

## NIGER

The Nigerien Constitution grants equal rights regardless of gender. Niger has ratified both the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) (in 1999), and the Optional Protocol on violence against women (2004).<sup>1</sup> Niger has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.<sup>2</sup> A Ministry of Social Development, Population, Advancement of Women and Protection of Children has been in place since 1998.<sup>3</sup>

### 1. Discriminatory family code

In Niger, there are 3 different sources of law, namely statutory, customary, and religious law, at times creating legal uncertainty due to a lack of any effective hierarchy.<sup>4</sup> On the surface, Niger is a secular state and its 1999 constitution states fundamental liberal principles such as the protection of human rights (Art. 10-14) and the separation of state and religion (Art. 4), and yet a sizable majority of Nigeriens are Muslim (80% of the population) and family life (inheritance, marriage, divorce, child custody) and land tenure is de facto regulated largely by Islamic religious culture.<sup>5</sup> In 2004, the civil code was amended to state that customary or Sharia law apply only if they comply with 'ratified international conventions, the legislative provisions or fundamental rules concerning public order or personal freedom',<sup>6</sup> and yet discriminatory law and practices continue to be applied against women, including in areas of divorce, custody, and inheritance.<sup>7</sup> A draft family code languished in the legislature for decades (originally proposed in 1976) before it finally collapsed in 2006, due to objections on the part of religious fundamentalists; as such there is absence of legislation governing marriage and divorce.<sup>8</sup>

The Civil Code sets the minimum **legal age of marriage** at 15 years for women and 18 for men.<sup>9</sup> It also stipulates that both parties must give their free consent, and that both civil marriages and customary marriages must be legally registered.<sup>10</sup> 2006 data from the UN reports that 60.6% of girls aged 15 to 19 years were married, divorced or widowed.<sup>11</sup> Data from the 2012 Demographic and Household Survey (DHS) indicate that 62.9% of

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<sup>1</sup> United Nations Treaty Collection (n.d.); Africa for Women's Rights (2009)

<sup>2</sup> African Union (2010)

<sup>3</sup> CEDAW (2005) p.17

<sup>4</sup> CEDAW (2007b) p.4; Africa for Women's Rights (n.d.); Cooper (2010)

<sup>5</sup> Cooper (2010)

<sup>6</sup> CEDAW (2007a) p.25

<sup>7</sup> CEDAW (2007b) p.4

<sup>8</sup> Purdy (2013) p.887; Africa for Women's Rights (n.d.)

<sup>9</sup> US Department of State (2012); CRC (2008) p.26

<sup>10</sup> CEDAW (2005) pp.64-65

<sup>11</sup> OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

girls aged 15 to 19 years were married, divorced or widowed.<sup>12</sup> By contrast, only 2.6% of boys aged 15-19, and 28.8% of men aged 20-24 were married, divorced, or widowed, suggesting that girls are being married off to men who are significantly older than them.<sup>13</sup> Moreover, **early marriage** data from 2013 reveals that 75% of women between the ages of 20 and 24 were married or in union before they were 18 years old, ranking Niger first country in the world, within the 20<sup>th</sup> highest-prevalence countries.<sup>14</sup> Most marriages are conducted according to custom, proceed without the spouses' consent and are never registered.<sup>15</sup> While marriageable age for persons with customary status is 14 for girls and 16 for boys (pursuant to the Decree of 13 July 1939), generally women are understood to be ready for marriage with their first menses and the practice of dowry payment (also known as *mahr*) is common.<sup>16</sup> In rural areas, families sometimes enter into an agreement whereby a young girl (aged between 10 and 12 years) joins her husband's family under the guardianship of her mother-in-law.<sup>17</sup> There are also cases where their families, under the guise of an arranged marriage, effectively sell girls into domestic and sexual slavery.<sup>18</sup>

