

An Analysis of the Land Access Issue in Republic of Benin

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Abstract: *In Benin, as everywhere in Africa, land is a key factor of the economic, social, cultural, environmental and political issues. With the increasing competition for it access, the land issue has become in recent years a major concern for the population and for the political and administrative authorities. It is therefore imperative that it is shown in all national development strategies of the Republic of Benin. Also the reviving of a land management based on knowledge and the endogenous expertise with a modern legislative framework creates a legal dualism: the customary land tenure and the modern land tenure. So the importance of this research is to describe the modes of land access in Benin but also to illustrate the problems faced in this process. A clear understanding of the Benin land access modes is very important for sustainable land resources management.*

Keywords: Land, issues, access, property rights, Benin

1. Introduction

The land is a man's first wealth on this planet. It is a support for all human activities and one of the major factors in the development of a nation. The guarantee of property and its rights is the foundation of the economies of modern societies. In regard of this it should be noted that land ownership is one of the major forms of property in a logic of sustainable development and preservation of the heritage of future generations. The success of public policies and strategies in land use, urban planning, protection of natural resources, housing, agriculture, industry, transport, tourism depends largely on the land resource management by the State and the Local Communities. But unfortunately, in the Republic of Benin, the land management is characterized by the lack of land mastership and the growing of land insecurity which did not promote sustained policy of investments and increased the failure of many peoples in Benin population, both in rural and in urban areas at the benefit of a minority.

To remedy this situation which delays the real development of Benin, the State is committed to establish in the country a maximum of land tenure security and a better land governance. Indeed, the realities of the land management in Benin, deserved a new approach to be undertaken with the participation of all stakeholders, in order to progressively provide the country with a secure land tenure by implementing an effective strategy and policy. But what are the land access modes in Benin?



Figure 1: Map of Benin's 12 departments (Source IGN-Benin)

1.1 The main land access modes in the Republic of Benin

The Republic of Benin main modes of access to land are: primitive or free occupation, community property, inheritance, donation, purchase, lease, pledge, loan and sharecrop [Art 8 and 9 of the Law No. 2013-001 of the Land and Domanial Code in Republic of Benin].

1.2 The first occupancy

The primary occupation is the oldest mode of land access in Benin. It is still called "free access" which is an acquisition by clearing or access by occupation. It is a mode of access to a land initially "without ownership", a land supposedly vacant and without owner, a "Res nullius" [Res nullius: Is a thing or a land which has no owner. A thing which has been abandoned by its owner is as much res nullius as if it had never belonged to anyone]. This mode of access to land is

based on the principle that the land belongs to the first occupant [To access to land, the occupier must be the first to have cleared it]. It is the descendants of these first settlers who are nowadays the supposed landowners because they have worked with their father or have acquired land as an inheritance or gift. This primitive tenure is now almost nonexistent.

Back to the days, when population pressure was not so strong that the land was still available and for various causes such as (epidemics, incurable diseases, war or seeking better security against invasions....), it was common to see a community with affiliation leave its old place of business to settle under the guidance of its head of community in a more secure place. This new place can, for example, be estimated more secure because they usually found there the land not occupied by other persons whose presence would later cause insecurity and even hostility or a threat to the vitality of the community. Immediately after installation, the occupied lands are demarcated using traditional methods, and then assigned to the group according to their needs. In any case, the lands are not subject to individual appropriation. Indeed, the community based on the affiliation which has an exclusion and discharging power is guardian of the demarcated land and allocated it to its affiliates. That community is fiercely opposed to groups or individuals who seek to settle in that same land. Therefore, it can be said that the land in which the lineage community is the first occupant. And which is effectively emphasized by its members, can be considered as a community property. This land access mode presents the following challenges: the orality, characterized by the absence of written documents, the vagueness of the land boundaries, the difficulty concerning the estate distribution (high and the increasing number of beneficiaries).

1.3 Community Ownership

Community or lineage ownership still called custom allotment ownership, opposes to the individual private ownership. Extended families and households do not have ownership of the land occupied and developed by the members of the lineage community, but they exercise a right of use and enjoyment (*usufruct rights*) [The right of enjoying the fruits of property of another person, e. g. the wife of a deceased person living in an estate house until her death] on the land assigned to them. In the South of Benin, it is now reduced to some relics of sacred forests, deified plantations, swamps stream arm or fish ponds or inherit lands which are still undivided. Generally, the areas of land available in this mode are insignificant for farms. In Benin's departments [Benin has 12 departments namely: Alibory, Borgou, Atacora, Donga, Zou, Collines, Atlantique, Littoral, Mono, Couffo, Oueme and Plateau] where this land access mode is still existing, it provides a relatively acceptable safety (MCA-Benin / Stewart, 2008). The community's ownership is often aimed for the community interest projects such as schools, youth centers, health centers, administrative facilities, etc.

