



Government and land corruption in Benin

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Abstract

This contribution tries to explain the land problem in terms of the corruption of the urban elites, the policy brokers and, more generally, the players in the political arena. Indeed, in the context of democratising African States such as Benin, corruption has become a social phenomenon, as has the exercise of political power. There is almost no political system that is free from corruption scandals, where the economy in general and the rural economy in particular has not been pillaged. Land corruption is equally well organised in the corridors of power at local, intermediate and central level. Indeed we could talk about a 'chain of corruption' for land.

From the viewpoint of public action, this contribution offers an empirical definition of land corruption and a typology of players. It studies the major trends and the critical uncertainties surrounding this phenomenon, i.e. using land as an object of political clientelism. It also explores the future prospects for land in the face of land corruption, and the possible mechanisms for escaping the crisis.

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Acronyms

CEN-SAD	Community of Sahelo-Saharan states
CFAF	Central African Franc
CNSS	National social Security Fund
DDEHU	Ministry of Environment, Habitat and Town Planning
FAO	Food and Agriculture Association – United Kingdom
IGE	Inspector General of State
IGN	National Geographic Institute
RFU	Urban Land Registry
SERHAU-Sa	Agency for Regional Studies, Habitat and Urban Development
SIG	Geographic Information Systems
SPA	Administrative Public Services
SPIC	Industrial and Commercial Public Services
TIC	Information Technology
UAC	University of Abomey Calavi
USA	United States of America

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1 Introduction

The etymology of a word is worth much less than the use made of it.

Bloch 2002:143.

It is essential to think of land corruption as an operational concept reflecting 'the illicit acts and the abuses of power committed by those in power (at different levels) when performing their duties' (Lascombes 2009:264) as this relates to different land operations. Land corruption is a concept that we use to analyse the illicit transactions related to land and involving the public authorities. The concept of land corruption is not in common use in social science. We must specify that this definition is valid in the context of this study; however it is not a general definition of corruption insofar as it only concerns actions done by, or with, 'those in power'. We can define land as all the relationships established amongst people for access to land and its control. It is at the heart of economic, political, social and environmental issues. By defining land rights and their management, and directing the distribution of land amongst the players, the land policies have a central role in development strategies (Lavigne-Delville & Durand-Lasserre 2009).

We try to analyse this concept as it relates to the behaviour of the political elites, government officials and private operators. It mainly concerns the purchase of areas of land, town planning operations (such as development), land management and taxation. We often talk about 'theft of land' to characterise the fraudulent removal of land from an individual or community, or about misappropriating land, commodifying land rights, etc. We cannot talk about the theft of land, misappropriating land or commodifying land rights without the intervention of the public authorities which, moreover, do not properly control the land market process. Conversely, land corruption highlights the interaction between the public authorities and the private or independent operators that takes place in a network of clientelism. The concept of land corruption in many African states such as Benin covers the whole concept of land (holism) in terms of illicit transactions produced by an interaction of powers.

Land as a resource for setting up political clientelism was highlighted by Barth (1959) and Bailey (1969) à propos the Pathans of Pakistan, particularly in the fights between factions of villagers. Land corruption is therefore a form of political corruption related to the land market process which involves state and non-state players. It is a relational interaction interspersing donation, exchange, offer of service, recognition for service done, bonus, benefit, commission, etc. and mixing public and private interests. It is part of the sphere of public action that 'corresponds to all the effects resulting from interactions between interdependent institutions, between the officials who run these institutions and a multitude of social players affected by the public decisions' (Alcaud, Bouvet, *et al* 2004).

Paradigms are dominant today in analysing public action. In the sociology of public action in France a whole series of analysis trends borrow from theories that fall within the province of methodological individualism and the concepts of 'power' and 'player' to analyse the forms and processes of contemporary public action; on the other hand, critical sociology and its concepts of 'domination' and 'agent' provide conceptual tools enabling the analysis of public and state action (Laforgue 2011). To these theoretical frameworks, we can add the cognitive approach seen in the works of Bruno Jobert and Pierre Muller (1987) which also develops a form of 'conceptualising related systems that constitute policies' (Dubois 2011). The same applies for the sociology of organisations that emphasise the complexity of the rules (often informal) that govern the administrations, but also the autonomy of the players in public policies (Muller 2011).

The study of land corruption, from the point of view of public action, may therefore be perceived as 'all the relationships, practices and representations that contribute to the politically legitimised production of methods of regulating social relations' (Dubois 2009). If 'the course of events becomes natural when we do not wonder about its meaning' (Weber 1965) (*Gesammelte Aufsätze zur Wissenschaftslehre*), then land corruption is a total social phenomenon (in the Gurvitchian sense) and from the point of view of the players, we confine ourselves to describing it and analysing its forms as well as the legitimation processes:

... the status of the players is therefore not enough to define public action. The practices that contribute to this social regulation are themselves also diversified, from enacting standards to recourse to expert opinion, from allocating material resources to discursive production.

Dubois 2009.

We will therefore highlight the specific position of the administrative bureaucracy in cases of land corruption in the context of decentralisation in Benin. The first thing that strikes the sociologist (or the political scientist), is the extent

to which the public administration has its own internal social life; not only does it have its own culture but it constitutes a sort of social mini-system (Rocher 1980). The basic premise is that the process of public action related to land corruption tends to de-institutionalise what falls within the scope of the public sphere and leads to a Herculean interference of the private sphere in the public sphere. This public intervention indicates a 'certain normative fragility' (Dourlens 2010); i.e. legislation and administrative organisation of land prone to land corruption and challenges the future of the land (livelihood) through the interaction of administrative, state and non-state players within land institutions (livelihood here refers to daily life and life in the future).

