

## Legalising Land Rights

Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America

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Tenure Security in the Periphery of Ziguinchor: The impact of politics and social relations

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### Introduction

Until 1964, the different ethnic groups and their respective land tenure systems dealt with land use in Senegal. In 1964, Senegal introduced a new land law, the National Domain Law or *Loi relative au Domaine National*. Senegal was the first former French colony in Africa to adopt a land reform. Although this law aimed mainly at rural development, it also contained regulations regarding urban land tenure. Indeed, the 1964 law divides the national domain in four categories, one of them being the urban zones. The law was considered as innovative since it did not try to unify the various colonial and customary land tenure systems in Senegal, but recognized the existence of local use rights and left it to local institutions to work out the practical details at the local level (Golan 1990: 20-21). To stimulate more private investment in cities, the government enlarged the possibilities for a citizen to acquire land as private property. Until now, this option is scarcely used in cities with enough space to expand and to absorb virtually without effort the great rush of new urbanites. Urbanites and urban migrants looking for a plot or a house rather followed unwritten rules and customs, as they knew them from their village, and they accommodated these rules, if necessary, to the urban context.

For years, the national and local governments paid little attention to the legal and policy aspects of urban land tenure and housing and cities developed without any significant intervention of the government. However, from the 1970s onwards the government has promulgated specific legislation on urban land, and has started urban development plans including allotment (*lotissement*) and re-allocation programmes. This also happened in Ziguinchor, the capital of the southern region of Senegal, the Casamance. This is the most fertile region of Senegal, but as a result of one of the strangest legacies of the colonial era - the creation of the tiny country of Gambia situated like an enclave within Senegal - the Casamance is practically cut off from the rest of Senegal. In the 1980s a rebellious movement, the *Mouvement des Forces Démocratiques de la Casamance* (MFDC), demanded separation from Senegal and the conflict quickly degenerated into a full-blown civil war with many casualties on both sides. In spite of many attempts to arrive at a peace pact (the last pact reached was in December 2004), fighting still flares up. Although this long drawn-out conflict has a complicated background, it is now generally accepted that one of the origins of the conflict lies in land disputes, which arose during the implementation of a re-allocation programme in Ziguinchor.<sup>1</sup>

In this paper we analyze the effects of the re-allocation programme on the life of the inhabitants of Ziguinchor. In the first part, we will give some details about the law relating to urban land, and we will introduce Ziguinchor and the re-allocation programme undertaken in this city. The next part is dedicated to the organisation of the Diola society - the dominant ethnic group in the Casamance - and the transition of the tutorial *adjjati* system from rural to urban settings. We will describe how both the urban environment and the re-allocation programme transform and politicise the position of the *adjjati* and the relationship with his followers. We will then analyse the effects of the re-allocation

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<sup>1</sup> For an extensive analysis of the conflict, see De Jong 2005. See also Evans 2000; Foucher 2003; Lo 2006.

programme on urban people's tenure security and on the individualisation of urban land rights. We will conclude that in the peripheral areas where the re-allocation programmes has taken place, hardly anybody has obtained a legally valid title. Despite this lack of formal recognition of their land rights, most people regard their tenure as quite secure. This can to a certain extent be explained by their erroneous belief that their 'tickets' or other *petits papiers* provide them with a legally secure title, but also by their *de facto* secure tenure resulting from the acts and attitude of the municipal government. At the same time, they realise that protection of rights based on a clientelistic system is always to a certain extent insecure and vulnerable. The data derive from research undertaken since the 1980s (Eichelsheim 1990, Hesselning 1983, 1986, 1992). The research area has been lastly visited in 2007.

### Law relating to urban land

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

The Senegalese urban land legislation is mainly to be found in three texts: the *Loi relative au Domaine National* (National Domain Law), the *Code de l'Urbanisme* (Urbanization Code) and an order relating to requests for building permits in urban zones (*Arrêté relative aux demandes d'autorisation de construire dans les zones urbaines sur des terrains faisant partie du domaine national*).

As said, the National Domain Law was adopted by the Senegalese legislature in 1964. In the law, 'national domain' (*domaine national*) is defined 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. With this act, all land which was held under customary 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 non-transferable 'use rights'. 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.

The national domain is subdivided into four categories, the first of which is designed urban zone (*zones urbaines*). 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*).<sup>2</sup> Land within the national domain can be converted to state property.<sup>3</sup> This is frequently the case in (the periphery of) 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 not when the land has been built on illegally.<sup>4</sup>

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 national domain can never be considered to include property rights. As stated before, the occupant only has 'use rights', which are not clearly defined by the law. Inhabitants living on state property

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2 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. See Caverivière & Debène 1988: 81-82; Elbow & Rochegude 1989: 14.

3 For a detailed discussion of the distinction between national domain and state property, see Caverivière & Debène 1988: 85-88, and Elbow & Rochegude 1989: notes 35 and 43.

4 The details of the expropriation procedure are governed by a separate expropriation law: Law no. 76-67 of 2 July 1976, which abrogated and replaced Law no. 66-01 of 18 January 1966, relating to expropriation in the cause of public utility and other land transactions for public utility.

