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Land and decentralisation in Senegal

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1. Introduction

Land and decentralisation policies in Senegal have been closely linked since the country became independent in 1960. Public lands are currently managed by the local governments of municipalities and rural communities, with the latter responsible for the land and natural resources in unprotected parts of their territory, and the former empowered to issue building permits. The law also provides opportunities for rural communities, municipalities and regions to be involved in managing special areas such as classified forests, national parks and protected spaces, thereby recognising that land and natural resources cannot be managed effectively unless the communities concerned are engaged in the process through their local governments.

Popular participation depends on several factors: how far the central government and administration are prepared to go in involving local people and local governments, and therefore what rights they grant them; the competences and resources available to communities; and the human and financial resources that local governments can call upon in order to fulfil their roles.

This paper will explore these issues and discuss their effect on decentralisation and land management in Senegal.

2. The decentralised State: municipalities, rural communities and regions

Decentralisation was established in Senegal well before Independence, as the country had four fully-fledged municipalities in the 19th Century: Saint-Louis, Gorée, Rufisque and Dakar, whose citizens had French status. Other municipalities were created in the 1950s, and a decree issued in 1957 gave territorial chiefs the power to create rural communities with a legal identity and financial autonomy. Successive decentralisation policies since Independence have seen this early experience with local management gain increasing weight and momentum.

A local authorities code was adopted in 1966, when there were thirty fully-fledged municipalities.

The reform of the territorial and local administration in 1972 set out special arrangements for the municipalities and rural communities, giving the former an executive appointed by central government, and the latter an elected rural council headed by a president. The chief executive of the rural community was the local sub-prefect, who was responsible for proposing and implementing the rural council's annual budget, and had a priori control over all council deliberations.

The reform of 1990 saw the widespread introduction of fully-fledged municipalities and executive power transferred to the presidents of rural councils.

In 1996 the new local government code recognised the regions, municipalities and rural communities as seats of local government, allowing for collaboration between municipalities and rural communities, and the creation of districts within municipalities. A second chamber of parliament, the Senate, was created in 1999 to ensure that local governments were represented at the national level, but was abolished under the new constitution in 2001, following the changeover of power in 2000 and complaints about its cost and role as a haven for political cronies.

The boundaries of these new local governments, which have no hierarchical relationship with each other, do not entirely match the administrative boundaries that were in place when they were created. Therefore, the regions do not correspond to the regional administration, which is managed by a governor. Within regions there are departments, which are managed by prefects; sub-prefectures, which are managed by sub-prefects; and villages, whose chiefs are nominated by local people and appointed by the sub-prefect. Thus, decentralisation creates a three-tier system with central, regional and local levels (municipalities and rural communities), while the administration operates on five levels: national, regional, departmental, sub-prefectural and village.

Brief review of decentralisation

Two of the major, closely linked, challenges of decentralisation are local governments' capacity to meet their constituents' needs and retain their support. This paper examines what we believe to be the most important aspects of decentralisation policy: the extent to which elected local authorities represent their constituents and exercise their transferred competences, and the human and financial resources available to do this.

Representative elected authorities. The roles of traditional social and religious leaders have changed with the advent of regional, municipal and rural councillors elected through universal suffrage, and the regional presidents, presidents of rural councils and mayors they appoint. While some may have slipped off the old mantle of power to assume a more modern one, they must now rely on popular support to retain their position. Whether or not they do so will largely depend on the manner in which elected officials are appointed and services delivered to local people.

Election by universal suffrage does not necessarily guarantee democracy, since the lists of candidates are prepared by political parties and independent lists are not authorised. Few parties have transparent and democratic procedures for drawing up these lists, and competition between the ruling party and its rivals is rarely fair, given its hold over the administration and the resources at the government's disposal. An electoral system with a majority list and a proportional list gives a considerable advantage to the winners, which can leave certain groups feeling poorly represented by the newly elected authorities – especially if they use their power for their own ends or those of their family, ethnic, religious or political group. The mechanisms for involving and informing local people are not always as effective as anticipated by the law, and it is not uncommon for mayors and presidents of regional and rural councils to be challenged or accused of mishandling or misappropriating power and corporate funds.