A documentary review was conducted, on the one hand to summarise the issue and to define the working hypotheses and on the other hand to clarify empirically the key concept — land corruption. As the study essentially employs the qualitative analysis method, the data collection tool is the interview guide, designed for a target population of development committee members; landowners selling land; buyers; landowners; town councils; regulatory bodies (DDEHU, IGN, SERHAU-SA, firms of chartered surveyors); and teachers at the University of Abomey-Calavi (Benin). The empirical data was collected during June and July 2010. The documentary data and the data from the land survey enabled us to present the research results.

2 Land corruption regulated legally and administratively

Land is traditionally regarded as sacred, humanised and socialised. It is not liable to be simply disposed of like other objects (Gbaguidi 2010). That being the case, how can we in modern sociology suspect acts of land corruption, especially as a plot of land cannot be bought without issuing the buyer with a sales agreement? At first sight, that would seem to be within the realms of the *impossible* as developed and undeveloped land is governed by legislation and each local entity has a land-use service.

A flexible land legislation

In Benin there are two types of right that characterise land: the customary land right and the modern land right, also known as the registration system. In practice, the impreciseness of these two types of right leads to land insecurity which makes the land vulnerable and subject to all sorts of misappropriation.

Customary law still exists

In the pre-colonial period, different types of rights co-existed, in particular the right of ownership held by the King and the right of use held by individuals (Circular A. P. of 19 March 1931: point 227). The King was the major landowner, had an eminent right (Circular A. P. of 19 March 1931: point 228) and supervised and controlled it as such. In the kingdom of Danxomè in South Benin, under the authority of the agriculture minister 'Tokpo', land could be given to a farmer for a fee. These farmers therefore had the right of use. 'The family property was jointly owned and run by the community chief who has to establish its usufruct for the needs of the community' (*ibid*: point 222). Originally, therefore, the land belonged to sociocultural groups who settled there for migratory reasons or for farming purposes. These very first occupants of the land were often worthies from traditional communities who provided land for those under their protection. The colonial administration then introduced a new land system.

The rival registration system

The colonial government became the sole landowner (N'Bessa 2004–2005) for two essential reasons: to make clear its right over the land acquired and for commercial purposes; and to issue title deeds subject to the payment of a tax. Land can be considered as an instrument of economic development; this idea of land intensified in the post-colonial period (after independence in 1960) when the government took a number of different measures, such as:

- Law n°65–25 of 14 August 1965 on the organisation of the land tenure system in Dahomey. This law defines the registration conditions for goods owned privately by the government or by private individuals. However, it does not appear to represent the crystallising of a vague concept or an exercise in appropriating land by the public authorities.
- The administrative decision of the council of ministers of 27 January 1977 authorising the sale of land for housing throughout the whole national territory.
- Article 22 of law n°90–32 of 11 December 1990 (*constitution of the Republic of Benin*) guarantees the right of ownership for all and the right to a fair and prior compensation for expropriation for reasons of public use, which may on its own justify bringing the ownership into question. From this law, we can deduce that land is an individual, collective (family, social network, etc.) and state property.

The right of ownership for all should imply that the state controls the land market and redistributes it as public property. In practice, however, the two types of right co-exist, with probably greater recourse to the customary land right according to empirical observations. The land essentially belongs to non-nuclear families, communities and others. Individual or private land ownership progresses easily, if often illegally. The great ease with which land owned by families is divided or sold is a sign of the desire of the Beninese to have their own property (commonly known as 'home') whilst, at the same time, the government is obliged to expropriate or reserve the land in accordance with town planning operations (specifically development) to become the landowner with a view to providing public services (schools, health centres, police stations, etc.) in the towns and countryside. Thus:

the legal dualism for land always causes difficulties in choosing an effective land policy. Whether in an urban area or a rural area land is contested: in the name of development, the government claims ownership of the land that it wishes to incorporate into its estate by means of private right or public right whilst the private owners want to maintain their rights over their land.

Gbaguidi 2010.

To this we must add the lack of legal land security, with a government who does not fix or define the price margin on the sale of a plot and does not know when or how an area of land has been acquired by a third party. Note the difference in level between, on the one hand, the positive right (the Beninese constitution that stipulates that every individual has the right to own land), which regards land ownership not as the rule but as the exception and places it under administrative supervision and, on the other hand, the sociological land practice consistent with the evolution of society (urban expansion), which enables an individual to appropriate the land as a commodity. 'This goes to show that today in the Republic of Benin, as things currently stand, the government and the citizen both claim legal land ownership' (Gbaguidi 2010). This duality of land rights leads Spore (2004) to maintain that:

all these systems overlap, creating unclear legal situations. The strongest or the richest profit from this by monopolising the land, all the more so since the profusion of arbitration cases does not provide for a real remedy.

Spore 2004.

National laws overlap with a range of different standards and methods of land regulation that they have only partly transformed. The divide between legality, legitimacy and practice means that a large part of the population remains in an extra-legal situation that causes frequent conflicts (Lavigne-Delville & Durand-Lasserre 2009). Roch Mongbo says that 'in Benin, the government have been guilty of the sin of failing to take responsibility in the sector of land legislation ...' (2002). There is a legal void or a sort of 'bug' in Beninese land legislation that facilitates and is prone to land corruption because land is compared to a work of art that can be bought and resold without the direct intervention of the public authorities.

