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Analyzing the Benin Land Law: An alternative viewpoint of progress

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Viewpoint paper

Analyzing the Benin land law: comments on Ekpodessi and Nakamura's paper

Abstract

Ekpodessi and Nakamura recently published in Land Use Policy a paper on the 2013 Benin Land Law, which stated objective is to evaluate its effectiveness. Benin case is particularly interesting because two different contradictory land reforms have been enacted in a few years. The 2013 Land Law is merely a reform in land administration bodies. It reaffirms the focus on private ownership and aims at simplifying and reducing the costs for accessing a land title. The new agency responsible for land administration has been created and just began to deliver titles, but not all the policy tools are yet in place. It is thus too early to evaluate its effectiveness. It is useful and necessary to question the assumptions and the content of the Benin Land Law and its ability to address land issues. But the above paper suffers from several mistakes and approximations. Whatever focus is chosen, policy analysis and evaluation require relevant frames and methods.

Key Words

Land law; policy analysis; implementation; evaluation; legal pluralism; research methodology.

In their recently published paper in Land Use Policy, Ekpodessi and Nakamura (2018) say that their aims is to make « an evaluation of the effectiveness » of the 2013 Land Law in Benin. The issue of policy effectiveness is indeed an important issue. As policy scientists know, the reality of a policy is not so much in its programs and laws as in its implementation, with often strong gaps between intentions and reality (Bardach, 1977; Pressman and Wildavsky, 1984 (1973)). However, their paper raise several concerns, regarding the possibility of evaluating the effectiveness of this recent Land Law and the way the authors present and analyze its content. In this Viewpoint Paper, I would like to elaborate on my own research to highlight some issues of this Law and some shortcomings of the above-mentioned paper.

The case of Benin is particularly interesting because land debate began in the 1990s and because, within a few years (2007 and 2013), Benin has adopted two different land reforms. Relying on an "adaptation paradigm" (Bruce *et al.*, 1994), the first one focused on rural areas, and constructed an alternative to classical registration and land title, which its promoters considered fundamentally unsuitable for rural areas. It was prepared from the early 1990s onwards by rural development projects funded by European donors, which created a specific methodology to identify and register farmers' individual and collective land rights. The Rural Land Tenure Act 2007 created a new legal status, the Rural Land Certificate to legalize rural plots registered this way and a new land administration framework, anchored in rural communes[1]. The second one has a national focus. It has

[1] We use "communes "and not « municipalities » because in Benin most communes are rural and urban, and include a central town and a number of villages.

been led by the Ministry of Urban Planning with the support of the US Millennium Challenge Corporation (MCC)[2]. Initiated in 2004-2005 and prepared between 2006 and 2011, this reform aims to standardize land law and develop access to land title[3] by reforming the land administration. It was embodied in a Land Policy Statement (MUHRFLEC, 2011a) in 2011, followed by the adoption of the Land and Domain Code in 2013 (slightly revised in 2017), and the establishment in 2016 of a National Agency of Private and State Land (*Agence Nationale du Domaine et du Foncier – ANDF*). Three years later, the new institutional framework is largely in place, the first new titles have been issued. However, a number of procedures, devices and tools are not yet designed and implemented. The digitalization of existing land information and the preparation of the future cadastral tool are still in progress. The reform is thus still in implementation process. Field research would be useful to look at it first steps, analyse the practices of the new local Land Boards, see what kind of people ask for a title and check whether the stated willingness to improve rigor, reliability and rapidity in land administration is concretized. However, it is too early to evaluate its effectiveness.

Nevertheless, it is possible to analyse the content of the 2013 law and the land policy it embodies, their underlying assumptions, their content. This reform is very conservative in the way it thinks and deals with land issues. It focuses of private ownership, state-led registration, refusing to take into account the diversity of rights through the country and the fact that, in rural areas at least, people's concrete rights are not everywhere individual ownership. For it, land conflicts are the consequence of informality and registration and titling are the answers. The very logic of the classical registration and titling process is the right one, even if it only covers a small percentage of the full national territory: in 2004 there were only 14 606 land titles (MUHRFLEC, 2009)[5], for a population of 6,769,914 inhabitants in 2002. The "semi-formal" procedures that municipalities (and before local administration) have put in place (signing land sales contracts or ensuing administrative land certificates on untitled plots, giving housing permits outside state land, etc.) are not seen as pragmatic answers to the concrete problems of people and the absence of state solutions, but as unacceptable distortions to the rule. For the reform promoters, the sanctity of titling, the uniformity of the rules, have to be reaffirmed, but in a new way, that, this time, will allow for a large diffusion of title.