According to Article 213 of the Niger Civil Code, husbands are the heads of the household.<sup>19</sup> The same article also states that both women and men share **parental authority** and are expected to contribute to assuring the moral and material direction of the family, including raising any children. Also, the Constitution of the Niger provides that parents have the right and the duty to raise and educate their children.<sup>20</sup> Under customary law, men are considered the heads of families and their wives are expected to obey them. Even after **divorce** or the death of their spouse, women cannot claim the status of head of the household.<sup>21</sup> That said, if a man has more than one wife, he is only considered to be the head of the household that he establishes with his original wife; subsequent wives are considered to be the heads of their respective households, even though they have no legal status as such.<sup>22</sup> In the event of divorce or repudiation, under customary law, wives are usually granted custody of boys until they reach puberty and girls until they marry.<sup>23</sup> But in some cases (and again under customary law), fathers are granted custody of their children from the age of seven (and sometimes younger).<sup>24</sup>

In Niger, **inheritance** is governed by customary (which varies between different ethnic groups) and/or Sharia law.<sup>25</sup> Sharia law stipulates that women may inherit from their father, mother, husband or children and, under certain conditions, from other family members. However, their share is generally smaller than that to which men are entitled. Daughters, for example, inherit half as much as sons, unless a will has been left specifying otherwise. Widows may not receive anything if there are no surviving children and are often the victims of "property grabbing" on the part of her deceased husband's male relatives.<sup>26</sup> According to the Chronic Poverty

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<sup>12</sup> DHS (2012) p.82

<sup>13</sup> Idem

<sup>14</sup> UNICEF (2013)

<sup>15</sup> Cooper (2010)

<sup>16</sup> Idem

<sup>17</sup> US Department of State (2012)

<sup>18</sup> Purdy (2013) p.887

<sup>19</sup> World Bank (2013); Niger Civil Code Article 213

<sup>20</sup> CEDAW (2005), p. 27

<sup>21</sup> Purdy (2013) p.887

<sup>22</sup> World Bank (2013)

<sup>23</sup> Purdy (2013) p.887

<sup>24</sup> Idem

<sup>25</sup> FAO (n.d.); Cooper (2010)

<sup>26</sup> FAO (n.d.); Cooper (2010)

Research Centre, in 2006, 23.75% of widows inherited majority of assets after their spouses passed away.<sup>27</sup> In some regions, when a husband dies, his property and land pass back to his family, and the widow may have limited access to these.<sup>28</sup> Generally, the application of Maliki inheritance law is often tempered by the view that women are less responsible and reliable than men and therefore less suited to inheriting family property. As a result, women rarely inherit land at the time of the division of inheritance.<sup>29</sup>

### **More**

Reliable information about the legal status of **polygamy** in Niger was not available. Under customary law, men can take up to four wives while women can marry only one husband at a time. According to data from the 2012 Demographic and Household Survey (DHS), 36% of women aged 15-49 were in polygamous marriages.<sup>30</sup>

Women and men's rights to **divorce** are not symmetrical. While husbands can divorce their wives unilaterally under the practice of repudiation, while women wishing to initiate the rupture of her marriage through a divorce of this kind must return the marriage payment (*mahr*) to her husband. The latter, however, is often not in her possession, and in many cases was given directly to her father or other paternal representative who may have already spent it, creating a significant impediment to divorce.<sup>31</sup>

The adolescent fertility rate in Niger, or the number of annual births per 1,000 women aged 15 to 19 according to the 2012 Demographic and Health Survey is 206.0. An estimated 40% of adolescents have begun their reproductive lives, and by 19 years of age 68% of women have already had a child.<sup>32</sup>

When it comes to decision-making, 85% of women who earn money decide themselves how to spend the latter.<sup>33</sup> However, in the majority of cases, it is husbands (77.3%) who make decisions concerning important household purchases.<sup>34</sup>

## **2. Restricted physical integrity**

There is no legislation in place specifically addressing **domestic violence**, although perpetrators can be prosecuted under laws against battery with penalties ranging from two to thirty years imprisonment and fines.<sup>35</sup> Women can report violence to customary or official courts, but seldom do: many women are unaware of the laws in place, while others fear being stigmatised by society or repudiated by their husbands.<sup>36</sup> Cases that do reach court are also often dropped in favour of customary dispute resolution mechanisms,<sup>37</sup> denying women access to legal justice. Families intervene to physically protect their daughters in the most severe cases.<sup>38</sup> While domestic violence against women is reportedly widespread, there are no reliable statistics as to prevalence

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<sup>27</sup> Chronic Poverty Research Centre (2011) p.20

<sup>28</sup> FAO (n.d.)