Are those involved in land corruption — most of whom are still in the state apparatus — willing to embrace formal regulation or improve land security? This question remains open. It seems necessary therefore to analyse the structure of the land administration which should, in principle, oversee land security, especially since 'political science has for a long time now been inviting us to take an interest in the ordinary conduct of the administrations, with their informal ways of operating and their power games' (Weller 2009).

The low production capacity of land administration

Land administration is an area of public administration, i.e. it is a 'device for managing public affairs' (Debbasch & Colin 2005) in particular land. After the national conferences, the need for administrative reform became a priority for the African states, to bring the citizen closer to the administration, encourage the people to participate in the management of the public community and essentially take responsibility for their own affairs. Thus, in states such as Mali and Burkina-Faso, the reform process was accelerated and the different local communities have been administered by elected mayors since 1995. In Benin, the process is twelve years old. In 1993, three years after the national conference, the Convention on Territorial Administration was held, its main recommendation being decentralisation, devolution and division of land. Six years later, different laws were enacted; in December 2002 and January 2003, the first municipal and local elections in the era of democratic revival took place. The local communities are now administered by local councillors who have prerogatives provided for by law. From the reforms resulting from this decentralisation, the seventy-seven former sub-prefectures and urban constituencies have been 'transformed' into autonomous municipalities. These are in fact municipalities with a legal status, financial autonomy and administered by elected bodies (the municipal or local councils and their executives). This reform introduces a single

level of decentralisation (which is the municipality) and a single level of devolution (which is the department administered by a prefect). With the advent of decentralisation, the local administration is responsible for the management of the land sector. This public service commonly called 'land-use service' or 'land and town planning service' manages land on a day-to-day basis in the context of a transfer of powers. This is a form of territorialising public action that can be defined as the

transfer by the government of some of its powers to the local communities, which see their legitimacy and their means of action increase, enabling them to surpass the framework provided by the decentralisation reforms, all the more so since, in a context of competition between local communities, they develop a number of initiatives, as part of the legitimisation process both by action and by 'orientation'.

Faure 2005.

Land as a public service

The notion of public service, as French legal theory understands it, is a formalised, guaranteed and sanctioned by law activity that has two dimensions. Firstly, that of social need, because it is impossible to 'live together' without jointly performing certain tasks essential to satisfying the basic needs of every human being and the collective needs of people living in a given area, whatever it may be. Secondly, that of public will, because the choice of these tasks is determined according to their public interest and their accomplishment is supported by the interaction of institutions chosen by each government to represent it and act on its behalf (Guglielmi & Koubi 2007). Indeed, the right to public services constitutes a special ground for reflecting on public action and a fascinating field of study (Braconnier 2003).

Public service still seems today to be a key function of the administration, i.e. all the public or private structures responsible for performing public interest activities. However, like the word administration, the expression public service has several meanings. On the one hand it indicates an activity or a task in the public interest (e.g. public service provided by schools, refuse collecting, etc.), on the other hand, all the bodies responsible for these public interest activities and which can be both public and private (e.g. motorway companies). Thus we go from 'public service' to 'public services'. The law defines the tasks relating to public service. However these have varied over time and have spread to the economic, social and cultural domains. Thus, in 1916, the jurisprudence of the Council of State did not provide for the development of a public service theatre, and then changed its mind in 1944. For a long time, public service was the sole criterion on which the application of administrative law and the competence of administrative justice (theory of the 'school of public service') were based. During the twentieth century, this condition was no longer sufficient with the extension of public service activities to the economic domain and the more important role played by private law. Thus, according to the nature of the activity and the structure responsible for it, we can distinguish two different scenarios:

1. The administrative public services (SPA): Very diverse, bringing together services that have no industrial or commercial purpose (e.g. national defence, education, etc.); they are mainly administered by public bodies and administrative law prevails.
2. The industrial and commercial public services (SPIC): These appeared from the time of the decree of Bac d'Eloka (1921). They can be provided by public or private bodies. For private bodies, private law mostly applies, but administrative law is not absent. Thus, they remain under the supervision of the public authorities (government, territorial communities) who make sure that they are doing their job properly, must respect the principle of equal user-access to the public service and may benefit from a monopoly situation over all or part of the national territory (Vie-publique 2008).

On the whole, land as a public service is multifunctional. For the local communities, it is this service that is in charge of planning urban areas through: the urban development scheme; town planning, etc.; preparing land development cases; setting up geographic information systems (SIG) that facilitate the implementing of the urban land registry (RFU); managing and preserving land ownership; conducting topographical, geodesic and cadastral surveys; working with the technical services to monitor development and resettlement operations; centralising all the documents relating to land in the districts and local areas; issuing residency and building permits, liaising with the legal service to manage land disputes; and representing the municipality in the courts. In addition, the service sells the developed plots, identifying them, updating the inventory and accounting for and updating local properties in public and private local areas. In order for the public service to function better, the public officials must be neutral, i.e. they must observe the principles of administrative fairness to the public, impartiality and non-discrimination.

Furthermore, there are essentially three divisions: the development division; the division dealing with planning documents and permits; and the land deeds division. This is therefore an important service in managing land affairs.

... the public service is essentially defined by the activity. This means the processes implemented by the public authorities to respond positively to the demands of civil society for consistency and with an aim that is clearly distinguished from social solidarity. These processes include certain activities and operations, duties and tasks.

Guglielmi & Koubi 2007.

However, there can be land corruption without the bureaucracy of land administration playing an active role, an administration that is revealed in essence to be somewhat ineffective.

Land as a public service: An incomplete structure

Decentralisation is subject to the fulfilment of three conditions:

- it assumes that a range of specific competencies is determined for the local communities;
- it presumes that responsibility for these activities is taken by the local authorities independent from the central authority; and
- it requires that the affairs of the local authorities are managed autonomously (Baguenard 2004).

