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## L'information foncière, bien commun et ressource stratégique. Le cas du Bénin

Pierre-Yves Le Meur

► **To cite this version:**

Pierre-Yves Le Meur. L'information foncière, bien commun et ressource stratégique. Le cas du Bénin. 2008. hal-02813250

**HAL Id: hal-02813250**

**<https://hal.inrae.fr/hal-02813250>**

Submitted on 6 Jun 2020

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Issue paper no. 147

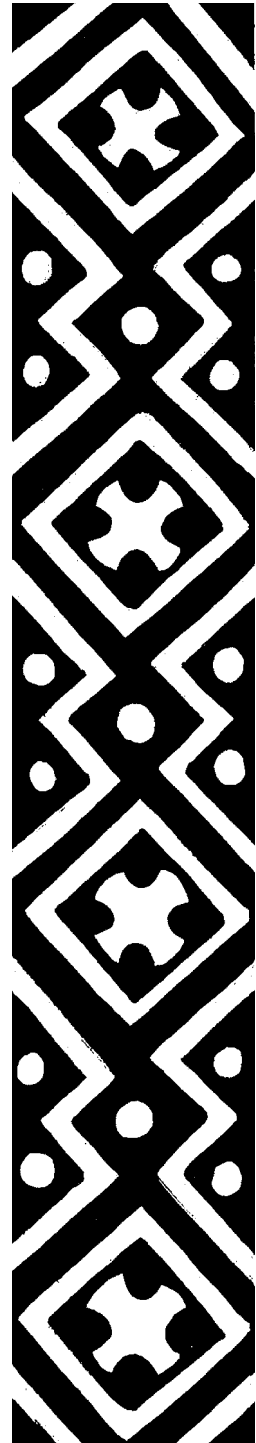
Information on land:  
a common asset and  
strategic resource  
  
The case of Benin

Pierre-Yves Le Meur

May 2008



making  
decentralisation  
work



IIED gratefully acknowledges the support of the Swedish International Development Cooperation Agency (Sida), who are funding this phase of the Making Decentralisation Work (MDW) programme, for financing this publication.

Translated from the French by Lou Leask.

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Printed by: Russell Press, Nottingham, UK.

Printed on: Recycled paper – Challenger Offset 90g, and Challenger Tint (Gold) 160g for the cover.

# Contents

## Abbreviations and acronyms

<b>Summary</b> .....	1
<b>1. Introduction</b> .....	3
<b>2. A patchy legal framework</b> .....	5
2.1 Colonial origins	5
2.2 Current reforms	6
<b>3. Fragmentary land registration records</b> .....	8
3.1 Land titles: peripheral paperwork	8
3.2 Housing permits: from unofficial practices to official titles	9
3.3 Lotissement: the commodification of land and informal urbanisation	10
3.4 Certificates of sale: formal or informal documents?	11
3.5 'Formalising the informal': how documents are used	12
<b>4. Chains for translating knowledge about land</b> .....	13
4.1 The urban land register	13
4.2 The rural land plan	14
<b>5. Conclusion: decentralisation, knowledge about land and the rural/urban dichotomy</b> .....	16
<b>Bibliography</b> .....	18
<b>Appendix: List of people interviewed</b> .....	21

## Abbreviations and acronyms

DANIDA	Danish International Development Agency
DEPONAT	<i>Déclaration de politique nationale d'aménagement du territoire</i> (National policy statement on territorial development)
DTPD	Department of Town Planning and Development
FDA	French Development Agency
EDF	European Development Fund
FWA	French West Africa
GIS	Geographic information system
GPS	Global positioning system
LHA	Land Holders' Association
LNRMP	Land and Natural Resource Management Programme
MALF	Ministry of Agriculture, Livestock rearing and Fisheries
MEHTP	Ministry of Environment, Housing and Town Planning
MFE	Ministry of Finance and the Economy
MJLHR	Ministry of Justice, Legislation and Human Rights
NGI	National Geographical Institute
NGO	Non-governmental organisation
NRMP	Natural resource management programme
OHBLA	Organisation for the Harmonisation of Business Law in Africa
PRPB	<i>Parti de la révolution du peuple du Bénin</i>
PRSP	Poverty reduction strategy paper
RLP	Rural land plan
SP	Strategic plan
ULR	Urban land register
UNCDF	United Nations Capital Development Fund

## Summary

In some respects Benin is still a country in transition, despite its successful shift to democracy in 1989-1991. This is particularly true of its land policy, with decentralisation an ongoing process, the rural land law recently voted in (2007), and no urban land law in place. Consequently, information about land is derived from a range of procedures of varying degrees of complexity and involving different actors and diverse aims (from taxation, legal validation and security of tenure to territorial and economic development). At the moment information is uneven, incomplete and composite, in that all documented knowledge about land is produced for specific objectives. Little of the contextual knowledge required for the daily governance of land matters and the practicalities of assessing and resolving conflicts is formalised or made explicit, and this important commodity is very unequally distributed among the many actors affected by land issues.