<sup>29</sup> Cooper (2010)

<sup>30</sup> DHS (2012) p.83

<sup>31</sup> Idem

<sup>32</sup> DHS (2012) p.60; UN Population Division (2013)

<sup>33</sup> DHS (2012) p.267

<sup>34</sup> Idem, 274

<sup>35</sup> Idem

<sup>36</sup> Purdy (2013) p.887

<sup>37</sup> US State Department (2012)

<sup>38</sup> AFROL (n.d.)

rates.<sup>39</sup> Attitudes towards domestic violence suggest that the latter is commonly accepted; the 2012 DHS reports that 59.6% of women agree that their husband is justified in beating them for at least one of the following four reasons: burning the food, going out without telling him, neglecting the children, or refusing to have sex with him.<sup>40</sup>

**Rape** is a criminal offence, although the law does not specifically recognise spousal rape, nor does the law provide a minimum age of consensual sex.<sup>41</sup> Prevalence data on rape is not available and few cases are prosecuted.<sup>42</sup>

The Nigerien Penal Code was amended in 2003 in order to introduce the offence of **sexual harassment**, defined as the act of harassing another using orders, threats or coercion in order to obtain favours of a sexual nature. Sexual harassment is punishable by a fine and prison sentence of three to six months, both of which increase in situations in which the offender abused a position of authority.<sup>43</sup> Data on prevalence is not available, but sexual harassment is reportedly common and courts enforce the applicable law in only a small percentage of the cases reported.<sup>44</sup>

**Female genital mutilation** (FGM) is practised by only a few ethnic groups in Niger, and according to data from the 2012 Demographic and Household Survey (DHS), only 2.0% of women have been subjected to the procedure (ranging as high as 9% in the Tillaberi region).<sup>45</sup> The government has taken steps to eradicate the practice: in 2003, the penal code was revised to include provisions on prison sentences and fines for those who perform the procedure.<sup>46</sup> Working with NGOs and international organisations, the government has also led campaigns raising awareness of the dangers of the practice, which have included travelling to different communities to talk about FGM. The majority (82.4%) of women questioned in the 2012 DHS thought the practice should not continue.<sup>47</sup>

### **More**

**Abortion** is only legal to save the pregnant woman's life.<sup>48</sup>

Women have the right to access and use **contraception** and other reproductive health services, which are provided in theory by government health clinics and local NGOs.<sup>49</sup> But in practice, provision is inadequate, and it is difficult for many people to get information about contraception.<sup>50</sup> In rural areas, women may have to travel long distances to reach the nearest clinic, and in areas where women are confined to the home (see restricted civil liberties below), they may be unable to access health care facilities at all. In addition, 76.3% of women report in the Demographic and Household Survey (DHS) that it is primarily their husbands who make decisions regarding their health care.<sup>51</sup> Contraceptive use is relatively low: only 11% of women reported using a modern

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<sup>39</sup> US State Department (2012)

<sup>40</sup> DHS (2012) p.277

<sup>41</sup> Cooper (2010)

<sup>42</sup> US State Department (2012)

<sup>43</sup> World Bank (2013); Niger Penal Code Article 281.1

<sup>44</sup> US State Department (2012)

<sup>45</sup> DHS (2012) p.286

<sup>46</sup> Act No. 2003-025 of 13 June 2003 (CEDAW 2007) p.12)

<sup>47</sup> DHS (2012) p.289

<sup>48</sup> UNDP (2010)

<sup>49</sup> US State Department (2012)

<sup>50</sup> Idem

<sup>51</sup> DHS (2012) p.274

form of contraception,<sup>52</sup> while 16% of women reported having an unmet need for family planning.<sup>53</sup> Average age first birth among women age 25-49 is 18.6 years.<sup>54</sup>

### 3. Son bias

The male/female **sex ratio** for the working age population (15-64) in 2013 is 1.0 while the ratio at birth is 1.03.<sup>55</sup>

There is evidence to suggest that Niger is a country of low concern in relation to **missing women** due to elevated child sex ratios.

