

LTC Paper

CONFLICTS OVER LAND AND
THE CRISIS OF NATIONALISM
IN MAURITANIA

by

Thomas K. Park
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TENURE
CENTER**

An Institute for Research and Education
on Social Structure, Rural Institutions,
Resource Use and Development

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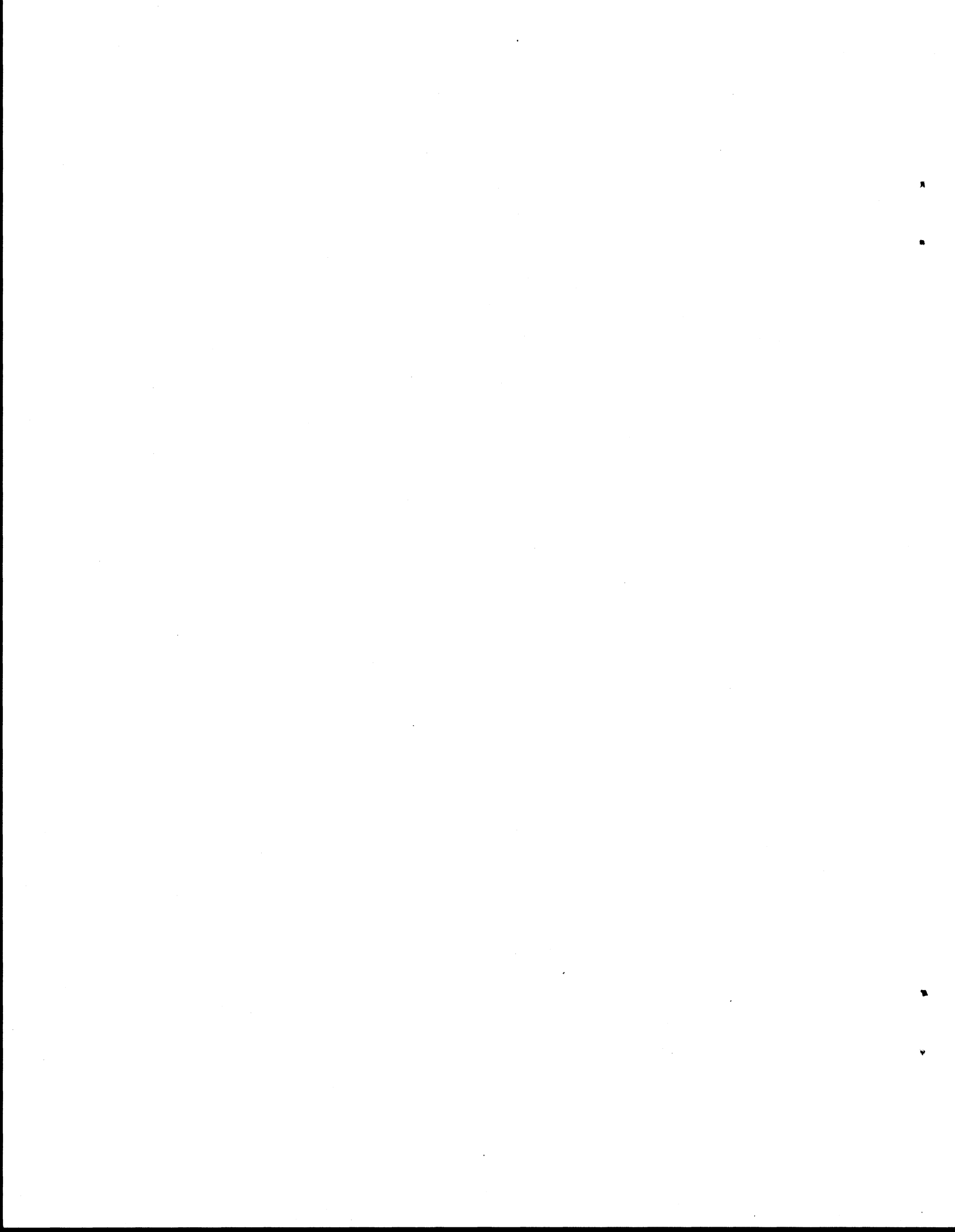
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Cercle de Gorgol: Secteur de Littama: De "futiles" querelles de contestations de terrains, aussi vite nées qu'éteintes et toujours rallumées par des haines et rivalités de race.

Archives Nationales du Sénégal 2 G7-11:
Rapport Politique 1er trimestre 1907
(24 mai 1907)

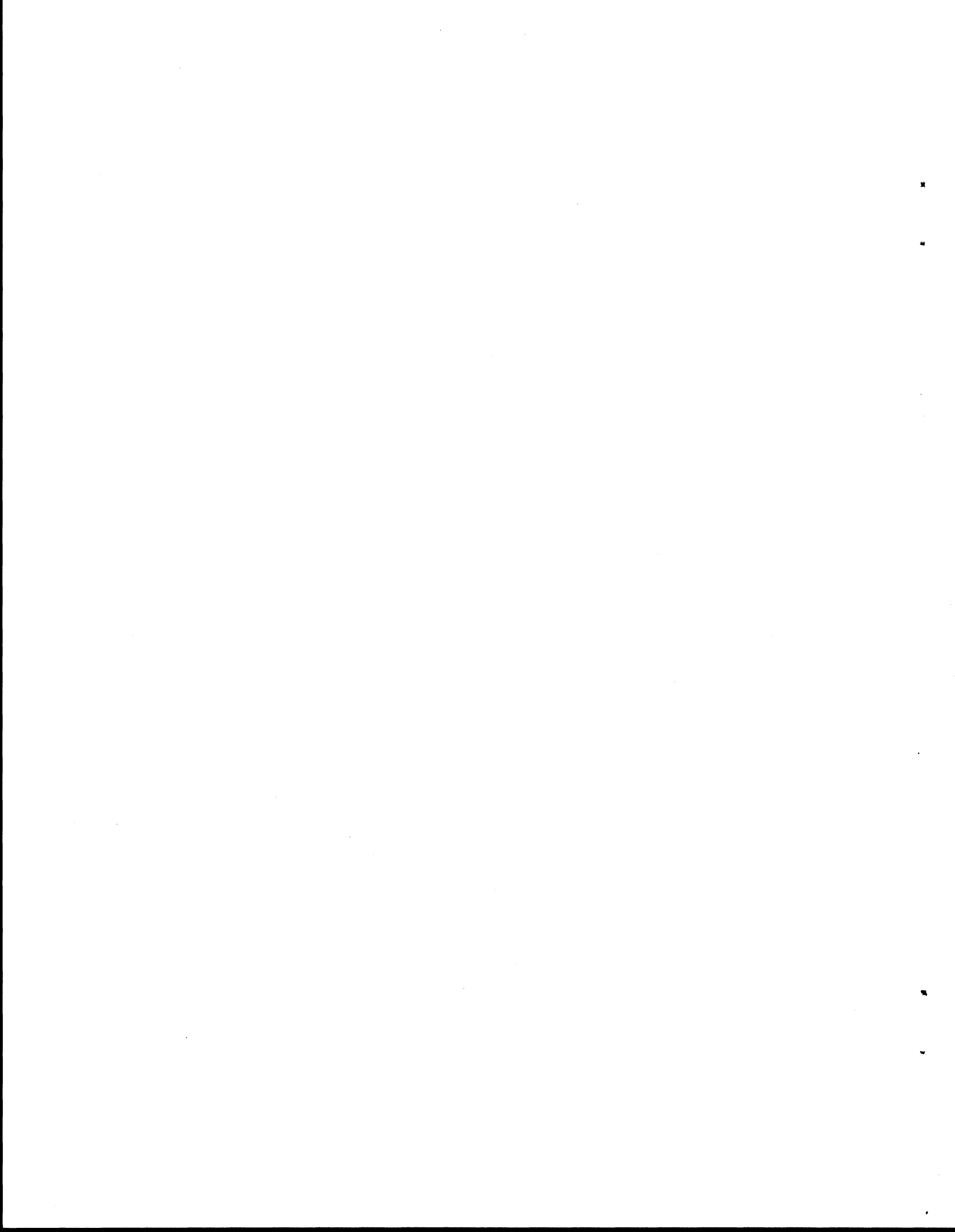
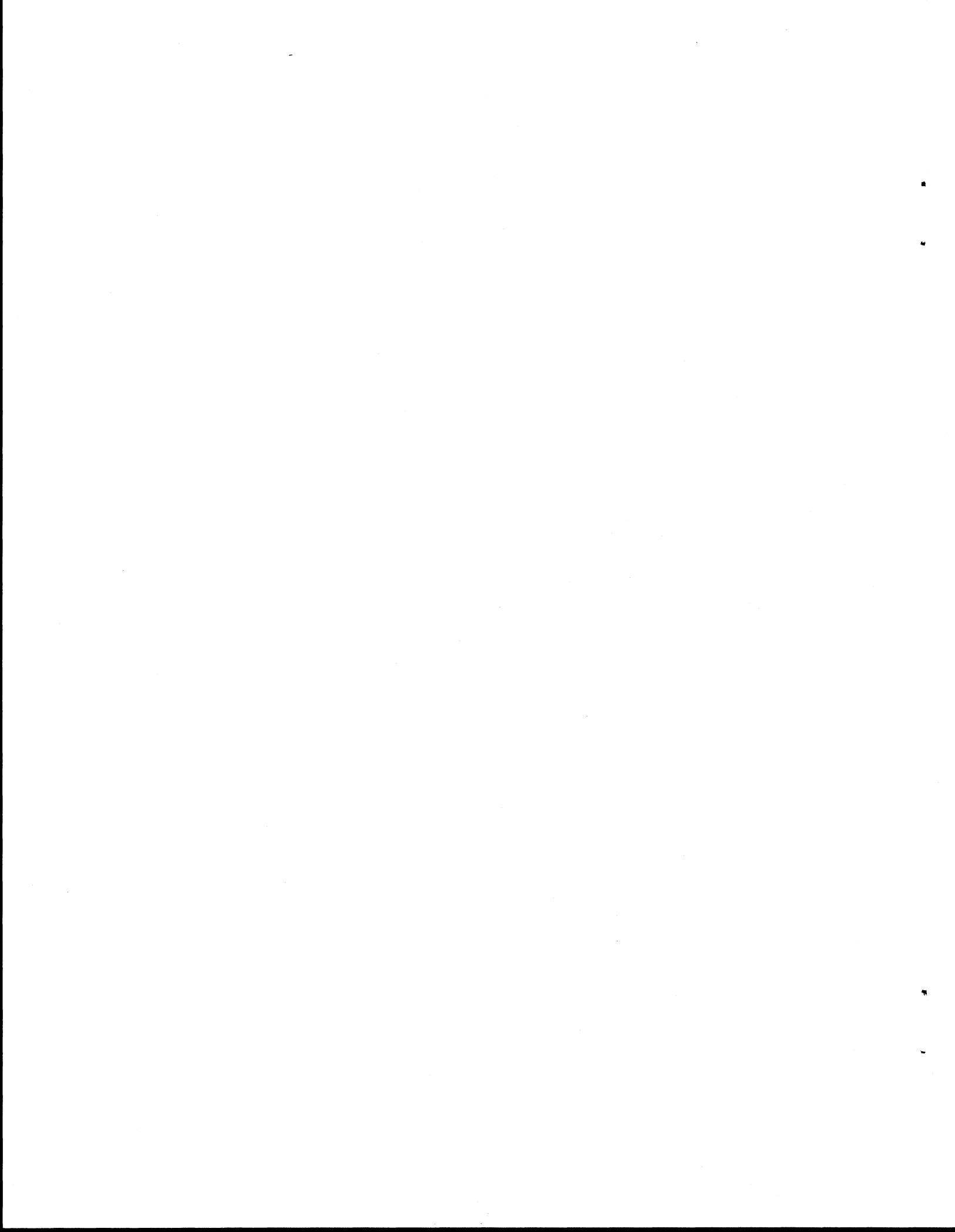


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PREFACE

This paper does much to expose the root causes of the conflict over land which sparked ethnic conflict in Senegal and Mauritania in 1989. It builds upon the understanding of tenure issues in the riverine area of Mauritania developed in the course of the LTC's involvement there between 1983 and 1985. A "reform" of land tenure adopted by government as Islamization and welcomed by donors as individualization proved to be a vehicle for land grabbing by Moor business and governmental elites from black riverine populations with strong ties to Senegal. The Moors' desire to increase their landholding along the river appears to have been driven by both the drought in the north of Mauritania and the inflated expectations of development of the Senegal River Basin created by overblown donor planning activities for OMVS (Organisation pour la Mise en Valeur du Fleuve Sénégal).