This paper begins with a presentation of the legal framework and methods of producing information about land in Benin, before moving on to look at the complex modalities of determining, recognising and 'translating' rights in rural and urban areas (the Rural Land Plan and Urban Land Registry). It closes with observations on several current issues, particularly the political and administrative decentralisation that is fundamentally changing the country's institutional landscape. As the main arenas of this procedure, municipalities could play a key role in harmonising information on land tenure, but currently lack the resources and competences required to fulfil their remit. Therefore, reflection on how best to meet their needs and provide support through training and equipment is required as well as establishing 'vertical' linkages with the territorial administration, and 'horizontal' ones with neighbouring municipalities and development and natural resource management programmes. One of the most pressing issues that now needs to be addressed with regard to land and decentralisation is how best to manage peri-urban spaces.





# 1. Introduction

Policy-makers wishing to improve land governance, and particularly the way that the poorest people gain access to land, need to be able to get hold of sound analysis – which in turn requires reliable data on access to land rights and how they are distributed and transferred. However, anyone reading the documentation for Benin's poverty reduction strategy paper (PRSP) will see that the issue of information on land tenure is largely ignored, or at least undervalued.<sup>1</sup> Similarly, the Policy Research Report prepared by Klaus Deiniger of the World Bank (World Bank 2003) mentions the subject in passing but does not address it in any detail.

As political decision-makers and development agencies become increasingly aware of the crucial importance of land tenure in development policies and poverty reduction strategies,<sup>2</sup> the availability of information on land and knowledge about how it is produced, stored and utilised also becomes a key issue. In this context, information about land should be regarded as a strategic resource that feeds into the processes of public policy formulation.

In order to determine whether or not this is actually the case, we need to look at a series of more specific questions:

1. What is the nature and availability of existing information on land that can be used for policy-related decisions?
2. How is information on land distributed within and between the different administrative services and non-governmental institutions (ministries, services, central and decentralised authorities, and bi- and multi-lateral agencies, development projects and NGOs)?
3. How is this information stored, archived, made available and updated?
4. How does information circulate between sources, repositories and decision-making authorities?
5. What role does information on land play in decision-making and the formulation of land policies at the national level? Who are the decision-makers, what are they making decisions about and what kind of information do they require?

These questions (particularly the first three) provide the framework for this study, and relate to the specific national context in Benin.<sup>3</sup> Between 1989 and 1991 Benin went

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1. See Bierschenk *et al.* 2003 for analysis of the situation in Benin.

2. See de Janvry *et al.* 2001, Chauveau *et al.* forthcoming.

3. This article is based on (1) a study conducted in Benin in February 2005 on behalf of the FAO, *Information on land tenure in Benin: production, storage and use* (interviews with officials in the administrative services and development projects as producers and/or consumers of information on land; cf. list in Appendix, Le Meur 2005a for detailed results of the study, and Le Meur 2006a for a broader overview); (2) my participation in the programme supporting implementation of the new legislation on rural land tenure (Lavigne Delville *et al.* 2003; Edja and Le Meur 2004 and forthcoming; Le Meur 2005b); and (3) research started about ten years ago on the links between land tenure, policy, development and mobility in central Benin (Le Meur and Adjinacou 1998; Le Meur 2006d).



through a peaceful and institutionally innovative democratic transition,<sup>4</sup> which has subsequently been consolidated through the democratic transfer of power between political parties and the implementation of political decentralisation (with municipal elections held in 2002-2003). Nevertheless, in certain respects Benin is still a country in transition, particularly in terms of its land policy – decentralisation will not be complete until village-level elections have been held, the rural land law has only just been voted in and there is no law on urban lands.

This has a determining effect on information about land, which is generated by a range of procedures that involve different actors, are of varying degrees of complexity and pursue diverse aims (from taxation, legal validation and security of tenure to territorial and economic development). Furthermore, this information is not produced independently of the institutions concerned with land affairs or the issues and objectives to which it is supposed to respond. It is necessarily composite and targeted, insofar as documented knowledge about land is produced for specific purposes.

As we shall see, land information is not only hybrid and composite, but also patchy. It is both a common asset and a strategic resource, but has no coherent 'system' of production and use (far less a self-regulating one). Information is intrinsically a political and economic tool, rooted in the logics of power and the control of knowledge. It is also an institutional matter, in the sense that, to paraphrase Mary Douglas (1987: 69), institutions encode information and socially organise memory and forgetfulness. Finally, the production and assimilation of information on land requires translation mechanisms<sup>5</sup> that involve a wide range of actors, ideas and objects.

This paper begins by presenting the legal framework and modalities for producing information on land, before going on to consider the complex methods of determining and recognising rights in rural and urban areas (the Rural Land Plan and Urban Land Register) and how these relate to the issues involved in political and administrative decentralisation. It concludes with a review of some key points that need to be identified and analysed in order to help determine how matters can be improved.

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4. See Bierschenk and Olivier de Sardan 1998; Banégas 2003.

5. In this paper, I use the notion of "translation" in the sense employed by Callon (1986, 1991) and Latour (2000, 2006): a process of reassembling and transforming the world that is both technical and political. "The definition of groups, their identity and what they want or pursue, is constantly negotiated throughout the translation process. It is not an intangible given, but a hypothesis (problematization) introduced by certain actors that is then more or less contained, confirmed or transformed" (Callon 1986: 181n). From this point of view, the production of information on land is not a simple matter of transcribing data from various investigations and surveys. It is inherently tied to social groupings and interests that are constantly reconfigured through "problematization, *interessment*, enrolment and mobilization" operations (Callon 1986: 180 et seq.; Callon et al. 2001: 73 et seq.). For an analysis of Benin's Rural Land Plan according to this perspective, see Le Meur (2006c).

