

Protection of State Lands and Conservation Methods Under Law 23-18



Received: 08/08/2024; Accepted: 06/11/2024

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Abstract

In the face of increasing violations involving state lands, characterized by exploitation, misappropriation, and unauthorized repurposing, the Algerian legislature has introduced a series of robust legal frameworks. Prominent among these is Law No. 23-18, which focuses on the protection and preservation of state lands. This legislation is crucial, as it tackles issues pivotal to national sovereignty and promotes sustainable economic growth. This study delves into the procedural amendments recently enacted to safeguard state properties, ensuring their judicious utilization and forestalling infringements that jeopardize public welfare. It further examines the enforcement strategies concerning illegal structures and facilities on state properties.

Keywords

State lands;
preventive measures;
national properties;
demolition of buildings;
management of state lands.

الكلمات المفتاحية

أراضي الدولة؛
تدابير وقائية؛
أموال وطنية؛
هدم البنايات؛
مسيرو أراضي الدولة؛

حماية أراضي الدولة وسبل المحافظة عليها على ضوء أحكام القانون 18-23

ملخص

نظرا لارتفاع الاعتداءات الواقعة على أراضي الدولة، من استغلال ونهب وتغيير لوجهتها، قام المشرع الجزائري بوضع مجموعة من القوانين التي يهدف من خلالها إلى ردع هذه الظواهر المشينة، من بينها القانون رقم 18-23 المتعلق بحماية أراضي الدولة وسبل المحافظة عليها. وتكمن أهمية هذا الموضوع في كونه يعالج إحدى القضايا المهمة والمرتبطة بشكل مباشر بالسيادة الوطنية وتحقيق تنمية اقتصادية مستدامة.

حيث سنتطرق في هذه الدراسة إلى القواعد الاجرائية المستحدثة لحماية أراضي الدولة وضمان الاستخدام العقلاني للموارد الطبيعية ومنع التجاوزات التي تضر بالمصلحة العامة، إضافة إلى القواعد المطبقة على البنايات أو المنشآت الغير شرعية المقامة على أراضي الدولة.

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Doi: <https://doi.org/10.34174/0079-0355-004-019>

I – Introduction

Recently, there has been a marked increase in incidents of encroachment and appropriation of state lands, along with unauthorized changes to their designated uses. This has led to a decrease in the available real estate inventory at both local and national levels, necessitating stringent protection measures. The safeguarding of state lands is a critical concern for the Algerian government, reflecting negatively on the national economy and constituting an essential element of state sovereignty and community resource management.

The primary adverse impacts of this encroachment include the obstruction of local and national investments. By protecting and reclaiming state lands, these areas can be repurposed for investment ventures at multiple administrative levels, thereby laying the groundwork for public investments and vital services such as water supply, energy, and agriculture. Effectively addressing land encroachment requires amplified efforts, which are indispensable for fostering sustainable economic and environmental growth.

Recognizing the importance of this issue and its direct relevance to bolstering the national economy, achieving environmental equilibrium, and securing the rights of future generations, the Algerian legislature has promulgated a comprehensive array of legal statutes and regulatory directives. These include Law No. 10-03, which establishes guidelines for utilizing agricultural lands owned by the state (Official Algerian Gazette No. 46, 2010), Law No. 08-16 on agricultural guidance (Official Algerian Gazette No. 48, 2008), and Law No. 03-03 concerning the development of expansion zones and tourist locations (Official Algerian Gazette, No. 11, 2003).

Additionally, the recent Law No. 23-18 addresses the conservation of state lands (Official Algerian Gazette, No. 76, 2023), introducing novel mechanisms that fortify their protection. This law includes stringent measures to deter encroachments and unauthorized uses of state lands, and intensifies efforts to dismantle unsanctioned constructions. The criminal acts associated with the infringement of state lands encompass all illegal constructions and the unauthorized exploitation of natural resources, including forests and agricultural lands.

Therefore, this paper will address the legislative measures stipulated by Law No. 23-18 to protect state lands from various encroachments. Initially, we will identify the lands impacted by this law and discuss the roles assigned to ministers, governors, and the heads of municipal people's assemblies.

