Project Law—a Legal Intermediary between Local and Global Communities: A Case Study from Senegal

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Abstract: This article focuses on the working methods of international development agencies. It pays attention to the societal impact of normative orders regulating the conceptualization and implementation of development projects. On the basis of a slum sanitation project in Senegal, it outlines how transnational concepts of rural property relations interfere with local concepts and what kind of reactions a project might set in motion locally, nationally and internationally. Attention will also be paid to the dynamics entailed in the triangular structure of transnational and rural actors and the state and its representatives.

Keywords: development agencies, project law, Senegal, slum sanitation, rural property relations, Maraboutic order

Résumé : Ce texte traite des méthodes de travail des organisations de développement international. Il porte une attention particulière à l'impact social des règles normatives qui régularisent la conceptualisation et l'implémentation des projets de développement. En se basant sur un projet d'assainissement au Sénégal, il démontre la façon dont des concepts transnationaux des relations de propriété foncière s'imbriquent avec des concepts locaux et quel le genre de réaction qu'un projet peut déclencher au niveau local, national et international. Un autre aspect important du texte est la dynamique qui résulte de la structure triangulaire entre d'une part les agents transnationaux et ruraux et d'autre part ceux de l'État et de ses représentants.

Mots-clés : organisations de développement, droit des projets, Sénégal, assainissement des quartiers pauvres, relations de propriété foncière, ordre des Marabouts

Introduction

This article analyzes the impacts of processes of transnationalization and globalization on rural property relations, and draws attention to the working methods of international development agencies. I focus on this field of action through the analysis of a development project from Senegal, which began in 1987 and is ongoing. Development agencies are certainly at the forefront of the globalization process. Yet, they also work closely with rural "target groups," trying to empower the poor and to strengthen institutions in an attempt to realize a balance that more closely reflects their own notion of social justice.

All development agency political interventions are formed by a particular kind of law, so-called "project law." This kind of law strongly influences the observed paradoxes of ongoing processes of globalization and transnationalization, which in turn are concurrent with an increasing homogenization and fragmentation of legal and social relationships. On the one hand, project law has a homogenizing impact on social change because it structures the development political consulting process through norms that are thought to be applicable worldwide. These norms step into all those sociopolitical contexts that are subject to any social change whatsoever. On the other hand, project law also contains behavioural demands on the local population; it offers project-dependent provisions of new structures for decision making or regulations for the allocation of new resources. Therefore, project law also enhances the possibilities of fragmentation in recipient countries. And because each project has its corresponding legal body, various law bodies in any one setting might also clash in different ways with local customary, religious or state law. Project law is thus Janus-faced and development agencies are often regarded increasingly as important legal pluralistic actors in a cumulatively fragmented field of competing normative systems.

Although a considerable amount of literature already deals with the operation of international development

agencies, including those from an anthropological viewpoint,[1] little attention has been paid to the societal impact of normative orders regulating the conceptualization and implementation of development projects or to the sociopolitical power structure that generates such regulations. For instance, David Mosse, an influential scholar of the anthropology of development, who has called for an "opening up [of] the implementation black box so as to address the relationship between policy and event" (2003:5), has himself largely neglected the convoluted processes of legal decision making. While all development interventions take aim at societal contexts that are marked by their own legal organization of social, economic and political living conditions, it is regrettable that most social anthropological analyses refer only to questions of "power," "policy," "discourse" or "cultural factors."[2]

In this article, attention will be paid first to the question of how transnational concepts of rural property relations interfere with local concepts and what kind of reactions a project might set in motion locally, nationally and internationally. Attention will also be paid to the dynamics entailed in the triangular structure of transnational and rural actors and the state and its representatives. The Senegal case study reports on a belated attempt to regulate so-called "wild settlements" in the greater Dakar area. I then shift my focus to the ways that the problem descriptions are produced and administered as a distinct property of development agencies; further, I ask how they determine the project law to be applied and how these problem descriptions, as a legitimating part of the normative orders of development agencies, conflict with other normative orders such as prevailing state law or the Maraboutic order. Finally, I discuss the manner in which such problem descriptions entail a layered structure that reconfigures the access rules to rural property.

My experience with the project began with some prior consultations for the German Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ) from 1997 to 1999, and from a private stay in 2000 in Senegal. Additional project information, up to 2004, has also been considered. The case study thus draws on several stays in Dalifort and Pikine (two Dakar shanty towns), on internal project documents such as consultants' reports, project documents and plans, on several interviews with local stakeholders, on discussions with lawyers and politicians, on a long-term correspondence with a former GTZ team leader, on challenging exchanges with a Senegalese friend, and on additional discussions with the responsible departments at GTZ headquarters in Eschborn (Germany). Before going into the case study details, I will first outline my concept of project law, as I have applied it in my earlier publications on the issue (Weilenmann 2005a, In press).

What Is Project Law?

"Project law" is a relatively recent concept,[3] and one that requires further elaboration. By and large, this concept contains all those legal concepts that are part of the usual techniques of project management in the field of development. For the purpose of this case study, I distinguish two types of legal schemes: first, those which refer to the planning and conceptualization process of development projects and programs in general; and second, those which are negotiated between project personnel and their target groups and thus apply in specific development project contexts.