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 these permits can be withdrawn without compensation after a three months' notice, it hardly offers a better security to the holder than the earlier mentioned 'use rights'. 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 a much better security to the holder, it is hardly applied in a city like Ziguinchor because of the required obligations for the leaseholder.<sup>5</sup> The national domain of Senegal accounts for more than 95 % of the national territory. Another 3 % of the national territory consists of state property, leaving 2 % of the land in the hands of individuals who had acquired private title to their land holdings prior to 1964. In the same year that the National Domain Law was passed (1964), a *Code de l'Urbanisme* also came into being. In article 1, the aim of the urbanization policy is put into words: '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.'<sup>6</sup> In pursuance of this policy town plans were to be drawn up, including plot lay outs for the reallocation of rights in land in residential areas. The Code also decrees that whoever wants to build a house in a town has to be in possession of both a permit to settle and a building permit. An order (arrêté) of 1970 regulates how one should go about getting a building permit for a piece of land in the national domain.<sup>7</sup> A permit to settle is only granted after the building plans have been approved. It is non-transferable, and lapses if construction has not commenced within two years after the initial granting of the permit. Finally, in 1996 a number of laws and decrees were adopted that aimed at more decentralisation, transferring competences from the state to local institutions such as regions, city councils and rural councils (République du Sénégal 2003). According to these regulations allocation programmes and the distribution of residential plots are no longer the responsibility of the state but of the Municipal Council.

## Ziguinchor

In Senegal, as in most African countries, an extremely rapid urbanisation process has taken place. Senegal is one of the most urbanised countries in sub-Saharan Africa: 46% of the Senegalese people now live in cities. Although the capital Dakar attracts 55% of the urban population, intermediary cities like Ziguinchor have also grown considerably. At the turn of the last century, the population of Ziguinchor was about 1 000, in 1960 it had risen to 30 000 inhabitants and by 2004 the population was approximately 170.000.<sup>8</sup> The annual increase of more than 5% can be attributed half to natural processes and half to the influx of immigrants from the surrounding villages and from other parts of Senegal. With this rapid growth in the city's population comes an increasing demand for building plots. A great area of agricultural land has been converted to residential uses. The city of Ziguinchor is still characterised by housing plots of some 400 square meters, broad roads with trees on both sides and one-storied houses. It is therefore not surprising that land nowadays has become rather scarce in the periphery of the city. Between the 1960s and 1980s, Ziguinchor has expanded outside its central districts with little or no involvement

<sup>5</sup> Law no. 76-66 of 2 July 1976 establishing the *Domaine de l'Etat*.

<sup>6</sup> The Urbanization Code was abrogated and replaced by Law no. 66-49; 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. 81-803bis abrogating and replacing section II of the first title of the Urbanization Code.

<sup>7</sup> Order no. 6288 of 26 May 1970 relating to requests for building permits in urban zones which pertain to national domain. See also Gadiaga 1984.

<sup>8</sup> For an overview of the historical development of Ziguinchor, see Bruneau 1979, Trincaz 1984.

from local authorities. Because of the constant growth of the population and the comparatively low supply of legalised buildings by local authorities, people looking for housing plots are driven to the periphery of the town.

As said, until 1964 land use in Senegal was dealt with by the different ethnic groups and their respective land tenure systems. Thus the land of the ever-expanding city of Ziguinchor belonged to the inhabitants of the surrounding Diola villages. The Diola form the largest ethnic group in the region and an important ethnic group in the municipality of Ziguinchor.<sup>9</sup> Because local government paid little attention to the way the town expanded, a great variety of so-called 'spontaneous' settlements developed in the periphery of the town. With permission from Diola landlords one could easily acquire a plot of land. In fact, as we will show later, this 'anarchic' expansion took place in a thoroughly organised manner.

In 1964, the National Domain Law divided all land into three categories. These categories can easily be distinguished in the situation of land tenure in the municipality of Ziguinchor.

1. Land owned privately (*titres privés*), concentrated mainly in the centre of the city.
2. Land which is state property: the greater part of urbanized space in Ziguinchor was registered in the name of the state.
3. Land which pertains to the national domain: all land that is not registered as private or state property. This affects mainly the western part of Ziguinchor, the less urbanized area of the city.

In the 1970s, the local authorities decided to reorganise the land situation in Ziguinchor to end the proliferation of unregulated 'anarchic' town development, and replace it with sound town planning regulation, marking residential areas as well as reserving space for roads, drainage systems, waterways, and other public facilities. This should enhance the living quality and 'favour an active social life' (Livre blanc 1980; République du Sénégal 1991). The local authorities targeted both older districts of Ziguinchor, which are state property, and newer, 'spontaneous' developing residential areas on national domain land. The re-allocation programs were to be done on the basis of new plot lay outs. 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. The procedure was relatively simple. In principle every family head that was able to prove that he lived with his family in the district was eligible for a plot of about 400 m<sup>2</sup>. To subdivide the land according to the plot lay out, however, approximately 60% of the existent houses had to be demolished. Not surprisingly, quite a lot of the re-allocations developed into disputes, of which relatively few were brought before the court (Hesseling 1990).

After the surveying of the area, a Plot Allocation Board was supposed to supply each family head with a piece of paper ('ticket') with the number of the plot and his name. Most ticket-holders think that such a paper confers the ownership of the land to them, but nothing could be farther from the truth. They additionally have to go through 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. Especially in the peripheral areas of the town very few of such ticket-holders ever started these procedures.