Under Law 23-18, these local authorities, along with all managers of state lands and public officers, bear the critical responsibility of conserving state lands. They are equipped with extensive powers, including the authority to conduct on-site visits, field investigations, review essential documents, enforce judicial orders concerning demolition with the support of public force if required, and impose stringent penalties on any state land manager who partakes in or facilitates the unauthorized appropriation and misuse of these lands through abuse of power.

Through these discussions, we pose the following research question: What are the specific measures and tools that Law No. 23-18 provides for the protection and conservation of state lands?

This question will be explored using descriptive and analytical methodologies, as outlined in the sections below.

The first section will explore the conceptual framework dedicated to the protection of state-owned assets, focusing on the fundamental aspects of public property security, the objectives, and the scope of Law 23-18's enforcement, as well as identifying the bodies responsible for the defense of state properties.

The second section will delve into the preventive measures designed to protect state lands and the punitive actions prescribed for violators.

II. The Conceptual Framework for Protecting State-Owned Properties

Defining the conceptual framework for the protection and conservation of state lands necessitates understanding the objectives behind the enactment of Law No. 23-18. This includes identifying the agencies responsible for enforcing this law and detailing the powers and responsibilities bestowed upon them to fulfill the law's objectives. This chapter is crucial to highlighting the significant mechanisms introduced by the law, primarily aimed at curbing the encroachment on state lands.

II.1 The Nature of Public Property Protection

In this section, we will elaborate on the main goals the Algerian government aims to achieve through the implementation of Law No. 23-18. The law is designed to counteract the real estate mafia and prevent their encroachment on state properties. This involves delineating the scope of the law's application and the agencies entrusted with the task of conserving and protecting state lands.

II.1.1 Objectives and Scope of Application of Law No. 23-18

The increasing problem of illegal encroachments on state lands, along with its significant adverse impacts that impede sustainable economic progress, has necessitated a governmental intervention. This intervention has led to the establishment of legal structures designed to establish protective measures, mechanisms, and procedures for reclaiming appropriated lands. In this section, we specify the goals and the enforcement scope of Law No. 23-18.

A. Objectives of establishing Law No. 23-18 concerning the protection of state lands.

Initially, the principal objectives of Law No. 23-18 in terms of state land protection are to develop a comprehensive set of preventative, precautionary, and punitive measures to secure public assets and prevent their unauthorized use. It also seeks to streamline and standardize the processes for individuals who are constructing or developing infrastructures on state properties, which includes public assets, state-owned private assets, and assets owned by regional entities such as governorates and municipalities. This law is relevant to all parties infringing upon lands recovered under this statute.

Moreover, Law No. 23-18 specifies stringent penalties for each offender, whether a natural or legal entity, who infringes upon public property. In a decisive move, the Algerian legislator has dedicated the final chapter of this law to outlining the penal sanctions for all forms of encroachment, unauthorized seizure, exploitation, and construction on public and private lands owned by the state and local communities, exploited for personal gain or the benefit of others.

A pertinent inquiry arises: What does the legislator imply by the lands designated as public and private properties as mentioned in Article 2 of Law No. 23-18? This question will be explored in subsequent analysis.

B. The Scope of Application of Law No. 23-18 Concerning the Protection of State Lands

Referencing the stipulations of Law No. 90-30, which pertains to national properties (Official Algerian Gazette, Official Gazette No. 52, 1990), amended and supplemented by Law 08-14 (Official Algerian Gazette, Official Gazette No. 44, 2008), it is noted that Articles 12 and 18 of the amended and supplemented Law No. 90-30 classify general national lands as real properties that the state or local communities have directly allocated to the citizenry or as public facilities.

Private national properties owned by the state, governorate, and municipality encompass a variety of lands not classified under national public properties, in addition to properties whose designation as national public properties has been revoked.

This category also includes lands illegally seized and subsequently recovered through legal avenues. It encompasses private national properties used for residential or professional purposes and barren lands not allocated that remain state-owned, including lands reverted to the state through estates with no heirs, and ownerless lands, as well as lands designated for agricultural and pastoral use owned by the state.

From the foregoing discussion, it is apparent that the Algerian legislator has not explicitly defined national properties but has instead delineated what these properties entail. Moreover, turning to the Algerian Constitution in Article 22 thereof (Official Algerian Gazette, No. 82, 2020), it is observed that it too does not provide a definition of national properties but merely specifies their components.