## 2. A patchy legal framework

### 2.1 Colonial origins

As in many other West African countries, the legal apparatus regulating land ownership in Benin is essentially of colonial origin. In this case, however, it is also minimal.<sup>6</sup> The first colonial decrees of 1904 and 1906 promoting land titles and individual ownership actually had very little impact. According to the principle of “vacant and ownerless land”, they made the State the owner of all unregistered lands, apart from those “collectively owned by indigenous groups” or “held by the chiefs representing them”, which could only be sold or rented with the governor’s approval.

The Decrees of 1925 and 1932 introduced minor modifications without challenging the underlying premises of the initial measures. Significantly, the ‘*Grands coutumiers*’ – registers that were supposed to record all existing rights – were never fully introduced.<sup>7</sup> The expression “vacant and ownerless land” disappeared with the decree of 15th November 1935; and since then, “lands not covered by a regular title of ownership or use (...) or that have not been exploited or occupied for more than ten years belong to the State”. It was only with the Decree of 20th May 1955 that responsibility for proving ownership passed from the possessor (usually ‘customary’) to the acquirer (in this case the State, which was attempting to assert its ownership of public lands).

Very little changed when Dahomey became independent in 1960. Land Law No. 65-25 of the 17th August 1965 revisited the colonial approach, particularly the Decree of 26th July 1932 regarding the land ownership regime in French West Africa (FWA), whereby land is owned by the State and ‘customary rights’ are assumed rather than clearly defined. These rights are not even mentioned in the constitution formulated during Kérékou’s radical military Marxist regime (1972 to 1990),<sup>8</sup> which talks about individual land rights or collective ones (within the cooperative models promoted by the State), but identifies the State as the landowner.

In the meantime, Law No. 61-26 of the 10th August 1961 had specified that “after studying a region in conjunction with the Minister of Agriculture and Cooperation, the President of the Republic may decree how it will be developed and put to productive use, taking account of current and potential land use”. According to this developmentalist logic, lands earmarked for rural development were declared “areas of public utility”. This law replaced the colonial decree of 25th November 1930 (regarding the regime for expropriation on the grounds of public utility), and was used to support agro-industrial projects<sup>9</sup> promoting palm oil production through the expropriation and redistribution of land and compulsory membership of the new cooperatives.

6. In 1994 two experts noted that “there is no land law or law on public lands in the Republic of Benin” (Hernandez and Tribillon 1994: 16). The new democratic regime has contented itself with framing recognition of private property in the Constitution of 1990, and renewing a legislative framework whose origins can be traced back to the colonial regime.

7. See Colony of Dahomey, 1933.

8. The “Fundamental law” of 27th August 1977.

9. Prolonging the colonial programmes of the 1950s.



These cooperatives were not only economic failures, but also permanently changed the agrarian landscape in the south of the country (Le Meur 1995). They now constitute a grey area in terms of land tenure, and are a typical example of the kind of informal practices and uncertainty engendered by State interventions.

While moves to expropriate land on the grounds of public utility initially stayed within the limits of existing laws, the State farms set up in the 1970s were the product of illegal expropriation and redistribution among the regime's 'clients' and political allies. (The state banking system, which completely collapsed in 1988-1989, was also closely implicated in such schemes). Most of these farms were financial disasters, and were gradually re-appropriated by their former owners and other actors during the process of democratisation, but their tenure has never been legally clarified. The FAO is supporting initiatives by the Ministry of Agriculture, Livestock rearing and Fisheries (MALF) to register areas that have not been re-appropriated as elements of State lands and then assign them to young farmers – ignoring the fact that many young people have little interest in rural life, and far less in agriculture. Benin is not the only country whose policies take no account of what its youth want to do and where they want to do it, as similar attitudes are prevalent elsewhere in West Africa (Chauveau 2005).

## 2.2 Current reforms

The main factor shaping Benin's legislative landscape since it switched to democracy in 1989-1991 has been hesitancy in the (still ongoing) process of decentralisation (Laws No. 97-029, 98-005, 98-007 and 986034 of 15th January 1999<sup>10</sup>). Municipalities now play a central role in land management, while sub-prefectures no longer function as administrative subdivisions and have been replaced with departments. Unlike the municipalities, departments have neither legal personality nor financial autonomy. The land competencies of the prefectures have been transferred to the municipalities, which are now responsible for issuing housing permits and administrative certificates and setting up urban land registers (ULRs).

The Ministry of Agriculture, Livestock rearing and Fisheries (MALF) is engaged in a process of legislative reform, in consultation with the Ministry of Justice, Legislation and Human Rights (MJLHR) and the Ministry of Finance and the Economy (MFE). This process partly grew out of a development project, the natural resource management programme (NRMP), as a feasibility study for the NRMP undertaken by the World Bank in 1992 highlights legislative reform as one of its missions.<sup>11</sup> The rural development policy statement (MALF 2001) asserts that "in order to secure investments, it will be necessary to put in place an appropriate legislative framework that gives actors complete confidence in the structures for framing and promoting different activities". The strategic plan (SP: 58) states that "with regard to land (agricultural, forest, pastoral and fisheries) the objective is still to adapt traditional rights to modern constraints, using (and retaining) their dynamism and flexibility". The reform process lasted from February 1999 to September 2001, with field surveys and seminars on

10. Also Law No, 93-009 of 2nd July 1993 regarding the forestry regime (with its enforcement order No. 96-271 of 2nd July 1996), which distinguishes classified forests (usually of colonial origin) from protected (i.e. non-classified) lands.