The approach, as expounded by Günther and Randeria (2001), is predominantly relevant for those legal rules that guide the planning and conceptualization phase of a development project as well as the monitoring and transfer of project responsibilities to local implementing organizations (cf. Weilenmann 2005a). Günther and Randeria (2001) focus mainly on "memoranda of agreement, terms of reference, management systems, administrative and budgeting procedures, accounting and auditing procedures and standards, regulations of purchase, benchmarks for evaluating the progress of the projects and the attainment of project goals, operational policies and operational directives of the donor organizations which are binding on the credit or loan recipient." Conditionality is regarded as a "tool that creates slots for other instruments to be inserted into the national polity" (Günther and Randeria 2001:70).

Such legal rules regulate a distinct understanding of development co-operation and shape the stated policy objectives and their reasons. While such project law comes into existence and is reproduced within development organizations or in interaction with their partners in developing countries, project law of a different kind emerges during the phase in which development projects are institutionalized and implemented.

Project law also encompasses those legal rules which are formed by project personnel during the implementation process and in interaction with so-called target groups (cf. Thomson 1987). Von Benda-Beckmann (1989) specifically considered this process by analyzing the role of project law during the phases of institutionalization and implementation. In this manner, project law lays down behavioural demands for the local population, devises new structures for decision making and the allocation of resources, and regulates the various relationships between project personnel and target group(s).[4]

Examples include the so-called new fora for dialogue and peace with local stakeholders or new legal mechanisms to obtain official land titles. These processes are initiated and later negotiated by the responsible project personnel, or are the concretization of generic terms such as sustainability, participation, the target group concept and the like. Here, the benchmark depends on the country-specific requirements of a project-related target system but will be further influenced by corresponding time frames and budget of the project. Most importantly, project law incorporates criteria for the inclusion or exclusion of parts of the total population, thus regulating access to scarce—and frequently also disputed—resources in local settings.

Is Project Law a Form of Law?

Having discussed the project side, we can now turn to the law component of project law—the question is whether project law is actually law or just one of several internal orders. According to Keebet von Benda-Beckmann, many of these concepts and principles are "formally speaking not yet law, but in effect obtain the same level of obligation" (2001:38). She goes on to add that these

> principles and concepts have been developed and elaborated in various parts of international law but they show little internal coherence. To some extent they are still proto-law, not yet fully developed principles [that] float around in development circles as abstract goals of development co-operation. These agencies of development co-operation...play an intermediary role in concretizing rights and obligations and in implementing international law. But they do so as independent actors that have their own interest in the business. [2001:38]

Yet, Randeria (2005:154) wonders whether such normative concepts and goals should be considered law. She suggests considering these demands—which she qualifies as directives—as being part of a "policy process" that, in recent years, has been largely dominated by international development bureaucracies. I quote her at some length here, as she makes a distinction that I wish to challenge:

> A distinction between [normative concepts and policy process] at an analytical level is important, precisely because the line between law and policy has become increasingly blurred in recent years in the wake of the transnationalization of both law and policy. Klaus Günther and I have used the term project law in a narrower sense...Not all norms governing development intervention, however, are project law...Development projects, for example in the area of family planning and reproductive health, certainly diffuse and even impose contraceptive practices, the acceptance of a small family norm...But these disciplinary practices...are better understood as techniques of governmentality than as project law. [2005:154-155]

However, the law also organizes and legitimates power. To dichotomize the two, as Randeria does, and to argue that project law "is a very important technique of governmentality, but not all techniques of governmentality can be subsumed under project law" (2005:155), is thus a very misleading approach. Though I certainly would not call the entire gamut of Western norms and values diffused within the architecture of international aid as project *law*, it is still important to stress the fact, that project law is a very important governance technique. Additionally, with Foucault (1966) in mind, one should never forget that much of governmentality is also legally organized. Moreover, Geertz has pointed out a particular characteristic of law, namely that "law...propounds the world in which its descriptions make sense...The point here is that the 'law' side of things is not a bounded set of norms, rules, principles, values, or whatever from which juridical responses to distilled events can be drawn, but part of a distinctive manner of imagining the real" (1983:173).

Consequently, law as "statute" or "general law" can also be seen as a projective and legitimizing cosmology. The values that are constitutive of law allow for the regulation of "possible" or "thinkable" social problems. Therefore, it is not the pre-conceptions as such, but what these connote that point to underlying power constellations. One could therefore argue that the characteristics of normative behavioural demands testify to underlying policy processes. In this connection, von Benda-Beckmann (1989), Ferguson (1994) and Rottenburg (2002) rightly highlight the models of development policy that underlie such behavioural demands and hence justify intervention. Furthermore, these models, which contain statements about how the world is and how it should be, are not usually based on empirical data. Rather, they bear the mark of normativity because they derive behavioural demands and objectives, as well as the underlying forms of legitimacy, from social consequences that are simply posited without any concrete evidence. As this is a problem that characterizes much of the policy world, I follow Franz von Benda-Beckmann (1989:134) in hypothesizing that development projects have the form of law.

The Critical Role of Problem Definition

The social consequences of development projects often derive from the way problem definitions are designed and administered. Problem definitions assess observed social behaviour in regards to internal normative sets, which

have to be considered when conceptualizing and implementing a project plan. Various authors have already emphasized that development agencies time and again oversimplify the social complexities of the environments in which they operate.[5] When searching for the reasons behind such simplifications, one becomes aware of the ways in which legal and sociopolitical concerns are turned into development-political questions. In essence, topics suitable for development aid, such as access rules to rural property or patterns of settlement, have to be identified as "problems" in order to become the subject of development projects (see Rottenburg 2002:92). These "problems" then have to be classified according to the normative frames of the developmental donors such as "Poverty Reduction," "Gender Equality," "Promotion of Human Rights and Rule of Law," "Good Governance" and so on.