There are lessons to be drawn from this experience, lessons applicable to other countries in Africa:

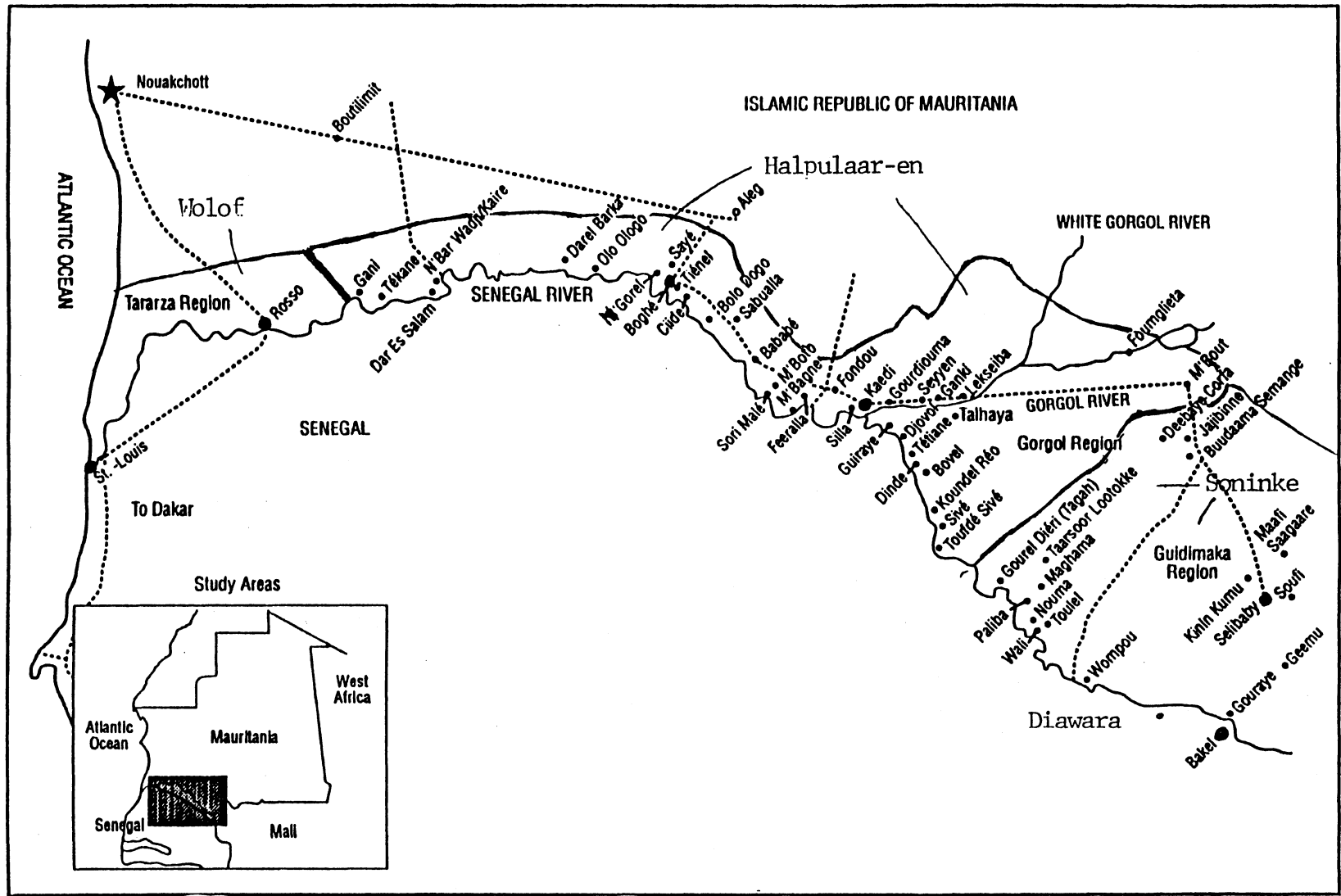
First, the terms of access to land are not just one technical parameter among others to be adjusted as needed to reach narrow developmental objectives. Existing patterns of tenure have woven into them complex compromises among different classes and ethnic groups. Reforms can upset them and lead to overt conflict.

Second, the rationale for a reform may be articulated in technocratic and/or theoretic terms, but the underlying agenda may be as simple as land grabbing by one group from another. The motivations behind the "rhetoric of development" need to be closely and critically examined.

Third, when legal disparities in political power exist, clauses in laws which safeguard the access of existing users can and usually will be circumvented.

John W. Bruce
Director, Land Tenure Center

February 1991



(Slightly modified from map developed by OALS, Tucson, AZ.)

EXECUTIVE SUMMARY

1. In the spring of 1989, a series of confrontations between farmers and Mauritanian troops on both sides of the Senegal River escalated into a major diplomatic crisis involving both Senegalese and Mauritanian governments and ultimately resulting in the loss of life and property of thousands of individuals. That the Mauritanian government did not even initially inform the Senegalese government of the illegal actions of its military persuaded many that the violence was condoned by the highest levels of the government in Nouakchott. This paper argues that the events can be understood only as a crisis of national proportions involving nothing less than the definition of the Mauritanian state. Although the product of a specific series of confrontations, the crisis is intimately related to the internal linguistic, cultural, and economic policies of the Mauritanian state. These in turn can be grasped only by an understanding of their historical context.

2. Ethnic and caste divisions have long existed in the Senegal River Basin and continue to shape many of the interactions between groups today. While the Halpulaar-en cultivate the majority of the very productive flood-recession lands on both sides of the middle Senegal River, other land, at the eastern end of the middle valley, is cultivated by the Soninké. Political changes over the past few centuries, including the establishment of emirates, jihads, and the imposition of colonial rule, have resulted in a complex social and economic system, with some groups (for example, the Halpulaar-en) asserting land rights based on conquest and others (including the Haratine, former slaves) basing their claims on the Islamic principle of indirass, which recognizes rights established through clearing the land.

3. French colonial administration, which furthered the interests of elites in the area, only complicated claims to land rights and relations between groups and in fact did little to advance the status of former slave groups. The control of recession lands in the Senegal River Basin has long been a source of competition and tension within communities or across communities and ethnic groups. Flood-recession lands are the most reliable asset, yet one regularly in short supply. Thus each dominant social group in the area has wanted to control them, to exercise an authority that implies control over the region's population.

4. Land law during the colonial period recognized traditional tenure rights on those lands which had not been subject to a special process of registration (immatriculation). At the same time, rights to land not actively cultivated (including land cultivated only in good years) were systematically undermined by application of the Islamic principle of indirass, articulated to justify taking over lands left unused over a period of ten years. Because colonial legislation arrogated to the state unoccupied land, this land became part of the national domain.

5. Since independence, the government of Mauritania has passed a number of significant pieces of land legislation. The most recent, passed in 1983, abolishes the traditional tenure system, asserts that individual ownership is the norm, and makes legally inadmissible all lawsuits concerning collectively held property. Like earlier legislation, the 1983 law enunciates the principle that "dead land" is the property of the state, thereby facilitating the state's access to land that can be used for national development schemes. This is an important provision since a significant portion of the land in the valley has been left uncultivated in recent years due to drought. Subsequent ministerial directives have eased the state's granting of concessions for agricultural development schemes to private individuals.

6. In the Senegal River Basin, much of the agricultural development has been financed by upper-class, Bidan entrepreneurs, but the schemes are based on Haratine or slave labor. Moreover, a significant part of the land granted by the state to Bidan is claimed by Halpulaar-en, who insist that their rights continue despite their inability to cultivate the land because of drought. Drought has also made development schemes attractive to Bidan since it has deprived many of them of their traditional sources of income from pastoral activities. And more recently, Bidan business losses in Senegal (and expulsion from that country) have made the schemes all the more appealing as investment targets. Donors' insistence on privatization of the schemes and on individualization of tenure have facilitated Bidan dominance and use of hired labor.

7. The diplomatic and ethnic problems which surfaced in 1989 are only one facet of the crisis. There are economic and environmental concerns as well. The ecological unity of the Senegal River Valley requires that proposed solutions go beyond even national considerations. In addition, significant revisions in both development policy and land tenure legislation are necessary to begin to rectify some of the inequities and injustices of the recent years.

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The Current Crisis

On the 9th of April 1989, two Senegalese (Soninké) farmers were killed by Mauritanian military in the aftermath of a confrontation between Mauritanian Peul herders and Senegalese Soninké cultivators. The Soninké had been chasing the herders' livestock from their fields, which were near harvest. Mauritanian military ventured into Senegalese territory near the town of Diawara, in ostensible support of the herders, killed two Senegalese, and took hostage thirteen others, who were imprisoned, maltreated, and released only after diplomatic protests by the Senegalese government. The initial confrontation between herders and cultivators was probably not unlike others which had occurred many times between different groups along the river.

What distinguished this incident was not the actual incident itself but its aftermath, which seemed to bring to a pitch hostile attitudes of the Mauritanian government toward Senegalese cultivating lands in Mauritania and, by proxy, attitudes toward Mauritanian Halpulaar-en. That the Mauritanian government did not even initially inform the Senegalese government of the illegal actions of its military persuaded many that the violence was condoned by the highest levels of the government. The actions fit in with other, less tragic incidents involving imprisonments and mistreatment of Senegalese cultivating in Mauritania in towns such as Diaw, Diatar, Loboudou, Walalde, Nawel, and Dara-Halaybe (Sy and Tall 1989, pp. 5-8). International treaties had from the time of independence specified that the international border gave neither country a right to interfere with indigenous patterns of ownership and cultivation in the valley (see discussion of the arrêté of 10 January 1905 and the legislation of 1960 and 1983 to 1984, below). The Mauritanian authorities had thus for some time been viewed by residents of the valley as deliberately breaking international law in order to dispossess residents of land in favor of Bidan development schemes.

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On the 19th of April the Diawara incident was repeated near the village of Sadel, near Matam in Senegal (Sy and Tall 1989, p. 7). Two Senegalese cultivators were attacked in Senegal by Mauritanian troops and taken as hostages to be imprisoned near Kaédi, Mauritania. When local Senegalese authorities protested the events, the Mauritanian government paid minimal attention and the Senegalese government accomplished little in the way of resolving things--perhaps too preoccupied with keeping the peace. Senegalese youth thus organized a protest in Dakar, during which a young Bidan shot and killed a black Senegalese.

This led to an initial set of riots in which the Senegalese government made serious efforts to defend the Maures from the rioters. Shortly after, on the 24th and 25th of April, massacres of black Senegalese at the hands of an apparently government-directed mob took place in Nouakchott. At least 40 people were massacred and estimates carried on RFI, BBC, and VOA suggest the number was as high as 200 dead with 700 people injured; other estimates put the figure at 400 dead (Sy and Tall 1989, p. 8). The Mauritanian government refused to let any international or Senegalese officials make counts of the dead and many were buried in mass graves. The enormity of the events of late April in Nouakchott quickly reached Senegal and led to massive riots against Bidan residents of Senegal, particularly on the night of April 28, in which at least 35 people were killed (estimates suggest as many as 100 Bidan may have been killed) and some 40,000 Bidan shops were pillaged. Since this time incidents have multiplied as Bidan in Mauritania have tended to explain the events in Senegal as evidence of a systematic racist policy (for example, El Hassan 1989, Soudan 1990a).

The events of April 1989 precipitated massive airlifts between the two countries. Numerous Bidan also fled from Senegal on foot while black Mauritanians were deported by various routes. In all several hundred thousand people were relocated in 1989. A number of people were arrested in April for protesting government complicity in these events, but apparently these early prisoners have since been released. Since the April 1989 relocations, tens of thousands of blacks have been thrown out of Mauritania. The total number is unclear, but in some areas (for example, west of Lexeiba/Podor) reports suggest 50 percent of the Halpulaar-en had already been expelled by mid-1989 (Soulhier 1989). Amnesty International reports large-scale torture and extrajudicial executions by the government of Mauritania (or its officials) since this time (1989a-d, 1990). Other accounts suggest numerous cases of state criminality and assert that more than 140 villages have been expelled in their entirety.¹

Both the Bidan expelled from Senegal and the great majority of the black Africans deported from Mauritania were deprived of their possessions. In Senegal this was frequently due to mob pillaging of stores, but the state also impounded goods of many Bidan. In Mauritania the state has been overwhelmingly responsible for the material losses: police, customs, and virtually all government officials involved in the deportations have openly confiscated everything, from land to earrings. Officials no doubt justify the confiscations as a means of recuperating the losses suffered by Bidan to Senegalese mobs, but the official policy of theft is as illegal, from both a shari'a and a United Nations perspective, as the policy of torture and arbitrary imprisonment for purported "political" crimes.

Perhaps the key evaluation of the events is that of Amnesty International (1989d, p. 11), which noted that one of the most apparent differences between the Mauritanian government's reaction to the April 1989 events and that of the Senegalese government was the degree to which the Mauritanian government seemed to be more actively a party to the worst atrocities. Accounts of Haratine trucks into Nouakchott to pillage proliferate, and uniformed and plainclothes police with walkie-talkies are reported by numerous witnesses to have observed and even directed atrocities. It is not irrelevant that the frequency of torture in Mauritania, which has greatly increased under the leadership of Maaouiya Ould Taya since 1986, contrasts with its apparent rarity in Senegal. In short, despite some complicity in the atrocities by both sides, the Mauritanian government, by the available reports, seems to be far more implicated than the Senegalese government.

The frequent brutality of the Mauritanian response and the obvious gravity of the problem from the perspective of most black Mauritians, and particularly the Halpulaar-en, can be understood only as a crisis of national proportions involving nothing less than the definition of the Mauritanian state. On closer analysis the crisis can be seen to have little to do with the specific events of Diawara and much to do with the internal linguistic, cultural, and economic policies of the Mauritanian state. These, in turn, can be grasped only by an understanding of their historical context.

