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Senegal

Reforming the 1964 Land Domain Act?

Philippe Lavigne Delville

Crossing Perspectives on West and East Africa Land Reforms
Ifra Nairobi – 30 janvier 2025

- 1. A wave of land reforms since the 1990s
- 2. Senegal: African socialism and the 1964 National Domain Act
- 3. Economic liberalisation and failed attempts for reform
- 4. Bypassing and instrumentaling the law to expand private land rights
- 5. Reforming by projects?

Introduction

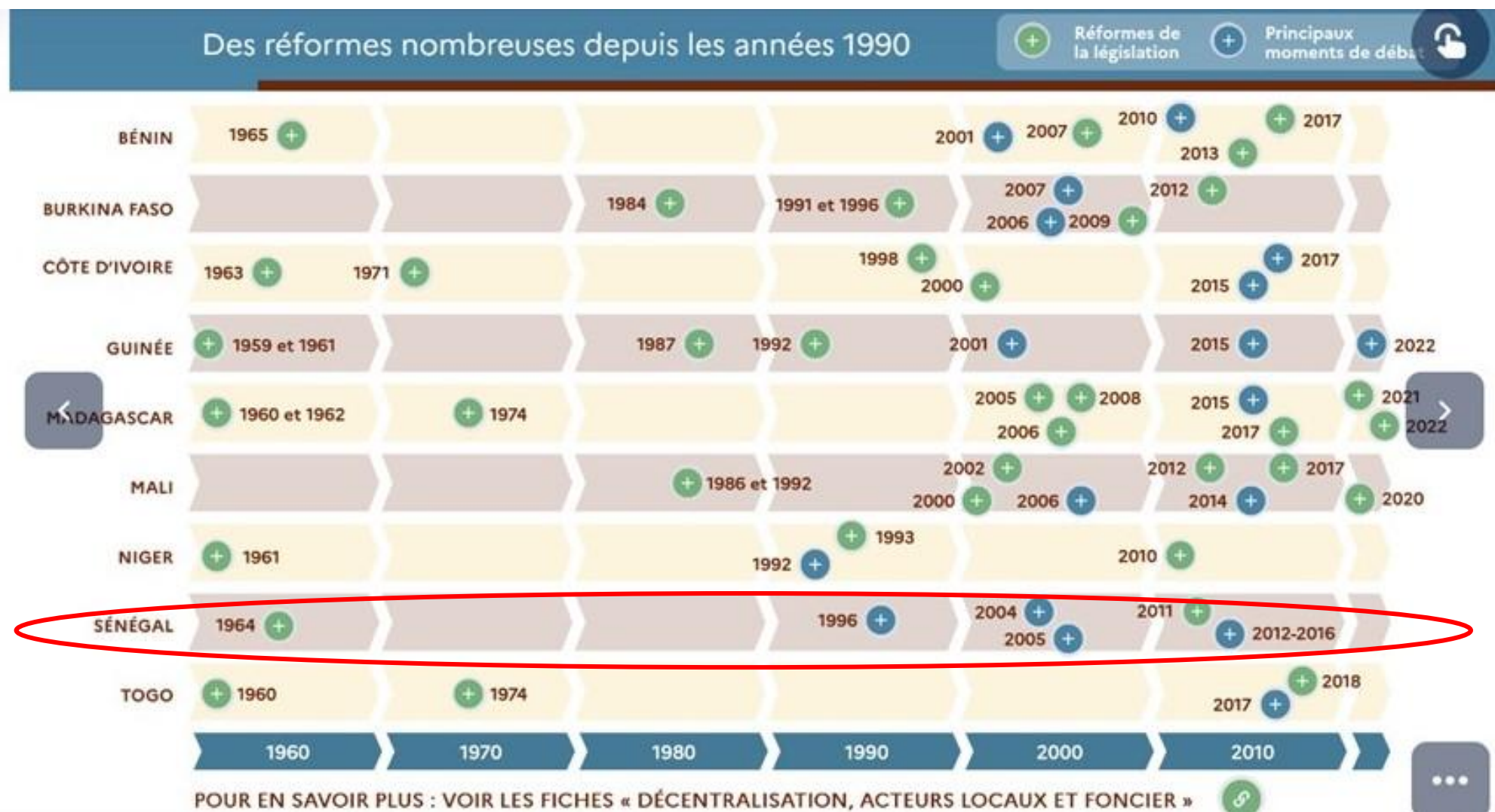
- Colonial experience and legal dualism in land law
 - Colonial power takes control of land (state land, crown land, etc.)
 - Land titling and state-supported land grabbing
 - On untitled land, customary authorities and « informality »
 - Few changes at the times of Independance
- The 1980-90s wave of land reforms
 - A « global/sectoral adjustment » to economic liberalisation (P.Muller)
 - Securing people's rights or facilitating access to land by investors to boost productivity
 - Sometimes challenging state agents land grabbing
 - A focus on local/customary land rights formalisation/legalisation
 - Replacement or adaptation: a confrontation of paradigms (John Bruce)