The local Beninese communities are administered according to this scenario. This assumes that the local and municipal services exercise their prerogatives in accordance with the laws governing decentralisation. Beyond setting up the services — in particular the land-use and planning service — the managerial analysis reveals a lack of human resources qualified to deal with land management and in particular that: ‘the local communities have inherited from the former sub-prefectures some 4 000 officials, 94% of whom are executives and the remaining 6% design and managerial staff’ (Le Municipal 2006). Generally, in addition to the lack of staff, administration is slow and the service is not computerised— giving a computer to the land-use services does not mean that they are computerised; for them to be computerised, these services must be equipped with software that can facilitate any land operation — or programmed to facilitate the prospective monitoring of land operations. The land administration could therefore be said to constitute a passive bureaucracy; If not, how is it that law n°65-25 of 14 August 1965 organising the land tenure system in Dahomey, and which is still in force, has no implementing provisions? Alain Durand-Lasserre and Etienne Le Roy say that ‘the land administration in sub-Saharan Africa is not fit for purpose’ (2010).

In addition to the vicious circle of bureaucratisation described by Michel Crozier, characterised by an expensive, routine and inefficient operation, there is a political crisis in which criticism of the politico-administrative elites is combined with exposure of the abuse of public interest by players protecting different interests to those of civil society.

Alcaud, Bouvet, et al 2004.

Thus it is affected by ‘institutional problems and issues of misgovernance’ (Houedjissin 2008) ‘... where land governance is poor, there is an increased risk of corruption’ (Mueller 2011).

... poor governance, whether it concerns formal land administration or customary land rights, (which) leads to the land rights of the poorest being inadequately protected, and to them being marginalised and losing their rights. Poor governance also means that the land is not exploited appropriately and is therefore unable to create wealth and benefit society as a whole. The lack of land administration competencies may prevent the development goals from being achieved and poverty from being eradicated. Good land governance is an essential element in the good governance of society as a whole.

FAO 2007.

Indeed the unclear structure of the Beninese land administration constitutes a breeding ground for land corruption. ‘Poor governance increases the probability of corruption in the land systems and land administration and intensifies the impact of pressure on the use of the land’ (FAO 2012).

So can land corruption be understood as the interaction of players taken individually, from the actionist and interactionist points of view, given that the individual is, in any society, an individual player? Are their social position; their rank within the hierarchy; their status in the public administration, in the political sphere, in the private sphere and even their economic profile, pointers capable of facilitating their integration into client networks? When asking these questions, we must bear in mind that corruption is always the consequence of social interaction.

3 The public chain of land corruption

Public action is the product of the practices and representations of the officials engaged in it; the direction of these practices and representations is determined by their positions, trajectories and social characteristics: understanding the 'product' (public action) therefore involves studying the sociology of its producers. In this regard *positional analysis* is essential to the sociology of public action. It includes among other things studying the groups that are most regularly present in public policy making (Dubois 2009). More precisely, we are 'interested in the way in which the officials deal with a certain failure of the management to fulfil their duty, by inventing, rebuilding, creating cognitive supports that enable them to understand the reality and act upon it' (Dourlens 2010). However, 'it is not, in fact, a case of applying an empirical 'gloss', but of using the survey data to analyse and interpret what we have observed by recreating certain facts, focusing on certain processes, locating the most relevant players ...'(Musselin 2005).

The omnipresent players

The comparative analysis of empirical data enables us to distinguish two types of player: players at infra-state (local) level; and state players (prefectural level and central to government decision-making). There are individual, community and institutional players.

A typology of players

Taking a global approach, the social science specialists, in particular the political scientist, uses tools such as typology. It is a form of characterisation that '... introduces points of reference into a complex reality' (Hastings 1996) such as land corruption.

At infra-state level, 'the municipality is a territorial community with a legal status and financial autonomy. It is freely administered by a council elected within the conditions fixed by law' (Article 1 of law 97/029). In line with their actions, the local councillors are therefore the main players in the local politico-administrative system. The mayor is the authority that personifies 'the local executive'. Martine Buron (2000) writes about France that:

nationally the mayor combines the roles played by the president of the republic, the prime minister and the presidents of the national assembly and the senate, i.e. the role of the four main offices of state.

The involvement of different local or politico-administrative players in land corruption therefore serves to highlight the corruptible aspect of the interaction. In fact, the mayor plays a dominant role in the local management of the land. The power of these politico-administrative authorities to manage land is extensive and evident with the implementing of urban planning approaches accompanied by development plans. If the development needs are expressed by the people, in the vast majority of municipalities in Benin the mayor is a permanent member of the development committees that they chair. The district chiefs and the local chiefs are, according to them, involved in the urban planning operations of their administrative zone, participating in mobilisation and awareness actions and countersigning the agreements for the sale of the areas of land. They are the focal points for the mayor in this regard.

The private firms of chartered surveyors are recruited by the mayor. These firms are at the heart of planning issues and are very often accused by the people of colluding with the local administration to determine the reduction factor; for the technical errors revealed by the opinion survey publicity phase; and when dividing up and registering plots. The development association, when it exists, is always represented in the development committee. Its role can be seen in the phase of awareness, mobilisation and explanation of the stages and demands of the development. Nevertheless, there are landowners who have three or four representatives on the development committee (in accordance with the number of owners presumed registered in the area of the town to be developed). They sometimes spearhead the challenges brought against the members of the development committee often accused of colluding with the administration and/or the private firms of surveyors. These players sometimes work in tandem with the state authorities in land misappropriation operations.