As said, in Ziguinchor re-allocation programs were executed both in areas where the land is state property, as well as in areas falling under the category national domain land. Due to the different rights that can be obtained in these two categories of land, the allocation programs have a different effect on the respective landowners, especially with regard to the possibility of requiring private title. When a plot is located on state property and the beneficiary has a building permit, he can ask for a lease (*bail emphytéotique*). The cadastre first dresses an official report of the value of the investments made and after a long process the lease can be transformed into a private title. But if the plot is part of the national domain, the state cannot give out such a lease. The National Domain Law provides

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<sup>9</sup> For more information on the organisation of Diola society, see Pelissier 1966 and Thomas 1959 and 1968; with regard to the traditional law of the Diola, see Ki-Zerbo 1997.

for a conversion of urban (re-allocated) national domain land into state property, but, to date, no land in Ziguinchor belonging to the national domain and subject of the re-allocation programmes of the 1970s and 80s has been converted into state property. This has only been done in the case of some new and recent re-allocation programmes. Nevertheless, anybody can deposit an application for a lease, whether his/her plot is on national domain land or on state property, and the regional Domain Department will even register this application, although they will not send it to Dakar for validation. The regional Domain Department nowadays even encourages citizens to ask for a lease on national domain land, as they hope that a massive demand for leases will incite the government to convert large parts of national domain land into state property. This conversion would subsequently open the opportunity to obtain a lease and ultimately a private title. Despite this encouragement, not many people apply for a lease on national domain land. They do not see the use of paying the registration fees and the first year of the lease rent only to wait until the land on which their plot lies is converted into state property.

It should be mentioned that no data are available with regard to the number of people involved in a re-allocation programme who have succeeded in obtaining a private title following a lease. Registration figures show that land titles have only sporadically been registered the last decades. Until recently, there are considerably less than 3 000 land titles (*titres fonciers*) in the whole of the Ziguinchor region, an area of more than seven thousand square kilometres and approximately 450.000 inhabitants. Most of these titles have been registered prior to the introduction of the National Domain Law in 1964 or in the delay granted by this law. In 2006 the Domain Department registered only 190 new *titres fonciers*, mostly in the new urban district of Ziguinchor, Goumel. Here, a large area of rice fields at the outer confines of the town has been divided into residential lots and converted from national domain into state property in the end of the 1990s.

In sum, for people inhabiting a plot that belongs to the national domain, it is legally impossible to obtain a lease and subsequently a land title in order to have absolute tenure security in the form of private property. This requires a conversion of the land to state property, which has only taken place in a few areas that have recently undergone re-allocation programs. In these areas, some land titles have been registered. It seems, however, that in areas that have been state property for a much longer period, also not many land titles have been registered. This might imply that a simple conversion of land without a clear interest and commitment of the government to stimulate privatisation cannot be expected to have much impact.

### **Diola land tenure: The *adjati* relationship in rural and urban settings**

In order to understand the frame of reference for an urban migrant settling on Diola land in Ziguinchor we must know how the land-tenure system operates in a Diola village. The Diola have a long tradition of sedentary agriculture activities, mainly consisting of rice production. The best rice fields are those at the border of the Casamance River and its tributaries, threatened by the salt water of the Casamance River. These low fields, which have a high value because they are fairly scarce, need a lot of manpower for maintaining dikes. The hydraulic system is controlled by a small group of village elders and this form of rice cultivation is centuries old. The fact that many generations invested their labour in the maintenance of these fields gives an extra dimension to their value. The Diola are more strongly attached to their land than groups practicing shifting agriculture.

As is the case in many African countries, this also explains the existence of the following feature in the social organisation of Diola society, based on the control over land: a sharp distinction between the indigenous population and strangers (both from inside and outside the ethnic group). Each Diola village has witnessed both immigration and emigration flows in the course of years. Those who control the land also control certain aspects of these migration movements and especially the location pattern of newcomers. These newcomers

are in every way inferior to indigenes, concerning settling, religious and political matters. In Diola society the complex network of relations between indigenes and migrants is called the *adjiati* relationship. In these local patterns of interaction, the elders of the lineages control the newcomer's access to land by acting as host (*adjiati*).

The *adjiati* is a host who gives shelter and food to a newcomer in his own house. The guest or stranger (*adjaoura*) finds in the house of his *adjiati* his first shelter and access to the society he wants to become a member of; his first necessities of life are cared for. He has a solid basis from where he can explore the (social) environment and search for the possibilities for a new home. Then the *adjiati* provides his guest with the opportunities to settle: he gives him a plot of land to build his own house or otherwise puts him in contact with another elder who is prepared to cede land: the *adjiati* becomes landlord or 'middle man'. It is important that the *adjiati* establishes all new relations for the *adjaoura*. In exchange for shelter, mediation and access to land, the *adjaoura* has to acknowledge the social superiority of his *adjiati*. He has to treat him as some sort of father.

The so-called 'spontaneous' expansions of Ziguinchor originated mostly in the way described above. These districts have their own dynamics in patterns of organisation in which control over land plays a crucial role (see also Eichelsheim, 1986). The inhabitants of these 'spontaneous' districts consider their plot of land, on which they build their home, as a safe place, despite the fact that these places of settlement are not legalised or recognised as such by the national authorities or those of the municipality. The feeling of security of its inhabitants derives from the *adjiati* relationship. They feel protected by their *adjiati*, to whom they have fulfilled their obligations, or still do.