11. Much of the following information is derived from Lavigne *et al.* (2003) and Edja and Le Meur (2004).

rural land to gather information about the socio-economic realities and concerns of all those involved in rural development (farmers, herders, fishermen, landowners and customary rights holders, development associations, researchers, engineers, lawyers and the officials concerned). A committee of national experts used the findings of the seminars and thematic studies to draft a bill on the rural land regime, operating under the auspices of an inter-ministerial monitoring committee created by the same order and jointly supervised by the Ministries for Rural Development (subsequently MALF), the MFE and the MJLHR. The draft rural land law was adopted in Cabinet on the 16th March 2005, and the law was passed in the National Assembly in early 2007.

The law specifically states that each village should have a rural land plan (Article 115), requested by the village chief after deliberations with the village council (Article 118). The next step is to issue land certificates – “records of the findings and confirmation of land rights established according to custom or local practices and norms (...), which are accepted as evidence until proven otherwise before a judge” (Article 121). Once a certificate has been issued for a plot, it can be registered on the rural land plan (Article 130). This planned development in the future law was preceded by a pilot phase within the Natural Resource Management Programme, which subsequently became the Land and Natural Resource Management Programme (LNRMP).

At this point it is worth noting that the various legislative initiatives emanating from different ministries over the last few years have not always been preceded by public policy statements, and there is little evidence that these ministries are coordinating their efforts. For instance, the draft rural land law has been challenged on the grounds that there is no legal reason to separate rural land from other types of land, and that only one general land law is needed. While this may be true, there is no reason why existing legislation (and the recent rural land law) cannot be used to build a common framework for all land (the idea of an urban land law was floated long ago without any concrete results). With efforts to formulate legislation on the environment and territorial development also under way, one might ask whether the proliferation of poorly coordinated draft laws is a sign that while development is still structuring the country’s political economy, development mechanisms tend to focus on the sovereign prerogatives of the State – in this case, the legislature and decentralisation. Thus, legislation becomes part of the so-called development rent, and as a result reinforces the heterogeneity of information on land rather than harmonising it.

### 3. Fragmentary land registration records

Information about land is disparate and fragmentary. However, we can distinguish between different types of data according to how they are produced. Most primary data directly emanate from procedures related to land administration (legislative texts, guidelines and national policy statements, land titles, administrative certificates, housing and building permits, sale agreements, cadastral maps, tax rolls, reports of proceedings, records, documents relating to conflicts over land). Informal channels also generate various forms of primary data, such as "*petits papiers*" – unofficial records and other informal records intended to validate land transactions at the local level – claimants' letters and other materials relating to disputed lands. Secondary data (processed forms of primary information) are equally diverse. These include statistical data, maps, GPS, geographic information systems (GIS), complex procedures for producing and managing land information (ULRs and RLPs), surveys and assessments, results of qualitative and quantitative surveys (including studies undertaken in the context of development projects), scientific texts on land and local texts and testimonies regarding land tenure, settlement history and traditional authorities.

The fact that various institutions produce and store different types of legal and para-legal records results in information on land being inconsistent, disparate and dispersed. Photographic and cartographic geographical information about land can provide an objective basis for substantiating legal information on land tenure, but the links between legal records and topographic materials are variable and often tenuous. Thus, sales agreements validated by the territorial authorities are never accompanied by a parcel plan that would allow plots to be unambiguously located.

#### 3.1 Land titles: peripheral paperwork

Land titles are the only legal documents that give the holder full private ownership of a plot of land, and thus the theoretical possibility of legally selling it. Untitled lands are (potentially) owned by the State as part of the *domaine privé de l'Etat*, which lends a degree of legality to the expropriations overseen by the regime of the *Parti de la révolution du peuple du Bénin* (PRPB) in order to create state farms.<sup>12</sup>

Very few land titles have been issued in Benin since the colonial period. Comby (1998: 11-12) puts the total number of titles issued between 1906 and 1967 at just 1,980, estimating that there were fewer than 10,000 land titles in the whole of Niger in 1998; 60 per cent of which were in Cotonou, 20 per cent in Porto-Novo and over ten per cent in Abomey-Calavi, which developed into a suburb of Cotonou as a result of unregulated expansion.<sup>13</sup> Thus, four per cent of households in the agglomeration of Cotonou and less than one per cent in the rest of the country possessed a land title

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12. See also Article 28 of the Constitution of 1977, which allows the State to requisition urban and rural land without automatic compensation.

13. Rochequide (2000: 13) puts the figure at "just a little over 5,000".

at the time. It seems that urban areas are not much better off than rural areas in this respect, as the Department of Town Planning and Development (DTPD) in the Ministry of Environment, Housing and Town Planning (MEHTP) reports that barely ten per cent of urban land is currently covered by land titles (Mako Imorou 2004) – most of which are open to challenge.

