
The Senegalese National Land Act of 1964, designed to unify legislation concerning land, formally abolished the various local systems of land law. Nonetheless, a degree of legal pluralism persisted in rural areas as a result of French colonial law and the preference for settling disputes through administrative procedures rather than through ordinary judges. Similar preference is evident in the urban situation of Ziguinchor.¹

Urban land conflicts and the administration of justice in Ziguinchor, Senegal (663)

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Introduction

After their independence most former French colonies in West-Africa gradually implemented land reform programmes. In first instance these programmes aimed at rural development, but they also contained regulations regarding urban land tenure. In Senegal as well the National Lands Act of 1964 aimed at rural development, but even more at establishing unified legislation in relation to land.² The various local land law systems were thereby abolished.

As long as middle-sized cities like Ziguinchor in Senegal had enough space to expand and to absorb the great rush of new urbanites virtually without effort, the national and local governments had paid little attention to the juridical and policy aspects of urban land tenure and housing. Urbanites and recent urban migrants looking for a plot or a house largely followed the unwritten rules of traditional law and customs, practised in their village, and they accommodated these rules, if necessary, to the urban context. The relative aloofness of the government up to the 1970's, strengthened by the continuing incapability of the local bureaucracy to control the distribution of land and the construction of houses, has led to a situation in which the so-called spontaneous settlements have mushroomed.³ The implementation of the various urban land regulations and the efforts to restructure and regulate the spontaneous settlements which were started in Ziguinchor in the 1970's resulted in a great number of urban land conflicts. And, as a result of historical, geographical and socio-economic circumstances which I shall not go into, land disputes in Ziguinchor have led to exceptional social and political tension.⁴

This paper gives a selective review of the law relating to urban land. It explores the handling by the formal judicial and administrative institutions of urban land disputes and the conceptions and attitudes of the urbanites involved in these conflicts. The deliberate and systematic ignoring in the new national land law

of the actual urban situation (more or less characterized by the persistence of – accommodated – traditional customs and values) seems to have contributed to the problems in the implementation of formal land law in Ziguinchor. Moreover, the use of a foreign language (French) and of abstract concepts, and the implementation of the national law system by modern French educated bureaucrats and judges, are alienating factors for the mostly illiterate urbanites.

The basic materials for this paper have been drawn, to an important extent, from court records and the minutes of special administrative arbitration commissions for review of land disputes. A main problem appears to be that land disputes submitted to court are handled by the criminal judge, although the “defendants” do not feel in the least bit criminal. Besides, the material shows a clear difference between the very general and formalistic decisions of the judge, and the more concrete and casuistic solutions of the arbitration commissions that were set up to process the great number of urban land disputes.

Ziguinchor is the capital of the southern province of Senegal, the Casamance. Partly as a result of the disturbances which have occurred, mainly in the western region of the Casamance since 1980, the province was divided into two parts in 1984; since then the western half has been called after the regional capital, ‘*région de Ziguinchor*’. Ziguinchor was founded in 1645 by a Portuguese captain and bought by the French in 1888, who made it into the capital of the Casamance at the beginning of this century. At that time there were no more than 700 inhabitants, of whom about fifty were French.⁵ After the Second World War, Ziguinchor became one of the most rapidly growing towns of Senegal: in 1945 the number of inhabitants was still assessed at about 45,000 and today it has a population of about 120,000.

The majority of the population (35%) are Diola, who live in the least urbanized areas of the town and continue to maintain close relationships with the countryside. Because of its very well represented agrarian sector, Ziguinchor can be qualified as a semi-rural city. One has to agree with Vernière (1977: 120) who states that by its morphology, the nature of its park-like lay-out, its air of being a large village, Ziguinchor offers real originality.

Before I turn to a discussion of the case law, I shall give a brief and selective review of the law relating to urban land.

Law relating to urban land

In Senegal, specific legislation on urban land, housing and town planning dates from the 1970’s. This is not to say that before the 1970’s the urban areas were in a legal vacuum. They were certainly not. But the legal arrangements applied were mainly of colonial origin and rarely referred to the special aspects of fast growing cities.

Today the Senegalese urban land legislation is mainly to be found in three texts: the *Loi relative au domaine national* (National Lands Act), the *Code de l’Urbanisme* (Urbanization Code) and an order (*arrêté*) relating to requests for building permits in urban zones.

The *Loi relative au domaine national* was adopted by the Senegalese legislature in 1964. It defines “national land” (*domaine national*) in a negative sense, namely

as all land that is not registered in the land books, i.e. land that is not “State property” (*domaine de l’Etat*) and for which no private title exists. All land which was held under the customary land law passed into the control of the State. The State does not consider itself to be the owner but merely the custodian of this land; individuals only have “rights of use”. This means that, among other things, the land may not be sold; only the buildings and other investments (wells, orchards and other such improvements) are transferable.

