



TOWARDS REAL DIALOGUE ON LAND REFORM

ISSUES AND OBJECTIVES IN SENEGAL

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1. TWO CONCOMITANT MODELS OF LAND MANAGEMENT

Land management in Senegal continues to be dominated by two different management models which are superposed: a “traditional” model founded on customary rules and a “modern” model based on national legislation. This regulatory framework is chiefly organized by the law on State land (adopted in 1964) and its implementing instruments (which were later supplemented by the law on administrative reform of 1972 and the laws on decentralization of 1996).

The purpose of the law on State land was to provide Senegal with a unified legal framework for land management. This unified framework was intended to put an end to certain situations in which peasants were exploited by large landholders and to promote land development, while enabling the State to make investments in development and infrastructure without having to compensate the users of land or other resources affected by such investments.

However, ever since its adoption, this law has given rise to numerous debates. First of all, it was never really accepted by the people, who felt that they were being dispossessed of their land, and continued to recognize and use the customary system. Secondly, the law’s implementation was beset with real difficulties due to the absence of accompanying and supporting measures. On

the one hand, certain key notions such as “land development” and “resident” were never clearly defined and, on the other hand, the low level of human, material and financial resources affecting the rural councillors in charge of enforcing the instruments never received the necessary attention. These deficiencies paved the way for numerous abuses in the interpretation and enforcement of the law.

That is why today, some 50 years after the enactment of the law on State land, we are faced with a situation where the law fails to meet with compliance and where scandals and conflicts over land are a growing trend. For the State, as for local government, but also for the people, compliance with the legislation is no longer a priority. Everyone agrees on the need for a new land reform and, pending the achievement of such a reform, stakeholders are developing their own individual strategies for getting around the law, wielding cultural, political or economic arguments to justify their behaviour and dispense with the law. And yet, at the time of its enactment, the law on State land corresponded to a real policy vision of a land management model, which of course underwent considerable change in the interval.

2. A POLICY VISION CHANGING OVER TIME

The policy vision underlying the law on State land was based on the principle of enabling everyone to have equitable access to land, in a post-colonial context where injustices and inequalities afflicted a population of which the majority was still rural and poor. By adopting the principle of making all unregistered land State land and entrusting its management in rural areas to local elected officials, the government preserved the possibility for all citizens to have access to land. In order to ensure optimal use of all land resources, the legal mechanism provided for land assignment granting a permanent right of use on condition that the land was actually developed, but also on condition that the user of the land was a resident of the rural community, in order to give priority to local people.

In the years that followed, this policy vision was quickly questioned, particularly after the Structural Adjustment Plan in the Agricultural Sector, adopted in Senegal under pressure from the Bretton Woods institutions (World Bank and IMF). Thus, as early as 1996, the Senegalese government, through its Agricultural Policy Unit, commissioned a study with a view to preparing a land reform, which would become the Plan d'Action Foncier (land action plan). This study focused as a priority on how to liberalize land management with a view to stimulating private investment in agriculture. To deal with that issue, it proposed three possible land reform scenarios: the status quo, land liberalization and a mixed option.

At the same time, in the mid-1990s, thought was also being given to land reform in the Senegal River Valley, focusing on other issues: capitalization on the sizeable investments made in irrigation schemes and reduction of

conflicts between herders and farmers. At the local level, experimentation was also undertaken on local management of natural resources on unassigned State land.

It was not until the early 2000s that another issue emerged and soon became a fixture on the national scene: this issue of securing family farmlands. Until that time, the various studies undertaken had only addressed the land issue from the standpoint of privatization of land ownership to promote the arrival of new investors in agriculture. The CNCR, which is the foremost organization of Senegalese producers, with a membership including 28 national federations, was the first to highlight the need to secure family farms in order to enable them to grow and modernize.

Finally, in recent years and particularly since the food crisis of 2008, another type of issue has made its appearance: achieving food self-sufficiency through the promotion of private investment. This has been reflected in the transfer of rural lands to holders of capital (city-dwellers, businesspersons, political leaders, foreign businesses, States looking for production zones beyond their own borders, etc.). Underlying this vision is the idea that family farms are unable to feed Senegal and enable the country's economic development, and that other types of players therefore need to be promoted to ensure a rapid increase in national production and to develop exports.

3. DIFFERENT TOOLS TO RESPOND TO DIFFERENT TYPES OF ISSUES

In response to each of these issues, a certain number of tools were designed, sometimes using a participatory approach, then tested and developed on the local, regional or national scale. Some of these tools have official status (they have been legally recognized), while others are based on dialogue and negotiations between local stakeholders, working together to develop a set of rules suited to their needs.

First of all, with the law on State land, a whole decentralized land management system was set in place, through the attribution of powers of land assignment and removal to the rural councils. Alongside this system, which did not grant a real right, but rather a right of use tied to land development, the land registration system inherited from the colonial era was maintained. The land registration system had been very useful in terms of enabling colonists to dispose of official and recognized rights in the countries they occupied, but it revealed itself to be too complex and ill-suited to securing the land of the local population.