This legislative strategy is judicious, as offering precise legal definitions falls under the domain of jurisprudence rather than legislation. Nonetheless, the absence of a clear definition of national properties could potentially open the door to further encroachments on state properties (Zriki, Fwathiha, 2023, pp. 510-511).

II.1.2 Subsection Two: Bodies and Institutions Charged with Protecting State Lands

Through the enactment of Law No. 23-18, focused on the safeguarding and conservation of state properties, the Algerian legal framework has notably enhanced the roles of governors and leaders of municipal and provincial councils. These authorities are charged with the primary and direct responsibility of protecting the assets under their management.

Referring to Articles 3 and 5 of the aforementioned law, it is stipulated that all concerned ministers, heads of elected councils at the local level, and managers of public institutions are legally mandated to adopt the necessary preventive and protective measures to safeguard public properties from any encroachments, exploit them rationally, and engage with administrative judicial authorities. This directive is aimed at securing the rights of future generations and promoting sustainable growth.

Additionally, the legislation emphasizes the critical need for oversight and disciplinary measures against any officials or managers of state properties who exploit their public roles for personal advantage or to benefit others.

A. Heads of Municipal People's Councils

Leaders of municipal people's councils are responsible for all activities pertaining to the safeguarding, upkeep, and administration of municipal assets and rights, as stipulated in Article 82 of the municipal law (Official Algerian Gazette, Law No. 11-10 concerning the municipality, No. 37, 2011).

In the domain of protecting municipal agricultural lands, all developmental projects that fall within the preventive measures for protecting public property, and are likely to generate diverse investment opportunities, must receive prior approval from the municipal people's council, as per Articles 109, 110, and 111 of the municipal law.

With the assistance of specialized technical services, municipalities are empowered to ensure respect for land allocations and protect local cultural real properties and those also belonging to state public properties, thereby preventing their misappropriation for personal uses rather than serving the public good.

In fulfilling their responsibilities, leaders of municipal people's councils must safeguard both the tangible and real assets of the municipality, act as representatives before judicial bodies, and negotiate contracts for the acquisition, transactions, dealings, and leasing of properties. They must also preserve the national properties defined by law, which consist of both public and private properties (Doubi Bonoua, Issue 6, 2016, pp. 9-10).

A critical question arises: What is the legal nature of the responsibility imposed on heads of municipal people's councils in cases where they engage in actions that lead to the seizure of state lands or refrain from performing the necessary actions to preserve public properties?

Referring back to Article 144 of the municipal law, it is noted that these council heads are not held personally liable for mistakes made in their official capacities; instead, the municipality itself assumes civil liability. Nonetheless, individual accountability for such actions, especially those related to the management of state lands, is assigned directly to the managers, including the heads of municipal people's councils.

Critiques of this law often center on its failure to specify penalties for state land managers who are found to have accepted bribes and undue privileges from offenders in exchange for facilitating their illegal acquisition of state lands. This omission directs us to the provisions of the Anti-Corruption Law 06-01 (amended and supplemented) (Official Algerian Gazette, No. 14, 2006).

Given that all state land managers referenced in Article 3 of Order No. 23-18, along with appointed ministers, governors, and heads of municipal people's councils, are classified as public officials as defined by Article 2 of Law No. 06-01, the provisions related to the acceptance of bribes and unauthorized advantages are outlined in the articles of Chapter Four, entitled "Investigation Mechanisms and Penalties for Corruption of Public Officials and Illicit Privileges."

In scenarios where state land managers neglect their duties, Article 21 of Law No. 23-18 prescribes a penalty of up to five years in prison for failing to perform their supervisory responsibilities, whether due to malice or negligence. If the encroachment on state lands results from state land managers' failure to adhere to the obligations set forth in the regulatory and legal legislations that define their powers, the penalty may be extended to twelve years of imprisonment.

Furthermore, if investigations reveal that the acts of encroachment were facilitated by an implicit or explicit agreement and collusion with state land managers, the penalty can escalate to fifteen years, in addition to financial fines.

This legal framework also empowers the aforementioned managers to take legal action and initiate lawsuits against any party that encroaches on state lands. For the heads of municipal people's councils, Article 82, paragraph 2 of Municipal Law No. 11-10 specifies that a key duty of these leaders is to represent local communities in legal actions aimed at safeguarding public assets and to manage all rights related to the real estate owned by the municipality.