Not all land which should be deemed national land according to this definition was automatically included in it. Anyone who could prove that, on the day on which the statute became law, he had made investments of a permanent nature on a plot could, up to six months after the implementing measures, put in a claim for registration of that piece of land thus precluding it from becoming national land. The dramatic backlogs characteristic of all registration procedures everywhere in Senegal have compelled the Senegalese Government to an almost unlimited extension of this six months’ term. Once land has been deemed to be part of the national land, registration can only take place in the name of the State, thus becoming property of the State (*domaine de l’Etat*).⁶

National land is further subdivided into four categories, the first of which is designed “urban zone”. This covers municipal territory that has been established by law. The other three categories are agricultural zones (*zones des terroirs*), classified zones (*zones classées*) and pioneer zones (*zones pionnières*).⁷

It is not easy to make a clear distinction between the national land (*domaine national*) and the property of the State (*domaine de l’Etat*). The scholarly debate at this point is still going on. For the present purpose, what needs to be emphasized is that land within the *domaine national* can become part of the *domaine de l’Etat*. This is frequently the case, particularly in the periphery of the fast growing cities in Senegal. The state then instigates a process for the expropriation of the land for the general good; the land is thereafter registered in the name of the State, thus falling within the category of State property. All existing rights to the land are thereby abrogated. Damages are only possible insofar as buildings are concerned, but are out of the question when the land has been built on illegally.⁸ For the individual occupant the distinction is important, his rights to the land being different. The allocation to any individual of land pertaining to the *domaine national* can never be considered to include property rights. As stated before, the occupant only has “rights of use” which are not clearly defined by the law. Inhabitants living on State property need to have a settlement permit or a long lease. A permit is a precarious title which authorizes the holder to settle on a plot for a determined period. Since the permit can be withdrawn without compensation after three months’ notice, it hardly offers a better security to the holder than the earlier mentioned “rights of use”. Long lease is an agreement between the State and the leaseholder under which the latter pays rent to the State, in return for the legal right to occupy a plot within the State property for a period between 18 and 50 years. Although it offers much better security to the holder, it is hardly applied in a city like Ziguinchor because of the relatively high costs and the required obligations for the leaseholder.⁹

The *domaine national* of Senegal accounts for more than 95% of the national territory. Another 3% of the national territory is included in the *domaine de l’Etat*, leaving 2% of the land in the hands of individuals who had acquired private title to their land holdings prior to 1964.

Subsequently, three categories can be distinguished in the current situation of land tenure in the municipality of Ziguinchor:

- 1 Land owned privately (*titres privés*), concentrated mainly in the administrative and commercial centre, and in the two oldest "African" districts; those title holders are owners of the land in the sense of Roman Law.
- 2 Land which is the property of the State (*domaine de l'Etat*): the greater part of urbanized space in Ziguinchor was registered in the name of the State.
- 3 Land which pertains to the national lands (*domaine national*). This affects mainly the western part of Ziguinchor, the less urbanized area of the city.

The *Code de l'Urbanisme* came into being in 1964, the year the National Lands Act was passed. It was, however, replaced two years later, and details have been altered repeatedly in the course of the years. Its article 1 in which the aim of the urbanization is put into words and which has remained unchanged, states that:

'the urbanization policy in Senegal has as its aim the integration of the progressive and provisional arrangements of settlements in a general policy of economic development and social progress. It is leading, notably through its rational utilization of land, to the creation of a framework for a propitious life for all of the population, and to a harmonious development on physical, economic, cultural and social level.'¹⁰

In pursuance of this policy, town plans would be drawn up to implement the re-allocation of land rights in residential areas. The Code also decreed that whoever wanted to build a house in a town had to be in possession of both a permit to settle and a building permit.

Finally an *Arrêté* (order) of 1970¹¹ regulated how one should go about getting a building permit for a piece of land in the *domaine national*. A permit to settle is only granted after the building plans have been approved. It is not transferable, and lapses if the building has not been commenced within two years after the initial granting of the permit. Fines between 20,000 and 2,000,000 FCFA (about Dfl. 150.- to Dfl. 15,000) were set for building without a permit. Moreover, if it involves an area which has not been parcelled out yet, prison sentences are imposed ranging from six months to two years. In any case, the court can order the demolition of the building and can require the defendant to pay for the restoration of the land to its original condition.

Of course it is not enough to create a more or less coherent system of urban land law. It has to be supplemented by a body of rules and practice by which justice is meted out if an individual considers that his land rights have been encroached upon by the authorities or by a fellow citizen, but also for the authorities to bring an action against offenders of the law. Besides the possibility for individuals of resolving land disputes by reconciliation with the assistance of the district chief and/or prominent people in the area, which I shall not go into here, the administration of urban land disputes is entrusted to the criminal court, *Tribunal de Première Instance* (since 1984 replaced by the *Tribunal Régional*).

By virtue of the *Code de l'Urbanisme* the Governor of the province is president *ex officio* of the *Commission régionale d'Urbanisme, de l'Habitat et de l'Environnement*. In this function he can form special sub-commissions to meet specific problems, he determines their competence and composition and he appoints their members. Under the pressure of fairly heated actions of the inhabitants of Ziguinchor in 1980, the Governor of the Casamance set up such a special sub-commission to handle the land disputes which had flared up as a result

of the subdivisions in Ziguinchor. This sub-commission was designed as an Arbitration Commission (*Commission des Litiges*).

Subsequently, the following situations can be distinguished:

- if an individual considers that he has been treated unfairly by the Plot Allocation Board, he can file a complaint with the Arbitration Commission.
- if an individual considers that his land rights have been infringed by a fellow citizen, he can file a complaint either with the Arbitration Commission (if the dispute is the result of the subdivision), or with the court (*Tribunal de Première Instance*).
- if the authorities consider that an individual has violated the urban land law, they can compel the attendance of the offender in court (*Tribunal de Première Instance*).