The following section examines linguistic, ethnic, and cultural policies. The next two sections examine land policy, an important factor in this crisis because the Sahelian drought (1968-85), which severely reduced the productive capacity of the rest of the country, along with declines in revenues from the mining sector have drastically decreased Mauritania's export earnings and increased its import needs. This has focused Mauritanian government policy on the remaining potentially arable land: the Senegal River Basin whose lands, inconveniently from some perspectives, have long been fully claimed. The penultimate section of the paper reexamines the current crisis in the light of material thus presented. A final section is intended as a contribution toward a resolution of the crisis, phrased as recommendations to donor agencies.

Ethnicity, Slavery, and the Mauritanian State

The ethnic groups of the Senegal River Basin (Wolof, Halpulaar-en, Soninké, Haratine, and Bidan) have long interacted and even intermarried. All but the last, the Bidan, are black-skinned, but the Haratine share a common language, Arabic, with the Bidan while the others speak their own languages, Wolof, Pulaar, and Soninké, respectively. The Wolof, residing at the delta end of the river basin, are one of Senegal's dominant ethnic groups but have no significant agricultural presence in Mauritania. The Halpulaar-en cultivate the great majority of the flood-recession lands on both sides of the middle Senegal River valley. Their dominant position in terms of landholding makes them obvious obstacles to the expansion of development schemes in the middle valley. The Soninké cultivate the lands on both sides of the eastern end of the middle valley, in Guidimakha and Bakel. Each group can make legitimate historical claims to tenure of flood-recession lands in the valley. Most

recently these claims have been made in the context of the debate over "la question nationale."

From 1512 to 1776, the Deeniyankobe Peul unified the middle valley into the Deeniyankobe state of Fuuta Tooro. This state was based on slave labor, but a reaction to the Atlantic slave trade developed into a movement against slavery (called Shuur Bubbe) from 1644 to 1774 (B. Ba 1986). An Islam-inspired revolution, led by Sulayman Ball, established the new state in Fuuta Tooro of the Almameebe Toorobe in 1776. Abdul Quadiri Kan, the first head of state, inaugurated his new regime with a massive redistribution of lands (referred to as the Feccere Fuuta or Feccere Almaami Abdul), an act from which most current Halpulaar-en derive their rights to land. Later heads of state (such as Yuusuf Siree Lih of Jaaba and Mammadu Biraan Wan of Mbumba) also instituted land redistribution programs but on a lesser scale than that of Abdul Quadiri Kan. The revolution of 1776 can thus be described as an agrarian and antislavery revolution, a basic principle (the Alkati Mboolo) of which was that no Fuutanke should be put in chains and traded as a slave. It is from this period that the current land tenure regime of the middle Senegal River valley most generally dates.

At the beginning of the nineteenth century the emirates of Trarza and Brakna established dominion over the right (north) bank of the Senegal River (Minvielle 1977; B. Ba 1983). Their claim was based on conquest, an accepted Islamic principle for the establishment of landownership rights. Initially, most Halpulaar-en fled to the left (south) bank of the river, but later in the century many made arrangements with the emirates of Brakna and Trarza to return and cultivate lands on the right (north) bank of the river. Some arrangements were based on payment of tithes to the emirs; others, on marital ties. A number of lands on the right (north) bank were put under cultivation by Haratine under the control of the emirates.

In 1858, Shaykh Umar Taal, in partial reaction to French influence in the valley, led as many as 25 percent of the Halpulaar-en out of the valley in a jihād to the east to spread the Tijaniya brotherhood in the Niger valley. In 1891 the French finally conquered the whole valley and, by 1900, had begun to encourage Halpulaar-en to reestablish cultivation on the right (north) bank in those areas they were still not yet cultivating. In many cases the French urged the Halpulaar-en to cultivate lands already in use by Haratine on the explicit grounds that indirect rule could best be exercised through an elite rather than through a denigrated group such as the Haratine. This has not extinguished claims by some Haratine groups, who feel that their clearing of long-abandoned lands for cultivation had established ownership rights based on the Islamic principle of indirass. They maintain that their subsequent expulsion from such lands by Halpulaar-en with French backing was quite illegitimate.

During the French colonial period slavery was officially banned. The circulaire Ponty of 1 February 1901 abolished the right of a master to pursue and recover a slave, while the decree of 12 December 1905 established fines for any agreements amounting to the enslavement of an individual. These measures did not have a decisive impact, however. Nor has the issue been clarified since independence. Article 1 of the Constitution of Mauritania of 20 May 1961 declares, "The Republic assures equality before the law to all its citizens

without distinction of race, religion or social condition." This has often been interpreted as an indirect abolition of slavery. Nevertheless, the practice of slavery continued, a fact acknowledged by the government (interview of Lt. Colonel Mohamed Khouna Ould Haidalla with M. Hervé Bourges, director of Radio-France International, appearing in Chaab, 28 July 1983, p. 3, cites Haidalla as admitting "certains de nos citoyens, se basant sur la religion, continuaient à pratiquer l'esclavage"). Only on 5 July 1980 did the government declare slavery abolished. This was followed by an ordonnance of 9 November 1981 formally abolishing slavery which, among other provisions, declared that:

First article: Slavery under all its forms is definitively abolished throughout the territory of the Islamic Republic of Mauritania.

Article 2: In conformity with the shari'a, this abolition will imply a payment of compensation to those entitled to such.

[Complete text of the ordonnance, in both English and French, can be found in annex 1.]

What seems to have escaped outside funding agencies is that the compensation prescribed by the shari'a is a payment from slave to master, not the converse as one might suppose. This of course is rather difficult to arrange since slaves have few to no goods of their own (Ficatier 1987b; Hadj 1988). Book (chapter) 39 of al-Muwatta of Imam Malik ibn Anas, the most obviously relevant text, deals at length with this issue and, though no simple figure can easily be calculated from the examples cited, it is clear that the compensation due to the master is meant to be very substantial (Malik ibn Anas 1989). This is why repeated abolition of slavery in Mauritania has had no real significance. The slavery issue has relevance not only in terms of the political movement El-Hor (freedom), but also in the use by Bidan of Haratine/slaves in cultivation and the excesses of some "Haratine" in the events of April 1989. Although Haratine and slaves are legally and, usually, socially distinct groups, slaves are regularly glossed as Haratine due to the sensitivity of the slavery issue, the ignorance of many observers, and the dependent situation of many Haratine.

Although the recent violations of human rights have a direct link to land tenure, earlier incidents revolved around other components of the "question nationale," the very important issue of the constitution of Mauritanian society. On the 4th of January 1966, black students in Nouakchott lycées protested with a strike the imposition of mandatory Arabic in secondary schools, arguing that this unfairly discriminated against those Mauritanians who had other native languages and disadvantaged them in terms of access to education. The protests attracted the attention of local intellectuals, who issued the Manifesto of 19 (signatories) in February. The issues raised in the manifesto were identical to those that had been raised by the UOMS (Union des Originaires de la Mauritanie du Sud) in 1957, which had protested against French-Maure collusion in negotiating for the soon-to-be-independent state what is considered to be second-class citizenship for Mauritanian blacks on obviously racist grounds. New strikes occurred in 1979 when the amount of mandatory Arabic was increased,

and two people were killed. In October 1980 the government officially recognized the languages spoken by black Mauritians and set up an Institute of National Languages to prepare for the introduction of these languages into the school system.

On assumption of power in a bloodless coup on 12 December 1984, Colonel Maaouya Ould Sid'Ahmed Taya liberated most political prisoners, abolished a number of traditional Islamic punishments now considered inhuman, and set up a League of the Rights of Man in Mauritania (Amnesty International 1989d). This has not ended protests, however, for in April 1986 a group of black intellectuals issued an eloquent and well-researched new manifesto, the Manifesto of the Oppressed Black Mauritanian (Le manifeste du négro-mauritanien opprimé). This documented in detail the discrimination against black Mauritians in government appointments and access to education and declared the situation completely unacceptable. It called for a complete restructuring of the state to eliminate cultural chauvinism. The authors of the manifesto included some of the best and most brilliant black Mauritanian intellectuals. In response, more than a hundred people were arrested and twenty-one were tortured, tried (in a farcical procedure from which the defense lawyers walked out because they were not allowed to provide any defense), and sentenced to severe penalties for writing the document. All but two authors are still in prison; the two who are no longer subject to state chauvinism died as a result of torture and mistreatment. In September and October 1986 when the convictions were announced, demonstrations broke out leading to further arrests. Twenty-two of the people arrested were convicted and sentenced in March and April 1987.

The organization behind the Manifesto of the Oppressed Black Mauritanian was FLAM (Forces de libération africaine de Mauritanie), which has periodically issued reports from its European branch. FLAM includes several movements: MPAM (Mouvement populaire africain de Mauritanie), ODINAM (Organisation pour la défense des intérêts des négro-africains de Mauritanie), UDM (Union pour la démocratie en Mauritanie), and MEEN (Mouvement des élèves et étudiants noirs). In October 1989, FLAM issued its "Livre blanc sur la situation des noirs en Mauritanie," a compendium of its statements, news reports, Amnesty International reports, and other documentary evidence about discrimination, torture, and abuse of black Africans in Mauritania. FLAM's position has been fairly radical, but it cannot be accused of advocating only violence. The manifesto, for example, called for negotiated solutions, and this seems to be FLAM's preference.

FLAM's position is that the Mauritanian state is engaged in a form of apartheid, a view others might consider a bit extreme. Graffiti such as "Maaouwiya (Sid'Ahmed Ould Taya) Botha" reflecting this position appeared regularly in Nouakchott at least until 1989. The former Minister of the Interior, Lieutenant-Colonel Anne Oumar Babaly (a Halpulaar-en), was moved to the Ministry of Commerce for sympathy with FLAM. In October 1987 a number of high-ranking black Mauritians were arrested or dismissed from their positions on the grounds of complicity in a planned coup. Fifty-one individuals were convicted (18 November 1987): three were given the death penalty; eighteen, life at hard labor; nine, twenty years at hard labor; and the rest, lesser sentences. This led to the purging of virtually all black Mauritians from the military. Lieutenant-Colonel Babaly was arrested but was among those later

released. Membership in FLAM is currently grounds for incarceration, torture, and imprisonment.

Another major publishing effort is conducted by FRUIDEM, with its Organe central du Front de résistance pour l'unité, l'indépendance et la démocratie en Mauritanie. Since the events of April 1989, this group has also published a series of reports, often entitled "Résistances," that document abuses and analyze events in Mauritania. FRUIDEM's position has focused on the need for democracy and national unity, declaring the situation a case of state chauvinism that needs to be overcome one way or another.

Still another organization is the Front for the Self-Determination of Walo, Fouta, and Guidimakha (the whole frontier between Senegal and Mauritania). Under Alioune Diaw, this group apparently led an armed resistance until its dissolution in 1985.

Opposing sides have also made their views known. The Baathist and Nasserist movements in Mauritania take the position that Mauritania's Africanness is to be eliminated. Mauritania's destiny, in their view, lies with the Arab world (Amnesty International 1989d, pp. 16-19, 43; FLAM 1989L; FRUIDEM 1990k). Funded by Iraq, the Baathist movement is clearly the more dominant of the two. It seems to have substantial support among some members of the government in that low-level government complicity in Baathist attacks on black Mauritians is widely documented. Yet the extremism of the Baathist movement has equally been regularly perceived as a threat by the state--at least through 1988. In August 1981 and March 1982 some 150 Baathists were arrested, tortured, and imprisoned without trial. Released in July 1983, 26 were rearrested along with 29 others in September 1983 and tried and convicted for "complicity with a foreign power." At regular intervals between 1986 and 1988 Baathists were incarcerated. In August 1988 Baathists were hunted down and summarily tortured, convicted, and imprisoned in much the same way members of FLAM have been treated (Amnesty International 1989d).

Recent diplomatic isolation of Mauritania has pushed the government closer to Iraq. Saddam Hussein's African initiatives, including a search for long-range missile testing grounds, have seemingly been viewed hospitably in Mauritania. During the events of April 1989, Iraqi armaments and expertise were deployed in Mauritania--including such gifts as Sam 7 anti-aircraft missiles. Several dozen officers were sent to Iraq for training from July to November 1989 (I. Fall 1990; Soudan 1990b).

Land Policy in the Colonial Period

The traditional agricultural systems in the middle valley include both flood-recession lands (waalo) and rain-fed lands (jeeri). Flood recession is intrinsically unpredictable in terms of how much land is annually inundated and, equally importantly, which lands are best suited to agriculture in a given year. This unpredictability is a factor of major significance in the arid Sahel. Even when inundated there are variations of quality. Lands which

are inundated for more or less than optimal amounts of time become less productive. As a result, agricultural systems, which have traditionally been complemented by fishing and pastoral activities, have incorporated risk management strategies (Park 1985; Boutillier and Schmitz 1987) such as common property (to increase the size of the portfolio of lands accessible to each cultivator) and annual reallocation of lands after the flood recedes (to ensure that shareholders each have access to a viable holding). Traditional systems of tithes may also be viewed as risk management systems, as well as a way to maintain economic stratification: payment of tithes obligates the recipient to use some of these revenues for community welfare. Individual tenure, because of the small size of holdings, would be generally unviable or inefficient in the flood-recession context. The institutionalized relationship between the fishing, pastoral, and agricultural sectors is clearly also a strategic advantage in terms of risk management since it provides alternative support for segments of the population and the flood variability implies inadequate amounts of land are flooded perhaps 40 percent of the time.

The flood plain of the Senegal River includes three types of recession lands: (a) waalo lands, which are the primary lands of the plain; (b) fonde lands, which have higher and lighter soils and are priority lands in times of high flood; and (c) falo lands, which are found on the banks of the two main channels and the subsidiary river channels in the basin.