However, there is no normative code to determine what exactly these labels mean. Instead, their interpretation is subject to an ongoing internal debate in the course of which project profiles are designed. Problem definitions are therefore determined by the vision of the change agents and these visions structure the corporate identity of project personnel. Problem definitions also channel the temporal perspective of a project plan and are always positioned vis-à-vis the notions of other interest groups or (state) institutions in order to identify potentials for collaboration or for blockages and to give structure to expectations about success or failure. For anthropological analyses of project documents, it is thus crucial to examine the various ways in which such problem definitions are produced and administered. One has to investigate how information collection is institutionally organized, when a problem description is regarded as valid and—because of the professional and economic interests at stake—one has to ask how the understanding of such problem-solving is linked to the concrete interests and living conditions of different actor groups.

The Case: Belated Regulation of So-called "Wild Settlements" in the Greater Dakar Area

In 1987 the German GTZ launched a large-scale slum sanitation and reconstruction project in Dakar, which was still functioning at the time of writing. At the outset, the project rationale was set in the context of the official "politics of the bulldozer" that aimed at large-scale slum clearances that always resulted in more social and economic hardship and in uncoordinated re-building of formerly destroyed wooden shacks. A preceding slum clearance had taken place in 1985. GTZ started with a pilot project in one shanty town, Dalifort. Dalifort became a political development laboratory to develop and test best practices that might be applicable at the wider scale and thereby arrive at a legal definition useful in the regulation of so-called "wild settlements" all over Senegal.

GTZ identified an environmental problem as core to this issue: the growing desertification of Senegal and corresponding migrations to the cities. Shanty towns were thus seen as a direct consequence of desertification. In addition, the agency focused on erratic population growth and the fact that the settlements were growing each day. Since the state owned the land, the settlements were identified as "wild" and "spontaneous" (no visible order) and thus illegal. Huge sanitation problems were reported from the squatter settlements. They were also seen as loci of extreme poverty, unemployment and growing criminality. Therefore, "wild settlements" were identified as a ticking bomb set to undermine the economic, political, social and legal development of the whole of Senegal.

During the implementation phase, additional difficulties arose, such as the complicated working procedures of the state bureaucracy, the doubtful will of the beneficiaries to claim ownership and the so-called sociocultural framework conditions. Strong criticisms were directed at the sluggishness of the ministerial bureaucracy, which obstructed vertical and horizontal coordination of sector administration during Senegal's slow shift to decentralized state administration; the (limited) willingness of the target groups to be accountable with the state administration for the negotiated cost-sharing model; and, the "traditional" discrimination towards women, which was seen to interfere with the participatory approach.

How Does the Problem Description Interfere with Local Property Relations?

The problem description, which is still in use today, contains some remarkable statements. First, its environmental orientation needs to be queried. The settlers are classified as "desertification" refugees, but historical or political factors have not been considered and the problem is thereby rendered as natural rather than political (cf. GTZ 1998a:2f). The settlers came like a sandstorm to Dakar, where they built up their "hazardous" shanty towns, but the purely environmental explanation is challenged by the results of several large-scale irrigation projects on the Senegal River in the North. These projects aimed at combatting growing desertification but with the improvement of the fertility of the land, they also led to a massive rise in land prices, contributed to a regrouping of the local population and boosted migration to the cities. Parts of the most vulnerable population were crowded out by wealthy Senegalese, and by national and international

brokers (cf. Cotula et al. 2004:35-36). Although officially land could not be bought and is allocated by the rural council, many informal rental and sale arrangements have been made. Moreover, rural councils rarely make such land allocations without the approval of customary chiefs. This raises the additional issue of the way in which the problem description for these projects is positioned vis-à-vis the legal regulations of two other important actors: the postcolonial state bureaucracy and the Maraboutic order.

Actor 1: The Senegalese State Bureaucracy

It is clear that problem identification of the shanty town project has been exclusively oriented toward official state law, since it qualifies the settlements as "wild," "spontaneous" and "illegal."[6] It is predicated on the official land expropriation of 1964. At that time, all land regulated by customary law was identified as unregistered land, thus automatically falling under the official control of the state (cf. Hesseling, 1990/91:15). From that point forward, the state has considered itself the official custodian of this land and individuals could only be granted usufruct rights. Since then, this land—called "national domain" (*domaine nationale*)—has been subdivided into four categories, including three agricultural zones and an "urban zone," which covers municipal territory.