The subdivision of land in Ziguinchor

In about 1970 the local authorities decided to reorganize the land situation in Ziguinchor on the basis of a new plot lay-out. A plot lay-out is a plan showing the parcelling out or the subdivision of the land into individual plots as well as the position of the access roads and foot paths.¹² In the older districts, which were State property, the parcelling out already begun had to be completed. In the new, "spontaneously" developing residential areas on national land, the subdivision of the land into new individual plots would take place progressively in the course of time.

The procedure is relatively simple: in principle every head of the family who can prove that he lives with his family in the district is eligible for a plot of about 400 m². After the district to be subdivided has been surveyed, it is visited by a Plot Allocation Board which supplies each head of the family with a piece of paper (*ticket*) stating his name and the number of the plot. Most ticket-holders think that such a paper confers ownership of the land on them, but nothing could be further from the truth. They then have to embark on a long and fairly costly procedure to obtain permission to settle (*permis d'occuper*) and, should they wish to build a brick house, a building permit (*autorisation de construire*) as well. In 1983 it seems that only 3 % of such ticket-holders had by then begun proceedings.

These new subdivisions have caused innumerable problems in Ziguinchor, because the plot lay-out which was designed on the drawing board did not account for the actual situation of plots and buildings. The implementation of the new division implied the re-allocation of plots to other people than those who had settled on them in the first place, and the demolition of buildings. In 1980 the Senegalese research bureau SONED stated with reference to these subdivisions:

'When one considers that an average of 60 % of houses are demolished, the importance of vegetation cut down and the blind way in which the allocation has taken place in the districts, it is permissible to ask oneself if such damage was inevitable. In fact this operation, which has been so catastrophic for the environment, indicates the obviousness of the necessity for proceeding with an inventory of the existing buildings, with a highly detailed questionnaire, plot by plot, side by side with the inhabitants. Furthermore, with reference to the possibility of respecting and coming to terms with the one who is already on the plot, indeed, such a step would permit the avoidance of injustices and the litigations (...) which are generally settled to the disadvantage of the most destitute.' (see: Livre blanc 1980, tome II:55-56).

Little needs to be added to such a crushing judgement of the subdivision in Ziguinchor. The local authorities claim that about 30 % of allocations have developed into disputes resulting in a law suit. If one realizes that about 60 % of the houses had to be demolished, one may well assume that the number of cases in which the allocation of plots had led to dissatisfaction is much higher in reality.

In the following review of judicial decisions relating to land disputes in Ziguinchor, I shall deal consecutively with the decisions of the court and those of the arbitration commission.

Decisions of the court

Most of the land disputes in Ziguinchor which have occasioned judicial verdicts had to do with *occupation illicite* as defined in article 423 of the Senegalese Penal Code. It states that:

'Whosoever tills or occupies a piece of land of which another, by virtue of ownership or an administrative or judicial decree, has the power of disposal, can be punished by a term of imprisonment ranging from six months to three years and a minimum fine of 50,000 FCFA.'

In 1966 the operation of article 423 was extended to the "illicit occupation" of land designated as National land or State property. Furthermore, every transaction with regard to these categories of land is punishable if one is not in possession of the required permits (i.e. a settlement permit and a building permit).

Both a person who is of the opinion that a plot has been unfairly allocated to another, as well as the party to whom the plot has been allocated but who perceives that someone else claims rights to the plot, can invoke this article. One can notify the police, following which, under the direction and responsibility of the Public Prosecutor (*Procureur de la République*), an investigation procedure is set in motion. The Examining Magistrate (*Juge d'Instruction*) can instigate legal proceedings as a result. He has wider powers of investigation than the Public Prosecutor. During the preliminary examination the latter only collects evidence, after which the dossier is placed once more in the hands of the Examining Magistrate, who then decides whether or not to prosecute or to dismiss the case. The records of the court in Ziguinchor (*Tribunal de première Instance*) contain twelve files relating to illegal occupation for the period 1980-1982. I will briefly discuss four of the most representative and striking cases.

1. Fatou S. versus NDèye M.

During the subdivision of the district Peyrissac, where the land is State property, a plot was allocated in 1976 to Maguèye C., a civil servant with a good education. He obtained both a permit to settle and a building permit, and he built a large, seven-roomed house on the plot. In 1980 he divorced his wife, NDèye, and sold his house to Mrs. Fatou S. for 650,000 FCFA. After the departure of her ex-husband, NDèye remained in the house in Peyrissac with her four small children. In 1981 Fatou S. was given notice to leave the house she rented and she wanted to move into her new house. She then was confronted by the fierce opposition of NDèye, who insisted that she knew nothing of the sale of the house. In view of her condition (she was then five months pregnant) she refused to leave the house. At this point Fatou lodged a complaint against NDèye. When confronted during the hearing with the valid deed of purchase, NDèye withdrew. She did, however, ask for respite in connection with her pregnancy and offered

to go herself to the owner of the house which Fatou rented 'in hope of a compromise in the matter'. Two weeks later, it appeared that NDèye had taken no further steps and, because Fatou had to leave her rented accommodation within a fortnight, the latter went to court again. NDèye was taken into custody and charged with illegal occupation under article 423. A good month later NDèye acquiesced to the facts and was released.