After the adoption of the National Domain Law, all land subject to customary law formally became national domain land and thus passed into control of the state. This happened also in the areas of extension in the fast expanding city of Ziguinchor, where Diola landlords from surrounding villages lost their control over the land to the state. At first, this new legislation did not have much effect on access to and regulation of land, but in the 1970s the municipal authorities decided to legalise and upgrade the 'spontaneous' settlements and started the re-allocation programme, in which they discarded the existing local rules. The case of Abdoulaye Diedhiou, discussed below, shows that those rules are nevertheless highly resilient. Up to this day, people gain access to land through *koudjiati* (plural of *adjiati*), without state interference. It also indicates the changes the *adjiati* relationship undergoes when transplanted into an urban setting, where law and politics of the state converge with the Diola system of norms and political leadership.

#### *The case of Abdoulaye Diedhiou: from adjaoura to adjiati*

Abdoulaye Diedhiou is a Diola from the village of Diatock, where he was born in 1939. In 1966, he wanted to settle in Ziguinchor and in the 'spontaneous' area called Soucoupapaye he found a co-villager who was prepared to shelter him and thus become his *adjiati*. For his subsistence during the first years, Abdoulaye cultivated some rice fields in the nearby village of Niaguis. At home, in Soucoupapaye, he became more and more active in the then ruling political party, the Parti Socialiste (PS) and his star was rising in the hierarchy of this party. When, in the 1970s the municipality started the re-allocation programme in Soucoupapaye, Abdoulaye's *adjiati* received five official residential plots, marked parcels of land with a cadastre number. From these, Abdoulaye received two plots. But since he also wanted a plot for his two sons, he was one short. To resolve this problem, he decided to sell one of the plots he just received and to lease the other one. With that money, he bought a much bigger parcel in a not yet legalised district in the periphery of the town, Lyndiane.

There he met Sidy Sidibé, a high ranking official in the Municipal Council. As the son of the landlord of Lyndiane, Sidibé occupied a large parcel of three hectare belonging to his patrilineage. Anticipating on the re-allocation programme in Lyndiane, he decided to subdivide his parcel into smaller plots and to sell them. As a civil servant he knew that it was prohibited to sell his land, because it was located within the national domain. To

avoid direct involvement in the sale, he therefore asked Abdoulaye Diedhiou to look for people interested in buying a plot and to handle the transactions. For his work he could keep one of the plots.

Abdoulaye Diedhiou grasped this opportunity with both hands. He had no problem in finding potential buyers amongst his friends and relatives. They trusted him because he had close relations in town via his political friends. He sold all the sites to relatives, friends, villagers and co-habitants from Soucoupapaye in no time. After some time, people even started coming to him asking if he had plots to sell or if he knew somebody selling plots of land.

These transactions passed so smoothly that other landlords asked him to sell land for them. The agricultural value of these fields had decreased because they had been fallow for some years due to a lack of rainfall in the last years and because fewer members of the patrilineage were prepared or able to cultivate the fields. And, after all, in the rhetoric of Diola social organisation, the elders of the patrilineages were considered to keep control over the fields, despite the fact they were 'sold' for money. This money was seen solely as compensation for the usufruct of the fields. In short, there were many reasons to 'lend' a small part of the land to strangers who wanted to pay for it. The landlords left all the work to Abdoulaye Diedhiou: he divided the land into plots, searched for buyers and established contacts between the buyers and the landlord. As compensation he always received a piece of the land.

Gradually, Abdoulaye Diedhiou got hold of the monopoly of all land transactions in the area. Buyers considered his good contacts with the outer world (read: prominent political figures who played an important role in the municipality) as a guarantee for their high investments in - officially illegal - transactions. Besides that, he came to be considered as the *adjati* of all newcomers and as the highest traditional authority to whom they could turn to in case of problems or disputes.

Money was not the only requirement for gaining access to a building site in the new district of the city. Abdoulaye's monopoly allowed him to sell the plots of land selectively. Many of his transactions appear to be based on relations of trust, or rather on relations of (putative) kinship, because that is what the *adjati* relationships were based on.

Abdoulaye Diedhiou profited greatly from his role as an intermediary. By selectively giving access to land, he could surround himself with people who would follow him in his political activities. This enabled him to determine the voting results in the new district of Lyndiane-Golomoute. As a result, he became good friends with executives of the largest political party. The party leaders nominated him district chief, which gave him considerable financial advantages. Furthermore, at the recommendation of party leaders, he took control over the dispensary in the district, and he built a coranic school on one of the plots given to him as a reward for his mediation. In short, he became a person in the district who had to be reckoned with.

The case of Abdoulaye Diedhiou shows how urban immigrants first seek provisional shelter, from where they investigate the possibilities to obtain a permanent and strong foothold in the city. The last stage is building a family house, which in turn, will serve to provide shelter for young people from the surrounding villages who are attracted to the town by schooling and job opportunities. Thus, members of a family and villagers who already live in the city become more and more important as providers of first shelter in the urban environment. An immigrant (*adjaoura*) will always maintain contacts with the *adjati* who opened the way to the city for him, even after he has obtained his own plot of land. This example demonstrates that the *adjati* relationship continued to function in the urban context. Abdoulaye Diedhiou, who started being Demba's *adjaoura*, became the *adjati* for many inhabitants in the new district of Lyndiane-Golomoute.

