount of money in exchange for the land. I have heard of one such transaction for which the pur-

316. *See id.* at 1013-16.

317. *See id.* at 1017, 1022 (arguing Nigerian custom requires nobles to make agricultural land available to slave, but in adopting western notions of land law, they can abandon this.)

318. *See id.* at 1034.

319. *Id.* at 1032.

320. *Unintended Consequences*, *supra* note 9, at 1032.

321. *See* Blocher, *supra* note 296, at 168-69 (arguing chiefs in Ghana sometimes sell land out from under its rightful users); *see also* *Tenure Security*, *supra* note 57, at 216 (arguing similarly to Blocher); Bron-Saidatou, *supra* note 26, at 127 (arguing chiefs in Niger do not own communal land but sometimes sell it without consultation).

chaser paid the equivalent of \$20,000,<sup>322</sup> a substantial fortune in a country where most people live off of less than two dollars per day.<sup>323</sup>

The money rarely lasts. In African locales, where peri-urban ancestral land is being sold to developers, stories abound of patriarchs who spend the proceeds on la belle vie: drink, women, and flashy possessions.<sup>324</sup> In Niger, a country where most rural people profess and practice Islam and live sober, ascetic lives,<sup>325</sup> the money may not go to alcohol and high living but instead to satisfy the lineage's pent-up demand for life's necessities.<sup>326</sup> Young men who have delayed marriage because they lack money for a bride price payment require financial backing from the patriarch.<sup>327</sup> Family members living in grass huts require the construction of more expensive banco houses with metal roofs.<sup>328</sup> Lineage members who have been making due with donkey carts feel the urgent need for motorcycles.<sup>329</sup> And, of course, the sale of agricultural land means that the lineage's ability to grow its own staple crops diminishes or disappears, so they must purchase their grain at the

322. Interview with Canton Chief of Koure, *supra* note 100 (arguing purchases of rural land in Koure, near Niamey, sometimes amount to \$10,000 or \$20,000, a huge amount in Niger).

323. See *Niger: Country Profile*, WORLD HEALTH ORG., available at <https://www.who.int/hac/crises/ner/background/profile/en> (last visited Sept. 27, 2019) (reporting that over 60% of Niger's population lives on less than \$1 a day); see also *Country Reports on Human Rights Practices for 2015: Niger*, U.S. DEP'T OF STATE (Jan. 20, 2015), available at <https://2009-2017.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252713> (last visited Sept. 27, 2019) (reporting that in 2011, 48.2% of Niger's population lived under the poverty income level of \$1.70 a day).

324. See JIMU, *supra* note 2, at 38 (arguing most proceeds from land sales in Malawi are spent on "beer, prostitutes, and pot," and on general "conspicuous consumption.").

325. *Exporting Western Law*, *supra* note 134. My characterization of Nigeriens leading sober and ascetic lives is based on my years of experience and observation in rural communities there.

326. Interview with Canton Chief of Koure, *supra* note 100; see Becker, *supra* note 104, at 120 (arguing some sellers of ancestral land in Mali, a predominantly Muslim country, spend lavishly by giving gifts and offering their friends rides in their new cars); see also JIMU, *supra* note 2, at 312-13 (arguing in Malawi land sales are often motivated by practical financial concerns such as the payment of school fees, medical bills, bride-wealth payments, or tombstones for dead relatives, though some of these justifications are "after-the-fact rationalizations.").

327. Interview with Canton Chief of Koure, *supra* note 100.

328. I base this statement on personal knowledge of Nigerien friends who live in the U.S. and who send home remittances so their relatives can switch from grass to banco.

329. Interview with Canton Chief of Koure, *supra* note 100.

market if they are to avoid starvation.<sup>330</sup> The small fortune disappears quickly.<sup>331</sup>

When the money is gone, rural Nigeriens have no place else to turn. Niger has no equivalent of mid-twentieth century Detroit or Chicago where former agricultural workers can migrate to seek factory jobs.<sup>332</sup> Even if such jobs existed, the former subsistence farmers would have no relevant skills to offer, since the vast majority are illiterate.<sup>333</sup> In short, when the proceeds from the sale of ancestral lands run out, rural people will suffer.<sup>334</sup>

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330. See JIMU, *supra* note 2, at 71 (arguing that in Malawi the conversion of peri-urban land led to declines in food production and increased poverty and insecurity for rural people).

331. Interview with Official, *supra* note 258 (arguing peasant farmers are “selling their patrimony” and that in many cases the money they receive only lasts for months or years). It should be noted that counterexamples exist. There are instances where those who sell their ancestral land invest wisely or start small businesses and prosper. JIMU, *supra* note 2, at 7 (arguing some sellers of ancestral lands in Malawi use the proceeds to start a small business or obtain a commercial driving license and prosper, though most spend the money quickly). Of the many Nigeriens I have interviewed over the years, I have met one who prospered as a result of land sales. He was from the village of Goudel. Niger’s government expropriated much of his family’s agricultural land over the decades. After the start of democratization in the early 1990s, the government tried to compensate him and similarly situated Goudel farmers by granting them a share of the undeveloped suburban house plots that had been carved out of their old fields. This man sold many of those house plots and used the cash to buy a bar in Niamey. Over the following decades, the bar grew into a small empire of bars, nightclubs, hotels, tourist businesses, transport, and real estate holdings. However, as the text indicates, such economic success stories are the exception, not the rule.

