

## REFORMS FOR THE LAND REASSURANCE IN BENIN MASSIVE DELIVERY OF LAND TITLES

Leopold Degbegnon, Houinou Gossou

Dep. of Civil Engineering  
Ecole Polytechnique d'Abomey-Calavi  
Université d'Abomey-Calavi, Bénin

The reorganization of the sector of the land management in general and the urban land tax in particular, stays nowadays, one of the necessities that must drive to the sustainable development. To reach there, every plot of land has to have Land Title (LT). That's why, the Government of the Republic of Benin has introduced the massive creation of Land Titles in certain urban areas of the country. During the management of this project, several difficulties have been resolved while others continue. Most of these difficulties find their foundation in the essence and the tenures characterizing the beninese land system. That's why it will be necessary to regulate them by reforms as legislative as institutional and structural.

**Key words:** Title land tax, transfer, rightful claimant, land security, land registry

### Introduction

In Africa, particularly in Benin, the land tax occupies a place of choice in the diverse activities which the populations lead. Indeed, the ground is the main support of all the human activities. The purification of the land management sector in general and the urban land tax in particular, remains nowadays, one of the necessities that must drive to the development of Benin. To reach there, every plot of land has to have Land Title (LT), only title deed legally recognized on the real property according to statutory provisions **65-25** of August 14th, 1965 carrying organization of the landed property in Dahomey.

So, the **Government of the Republic of Benin**, introduced the massive delivery of Land Titles in certain urban areas of Benin at first on one's money by means of the National Commission of Transformation of Living Licences in Land Titles, created by decree N°2001-291 of August 08th, 2001 (2003 to 2007). Then, on financing of **Millennium Challenge Account — BENIN (MCA-Benin)** (2009 to 2012), this project was led by the National Commission of Support to the Obtaining of Land Titles (NCSO-LT), created by decree N°2009-10 of February 16th, 2009 for a five-month period. From these two experiences, it appears that some difficulties remain in the supervision of the operations although the second learnt inadequacies of the first one.

Indeed, the land system Benin is characterized by the coexistence of three land regimes namely:

- the customary regime characterized by the oral character;
- the regime of the registration (organized on the law n°65-25 of August 14th, 1965 fixing the regime of the landed property in Dahomey);
- the regime of the living licence governs on the law n°60-20 of July 13th, 1960 fixing the regime of the living licences in Dahomey and the Decree 64.276 of December 2nd, 1964 (1).

This diversity is partially the cause of a deplorable land insecurity which is particularly due to the low detention of reliable and indisputable title deeds on one hand and to the quasi-non-existence of graphic and literal documents assessing all the landed properties and their rightful claimant on the other hand. This insecurity is stressed with the poverty, the lack of information, the failure of the state to regulate well the land tax, the hoarding of lands, galloping speculation in land and questioning of the rights of the buyers of plots of land by the heirs of their sellers and/or these same latter.

All these problems are at the origin of the land drifts which sometimes lead the actors in front of the justice for state-owned disputes. This land problem in Benin is the object of this study which leaves an analysis of the current difficulties met by the actors of the land management to place the responsibilities and present a prospect of future.

### Geographical presentation of Republic of Benin

Benin is located in West Africa between parallels 6° 30' and 12° 30' of North of latitude and meridians 1° and 3° 40' of East of longitude. Thus, the Republic of Benin is limited in North by the Republic of Niger; in North-west by the Republic of Burkina Faso; in East by the Federal Republic of Nigeria; in West by the Republic of Togo and in south by the Atlantic Ocean. It covers an area about 114 763 km<sup>2</sup> and its recent population is near nine millions (9 000 000) inhabitants (Fig. 1).