But as is so often the case, the official discourse on property rights only fogs important legal, political and economic power constellations.[7] The land expropriation act entails a series of problems, notably regarding the governmental capacity to implement such a rule[8] and confusion arising from the distinction between national domain and the normal property of the state (*domaine de l'État*). The former Senegalese President, Leopold Sedar Senghor,[9] legislated, but he applied the law at most only partially. His power position depended heavily on the Maraboutic order, mainly from the Sufi-branch of the Muridiyya, who were particularly well anchored in the countryside (Loimeier 2001:147). In order to stay in power, Senghor decided, just a short time after the act's promulgation, to surrender most of the national domain to religious leaders, the Marabouts of the countryside. Nevertheless, the new law played a role mostly with respect to political manoeuvres and ideological purposes, such as the promotion and propagation of Senghor's ideas on the planned economy (African socialism) and his concept of *Négritude*.[10] In 1970, Senghor gave some lectures at the University of Uppsala where he outlined the advantages of having a comprehensive plan and reported the promulgation of the new law as a successful venue for the promotion of economic development[11]:

> At the time of independence, useable agrarian land was owned by about 15% of the total population. [But because of the former patron-client relations] the farmers were not interested in using fertilizers. In order to solve this problem, we returned to old "Negro-African" customary law, which knew no property right, but only a usufruct right. Ninety-five percent of the lands, which before were in individual hands, were thus transformed into common property—not of the state but of the Nation of Senegal. By this promulgation of a law for the public good, the lands were thus directly placed at the beneficiaries' disposal...Amazingly, this revolution of the lands was accomplished by amicable agreement...During the meetings we organized, we convinced different groups of landowners to effect this change on the night of August 4 with the assistance of "Negro-African" dialogue. [1970:535][12]

However, the night of August 4 proceeded so peacefully mainly because the Senegalese bureaucracy never controlled the whole territory and thus surrendered, in spite of the law, the national domain to the Marabouts for cultivation. The lack of rural anchorage for the modern state apparatus remains its Achilles heel. Regarding the shanty towns, it was thus not very surprising that the official state bureaucracy stressed the 1964 law on land expropriation only in order to legitimate slum clearances and the appellation of "illegal and wild settlers," and not in order to recognize any public responsibility for the social and legal protection of vulnerable migrants. Furthermore, the legal distinction between the national domain (domaine nationale) and the property of the state (domaine de l'État) was cumulatively blurred. The state bureaucracy disenfranchised the urban poor—mainly in Senegal's shanty towns—simply by instigating processes for the expropriation of land for the general good. Thereafter, the land was registered in the name of the state, thus falling within the category of state property, and all formerly existing rights to the land were abrogated. This way, land within the national domain became property of the state, a procedure which was particularly problematic in such densely populated suburbs as Dalifort and Pikine (see Hesseling 1990/91; Loimeier 2001). The partial implementation of the 1964 land law certainly improved the social and legal position of the Maraboutic order and thereby the validity of local customary law. The "hazardous" order in these "spontaneous" settlements was thus influenced by multiple, overlapping and partly competing normative orders that were fed by a power conflict between parts of the official state bureaucracy and the Maraboutic order on the one hand, and by internal frictions within the Maraboutic order on the other.

Actor 2: The Maraboutic Order

The Maraboutic order[13] is based on Sufism, a mystical branch of Islam which is very well established in Senegal. According to Villalón "most people in Senegal are born into a connection to a Marabout [sheik/religious leader]...While these ties are...fluid and manipulable, they are also absolutely central to people's lives" (1995:121). Mbacke mentions a traditional Sufi proverb which states that those who have no sheik are guided by Satan (1995:5). The Maraboutic charisma, largely dependent on personal relationships, is enhanced by a patron-client relationship between Marabouts and followers. According to Villalón, the patronage function of the Marabouts has been "particularly important in the distribution of land, notably in the periods and areas of expanding peanut cultivation. The relative importance of these two aspects of dependency may vary not only across orders, but also in relation to such factors as caste status, geographic location, and 'modern' contacts" (1995: 118). The need for patronage, both material and spiritual, usually requires a long-term relationship. According to Loimeier, the erudite Sufis are recognized as healers, adjudicators, arbitrators, blessing givers, political intermediaries, organizers and leaders of widely ramified economic networks, and principal protectors of their wards (*talibés*). Landless farmers, subordinate to a Marabout and thus beneficiaries of such gratifications, are wards and are required, inter alia, to make gifts and donations, to work for particular economic purposes, collect votes and vote according to specific instructions (2001:115f).

In our context, only two of four important Sufi branches[14] are relevant, the Tijaniyya and the Muridiyya. Both branches are widespread and hierarchically organized. While Villalón stresses the great Maraboutic control of Muridiyya orders (1995:117), Robinson (2000:143f) and Loimeier (2001:116) highlight the role of some particularly erudite Tijaniyya, who obviously developed quite similar patronage networks. Also significant is their influence on the composition of the actual state administration: while Senegal's first president Leopold Senghor (1960–80) owed his power position mainly to Muridiyya support, his successor Abdou Diouf (1980–2000) depended on the political recognition of the Tijaniyya. The current president, Abdoulaye Wade (2000-), is again a Mouride. This rapprochement with the Mouride leadership, however, caused quite a stir.

Until the late 1960s, conflicts between these two branches were rare mainly because of the geographic and social locations of the different clientele networks: the Tijaniyya recruited its disciples in the urban centres and in the countryside outside the peanut basin, while the Muridiyya, who developed and controlled peanut cultivation, were anchored in the region of Diourbel. But with growing population mobility from the 1970s onward, many Muridiyya networks extended their recruiting reservoirs to the urban centres as well. From the base of their increasing influence—particularly in Dakar's shanty towns Pikine, Rufique, Guediawaye and Thiaroye (Loimeier 1994)—powerful Tijaniyya families became alarmed and launched a religiously motivated defamation campaign that declared the Muridiyya to be heterodox and un-Muslim. These frictions, which finally escalated into open conflict in the 1990s, centred mainly on important voter reservoirs such as youth movements and the urban poor.