In times of female emancipation our (western) feelings in this affair involving NDèye M. may revolt against the fact that a woman, after she has been divorced, is obviously without rights. Such a conclusion, however, would be premature since other legal actions are available under civil law for the partition of matrimonial property after a divorce. Still there is little to comment on this matter from a judicial point of view.

In this respect, the case is hardly representative of the situation of urbanites in Ziguinchor. Usually people still act on the basis of oral transactions. This case, however, shows the example of a man who went through all the necessary bureaucratic formalities: the seller of the house in question was entitled to go ahead with the transaction because he could prove, on the grounds of an administrative decision (the grant of the Plot Allocation Board) that he was the owner of the plot, and also because he had a building permit.

The somewhat naive attitude of the divorced woman, however, is much more representative. Even though she had no official evidence whatsoever for her rights to the house after the departure of her husband, in her conception she could stay there since she had lived in the house for years and she had the care of the children. Obviously her attitude has been influenced by the urban context. In a rural context her vulnerable position as a single, pregnant woman would be different, she would have more opportunities to appeal to the solidarity of social relationships. In a much more anonymous city an illiterate woman who ignores the modern rules of law (in this case civil law and urban land law) is particularly vulnerable. In NDèye's case her implicit appeal to the forbearance of the judge and her fellow citizens did not work.

2. Kecouta S. versus Pierre B.

This case also concerned a plot of land in the district of Peyrissac. During the subdivision the plot was allocated to Kecouta because the plot on which he used to live was given to another person.

Pierre B., however, insisted that he had bought that plot in the 1960's; he had built a house on it in which he lived with his family. He therefore refused to leave the house, whereupon Kecouta lodged a complaint. During the court hearing Pierre could prove, by calling witnesses and by producing the deed of purchase, that he had indeed bought the land. The woman who had sold Pierre the house was also subpoenaed as a witness. She was, however, unable to produce a single piece of evidence showing that she had any right to the plot at the time of the sale. She explained that when she occupied the land neither the National Lands Act nor the allocation regulations were in existence.

On the other hand, Kecouta, while the preliminary investigation was in progress, quickly acquired a permit to settle. The defence of Pierre - 'I do not understand why they are going to grant this plot to another when I have already built a house on it' - was futile in judicial terms and, by virtue of article 423 of the Penal Code, he was sentenced to three months conditional imprisonment

Two quotations from the record of the trial deserve particular attention. The Inspector of Property, called as a witness, explained that

'... each Plot Allocation Board has sovereign powers; it establishes its norms. Here we are dealing with a social matter, but there is no absolute criterion. Each case is appraised in terms of the facts found on the spot. The Board itself makes its criteria. I repeat it is a sovereign body.'

The Commissioner of Police, on the other hand, severely criticized the way in which the subdivision had taken place by saying that

'... this has all to do with a perpetual conflict originating from the irregular distribution of the plots, the redistribution carried out by the Plot Allocation Board. This Board, for its part, has never bothered itself about people's right of occupation and has always allocated built-up plots to others, while proprietors have nothing or receive other land in exchange, but just the bare land. Anyway, it would have been much easier to reinstate each one on his own plot and to allocate the vacant plots to the newcomers. That is exactly the problem here. Mr Pierre B. should have been allowed to remain on his built-up plot, and that would have obviated this dispute.'

This case is interesting for two reasons. In the first instance, it seems that possession of a deed of purchase is not enough in itself. In towns like Ziguinchor, countless plots have been sold through the years – with or without a written deed of purchase – without anyone bothering about the validity of these transactions or the possession of the required permits. Even today plots change hands in this way. It is only when such a deed of purchase is confronted by an administrative decision that the deed appears to be null and void. The traditional rights to land to which the seller appeals have no longer been in effect since the introduction of the National Lands Act; thus the buyer has only bought a worthless piece of paper. From the legal point of view there is not a single loophole.

From the social point of view, however, it is more problematic. In the conception of both Pierre B. and the woman who had sold him the land, Pierre's rights to the plot and the house were absolutely secure as the transaction had been concluded in the usual way at that time. That is why Pierre invested money in the purchase of land and the construction of the house. For reasons beyond his scope – the implementation of the National Lands Act years after it had been passed and the disputable decision of the Plot Allocation Board – he suddenly found himself without rights to the land: the money invested appeared to be wasted, and he and his family lost their home.

An interesting feature of this case is that the Inspector of Property did, in fact, emphasize the social aspect, but he obviously accepted the competence of the Board to deal with the case according to its own criteria. The reaction of the Commissioner of Police, who was clearly annoyed, also speaks well from a social point of view, even though it was of no help to the injured party.

3. The case against Salvador N.

In 1948, old Salvador N. came to live in the district of Tilène, which was then virtually uninhabited. He was able to acquire a sizeable piece of land on which, as the years went by, he built two houses for his steadily increasing family. He also planted a number of mango and citrus trees and he laid out a corn field.

In 1964, when the National Lands Act was introduced, he heard that there was a possibility of obtaining a title to his land (*titre foncier*) and, preferring a bird in the hand, he filed an application at the *Préfecture* in Ziguinchor. Salvador never received a reply and assumed that everything would be all right, as nothing further happened. In 1973, he heard that the Tilène district was to be subdivided, whereupon he filed a second application for his title, this time

at a higher level, addressed to the Governor. The result was the same: there was no response. Four years later, in 1977, Tilène was indeed subdivided, with the result that Salvador's land was divided into thirteen plots. Despite his protests he was only allocated four plots.