Tenure in flood-recession lands is generally held in common property at levels ranging from the extended family to the lineage. Ownership rights extend over the full flood plain. Due to the variable amount of the plain flooded in any given year, land is cultivated under a spectrum of tenure arrangements. This range of tenure must itself be viewed as a risk management system. In a good year 20 percent or more of the cultivators will not have primary rights in a full complement of optimally inundated lands, and in poor years the percentage may be even higher. The availability of lesser rights allows these cultivators to gain access to additional lands and ensures optimal use of the inundated areas. The terms of contractual arrangements vary from year to year, depending on the availability of land and labor. It is worth emphasizing that 80 percent or more of the cultivators have adequate primary or secondary rights in good years. Although a significant minority is regularly obligated to negotiate access at disadvantageous terms, particularly in poor years, this is not the case for the great majority in good years.

Jeeri lands have more open access than waalo lands though they need to be cleared and prepared for cultivation and are exposed to high risk (from birds and cattle) when isolated. This means that desirable jeeri fields tend to be grouped and located near settlements. For this reason jeeri lands often command a rent (loubel) even though there is no overall shortage of jeeri lands.

The Arabic-speaking "Maures" include Bidan and Haratine. In almost all agricultural efforts by this group, the Haratine cultivate lands, often paying Bidan for the privilege, while the Bidan do not themselves engage in cultivation. Recently (since 1984) Bidan have established large agricultural lands at the west end of the valley, with actual cultivation done by many Haratine and some slaves. Traditionally, Haratine have cultivated for themselves or for Bidan in other areas of the valley as well.

The Halpulaar-en have traditionally held rights to lands in most of the middle Senegal River Basin. In general they own land collectively, from the level of the extended household up to that of the extended lineage. Land is reallocated annually to members on the basis of the annual flood. Payment of tithes by many members secured tenure rights ranging from "full ownership" down to temporary usufruct.

Among the Soninké, land is held in common property at the extended family level. The eldest male, called the kagume, manages the property in two ways: (a) by requiring all male members of the extended family to work the main fields (texoore) from 7 a.m. to 2 p.m.; and (b) by allocating, on an annual basis, individual fields (saluumo) to male members of the family for their own use. Women generally also have access to fields but do not as a rule receive them from the kagume. They may rent or inherit these lands. In addition, the Soninké have lineage-level common property which is allocated by a land official (jaagarafu) to individuals or to families. These lands are subject to payment of a tithe (jaka) which goes to the lineage.

The control of recession lands (waalo) in the Senegal River Basin has been a source of competition and tension within communities or across communities and ethnic groups. Conflicts between herders and cultivators have a long history in the area. Flood-recession lands are the most reliable asset, yet one regularly in short supply. Thus each dominant social group in the area has wanted to control them, to exercise an authority that implies control over the region's population.

By the colonial period, the ethnic groups of the valley could each make legitimate shari'a-based claims to flood-recession lands in the valley. Nevertheless, perhaps the most basic principle of shari'a land tenure is the superimposition of the current Islamic community over past communities. This takes the form of privileging oral testimony over written documentation: an ancient title has absolutely no validity unless supported by an unbroken chain of documentation culminating in current oral testimony verifying the uncontested tenure claims. Oral testimony to the effect that another party has, in an uncontested fashion, exercised tenure over the property for ten years (in Maliki law) completely invalidates opposing past claims or titles. This implies that recent practice takes precedence over historical claims.

This simple solution to conflicting claims, as one might expect, poses problems in its application because the claim can be made that French (infidel) interference in the exercise of tenure was not Islamic conquest, was not a legitimate basis for tenure, and therefore needs to be properly addressed. The complexity of legislation on tenure is considered in this and the next section.

Tenure Legislation

The French began early to try to legislate tenure rights in the Senegal River Basin. The earliest significant arrêté was that of 1905:

Arrêté on the subject of lands on the right bank cultivated by indigenous residents of the left bank.

Art. 1: Residents of the right bank in Mauritania are subject, whatever their race or origin, to the laws, taxes and authorities of Mauritania.

Art. 2: Residents of the left bank who are inscribed on the tax roles of Senegal are authorized to cultivate, as before, the fields they currently have use of, according to local custom, on the right bank.

Art. 3: Residents of the left bank wishing to cultivate fields on the right bank other than those specified in the preceding article must obtain prior authorization from the authorities of Mauritania and will be subject to payment of Mauritanian taxes.

Art. 4: The Lieutenant Governor of Senegal and the Commissioner of the General Government of Mauritania are each, for their part, responsible for the implementation of this arrêté which will be registered and disseminated wherever necessary.

[For the original French text, see annex 2.]

The 1905 Arrêté established the boundaries between the two territories as well as the right of those on one side of the river to cultivate their lands on the other side. This is a critical piece of legislation because the acceptance of these rights continued through the independence period until the recent events, when the Mauritanian government suddenly decided no longer to honor them.

The French government passed a number of other laws and decrees between 1830 and independence in 1960 which are relevant to understanding twentieth-century land tenure. The most important laws, decrees, and treaty arrangements are listed below (Minvielle 1977, pp. 37ff, provides a further discussion of most of these decrees; an additional list is given in annex 3):

- 5 November 1830: The French Civil Code is declared applicable to AOF (Afrique Occidentale Française) along with its corollaries having to do with land tenure. This code makes no provisions for recognition of Muslim or customary tenure.
- 1 January 1861: The Damel of Cayor (northwest part of Senegal) grants France rights "en toute propriété" to all lands it is not using.
- Decree of 23 October 1904: confirms the appropriation by the French state of vacant lands ("toutes les terres vacantes et sans maîtres") without any acknowledgment of traditional forms of tenure.
- Decree of 24 July 1906, Art. 58: recognizes the existence of traditional forms of tenure and provides for their transformation into legal property in French law by registration (immatriculation). The problem with this was that the people saw no reason to register land since they viewed their traditional rights as

superior to what was being offered: the French registration was individually based and negated all collective forms of tenure.

- Decree of 8 October 1925: attempts without modifying traditional tenure to publicize, legalize, and record it. Due to the complexity of required procedures this also met with no success.
- Decree of 26 July 1932: deals with the question of registration (immatriculation) of lands in French West Africa.
- Decree of 15 November 1935: makes more precise the meaning of "terres vacantes et sans maître" as lands not registered in accordance with earlier decrees (1925 and 1932) or lands not exploited or occupied for more than ten years.
- Decree of 20 May 1955 (promulgated 7 September 1956): institutes the "livret foncier" (land registry), accepts traditional tenure on unregistered lands (lands not appropriated according to the civil code), and provides that no concession of lands is allowed where traditional tenure rights exist. The key implication here is that this reinforces the power of jom jeyngol (those with usufruct rights or "maîtres de culture") at the expense of property owners (joom leydi: maîtres de terre).

In brief, this body of legislation had the following policy implications: Traditional tenure was confirmed after initial attempts to impose French tenure concepts. The rights of those with secondary tenure rights were systematically undermined by the principle of indirass, which was articulated as grounds for taking over unused lands after ten years. The implication is that lands formerly available in good years, in particular to those with lesser rights, might now be absorbed by development schemes. In addition, the boundaries between the two states were defined, and slavery and employment of slaves were outlawed throughout both territories. It is worth noting that the legislation makes no reference to any potential advantages of the traditional tenure systems. Some of these provisions have informed subsequent legislation, while others have been superseded by other priorities.

Land Policy in Independent Mauritania

One of Mauritania's earliest significant pieces of legislation was the Decree of 1960 dealing with land tenure. The key clauses of this legislation are as follows:

Décret 60.139 of 2 August 1960.

First article: Lands that are vacant and without owner belong to the state. The same is true for unregistered lands or lands which have not been subject to a regular concession and are undeveloped or unoccupied for ten years.

Vacancy will be adequately established by the absence of constructions, crops, cultivated trees, or wells.

Art. 3: Customary tenure rights are confirmed when they involve an evident and permanent use of the soil. No one may, however, make use of the land in a way prohibited by the law or regulations.

Art. 9: The system of expropriation for public utility applies to customary rights. No individual or collectivity may be forced to give up its rights except for public utility involving reception of just compensation.

[French original can be found in annex 4.]

This legislation maintains the legality of customary law and establishes both the right of the state to take land for the public good and the right of any person whose land is expropriated by the state to just compensation. In addition, the first article establishes the principle, based on Maliki law, that lands which are empty for ten years become the property of the state. Maliki shari'a establishes a ten-year period for the principle of *indirass* (expiration of rights due to the passage of time) in favor of the Islamic community--an individual or group would be free to use the lands. The 1960 legislation differs only in specifying the state as beneficiary. Other articles of the legislation provide procedures for registration of lands.

The 1960 legislation was completed in August, three months prior to Mauritanian independence (28 November 1960). The legislation was promulgated at a time when the black Africans, mainly the Halpulaar-en, wanted assurance that they would retain their traditional claims to the lands they cultivated. The timing and the scope of the law suggest that Moktar Ould Daddah and the French who wanted to stop the expansionism of the king of Morocco bargained with Pulaar leaders. This agreement resolved three issues: (1) Moktar Ould Daddah would be able to resolve the national unity issue; (2) the expansionist ideas of Morocco would be contained; and (3) the traditional claims of the Halpulaar-en to the *waalo* lands were confirmed.

Initially, the Pulaar leaders were concerned to safeguard their class interests and did not define or develop with Moktar Ould Daddah the place and the role they would have in the making of Mauritania. This missed opportunity led almost immediately to second-class status and to the prominence of this status in debate of the "question nationale." This was apparent as early as a year after independence, in 1961, when the president proclaimed Arabic (but not Wolof, Pulaar, or Soninké) a national language while French remained the official language. This was the first step undertaken by Moktar Ould Daddah on the road to ethnic conflict.

On 15 September 1980, a commission assigned to study land tenure problems issued a report (GRIM 1980) enumerating a multitude of disputes in Assaba, Guidimakha, Gorgol, Brakna, and Trarza, many of which involved armed violence. It is clear that ten years of drought as well as political developments had contributed to the situation. The report noted that in most cases one of the

parties to the dispute had refused to accept resolutions from the Qadi's court or the supreme court and that peace could be maintained only by detachments of the National Guard.

One example from the report will serve. In Barkeol Ghabra the disputes were between Haratine and Bidan, with the latter claiming that their tribe had traditional influence in the zone and the former asserting that they and their ancestors had cleared and worked the land as free Muslims and so had established legal rights to the fields. This conflict reflects in part the ideas of the El Hor movement among Haratine, which argued that they had rights as landholders just like everyone else. It should be noted that at the time the prevailing opinion in most of Mauritania was that Haratine, by definition, could not own land.

The tenure legislation of 1983 to 1984 affirmed Bidan neglect of the black residents of the Senegal River Basin by removing the legislative backing for maintenance of the latter's traditional tenure rights. The legislation made provisions for Bidan customary tenure (pastoral collectives) while it eliminated the legal basis for traditional tenure in flood-recession lands (see Art. 3, below). The legislation is worth close scrutiny. The critical clauses are as follows:

Ordinance 83.127 of 5 June 1983 concerning land reform and the organization of Domain lands.

First article: Land belongs to the nation and every Mauritanian, without discrimination of any kind, can, in conformity with the law, own land.

Art. 2: The state recognizes and guarantees private property which must, in conformity with the shari'a, contribute to the economic and social development of the country.

Art. 3: The traditional land tenure system is abolished.

Art. 5: Land registrations made in the name of chiefs and notables are understood to have been granted to their traditional associated collectivities.

Art. 6: The collective rights legitimately acquired under the former regime, initially confined to agricultural lands, benefit all those who have either participated in their initial development or contributed to their continued exploitation.

Individual ownership is normal. When there are no arrangements for division, and when the social order requires it, redistribution will be arranged by the administration.

Art. 7: Collective lawsuits concerning property are legally inadmissible. Such lawsuits now pending before the courts and tribunals will be struck off the rolls by special decisions of the jurisdiction concerned. The decisions or judgments to strike such lawsuits off the rolls are not appealable.

Art. 9: Dead lands [terres mortes] are the property of the state. Lands which have never been developed or whose development has left no trace are considered dead.

Extinction of property rights by "indirass" [the passage of time] can be opposed by the original proprietor and by his heirs, but not in the case of properties which have [since] been [officially] registered (by someone else).

Decree 84.009 providing the implementation of Ordinance 83.127 of 5 July 1983 concerning land tenure reform and organization of Domain lands.

Art. 2: To be legally protected, the development of a plot must include constructions, crops, or dikes for retaining water. This development must be in conformity with Ordinance 83.127 of 5 June 1983 and the present decree.

Art. 13: When amicable division cannot be arranged, if the social order requires it, and if the redistribution does not compromise the profitability of the plots, the division will be arranged in the presence of members of the collectivity concerned by a commission presided over by the préfet and including a magistrate of the tribunal of the département, the commandant of the local militia [Brigade de Gendarmerie], the head of the regional agricultural service, a representative of the Extension Service.

Art. 21: Any collectivity that wishes to retain lands undivided must transform itself into a regularly constituted cooperative in which the members have equal rights and duties.

The same is true for collectivities whose lands cannot be divided among individuals for economic or technical reasons noted by the Commission referred to in Art. 13 of the present decree.