According to Loimeier (2001:323), however, most sociopolitical analyses overestimate the Muridiyya's influence on state-supporting structures. Today, Kalifs and Marabouts of the Tijaniyya are mainly anchored in public administration and in the intellectual milieu (as teachers, lawyers, judges and university professors), while many Muridiyya work as businessmen in the informal sector.[15] Within public administration, the Tijaniyya formed very effective networks under Abdou Diouf (1980-2000). They became a state structuring power and achieved public recognition as the "true" Muslim power of Senegal.

Goal, Strategy and Methods of the Development Project

The goal, strategy and methods of the GTZ shanty development project, which has been running since 1987, have not been very responsive to Senegal's changing power configuration. The goal is to achieve adequate shelter that is environmentally sound by improving standards of living and regulating land tenure for occupation. To achieve such a goal, each project requires a clear understanding of the composition of partner structures and the interests at stake, particularly if, as is the case here, the project opts for a participatory approach by strengthening the dialogue between administrative authorities and populations of the squatter settlements. But up to 2004, this project did not anticipate the political consequences of the growing influence of Tijaniyya's old-boy networks on the working of public administration and thus ignored the socio-cultural context of target public officers.

In addition, the project sought to develop a general legal procedure that would allow shanty dwellers to get official land title and the required resources for ongoing slum sanitation and reconstruction processes—processes that should eventually be independent of external donor

interventions. The basic structure of this procedure was essentially designed during the late 1990s but has passed through many phases since then (Weilenmann 1998:11f). The central idea is that the procedure should guarantee a strict separation between private construction firms and a private foundation that was initiated by the project. This foundation is responsible for all planning tasks (including evaluation of living quarters to be reconstructed), the mobilization and administration of credit and the payment of bills and so forth. Second, the procedure should guarantee a strict separation between the private foundation and the political structure (municipal and district administration) in order to prevent any (abusive)[16] influence on project execution and to ensure congruency between slum restructuring and the participatively developed project plan.

The procedure ought to work as follows: first, the municipalities file an application with the foundation. The foundation then conducts a kind of mini-feasibility study, from which emanates the expected costs for the regularization and the restructuring of a neighbourhood. This calculation forms the basis for the granting of credit by the donor agency. On the basis of a tender, a qualified private construction firm is engaged. After having done the job, it bills the municipality for the costs. The municipality appraises and forwards the bill to the foundation, which pays the private construction firm directly.

Up to 2000, this procedure was not properly applied. While Senegal's move from a highly centralized ministerial bureaucracy to a decentralized state structure was under way, the German project staff debated the idea of abandoning the existing partner structure and moving project responsibility from the Ministry of Urban Affairs to a private foundation. Dissension with respect to next steps within the GTZ, as well as discussions within the responsible ministries, resulted in a remarkable delay. Since 2002, the procedure for land registration and fee collection has been working as designed—a design that fails to address two sensitive points. It ignores firstly the cultural and historical background of Senegalese interconnections between political and religious power structures and is based on the bureaucracy-bound assumption of strict functional role attributes, which rarely fit well with the complex networks of agrarian states.[17] And secondly, the design contains some elements that are more appropriate for the promotion of new forms of quasi-state status.[18]

For example, composition, design, assignment of duties and the mobilization of new funds by the foundation, which have to be separated from the (democratically) legitimated municipal structure, are explicitly described in the target system and remain therefore largely controlled by applied project law.[19] Important goals of the project included: the generation of a new legal, administrative and financial framework for the formation of an independent and autonomous foundation; a reorganization of the partner structure; and, an improvement of instruments in order to change access rules to rural property and covering of associated costs (GTZ 1998b).

Acknowledged Paradoxes of the Project

The first paradox is that, despite the participatory approach, this project was not as democratic, inclusive and transparent as officially declared (GTZ 2001). According to former GTZ project manager Voigt-Moritz, the participatory planning method is neither an event for the popular masses nor a democratic process (1991:7). In order to identify the customs of everyday life in the shanty towns, the project engaged a local undercover agent.[20] He rented a flat in Dalifort, secretly investigated the manner of construction, dimension and design of the wooden shacks, and explored local living conditions. He identified some common procedures of illegal settlement, traced common conflict patterns based on gender and generational relations, observed "patriarchal" processes of local decision-making, analyzed the illegal planning of spontaneous settlements, scrutinized the supervision of unauthorized civil works, and examined fund management. According to Voigt-Moritz, this knowledge was important for understanding the behaviour and composition of local target groups (1991:6). But using this approach makes the starting point of participatory project planning non-transparent. Instead of involving local actors in real participation, such actors are externally pre-selected and ordered to participate in a fully developed project.

The second paradox is that, on the basis of this knowledge, the project focused primarily on the participation of settlers and dignitaries who migrated some time ago, since it was mainly this group who got plots (via the multiple dependencies of the Maraboutic structure) and thus "owned" most of the wooden shacks. But this approach entailed excluding women, youth and the poorest of the poor—the principal target groups of GTZ's development programs. Voigt-Moritz (1991:7) remarked critically that a slum sanitation project could not be in their interests: "Even the rumour of possible slum sanitation might entail rising rental fees. Each upgrading by reconstruction and legalizing of the plots becomes therefore [more] expensive. Thus, some have to leave the district and to look for a place in cheaper, unprotected and illegal quarters and consequently, they are even farther away from their jobs." Given this approach, the project endangered its own devel-

opment objectives—like the above mentioned irrigation projects at the Senegal River—instead of achieving adequate shelter for the most vulnerable migrants; it resulted in new forms of inner migration.