Titles are kept in the Department of Land Affairs, whose centralised ‘system’ can best be described as dysfunctional (Comby 1998), with documents in poor physical condition, slack bookkeeping and land plans stored separately from files (as there is no land registry). These conditions are a measure of the uncertain status of land titles and their inability to provide any ‘real’ legal security. Changes and transactions are not automatically recorded and files are updated very slowly on the basis of tax officials’ rounds, which means that coverage is probably patchy. Matters are not helped by the fact that the land registry office is located in the National Geographic Institute (NGI) and hence attached to the MEHTP, while the Department of Land Affairs is logically housed in the MFE.

Thus, the Land Registry does very little to secure the status of private property, with minimal collaboration or information circulated between the administrations concerned.

### **3.2 Housing permits: from unofficial practices to official titles**

Housing permits are regulated by Law No. 16-20 of 13th July 1960 and Decree No. 64-276 of 2nd December 1964. They offer insecure and revocable personal rights allowing beneficiaries to occupy state-owned land in urban areas – implying that the land is already registered in the name of the State. Unlike land titles, housing permits entail permanent occupation, and any plots that are unoccupied for six months can be withdrawn by the administration without compensation. These permits are non-transferable.

Housing permits have effectively become pseudo-ownership titles, and are regarded by many as “cut-price land titles” (Comby 1998: 13). Many permit holders probably do not differentiate between permits and titles. While permits cannot be mortgaged because they are not ownership titles, they can be pledged, which amounts to the same thing in practical terms. These permits are granted for areas (*de facto* customary lands) that have simply been parcelled up, rather than formally parcelled up and registered as State lands before being sold off for development. Although they are not supposed to be transferable, there is an active market for land covered by these permits (which are often sold several times over). The fact that this market is recognised by the administration contributes to the informalisation of land practices via ‘administrative customs’, along with poor filing methods that have created a kind of “makeshift land registry” (*ibid.*). With records of housing permits kept in notebooks or even on loose sheets of paper, it is impossible to gauge how many have been issued, particularly as many relate to sites that have not been parcelled up and registered as State land.



Under the terms of the treaty of the Organisation for the Harmonisation of Business Law in Africa (OHBLA), credit is only available to holders of land titles, which are costly and time-consuming to obtain (the objective is to reduce registration costs from around 500,000 down to 100,000 francs CFA). In 2003 the Government of Benin launched a pilot project to prepare the way for land ownership reform (reform of Law No. 65-25) that would broaden access to private ownership by using a simplified registration procedure to convert housing permits into land titles (Mako Imorou 2004). Rather than registering individual parcels, the idea was that owners of plots in a given area who were prepared to pool their land resources would set up a Land Holders' Association (LHA) and register the collective plot as a group holding. The boundaries of the holding would be set by the local authority, and a local registration commission would be responsible for determining the identities of applicants for land titles, the possible existence of housing permits relating to plots within the holding, and getting private surveyors and the NGI to verify and validate the boundaries of these plots.

The pilot programme (which aimed to convert 1,483 housing permits into land titles and reduce the timeframe from one year to six months) was to be followed by a programme to secure land and housing tenure, overseen by the MEHTP (DTPD). The aim was to issue 10,000 land titles in 2005, 15,000 in 2006 and 20,000 in 2007, establish a land registry for ten municipalities, and update and implement land legislation through a reform of the land tenure system. Converting housing permits into land titles not only involves securing land tenure by improving procedures for maintaining the land registry, but also has a bearing on tax issues, as urban land registers are based on tax rolls (see below).

### **3.3 *Lotissement*: the commodification of land and informal urbanisation**

*Lotissement*, the process of parcelling and selling off public lands for urban development, is supposed to be a means of both registering and developing lands that fall into the default 'customary' category (Decree No. 635 of 20th May 1955, Order of 22 October 1996). In practice, however, it is often little more than a simple parcelling operation where land is neither developed nor earmarked for any subsequent provision of services, or else a way of retrospectively regularising urbanisation that has resulted from deals between private actors. We can distinguish between the parcelling of customary lands and *lotissements* undertaken as part of land consolidation operations. The former, where the acquirer can only obtain a certificate of sale, seems to be a pre-requisite for the latter, which constitute the most common form of *lotissement*, whereby rights holders receive a simple 'certificate of re-housing' indicating the new land allocated through *lotissement*.

With decentralisation, the municipalities assumed responsibility for *lotissement*, which is crucial in mobilizing local resources for their political economies. It is also a very powerful instrument for converting (or regularising the conversion of) 'customary' rural areas into 'registered' urban areas, thereby creating "urban pockets" (Aboudou *et al.* 2003) and greatly contributing to the commodification of land. The case studies con-

ducted in Parakou<sup>14</sup> clearly reveal how murky and flawed these procedures are. They do not merely 'regularise' the processes of urbanisation, but reshape them to reflect existing power relations. This frequently leads to conflict – over boundary demarcation, the identity of rights holders, disputed inheritances, errors in registering plots during the assessment stage, illegal attributions, unwarranted taxation – and various forms of manipulation by solicitors, surveyors and the administrative services, who take advantage of local people's lack of knowledge about legal procedures (Aboudou *et al.* 2003: 29-37).

