

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

“Land Tenure and Development” Technical Committee

Aspects and characteristics of State-owned land in West Africa

by Gérard Chouquer¹, January 2011

West African land regimes are based on particular constructs of State-owned land. This paper aims to clarify the different conceptions of State-owned land so that we can better assess their implications for land policies and understand the nature of this type of land in Africa.

When we talk about ‘State-owned land’ we mean the regime for goods that belong to public bodies. This regime has a long and very rich history, and encompasses a wide variety of realities on different continents.

In European countries and their former colonies, State-owned land has taken various forms according to the nature of the rights held by the public authorities: semi-feudal (*seigneurial*), colonial, public, private, and so on. But even this historical typology could be improved, and the need for clarification is growing as new concepts emerge in Africa, since the existence of several definitions can lead to ambiguity

Public lands

In many countries, land assets that belong to the State but are allocated for public use are known as **public lands**. Public land assets are covered by a particular regime of public law, which is designed to protect and maintain their allocation for public use. Therefore, goods in the public domain are inalienable (the State cannot sell them or transfer their ownership).

Public lands include:

- goods designated for collective public use, such as roadways and sea shores;

- goods assigned for individual public use (cemeteries, market places, metered parking, etc.);
- goods allocated for a public service, provided they relate to the public service in question and are developed for this purpose (such as the land needed to build and develop railways, gas pipelines, electric lines, etc.).

Depending on the type of use for which it is allocated or the type of space concerned, public land is categorised as maritime, aerial, riverine, terrestrial, personal or military.

Public land is defined in contrast to State land, which refers to the State’s private assets: goods that belong to the State and which it holds and manages under the same conditions as goods held by individuals. Unlike goods in the public domain, those in the private domain can be transferred, which means that the State can rent or sell its own assets to individuals. This category also includes rural land that the State can assign to individuals, or urban land that communes can transfer to individuals by parcelling it up and selling it off for development (*lotissement*).

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Land monopolies

Apparently not content with the classic distinction between public and private State land, African countries have invented new concepts of State land. These need to be clarified and explained, especially the concept of national lands.

The notion of *national lands* or *public national lands* that appeared in the legislation of numerous African countries in the mid-1960s represented a major, but far from homogenous, innovation. National lands amount to a State monopoly on land since the State holds all or some of the land in the country, not in its own name, but in the name of the nation that it represents. A. Rochegude and C. Plançon define this kind of land as follows:

>> *National lands*: “A new concept frequently used in Africa (or at least francophone Africa), which can cover a wide range of legal situations. For example, in Mali national land constitutes a whole legal framework covering every status of land (which means that all land is included in this category), while in Senegal it refers to the status of all lands that are not part of the public domain or any legally appropriated holding (that is to say titled private property).”

If we take this definition as our starting point we can envisage two hypothetical situations. One where there is a total monopoly on land, and all lands fall into the legal category of national land; and the other where there is a partial monopoly, and only certain areas are incorporated into national lands. This concept of national land is usually accompanied by a system of concessions or use rights which regulate the way that the State makes land available for use by other, mainly individual, actors.



Fouta Djallon, Guinea. Diffuse land occupation creates an appearance of vacant lands. capture of Google earth

Examples of total State monopolies on land

Certain countries have opted for comprehensive State ownership of land, such as the *Fundo Estatal de Terras* in Mozambique, the *Património comun de todo o Povo* in Guinea Bissau, or the *domaine national* in Mali. A comparison of the regimes in some of these countries clearly illustrates the potential for ambiguity in the concept of national lands.

- In **Guinea Bissau**, the law states that land is “the property of the State and the common heritage of the entire population”. The State may grant individuals private use rights to facilitate productive and social activities on land. This is mainly done through common use or by assigning land.
- **Mali’s** Land Code stipulates that all land is included in its national lands; that is to say, public and private State lands, public and pri-

vate local government lands, and land held by other natural and legal bodies.

- As in Mali, national lands in **Mozambique** constitute a broader category than public lands, expressed in the concept of *Fundo Estatal de Terras*, (*Domínio Público*). Therefore, public lands should not be confused with the larger, overarching category of national lands, to which the Mozambican State has a clear (and unusual) constitutional claim, and which encompasses a public domain that is not fundamentally different to that of many other countries.

Examples of partial State monopolies on land

In some countries certain lands are classified as **national land** (*domaine foncier national* or *domain national*). This category, which does not cover all the land in the country and should

not be confused with public or private State lands, includes any land that is not registered and is therefore considered vacant and ownerless. This type of regime exists in countries such as Senegal, Togo, Cameroon and Gabon.

Based on the principles of customary land management, this approach to land management aims to establish some kind of 'national land reserves' by incorporating customary lands that are deemed to be unused or insufficiently used into a 'national estate' that can be allocated for rural development operations.

- In **Senegal**, which was the first West African country to enshrine this concept in law in 1964, national land automatically includes "all land that is not classified as being in the public domain, is not registered or whose ownership has not been recorded in the mortgage

registry" when the law came into force. Therefore, national lands in Senegal include lands formerly held according to customary principles that the State holds in the name of the nation in order "to ensure that they are used judiciously and productively, in accordance with development plans (...)" .

With such use in mind, national lands are classified in four categories: urban areas, classified areas, village lands and pioneer zones. This last category mainly relates to land that can be developed in accordance with development plans; land in these areas is allocated by decree to rural communities, cooperative associations or organisations created by the government.

- In **Togo**, 'national lands' include all land that has not been appropriated by individuals and does not

belong the State's public or private domain. In reality, this means that national lands are made up of former customary lands (which are not registered in the name of the State or individuals).

Ideas implicit in the State monopoly on land

According to H. Ouedraogo, the notion of 'national lands' is tied up with the post-colonial history of the states concerned.

>> *"Emerging from independence with dreams of economic development powered by an agricultural base, States in the [West African] sub-region preferred to work with land maps so that they could redistribute land to actors deemed capable of engaging with modern methods of agricultural production".*

The concept of State-owned land was originally unilateral, in that the State could use the notion of vacant lands to decide that it alone had the right to determine how such land is used. Designating land as vacant and incorporating it into the national domain avoided the need to go through strict and restrictive procedures for expropriation on the grounds of public utility. These were the after-effects of colonial processes: reasoning based on the colonial regime of registration as the source of all legal land tenure. Everything was done as if this had regulated the status of all land that was normally occupied, while other land was deemed to be free and vacant.

It is said that things would be different if the people who exercised customary rights could produce titles, but since they cannot do so—due to the failure of the registration process launched

Impression of vacancy contradicts with the detailed study of land plots. capture of Google earth



during the colonial period—governments can automatically assume that any unregistered land belongs to the State. However, various countries are starting to make perceptible progress in recognising customary rights.

The assertion that land is unoccupied—regardless of whether or not this is actually the case—leads to its appropriation through colonial or post-colonial State ownership. Land is given State-owned status because it is seen or deemed to be unoccupied. Therefore, putting the concept of State or State-owned lands into practice is an extremely delicate matter. ●

FOR FURTHER INFORMATION

>> *Large-scale land appropriations. Analysis of the phenomenon and proposed guidelines for future action, "Land Tenure and Development" Technical Committee (AFD-MAEE), June 2010, 56 p.*

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