• The case of Senegal

- Colonial presence since 1626 along the coast
 - Conquest in 1880-1890
 - Farmers production of peanuts and cotton
 - Few land titles for european and leanese people
 - Civil code in 1830
 - Land titling (inspired by the Torrens Act) in 1900 (1906, 1932)
-
- The 1964 National Domain Act, part of African socialism
 - On going debate since economic liberalisation policies, several failed attempts
 - Why such an incapacity to reform?



1. A wave of land reforms since the 1990s

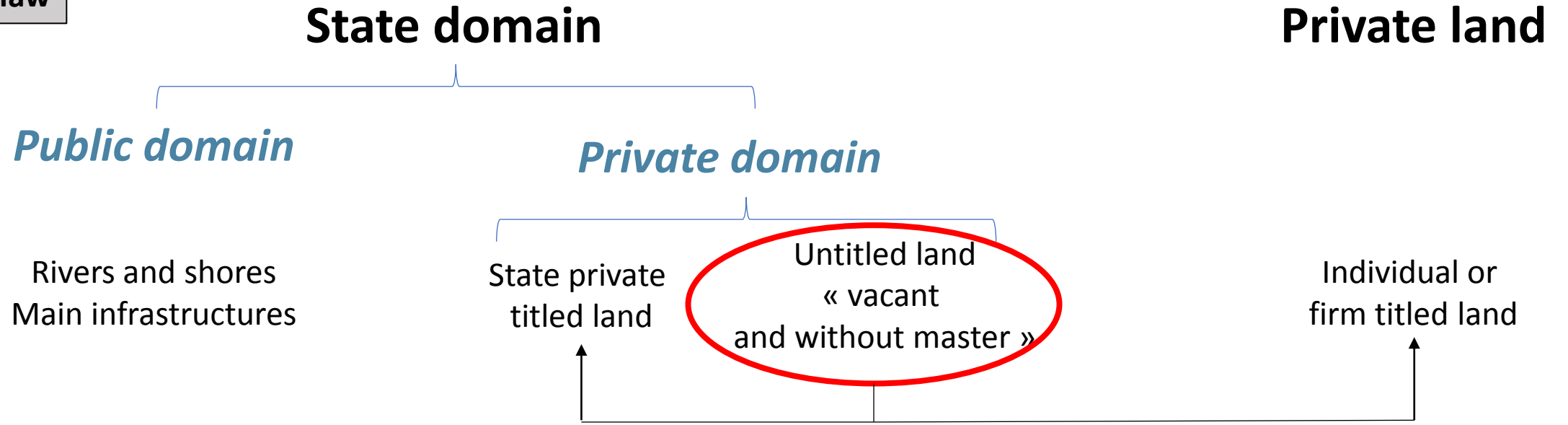


Country	Laws on state domain and private ownership	Rural land laws	On-going processes
<i>Bénin</i>	2013 (2017)	2007	
<i>Burkina Faso</i>	1996, 2012	2009	
<i>Côte d'Ivoire</i>		1998	
<i>Guinée</i>	1992		since 2014
<i>Mali</i>	2000, 2002	2017	
<i>Niger</i>		1993	
<i>Sénégal</i>	2011		since 1995
<i>Togo</i>			since 2011