At state level, there are three public administration officials or politico-administrative authorities appointed by the central authority. One of the key players is the prefect. In all legal mechanisms, decentralisation leads to devolution. The prefect plays the role of the regulatory authority, as representative of the central authority, and is assigned specific tasks to avoid attribution disputes between mayor and prefect. In the period of the revolution (1972–1989) until the 2000s, the prefect was actively involved in most of the land development operations and in managing the development through planning committees and the land-use service of the prefecture. Indeed, 'the centralised

operations of the land-use services caused a lot of problems related to the cumbersome nature of the registration procedure and the overload of services generating many corrupt practices in the attempt to procure a title' (Droy, Bidou, *et al* 2010).

With the advent of decentralisation, the mayor becomes the chair of the development committee and the prefect coordinates the work. If land is expropriated, the role of the prefect is to strategically monitor the implementing of the process. As well as the prefect, the players central to government decision-making — such as ministers of the republic, technical advisers to heads of state, high-ranking administrative officials, etc. — are very often mentioned in land corruption.

One official player which provides synergy between infra-state and state is the development committee, which brings together all the structures and authorities previously mentioned: prefect (coordinator); mayor (chair of the development committee); district chief; local chief(s); landowner representatives; technical services of the local administration and devolved services; development associations; and worthies. We note that it is very often the development committees that are implicated in land misappropriations related to town planning operations. In the study of conflict, it is said that the players accuse each other of land corruption.

From the strategic analysis, which in French sociology today has a mind-set that focuses on calculations, the taking of concrete decisions by players within the environment in which they develop (Crozier & Friedberg 1977) and which supports the appointment of 'rational' individuals to positions of 'power', we can say that land corruption clearly has a political dimension.

[C]orruption no longer comes from the alleged 'corruptor', but from the person considered in law to be the passive player, the corrupted, i.e. the politician or the official. More and more it is the public official — here, the officer of the municipality — who is in the position of corruptor.

Meny 2001.

Likewise, note that in an organised framework, the players also tend towards mobilising the most relevant resources for the desired aims and try to increase their margin for manoeuvre or decision-making in their interactions with the other players. However, whether the players are infra-state, state or supra-state, it is the land that is an object of political clientelism.

In fact, corruption poses the problem of power. People can only profit from the prerogatives that they hold or those they would have us believe they hold, which is another form of power. Each owner of a small pocket of power — and there are many of them — is liable to benefit directly from misappropriation. But the reality of fraudulent practice can only be judged in relation to the rules on which the power that has enabled this action is based. (...) the difficulty is great, insofar as many powers stem from several frames of reference: thus, the 'local chief' exists both in relation to custom and in relation to law, and also, sometimes, following the consensus of a local community: the politician must respect both the principles of the government and certain specific solidarities; likewise the business person is dependent on an international system and a local political system.

Piermay 2010.

As Land is a source of income and a cost-benefit resource:

... the radical transformation of society involves the fight against monopolising goods that are considered common, inventing new forms of sharing and cooperating and the adoption of this notion by the majority, in the knowledge that it is much more complex than simply abandoning private ownership ... Common goods cover both the substance of the good that must be preserved from monopolisation, the rules that enable it to be shared and finally the collective and democratic organisation that governs them.

Sultan 2011.

In the confusion between appropriate, gratuitous and free use of a good (*ibid*), corruption means that the land has essentially gained in use-value. '... corruption, although it varies from place to place, is surprisingly wide-ranging and seriously disrupts the way the state apparatus operates' (Piermay 2010).

Corrupt land practices

In the absence of a rigorous legal framework for land appropriation, land rights implicitly give rise to the monopolising of the land by politico-administrative players and citizens who have a fixed position in the administration and in other

spheres of activity. For land corruption, we need to distinguish the land corruption practices in urban/outlying areas from those in rural areas. The research approach remains essentially heuristic, which allows us to ask ourselves essential questions about agricultural economy and the sociology of public action: Who does what? Who gets what? How? And why? (Peroni 1993).

In urban areas, land corruption practices are varied. They mostly concern development operations; development of land for state use; environmental planning work; and the property tax system.

Development, a source of multi-faceted corruption

The urban area is the preferred framework for environmental planning operations, specifically development. Moreover, the latter remains the main urban development tool. But in Benin, it is almost always subsequent to the occupation of the land. The development process has four phases:

1. preparing the development plan;
2. inventory;
3. development itself (pockets of housing, areas of local and state control, roads, etc.); and
4. resettlement (opening of roads).

Generally, the last two phases of this process are the most prone to land corruption. *De facto*, almost all the land development processes are affected by land corruption, the result of the interaction between the different players involved.

In fact, the land corruption schemes operated during the actual development phase currently occurring in outlying areas. The buyers hear about a development project or the drawing up of an inventory for a given area, rush to buy plots of land and, in most cases, invest in them. In a few years, the housing profile of the outlying area changes and it loses its agricultural status. So the buyers of plots come to an agreement with the surveyor (or the urban planning engineer) so that the reduction factor is not applied to their area of land or that their investment (houses, factories, etc.) is protected. This type of land corruption is within everyone's reach, the essential ingredient being to have the resources to persuade the surveyor to act.

For resettlement, considering that this phase focuses on realising a full-scale development plan (and thus on the layout of the urban area), the responsibility of the members of the development committee (local chiefs, members of development associations, etc.) is highlighted in the illegal traffic on the land. In fact, applying the reduction factor (very variable depending on the municipalities and within the same municipality) increases the areas of public space (schools, colleges, health centres, etc.); eases the movement of people and goods along the roads; and provides land for development. The landowners who find themselves in thrall to these infrastructures provided for by the development plan are often forced to destroy their houses. The development committee is therefore responsible for allocating them a plot. But the reality is completely different.