[French original can be found in annex 5.]

The bulk of the ordinance and decree are devoted to establishing two classes of procedures: (a) for registration of individual tenure, and (b) for acquiring domain lands and for making concessions to individuals from state lands--referred to as domain lands (terres domaniales).

The ordinance establishes a number of new principles, the most sweeping of which is the idea that customary tenure is abolished and individual tenure is to be the norm. Art. 6 bears close scrutiny. It establishes that collective rights recognized under the earlier regime are a legal basis for establishing individual ownership under the current regime. Art. 7 adds the coup de grâce to the end of traditional collective tenure; it declares all current lawsuits based on collective tenure to be null and void. It is a general legal principle that events occurring under a particular legal system should be judged according to that system. Retroactive changes in laws render the whole justification of law invalid. Any action can suddenly after the fact become legal or illegal.

The decree makes one concession to collective property, but it does not prove to be a useful one for the lands in the Senegal River Basin. Art. 21 provides for a specific form of collective tenure, one in which all members have equal rights and duties. This provision is inspired by pastoral tradition as well as socialist ideology. In a pastoral system hierarchies in wealth are maintained by ownership of livestock, which are individually held, while access to land involves nominally equal rights and duties. Such a system is inapplicable to the Senegal River Basin, for there the common property systems have a major significance as risk management strategies but involve decidedly unequal rights and duties.

Another key point in this legislation is broached in Art. 9 of the ordinance. A major purpose of the legislation is to facilitate state-backed development of land in order to increase national production. The first step is to take over vacant lands and Art. 9 justifies this step in terms of the shari'a principle of *indirass*. One of the peculiarities of tenure in the Senegal River Basin is that the population, though Muslim, has not traditionally relied on the shari'a courts to settle tenure disputes. There is a good ecological reason for this. A significant portion of the land in the valley lies vacant much of the time due to the vagaries of the flood. This means that in a given year a piece of land which was marginal for the last fifteen years may suddenly that year become desirable while lands that had been optimal become marginal. Islamic shari'a would provide justification for someone to claim land that had been unused for ten years while the collectivities in the valley prefer to maintain claims to their full portfolio of lands to provide the maximum protection against the vagaries of the flood. This is currently not an abstract principle, for many of the lands developed in the valley under the legislation have been vacant because drought conditions prevented cultivation using traditional methods. The government can use Art. 9 to avoid any obligation for payment of just compensation.

The legislation of 1983 to 1984 created some major bottlenecks in forcing concessions from 5 to 30 hectares in size to be approved by the Finance Minister and those greater than 30 hectares to pass through the Council of Ministers (Art. 22). As a result, the government was quickly pressured to provide some more expeditious administrative procedures.

This led to a series of controversial ministerial directives: Circulaires 0005 of 14 April 1984; 007, 00020 of 29 July 1985; and 00013 of 24 August 1986. The import of these circulaires was to facilitate granting of concessions without going through the full legislative process. Circulaires 00020 of 29 July 1985 and 00013 of 24 August 1986 were critical in this effort. The first established the principle of concessions "*à titre précaire et révocable*," which allowed authorities to permit Bidan to set up agricultural development schemes without passing through the verification of ownership and compensation procedures of the 1983-84 legislation. The second clarified the first by noting that Circulaire 00020 was in no way intended to short-circuit the legislation and suggesting that the legislation had to be followed in full. Yet the actual text of Circulaire 00013 reads:

Concerning the irrigated perimeters and the rural concessions that will be the object of major investments, you will follow the dispositions of the legislation on tenure and domain lands in order to avoid

interfering with the development plans whose implementation is envisaged for the river valley.

[French original can be found in annex 6.]

The operative word is major ("important" in the original text; authors' emphasis), which allows circumvention of the legislation where local authorities do not feel the concessions are of truly significant size. This rather large breach in the legislation was clearly designed to facilitate the new strategy of developing the Senegal River Basin under the aegis, and for the profit, of Bidan entrepreneurs. Even if the concessions are not initially granted with the same permanent status as those envisaged in the legislation, this can always be remedied later.

Large irrigated perimeters in Mauritania have long been characterized by significant differences in tenure rights and land allocation algorithms. The basic system of allocation in the Foug Gleita perimeter was by household head and original location of lands. In the Kaedi Gorgol perimeter, land was allocated according to former tenure rights and household size with a small amount (one-third) set aside for landless and new migrants. In the Casier Pilote de Boghé, land was primarily distributed according to traditional holdings in the area but it also incorporated some (Haratine) groups from outside the developed area. These inconsistencies reflect negotiated and experimental outcomes in the context of the old (1960), but still at the time prevailing, land tenure legislation.

Modern development schemes often abrogate minor tenure rights because it is simpler to assume that the people with the most important rights are the only ones with any real rights. Such an assumption facilitates division of land and compensation of those whose lands have been absorbed by the project. In reality, all rights are equally real. The full, free, and clear rights, to dispose of land as one wishes, assumed in a market economic model, are part fiction and part the result of historical developments in industrial societies which have no counterpart in many areas of the world. The legislative abrogation of traditional tenure rights has, perhaps, its most negative impact in the implied suggestion that individuals who could establish ownership rights would be able to obtain compensation.

The legislation makes some provision for division (conversion) of common property (Art. 6), but it provides very inadequate support for minor tenure rights, for example, rights to cultivate subject to a tithe of given proportions, rights of pasture, or rights to rent. Art. 6 suggests that even such rights might be, in principle, redeemable or convertible into individualized tenure, but the actual procedures invoked there, decision of the collectivity, and in other articles effectively eliminate such rights. There is no compensation available to those who, whatever their rights in practice, cannot establish ownership in the eyes of the law. The difficulty is precisely that many tenure rights do not in any way constitute ownership as such.

Small irrigated perimeters have generally been developed on the *fonde* lands and it is the received wisdom that they have led to no tenure problems.

This generalization needs to be conditioned by the observation that tenure problems do occur when more than one ethnic group or community had rights to the developed lands. One such example is the conflicts which broke out in 1986 between Dolol Siwré (a Mauritanian village) and Odobéré (a Senegalese village) over a perimeter to be constructed under SONADER auspices on land in Mauritania belonging to Odobéré (SUD hebdo October 1988).

Traditionally, cultivators could always reach an agreement because each community knew the limits of its territory and its holdings. Even if there was conflict on the border of their territories, customary law, seconded by shari'a, provided a means of resolution. With the abolition of traditional tenure and the application of the 1983-84 legislation, only the government can settle tenure issues. As the government interferes in the relationship between local groups and favors one group over another, the smallest producers become worse off because they are privileged in a sense: they are the first to be pushed off the land or to have tenure rights turned into the right to seek employment. This has been the case for the Haratines in the Rosso area. The development push on the western end of the middle valley has brought Halpulaar-en into the fray and this has led to many casualties and even to whole villages being eliminated by the government.

A potentially important turn in the land reform policy was the meeting held in Aleg on 28 August 1988 between Mauritanian and Senegalese government officials. The Aleg meeting was held after the *préfet* of Boghé, Jiddu Ould Mini, had abolished some Senegalese traditional claims and granted nine fields (20 to 689 hectares) to new Bidan in the region through Arrêté no. 119/DB of 10 May 1988. This threatened the traditional ownership rights of the people living in Senegal and contradicted the 1905 colonial decree that had up to this point been respected. The national (that is, Bidan) advantage of this move was that even if the Senegalese retaliated and confiscated Mauritanian lands in Senegal, the only losers would be Halpulaar-en, and the freed Senegalese lands would still be available for concessions to Bidan.

The Aleg meeting tentatively resolved these problems with agreement by all participants to a series of steps:

1. A mixed Senegalese/Mauritanian commission would be created and charged with inventorying the lands held by Mauritanian farmers in Senegal and the lands held by the Senegalese farmers in Mauritania.
2. The Senegalese and the Mauriticians would be integrated in development projects where both have tenure rights in the project areas.
3. Wherever development projects were not implemented, the status quo would be respected and the cultivators could retain their lands.
4. There would be free circulation of goods and people.
5. To begin the process, official trips were to be organized to ten villages: in Mauritania to Wodebere, Lexeiba, Jowol, Kaedi, Boghé; and in Senegal to Demett, Podor, Gae, Dagana, Dondou.

The fifth step was carried out until six villages had been visited: Wodebere, Dondou, Jowal, Kaédi, Bogue, and Demett. At Demett, GRIM (Gouvernement de la République Islamique de Mauritanie) decided to recall its officials.

The explanation for this lies in the contradiction between points (1), (2), and (3) of this new agreement and the 1983-84 land tenure legislation. This new agreement implied that GRIM accepted traditional claims over land because it agreed with the maintenance of the status quo over land. This in turn implied that all traditional claims were valid and that land reform would not be applied to lands controlled by traditional tenure. It also implied that if the land were to be developed, the people with traditional claims would be guaranteed the right to participate in the project. In Halpulaar-en minds, this withdrawal from a well-publicized agreement indicated the unwillingness of the Mauritanian government to find any solution to development that gave traditional owners of the lands a significant role.

Senegal River Basin Development

The primary policy transformations affecting tenure in the middle Senegal River Basin have been linked to international development efforts. Funding agencies have pushed individualized tenure on ideological grounds, believing that this would improve the expected rates of return for irrigated perimeters in particular and development in general. USAID's role in this has been minimal. Although PL 480 food-aid funds, used to help out in the drought years, have been pegged to a privatization push by Section 109 of the implementing legislation (Ferguson 1988b, p. 6), USAID has put significant resources into financing studies of land tenure in the valley.

The real pressures to tenure change have no doubt come simply in the form of donor-financed projects (the United States has financed no major agricultural projects and nor has it financed either of the dams). OMVS (Organisation pour la mise en valeur du fleuve Sénégal) plans for a complete transformation of the river basin into irrigated agriculture were fully formed by 1979 (OMVS 1979; EID 1982). Most of the major Mauritanian irrigated perimeters (Foum Gleita, Casier Pilote de Boghé, Gorgol Grand Périmètre at Kaédi, and Mpourié near Rosso), on which these plans were based, were developed under donor guidance and advice in the late 1970s. Legislation in Senegal (Law 64-46 of 17 June 1964 on the National Domain) had already in 1964 made private property the basis for development policy and paid little heed to common property in the Senegal River Basin (Sidi Seck 1985, p. 37). Economic adjustment strategies negotiated by Mauritania with IBRD (International Bank for Reconstruction and Development) since 1984 have included a strong privatization component (E/DI 1989).

In retrospect, OMVS and GRIM calculations seem painfully naive given the actual subsequent costs associated with implementing the legislation of 1983 to 1984 and the unrealistic character of the estimated rates of return to pumped irrigation (highlighted by current oil prices).

Many residents of the Senegal River Basin feel that the Mauritanian government acceded early to this pressure in large part because an individual

tenure policy provided an entry for expanded Bidan landholdings in the Senegal River Basin. The Sahelian drought throughout the 1970s would have made the Senegal River Basin one of the few appealing areas for investment. A few donor studies have taken into consideration the potential social costs. In particular, USAID's studies of the Dirol Plain included significant social impact studies. Yet one researcher was asked by USAID-Nouakchott in the mid-1980s to take out of his report a sentence suggesting that implementation of the legislation could have "explosive" results (Park 1986b). The adjective was changed under protest, but the accuracy of the prediction is even more difficult to criticize today.

The OMVS plan for the Senegal River Basin aimed at improving income for the maximum number of inhabitants, establishing a more stable balance between man and the environment, and making the member states less vulnerable to climatic and external factors. These praiseworthy goals were, even at the time, somewhat incompatible with the proposed developments: two dams (Diama and Manantali), hydroelectric power, pumped irrigation throughout the valley, and a canal for shipping transportation. Both hydroelectric power and pumped irrigation were never simultaneously feasible. OMVS has recently decided to continue flood recession (with a controlled flood); pumped irrigation is now seen as a very costly alternative. It has also given up on the canal and production of hydroelectric power (World Rivers Review 1990). The introduction of universal irrigated agriculture would have rendered the valley exceedingly dependent on external financial arrangements while providing only minimal, short-term protection from the chaotic character of the climate. The current position seems to be that the increased costs of production would exceed the savings from greater predictability.

The newly developed agricultural schemes, financed by Bidan entrepreneurs and international aid, make substantial use of mechanization but, most fundamentally, they are based on Haratine or slave labor. The new development of Lake Rkiz, a dry lake bed irrigated from the Senegal River, is perhaps the most prominent case in point. The long-fallowed soils have produced, according to difficult-to-interpret figures, superlative yields. The levels of inputs and the long-term yield capacities are not clear, but what is clear is that dependent Haratine and slaves are providing all the labor, at cost (that is, in return for maintenance in rather abject poverty), and that this is the basis for very substantial profits. Unlike other projects, however, Lake Rkiz, located some 35 kilometers north of the river, is just north of the traditional flood-recession areas of the river basin. This means the development does not have the same negative impacts on tenure now common to developments closer to the river.

Most of the new developments involve similar labor arrangements--there is little likelihood that Bidan themselves would provide significant amounts of agricultural labor. The new schemes also involve the conceding of land, which probably has traditional Halpulaar-en owners, to Bidan entrepreneurs. While theft and excessive exploitation are, historically, well-established ways of showing a profit, donors should not be misled into viewing such profit levels as maintainable in the long term or even economically accurate in the short term. When the social costs are included, many such endeavors may even prove to be net losses. What is clear is that until democratic processes are re-established, all figures from Mauritanian development schemes must be viewed, at least initially, as intrinsically false from a national perspective.