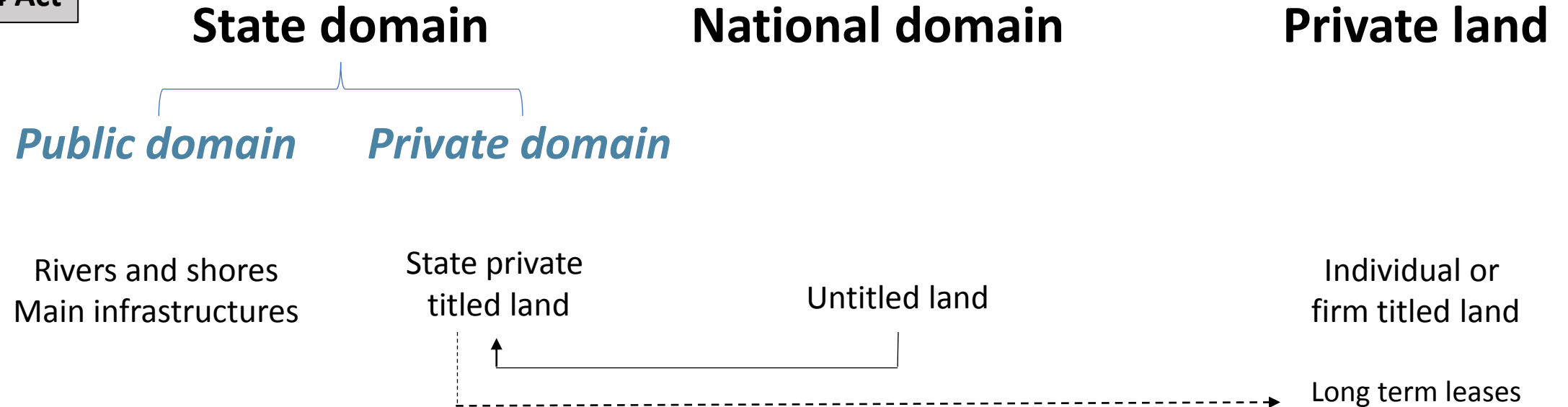
2. Senegal: African socialism and the 1964 National Domain Act

- African socialism and the will to challenge colonial relations
 - President Leopold Sedar Senghor and its Prime Minister Mamadou Dia
 - Cooperatives and farmers' control of peanuts trade
 - « Rural animation » and farmers' empowerment
 - The crisis of december 1962
- The 1964 National Domain Act : limiting the expansion of private ownership
 - Untitled land is a « national domain », belonging to the nation
 - Its management is devolved to « Rural communities » (local administrative units)
 - Customary rights are abolished, any transaction is forbidden
 - Rural councils allocate use-rights to members of Rural communities
 - The State only can title land in its name, for public purpose
 - Existing titles are maintained, on-going procedures can go on

Colonial law



The 1964 Act



- 1972 : Local government act and the legal creation of « Rural communities »
 - 8 years after the 1964 Act
 - An early decentralisation policy in a context of political crisis
 - « Rural communities » as local governments, at a supra village level
 - Rural councils elected on a party basis
- The contradictions and impacts of the 1964 act
 - An ambitious and ambiguous mix between african conceptions, cooperative self-management and nationalisation
 - Suppression of customary paiements in most places
 - Reduction of land loans
 - Consolidation of a family property
 - Illegal land markets in periurban areas
 - Politicised allocation of use rights, to few people
 - Land as a tool for clientelism and accumulation for local politicians

3. Economic liberalisation and failed attempts for reform

- Crisis in the rural world
 - Low price for peanuts (end of 60s)
 - Droughts (1972, 1984)
- State indebtedness and structural adjustment (1975-1985)
 - Economic liberalisation
 - New agricultural policy (1984)
 - End of state support to family farming
 - End of subsidies to inputs

- The « post-barrage era » (after 1990)
 - State-led irrigation development schemes for family farming in the Senegal river delta and valley
 - Big barrages to enhance irrigation potential
 - Promotion of private irrigation and the issue of land tenure
- The National Domain Act under pressure
 - Final end of the socialist policy
 - Use rights an impediment for access to credit and investment
 - Use rights only for Rural communities members
- Three successive attempts for reform

- President Abdou Diouf and the Action Plan on Land Tenure (1995)
 - Land has to be titled in the name of a state entity, that will allocate is to economic actors
 - Several scenarii
 - Englobing all the National domain or only zones planed for developement?
 - Who owns the land and allocate it: the state and/or local governments?
 - Economic actors access to land: full ownership or long term leases
 - Which place for family agriculture?
 - A study without outcomes
 - Strong opposition of farmers' organisations that launched their own reflexion and propositions
 - Opposition of local goverments heads
 - A pre-electoral context

- President Abdoulaye Wade, the LOASP and the CNRDT (2002-2005)
 - Victory of the liberal party in 2000
 - 2002: a draft « Loi d'orientation agricole » (agricultural framework law), where all untitled land is put under an agency responsible for allocating it to economic actors
 - Strong resistance of farmers organisations that promote their own vision (2004), and donors
 - 2004: An « agro-sylvo-pastoral framework law » more in favor of family farming
 - A land reform scheduled for 2 years after, supposed to secure both family farmers and private investors
- Pst Wade launches in 2005 the CNRDT (national commission for rights over land) that works secretly and proposes a enhanced state control over untitled land
- He explicitly encourages land acquisitions by state agents and foreign companies
- Several scandals of large scale land grabbing