Landowners, who are supposed to be compensated, are victims of the misappropriation of plots not yet allocated. Politico-administrative authorities and members of the development committee buy most of the plots reserved for this purpose by the square metre. They even help with the sale of the areas provided for the access roads. This was the case in 2006 in the municipality of Abomey-Calavi, a suburb of Cotonou where part of the main road connecting the districts of Sèmè and Tankpè were sold to a third party with a land title who had also erected a house (ground floor). The protests of the people, specifically members of development associations, forced the municipal council to order its destruction. They arrange to have a high number of plots that they sell or exploit by building houses for rent. Their name or that of their next of kin (child, spouse, relative, etc.) is entered on the administrative documents for the ownership of these created or falsified plots. Consequently there are cases of land misappropriation. Several development cases have given rise to commissions of enquiry in several municipalities in Benin.

A technical and financial audit report has revealed cases of theft of plots and misappropriation of development funds in the municipality of Abomey-Calavi (Houssou 2006). Other practices were shown in the adhoc committee assessment report (created by sub-prefect's decree n°21/029/SP-AC/SG/BAGS of 2 October 1995) on development work in the district of Abomey-Calavi. These include reduction factors that are generally high (at least 40%) and disparate (35% in Dékoungbé and 30% in Godomey-gare, two towns in the district of Godomey); surface area manipulations; inventory numbers that are surplus to requirements; plots without addressee plaques; etc. The reduction factor does not apply to some landowners (i.e. the rich). These cases of misappropriation lead to disputes.

The development process may therefore be challenged or destined to fail because of land corruption. Different outlying areas have been running several development projects in this way for decades. Land corruption becomes more complex when it affects the public space intended for use by the state.

The district of Agla (south-west of Cotonou and one of the most densely populated today) experienced three development processes between 1980 and 2001. The last one (2001) finally ended with plots misappropriated by various players in the development process. Members of development committees procured plots in other towns in Agla far away from their habitual residences to deter people. Others resold these plots to improve their living conditions. Conversely, the district of Abomey-Calavi (municipality of Abomey-Calavi, suburb of Cotonou) has been under development since 1982.

Reservation of land for state use, a contentious use of public land

There is not much less land corruption in the areas of land reserved for use by the Beninese government; the state-controlled land is sold to third parties without observing the applicable standards. Here we will study two cases that show the interaction of the players; the encroachment on the land of the University of Abomey-Calavi (formerly the National University of Benin); and the case of the garden of the Ambassador to Benin in Washington (USA).

When it was created in 1970, the surface area of the first of these cases, the largest and oldest university in Benin (formerly Dahomey) was 607ha 60a and 16ca; today it is 99ha 97a and 42ca — a drastic reduction of 83.55%. In other words, the current surface area of the campus of Abomey-Calavi (UAC) is only 16.45% (our calculations) of what it was when it was created. How can the significant reduction in this essentially public land be explained?

Officially, the UAC land was cut by 106ha 53a and 11ca to install a transmitter centre for national broadcasting by decree n°19/MTP/DTP/SUH of 14 October 1972. Based on its initial surface area, 501ha 07a and 05ca should normally have remained. But the current surface area is only 99ha 97a and 42ca, even though no other decree exists to justify a reduction in surface area. At the same time, on the other hand, there was an anarchic occupation of the university land. Many commissions of enquiry were set up in the 1980s and 1990s to study the issue, but none of them uncovered report n°2/PR.A of 24 April 1971 of the public opinion survey that led to the declaration of state approval of the land of the UAC (decree n°30/MTP of 27 October 1971). It is obviously in the interests of some players that the verification procedure does not succeed insofar as this report has no legal value, this prevents ‘the establishment of the terms of commitments undertaken by the government to the landowners’ (Agbodjogbe & Agoua 2008) who were expropriated without being compensated.

Thus, having been paid compensation for having to vacate the land, the landowners re-appropriated a large area of the land sold to the university and resold it to new buyers, mainly to ‘high-ranking administration executives and politicians (*Ibid*) who, in their turn, constructed added-value housing (villas, one-storey houses, etc.). The latter were able to ‘exploit’ their position in the public sphere to procure land titles from the government, thus giving a legal gloss to these land repurchases. Also notable is the lack of focus of the National Geographic Institute (formerly the National Institute of Cartography) which did not complete the study of the inventory plan of the university land, despite the funds having been mobilised and put at its disposal. The geographers who worked on the UAC development have ‘the strong impression of a coalition of players and accomplices whose actions were aimed at dispossessing our university of its property and reducing the surface area of land of the University of Abomey-Calavi’ (*Ibid*).

In addition, the proceedings instituted by the university against the landowners were blocked because it was unable to prove that it is the owner of the state-approved land. Since then UAC has contented itself with 99ha 97a and 42ca. In theory, it is a case of the government being robbed by the government as the players who ‘defended’ the UAC case (i.e. the government) are the very people who purchased plots of land: *you cannot run and overtake yourself*. Roch Mongbo says that ‘the authority and even the reality of the government have however been compromised, often from the inside, by players representing or directly connected to this same government’ (2002).