Babou S., Jean M. and Bocar D. were each allocated a plot of the land to which Salvador laid claim. Salvador strongly resisted the arrival of these intruders; among other things, he systematically demolished everything they undertook on their plots. The three aggrieved parties decided to lodge a complaint against Salvador, at the same time claiming damages in a joint civil suit.¹³ When they heard that they had to be in possession of an official permit to settle, they took their *tickets* to the *Service des Impôts et Domaines* (Department of Property) where the procedure was set in motion, and they received a provisional certificate stating that they had been granted their plots lawfully.

During the hearing Salvador initially stuck to his guns by stating that

'... whatever may happen, I shall oppose every person to whom the Board has allocated a plot of my land. I fail to see the right by which they would dispossess me of those plots by offering them to other people who have done nothing to improve them, when my children should be able to benefit before anyone else.'

When Salvador realized that he was losing ground, both literally and metaphorically, he demanded that he at least be compensated:

'... I shall not cede these plots which are an integral part of my land and I have cultivated since 1948, without having my labours reimbursed.'

All was to no avail. Salvador was ordered to pay a conditional fine of 20,000 FCFA (about f 150.-) and he had to pay damages.

In this case the defendant was clearly the victim of careless and inefficient bureaucracy. In contrast to the woman in the case Kécouta S. versus Pierre B., he was perfectly well aware of the possible consequences that the *loi sur le domaine national* had in store for him: the acquisition of a private title to the land giving him total land security. He had just not been tenacious enough.

This case also draws our attention to an aspect which will be returned to presently when the arbitration commission dealing with questions involving family solidarity will be discussed. In the traditional conceptions of Salvador, land not only has material but also symbolic value. In his capacity as head of the family he founded – what is called in the French literature on African urbanization processes – a *maison de famille* (family house) in order to provide the members of his family with security and safety, not only for the time being but also for future generations.¹⁴ A family house has to reinforce the ties of solidarity within the family. In this respect Salvador N. believed that he had rights to his land, not just because he had invested in it, but also because he felt it his duty to make sure that his sons, in their turn, would also own land.

Finally, this case shows that people usually become fully conscious of the necessity of applying for a settlement permit only when a conflict is in the offing.

4. Vincent M. versus Malou D.

Vincent and Malou were neighbours in the district of Niefoulène where the land belongs to the *domaine national*. Before the subdivision Vincent owned two houses. The larger of the two had been built by his father. This big house stood partly on land through which a road had been projected and, in the subdivision of 1976, it was demolished by a bulldozer. As compensation, the Plot Allocation Board granted Vincent another plot which, however, included some land to which Malou D. laid claim. When Vincent commenced preparations for building a house on his new plot by felling a large tree, he was verbally attacked by Malou's family. In particular, Malou's daughter assailed him with vile abuse. Consequently Vincent lodged a complaint and enclosed his settlement permit and his building permit. During the examination of witnesses he stated that

'... I am lodging a complaint against Mr. Malou D. so that he will allow me to build a

'... I am lodging a complaint against Mr. Malou D. so that he will allow me to build a house on that plot of which I am the legitimate owner, and provide for a proper education of his daughter who never stops insulting me.'

(Notice that Vincent called himself the legitimate owner. Since his plot was still within the *domaine national* he only had "rights of use"; the settlement permit, which is also a precarious title, had been granted in anticipation of the land becoming *domaine de l'Etat*). During the hearing Malou D. maintained that

'... this plot belongs to me, and as long as I live I cannot conceive that any family other than my own will build on it. I shall maintain my opposition till justice has granted me my rights.'

Malou D. did indeed lose: since he was illegally occupying a piece of land to which another (Vincent) could claim a right on the basis of an administrative decision, he was given a conditional fine of 50,000 FCFA on the grounds of illegal occupation. From the rest of the narration it will become apparent that Malou D. was unable to get satisfaction elsewhere.

From the court files I could not gain a clear insight into the social background of the defendant. Since he talks about 'building on the plot by my own family' one may only surmise that Malou kept the plot in reserve for his descendants, as many "traditional" family heads in African cities used to do. In this case it becomes once more obvious how badly the subdivision was prepared. Civil servants clearly sat behind their desks and drew boundaries on a map so that these passed right through existing premises. The most important reason for examining this case here, however, is that the arbitration commission occupied itself also with this problem. Although the commission passed its decision two months before the court pronounced its verdict, it was not explicitly taken into consideration. We will return to this below.

The four cases discussed all show clearly the importance of having the right documents. Customary land rights, oral transactions or actual use of land and houses for years on end are ineffective when confronted with written deeds and titles sometimes very recently obtained. Yet, written papers turn out not to be equally adequate either: the purchase deed and the permits in the first case were in conformity with the requirements of modern law, whereas the deed in the second case was based on traditionally concluded transactions although in written form. The third case demonstrates the bureaucratic obstacles which an illiterate man has to face to obtain the right documents. Most defendants shared traditional conceptions about land law and the social value of land and houses. Sometimes they were ignorant of modern land regulations, and sometimes they were unable to take advantage of the modern law, but they all lost their case from better informed and apparently better educated adversaries.