332. See SHIPTON, *supra*, note 8, at 144 (arguing Kenya lacked the industry to create jobs for people made landless by land titling; see also JIMU, *supra* note 2, at 7 (arguing wage jobs were not available for Malawi citizens rendered landless)).

333. *Factbook: People and Society*, *supra* note 1 (reporting 19.1% of Nigeriens over the age of fifteen are literate).

334. Interview with Canton Chief of Koure, *supra* note 100 (arguing Nigerien farmers who well their land “end up poor”); Interview with Former Mayor of Niamey’s Central Government, Niamey, Niger (May 11, 2018) [hereinafter Interview with Former Mayor of Niamey’s Central Government] (arguing proceeds of rural land sale go for weddings, trips, and motorcycles, and “then they’re left with nothing—they become beggars and thieves”); Interview with Judge in Niamey, *supra* note 39 (arguing after rural land sales in Niger, “pretty soon the money is gone and they [the farmers] starve”); see also JIMU, *supra* note 2, at 338 (arguing land sellers in Malawi who cannot find wage labor end up destitute); Falk, *supra* note 171, at 1 (arguing that in African contexts landlessness is synonymous with poverty).

*ii. Those Who Define Themselves, Their Communities, Their History, and Their Religion with Reference to Ancestral Land*

For rural people in peri-urban Niger, hunger is not the only consequence of land sales because land represents more than just a means of food production.<sup>335</sup> The legal transformation of ancestral land into a salable commodity, effectively converting land into money,<sup>336</sup> effaces the historical, cultural, and spiritual legacy that until now had given shape and strength to rural Nigerien communities.<sup>337</sup>

Rural Nigeriens may be desperately poor by international standards,<sup>338</sup> but overall, they lead lives of honor and purpose.<sup>339</sup> They take pride in offering food and shelter to travelers.<sup>340</sup> If a stranger wants to extend their stay in the village, the village chief or other lineage heads will accord him access to enough land to feed himself and his family.<sup>341</sup> Villagers look after one another, periodically gathering together to cultivate and harvest the fields of sick or recently deceased members of the community or to build huts for newlywed couples.<sup>342</sup> Respect for age is common.<sup>343</sup> Theft is rare.<sup>344</sup> Rural Nigeriens generally live in peace, mediating their differences in ways that Americans should emulate: they gather in public, talk things through, and endeavor to find compromise, a *modus vivendi* that permits them to navigate the difficult business of living together amidst some of the harshest geographic and climatic conditions on earth.<sup>345</sup>

335. See *supra* Part III.A.

336. Interview with Former Gamkalle Resident and His Friend, *supra* note 208; Interview with Former Mayor of Niamey's Central Government, *supra* note 334.

337. See *Squeezing Parakeets*, *supra* note 8, at 667, 710, n. 135; see also SHIPTON, *supra* note 8, at 14.

338. See *Human Development Reports*, *supra* note 19; *Factbook: Geography*, *supra* note 19.

339. *Squeezing Parakeets*, *supra* note 8, at 667.

340. See *id.* (arguing visitors to Nigerien villages "are plied with food and gifts.").

341. See *id.* at 666 (describing a family making agricultural land available to an outsider who wished to settle in the village).

342. See *id.* (arguing in the Zarma language of Niger, the word *bogu* describes communal labor, often undertaken on behalf of a villager in need and is the rough equivalent of "barn raising" in English).

343. *Id.* at 667; see also SHIPTON, *supra* note 8, at 14 (arguing respect for age is common among the Luo people of Kenya).

344. *Squeezing Parakeets*, *supra* note 8, at 673.

345. See *id.* at 710. I am fully aware that depicting rural life in Niger in this way risks sparking the ire of scholars who condemn as simplistic the colonial and post-colonial thesis that rural Africans live in harmony with themselves and nature. See generally Mark Davidheiser, *Harmony, Peacemaking, and Power: Controlling Processes and African Media-*

These positive attributes of Nigerien rural society arise out of an undivided complex of spiritual, historical, and cultural beliefs in which land, including individuals' rights in and obligations toward land, is a central tenet.<sup>346</sup> Land gives shape to rural peoples' identities and sense of self.<sup>347</sup> Even considering the recent increase of Islamic influence, most rural Nigeriens believe their ancestors made pacts with the spirits who control the land and that those spirits, along with the spirits of their ancestors continue to watch over the decisions and actions villagers take.<sup>348</sup> A young man in the village avoids unruly behavior because he has been raised that way, but also because he does not want to be the one to spark the spirits' wrath and thereby diminishes the village's *bar-ka*.<sup>349</sup> He accepts his father's or uncle's decisions about which plot of land to cultivate, and about when he can begin cultivating for his own rather than the extended family's account, because to object, to rebel, would injure not only his family but would insult the original land spirits and the spirits of his ancestors.<sup>350</sup> That same young man, once his elders have accorded him a portion of the family land for cultivation, will avoid waste and certainly avoid sale, because he understands that interest in the land is shared not only by his living relations, but by those who lived before and those members of the family and community yet unborn.<sup>351</sup>