This is not the case in the fraudulent sale of a portion of land from Benin to the United States (USA). This government affair involved high-ranking officials in the foreign office. In 2006, in the mysterious corridors of government power and in diplomatic and legal circles, the talk was of the involvement of a diplomat, general secretary of his ministry and later Minister of Foreign Affairs and African Integration in the sale of a portion of land of the Ambassador to Benin in New York. The plot, sold off at CFAF400 million¹ without the authorisation of the Beninese government, was resold a

¹ i.e. €609 756.10 (exchange rate: €1= CFAF656).

week later by its buyer for about CFAF6.4 billion² (sixteen times the purchase price) (Adoun & Awouda 2008). The administrative director of the ministry was bound by presidential decree 2006-049 of 15 February 2006.

The then President of the Republic, General Mathieu Kérékou, dismissed the minister giving a rather vague reason. The decree specified that a commission of enquiry would shed light on the case. The prosecutors of Cotonou declared themselves incompetent to deal with this case and referred it to the competence of the High Court of Justice. According to article 136 of the constitution of 11 December 1990:

The High Court of Justice is competent to judge the President of the Republic and the members of the government in cases such as high treason, offences committed in the exercise of or on the occasion of the exercise of their duties, and to judge their accomplices if there is a plot to destabilise national security.

The lawyers of the accused stated on national radio and television channels that it was a 'case closed without repercussions'. They said that they were certain that the matter would have no repercussions as:

... decision to proceed against and then indict the president of the republic and members of the government is passed by a majority of two-thirds of the deputies making up the national assembly, according to the procedure provided for by the national assembly regulation.

Ibid.

In other words, can the vote of two thirds of the deputies be obtained? This procedure gives the magistrates in the Court of Criminal Appeal who have jurisdiction over the national assembly, the prerogative to lead the investigation. In its application, the procedure is so complex that this court has been unable to try any high-ranking government official; the case is closed, without any repercussions. This case resurfaced in July 2010. It would seem that this former accused minister was supporting a probable opposition candidate in the 2011 presidential race. This is also the head of a political group who is not close to the presidential camp. The current government of Yayi Boni recovered the case and sent a request to the national assembly to ask for authorisation to bring proceedings before the High Court of Justice. Will the deputies authorise the procedure? Especially since on the eve of the 2011 elections, the deputies were confronted with two facts in this case: the legal fact (authorising legal proceedings) and the political manoeuvring (the case concerns one of their own). Other revelations were made by the Inspector General of State (IGE) (L'Autre Quotidien 2010), according to which the minister and his daughter (resident in Maryland in the USA) were said to have received the sum of about US\$392 000. After the national elections of 2011, however, this case of land corruption was no longer spoken of in political circles.

Within the rules of public international law, this case of the sale of Beninese land did not bind the American government in any way. Thus, the American government could not make a diplomatic appeal for Benin to recover the land of which it had been dispossessed. However, Benin instituted proceedings and won on appeal (September 2010); American justice handed the land back to Benin, a sale having been judged illegal. Note in passing that lawyer's fees would have cost the Beninese government US\$200 000, i.e. CFAF90 million (US\$1= CFAF450) for an area of land sold illegally for CFAF400 million. So it is clear that land corruption affects the sovereignty of the government both internally and as regards international society. No political regime will stop reinventing corruption strategies, which can affect land developed by the government in relation to private investors.

Land development, a critical source of financial income

This concerns planning and development projects conducted by the government. As we can imagine, these are projects with a budget of billions of CFA francs. Indeed, land corruption essentially focuses on the irregularity of the public procurement process. Adoun and Awoudo (2008) highlight the cost of building the new head office of the National Social Security Fund (CNSS), initially valued at around CFAF3 billion at invitation to tender, but which finally peaked at CFAF6 billion after amendments in 2005; the purchase by CNSS 'of an area of five hectares situated between the Benin Marina hotel and the Novotel for CFAF6 billion received in two weeks' in 2005 (*Ibid*).

Furthermore, in the 'CEN-SAD affair' which came to light just after the 10th summit of CEN-SAD in Cotonou in 2008, it was planned to allocate plots of land to property developers, develop the sites and build fourteen villas. Carrying out these tasks involved high-ranking officials and ministers in a scandal of misappropriation of funds to the tune of

² i.e. €9 756 097.56.

billions of CFAF. This affair persuaded the chief of state to make disclosures on 1 August 2009 in Cotonou, during a televised debate (Anonrin 2010). The CEN-SAD affair concerned the entire political establishment, whether at the presidential or opposition end of the spectrum. This goes to show that a network of political clientelism exists in Benin and tends on the whole to steer a course through corruption in general and land corruption in particular.

Thus land corruption is dynamic and alive and well amongst the ruling elites.

We can surmise that the lack of cohesion between the law and reality is not only related to the drastic transformations experienced by African society, but also, and perhaps increasingly, to the deliberate intention of members of the state apparatus to maintain and increase their advantages. (...) Corruption and all forms of misappropriation therefore benefit the most powerful most of all. Putting to one side the forms of redistribution, they increase social inequalities; and, in all cases, accentuate power contrasts. Is such an assertion not perhaps a rumour intentionally spread to hide the true causes of corruption? Thus, misappropriation constitutes an actual system, with its own rules.

Piermay 2010.

The state official tries to consolidate their material position, which can limit the flexibility and effectiveness of the administration as a pure instrument of domination.

ibid.

Thus, land corruption is part of an institutional change wished for or desired by those involved.

Corruption and the future of land institution

It is legitimised that land corruption creates land insecurity; generally, land corruption can be defined as the main reason why the land-use services do not function properly. The land management system is not transparent and does not make it easy to implement a key land development policy.