Progress on popular representation and participation is both possible and necessary, and the principle of decentralisation seems to be broadly accepted by Senegal's political parties and civil society. What the country needs is a more democratic electoral system, and transparent and equitable management that involves local people. Certain parts of the country are seeking regional status, often on ethnic grounds. These need careful consideration, especially as most are outlying or border zones with a history of neglect by central, colonial and independent governments. The creation in recent decades of district municipalities and small, barely viable municipalities that are cut off from their rural roots also needs to be reviewed.

Exercise of competences. The code of 1996 identified nine areas of competence that were to be transferred to local governments: (i) management and use of state, public and government lands; (ii) environment and natural resource management; (iii) health, population and social affairs; (iv) youth, sport and leisure; (v) culture; (vi) education and vocational training; (vii) planning; (viii) territorial development; (ix) town planning and housing. This devolution of powers was to be accompanied by funding from the State and access to its services according to agreed terms of use.



Under this code, most local government decisions are approved retrospectively by the administration, although matters relating to national lands and natural resources in rural communities require prior approval by a State official. For various reasons, local councils (and their executive organs in particular) find it very difficult to follow the procedures prescribed by the law. As a result, meetings are delayed, budgets and accounts are not approved or produced within the required timeframe, procedures and acts do not comply with the law, and management is poor and lacking in transparency.

The public services provided by the central and local governments (civil register, education, health, etc.) are based on the colonial model of public service provision, which is suitable for countries with developed economies and well-educated populations, but not for developing nations like Senegal. Some of our public services are both costly and currently unnecessary. For example, it is expensive and difficult for farmers to get productive land use assessments done, register their lands and obtain land titles; for fathers to register their children's birth; and for young people to obtain identity cards or register on the electoral roll. This can cost the equivalent of several weeks or months of agricultural income and requires time off work to go to the relevant offices, which can be very stressful for farmers who are not literate. With no systematic reflection on the way that public services are delivered to local people and how they could be adapted to our circumstances, our citizens are relinquishing their rights, postponing important procedures or falling prey to unscrupulous intermediaries. Changes could and should be made to the way that most public services are delivered, to make them more available and accessible to local people.

Human resources. Local governments are under-staffed and short of good personnel, even though they are free to recruit and theoretically have access to central government employees. Despite its efforts on this front, the State is still hesitant about creating a genuine local civil service, partly because of the financial implications of doing this and partly for fear that local governments will become too independent. For their part, local governments are reluctant to recruit because they are so short of money; in any case, political cronyism is so widespread that many jobs go to unqualified 'contacts' rather than competent staff.

Financial resources. Local governments receive money from the State to help cover the cost of the transferred competences. They also generate income from local taxes and pick up some funding from decentralised cooperation.

Central and local government officials are engaged in an ongoing debate about the findings of various studies on local government finances and taxation. These discussions mainly revolve around complaints that the State does not transfer nearly enough to allow local governments do their job properly, that payments are always late and the procedures for releasing funds highly complex. Comparison with developed and more advanced countries such as South Africa and Tunisia shows that a very small proportion of our central government budget is transferred to local governments (less than three percent), and that the procedures and mechanisms for allocating these funds lack transparency and favour wealthier local governments. The State acknowledges the situation, but does not seem to be in any rush to do much about it.

The local government tax system is quite confused, and its effectiveness and fairness need to be assessed. Even though the regions play a key role in social and economic development, they do not have their own tax system and are entirely dependent on central government funding. A significant proportion of taxes and duties are not collected in the municipalities and rural communities (especially the latter), partly because people are unwilling to pay them, and partly because the central and local government tax collection services lack the human and financial resources required to function properly.