Additionally, the managers are tasked with implementing and following up on judicial decisions in this regard and restoring the public property to its original state whenever feasible.

B. Governors and Ministers

The role of the governor is pivotal in safeguarding state lands, ensuring their use aligns with the laws and urban planning directives of the governorate, and managing resources effectively. This includes taking all necessary measures to preserve the public property within his regional jurisdiction. Exceptionally, within the scope of his duties, the governor may issue a demolition order for structures illegally erected on state lands within a ten-day period specified by law.

In instances of violation of legislative and regulatory mandates, the offender must execute the demolition decision within an eight-day period from the notification date. If no action is taken within the required timeframe, the head of the municipal council must enforce the demolition order, using resources from the governor if necessary. The order is enforceable once the judgment is final, or immediately in the case of a definitive judgment with *res judicata* force.

Articles 26, 30(3), and 31 of Law No. 10-03 govern the use of state-owned agricultural lands. If a lessee violates the terms, particularly altering the land's use, the lease is terminated. The state then uses all legal means to reclaim the lands, with management temporarily transferred to the National Office for Agricultural Lands until a new lease is granted.

A key concern remains: Has Algerian law balanced citizen rights and administrative fairness with the protection of state lands from illegal encroachments, particularly under urgent judicial orders?

C. Managers of Public Bodies and Institutions

Article 3 of Law No. 23-18 bestows crucial responsibilities on managers of public entities and agencies, tasking them with safeguarding state lands and monitoring the use of public assets. They are also responsible for coordinating with municipalities to ensure the execution of demolition orders within their legal authority.

This role is vital to prevent the misuse of power and privileges for personal benefits over public interests. Involved key agencies include the Directorate of Urban Planning, the Directorate of State Properties, the Directorate of Environment, the Directorate of Tourism, the Directorate of Water, the Directorate of Agriculture, and the Directorate of Forests.

III. Measures for Protecting State Lands under the Provisions of Law 23-18

To counteract encroachments on state lands, the Algerian government has intensified efforts to preserve public properties, beginning with the introduction of new legal frameworks that mandate stricter penalties and the implementation of prior precautionary and protective measures. These measures aim to conserve public property and promote cultural awareness, encouraging citizens through audiovisual and electronic media to inform relevant authorities about any assaults on state lands.

In this context, the first section of this chapter will explore the precautionary and protective measures implemented to safeguard state lands, while the second section will address the penal provisions enacted under these frameworks.

III.1 Preventive Measures for Protecting State Lands

In this section, we explore the comprehensive set of precautionary and preventive measures designed to shield state lands from encroachment. The following discourse is segmented into two subsections: the first focuses on field investigations by competent authorities, while the second addresses procedural rules applied to buildings and facilities constructed on state lands.

III.1.1 Field Investigations

Judicial police officers and agents are rigorously trained to search, investigate, and inspect any incidents suspected of constituting assaults and encroachments on state lands. They are also tasked with documenting these findings in official reports.

A key power granted to these officers is the ability to immediately halt any ongoing encroachment activities, as tackling these crimes is considered an essential aspect of maintaining public order. Consequently, the public prosecutor is mandated to automatically initiate public action without the need for a prior complaint.

The head of the municipal people's council, serving also as a judicial police officer, is authorized to conduct field inspections to ascertain any assaults on state lands. In carrying out these responsibilities, he is authorized to utilize resources from the municipal police, national police, and the gendarmerie, as specified in Article 93 of the Municipal Law and paragraph 5 of Article 11 of Law No. 23-18.

Further, Article 11 grants administrative public agents the authority to inspect public properties and examine pertinent documents. These agents are required to conduct necessary investigations and on-site visits to lands covered by Law 23-18. Should they face any hindrances while performing their duties, they have the right to call upon public force for assistance.

Upon completion of their tasks, both judicial police and public administration agents are required to draft detailed inspection reports. These reports must meticulously record all pertinent details of the assault, including the identity of the assailant, their statements, and the specifics of the inspection—place, date, and time. Additionally, the names of the agents who conducted the inspection must be included. These reports are then forwarded to the competent public prosecutor within the timelines prescribed by the aforementioned law.

Public administration agents specified by the Algerian legislature include, but are not limited to, agents from the Environmental Inspection, Agricultural Directorate, Water Police, and State Property Directorate.