Two more observations in conclusion: only in the first case was the illegal occupant taken into custody. When she finally conceded, she was released, and no further charges were made against her. In the other three cases conditional sentences were imposed. From discussions with judges in Ziguinchor it seems that, although they were obliged to pass judgement according to the letter of the law, they regularly felt that this went against the grain in these subdivision disputes. The conditional sentences were really only handed out as a means of forcing those involved to accept the verdicts. Such uneasy feelings of the judge when confronted with land conflicts in Ziguinchor give an indication of the deficiency of the national land law in a local situation.

Finally, I should like to touch on the linguistic problem in the administration of justice. In every case an interpreter was used. Indeed, in Senegal as in most former French colonies, the official language of the court is French: the pleadings

are formulated in French, and the organization and procedures follow to a large extent the French pattern. This may form a supplementary barrier for many litigants, and it gives the relatively few who are proficient in French an advantage over their less educated fellow citizens. The use of French reinforces the gap between the average Senegalese citizen and the law. Besides, the old, clever Diola who had served as an interpreter at the court of Ziguinchor since the 1950's had a slight propensity of considering himself more a "man of law" than a helper of the defendant, thus manipulating and intimidating the mostly illiterate defendants and witnesses.¹⁵

The Arbitration Commission

As mentioned earlier, an arbitration commission was set up in 1980. The civil servants sitting in this commission consisted of representatives of the Governor of Casamance, the municipal council and the police, and the heads of the departments of Lands, Urbanization and Land Registry. Moreover, district chiefs and dignitaries were regularly invited to give information.

In principle, the commission only met following a written complaint. The parties and their witnesses were then summoned. They were not, however, subpoenaed, nor were they examined under oath. The commission, being empowered to endorse and review the decisions of the Plot Allocation Board, can be considered as a sort of administrative appeal institution. The proceedings in the arbitration commission were somewhat less formal than the procedure in the law court, but on one point there was no difference: during the hearings only French was spoken, so that the intervention of an interpreter was always necessary.

This commission functioned for about two years. Despite the fact that the commission dealt with hundreds of disputes, its proceedings were not a success. Many of the residents of the subdivided areas frequently boycotted its activities by ignoring the summons to attend, mostly for the reason that the commission consisted largely of the same civil servants as those who had been involved in the subdivision. In the opposition press and, above all, in the informal gossip circuit, the civil servants involved were repeatedly accused of corruption and of working a (political) "old boys network". Therefore, an investigation commission was set up in 1982 with the task of shedding light on the situation in the subdivided districts; it was not, however, to investigate the alleged corruption by the civil servants. The investigation was placed in the hands of the *Association Karambénor* (Diola for 'mutual help'), set up in 1976, which was very active in Ziguinchor. The result was the formation of a new arbitration commission made up of civil servants and 'wise' men who were supposed to represent the population.

This new commission had, among its other jobs, the task of finding solutions for a number of persistent disputes. While the way of approaching matters did not alter noticeably, its procedure did. The members of this commission much more often visited the scene, where they summoned the parties and witnesses to give their point of view on the spot. Those sessions took place in the open air, under a big tree, and had the character of a village powwow. Diola and/or another local language was used rather than French. When necessary, arguments were supported by drawing in the sand. After everyone had had his say to his satisfaction, the affair was settled and the parties involved would shake hands while apologies were offered. The meeting was closed with a prayer.¹⁶

The way things developed in the second arbitration commission indicates that, as far as form is concerned, concessions were made to traditional proceedings. Due to lack of personal research material on this commission, it is virtually impossible to make pronouncements about the content of the resolution of disputes or about the criteria that were employed. Therefore, the review that follows only concerns the cases brought before the first commission.

Compared to the well-documented court records, the minutes of the arbitration commission were remarkably succinct, which made it difficult to deduce extended cases from them. Subsequently, the abundance of material will be presented in a very selective and rather sketchy way. For practical reasons I have divided the disputes into three categories. I first discuss a frequently occurring *source* of the disputes brought before the commission: questions involving family solidarity. Then I will turn to a category of cases where the same *criterion* is used by the commission to determine whether a plot has to be allocated to one or the other litigant: the investments made in the plot. In the third category I merely emphasize the *outcome* of the disputes characterized by a socially inspired or practical approach of the commission.

1. Questions involving family solidarity

Many of the disputes brought before the commission concerned quarrels in which someone refused to leave a plot allocated to another person, not so much for the commercial value of the land, but rather because of its symbolic value. As stated before, land often plays an important role in maintaining the solidarity ties within the family. The two most prevalent constructions were:

- a person thought himself the rightful heir to a piece of land because that land had been in the possession of his deceased father;
- a person claimed the land on behalf of his adult sons to enable them to found their own family house.

In this context it is notable that the minutes of the commission also contained some cases about widows who demanded their own plot because they did not want to live with their sons, which may be interpreted as a departure from the traditional norm. They all did, however, explicitly require a plot in the neighbourhood of their sons' houses.

The permit to settle, which was the only conclusive document in such cases, was not - in any of the disputes heard - in the hands of those who appealed to their more or less traditional claims; the allocation to a third party by the Plot Allocation Board was then endorsed without exception.