Perhaps more significantly, donors need to avoid compounding the problem. The drought has deprived most Bidan groups of a significant part of their livelihood, rendering camel and cattle pastoralism far less lucrative than it once was. The sizable losses many have suffered make the pastoral sector far less attractive for investment. This pushes Bidan entrepreneurs into investments in the Senegal River valley. The recent events, which have deprived Bidan of their commercial activities in Senegal, make the Senegal River valley an even more important component of their investment strategies. These are significant push factors. If donors continue to support, or insist on, privatization and irrigated development schemes while refusing to recognize any of the risk management advantages of traditional tenure systems, the chances of resolving tenure conflicts in the Senegal River will be even further diminished.

The Crisis in Retrospect

The Diawara incident has frequently been presented as an example of international conflict between Senegal and Mauritania. This is misleading. The incident in fact is a reflection of what has been called the "question nationale" in Mauritania. Discussion of this problem has centered around somewhat different topics in different periods but concerns most basically the question of what sort of nation Mauritania is or should be. The discussion has regularly led to violent confrontations. From 1960 to 1965 the focus of discussion was the degree of representation, within government structures, that each ethnic group should have. Between 1966 and 1980 the focus was on education, in particular, on the confrontation over the imposition of Arabic as a language of instruction. Since the legislation of 1983 to 1984, the focus of the debate has been access to land in the Senegal River Basin. The recent events have been most fundamentally a national dispute over access to land.

While there are persuasive reasons for believing that all major parties to the dispute have some historical claims to land in the Senegal River Basin, it is also evident that black cultivators, particularly Halpulaar-en, are being squeezed out of the north bank, under a variety of pretexts, in clear disregard of both long-established and respected rights and recent legislation as well as in violation of international accords. Attacks on cultivators with Senegalese national identity themselves free up significant portions of land, possibly as much as 10 percent of the best land. Declaring that all Halpulaar-en who have Senegalese relatives or who obtained their Mauritanian identity cards after 1966 are in fact Senegalese--as some accounts suggest is the current practice--obviously adds significantly to this fund of land. Expelling full Mauritanian citizens because they happen to be Halpulaar-en--something that is well-documented (Africa International 1989e; FLAM 1989a; Smith 1989; Soulier 1989; USE 1989)--has undeniable advantages if the goal is to obtain land in the middle valley of the Senegal River.

Implementation of the tenure legislation takes advantage of the legislation's formal rejection of common property in favor of private property in order to facilitate Bidan development of irrigated estates based on hired labor. The current, at least temporary, abandonment by OMVS of support for widespread irrigation agriculture and the resulting reliance on flood recession for the foreseeable future (World Rivers Review 1990) is likely to vitiate any

general reliance on private ownership while underscoring the value of the risk management advantages of common property. Yet government policy is likely to continue to be the basis for the transfer of significant land resources in the Senegal Valley into Bidan control/ownership. In situations where economies of scale provide comparable hedges against risk for the owners, where irrigation proves possible, or where collectivities will cultivate flood-recession lands for the owners, such transfers are likely to occur.

The internal implications of the current crisis explain both the extreme reactions of the Mauritanian government, which is significantly threatened by the developing schism between Bidan and Halpulaar-en, and the directions in which the crisis has moved. GRIM's willingness to incur general international opprobrium by its numerous violations of its own citizens' human rights makes sense only if its leaders feel control of the state or at least the prosperity of an ethnic group is at stake. The failure of the government to resolve the slavery question in a remotely acceptable fashion reflects the potential value of servile labor to the Bidan elite. The importance of a supply of labor from which a surplus can be readily extracted has increased now that this elite wishes to profit from agriculture on significant amounts of land in the Senegal River Basin. The abolition of common property and the insistence that only privately registered land has real legal value has taken on special significance now that the various circulaires provide an easy means for Bidan absentee landlords to develop land in the flood plain.

The recent dismissal of Djibril Ould Abdallahi (Gabriel Simper) as Interior Minister, on 4 February 1990 (Soudan 1990c), might be interpreted as a softening of GRIM's position. The nomination of two Halpulaar-en to minor ministerial positions at the same time suggests a potential for significant change. Nevertheless, the gravity of the 1989-90 events, and the continuation of human rights violations since the dismissal, will make a satisfactory resolution of the crisis difficult.

The Baathist orientation may change; the new Minister of the Interior, Sidina Mohamed Ould Sidiya, is a moderate from the Trarza, a region long closely tied to the south. The current (October 1990) student strike in Nouakchott and the economic crisis in Mauritania (in which prices of many staples have tripled and even quadrupled) may bring about a change in leadership--which many feel essential for a resolution of the crisis. The Mauritanian government is now under a great deal of pressure, diplomatic and economic, and this may bring about change. Iraq's own diplomatic isolation cannot itself be much consolation to Mauritania.

The diplomatic and ethnic problems need to be viewed as only one facet of the crisis. Even were these to be resolved by the establishment of a democratic society, there would still be important economic problems to confront. The ecological unity of the Senegal River Valley augurs poorly for any narrow, national solutions. The enormous variability of the annual flood, even if slightly moderated by the dams, is a cogent reason for viewing risk management as a critical component of any development program. If complete, macrolevel control of the river is abandoned as not cost-effective, the smaller-scale risk management systems built into traditional flood-recession agriculture should be seriously examined for the alternatives they may suggest. This will clearly involve significant revisions in development policy and land tenure legislation.

Toward a Resolution of the Crisis

Given the gravity of the crisis we would like to end with a series of recommendations to international donors--though the hope of their imminent implementation is slim. The Mauritanian case is not unique: few donors can be accused of consistent recommendations from a long-term perspective, with most relying on short-term cost-benefit analysis in the context of major political and economic changes at the world and national levels. Our recommendations are based on the restoration of internationally respected legal procedures in Mauritania: elimination of arbitrary arrests and tortures and the installation of a government with some legitimate pretensions to represent the people of Mauritania in their entirety. Donors should prioritize more legitimate governments until such a time. For the meantime, the authors jointly recommend donor encouragement of GRIM to undertake broad revision of its land tenure policy. In particular we feel significant modifications should, at a minimum, be made to the 1983-84 legislation. In addition, we urge that significant policy changes be made in the area of agricultural development. Our specific recommendations follow an initial outline of the general goals of such changes.

Goals

1. Improve the welfare of poorer segments of society while stimulating agricultural production.
2. Ameliorate the distribution of wealth in the agricultural sector in order to stimulate production.
3. Recognize the virtues (risk management), as well as the failings (inequality), of the traditional tenure systems in the middle Senegal River Basin through empowerment of local rural people (Grayzel 1988, p. 332). This must involve a rethinking of development in the basin that comes out of a democratic debate among the basin's population.
4. Establish a democratic administrative and development structure to stimulate production, one that involves actual producers in significant roles at all levels of decision-making.
5. Eliminate to the extent possible large-scale absentee landlordism through limits on agricultural property. Food production should not be jeopardized through privileging an already favored elite.
6. Consider the possibility of group registration of common property.

Recommendations

These fall into two categories: those involving modification of the 1983-84 legislation and those requiring careful resolution of general equity issues.

In the first category, we recommend:

1. Revise Ordinance 81.234 and Decree 84.009 to recognize collective tenure (with its risk management advantages) without the stipulation of equal rights and duties.
2. Return all lands allocated "à titre précaire" since the 1983 Ordinance by means of subsequent ministerial circulaires to their legal owners (if any).
3. Recognize the shari'a principle of the legal validity and priority of oral testimony in the revised land tenure legislation.
4. Recognize the traditional rights of Senegalese to lands on the right bank of the Senegal River.
5. Eliminate the retroactive character of Art. 7 of Ordinance 83.127.
6. Decentralize the procedures of the 1983-84 legislation so that all decisions do not have to be approved at the ministerial level while leaving room for appeal to higher authority and scope for national policy implementation as well as for regional differences.

In the second category, we suggest that:

1. An initial limit on tenure rights in the SRB, both within developed perimeters and on flood-recession lands, should be established. The limit might be revised in time, perhaps a generation, but would initially serve to get development off on a good footing. This limit should be based on the number of people resident in a household and the productive capacity of the land rather than the area and so areal allocations will vary. The agricultural services will have to be enlisted. The existing knowledge of comparative yields for different soil types available to farmers and the agricultural services should prove indispensable. Attempts to specify limits per household head have led only to abuses throughout the world (everyone gets registered as a household head). This limit should be significantly above the minimum necessary for those resident in the household and should be allowed in the form of either individual tenure or rights in collective lands.
2. Those who lose land through recommendation (2) might be compensated with tax credits; this implies imposing a low progressive agricultural tax which the wealthy in return for expropriation can avoid paying for a number of years. This would apply equally to large landowners of all ethnic origins. Clear cases where ownership rights are legally dubious need not involve compensation. There might also be a limit on the amount of compensation. The likelihood that Haratine have acquired significant new lands, at least in the form of usufruct for Bidan, may imply a need to negotiate tenure rather than simply to return to the status quo ante. To some extent, Halpulaar-en losses, Haratine gains, and large landowner excesses may all need to be included in a negotiated solution. The longer the new situation lasts, the more important this will be.

3. The right of indigenous cultivators to have first choice for any lands made available through state expropriation should be established. This would not eliminate investment opportunities for those unwilling to engage in cultivation but merely end the state subsidy for such investments. Agricultural investors could provide credit, marketing, or a great variety of contractual arrangements. They might even acquire large landholdings through purchase at a later time when the initial limits on ownership were lifted.

Provision for large-scale free bequests of land or labor are not appropriately disguised as free enterprise solutions. Free enterprise, by definition, should pay its own way. To the extent that investment can put lands into production that otherwise would be left unproductive, concessions to investors would seem warranted. These might involve purchase or leases at low rates. To the extent that concessions to investors will merely increase overall production, investors should be asked to pay their full costs of production including the price of land and taxes--otherwise the justification for such concessions seems quite unwarranted. Provided that a fairly equitable initial situation can be established, further development should be allowed in a reasonably unconstrained fashion.

These reforms would only be a first step. Land tenure reformers throughout Africa have applied most of the solutions imaginable without finding a simple, perfect way of modernizing traditional tenure systems (Bruce 1987). Mauritania should take heed of other countries' efforts. This would suggest a gradual attempt to improve indigenous tenure systems, implying the necessity of recognizing traditional common property rather than a quick abolition of indigenous tenure. The latter solution leaves Mauritania too open to a quick land grab by wealthy speculators and consequent political turmoil. In addition, the particular ecology and economy of the Senegal River Basin may require different solutions than agricultural systems in Mauritania's oases. The traditional systems, of course, are not without the need for improvement even if, as in the flood-recession case, they have risk management advantages. The key will be to recognize their value so that the advantages are not thrown out with the disadvantages.

NOTE

1. These include at least the following (FRUIDEM, FLAM, Amnesty International reports, and numerous other sources cited in bibliography for 1989, 1990):

In the département of Selibaby: Lislam, Belel Seno, Kadiel Pobbi, Godiowel.

In the département of Ould Yingé: Goupou Harouna, Salka Soulé, Winde Thiéwi, Gurel Hamma Demba Njakla, Louboyré Ifra, Fara, Louboyré Jaalel, Woul Siddou Geelel, Belel Goulaj.

In the département of Maghama in the Gorgol region (Kaedi): at least 49 villages including: Yaama, Bamiwol, Woojuru, Boowel Alluki, Thilude, Tachott Gurel Jey, Gijilol, Wiinde Lelel, Niaruwal, Tumbel, Dawal Waalo, Helléré, Hooré Ngaari.

In Brakna (Aleg): Diaw, Beylane, Hamdallaye, Ando, Ngourdiane, Boyngel Thilé, Goos, Thiaské, Gweyriiga, Jali Woor, Gural, etc.

In the Trarza region (Rosso): Lexeiba arrondissement: Wuro Oumar, Doué Réwo, Wuro Ibra, Diatar Réwo, Tufndé Jammi, Ngawle Réwo, Wuro Soli, Ndiawar Réwo.