In this respect, information about land is a two-fold issue:

1. The extremely uneven distribution of information about rulings, formal procedures and legislation;
2. Knowledge about land occupancy and legitimacy of tenure – the duration and lack of transparency of the procedures involved, and the general question of 'customary' institutions (rights and authorities) as the (contested and heterogeneous) depositories of knowledge and powers regarding land tenure.

### 3.4 Certificates of sale: formal or informal documents?

Certificates of sale are another example of 'administrative customs' contributing to the informalisation of land transactions and property relations. These records of private agreements have their roots in the colonial Decree of 2nd May 1906, insofar as the domanial logic of the law passed in 1965 made no provision for the sale of rights to untitled land. Comby (1998: 14) notes that "the official forms for these sale agreements refer to the 'sale of ownership rights' even though they all pertain to customary lands". These forms only cover very basic information: the identity of the purchaser, vendor ("the presumed owner") and witnesses; a brief description of the area, shape and location of the plot; and the sale price. It is impossible to mark the exact location on a plan, and the origin of the vendor's rights is not recorded, opening the way for all kinds of counter-claim and convoluted conflicts over the boundaries and location of plots, the owner's identity and the validity of the sale. In this respect, *lotissements* are often the catalysts that spark or reactivate conflicts.

Before decentralisation, certificates of sale could be stamped by officials from the prefecture, sub-prefecture or urban district. This gave them a certain official status but no legal force, since the administration never guaranteed their content (Hernandez and Tribillon 1994: 9) and sale agreements have no basis in land law. Nevertheless, the sub-prefect's signature indicates a presumption of rights, constitutes a supporting argument in disputed cases and is particularly important if the acquirer wants to register the land. This is done through records or administrative certificates issued by the prefecture (currently by the mayor), which were initially conceived as a tool for recording the original customary ownership of a piece of land (Hernandez and Tribillon 1994: 9).

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14. Aboudou *et al.* 2003; Akobi 2003.



Responsibility for issuing and storing sale agreements (as well as housing permits and administrative certificates) theoretically passed to the local councils with decentralisation. However, with no systematic transfer and very makeshift storage conditions, the archiving of documentation on land tenure still leaves a lot to be desired.

### 3.5 'Formalising the informal': how documents are used

The preceding paragraphs show the extent to which land transactions have been commodified and the increasingly informal nature of formal procedures. The use of *petits papiers* is also growing, along with certificates of sale and administrative records, but despite their widespread use in many West African countries there has been no real assessment of their relative importance in land transactions (Lavigne Delville and Mathieu 1999).

The commodification of land transactions began long ago in southern Benin, where documents are now common currency. Edja (2000: 87)<sup>15</sup> notes that the incidence of *petits papiers* and written contracts varies according to the type of transaction involved: they have been in common use for a long time for pledges and sales, are emerging for rental and 'palm contracts', and are not used for sharecropping or loans. Land interventions in the context of the NRMP/LNRMP encourage the use of documentation, marking a step towards possible formalisation (depending on whether the rural land law is implemented on the ground). Informal documents are also used for local charters and agreements relating to matters such as relations between indigenous landowners and migrants in central Benin (Edja 1999; Le Meur 2002).

The countersigning of private transactions by public authorities, village chiefs and mayors marks the formalisation of informal transactions – albeit to a lesser degree and in a reverse procedure to that described in the previous section. This 'informal formalisation' of transactions with an official seal of approval gives them greater weight, but no real legal validity.

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15. See also Mongbo 2000.

## 4. Chains for translating knowledge about land

Certain types of information about land are generated by complex, targeted procedures, and it is important to analyse how and why they are produced in order to understand their different results and effects. Differences in the composition of these chains of translation and their associated configuration of interests, alliances and mobilisation<sup>16</sup> have created new distinctions between the rural and the urban that are much more firmly rooted in the political economy than in the judiciary or concerns about territorial development. This will doubtless lead to the relationship between rural and urban lands being clarified and reviewed, given that the management of peri-urban areas is a very sensitive issue for those concerned. Territorial development is rising up the agenda following the statement of national policy on territorial development (DEPONAT) in November 2002 (MEHTP 2002) and the creation of the Delegation for Territorial Development, which replaced the Office for Territorial Development. No longer under the patronage of the MEHTP, it is a public body supervised by an inter-ministerial council that includes representatives from the municipalities and the territorial administration.

### 4.1 The urban land register

The urban land register (ULR) is an urban management tool designed with three objectives in mind: fiscal (increasing local tax resources), land (improving knowledge about real estate and land property) and development (generating and managing the data needed to improve urban infrastructures). In practice, ULRs tend to be driven by the fiscal objective. Indeed, the first experiments with ULRs (in Parakou in 1990) were prompted by the need to improve complex and unprofitable local tax systems before the advent of decentralisation. They have produced remarkable results in the towns where they have been introduced.