These difficulties mean that local governments are increasingly reliant on externally funded State development projects and decentralised cooperation programmes. There is no denying that these provide urgently needed resources, especially for installing local infrastructures, but they still fall well short of the local governments' needs – increasing their dependency on external resources and reducing their ability to operate autonomously. To a certain extent, the depth of popular support for decentralisation can be measured by the local governments' financial autonomy.

Summary of the situation

Those involved in politics and civil society agree on the importance of reviewing and intensifying Senegal's decentralisation policy in order to foster genuine local democracy and sustainable local government. With rural populations and professional organisations urgently in need of accessible infrastructures, public services and support in developing economic activities, we must rethink the way that public services are provided in order to make them cheaper, clearer and more accessible for local people.

A brief review of decentralisation in Senegal shows that the political authorities and top administrative officials have been slow to translate bold legislative advances into action. This is understandable in a country that has not been independent for long and whose administrative culture is still heavily influenced by its colonial past. Democratic progress has been made, and although the ruling party is slow to act and cronyism continues to exist, it is worth betting that the people of Senegal will not accept any attempts to reverse the process.



3. Land and natural resources

The land legislation and codes relating to natural resources rely heavily on municipalities and rural communities (particularly the latter) to exercise the devolved competences for town planning, housing and land and natural resource management. Therefore, effective, equitable and sustainable local governments are an essential pre-requisite for good land and natural resource management. Conversely, this could also be said to be the best criterion for evaluating the decentralisation policy of West African countries where agricultural activities in the broad sense predominate, and where land and natural resources are the main factors of production. There is no doubt that Senegalese farmers mainly judge their local governments according to their ability to manage these resources.

Land legislation. Traditional land tenure regimes have never been static. Before colonisation, they evolved according to changes in settlement, political systems (conquests, internal political change) and technical and religious developments. Following the abolition of the slave trade, the French authorities sought to impose their own land system on agricultural production in Senegal and their other West African colonies. Senegal was never a settlement outpost due to its location in the Sahel, and the colonial system of private land ownership mainly affected urban centres.

Rural populations resisted the colonial authorities' efforts to impose a new land regime on them, hanging on to traditional systems that did not include private or individual appropriation of land and natural resources as these belonged to spirits that allowed local people to use them. These common assets could not be exchanged, and were accessed by community members according to their social and family status. Within lineage groups, family lands were managed by the eldest males through a complex system of overlapping use rights. Women rarely had direct access to land, except in matrilineal communities that practiced irrigated farming, but they did play an important role in the exploitation of natural resources: gathering and cutting wood for cooking, for example. It is worth noting that in societies with a 'feudal' political system, the central government uses land management as a vehicle for granting rights or raising taxes on production. In societies where land rights were handed down through lineage groups, the first occupants could also control new arrivals' rights of access to land. Conflicts often flared up between pastoralists (who had little hold over land) and farmers, frequently obliging the pastoralists to move on. Thus, land issues and disputes over land and natural resources existed long before colonisation and Independence.

Following Independence, Senegal devised a new land system in 1964. This had three unevenly weighted categories of land, each with its own regime: (i) private property, a legacy of the colonial system that mainly exists in urban areas and has grown exponentially due to urban sprawl and modern economic activities; (ii) public ownership, which was essentially conceived as a regulatory instrument allowing the State to take control over land from the rural councils in exceptional circumstances and for reasons of public

utility; (iii) rural lands, most of which are covered by the national land law, which constitutes the common law regime.

Until 1996, the law specified that the state services were responsible for managing public and state lands, and that national lands should be managed by rural councils, under the auspices of the deconcentrated authorities. The laws on decentralisation changed the central and local governments' powers over land, giving the latter particular responsibilities for managing public lands – although paradoxically, certain areas that had previously been under rural council jurisdiction could now be subject to a specific regime. As already noted, local government decisions regarding land are not subject to retrospective control, but are monitored by the deconcentrated state authorities.

State lands. The new arrangements for managing and using state lands were fairly straightforward, giving the State the option to allow local governments to own or use all or part of its assets by transferring exclusive or shared management of its lands to them. State lands registered in its name in rural areas do not include agricultural lands, mainly consisting of land attached to public buildings or communal amenities.