The third paradox is that the clear focus on well-identified local target groups and on the required procedure for the regulation of so-called "wild settlements" led to a fragmented understanding of the core problem and to a technically oriented project management.[21] The project never focused on social, cultural and political root causes of the shanty towns. The management realized this point only after it widened the scope of the plan[22] in order to tackle belated regulation in other districts of Dakar.

The fourth paradox is that, until 1996, core project philosophy was based upon complete political neutrality: "attempts to promote democracy...[and] to correct clientele disorders are not permissible interventions in the inner affairs of the host country" (Voigt-Moritz 1991:7). The political reorientation of donor countries toward topics such as the promotion of democracy, decentralization or good governance thus took project management by surprise. Until 1996, management ignored the changing legal framework conditions of the wider political stage and only later did it begin to anticipate the local consequences of Senegal's slow shift from a highly centralized state apparatus to a decentralized public order. Project management thus first developed—through painfully detailed work—a procedure for land registration and fee collection that was, in fact, inapplicable.[23] Later, cultural conflicts such as the increasing lack of accountability of the then-mayors were associated with the ongoing decentralization and democratization process. The then-project leader Roukema argued:

> The decentralization process, which has its silver lining, also complicates our implementation difficulties, because some of the mayors are not sufficiently qualified; some are even illiterate. The status of the wild and illegal settlements doesn't bother them. As long as they can place their well-disposed voters somewhere in their own community, things run well. But if we start pushing the restructuring of the settlements forward, the mayors do not always remain calm. What they need are votes and if some of the inhabitants have to look for other settlement opportunities, the mayors lose political influence. And if something goes wrong in their political sphere of influence, they are not responsible. For instance, if the high-voltage lines fall down, it is not their fault but an engineering error; and if the sewer is overloaded or blocked, the urban planning ministry didn't do a good job, did they? [Personal correspondence 1999]

The fifth paradox is that, in spite of these contradictions, the project won the "Best Practice Award" of the United Nations at the Habitat II City Summit in Istanbul (1996). And in the year 2000, the project was selected for presentation at the World Exposition in Hannover.[24] Both the plan and the underlying concept of the project received a lot of interest from various National Public Administrations and the larger donor community, because they opened space for new options: instead of the former "politics of the bulldozer," it was thought that a self-sustaining autonomous procedure could be developed with an associated financial framework.[25] Criteria applied in granting the award were: the participatory approach, the possible transfer of the method to other countries and the expected auto-financing of target groups. However, none of these criteria apply to the actual handling of cultural and political history and its impact on the property relations of shanty towns in the Dalifort and Pikine cases.

Meanwhile, in parallel with all these events, the "land management" planning section at GTZ headquarters in Eschborn was already criticizing this purely technical approach in 1997. It filed an "over-sectoral pilot project proposal" (GTZ 1997) with the German Federal Ministry for Economic Cooperation and Development (BMZ[26]), which would explore the pluralistic legal background of these processes in important and rapidly growing cities of southern regions such as Dakar, Johannesburg, Bogotá, Recife and Jakarta. This proposal drew on earlier consulting reports on the role of legal pluralism in running development projects[27] and argued that given the limited capacities of target groups, such groups are clearly overwhelmed by this formal and technical approach. In Dakar, according to this proposal, participation is mainly conceptualized with respect to the formal rules of the town, the formal economy, formal state law and the formal role description of public officers. Instead, the new proposal recommended an acceptance of competing legal orders as a social fact and focused on applied action research in order to identify and test new approaches and methods better able to deal with problems of legal pluralism in growing cities. But this proposal never gained the required support at higher levels.[28]

Unacknowledged Paradoxes of the Project

The project demonstrates the importance of paying sufficient attention to the layered structure of property relations (cf. von Benda-Beckmann and von Benda-Beckmann 1999:20f.), since they are networked with several, more or less separate and partly disconnected discourses on property rights. For example, the international community, represented here by the UN in Istanbul and the com-

mittee responsible for the World Exposition 2000, was drawn to those aspects of the project that were normatively conceived and that thus allowed for international application. In this way, some methods of the project contributed to the so-called "mainstreaming" of urban development projects through property rights that subsequently became a particular characteristic (indeed a "property") of the global development community.[29]

Second, the German BMZ as well as the executives of the development agency were, of course, very proud of the "Best Practice Award." They thus identified the project procedure as an important political vehicle to combat any question of political legitimacy as a competent development organization (the project as trophy). In the run-up phase for the World Exposition in Hannover, the German BMZ and agency executives pushed project management to coordinate the end of the project with the beginning of the exposition. Hence, project management came under severe scrutiny and growing pressure to produce immediate results. In order to demonstrate developmental political efficiency, different phases of the project were therefore adjusted, which in turn resulted in the increasing use of juridical terminology.

Third, on the Senegal scene, structural differences between state law and multiple customary laws came into play. The National Lands Act of 1964 for instance aimed primarily at rural development. But the relative "aloofness of the government,...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" (Hesseling 1990/91:13). Unsurprisingly, land rights conversion and registration programs remained, for the majority of the rural population, an "empty dream castle" (von Benda-Beckmann and von Benda-Beckmann 1999:18) because those who desired registration were often either civil servants or immigrants who stood apart from the local property networks of the Marabouts. Contrary to the ideology of legal officials, the access rules for rural property remained under the control of neo-traditional authorities.