2. Investments

The case mentioned earlier involving *Vincent M. and Malou D.* is one of the disputes in this category of cases in which the argument of investment is used as a determinant for decisions. Malou D. was summoned before the court by his neighbour Vincent because he had prevented Vincent from making a start with the building of his house. Malou then lodged a complaint with the arbitration commission while the case was still '*sub judice*'. Two months before the judge was due to pronounce his verdict, the commission took up the matter and decided to uphold the allocation of the disputed plot to Vincent. The determinant factor was the establishment that Malou had still not made any capital investment on the plot. It was explicitly said that the situation would have been different if he had made some sort of investment on that land before the allocation.

In the second case, *Ibou S. versus Henriette S.*, Ibou had built a house on land which was lent to him by his cousin Henriette. This house was the reason that the Plot Allocation Board decided to allocate the plot in question to him. In protest Henriette locked up Ibou's house and refused him further entry. Ibou turned to the arbitration commission which decided that the plot under litigation was legally allocated to Ibou S. in view of the improvements undertaken by him. Henriette should cease all claims to the said plot and return his keys with the least possible delay.

In the dispute between *Kecoune D. and Karamba G.*, it seems that during the subdivision of the large piece of land in which the houses of both Kecoune and Karamba stood, the area was so partitioned that the border between the two plots ran right through Karamba's house. Although the plot on which Kecoune's house stood was not allocated to him officially but was kept "in reserve" the arbitration commission decided nonetheless that Kecoune would be granted the plot and that Karamba would have to dismantle his house. The decisive factor was that Kecoune's house was larger and was constructed of better materials. Karamba was allocated another plot in the same district as compensation.

In the final dispute in this category, *Ismaila S. versus Diminga B.*, Ismaila occupied a modern brick house, which he built without a permit. During the subdivision of the district his plot was allocated to Diminga whose house had been demolished to make way for a road, and Ismaila had to demolish his own house in favour of Diminga. Only the Head of the Department of Urbanization voted against this solution, stressing that the value of the improvements made by Ismaila S. should not be underestimated.

3. Pragmatic solutions

In a number of instances the commission appeared to be aware of the argument that confirmation of the decision of the Plot Allocation Board and the boundaries drawn up for the subdivision would imply the irresponsible demolition of (good) houses. In three cases the commission examined the situation on location in order to see if the boundaries could be shifted around a little. This proved to be the case without exception, whereupon the commission ordered the Land Registry to move the boundary markers in accordance with its instructions.

In other cases the commission seemed convinced of the social injustice caused by the straightforward execution of subdivisions. That is why it allowed Sidy B. to continue to live in his house although the plot of land on which the house was situated was allocated to someone else. The commission stated that

'... the mud dwelling of Sidy B. is, it is true, in bad shape, but to conclude this in favour of Ibrahima G. would inflict a grave injury on a father who is at present unemployed and who has an excessively large family under his protection. Allowing Sidy B. to keep his building intact may create a difficult precedent in the series of litigation over which the commission will have to deliberate. Nevertheless, the commission has decided by way of exception, for reasons which are purely social, to leave the house of Sidy B. where it was built and to allocate plot number xxx or another one of his choice, to Mr. Ibrahima G.'

(The latter accepted this solution).

In another dispute the commission also decided to take away a disputed plot from one person by extraordinary title, and award it to a more deserving citizen.

Recapitulating, one could say that the commission's proceedings were under less juridical restrictions than the judges'. This becomes especially apparent from the economic, social and practical solutions which it proposed. Decisions of the Plot Allocation Board were upset by the commission only with a great deal of hesitation and by way of exception, which is scarcely surprising considering that it was made up of civil servants of the departments which had prepared and implemented the subdivision.

Traditional claims to land also appeared to stand little chance of being upheld by the arbitration commission. For the very same reason this is not particularly surprising. The consulting by the commission with both the district heads and dignitaries appears to have been able to change very little. Finally, it is worth noting that the policy of the commission was not very perspicacious with regard to the value which should be placed upon existing houses.

Conclusion

The relatively limited number of land disputes which were brought before the court in nearly three years compared with the hundreds of cases dealt with by the administrative arbitration commission in two years, demonstrates - in spite of the wave of criticism against this commission - a clear preference for dealing with land disputes at an administrative level to the detriment of the ordinary judge.¹⁷

An important explanation for this development must, in my view, be sought in the less formal proceedings of the arbitration commission in comparison with those of the law court: there is neither a Public Prosecutor nor an Examining Magistrate, conflicts are brought directly before the commission, parties and witnesses are not heard under oath, etc. Besides, the handling of a complaint by the commission is free of charge, whereas the costs of a lawsuit are usually relatively high: engaging the services of a lawyer, the risk of being ordered to pay the costs, etc. In many respects the inhabitants of a semi-urban city like Ziguinchor seem to be more familiar with the procedures of the commission.

The fact that in Senegal the criminal court, instead of the civil court, is charged with the settlement of urban land disputes may be a supplementary barrier for the Senegalese citizen seeking justice, involving the police and thus officializing the conflict, which may be contrary to his more traditional conceptions of dispute settlement.¹⁸ Although a criminal lawsuit may enforce the position of the claimant, most people in the more or less traditional setting, as found in the peripheral areas of Ziguinchor, will be reluctant to call in the police in order to maintain social relationships within the neighbourhood.

The absence of an approach in civil law and the obligation to seek recourse to criminal law has a number of prejudicial consequences.

