2. Overview of land governance in Senegal

Land has always been a key part of the political landscape in Africa, and contemporary land laws in many African countries are still influenced by the way that the French and English colonial authorities managed land issues in previous decades. In Senegal, the land tenure regime has recognised three types of land since 1976, when Law No. 76-66 of 2 July 1976 regarding the Code on state land (*domaine foncier de l'État*) supplemented Law No. 64-46 of 17 June 1964 on national lands (*domaine national*). The three categories are national land, state land (both public and private) and private land held by individuals with registered titles. Numerous changes since the reform of 1976 led to the emergence of new economic, social, political and environmental issues, and have made land one of the most complex natural resources to manage.

Most agricultural and livestock-rearing activities in Senegal take place in rural spaces with no clear boundaries, which often leads to conflict between different land uses and users (e.g. landowners, farmers, herders). Under national law, rural land tenure is primarily regulated by the tenure regime applicable to national lands (*domaine national*). The adoption of this legal regime was preceded by a long and still unravelling history of customary rules and practices, which often continue to be applied in rural areas.

The role of customary land tenure systems

Customary land tenure systems in Senegal were historically shaped by a set of practices and diverse and complex customs that conceptualised land as a sacred resource, which belongs to everyone and cannot be assigned to any individual for their sole use or enjoyment. There was no concept of private property.[1] Land was seen as the space where life is organised, a means of subsistence that ensures the community's continued existence, and whose occupancy and use was universally recognised and accepted. Land management was often overseen by the "lamane" or "land master", who was sometimes also the king, oldest male or chief. The "lamane" was responsible for controlling and allocating land among members of the family group for an annual or seasonal fee or free of charge. The main advantage of the customary system was that it enabled each individual or group to access land and make a living from it, in contexts where land was abundant relative to labour.

1. The customary land tenure regime, particularly prevalent before the colonisation, is characterised by the following principles: i) rights are collective: there is no individual right to land as it belongs to the group or family; ii) rights are inalienable: the land cannot be sold as it belongs not only to the living but also to the dead, the spirits and the gods; iii) rights are imprescriptible: the land use right cannot be called into question as long as its holder effectively uses the land and pays usage fees to the "lamane" (if not, the land goes back into the "njol", becoming property of the lamane); and iv) rights are hereditary: the right to land belongs to the family, group or clan and is passed on from a generation to another.

The colonial authorities imposed legal concepts based on Roman law onto the traditional system so that they could claim the right to manage land, and retain territorial control by opening it up to free trade and using it as a means of exchange and credit. The legal texts introduced under the colonial regime promoted a land tenure system based on the recording, registration and publication of state-sanctioned rights. Recording enabled the land tenure services to identify land assets, while formal registration allowed them liberate the land from any customary rights. The colonial endeavour ultimately failed due to the strength of the customary systems, which still exist today even if they are not legally recognised.

Indeed, land still has a strong spiritual and cultural significance for rural people, who typically see land rights as collective, imprescriptible, inalienable and hereditary rights that can be transferred, but only from one generation to the next. And although land is officially regulated by the national land law, rural people still follow customary practices to varying degrees.

National land law and the role of local government

Senegal's land law is the product of the country's historic, economic and cultural environment. It is still strongly influenced by the colonial model, as post-independence legislators made few major changes to the system developed by the colonial authorities.

Law No. 64-46 of 17 June 1964 effectively designated 95 per cent of the land in Senegal as national land. Prompted by a strong and continuing political will to shift from traditional methods to a more "modern" land governance system, the law of 1964 regarded all unclassified land in the public domain and any unregistered land are part of national lands (*domaine national*). The law did not recognise customary land rights, and private property that was not recorded within two years was challenged. As a result, almost all land fell into a "national domain" administered by the state.

The law of 1964 identified four types of area within national lands:

- Urban areas within a municipality;
- Classified areas containing ecological and forest reserves (*zones classées*);
- "Home territories" used for housing and rural livelihood activities (*zones des terroirs*);
- Virgin and unused "pioneer zones" (*zones pionnières*).

This classification has important implications for the way that the different types of land were managed. Urban areas were jointly managed by the state authorities and the municipality, while in rural areas "home territory" land was managed by rural councils, which were the lowest level of local government in rural areas.

Incomplete legislation on decentralisation hampered the exercise of these prerogatives by the rural councils. Law No. 96-07 of 22 March 1996 opened the way for decentralisation, introducing major changes in the way that national affairs were managed as the state transferred powers for nine areas of governance – including certain aspects of land governance – to local governments. But due to a critical shortage of qualified personnel at the local level, this transfer of power has only had limited effect in practice, with land titling and allocation being actually co-managed by the state and local governments.

The land law of 1964 gave the rural councils the power to allocate and withdraw land in rural areas. Their presidents are charged with executing the council's decisions, and structures such as local-level land commissions are responsible for clarifying the council's decisions and helping put them into effect. Law No. 96-06 of 22 March 1996 containing the Local Government Code states that "rural councils shall deliberate on all matters for which they are legally responsible, most notably (i) general land use plans, development projects, works to parcel and sell off public land to developers (*lotissement*), installing amenities on land allocated for housing, and authorising new housing or encampments; (ii) the allocation and withdrawal of national lands."

In reality, however, the powers that local governments had in land matters were constrained. On paper, in accordance with articles 193, 195 and 251 of the Local Government Code, rural councils are supposed to have gained decision-making power in collecting and allocating property tax, but things have not worked out as expected in practice. Procedures for registering land titles at the local registry are also reportedly slow, cumbersome and costly, acting as a deterrent to landholders.

By restricting the rural councils' powers, the state retained ultimate control over national lands. Senegal is now undergoing important legislative reforms affecting both the land law and the laws governing decentralisation. The latter reforms are redefining the very nature of local government, and a new Local Government Code was developed in 2013 that transformed the rural councils into rural municipalities. There are questions about the nature of the powers that the newly rebranded rural municipalities will have in land matters, and concerns have been raised that the new reform might effectively re-centralise some devolved powers – for example, in relation to land right.

A process to revise the land law has been ongoing since the mid-1990. A concern about promoting private sector investment in agriculture has been a key driver of this government-led process. The land law reform has triggered lively debates and considerable mobilisation of rural producer organisations federated in the *Conseil National de Concertation et de Coopération des Ruraux* (CNCR). Momentum for land law reform experienced considerable fluctuations, and the government reactivated the process several times, lastly in 2014.

Lack of implementation

At the village level, people maintain that no-one respects the law, least of all those who are responsible for implementing it. There is a perception that the state is the first to requisition land in the name of the general interest and public utility, yet land is allocated to private operators whose business ventures are heavily geared towards commercial production and external markets.

In rural councils, elected officials often allocate land to non-residents, even though Article 8 of the land law of 1964 stipulates that "home territory" lands can only be allocated to members of the local community. The law does not allow land sales, though these are often effected informally, often followed by a formal land allocation decision by the rural council. Most rural people do not register their land rights, and believe that they own the land they work because it has been passed down through the family. This situation can lead to tensions when non-residents who have rented or bought productive plots seek to register their land rights– sowing the seeds for future conflict with people from the area who may feel dispossessed of their claim to their ancestors' land.

When private sector operators acquire land for agribusiness investments, they enter local arenas where land relations may be heavily contested – due to the continued application of customary systems, discontinuities in national legislation on land and decentralisation, and the challenges in implementing national legislation on the ground.