At the local level, the historically grounded differences between Muridiyya and Tijaniyya, as well as their unequal integration into the state apparatus, play a role. As public officers who were directly informed, the Tijaniyya had access to critical information. In order to guarantee cheap, accessible and equitable access to official land titles, the project negotiated a fixed price with the public administration for zoned lands in shanty towns. These prices were remarkably below real market value. Some neo-traditional authorities, mainly Tijaniyya, then started to act as brokers by buying these titles in order to sell them on the free market. Such examples come mainly from the district of Arafat. At the same time, this commerce triggered an unforeseen side-effect of project law in the peri-urban zones of Dakar—the local application of an old and discredited land law from 1964. For many Muridiyya, as a result, there was now a vital interest in selling their un-zoned urban plots to migrants at low prices and as quickly as possible.[30] Otherwise, they risked an expropriation based on the re-sanctioned land law of 1964.

All these various layers thus demonstrate the importance of distinguishing different kinds of social phenomena which interact continuously with different elements of project law and together influence, form and reconfigure access rules to rural property.

Conclusions

Given an interest in the effects and impacts of processes of transnationalization and globalization on rural property relations, I focused attention in this paper on project law in the development sector. I assumed at the outset that project law would reconfigure access rules to rural property. But contrary to Scott, who regards "the transformation of peripheral nonstate spaces into state spaces by the modern, developmentalist nation-state" (1998:187) as a ubiquitous phenomenon, the slum sanitation project case presented here illustrated, rather, the absence of a direct cause-and-effect relationship. Indeed, like other law, project law has an effect on social action but these effects do not always comply with original intentions. Rather, project law constitutes another layer that shapes and may be shaped by various political, professional and economic interests at stake that are, at least partly, also legally organized. Yet, a focus on the application of project law provides useful insights into the complex "implementation black box" (Mosse 2003:5) of ongoing development projects, in particular because it shows how various specifications of the project (such as the normatively fixed problem definition or the ways a project plan has to be set up) interact with other internal and external normative sets. In this way, it puts into perspective the widespread tendency within development anthropology to see development as a monolithic enterprise (cf. Hobart 1993; Escobar 1995; and to a lesser degree Ferguson 1994) or to argue only with "power," "policy," "discourse" or "cultural factors" (cf. Mosse 2005:230f; van Gastel 2005:159-173). Far more important and more useful are case studies focusing on the multiple layers with which internal legal regulations such as project law might interact, and which dissect the complex processes of transnationalization and globalization and their effects on social change.

Finally, I need to stress that project law is tailor-made and thus always substantiated only within a specific development project. Project law can only be applied in the project region of the responsible development agency and only during the effective period of the project. Hence, Randeria (2005:155) rightly points to the limited spatial, temporal and institutional validity of individual project laws. For recipient countries like Senegal, however, different development agencies address different target groups and implement separate projects with different, and even partly contradictory, objectives. In addition, big donors tend to subdivide recipient countries into different spheres of influence and intervention. In this way, various development political actors become important legal pluralistic players, because their projects not only conflict in different ways with distinct sets of local customary law, state law or international law, but will also regularly entail a layered social structure that markedly reconfigures pre-existing bundles of rights. Their varied impact on access to vital resources should not be ignored.

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Notes

1 For example see Drinkwater 1992; Escobar 1995; Ferguson 1994; Gardner and Lewis 1996; Grillo and Stirrat 1997; Hobart 1993; Sachs, 1992; and Shore and Wright 1997.

2 According to Grillo and Stirrat, "there is a widespread tendency,...illustrated, for example, by Hobart, Escobar and to a lesser degree Ferguson to see development as a monolithic enterprise, heavily controlled from the top, convinced of the superiority of its own wisdom and impervious to local knowledge, or indeed common-sense experience, a single gaze or voice which is all-powerful and beyond influence." They call this the "myth of development," and argue that it "reflects a surprising ethnocentrism: It is very much the view from North America. Ill-informed about the history of government, it has a Jacobinist conviction of the state's power to achieve miraculous things" (Grillo and Stirrat 1997:20-21).

3 Its initial use is attributed to Thomson (1987).

4 The target group represents those members of society who should (directly) benefit from a given project, those for whom the project is conceptualized. The impact of the project should thus appear at the target group level (cf. Forster and Osterhaus 1996).

5 See Benveniste 1972; Merry 2005; Page 1985; Shore and Wright 1997:3-39; Sutton 1999; and van Gastel 2001 among others.

6 The same holds true for the Country Assessment Report of the World Bank from 2002. There too, the rules structuring the settlements are classified as "informal," as if the degree of formalization depended on codification. Therefore, customary land law regulations could be called "informal," even though they have been passed on ritually. Criticism of this biased approach, however, should not be misconstrued. I do not necessarily consider customary law as more appropriate than formal law.

7 Property relationships are multifunctional. Often, they constitute only one aspect of a "many-stranded" social relationship (Gluckman 1972:94; von Benda-Beckmann and von Benda-Beckmann 1999:33).

8 At the end of colonial times, the implementation of governmental decisions depended heavily on the patronage system of the Maraboutic order (discussed further on). In order to get votes, most political parties pledged and granted the Marabouts special benefits, access to privileges and goods, financial subsidies and legal protection (Loimeier 2001; Robinson 2000; Villalón 1995).