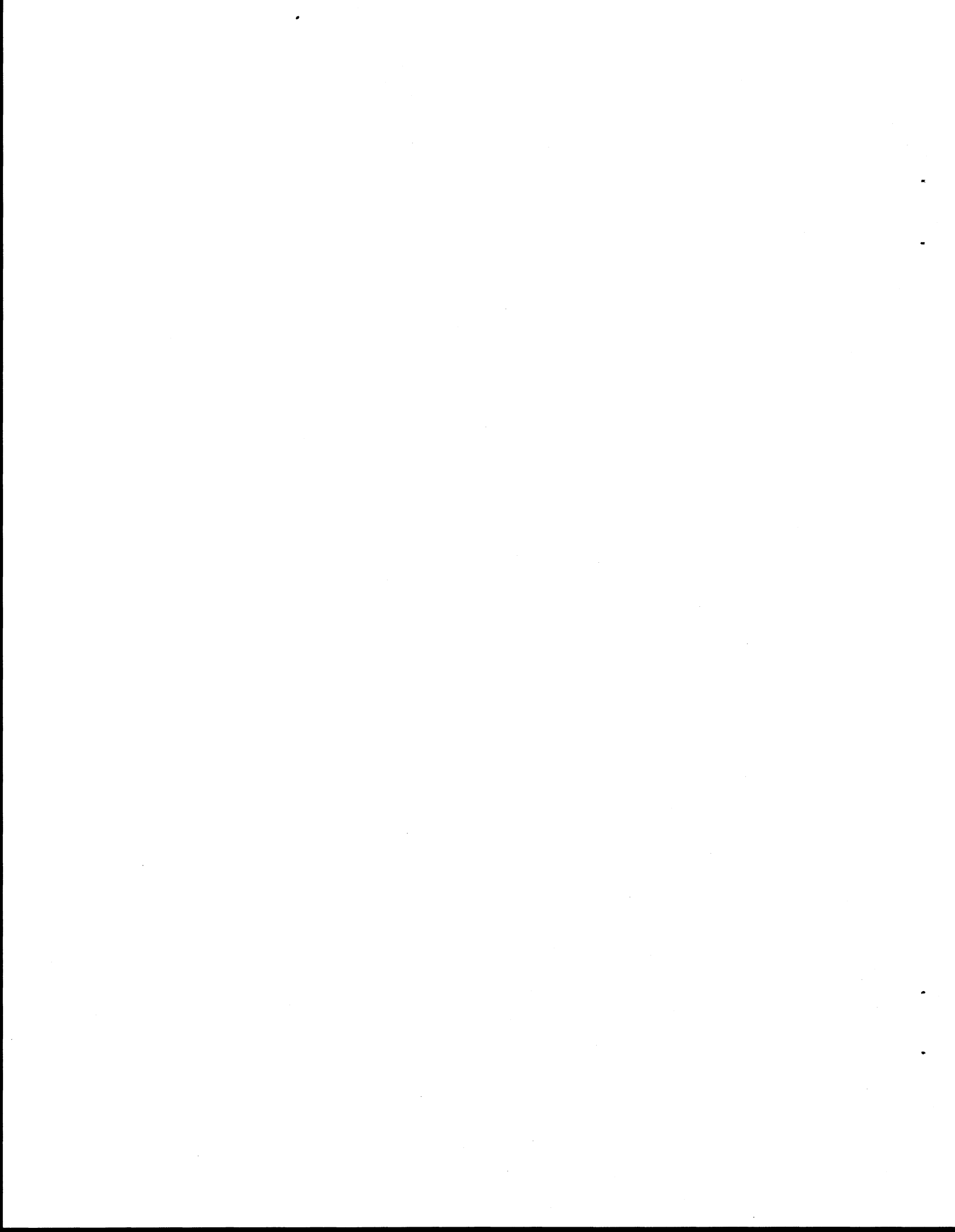
Arrondissement of Tékane: 25 villages including: Madina Fanaye, Ganki Tooro, Mbul, Gure Saarbe Gaani, Gurel Moussa, Gawdal, Gurel Sidi Sambel, Gurel Bokar Sy, Wouro Mamadou Diabiri.

All the Halpulaar-en villages of the département of Rosso other than those in its immediate vicinity.

In the southwest of Mauritania, in particular, numerous arrests and imprisonments have occurred since April 1989:

- dozens in Foundou (Mbagne Prefecture) for protesting activities of the Garde Nationale in July 1989;
- 44 persons including the vice-president of the community of Bagou-dine imprisoned in Aleg;
- dozens imprisoned in Kaédi between May and September 1989, and numerous reports of torture;
- 27 people from Maghama (near Kaédi) imprisoned since May 1989 including Isma Abdoul Kane, former Head of Personnel for the Ministry of Education.

Amnesty International (Mauritanie 1986-1989 Contexte d'une Crise, p. 58) estimates the number of people imprisoned between April and the end of 1989 at "plusieurs centaines"--many hundreds: this figure includes only those actually imprisoned, not those arrested and exported.



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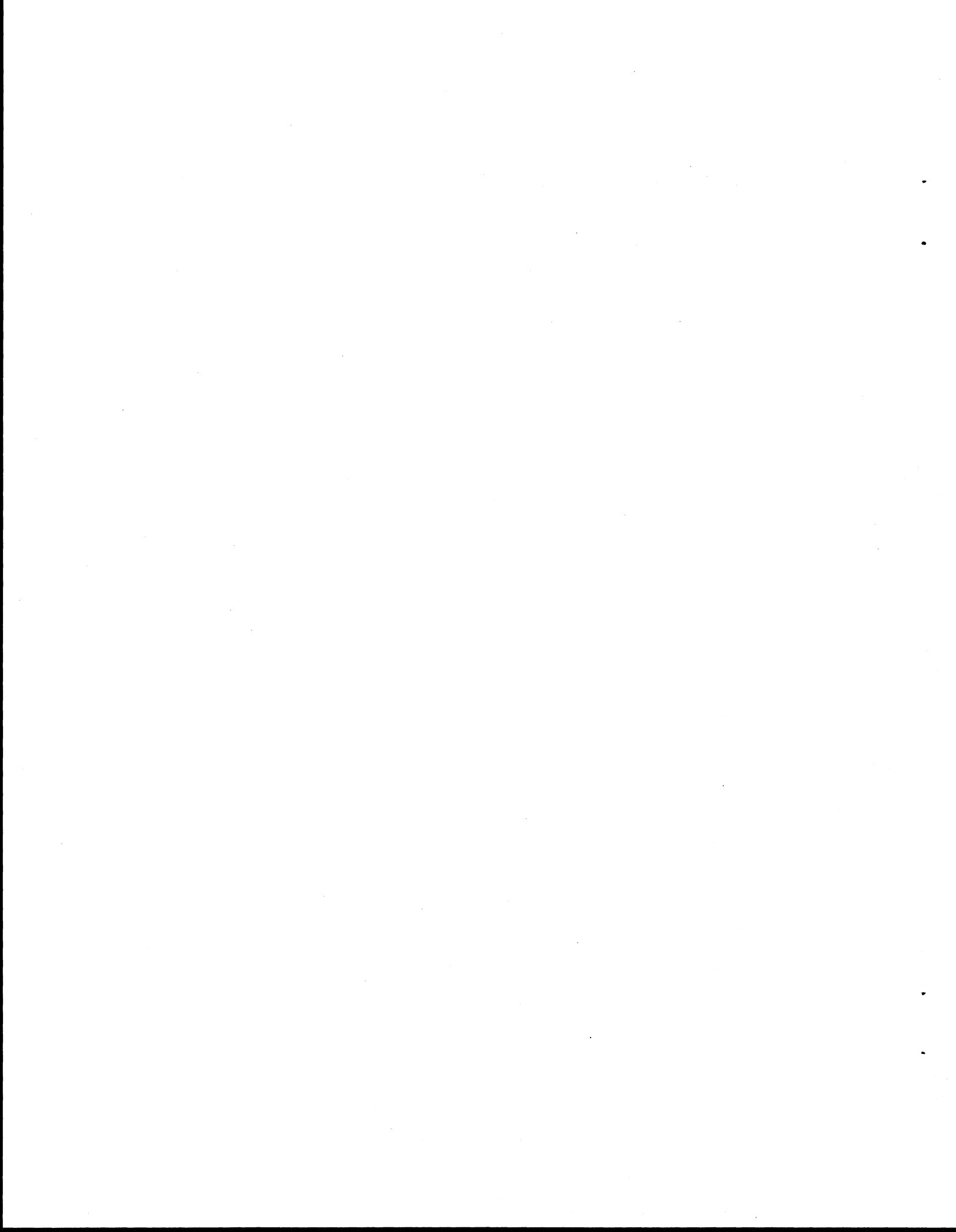
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ANNEX 1:

Ordonnance no. 81-234 du 9 novembre 1981
portant abolition de l'esclavage

Le Comité militaire de salut national a délibéré et adopté;

Le Président du Comité militaire de salut national, chef de l'Etat, promulgue l'ordonnance dont la teneur suit:

ARTICLE PREMIER: L'esclavage sous toutes ses formes est aboli définitivement sur toute l'étendue du territoire de la République Islamique de Mauritanie.

ART. 2: Conformément à la Charia, cette abolition donnera lieu à une compensation au profit des ayants droit.

ART. 3: Une commission nationale, composée d'oulémas, d'économistes et d'administrateurs, sera instituée par décret pour étudier les modalités pratiques de cette compensation. Ces modalités seront fixées par décret une fois l'étude achevée.

ART. 4: La présente ordonnance sera publiée suivant la procédure d'urgence et exécutée comme loi de l'Etat.

Fait à Nouakchott, le 9 novembre 1981

Pour le Comité militaire de salut national,

Le Président: Lieutenant-Colonel Mohamed
Khouna Ould Haidalla.

Ordinance 81.234 of 9 November 1981 Abolishing Slavery

The Comité militaire de salut national has deliberated and adopted;

The President of the Comité militaire du salut national, chief of state, promulgates the ordinance as follows:

First article: Slavery under all its forms is definitively abolished throughout the territory of the Islamic Republic of Mauritania.

Art. 2: In conformity with the shari'a, this abolition will imply a payment of compensation to those entitled to such.

Art. 3: A national commission, composed of ulema, economists, and administrators will be instituted by decree to study the modalities of this compensation. These modalities will be fixed by decree once the study is finished.

Art. 4: This ordinance will be published without delay and implemented as law.

Nouakchott, 9 November 1981

For the C.M.S.N.,

The President: Lt-Col. Mohamed Khouna Ould Haidalla.

ANNEX 2:

Arrêté of 10 January 1905
(signed in Gorée by E. Roume)

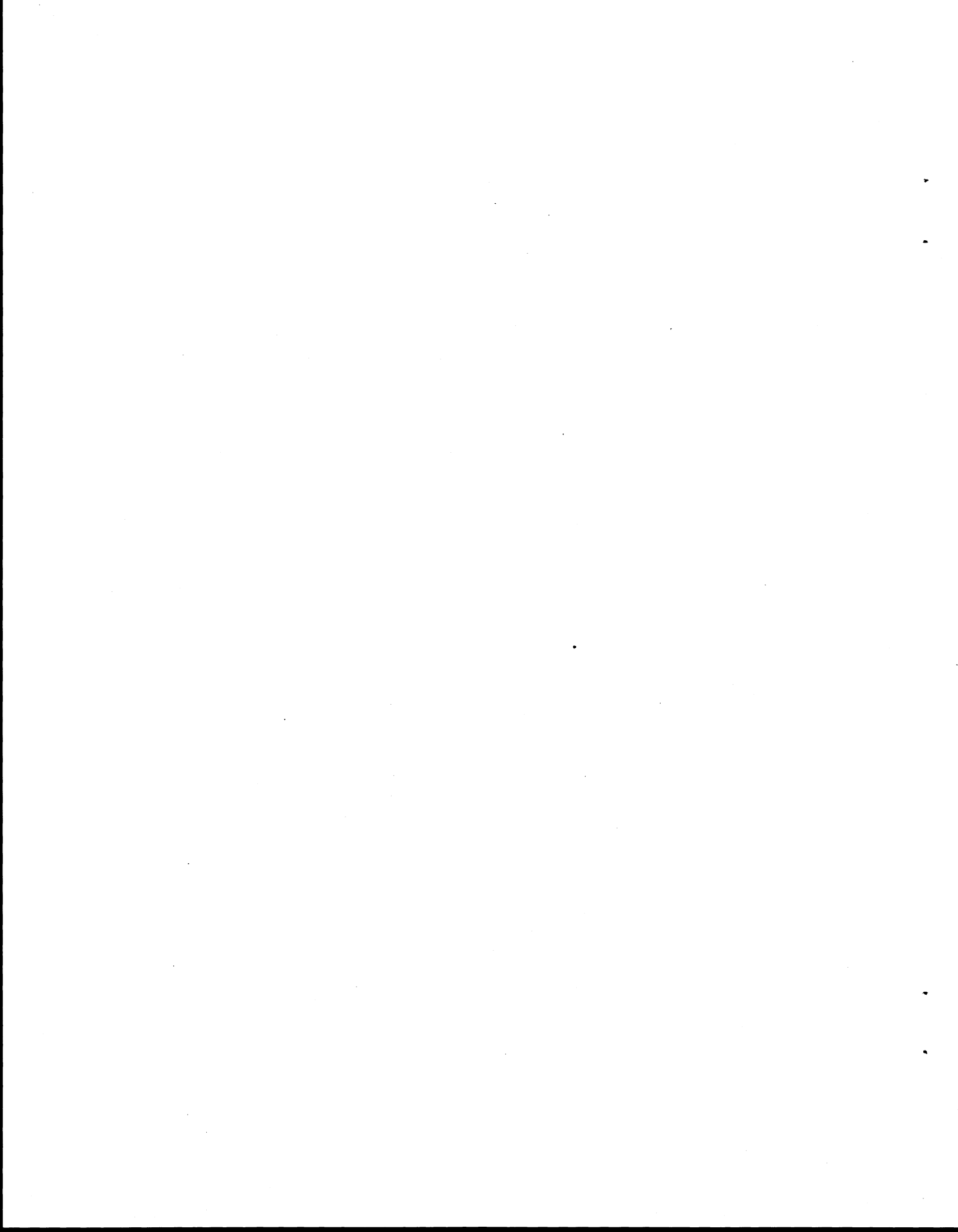
Arrêté au sujet des terrains cultivés sur la rive droite du Sénégal par les indigènes habitant la rive gauche.