In technical terms, the ULR is a land information system<sup>17</sup> that makes it possible to deal with one or more specific 'levels' of data, and to provide the information on each parcel required to process applications (PDM 2000; PDM-SERHAU SEM 2000). Beneficiary local governments (currently municipalities) have overall responsibility for operating the system, which they delegate to an executive structure, SERHAU-SEM (now SERHAU SA). Temporary staff are recruited to conduct land and tax surveys, and private surveyors plot the position of parcels with geographic coordinates (addressing). Aerial photographs are taken by foreign companies, and most funding comes from external sources, such as EDF, UNCDF and the FDA and DANIDA.

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16. Callon 1986; see also footnote 2 above.

17. A land information system is defined as "an environment that combines a database on parcels of land with the tools and techniques required to gather, update, process and correlate data in order to produce and present information" (Alain Durand-Lasserve, cited by Jean-Pierre Elong Mbassi, PDM coordinator, in PDM-SERHAU SEM 2000: 8).

Analysis of the ULR land surveys shows that the highly technical definition of the procedure ignores the central issue of the type of land data involved and the empirical methods used to gather them. Brochures on the registers reveal very little about how these surveys are conducted, apart from a passing comment that “survey methods consist of collecting information by asking the occupants of parcels a very short set of questions” (PDM-SERHAU SEM 2000: 24). The two key questions concerning the ULR procedure that need to be addressed, but which are not discussed in any depth, are:

- How do we define rural and urban areas (in the absence of any clear legal definition of such spaces)? How do the different levels of administration (municipalities, districts) take account of this distinction, especially with regard to taxation (remembering that there is no rural land tax in Benin)?
- Given the heterogeneous nature of land tenure arrangements, how can data gathering mechanisms be adapted to obtain more reliable information that takes account of the diversity and complexity of local land rights?

In order to answer these questions, we need to consider the procedure for the Rural Land Plan (RLP), which intrinsically complements the ULR. It is worth noting that the two tools were not initially seen as complementary when they were conceived and launched in the early 1990s. Recognition dawned slowly, with the emergence of blurred (though active) peri-urban areas produced by the constant collision and growing overlap between urban and rural spaces.

## 4.2 The rural land plan

The rural land plan can be seen as a simplified form of customary land register (Hounkpodoté 2000; Edja and Le Meur 2004). Introduced in Ivory Coast in the late 1980s and imported to Benin in a slightly amended form, it seems to offer an alternative means of fleshing out the extremely patchy legal framework inherited from the colonial authorities, and a way of securing land rights. The land operations authorised by the inter-ministerial order of 11th January 1994 in the context of the NRMP are supposed to “promote more secure land rights in rural areas, sound and sustainable use of land capital, and the emergence of legislation on land tenure”. Thus, the explicitly retained central objective is to survey and register customary land rights through a pilot operation that will ultimately be rolled out across the whole country. The third (albeit slightly marginal) aim is to inform public policies on rural land management and agricultural development. This institutional technology combines topographical mapping and land surveys in a ‘participatory’, crosscutting public registration of existing, locally recognised customary rights.

As a procedure for both determining and recognising land rights, the RLP generates several types of information about land. On the one hand, there is the qualitative information about land tenure documented in land analyses and lexicons (plus the opportunity to gather information about local norms<sup>18</sup>): the local issues, means of access to land, rights holders and relevant authorities in a particular place. On the other hand, the surveys generate lists of rights holders and plot plans that will be

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18. As proposed: see Le Meur 2005b.

used to issue land certificates – which the draft rural land law sees as legally valid “until proved otherwise” in the courts, and which can serve as the starting point for land titling.

At the moment the RLP is an interim measure, as MPs only voted on the draft law in 2007 (following its approval in Cabinet on 16th March 2005). The procedure will not be valid until it (and future enforcement orders) has been registered in a legislative framework. Only then will it be possible to extend it across the country, and this will not be a matter of simply changing the scale of operations, but will require the introduction of a specific institutional mechanism and a series of technical improvements – not to mention the network of alliances that will be needed to put into practice (both in Parliament and among and between elected officials, the courts and other authorities).

Finally, it should be noted that the RLP procedure (which has long been defended by the FDA and the services responsible for LNRMP land operations) is being disseminated more widely, particularly among forestry projects such as the PGFTR and PAMF. Establishing good links with the decentralised authorities (municipalities) responsible for deciding whether or not to proceed with a RLP at the village level has proved to be a critical element in this dissemination.

## 5. Conclusion: decentralisation, knowledge about land and the rural/urban dichotomy

The processes used to produce information about land are inextricably linked to the institutions concerned with land affairs and the issues and objectives that this information is supposed to address. In a diffuse, fragmented and negotiated reality, there can be no straightforward linear progression from producing information to making decisions and evaluating what has been learned.

Political decentralisation has profoundly changed the institutional landscape in Benin. As the key level of the process, the municipality has become the main arena for centralising and (in the best cases) harmonising information on land. Four key issues are at stake here: i) the transfer from the prefecture to the municipality of competences for issuing administrative certificates relating to land; ii) archiving and managing this documentation, which involves both physical storage and data processing; iii) managing lotissement procedures; iv) the articulation between rural and urban lands and the harmonisation of procedures for producing and managing information about land (ULR and RLP). The municipalities will be responsible for managing information about land, but currently have neither the resources nor the competences required to do this, so we need to think about the kind of training and material support they need to equip them for the task. Initiatives should be articulated 'vertically' with the territorial administration (the prefecture), and 'horizontally' with neighbouring municipalities (through cooperation between local governments at the same institutional level) and development and natural resource management programmes. A third axis will emerge as local elections at the sub-communal levels (village and *arrondissement*) complete the decentralisation process.