The *adjati-adjaoura* relationship is not only about land. The *adjati* also seeks other means to create personal bonds with his *adjaoura*. In urban areas, these are found in his contacts with the 'outside world': with local government officials and political party leaders and in his connections on a regional and national level. This implies a politicisation

of the *adjjati-adjaoura* relationship. In Ziguinchor, the provision of first shelter and access to land, as the most important elements in the *adjjati-adjaoura* relationship, are thus gradually substituted by a smooth introduction in the urban environment. The wider one's network of valuable contacts in the city, the more one is respected and the more one will be chosen by urban immigrants as *adjjati*. In return, the *adjaoura* contributes to the prestige of their *adjjati*.<sup>10</sup>

This new feature in the role of the *adjjati* in the urban context is not opposed to the traditional order. It is recognisable and acceptable for members of the traditional society as an expansion of the *adjjati's* function, which in the organisational structure of the village already was the highest political authority controlling the contacts with the outer world. Problems arise, however, when the *adjjati*, out of necessity or by choice, identifies himself too much with the outer world and neglects his obligations towards his *koudjaoura* (plural of *adjaoura*). Such a conflict of interest can for instance arise during the implementation of a re-allocation programme. In the next section we will show how the new involvement of the municipal authorities in urban land planning can alter the position of *adjjati* and the relationship with their *koudjaoura*.

#### *Municipal involvement and its effect on customary land tenure systems*

In order to gain some control over the promiscuous growth of the city, municipal authorities have, since 1969, drawn up town plans for the city of Ziguinchor. On paper, the 'spontaneous' residential areas were restructured in small building lots for housing and spaces for roads and public use, all according to a strict grid-pattern. The intention was to upgrade these 'spontaneous' settlements in several stages. First, the individual building lots, the proposed streets and the position of public places were laid out with little concrete markers in accordance with the plan. After that, the inhabitants had one year to adapt their environment to the new division, which meant that all houses standing on the newly traced roads or public places had to be demolished by the inhabitants themselves. The Lot Allocation Board supplied each family head in the district with a written note ('ticket') stating the name of the head of the household and the number of the building lot allotted to him. Within one year, the whole reshuffle of the district should have been completed. In reality, many disputes originated from the allocations made by the Lot Allocation Board and many people refused to demolish their houses (Hesseling 1990). It appeared that local politicians from the ruling PS had a considerable say in this board (Eichelsheim, 1986:53). The subdivision of the 'spontaneous' settlement areas, whereby the municipality gave the then illegal inhabitants an official building lot, appeared to be a welcome new source of capital for these politicians. The population density in these residential areas, subject of subdivision, was low and many building lots were not distributed after the subdivision. Assigning fewer or sometimes even no building lots to political opponents could even increase the number of 'spare' building lots. These spare lots were then given to members of the same faction within the party or sold to other interested people. Members of the military elite who were born in Casamance, members of the higher bureaucracy from the north, and natives of Casamance who worked in Dakar or France, were particularly interested in the spare official building sites. In 1983, the prices paid for these building lots went as high as one million F CFA (€ 1.524) or even more. It will be clear that the results of this form of subdivision - heavily influenced by politicians and political considerations - clashed with the existent organisational structure of the district, based on customary land tenure systems. Before the subdivision, as we have seen earlier, the *adjjati* gave the usufruct of land to his *adjaoura* and with that, according to the old Diola organisational patterns, he automatically agreed to protect his *adjaoura* as though he were his own son. The selling of land to people from outside the *koudjaoura* group is at the expense of members of that group. The needs of all members of the *koudjaoura* group must be satisfied first before 'outsiders' can gain access to land. In

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<sup>10</sup> Hesseling (1991) describes the various strategies employed by people who wish to become urbanites. See also Turner 1968, whose ideas have for a long time influenced urban developments in developing countries.

addition, members were defined in a very inclusive way: sons, daughters and all other members of kin have priority over outsiders.

Within this perspective, the position of *adjjati* becomes untenable when the roles of *adjjati* and politician meet in the same person. A politician wants to surround himself with as much followers as possible, even from the outside, whereas the *adjjati* relationship is mostly focussed on a fairly small inner circle. As described before, the politicisation of the *adjjati* relationship is not surprising: dependant followers surround the *adjjati* as he provides the usufruct of land and other favours. According to ancient traditions, he is their political authority. However, when he wishes to partake in regional and even national political processes and power struggles his role of local political leader expands to a broader horizon. He then must answer to pure political demands, even when these may hurt his inner circle.

When, in the eyes of his *adjaoura*, the *adjjati* does not fulfil the expectations related to his role, he will lose his authority. With great effect: the *adjaoura* feels betrayed and will turn against him and his political associates. High emotions usually go along with these tensions. In Ziguinchor this resulted in a lot of land law conflicts, in which 'outsiders' - immigrants and civil servants from other parts of Senegal - played a prominent role. General aversions arose against everybody and everything not originating from the Casamance, generating large protest manifestations and violence, and ultimately even the involvement of the national army.