Article 1: Les indigènes établis sur la rive droite du fleuve dans le territoire civil de la Mauritanie relèvent quelque soit leur race ou leur origine, des autorités de ce territoire et sont soumis aux impôts qui leur sont propres.

Article 2: Les indigènes établis sur la rive gauche et inscrits aux rôles d'impôts du Sénégal sont autorisés à cultiver, comme précédemment sur la rive droite, les terrains dont ils ont actuellement l'usage suivant la coutume locale.

Article 3: Les indigènes de la rive gauche desirant cultiver des terrains sur la rive droite autres que ceux spécifiés au paragraphe précédent devront obtenir l'autorisation préalable des autorités de la Mauritanie et seront soumis au paiement des taxes propres à la Mauritanie.

Article 4: Le Lieutenant-Gouverneur du Sénégal et le Commissaire du Gouvernement général pour la Mauritanie sont chargés, chacun en ce qui le concerne, de l'exécution du présent arrêté qui sera enregistré et communiqué partout où le besoin sera.



ANNEX 3:

Important Laws, Decrees, and Treaty Arrangements

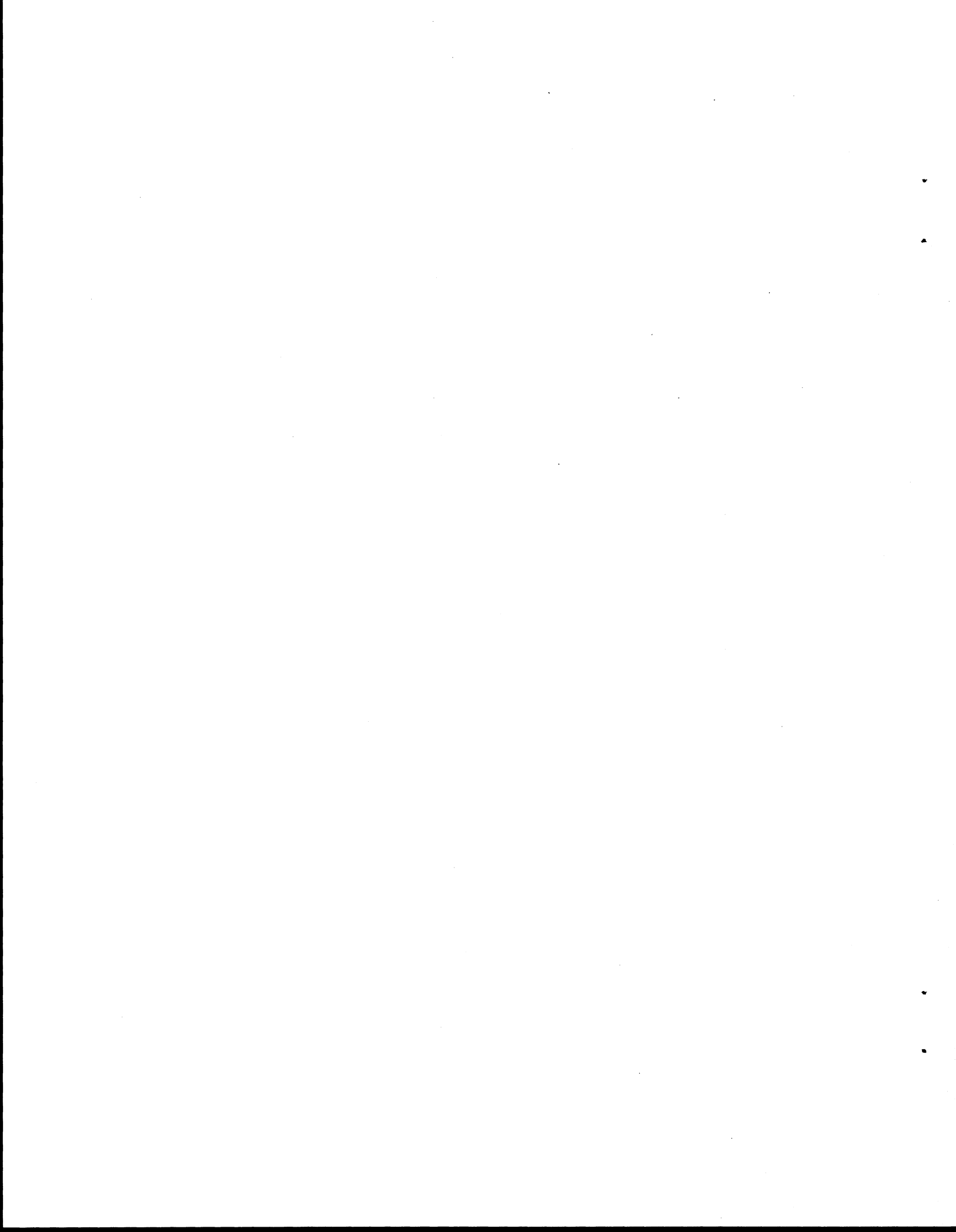
1894: The idea, enunciated by Governor de Lamothe, that captives (for life) become tenant farmers after ten or twelve years of work is accepted in principle. There are no known cases of this ever being put in practice.

Circulaire Ponty of 1st February 1901: This circular suppresses the right of pursuit (droit de suite) and abolishes the right of a master to recover a former captive or slave.

Decision of 1903: This ruling forbids the payment of assakal (basic tithe).

Decree of 12 December 1905: Establishes fines and imprisonment (for two to five years) for anyone concluding a slave contract, "une convention ayant pour but d'aliener la liberte d'une tierce personne."

Decree of 8 December 1933: Establishes the boundaries between the two French colonies (Mauritania and Senegal) as, roughly, the middle of the Senegal River following the northern-most branch of the river (where several courses exist). This boundary was inherited unchanged by the new independent states.



ANNEX 4:

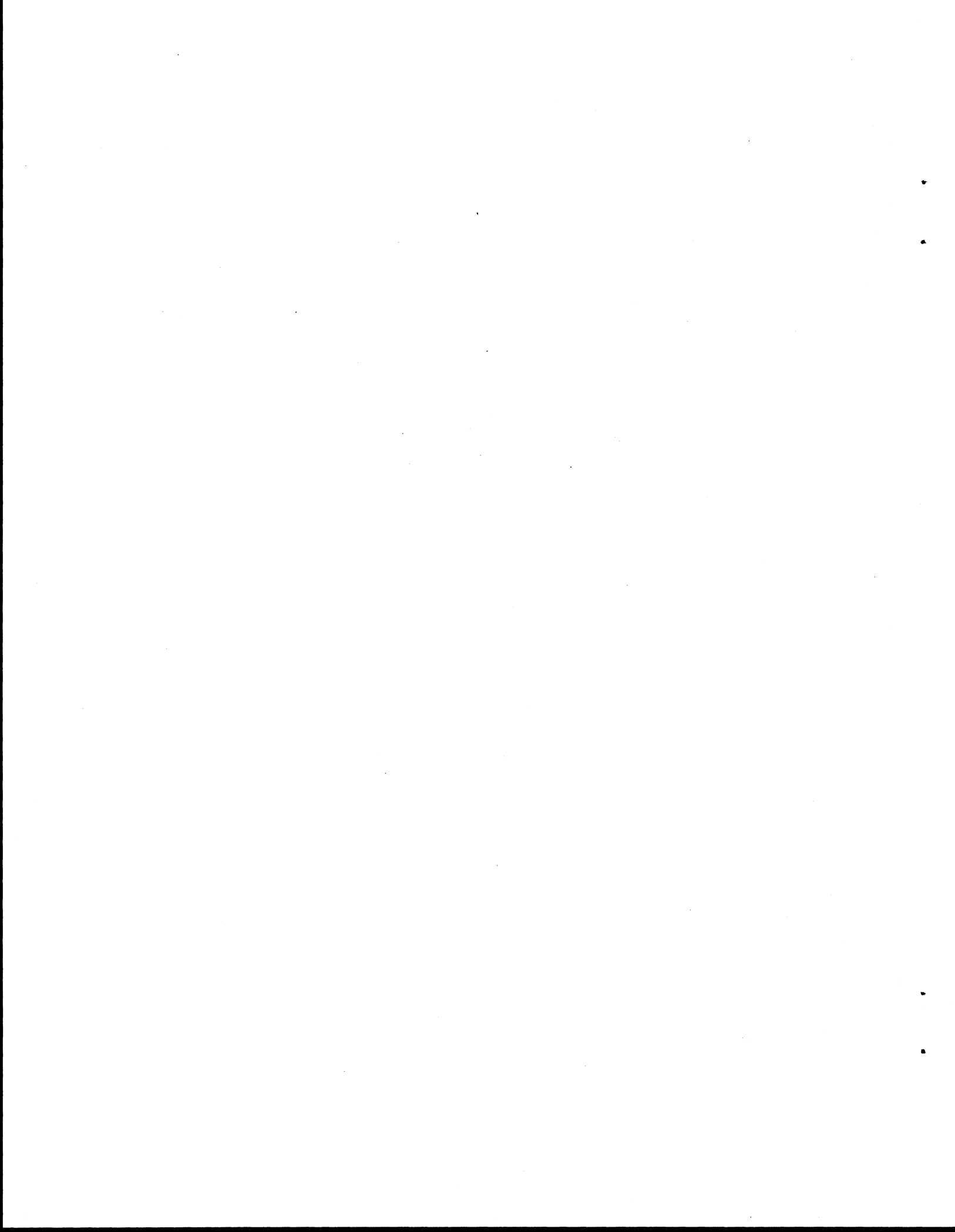
Décret no. 60-139 du 2 août 1960

Article premier: Les terres vacantes et sans maître appartiennent à l'Etat. Il en est de même des terres non immatriculées ou non concédées en vertu d'un acte de concession régulier qui sont inexploitées ou inoccupées depuis plus de dix ans.

La vacance sera suffisamment établie par l'absence de constructions, cultures, plantations ou puits.

Article 3: Sont confirmés les droits fonciers coutumiers comportant une emprise évidente sur le sol. Nul ne peut cependant en faire un usage prohibé par les lois et règlements.

Article 9: Le régime de l'expropriation pour cause d'utilité publique est applicable aux droits coutumiers. Nul individu ou nulle collectivité ne peut être contraint de céder ses droits si ce n'est pour cause d'utilité publique et moyennant une juste compensation.



ANNEX 5:

Ordonnance no. 83.127 du 5 juin 1983
portant réorganisation foncière et domaniale

Article premier: La terre appartient à la nation et tout mauritanien, sans discrimination d'aucune sorte, peut, en se conformant à la loi, en devenir propriétaire, pour partie.

Article 2: L'Etat reconnait et garantit la propriété foncière privée qui doit, conformément à la Chariaa, contribuer au développement économique et sociale du pays.

Article 3: Le système de la tenure traditionnelle du sol est aboli.

Article 5: Les immatriculations foncières prises au nom des chefs et notables sont réputées avoir été consenties à la collectivité traditionnelle de rattachement.

Article 6: Les droits collectifs légitimement acquis sous le régime antérieur préalablement cantonnés aux terres de culture, bénéficient à tous ceux qui ont, soit participé à la mise en valeur initiale, soit contribué à la pérennité de l'exploitation.

L'individualisation est de droit. A défaut d'accord pour le partage, et si l'ordre social l'exige, les opérations de redistribution seront réalisées par l'Administration.

Article 7: Les actions foncières collectives sont irrecevables en justice. Les affaires de même nature actuellement pendantes devant les cours et tribunaux seront radiés des rôles sur décision spéciale de la juridiction saisie. Les arrêts ou jugements de radiation sont inattaquables.

Article 9: Les terres "mortes" sont la propriété de l'Etat. Sont réputées mortes les terres qui n'ont jamais été mises en valeur ou dont la mise en valeur n'a plus laissé de traces évidentes.

L'extinction du droit de propriété par "l'indirass" est opposable aussi bien au propriétaire initial qu'à ses ayants droits, mais ne s'applique pas cependant aux immeubles immatriculés.

Décret no. 84.009 portant application de l'Ordonnance no. 83.127 du 5 juin 1983 portant réorganisation foncière et domaniale.

Article 2: Pour être juridiquement protégée, la mise en valeur d'une terre doit consister en constructions, plantations, cultures, ou digues de retenue d'eau.

Cette mise en valeur doit être conforme à l'Ordonnance 83.127 du 5 juin 1983, et au présent décret.

Article 13: A défaut d'accord amiable, si l'ordre social l'exige, et si la redistribution ne compromet pas la rentabilité des terres, les opérations de partage sont réalisées en présence des membres de la collectivité concernée, par une commission présidée par le préfet et comprenant: un Magistrat du Tribunal départemental, le Commandant de la Brigade de gendarmerie, le Chef du Service agricole régional, un Représentant des Structures d'éducation des masses.

Article 21: Toute collectivité qui exprime le désir de conserver ses terres indivises, doit se transformer en coopérative régulièrement constitué dont les membres sont égaux en droit et en devoir.

Il en est de même pour les collectivités dont les terres ne peuvent être individualisées pour des causes d'ordre économique ou technique constatées par la Commission prévue à l'Article 13 du présent décret.

ANNEX 6:

Circulaire 00013

S'agissant des périmètres irrigués, et des concessions rurales devant faire l'objet d'investissements importants [author emphasis], vous vous conformerez, aux dispositions de la réglementation foncière et domaniale afin de ne pas gêner les plans d'aménagement dont la réalisation est envisagée sur la vallée du fleuve.