9 Senghor was in power between 1960 and 1980.

10 The French term *Négritude* refers to a literary and ideological movement led by Black intellectuals in Paris in the 1930s. The founders, Aimé Césaire, Léon-Gontran Damas and Léopold Sédar Senghor, advocated resolutely for a new "African" identity and stressed common values such as the transcultural significance of the community in Africa, the working methods of "Negro-African" customary law, the history of common suffering during colonial suppression and the particular cultural achievements of African history (Ki-Zerbo 1978).

11 All translations from German are by the author.

12 This date has significance in that on the 4 August 1789, the national assembly of France decided to abolish the liberties of the feudal class. Obviously Senghor believed he could solve the problem notionally by referring to Galbraith's work on "The New Industrial State" (1972) and added that he had decided—like a king—"to replace nationalization by socialization as Senegalization of the society" (1970:535).

13 The Maraboutic order includes Marabouts and Kalifs. Both are spiritual leaders. Between the two, a hereditary line exists: the oldest male descendent of a Kalif (who, as a Sufi, is the principal holder of religious-political power) becomes a Kalif, other male descendents are Marabouts.

14 According to Mbacke (1995:5), the Quadiriyya (10%), the Tijaniyya (50%), the Muridiyya (30%) and the Layèene (5%) are the most numerous Sufi branches of Senegal.

15 An empirical study in the so-called "informal sector" of Dakar found that up to 65% of all marketers and retailers, bus and taxi drivers are Muridiyya (Kane 1994:20).

16 According to several project documents, corruption or the mobilization of partly kin-based clientele relations to further private or political advantage, are regarded as abuses (GTZ 1998a, 2001, 2004; Voigt-Moritz 1991).

17 The then GTZ-team leader, Jan Roukema, acknowledged this difficulty as early as 1998. He proposed the formation of a research unit which would scientifically evaluate the application of regulations, collect lessons learned and explore the social, political and environmental root causes of the mushrooming of these shanty towns. But due to var-

ious internal dissensions, intrigues and limited budgets, the proposition was finally shelved (Personal correspondence 1999-2000).

18 The term *quasi-state status* refers to the growing "referral of sovereignty rights and fundamental administrative tasks (to) groups and institutions" that compete with the post-colonial state for political leadership in rural areas. Both authors stress the unconstitutionality of such power-sharing, since this cession of sovereign rights and principal tasks of public administration happens stealthily through processes of "informal decentralization" and "privatization" (Rösel and von Trotha 1999:10).

19 The project concept contains relevant indicators for the target system as well as an implementation structure; further, a budget model was regularly sanctioned through government-level negotiations between Germany and Senegal.

20 "While social scientists call such a research method 'participant observation,'" Voigt-Moritz claimed, "we practiced espionage" (1991:6).

21 Richard Rottenburg (2002: 217f) points to the technical game as a kind of meta-code within development bureaucracies. While the technical game marks the social engineering narrative by classifying rising social phenomena as either efficient or inefficient, cultural factors are mainly viewed as local. At best, they are only considered when presumed to reside outside the modern state bureaucracy and the development agencies themselves, and when they are features attributed to so-called target groups (see for example, Crewe and Harrison 1998:43-46).

22 "But now after the project has left," the then project manager Roukema wondered, "what is going on? The old chaotic system is re-launched, new houses are built again under high-voltage lines, some start buying or selling parts of the main road, others discuss occupying public places and so on. The new rules are thus not accepted. I suppose the target group accepted the new rules only as long as the project, as a kind of antenna of the official state bureaucracy was in, but now, since GTZ left, the same problems arise again!" (Weilenmann 1998:10, author's translation).

23 The responsible project-leader, Roukema, a Dutchman who worked there from 1996 to 2001, complained that "all is delayed, the set-up of the whole A-phase was not well done, the project just launched a plan relating to a belated regulation, but it did not focus properly on the changing framework conditions (history of the root causes; decentralization)—therefore, the project surely can not end in 2000—as it has been stipulated in all these nice German plans!" (Personal communication 1997).

24 At the Expo2000 in Hannover, four towns from four continents were selected, namely Aachen, Dakar, Shanghai and Sao Paulo.

25 A certain number of upgrading projects have been subsequently carried out by the DUA (Direction de l'Urbanisme et de l'Architecture du Sénégal)/GTZ unit in the districts of Dalifort, Arafat, Medina Fass M'Bao, Ainoumady, Sam Sam I, II and III, Wakhimane, Gueule-Tapée and Rail. And jointly with the EU, the GTZ has also applied the "Dalifort method" in Pikine/St. Louis, Khouma/Richal Toll and Tenghory/Bignona.

26 In Germany, the German Federal Ministry for Economic Cooperation and Development is called "Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung," or BMZ.

27 See Weilenmann 1997 and 1998.

28 This is not to say that the GTZ still ignores legal pluralism. On the contrary, in the last ten years, GTZ's sensitivity with respect to such phenomena has improved remarkably (see GTZ 2004; Weilenmann 2005a, 2005b).

29 See the World Bank's Country Assessment Report on Senegal 2002.

30 For Dalifort, the former GTZ team leader, Roukema, speaks of "crooks" who "sold these plots to illiterates. They even gave 'receipts' of pharmacies and the like in order to convince the innocent unsuspecting" (Personal communication 2009).

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