The accumulation of protests and violence forced the Governor, in his function of highest representative of the government, to look for an alternative and generally accepted legislative arbitration commission. The Diola association *Karambenór* (work together) was useful. On the one hand, its leaders were strongly related to government as many were civil servants in colonial times. On the other hand, since they propagandised the old values of Diola society, the members of *Karambenór* were in general well respected in the districts of Ziguinchor. Thus, the Governor nominated members of *Karambenór* to an arbitration commission, which had to evaluate all lot allocations and, if possible, resolve disputes.<sup>11</sup> This meant that a board of 'wise men' joined the existing administrative arbitration commission, *la Commission des Litiges*, which consisted largely of civil servants. This resulted in a new approach: members of the commission went into the districts to evaluate disputes on the spot. This was a time-consuming approach that in effect prevented the civil servants from fully cooperating and in time, they left the work completely to the members of the *Karambenór*.

Between the 15th of February 1982 and the 5th of July 1983, members of this arbitration commission have evaluated 5 171 lot allocations of which they put 1 558 cases of conflict on record. By means of on-the-spot clarification of decisions made by the Lot Allocation Board, they were able to resolve 826 disputes. Through discussion and deliberation, and by examining each case thoroughly, they were able to reconcile another 696 conflicts. After this success, the Governor decided to formalise this form of approach and on July 8, 1983 a new commission was set up: *la Grand Commission Administrative*.<sup>12</sup> This commission was divided in a technical board, consisting of representatives of the Governor and the municipality and all the Departments involved, and a board of 'wise men', consisting of district heads and dignitaries and members of *Karambenór*. In this form, the preparative work on the spot by the board of 'wise men' was given the legitimacy it needed by the technical board.

The commission succeeded in evoking the old atmosphere from the villages: long palavers under a big tree where everybody can have his say. In the end an elder made a proposal, mostly a compromise, which in general was accepted unanimously. Furthermore, the commission took into account the old claims on land and the investments made by individuals. It is also important to notice that, in the eyes of all involved, the state was not publicly represented. The representative of the Municipal Council in the commission acted

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<sup>11</sup> Decision No. 0434/GC du 16/02/1982

<sup>12</sup> Arrêté no. 60/GC/AA

as a dignitary and not as an official. The elders of Karambenór solved the land disputes as the elders in the village. The working of the commission illustrates the discrepancy between the law and its perception by the citizens.

### *Effects of allocation programs*

The re-allocation programmes of the 1970s and 1980s have been the subject of some research (Eichelsheim, 1990; Hesselting, 1992). It is striking that some peripheral districts in Ziguinchor in which the division of plots was heavily restructured during a re-allocation programme in the 1980s, remained in some other aspects almost unchanged even twenty years after the implementation of the re-allocation programme. For instance in the area of Sougoupapaye, revisited in 2006 and 2007, there is hardly any improvement of the roads and the services in the area, and some of the salient conflicts are still unresolved or in the process of being solved. In the sections below we will look at two anticipated consequences of re-allocation programmes, the enhancement of tenure security and the individualisation of land tenure, and analyse to what extent these have materialised.

#### *Tenure security*

The large majority of the people involved in re-allocation programmes in Ziguinchor have not gone through the process of registering their use right permits as a first step to obtaining a lease or a *titre privé* on their urban plot. These people expressed that they felt secure enough in the current situation. Their feeling was based on the acts and attitude of the municipal authorities, and was reinforced by the possession of the small paper ('ticket') delivered at the time by the re-allocation commission, which shows their name and the plot number, or of other formal or informal documentary material.<sup>13</sup> Some of them even made investments to improve their houses. And people are continuing to look for residential plots in the area. A schoolteacher in Soucoupapaye expressed his feeling of security as follows:

"Somebody who wants to buy a building lot in town quickly bumps into a broker residing around the Cadastre Department. They will propose several locations and will accompany you to take a look. When you are interested, they present you to the owner and discussions on the price will be held. If you agree with the owner on a price you will then discuss with the broker on what price will be the official price mentioned on the mutation papers on which you have to pay a 15 percent tax to the Domain Department. He will then also fix his percentage on the deal, but assures you that he will take care of everything and that his interference will be very beneficial for you. You then have to fill in a pile of bureaucratic papers with many seals and present witnesses. You pay small fees for seals and paperwork for each of which you receive receipts. It all looks very official and reassuring. If at the end they give you the sealed note that the building lot is on your name, you really think you are proprietor of the land. It has cost you some money, but you now are officially landowner! Moreover, look around you. When there is a problem, for instance when your building lot is on land designated for a school or mosque, the Municipal Council will give you another building lot and will even give you some money for your investments. So why worry? You can have confidence in the transaction. This was confirmed by Insa Manga of the Urbanism Department who told me: 'When you have a building permission, you have right to compensation.'"

Another inhabitant of Ziguinchor, Lansana Sambou, states that he feels secure of his tenure because his uncle succeeded in changing the name of the 'ticket' in his favour. The father of Lansana Sambou, Doudou Sambou, got the famous 'ticket' from the Lot

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<sup>13</sup> For a critical discussion concerning tenure formalization and the importance of *petits papiers* for the poor, see Durand-Lasserve (1986, 2002, 2007).