In this regard, land corruption is an established fact, a 'form of social organisation that connects values, standards and models of relationship and behaviour' (Revel 2006). To this end, Pierre Bourdieu uses the term institution to refer not only to an institution as a state (a way of thinking, of being socially established), but also as a process (to institute is to establish) — 'the ritual of institution establishes a difference, it institutes it' and through a symbolic efficiency, 'the power to influence the real by acting on the representation of the real' (2001). Elements of regulation must therefore be considered.

Land corruption is poisoning African societies and in particular the Beninese. We may wonder what the players do with the surplus land misappropriated by the act of corruption (strategic interests). The land sold off has several uses, i.e. farming, building luxury housing (that is often uninhabited or not completed), empty areas of land (fallow land), land resold at a high price after the development of the site, etc.

Of note, in terms of impact on *livelihood*, is:

- the scarcity in the medium and long term of land suitable for cultivation (farmers who were previously landowners have become tenant farmers);
- the rural exodus and the migration to other border states in search of a better life (the departure of farmers from the farming profession to invest in new activity sectors such as the *zemidjan* — motorcycle taxis);
- the development of social scourges (such as theft, organised crime, alcoholism, etc.);
- the threat that hangs over food security in Benin or in the sub-region; etc.

Land must therefore be regulated to reduce misgovernance in this regard because it is on the land that all the economic activities depend.

However, if in Madagascar 'recourse to justice to settle land disputes is also uncertain, as corruption is very widespread here as well' (Droy, Bidoul, *et al* 2010), it is also difficult to say that in Benin a case of land corruption where recourse to justice has been possible has been fairly settled. On the contrary, what is astonishing is the complicity of some individuals with court judges to hush up cases. Justice is subject to many processes, all of which face the same charge that is substantial severe and without redress there is:

- no independent legal power;
- justice is subordinate to political power;
- judges are mercenary;
- magistrates are insufficiently or inadequately trained;
- the courts have a lack of funding and documentation;
- rules and procedures are too legalised; and
- the legal apparatus is remote from the people' (Du Bois de Gaudusson 1990).

For various reasons, land disputes are often not settled by the national courts and most of the disputes heard relate to land. On walls in the large urban areas and outlying areas, one can read: Plot under dispute, not for sale; Dispute, court case; Buyer at risk of death. Land is therefore experiencing a crisis of justice.

... under these conditions, the actual operation of the legal apparatus takes us straight to the heart of the problem of government and democracy. The crisis of justice is one of the many manifestations of the government crisis in Africa and is only one part of it.

Tidjani Alou 2007.

It remains to be seen whether the new law on corruption passed on 28 August 2011 can have a positive impact on the fight against land corruption. Moreover, rigorous land legislation is needed and how well it works will depend on the will of both state and non-state players. As is the case in other states like Madagascar, a legal assistance centre needs to be set up to deal with issues relating to land administration. Land administration falls within the scope of the kingly function of the state that must commit itself to combatting land corruption in all its forms. In addition, the need to introduce information technology (TIC) to the system of land management is imperative to combatting land corruption.

4 Conclusion

Land corruption is a consequence of the ambivalence of two types of land rights, still present in Benin. 'The co-existence of conflicting legal systems that are within the law and/or largely legitimate, generates a confused situation in which all forms of resourcefulness, misappropriation and corruption can spread' (Piermay 1986). Any social relationship must be understood as a relationship with power or as a relationship of power, which justifies the fact that in the sphere of land corruption power is both an exploited resource and the aim of the action undertaken. This greatly influences the process of the institutional and legal apparatus surrounding land, as the players involved may be or may easily become land brokers. The combination of unclear regulatory frameworks and complex administrative processes may lead to a lack of transparency and responsibility on the part of the land administration' (FAO 2007).

The issue of land corruption reveals the presence of an abundance of players who have differing interests and occupy strategic positions in the public sphere and in the private sphere. 'In this sector of land, the political elites have, it seems, succeeded in giving civil society and the citizens the image of an incoherent and inconsistent government' (Mongbo 2002). In addition, land corruption limits citizenship in the sense of an individual being a member of a democratic society. In this sense, it challenges the future of land (*livelihood*) and reflects a more global problem, the 'moral economy of corruption' (de Sardan 2007). Public action is therefore characterised by:

... the wide range of problems, combination of diverse players, changes in the scales of the areas of reference, adjustments of conflicting social interests, increased complexity of intervention instruments, more than substantial procedural approaches in directing collective action.

Lascoumes & Le Bourhis 1997.

In this way, land corruption instrumentalises public action (the instruments are: legislative and regulatory; economic and fiscal; agreement and incentive-based; and information and communication-based) and conditions the future of the government in Africa (Lascoumes & Le Gales 2005).

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LDPI Working Paper Series

A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase 'global land grab' has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an 'engaged research' initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: 'what do they do to each other?', and 'how do changes in politics get shaped by dynamic ecologies, and vice versa?' The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

Abstract

This contribution tries to explain the land problem in terms of the corruption of the urban elites, the policy brokers and, more generally, the players in the political arena. Indeed, in the context of democratising African States such as Benin, corruption has become a social phenomenon, as has the exercise of political power. There is almost no political system that is free from corruption scandals, where the economy in general and the rural economy in particular has not been pillaged. Land corruption is equally well organised in the corridors of power at local, intermediate and central level. Indeed we could talk about a 'chain of corruption' for land.

From the viewpoint of public action, this contribution offers an empirical definition of land corruption and a typology of players. It studies the major trends and the critical uncertainties surrounding this phenomenon, i.e. using land as an object of political clientelism. It also explores the future prospects for land in the face of land corruption, and the possible mechanisms for escaping the crisis.



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