- **President Macky Sall and the CNRF (2012-2016)**

- 2009-2016: strong donor-supported CSOs involvement in the land policy debate (struggle against land grabs, studies, workshops, etc.)
- 2012: a national commission for land reform, under the responsibility of a recognised negotiator
- An « inclusive and participatory process »
 - A technical team with land administration agents and experts of the rural world
 - Farmers organisations and NGOs in the steering committee
 - Local consultations
- A sound participatory process, with CSOs involvement
- But more consultative than deliberative
- A predefined frame unacceptable for OSCs: giving ownership to the state or the Communes?
- After long negotiation, a balanced but vague Land Policy Paper (2016) rejected by the President

- **Three attempts, three failures**

- Enhanced control by the State and land titling or consolidation of farmers' rights ?
- The place of the land market

- Since 1995, the State would like to take control of land and allocate it land to investors (or clients)
- It cannot/does not dare to impose it for fear of social unrest
- The framing of the land reform does not allow for building compromises
- The statu quo allows corrupted practices to continue

4. Bypassing and instrumentalizing the law to expand private land rights

- During that time, practices have evolved...
 - Inhabitants and communes develop semi-legal or illegal but widely accepted practices
 - Development of illegal (but legalised by the communes) land sales
 - Allocation of land to outsiders by the communes
 - Agrobusiness investors negotiate at local level to avoid conflicts and ask for a use-rights allocation not a land title
 - Land administration agents title land outside of rules in favor of powerful actors
 - An « informalisation » of practices since 2000
 - Titling for private interests without public purpose
 - Fraudulent practices of expanding existing titles
 - Expanding land grabbing by political elites, in rural and periurban areas

- Some rules have also been changed around
 - Facilitated transfer of state land to investors (sale for urban and industry, lease for agriculture) (1987, 1994)
 - Free transformation of housing rights to title on authorised housing schemes (2011)
 - Unique numerotation of all plots, either with title or use-rights allocation (2012)
 - Rural communities are changed as full communes (2013)
 - Law on special economic zones (2017)
 - Use rights can be allocated to families and enterprises (2022)
- A policy of « laissez-faire » with small legal steps to weaken the National domain law
- Land law is used and instrumentalised to favor state allocation of land titles
- What represents now the National Domain?

5. Reforming by projects?

- An unachieved informatisation of the land administration (since 2012)
 - Bricoled tools for cadastral mapping
 - UE funded projects and resistance to transparency
 - A software still under construction several years after the end of the project
- Attempts to create and implement tools for commune land management in the Senegal river delta (since 1999)
 - Clear process of use-rights allocation
 - Land information system and sound management of land rights on allocated land
 - Promotion of land use-rights registration
 - Several successive projects since 1999 (AFD, MCC, World Bank)
 - Few impact on practices : short term projects and political issues

- The World Bank Procasef (project for cadastre and land tenure security)
 - Promote « secure land use rights allocation » with a unique number and mapping in the cadastre
 - A land tenure information system shared between communes and the State land administration
 - 180 communes in Senegal
 - The ambiguity of informal project-led land management teams at commune level

Conclusion

- Intricated reasons for the statu quo
 - A highly unequal and politicised process of land rights allocation, at state and communes level
 - An enduring tension between a State (and elites) will to take control of land and the power of allocating it and people's aspiration for more secure family rights and autonomous management
 - A State refusal of pragmatic adaptations of the Land domain act
 - Strengthening land use rights, making them inheritable
 - Authorising temporary land transactions (and sales under certain conditions)
 - Authorizing land rights allocation to investors, with procedures for social equity
 - Land titling only for public purpose
 - The spirit of the 1964 National Domain Act and OSCs' reluctance regarding land market
 - A policy debate not enough grounded on expectations and practices

- CSOs' proposals for adapting the National Domain Act (2022)
- What will the new regime do?
 - Sovereignty, equity and reliable administration
 - President and Prime Minister come from the land administration
 - A will to stop corruption and illegal land accumulation

 - How far will they be able to go in reforming practices in land administration?
 - Will they be able to reframe the land debate and strengthen people's rights to land ?

- Thanks for your attention