Allocation Board in 1978, a small piece of paper with the number of the building lot and his name. Doudou Sambou died in 2000, but before passing away, he said to his elder son that the lot would be his. His elder sister would be married soon and thus would have no need for it. Nothing much happened after his father's death until an uncle, working in the national agricultural research centre, advised him to change the name on the 'ticket'. Why and how was not so clear to Lansana, so he left it all to his uncle who did all the necessary. It was the uncle who went to the tribunal and filled in the heritage papers to obtain a death certificate, a heritage certificate, a wedding certificate and a birth certificate. He also went to Cadastre to pay the 20.000 Francs (€ 30,49) fee for the four concrete markers which were used in 1978 to demarcate the building lot. Lansana only paid the € 30,49 and received a new 'ticket' with his name on it.

His father had not build the house with durable materials but erected the four rooms of dried mud, as most people do in this area. According to Lansana, because the construction is not done in concrete, he does not need permission from the Municipal Council. In his opinion, the situation is okay as it is, although he would prefer that the municipality did something with these mud roads that become violent torrents in the rainy season. The municipality must know all these problems, as the district head is living only 150 metres away, just near a canyon of some three meters deep:

"The municipality does nothing and what can we do? Poor people like us do not frequent official instances. We prefer to stay away of all that. Land ownership is very complicated, demands much paperwork and a lot of money. Furthermore, it is very hierarchically structured, where only the very rich can obtain full possession and become richer. We only want a home, a family house to live in. We do not need that entire fracas. My name is actually mentioned on the ticket, given in 1978, on top of the number of this building lot. What do I want more? I keep it in a metal box under my bed."

Another inhabitant of Soucoupapaye, Sidy Soly, never paid whatsoever and yet he claims that the Lot Allocation Board not only gave him the famous 'ticket', but also an official paper which explicitly mentioned that his plot was his forever.

The above examples show that people feel to a large extent secure in their tenure. This feeling is partly based on a false assumption that their tenure is legally secure, but also on what they see happening in practice. The municipal authorities only seldom interfere with their houses and plots. And when they do demolish structures on a plot situated in an area designed for public infrastructure such as a school or a health centre, people with a 'ticket' almost always receive another plot in substitution.

Ignorance about the official land legislation is indeed widespread. Even the district head of Soucoupapaye admits that he knows very little of procedures leading to an official legalisation of the plots after the re-allocation programme in the 1970s in his district.

When inhabitants of his district ask his advice, he can only tell them to meet the different departments involved in the procedure, such as Cadastre, Topography and the Tax department. He tells us that in his opinion there is a great distinction between official land tenure legislation and the daily routine. The perception of land tenure security is, he says, mostly based on clientelism: many local people know somebody in the Lot Allocation Board who is willing to distribute a lot number with a personal name attached to it, the 'ticket'. And since members of this board are highly placed people, you can trust them. Problems may only occur when these people lose their position and they are no longer able to protect you. But, he continues: "Why bother? You can have permission for this and permission for that. You can have many papers with official seals and have paid a lot of money for all those seals and permissions, but you know as we all do: if the government wants to take your land, it will take your land. Things can slow down if your protection is bullet proof, but in the end you will lose your land." Despite a general feeling of tenure security, most people are realistic enough to realise that such threats are inherent to a personalised, clientelistic system.

### *Individualisation of land tenure*

Although most people continue to live on the urban plots with their family members, and most of these family members feel quite secure when 'their family' has a 'ticket', in reality the 'ticket' grants the plot to one person only. This orientation of urban land tenure towards a more individual land tenure system causes many small family tragedies, as will be shown by the case of the Sagna plot. Safietou Sagna was married to Yaya Dieme who died in 1991. They lived in the Dieme family house in Soucoupapaye.<sup>14</sup> After the death of her husband, Safietou Sagna was not ready to accept her traditional transfer to the brother of her husband. She asked her father, then living in the village of Diatock, if he would allow her to live in her brother's house in Ziguinchor. This brother, Mamadou Sagna, had bought some land in the Lyndiane district in the year 1968. This piece of land was bought from a Serer farmer, whose daughter still lives on another piece of the land. Mamadou build a house with dried mud and allowed his brother Ousmane to live there, while he goes for work in Dakar. When the authorities decided to re-allocate the area in which Mamadou's plot was situated, he gave a copy of his ID to a third brother, Ahmet, and asked him to make sure that the plot was allocated to him, Mamadou. But Ahmet puts his own name on the 'ticket'.

Safietou's father and Mamadou allow her to build a house on the corner of the building lot. As soon as the mud-dried rooms are ready, Safietou leaves the house of her deceased husband and starts living in Lyndiane in 1992. The building lot is a microscopic labyrinth of minuscule alleys between mud-dried rooms where doors open and close, creating a buzzing atmosphere. This microscopic labyrinth is small Diatock (the native village of the family) in an urban setting and creates a feeling of security with regard to the plot considered as family land.

Finally Mamadou is retired and takes the opportunity to visit Lyndiane. He asks his brother Ahmet to come to Ziguinchor to change the name on the 'ticket', but Ahmet refuses. All this time, Safietou assumes that the building lot is family land, and does not know that in fact Ahmet's name is on the 'ticket'.