The conflicts of interest between the beneficiaries, the challenging of the legitimacy of the manager and the abuse

of power by the managers, are the problems faced by this type of land ownership.

1.4 Succession

The succession is the land access mode by which a property is transmitted from a real or adoptive parent to an individual or a group of people after the death of the former [Art 10 of the Law No. 2013-001 of the Land and Domanial Code in Republic of Benin].

Generally, in Benin Customary Law, the succession of the land is not open to women on the principle of exo-transferability reinforced by a patrilineal and virilocal [It refers to the mode of residence of young spouses who must reside or build their dwelling in the village of the husband's parents] tradition. A land inherited by a woman would become the property of the lineage of her husband or a third lineage with the child who will inherit (Biaou, 1998). The influence of modernity on the evolution of this principle is slow because the land is not only a factor of production, but increasingly becoming a factor of power and speculation. It is found in some localities that donations are made during the lifetime of some parents to their female children to prevent their exclusion when sharing the heritage and allow them a disguised inheritance. In some places especially in *Mahi* [The proper terminology is "Maxi" (see language and language policy in Benin, 2009, ed Ablodé, 194P modifications, S / D Tchitchi Toussaint et al)], there is a category of women called "*Gbononho* [Ibid "*Gbononxo*"] who inherit lands because they live with their parents even after marriage [Survey, diagnostic studies Stewart, 2008]. Also, in some parts of the Yoruba group, sometimes women access land through inheritance. We should also note that instead of sharing the land between the children, some living people share it out among their wives, making them the directly designate manager of the land intended ultimately to their children. Despite these situations that promote women's access to inheritance, the proportion of women land owners in this mode of access is still low.

Finally, inheritance leads to a high fragmentation of farmland, which does not promote the efficient use of agricultural equipment. It often participates in the sidelining of minor children by their elder's brothers or guardians, which is a source of the land tenure insecurity, and challenges arise when beneficiaries have the majority (Biaou, 2008).

1.5 The donation

The land ownership can be transmitted through donation in accordance to the Civil Code, the Code of the Persons and the Family and other Benin's relevant texts [Ibid]. In modern law, the donation is a contract by which the donor irrevocably withdraws himself during his lifetime without any consideration and with a liberal intention, his land ownership in favor of the donee who consents to it. The donation in the customary sense is the mode of access to land through which the customer receives a free, real property. The fundamental difference with open access is that here, there is a donor. Generally, the donee is a descendant of the donor, a potential inheritor according to,

Biaou (1994, 1995, 1996 and 1998). From the perspective of Dissou (1992), it may be a young married, who was called to face new family obligations resulting from its new status). The recipient may also be a wife. There are also rare cases of donations to persons outside the lineage, this is the case of slaves or permanent laborers and adoptive children.

This land access mode is observed in the departments of Borgou (33%), Collines (17%), Couffo (25%), Ouémé (13%) and Zou (11%) [Ibid]. It is a mode of access to the significant land among women in the Atlantic (16%), Collines (42%), Couffo (53%) and Zou (48%) [Enquetes MCA-Benin/Stewart (2008)]. The donation is usually accompanied by conditions that do not make it final. It may be revoked by the donor and provide a source of land tenure insecurity, due to the challenges of the donor's heirs. In case of dispute, the evidence is difficult to establish because of the absence in general of any writing proof.

1.6 Buying

The purchase of land is the mode by which the beneficiary has reached the ownership of a piece of land against payment. The purchase of land allows the transfer of ownership and provides a durable right to the purchaser [Ibid]. The sale of land, once sacrilegious and nonexistent in traditional societies, is spreading more and more because of the high population growth and the influence of the market economy. These factors have significantly eroded the authority of traditional chiefs and land chiefs. So "The principle of inalienability of the land, sacred goodbequeathed by deceased ancestors to the living peoples which in turn will be transmit to the descendants became these days and almost everywhere a myth ..." (Dissou 1992).

In some places in the Southern Benin, buying land is a particularly important means of access to the land ownership (Stewart, 2008). It represents 21% of available land in the Atlantic, 14% in the Couffo, 21% in Mono and even 25% in Zou. This mode is mostly used by women in the Atlantic (29% of the areas) and Mono (18%) (MCA-Benin / Stewart, 2008). This access mode to the land property seems safer. It offers the following advantages:

- Security through detention of administrative acts;
- The guarantee of a complete real rights (plantation, construction, possibility of fallow access to the products.... etc.);
- The freedom of management and the planning of agricultural activities;
- The full transfer of property right and warranty (inheritance, sale.... etc.) and;
- A good form of capitalization.