Law No. 23-18 grants both the governor and the head of the municipal people's council the power to conduct field visits and investigations within their jurisdictions to oversee the protection and conservation of public lands. They are authorized to access necessary administrative documents related to their duties.

Additionally, the Anti-Corruption Law introduces a vital preventive measure to deter the misuse of public lands. It requires monthly declarations from heads and members of local councils at both municipal and governorate levels, to be submitted to the now renamed Higher Authority for Transparency and Corruption Prevention and Combating, as per Presidential

Decree No. 445-20 dated December 30, 2020. For ministers, these declarations are made before the President of the Supreme Court and published in the Official Algerian Gazette.

III.1.2 Provisions Applied to Illegal Buildings and Facilities on State Lands

Law No. 08-15, which outlines the rules for building compliance and completion, defines in Article 2 (Official Algerian Gazette, No. 44, 2008) the concept of construction. This encompasses any structure or facility utilized for residential, commercial, agricultural, traditional activities, or services, including public facilities. The regulations for illegal buildings and facilities situated on state lands are detailed in Chapter Two, Articles 8 to 10 of Law No. 23-18.

A. Establishment of Local Cells

One of the notable innovations introduced by Law No. 23-18 to safeguard state lands from encroachment is the establishment of local cells. These cells are vested with various powers, crucially including the detection of all forms of assaults on public property and the notification of relevant authorities. However, the organization, composition, headquarters, and specific powers of these local cells are yet to be outlined by regulatory statutes.

B. Demolition of Illegal Buildings and Facilities

Algerian law requires that an administrative permit be obtained from relevant authorities before any construction of buildings and facilities on state lands can commence. In instances of non-compliance, such structures are mandated to be demolished. The law underscores the importance of preventing these illegal constructions from connecting to roads and public utility networks and enforces strict penalties on those who violate these provisions. Penalties for unauthorized construction can include up to ten years of imprisonment and fines between 500,000 DZD to 1,000,000 DZD.

Upon reviewing the inspection report, the head of the municipal people's council must issue a demolition order within eight days. Should further action be necessary, following the expiration of the period granted to the head of the municipal council, the governor has the authority to issue a demolition order within an additional ten days. The violator is then obligated to comply with this order and restore the site to its original state at their own expense. Decisions regarding demolition can be contested in the competent judicial body.

III.2 Penalties for Crimes Affecting State Lands

In addressing trespasses on state lands, the Algerian legislature has enhanced penalties for violations like assault, unauthorized occupation, or misuse of state lands. This discussion examines the statutes in Chapter Five of Law No. 23-18, entitled "Penal Provisions."

III.2.1 Penalty for Constructing Illegal Buildings and Connecting to Public Utility Networks

Individuals or entities that occupy state lands for personal use face imprisonment of 5 to 10 years and fines up to 1,000,000 DZD. For unauthorized constructions on state lands, the imprisonment may extend to 12 years.

Additionally, the Algerian legislator imposes penalties of up to 5 years of imprisonment and fines ranging from 200,000 DZD to 500,000 DZD on anyone who, through their position, facilitates the connection of these unauthorized buildings to public utility networks, as specified in Article 18 of Law No. 23-18.

III.2.2 Penalty for Threatening and Retaliating Against Whistleblowers of Stipulated Crimes

Articles 13 and 22 of the law underscore the Algerian legislator's efforts to foster civic responsibility by encouraging citizens to report any acts of encroachment and seizure of state lands. Notably, the legislation safeguards well-intentioned whistleblowers from any liabilities, ensuring their protection even if the investigations do not result in actionable findings.

To shield citizens from any form of intimidation or retaliation, the law specifies that anyone who threatens whistleblowers or their family members is subject to severe penalties. Such violations carry penalties of imprisonment from one to five years, along with fines reaching 500,000 DZD. This measure is designed to enable citizens to report infringements without fear of retaliation, thereby strengthening the enforcement and protection of state lands.

III.2.3 Penalty for State Land Managers

The law holds state land managers and public officials accountable for negligence or failure to perform their duties that lead to unauthorized use of state lands. Such failures can result in up to 5 years of imprisonment and fines of up to 500,000 DZD. If such neglect or misconduct results in damage to state lands or aids further encroachments, the penalties increase to up to 7 years in prison and fines up to 1,200,000 DZD.