Firstly, the judge cannot review administrative decisions (in this case the decisions of the Plot Allocation Board), but has to restrict himself to a judgement on the legality of such a decision. He may neither examine the suitability nor the fairness of it. In fact his choice is fairly limited: he can only attempt to force the defendant to leave the disputed plot by imposing conditional punishment or by constraining him. It is worth noting that, in this respect, modern Senegalese

law deviates from the French system from which it was largely inspired. The assumption that a distortion of the French system in the colonial period is the origin of this situation seems obvious to me.

The local authorities, harassed by social unrest, were aware of the problem of the limited resources which the judge had at his disposal. That is why the arbitration commission was set up as a sort of administrative appeal. The commission, besides passing judgement on the legality of the decisions of the Plot Allocation Board, can also test the policy of the Board, and its legitimacy and suitability. Moreover, it can revise the Board's decisions. For this reason, the arbitration commission was in a position to build in other socially inspired and practical criteria than the merely technocratic criteria wielded by the bureaucracy.

Another detrimental effect of a criminal law solution is that it often employs crude means. In a town like Ziguinchor the majority of the population does not realize the limited value of a ticket handed out in case of subdivision; the essential distinction in modern Senegalese law between ownership and the right of use is seldom clearly recognized by the citizens. Even more serious is the delusion of many that their more or less traditional claims to the land on which they live and which they cultivate offer sufficient protection against the claims of those who come armed with official papers. This is what makes a criminal law solution so absurd: the "defendants" in a criminal case involving illicit occupation do not feel in the least bit criminal. After all, they are living on their father's land or in the house of a partner who has deserted them.

I am aware that many aspects of urban land law and dispute settlement have not been fully discussed in this article. On the other hand, the traditional conceptions and the vulnerability of citizens involved in land conflicts may have been somewhat over-emphasized. Elsewhere I have stated that there is no manifest opposition between rural/traditional and urban/modern land law concepts and that, in the context of a town, various degrees of the vulnerability of the inhabitants can be observed.¹⁹

In this study I hope to have shown the problematic implementation by the State of its unified official land law, and the existence of the confusing distinctions - in the mind of the urbanites - of legal/illegal and of land tenure/land use. While not denying the merits of a more or less unified land law system, it must be said that a policy focussed on the ideology of legal centralism can have negative consequences in the long run, because it denies not only the creativity of the city-dweller in finding security of land and housing conditions, but also the existing social relationships and traditional normative structures and processes relating to urban land. As long as rights to land in the spontaneous settlements are considered illegal, the danger exists that large groups of urbanites are excluded from any security of tenure. The urban poor and the illiterate especially are a very vulnerable category, and they are an easy prey for local politicians and brokers. As long as their rights are not acknowledged, they are doomed to be eternal squatters who cannot benefit from the most elementary facilities in the city.²⁰

Notes

[1] An earlier version of this article has been translated from Dutch by Rosemary Robson.

- [2] For a significant study on legal centralism and legal pluralism, see Griffiths 1986.
- [3] The terms "spontaneous" or "anarchic" seem to be inadequate because in fact the expansion of African cities generally takes place in a thoroughly organized manner. "Spontaneous" here refers to the lack or absence of governmental planning, organization and control.
- [4] See especially Darbon 1984: 125-128, and Van der Klei 1989.
- [5] For the history of the city, see Bruneau 1979.
- [6] However, since 1987 a new law offers the possibility to apply for private ownership regarding urban land.
- [7] The agricultural zone is to correspond generally to the land exploited by farmers or herders; the classified zone consists mainly of the forest domain and the pioneer zone consists of previously undeveloped and unoccupied land destined for development according to the plans of the state.
- [8] The details of the expropriation procedure are governed by a separate expropriation law: Law no. 66-01 of 18th January 1966 relating to expropriation in the cause of public utility and other land transactions for public utility, abrogated and replaced by Law no. 76-67 of 2nd July 1976.
- [9] Law no. 76-66 of 2nd July 1976 establishing the *Domaine de l'Etat*.
- [10] Law no. 66-49, abrogating and replacing the Urbanization Code; see also Decree no. 66-1076, supporting the Urbanization Code (Statutory Section); Decree no. 72-1297, modifying Decree no. 66-1076; Law no. 79-78, abrogating and replacing art. 12 of the Urbanization Code; Decree no. 81-803 bis, abrogating and replacing section II of the first title of the Urbanization Code.
- [11] *Arrêté* no. 6288 of May 26, 1970 relating to requests for building permits in urban zones which pertain to national lands.
- [12] Logie 1978:94.
- [13] The criminal court judge cannot award damages. Therefore anyone who has suffered damages through a criminal action can, as a civil party, insert a claim for damages in the criminal case concerned.
- [14] A sound and interesting analysis of family strategies to obtain and maintain their family residences in town is given by Le Bris and others 1987.
- [15] I have discussed the problems relating to language in Senegal elsewhere (Hesseling 1982 and 1985) and in a comparative perspective (Hesseling 1981).
- [16] For a description, see Eichelsheim 1984:54-55.
- [17] In Senegal the involvement of the ordinary judge in the regulation of over conflicts rural land has decreased in favour of administrative methods of dispute settlement, see Le Roy 1983:551 and 1980:109 ff. For a comparable development in Botswana, see Werbner 1980; also Smith 1972.
- [18] See Le Roy 1983:576-577.
- [19] Hesseling 1984:384.
- [20] In this context see the significant case studies collected by and commented upon by Durand-Lasserve 1986.

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