It follows that throughout the South of Benin, there is no place where land purchase is not practical. Also in the north, this mode of access to land has already appeared and became widespread in some localities. It represents 2% of the land available in Alibori.

This type of land access poses a number of problems due to a poorly written sales acts, case of fraudulent sales, poor demarcation and identification of the plots, the lack of the publicity formalities intended to inform the public.

1.7 The rental or lease

The rental is a mode of access to land in Benin, which gives to the recipient for a specified period, the right to use a land against payment of a fee to the owner (usually monetary), paid either in full at the beginning of the contract or either at the beginning or at the end of aspecific periods; generally, this period corresponds to the crop time.

The land renting is very pronounced in the southern departments where land pressure is high. It concerns 19% of the land available in the Department of Atlantic, 5% in the Couffo, 16% in the maraichers systems of the Littoral, 7% in the Department of Mono and 17% in the Plateau. It is used by women of the Atlantic Department (14% of the areas), Couffo (15%), Littoral (20%), Mono (16%) and especially the Plateau (53%) (MCA-Benin / Stewart, 2008). It should be noted that the leasing that confers only the *Usus* [A right to use and take the fruit (such as crops) of a thing and corresponded to the modern notion of life interest], do not always encourage investment in facilities including those related to reforestation and fertility because of the precarious soils.

1.8 The pledge

The pledge is a mode of access to land by which the beneficiary (pledgee and the creditor) operates a land for the immediate satisfaction of a need for money of the landowner (pledger and debtor). The contract is terminated when the pledgee off its debt. In some cases, there is a minimum of warranty for the clause operating the pledgee. The pledge then operates as if the pledgee had lent money to the pledgee with the land as collateral. But unlike bank guarantee and antichresis [A contract by which a debtor transfers to his creditor the possession of his immovable, in order to receive the fruits and revenues until the debt is repaid], the land pledged is operated by the creditor. However, the farm incomes do not cancel the debt. The pledge is the result of interference of the land market and the financial market and it appears as a solution to the malfunction of these two systems. Studies have shown that this method is found mainly in the departments of Atlantic, Mono, Plateau, the Zou and Collines.

It is often a source of land conflicts, especially for long-term pledges where the key players have died without leaving any written evidence attesting the pledge.

1.9 The loan

The loan is a land access mode that temporary gives to the recipient also called borrower the rights of *Usus* [See n 15 above] and *Fructus* [Fructus (from the Latin meaning "fruit") is the right to dispose of the fruits of a thing because you are the owner or the usufructuary. It different from the *usus* ...] without any formal consideration of money or any kind. The targeted land can be an individual or a lineage property. The free land borrowing disappeared or represents a small proportion of farms in the departments of Borgou, Collines and Couffo. But it remains a very important mode of access to land by women in all other departments and especially in the Littoral (41%), Mono (53%), Ouémé (66%) and Zou (41 %) (MCA-Benin / Stewart, 2008).

This mode of land access can be a source of land disputes, especially when it comes to long-term loan or one the actors

die. The borrower of bad faith can claim to have received a donation of land or even to have acquired it.

1.10 The sharecropping

The Sharecropping is a mode of access to land for which the rent paid by the tenant is a contractual percentage of output per period of time. His name «de ma» in the Departments of Mono and Couffo which means that «you cultivate and we share». It is in fact an operating contract where two or more individuals combine the private's factors of production to achieve a production where the share allocated to each party is determined by agreement. Generally, the owner provides the land and the tenant provide the workforce; the other inputs may be provided by one or the other party. The oral nature of this mode is a source of problems. The farmer in bad faith may take advantage of some economic situations (death, displacement) to cease to fulfill its obligations and ultimately claim other rights. The land owner can break at any time the sharecropping contract putting the tenant in land insecurities.

2. Conclusion

The right of access to private property land is recognized for every citizen in the Benin Constitution of 11 December 1990. This Constitution also lays down the principle of equality between men and women as regards to the right of access to private property. This ownership right is also guaranteed even in the event of expropriation (Article 22 of the Constitution). Similarly, the other texts in application, such as the Civil Code and the Code of the Persons and the Family, make no explicit distinction between men and women as regards to the right of access to land and natural resources.

However, customary land rights remain a real handicap to women's access to land. In most cases, they are not entitled to inheritance. The most widely used modes of access are sharecropping and lending, which constitute precarious and revocable rights. In some areas the situation appears different. Indeed, wealthier women can freely buy land although in some cases the consent of the husband is still required.

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