That is where the reform is very ambitious. It wants to make access to land title quicker, cheaper and more reliable and therefore to profoundly reform the land administration. Led by people in the Ministry of Housing, it has been a war machine against the Land Directorate (Ministry of Finance) that was responsible for issuing and administrating land titles. Highly centralized, without human and financial resources, subject to corruption, the Land Directorate strongly resisted institutional change and decentralization. Issuing a single up-to-date text, integrating private land and State ownership is seen as a success. Reorganizing the land administration and transferring the main responsibilities to a new agency, with decentralized bodies and stronger human resources is a strong achievement against administrative and corporatist interests and powers. The land law also integrates several

[2] The MCA (Millennium Challenge Account) is the national team set up under the aegis of the Presidency of the Republic to develop and manage projects submitted to the Millennium Challenge Corporation (MCC), an American aid agency founded following the Monterrey Conference in 2004.

[3] In 2013, the classical Land title has been replaced by a "land ownership certificate", which could be contested during 5 years in case of fraud or mistake. The 2017 revision came back to the Land title.

innovations as an extinctive prescription on untitled land, provisions for collective housing, rural land market regulation, which aim at solving specific issues. It also creates strong sanctions for fraud.

These are strong novelties. However, the effectivity and impact of these provisions are still to be demonstrated. Moreover, it is clear that the reform does not change fundamentally the obstacles to access to land for ordinary people. It still relays on multiple procedures where one needs first having a "document of presumption of ownership", with a plot map, to be able to ask for a title, for which another plot map will be necessary. While the State reduced its taxes, surveyors freely settle their prices and the full cost for getting a title is still heavy for citizens. The reform seems to be tailored more for urban well off people buying plots than for the greatest number of citizens. Moreover, the law has several contradictions (Djogbénou, 2013) even after its 2017 revision. It does not address the issue of equity nor the one of the diversity of norms and rights (Lavigne Delville, 2014). It wants to overcome legal dualism but it does not succeed: it repeals administrative certificates and rural land certificates but creates new documents like attestations of customary possession or certificates of belonging. It creates new insecurity for the people having this previous documents that are no longer recognized.

There are thus many possible issues for an analysis of the Benin 2013 land reform. Whatever focus is chosen, policy analysis and evaluation require relevant frames and methods. The problem is that Ekpodessi and Nakamura want to do too many things at the same time and lack a clear focus. They are not able to assess its implementation. In practice, they try to give a general overview that encompasses several mistakes. They make confusion between policy and law: as we saw, the 2013 Land Law is the result of a policy reform process that has been launched around 10 years before. It has been adopted by the National Assembly on January 14, 2013 and not in August, 14, which is the date of its promulgation by the Head of the State. Given the high land speculation in periurban (and in rural areas where urban elites are interested in) (Adjahouhoué, 2013; Gbaguidi and Spellenberg, 2004; Sotindjo, 1996), it is very surprising to read about a "sociological land practice consistent with urban expansion, under which an individual is unable to appropriate land as a commodity" (p.68). Moreover, it is wrong to say that "housing permits and certificates of sale remain official land documents delivered by the land administration" (p.67) as the 2013 law explicitly repeals these documents. The mistake is even greater about land sales, as the whole law is oriented toward private ownership rights and securing land buyers. A full section is devoted to "ownership through buying". One can agree that the issue of sale's negotiation and contracting is not really dealt with (what has to be in the contract for it to be legal ad to avoid later contestation? How to ensure that the seller is really the owner and has the right to sell?). But it is wrong to say that "no allusion is made on land selling procedures in the new law" (p.68) as it clearly describes how sale contracts have to be established by notaries.

What about effectiveness? As we saw, the implementation is still in process. The capacity of the reform to reorganize over time the practices of all stakeholders is still pending. The numerous actors that had vested interests in the former situation are still there and will try to protect them. It is in the practices of the new land administration, and the way its staff will more or less succeed in putting rigorous procedures in place, resisting to pressures, adapting to unintended situations, and finally reorganizing actor's practices and routines that the reality of the reform will be constructed.

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