#### **More**

Overall, under-five infant mortality rates in Niger are amongst the highest in the world, but infant mortality rates for boys are slightly higher than for girls (73 ‰ against 56 ‰).<sup>56</sup> School enrolment rates show an opposite imbalance: 65% of boys against 51% of girls are enrolled in primary school, and just 14% of boys and 8% of girls are enrolled in secondary school.<sup>57</sup> This could reflect parental decisions to prioritise boys' education, and the fact that girls are married off at a much younger age than men.<sup>58</sup> Niger has one of the lowest female literacy rates (15.1%) in the world.<sup>59</sup> Taking these factors into consideration, it would appear that Niger could be a country of some concern with regard to son preference.

### 4. Restricted resources and assets

Women have limited rights to ownership or possession of **land** and **non-land assets**, because as with matters pertaining to marriage and divorce, inheritance and ownership are governed primarily by customary law.<sup>60</sup> The Nigerian government has introduced new legislation to provide women with greater financial independence, but some discriminatory practices prevail.

Niger's Constitution asserts the right of all individuals to own property and the Rural Code states that women are free to buy, own and sell land. In practice, however, women rarely have access to land, as ownership is most often passed on through inheritance, and under customary laws, women rarely inherit land.<sup>61</sup> As mentioned above, Islamic law accords women the right to inherit property (in shares half that of male relatives), but rural Muslims rarely follow this practice. While Muslim women in urban areas are more likely to inherit property, this seldom includes land.<sup>62</sup> Even if women farm land, they infrequently own it, as the right of ownership is reserved for the head of the family, i.e. a man.<sup>63</sup> Rather, women have access to land on a usufruct basis.<sup>64</sup> Because

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<sup>52</sup> Idem, p.67

<sup>53</sup> Idem, p.76

<sup>54</sup> Idem, p.59

<sup>55</sup> Central Intelligence Agency (2013)

<sup>56</sup> Amnesty International (2010) p.245; UNFPA (2010) p.103; DHS (2012) p.196

<sup>57</sup> UNFPA (2010) p.97

<sup>58</sup> Cooper (2010)

<sup>59</sup> Purdy (2013) p.887; UNESCO (2012) p.5

<sup>60</sup> FAO (n.d.)

<sup>61</sup> Purdy (2013) p.887; USAID (2010)

<sup>62</sup> FAO-Dimitra (2008)

<sup>63</sup> World Bank (2013)

<sup>64</sup> FAO (n.d.)

women access land through their husbands and male relatives, they risk losing the land when the relationship ends due to death or divorce.<sup>65</sup>

Under the civil code, husbands have the right to manage and administer property belonging to their wives.<sup>66</sup> The Commercial Code, however, permits women to have an independent activity (such as a commercial or craft business) without their husbands' consent. They can also enter into contracts and acquire goods.<sup>67</sup> However, many women are often unable to exercise their rights because of the strength of stereotypes regarding acceptable gender roles, poverty and the difficulties they encounter in obtaining loans.<sup>68</sup>

There are no legal restrictions on the right of women in Niger to access **financial services**, including bank loans. In practice, despite women playing an increasingly important role in society as entrepreneurs, it is very difficult for them to access credit, as they are unable to provide collateral or do not have experience of accounting or business planning. In addition, married women may not open a bank account in the same way as a man.<sup>69</sup> The Civil Code (Arts. 221 and 222) only allows women to open an account if the bank first notifies the husband, although women who have jobs may do so without their husband being notified. The complicated nature of this legislation means that many financial institutions simply require all married women to get permission from their husbands before opening an account, even if by law they are not required to do so.<sup>70</sup> Government schemes have, however, been established to provide support to women entrepreneurs, including access to credit, and to provide micro credit to women through grassroots women's organisations.<sup>71</sup>

## 5. Restricted civil liberties

The Constitution and law provide for freedom of movement and **access to public space**, however, married women do not have the same decision-making power on domicile as men. Rather, according to the Civil Code (Art. 215), this is to be decided by the husband, and the wife has no choice but to follow her spouse.<sup>72</sup> Since 2006, married and unmarried women may apply for a passport in the same way as a man. Married women may not, however, pursue a trade or profession in the same way as a man, but must get permission from her husband (Civil Code, Art. 223).<sup>73</sup> At the family and community level, women's freedom of movement is restricted in the east of the country, which is home to the Hausa and Peul ethnic groups. Women in these communities are rarely allowed to leave their homes without a male escort.<sup>74</sup> In the north of the country there have also been restrictions on freedom of movement, in response to the on-going conflict with Tuareg rebel groups and the recent conflict in Mali.<sup>75</sup> In addition, a married woman cannot convey her citizenship to a non-national spouse.<sup>76</sup>