Public lands. Changes in the ways that public lands are managed and used have affected certain areas, such as the land adjacent to riverbanks and watercourses, which is particularly valued for irrigated and floodplain cultivation. It was supposed to be managed solely by the State, but this proved unrealistic so it is actually managed by rural communities, which treat it as national land. Often economically and ecologically sensitive, these areas are covered by the regime for public lands, although the law now stipulates that the local governments in whose territory they are located should be involved in decisions regarding their occupation and use. The State decides whether or not to initiate projects on this type of public land, but must now consult the regional council first and then inform it about the decision. Projects initiated by any other body are jointly agreed with the regional council and a central government official, following advice from the municipality or rural community responsible for the site. Areas that are covered by special land management plans, which prepared by local governments and approved by the State, are managed by the region, municipality or rural community concerned.

National lands. Rural land accounts for about 95 percent of the national territory. Most rural lands were held under customary regimes following Independence, but with the new legislative framework they are now covered by the common law regime of the national land law. Territorial lands include all the land that a rural community needs for housing, farming, livestock rearing (pastures and rangelands), woods and possible expansion. The boundaries of each territory are determined by decree. These coincide with the boundaries of the rural community, and the land within them is regarded as a space for development, not as a legal and economic asset. As such, it belongs to no one and does not form part of any estate. National lands are held by the State, which determines the rules for their productive use at national level, and administered by the rural council under the auspices of the sub-prefect.

This administrative power gives rural councils the authority to allocate and withdraw land and to monitor land use. Land is allocated free of charge, to beneficiaries who must live in the rural community and be able to use the land productively. Any natural or legal person who is allocated a plot receives a means of production for an indeterminate period. When they die, their heirs are allocated the land, provided they can put it to productive use.

The rural council can (or should) withdraw plots for two reasons: (i) to sanction non-compliance with the conditions of allocation, particularly the productive use requirement, in which case the land is withdrawn without compensation; (ii) in the interests of the community, in which case the landholder should be allocated a similar plot whenever practicable – although this is not possible in most rural communities. It is worth noting that no prefect has ever promulgated an order defining the modes of productive use retained in their department, as required by the law of 1964.

Some lawyers believe that the right to allocate land is not a right in the legal sense of the term, but an obligation to use it productively, insofar as the land is not automatically transferred and the beneficiary is not permitted to make any transactions involving the land or receive compensation if it is withdrawn.

Rural councils are directly responsible for managing unallocated areas of national land, such as forests, pastures, livestock corridors, etc., and for regulating their use by local people, under the auspices of the sub-prefect. In addition to their limited powers to allocate and withdraw land, they are also authorised to proceed with operations to reorganise common lands within their territory when necessary. The fact that this opportunity has never been exploited is doubtless due to the complexity, expense and sensitive nature of such initiatives.

This brief summary shows that since 1964, and especially since the creation of rural communities in 1972, rural councils have had the legal right to manage territorial areas within national lands, under the tutelage of deconcentrated officials. The State can only withdraw certain lands from this regime if it is deemed to be in the public interest, in which case it will be directly responsible for managing them by registering them in its name and thus incorporating them into state lands. However, the concept of public interest is interpreted very loosely, and this practice is often seen as a means of granting undeserved favours to private interests at local people's expense. It is an increasingly sensitive issue, given that rural communities do not have sufficient land reserves to compensate landholders for the plots that are withdrawn.