In the 1990s, specific tools were set in place in the Senegal River Valley to resolve the principal local conflicts and allow the irrigation schemes to be used to their fullest extent. These tools were known as POAS (Plans d'Occupation et d'Affectation des Sols, or land occupation and use mapping) and the Charte du Domaine irrigué (CDI, the irrigated land charter). The POAS are land management tools originally designed through a participatory approach in the rural community of Ross Béthio to find ways to reduce conflicts between farmers and herders. To achieve that goal, the local people proposed zoning the territory in order to clearly map out the areas whose primary vocation corresponded to each type of activity (farming, herding, tourism,

housing, etc.), and establish rules that were shared and accepted by all. The aim of the irrigated land charter (Charte du Domaine irrigué) was to find a way to intensify production in the irrigated zone, by designing a universal set of rights and responsibilities for beneficiaries of land use rights. Finally, at the local level, the establishment of local agreements on sustainable natural resource use has often been encouraged by NGOs and projects, with a view to better conserving natural resources.

Although these tools were highly pertinent for dealing with the issues for which they were designed, they did not, however, address the fundamental questions raised by the inappropriateness of the country's land legislation. Thanks to a dialogue process that unfolded from the constituent base to the national level between 2000 and 2004, the CNCR brought forth a certain number of proposals, notably on how to secure and modernize family farms, conserve natural resources and improve local land governance.

The issues surrounding family farms were finally taken into account in the LOASP (2004), which, in Chapter 6, announced the preparation of a land reform within the next two years based on the following general principles:

protecting the rights of use of rural stakeholders, allowing controlled land transfers to make it possible to create more viable farms, making it possible to inherit land and to use land as collateral for credit.

4. MANY AND DIVERGING GOALS DEPENDING ON THE ACTORS

The LOASP clearly stated that the future land reform should have the following objectives: “land security for farms, incentive for private investment in agriculture, allotment of sufficient resources to the State and local government to allow them to effectively, fairly and sustainably manage natural resources, and lightening of land tenure constraints affecting agricultural, rural, urban and industrial development.” However, these objectives sometimes appeared contradictory in a context marked by pressure on resources and competition between the players in the areas with the highest potential. Each category of stakeholders therefore sought to make its point of view the priority, by proposing specific tools and instruments.

Producers’ organizations, through the CNCR, stressed securing family farms and reinforcing the powers of local government. They therefore proposed granting real rights to the people who were assigned rights of use over land, creating local markets for such rights, setting up a taxation system to allow rural communities to ensure better land management, reinforcing rural council powers with the support of village committees and

developing several land management tools (POAS [land occupation and use mapping], a rural cadastre, a development fund, and contracts for natural resource use).

For its part, the government was more concerned with how to develop private investment in agriculture and remove the “existing land tenure constraints affecting agricultural, rural, urban and industrial development.” This vision, reflected in numerous programmes aimed at enhancing the food self-sufficiency of the country (GOANA, national plan for self-sufficiency in rice) was also manifested in the work of the State-appointed commissions mandated to reflect on land reform.

The national land law reform commission (Commission Nationale de réforme du droit de la terre), set up by the President of the Republic, has proposed the creation of vast zones for intensive investment aimed at facilitating access to land for non-residents, registration of land as private State land to anticipate requests, granting of real rights to major investors (ordinary or emphyteutic leases, sale of State lands), upon simple consultation of the population on condition of compliance with the POAS.

5. REFLECTION ON REFORM IS STILL TOO CENTRED ON TOOLS

It now appears that there are clear divergences regarding the direction that should be taken by land reform. It is therefore necessary for all of the stakeholders to work together on the different types of land issues to arrive at a shared vision. Why land reform should be carried out, for whom and how it should be done are the questions that need to be asked beforehand, and they point to the need for an inclusive approach.

And yet, instead, the current trend is towards negotiations that give limited space for stakeholders, and sometimes lock them out. Producers’ organizations have been excluded from the national land law reform commission. The CNCR, which is one of the organizations that has made the biggest contribution in terms of reflection on land reform, has also been excluded from the new thematic group in charge of preparing for land

reform; the group is presided over by the Ministry of Economics and Finance.

At the continental and sub-regional levels, the growth of the phenomenon known as “land-grabbing” has prompted the African Union, WAEMU and ECOWAS to take positions on the land issue. They call for the establishment of inclusive land policies backed up by the necessary financial and human resources to ensure proper implementation.

For their part, several development projects (PDMAS, PACR, MCA, etc.) continue to work in the field to improve and implement land management tools such as the POAS, land registers and land information systems. However, the problems currently besetting land cannot be resolved as long as there is no debate on substantive issues and no negotiated vision of the objectives of land reform. The tools will follow afterwards.

6. THE NEED FOR FAR-REACHING DIALOGUE ON LAND REFORM ISSUES AND OBJECTIVES WITH A VIEW TO SOCIAL PEACE AND SUSTAINABLE DEVELOPMENT

There is therefore a need to launch a new process of dialogue and negotiation on land reform that includes all stakeholders. To achieve that end, the necessary time and resources should be programmed by the State in order to allow the different actors to reach a consensus on land reform issues, to reflect on the tools that should be developed (drawing on existing tools and experiences in other countries) and how they are to be implemented.

With this in mind, we issue the following recommendations:

- ➔ Set up a framework for dialogue and negotiation that is open to all of the stakeholders (ministries concerned, local government, producers’ organizations, civil society, the private sector, etc.) in order to arrive at a shared vision of land reform issues and objectives;

- ➔ Carry out a state of the art review on the different thought processes that have been carried out and the positions held by the different categories of actors;
- ➔ Inventory and capitalize on the initiatives launched to implement land management tools, identifying their interest and their limitations;
- ➔ Initiate a national debate on the different land reform issues, so that the issues are used as guidelines for the work of the thematic group in charge of land reform preparations within the Ministry of Economics and Finance.