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<sup>65</sup> FAO-Dimitra (2008)

<sup>66</sup> World Bank (2013)

<sup>67</sup> Idem

<sup>68</sup> Idem

<sup>69</sup> Idem

<sup>70</sup> World Bank/IFC (2014) pp.16-17

<sup>71</sup> CEDAW (2007a) p.9, 22

<sup>72</sup> World Bank (2013); World Bank/IFC (2014) p.16

<sup>73</sup> Idem, World Bank/IFC (2014) pp.16-17

<sup>74</sup> Purdy (2013) p.887

<sup>75</sup> US State Department (2012)

<sup>76</sup> World Bank (2013)

The constitution and law provide for freedom and assembly and association.<sup>77</sup> However, the police have forcibly dispersed demonstrations and the government can prohibit gatherings if organizers do not provide advance notice.<sup>78</sup> In addition, political parties based on ethnicity, religion, or region is not permitted.<sup>79</sup> Specific information on the activities of women's groups is not available, although women activists from major political parties have met under the coordination of the NGOs and Women's Association of Niger to carry out actions aimed at increasing women's political representation.<sup>80</sup> The Ministry of Population, Women's Promotion, and Children's Protection, international organizations, NGS and women's organization have conducted public awareness campaigns on the issue violence against women that received wide media coverage.<sup>81</sup>

The Constitution and law also provide for freedom of speech, and while there have been minor incidents of journalists being intimidated, the government generally respects this right, and has recently (2010) enacted a law protecting journalists from prosecution. That same year, the National Assembly adopted a new press law eliminating prison terms for journalists and in 2012 the media generally published political facts and critiques without restraint.<sup>82</sup> There is, however, no data available on women's representation and participation in the media.

Women in Niger have the legal right to vote and to political participation, although in reality, they may face resistance and hostility in the event of standing for office. There has been important advances since the 1990s: from 5.4% of women in parliament in 1990, the percentage dropped to 1,2% in 1999, and improved to 12,38% in 2004. Since 2002 a **quota** has been in place, requiring political parties to allocate 10% of their elected positions to women (due to be reviewed in 2016).<sup>83</sup> There are, however, no specific regulations as to how this is to be put into practice.<sup>84</sup> The quota law also calls for no less than 25% of nominations for high-ranking government posts to go to women.<sup>85</sup> These quotas would appear to be having some impact on the numbers of women in positions of power. As of 2012, there were 14 women in the national assembly (or 13.3%) as opposed to one in 1999, and five female ministers in the 26-member cabinet.<sup>86</sup>

### **More**

Gender discrimination in **employment** is prohibited under the labour code (Art. 5), although there are potentially discriminatory prohibitions on women taking on work that 'exceeds their strength or damages their moral character'.<sup>87</sup> As mentioned above, the Civil Code also provides that married women cannot pursue employment without the permission of their husbands.<sup>88</sup> Pregnant women in Niger are entitled to 14 weeks paid **maternity leave** financed by the employer and the government, and cannot be fired as a result of their pregnancy (Labour Code, Art. 178).<sup>89</sup> The Labour Code also mandates equal remuneration for work of equal

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<sup>77</sup> Freedom House (2013)

<sup>78</sup> Idem

<sup>79</sup> US State Department (2012)

<sup>80</sup> Sherif (2013) p.7

<sup>81</sup> US State Department (2012)

<sup>82</sup> Freedom House (2013)

<sup>83</sup> Idem

<sup>84</sup> Quota Project (2012)

<sup>85</sup> Idem

<sup>86</sup> US Department of State (2012); UNdata (2013)

<sup>87</sup> CEDAW (2005) p.19, 48

<sup>88</sup> World Bank (2013)

<sup>89</sup> ILO (2010); World Bank (2013)

value for men and women. The World Bank considers 40% of women over 15 to be economically active in Niger in 2012.<sup>90</sup> But given that it is estimated that over 95% of the population work in subsistence agriculture or the informal economy, very few women are able to benefit from this legislation.<sup>91</sup>

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<sup>90</sup> World Bank (n.d.)

<sup>91</sup> Freedom House (2013)

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