Local people are becoming increasingly critical of the way that rural councils manage state lands, although in certain respects this is the result of a tacit compromise between councillors, rural people and the mentoring authorities. Rural communities didn't exist when the law of 1964 came into force, stipulating that land held under customary rules was automatically allocated to the holder. Farmers had never taken much notice of the legislation on national land, so they still saw themselves as its 'owners' and continued to manage it according to customary rules. With no land register, technical staff or income from taxes on allocated lands, the rural councils have neither the powers nor resources

to manage their lands. So they turn a blind eye to land rentals and readily regularise sales (even to incomers) by minuting the withdrawal and reallocation of land. Land clearances that have not been authorised by the council are retrospectively approved, and when a landholder dies their plot is automatically reallocated to their heirs, without determining whether they are capable of putting it to productive use. These methods of circumventing or accommodating legislation open the door to all kinds of malpractice, and there are frequent allegations of corrupt transactions involving rural councillors and the administrative authorities, especially when land near urban centres is involved. Local people are free to use unallocated national lands, which has led to the disappearance of national forests, erosion of fragile areas and overgrazing and misuse of livestock corridors, as no concerted efforts are made to preserve these areas.

Implications of the 1996 reform. Despite their potential impact, the decentralisation laws of 1996 set about reversing the logic of local land management with little fanfare and no debate on the matter. The new law confirmed the rural councils' authority over national lands in principle, but actually tipped the balance of power in favour of the State, which then secured the means to attract new actors into the agricultural sector. These players, chosen for their deep pockets and/or entrepreneurial energy, are seen as vital in maintaining productive land use and sustaining public land management programmes. The reform also allows the State to hand over land that the municipalities need to expand, and then proceed directly with developments destined for urban housing.

There are two scenarios in which powers over national lands can be transferred to the State: (i) when it instigates a project on national land, which it can do after simply consulting the regional council and rural community or communities concerned and informing them of the decision, without needing to register the land in question; (ii) when territorial lands classified as *zones pionnières*¹ are earmarked for special developments. This means that the State can then allocate or transfer all or part of these areas to natural or legal persons, without having to incorporate them into state lands by registering them in its name.

This arrangement is particularly significant, given that the State has classified lands as *zones pionnières* in order to expedite development or irrigation schemes, especially in the River Senegal valley. It could broadly apply to all zones where sizable developments are planned – meaning that several years after the *zones pionnières* reverted to territorial lands under rural council administration, and management of outlying areas was transferred to local land users, the way is open for a return to centralised land management by the State. Depending on how it is used, the reform could either encourage balanced participation by different rural operators, or sideline those that have traditionally used good lands and been involved in development. The transfer of developed lands in the River Senegal valley has not been a positive experience. Although the farmers that used to cultivate the developed areas have kept their landholdings, rural councillors have allocated large areas of land with no regard for the beneficiaries' ability to develop them, use them productively or conserve their soils. In the scramble for land,

1. Residual land slated for development but not included in any identified class of land.



people close to elected officials and those with political or administrative contacts that can be turned to their advantage are grabbing the last of the land that is suitable for development.

This represents a profound change, not only in the logic of the national land law, but also in the balance of the entire national land system and the power held by rural populations, local governments and the State. The State can now remove land with the potential for economic and social development from local government jurisdiction, with no public interest requirement and thus no opportunity for jurisdictional control. This is causing deep concern among local people and even elected officials, partly because it creates uncertainty and insecurity of tenure, and partly because government employees and elected local officials sometimes turn State interventions to their own advantage. It is not uncommon for officials to succumb to political pressures and enforce manifestly unfair measures that clearly breach the spirit of the law.

In fact, every land reform bill drafted at the State's request since 1995 has been driven by the belief that the national land regime is not conducive to private investment. This was certainly the underlying logic of the study that led to the 1995 land use action plan, the draft framework law on agricultural land use proposed by the Presidency in 2003, and the Senegalese employers' strategy paper for developing the private sector. APIX, the agency created by the Presidency to promote investments under its auspices, frequently invokes this idea, which is also gaining growing support among administrative officials. Therefore, rural communities and their organisations urgently need to rebut the view that farmers are incapable of modernising agriculture and that they should be superseded by agribusiness and industrial farming. Farmer organisations have succeeded in resisting elements of the 2004 framework law on agricultural, forestry and pastoral land use that support such a move, but they form a small minority in the national commission established by the Presidency in 2006 to reform the land law. The Ministry of Agriculture has also set up a land reform working group. Under the terms of the framework law, the State should have presented a law on land reform by May 2006 at the latest. It missed this deadline, but there is no doubt that those in favour of privatising land at rural people's expense will return to the attack.