Furthermore, if it is established that the acts of encroachment stem from collusion and conspiracy involving state land managers and other public officials, the consequences become even more stringent. In such cases, offenders may face up to 10 years of temporary imprisonment and fines increasing to 1,500,000 DZD.

In addition to the primary penalties, the competent judicial authorities are also empowered to impose supplementary punishments on the offenders. These can include the confiscation of any devices and means utilized in the commission of crimes related to the encroachment and seizure of state lands. This comprehensive approach not only penalizes the direct actions but also disrupts the means to perpetrate such offenses, thereby reinforcing the protective measures established by the law.

IV. Conclusion:

From the analysis presented in this article, it is evident that in response to the escalating incidents of encroachment on and the unauthorized redirection of state lands to private ownership, the Algerian legislature has taken decisive steps to fortify the legal framework protecting state lands. This enhancement is embodied in the provisions of Law No. 23-18, which introduces several innovative measures:

- The role of civil society has been amplified, encouraging reporting of crimes involving the seizure of state lands. Informers are safeguarded from retaliation, and good-faith informers are exempt from criminal or civil liabilities, should the investigations yield inconclusive results.
- The creation of local cells specifically tasked with combating crimes of encroachment on state lands represents a strategic approach to localized law enforcement.
- Accountability has been strengthened for governors, ministers, directors of public institutions, and other public employees entrusted with the preservation of state lands. Those who neglect their duties or misuse their powers to facilitate the illegal transfer of state properties face stringent legal consequences.
- There is a reinforced prohibition against the regularization of illegal constructions on state lands, as well as their connection to essential public utility networks like water, electricity, and internet services.
- Penalties have been intensified for public officials who abuse their positions to aid in the illegal acquisition of public property, highlighting a commitment to upholding integrity and lawfulness.
- Similarly, the penalties for managers of public lands, as specified in Article 3 of Law No. 23-18, have been significantly increased to deter misconduct and promote compliance with the law.
- The Algerian state continues to actively promote a culture of awareness and responsibility within all administrative, economic public institutions, regional communities, and elected municipal councils. This initiative is aimed at combating all forms of encroachment on national properties, recognizing the critical impact such actions have on both local and national development.
- Procedural responsiveness is emphasized by the requirement for the head of the municipal people's council to issue a demolition order within a maximum of eight days. Should this timeframe lapse without action, the governor must issue the order within an additional ten days. Violators are obligated to comply with these orders and restore the affected sites to their original condition at their own cost, though these decisions are subject to appeal in the appropriate judicial bodies.

In conclusion, this study puts forth several strategic recommendations to bolster and support innovative mechanisms for safeguarding state lands:

- Introducing incentives for individuals who report any encroachments on both public and private state lands to central and local authorities, thus fostering civil society's engagement in curbing corruption.
- Revising and updating legislative frameworks pertaining to environmental laws, as well as regulations governing construction compliance and the utilization of state-owned agricultural lands.
- Adopting successful global practices in addressing the illegal occupation and misuse of state lands.
- Rigorous enforcement of Law No. 23-18 to fulfill its intended goals, which include eradicating nepotism, curbing financial corruption, and preventing the abuse of power in the appropriation and encroachment of state lands for personal gain.
- Ensuring the restitution of public assets without misusing public authority, with stringent judicial oversight.
- Organizing educational events and scientific seminars to highlight the importance of protecting state lands. These would include detailed discussions on Law No. 23-18, aimed at preserving state lands and enabling broader public and media access to information about the plunder of public assets. This approach is crucial for

heightening public awareness about the gravity of these issues and eradicating all forms of corruption while combating the real estate mafia.

- Implementing asset declaration as a crucial preventative measure under the Anti-Corruption and Combating Law, which will significantly contribute to the eradication of public property plunder, a key element in achieving sustainable economic development.
- Encouraging scientific research focused on the development of cutting-edge technological tools that aid in the detection of state land encroachment offenses.
- Involving civil society in the preservation of public assets, boosting environmental consciousness, and promoting a culture of vigilant reporting of any assaults on public properties to the authorities.
- Enhancing the development of regulatory guidelines that clarify the implementation of Article 8 of Law No. 23-18 is crucial. This includes establishing local units tasked with recording instances of state land encroachment and outlining their organizational and operational structures.
- Training specialists and equipping them with advanced technology to expedite the detection of all encroachment incidents on state lands.

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