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tion, 23 CONFLICT RESOL. Q. 281, 282-86 (2006) (summarizing various critiques of the "harmony thesis"). But ire be damned. Yes, rural Nigeriens sometimes vie with one another over resources. Yes, intractable conflicts sometimes arise within and among villages that can only be resolved with outside intervention. Yet, the cooperative practices described above, and the overall peaceful, positive nature of Nigerien villages, is both an ideal toward which Nigeriens strive and an empirical fact.

346. See *Squeezing Parakeets*, *supra* note 8, at 704 (arguing land is a key element in maintaining village harmony); see also Becker, *supra* note 104, at 115 (arguing customary land helps "define cultural identity through social relations.").

347. SHIPTON, *supra* note 8, at 110-11, 117 (arguing that the Luo people of Kenya view themselves as belonging to the land and, through the medium of the land, belonging to other people and that land is "tied up with some of the most intimate, emotionally charged dimensions of personhood and pride.").

348. See *Squeezing Parakeets*, *supra* note 8, at 647-48.

349. *Squeezing Parakeets*, *supra* note 8, at 704; see also Hagberg, *supra* note 60, at 99 (arguing village leaders in Burkina Faso consider the land "as a divinity and fear that the violation of rituals may endanger not merely the individual's well-being but community life in general.").

350. *Squeezing Parakeets*, *supra* note 8, at 704; JIMU, *supra* note 2, at 8 (arguing land is a symbolic medium through which living people connect with their ancestors and their traditions); Blocher, *supra* note 296, at 174 (arguing trust and honor can play a vital role in consistent land practices leading to stability and efficiency).

351. See *Squeezing Parakeets*, *supra* note 8; see also Njoh, *supra* note 27, at 555 (arguing land sales are unthinkable in Nigerien customary law because those who control land

When land is titled and sold out of the community, those beliefs that tie together history, spirituality and law disappear.<sup>352</sup> If the spirits and their influence are displaced by a legal title – a piece of paper filed in a distant town saying an outsider now owns the property – that young man can take his proceeds, (assuming he is not struck by lightning or otherwise quickly felled by illness or other misfortune)<sup>353</sup> and ignore concerns about the ancestors' wrath.<sup>354</sup> He can disregard the wishes of his father, his lineage head, and his village chief, because they no longer have influence over his and his children's future access to land.<sup>355</sup> That issue will be decided not by village elders, but by who can decode the foreign, formal legal process, obtain the necessary piece of paper and properly register it in the distant cadaster.

In sum, land is an essential aspect of the social, spiritual, historical and legal complex that provides structure and meaning to rural Nigerien communities. Removing land from this complex will profoundly disrupt a system that has permitted Nigeriens to persevere for many generations amidst extraordinarily difficult conditions.<sup>356</sup>

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hold it act as custodians for future generations); *see also* Blocher, *supra* note 296, at 174 (arguing chiefs in Ghana hold land in trust for the living, the dead, and the not yet born).

352. *Squeezing Parakeets*, *supra* note 8, at 704-07; *see* Körling, *supra* note 20, at 133-34 (arguing authority in Nigerien rural communities is tied to land and those who alienate land lose their authority); Becker, *supra* note 104, at 115 (arguing "Where land is not a commodity, its non-market values define cultural identity through social relations. When and where land sales occur marks a fundamental agrarian change that breaks cultural ties to the land...").

353. *See* SHIPTON, *supra* note 8, at 159 (arguing that in Kenya those who title an alienate family land "expose themselves to the wrath of the spirits.").

354. Becker, *supra* note 104, at 121 (arguing in Mali, land sales are leading to a decline in cooperative spirit of the ethnic group's values). *See also* *Tenure Security*, *supra* note 57, at 223 (arguing studies of peri-urban land sales show abundant evidence of high social cost, especially for the poor).

355. *Squeezing Parakeets*, *supra* note 8, at 70; *see also* Becker, *supra* note 104, at 121 (arguing land sales in peri-urban Mali contribute to "a decline in the cooperative spirit of the ethnic group's values" that will "radically change the village in the next generation.").

356. *See* Becker, *supra* note 104, at 115 (arguing land conversion creates "new territories with new boundaries, new rules and new authorities claiming new legitimacy to control access" leading to "a profound transformation of society"); SHIPTON, *supra* note 8, at 128-29 (arguing land titling in Kenya threatens to upset the deeply rooted land-related traditions and may lead to social disruption).