4. Conclusion

The 1964 national land law was supposed to promote productive land use and protect farmers against major landholders. Numerous studies on its application in rural areas have shown that this reform is ineffective, unfair to farmers and unsustainable. There are several reasons for this.

First, farmers have never accepted the abolition of their customary rights or complied with the reform. They have adapted to it, continuing with their customary practices and circumventing certain aspects of the legislation with the help of elected local officials. Neither the State nor local governments have sufficient human or financial resources to apply the law, none of the rural communities have a land register that would allow them to manage land in the manner anticipated by the law, and the concept of productive land use is not defined in any text as stipulated by the law. The procedures set out to assess productive land use and allow use rights to be converted to leases or land titles are beyond the reach of local people, meaning that farmers who have been allocated plots on national land, which were previously covered by customary rights, find it impossible to acquire real land rights. And because rural councils are unable to manage common areas of national lands in a sustainable manner, these are treated as vacant and ownerless land and often end up being over-exploited.

Local people's ideas about land are changing too, as demographic pressure leads to land saturation. Land is no longer regarded as an inalienable asset, but is treated like any other commodity that can be traded for money. With the collusion of elected local officials and tacit consent of the State, 'illegal' land sales and rentals are on the increase nearly everywhere, especially in peri-urban zones and areas of irrigated farming. The rules for transferring land to rights holders have resulted in the widespread fragmentation of farms in rural areas, and certain regions of Senegal, particularly the peanut basin, are seeing increasing numbers of completely unviable micro-agricultural enterprises.

The 1964 land reform, which was never fit for purpose, has proved incapable of dealing with the changes resulting from demographic pressure, urban growth, economic activities and the liberalisation of the economy.

Most informed observers and actors agree that the current land legislation will not be able to secure the ongoing changes in land tenure, and that the diversity of current land practices is undermining security of tenure, sustainable natural resource management projects and agricultural modernisation programmes. The State is trying to adapt to this situation by using the 1996 decentralisation laws to encourage access to land by private investors, but what Senegal really needs is a new land policy and a reform of all the legislation regulating land and natural resources. There is widespread agreement on this, and the State has been trying – unsuccessfully – to lead such a reform since 1995.



There are various reasons why it has been unable to do so. First, it does not recognise that land reform and changes in land policy involve real social choices. Since land tenure formalises the interactions between people and land and natural resources, changes in land tenure should take account of all stakeholders' interests and reflect choices they have made through a process of negotiation and compromise. The State has always opted for a technocratic approach led by experts: what it should do is begin by defining the issues at stake in any new policies, land legislation and codes regulating natural resources; determine why there is a need for change and whom it will benefit; and then ask the experts to put the stakeholders' decisions into practice. Instead, the State and the administration are trying surreptitiously to impose their choices and exclude key actors (farmers) in rural areas, taking advantage of the fact that they are poorly organised and largely unaware of their political and economic weight. This line of action will almost certainly result in an inappropriate reform.

A pre-requisite for good policies and successful reform is that all the actors concerned participate in their formulation. The key issue here is the transformation and fragmentation of family farms in a context of scarce resources and economic liberalisation. The land policy needs to allow the current process of fragmentation to be reversed and give local governments the human and financial resources they require to manage land and natural resources sustainably, thereby securing real rights for people in rural areas. It will also need to address the galloping urbanisation of Senegal, where 50 percent of the population have been living in urban areas since 2005 – a figure that is set to rise to 70 percent by 2050. These people need land for housing, infrastructures, public amenities and economic activities, and this land will have to come from what are now rural areas. Although rural populations can do nothing to prevent this, it must be done equitably so that the land capital removed from rural areas is balanced by inflows of financial capital. This is one of the major challenges now facing Senegal and other countries in West Africa.

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