In addition to written forms of information about land (certificates and records of various kinds), we also need to consider all the knowledge that is not formalised or made explicit. This contextual knowledge varies greatly in depth, range and distribution, and is absolutely critical in the daily governance of land affairs (Le Meur 2006b). Without it, claims cannot be properly assessed and interpreted or conflicts over land resolved. Yet the continuity of this knowledge, this institutional memory, is often jeopardised by the difficulty of incorporating it into formal planning schemes and the way that administrations function – with high staff turnover, information about land being used for private ends and a land administration and judiciary that lack the resources to conserve information.<sup>19</sup>

Finally, the literature on development often portrays urbanisation and rural exodus as powerful trends right across developing countries, when the reality is that these processes are composite and non-linear. The most rapid development often occurs in secondary towns and cities, while population flows change and are reversible. People

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19. This is one of the reasons why it is difficult to build a case law for land affairs, which are often 'customary', another being the weakness of the justice administration.

return to their villages as part of a cycle of migration between the town and the country and between different rural areas. This blurs the distinction between the rural and the urban, particularly as there are no real administrative boundaries or any clear legal or administrative foundations for this distinction in Benin (unlike Senegal, for example, where there is a clear distinction between rural communities and urban municipalities). This is why the question of how to manage peri-urban areas is becoming critical (cf. Gbaguidi and Spellenberg 2004). It is not a matter of dealing with 'the outskirts' or 'outlying urban districts', but of tackling a key land issue that cuts across a whole set of distinctions that inform public policy decisions, but which are never really made explicit. The rural/urban dichotomy is the matrix of other distinctions that are often seen as naturally emanating from it: the differentiation between agricultural and non-agricultural, customary and modern, parcelled and non-parcelled, taxable and non-taxable. All have their roots in the distinction between citizen and subject that still shapes the way we think,<sup>20</sup> and the old differentiation between managed/humanised space and space that is not fully regulated still applies to the urban/rural dichotomy.

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20. Mamdani 1996; Englund and Nyamnjoh 2004.

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## Appendix: List of people interviewed

Date	Person	Position & institution
21/02/05	Martin Hounkpodoté Petra Mutlu	Coordinator of land operations PROCGRN Programme director, GTZ, PROCGRN
21/02/05	Roch Mongbo	Socio-anthropologist, executive director of CEBEDES, ECOCITE project
22/02/05	Christian Bellebon	Advisor to the Director-General of SERAU-SA
22/02/05	Anne Floquet	Agro-economist, CEBEDES, ECOCITE project
22/02/05	Jean-Pierre Elong-Mbassi	PDM Regional coordinator
22/02/05	Adrian Saccla	MALF official
23/02/05	Jean-Marc Sinassamy Alain Bernard Louis-Valère Marielle	Technical advisor, MEHTP (Lagune project) Technical advisor to the DPP, MALF Head of mission, Delegation for territorial development
23/02/05	Romain Tognifodé Abel Fanou Victor Houndekon	Director general NGI Director of cartography NGI Director of land registry NGI
23/02/05	Jean-François Cavana	FDA
23/02/05	Bruno Houndolo	Former Director of land affairs & coordinator of fiscal reform, MFE
23/02/05	Yves Ajavon (with Alain Bernard)	Head of statistical service, MALF
24/02/05	Jean-Claude Levasseur Falinou Akadiri	FAO representative FAO programme director
24/02/05	Guy Johnson	Director general, Agency for the development and promotion of tourism, roads and fisheries, MCAT
24/02/05	Louis Djossou Germain Houedenou	Deputy director DTPD, MEHTP Head of the planning, monitoring and evaluation unit, DTPD
24/02/05	M. Seidou (with Alain Bernard)	Director of DPLR, MALF
24/02/05	Clément Dari	Permanent secretary of CNAD, MISD
25/02/05	Nicaise Aïssy (avec Anne Floquet)	Head of land affairs services, Abomey prefecture
25/02/05	Blaise Ahanhanzo Glele A. Adjakidje Charles Agbowai  Bernardin Daga Bertin Kpakpa Berthe Boulga (with Anne Floquet)	Mayor of Abomey Deputy mayor of Abomey President of the Commission for land and ecological affairs, municipal council Technical services, Abomey Technical services, Abomey Head of Abomey tax department
25/02/05	Jean-Jacques Sehoué (with Anne Floquet)	Head of technical services, Bohicon local council



25/02/05	Marianne Kessou (avec Anne Floquet)	Head of archives, documentation and information, Bohicon local council
27/02/05	Edilbert Mongbo	ULR consultant, Bohicon (PGUD)
28/02/05	Daniel Koudoro Emmanuel Toni	Director general CENATEL Technical coordinator CENATEL
28/02/05	Bruno Avonomadegbé	Coordinator PGFTR
28/02/05	Daniel Tossou Sylvestre Bossou	Director of cartography, topography and land management PROCGRN Director of cartography DTPD, MEHTP

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ISSN 1357 9312  
ISBN: 978-1-84369-690-2  
Order No: 12547IIED