A lot of time passed away and with that Ahmet Sagna. Mamadou Sagna is enjoying his retirement and still living in Dakar. It is only in 2006 that Safietou checks with the Cadastre Department on which name the building lot is registered and discovers that it is on the name of her deceased brother Ahmet.

What to do now? For the first time Safietou starts to be anxious about her future. The four children of Ahmet Sagna continue to live on the family lot in the house of their uncle Ousmane. The building lot becomes more and more crowded which from time to time creates tensions between Safietou and her nephews and nieces. And although for the moment they do not want to take any initiative and nail down the situation, Safietou realises now that they - as the rightful heirs of their father - could at a certain moment decide to claim the building lot and that she will be compelled to leave her house. And she has no money to move. When she goes to the municipal services for advice, she discovers how wrong her perception of the building lot as family land has been. The 'ticket' has a first name and a family name, thus concerns only one person, in her case her deceased brother Ahmet. In Safietou's opinion the building lot should go to her eldest brother, Mamadou, who promised that he would take care that the lot remains family land and that she could stay in her house. But the municipal services also told her that the procedures to change the name of the 'ticket' and subsequently obtain the property of the building lot and the houses on the name of Mamadou, are long, complex and costly, and require the cooperation of Ahmet's children. After consultation with her brother Mamadou, she decides 'to keep silent' for the time being and not to take any action.

The case of the Sagna plot is representative of what is happening in many popular districts of Ziguinchor. It displays that the issuance of personalised 'tickets' leads to an individualisation of land that often used to be considered as family property. Many family

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<sup>14</sup> The importance of the family house in Africa has been documented a.o. by Le Bris et al. 1987.

members of 'ticket'-holders feel secure in their tenure, either because they are unaware of this change or because they trust the 'ticket'-holder to take care of his family. When the family situation changes or personal relations come under strain, family members can be confronted with the insecurity of their tenure and come off the worst. The urban land legislation aiming at private property of land and houses thus enhances the tenure security of some, but also endangers that of others. It increases the vulnerability of people who lack good knowledge of the legislation.<sup>15</sup>

### Some concluding remarks

We have seen in this paper that in the Senegalese town of Ziguinchor re-allocation programmes have been undertaken since the 1970s. These programmes did not replace the earlier land tenure situation based on Diola customary law, as they were naively envisaged to do. They rather created a new, hybrid system that combined a continued importance of the Diola *adjiati-adjaoura* relationship with a role for new actors involved in municipal town planning. In this new urban constellation, the position of the *koudjiati* became more and more politicised. This expansion of his role was acceptable for the members of the traditional society as long as the political ambitions of the *adjiati* did not result in him neglecting his obligations towards his *koudjaora* in favour of the interests of his other, 'immigrant' followers. When the *adjiati* starts to answer to political demands that hurt his inner circle, he loses his authority and his *koudjaora* turn against him and his political associates. In Ziguinchor, this resulted in high tensions between locals and 'outsiders' and even in violent clashes.

The case of Ziguinchor clearly brings to the fore the well-known truth that land tenure and property rights are institutions in which people's access to, use of, and control over land are highly dependent on social relations. When these are transformed and reconstructed over the course of time and in a different environment, land tenure is readjusted accordingly (cf. Juul and Lund 2002). This paper has posed the question what the effect of this changing constellation is on people's tenure security. We have seen that people in the study area feel to a large extent secure in their tenure. Although most of them do not have a legally sound title to their land, many are in the erroneous belief that their 'tickets' or other documentary material does provide a formal title. Very few really know their way in the legal labyrinth and not every man in the street can meet a department director to be rightly informed. But also those who know that, from a legal point of view, they may lose land and home with a stroke of a pencil, do not really worry. Practice proves them right. Rare are the occasions that houses are torn down without state compensation. For the people it is enough to know that they will receive compensation for the investments they made in case the government decides to upgrade the area in which their plot is located and their houses have to be torn down. Even when their rights to land are not legally secure, people trust the current state of *laissez faire* to continue, and expect to be protected by political strong men, through their relationship with their *adjiati* or with people involved in the municipal land planning system, such as members of the Lot Allocation Board. As long as this protection stands, they believe to be quite secure in their tenure vis-à-vis the government.

A different issue that has also been discussed in this paper, is the effect of the individualisation of family land due to the issuance of personalised 'tickets'. The case of the Sagan plots clearly brings out that the enhancement of tenure security of some people

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<sup>15</sup> Despite the fact that the people in Ziguinchor are relatively well educated (the region of the Casamance has the highest rate of primary education in Senegal), lack of knowledge of the ins and outs of urban legislation is ubiquitous. This is illustrated by the Sagna case. The Sagna family is a modern, well-educated family. Two daughters have their baccalaureate, one of them currently works as a teacher, the other has entered university. All family members carry mobiles and the youngest children regularly visit the internet café. Despite their education and modern life style, most of them are not well informed with regard to urban legislation.

usually coincides with the erosion of that of others. The vulnerability of people who lack knowledge of urban legislation and who are dependent on family relations can be significantly increased by the drive for individualisation of tenure. When discussing the effects of re-allocation programmes on tenure security, one should thus always ask the question whose tenure security.

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