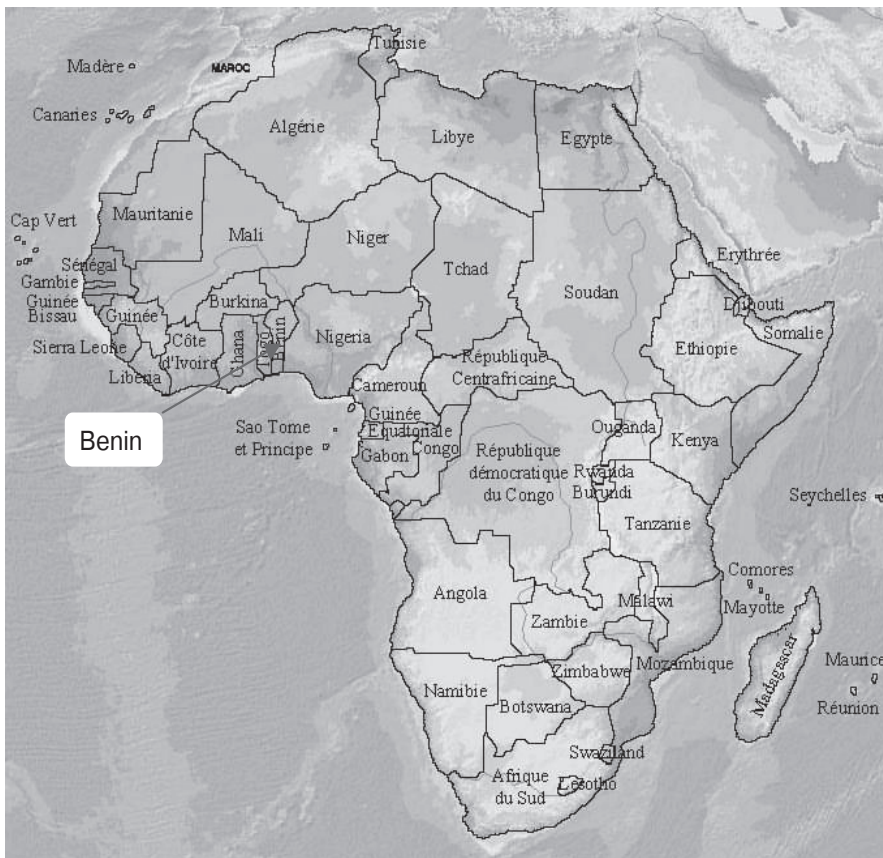


Fig. 1. Map of Africa locating the Republic of Benin

### **Problematical data**

In the Beninese positive law, there is no real property of the ground without land title. Only this document confers to its holder the right to have freely his ground, that is to occupy it or to sell it in complete peace. On the legal plan, no acquisitive prescription can play against a land title. However, on the material plan, the document is perishable. Many old titles are practically unreadable, considering their conditions of preservation (heat and humidity); some are even destroyed or are missing.

Thus, the State owes itself in theory through land actions, to begin by appropriating land titles (securities) to bound its domain deprived before being able to exploit it, for example for infrastructures and projects in public interest requiring a land availability. The private property would be better organized at that moment. Today on the contrary, it is, more and more, object of a growing land insecurity which hypothecates the investments and indirectly the development.

The land pressure, the source of this insecurity is due to a strong aspiration of the population in the family property and particularly in the individual property, in particular in the South of the country, as in all the agrarian monetarized civilizations. In town also, the rejection of the vertical co-ownership, as residential mode, was able to be verified during the failure of the marketing of such programs. It translates a strong attachment on the ground. The ease with which take place the division and the sale of the customary possessions is revealing of a strong tendency in the small property, even when the legal security of such operations is shaken [1].

Indeed, the causes of insecurity of the landed property are multiple. They don't have the same importance. We can distinguish four types from it, of decreasing importance.

1. The first cause of insecurity results from errors of identification of the assigns. We are never sure that the seller had the right to sell and that other assigns won't appear a few years later to try to make cancel the sale.

2. A second type of insecurity is the bad identification of the ground which a transfer concerns. The ground which we think to have bought is not always the one which is indicated on the document that we received. Inversely in the sight of an agreement of sale or even often a land title, it isn't absolutely obvious to know about which ground it is. Even when a precise plan of the ground exists, the localization, it is lacking.

3. The administration considers itself that, as long as a land title was not attributed, that is on 99% of the territory, it is entitled to practice a kind of eminent property right which can go as far as in certain cases to take the grounds that it needs.

4. Except the operations of current regrouping of lands, the legal insecurity concerning the limits of grounds is low in urban zone or constitutes a secondary question. However in rural areas and in suburban zone we meet these cases of dispute on the fragmented limits. Nevertheless these conflicts often settle by amicable arbitrations in the local level, without great difficulties.

The main part of the problem of the land insecurity thus concentrates on the question of the security of the transfers. There aren't so many the rights while existing on the ground which need to be secured, but rather the transfers of these rights. So it's difficult to find grounds to buy in complete safety although many remain unused during very long periods. It can concern split grounds in wait of a procedure of lot or regrouping of land.

But also urban grounds already settled and even serviced, with service in water, electricity, and even street lighting [1]. (Case of big urban centers.) This situation is understandable by the attachment in the ground of the population.

That's why, we observe at the same time a strong resistance of the administration in the recognition of the private property of grounds and an overestimation, by the same administration, prerogative which is attached to the property right. So, it considers that a ground having a land title becomes practically uncontrollable because it can be neither expropriated, nor regrouped. The paradox is only visible. In reality, both attitudes are complementary. It is because the public body has the feeling to be moved towards the private property, when this one is definitively recognized, through a land title, when it resists the generalization of its recognition.

In the time of the old colonial right a ground was granted at first on approval and, at the end of probationary period, the beneficiary became definitive owner if he had enhanced it (either by building the land, or by putting in culture the farmland).

This colonial and paternalistic approach has then derived in tool of bureaucratic control; the administrative control of the development being in reality only a pretext to keep a means of pressure on the owner. From the moment when an effective land fiscal system exists, the idea to go to control every owner to verify if he uses well his ground is not any more right to be. To implement it would suppose heavy and little effective administrative procedures. A good owner is simply the one who pays punctually his taxes. And, without it is need for controls, the alone obligation to have to pay a tax dissuades an owner to preserve a ground which presents no utility for him. The necessity of settling this sector by the State thus isn't to be demonstrated any more. The tax system thus appears like an effective solution to convince the owner to emphasize his landed property. However it could not be correctly used without a general fragmented land registry.

On one side, if the State authenticates agreements of sale "in full property" (2) of customary grounds by taking a transfer tax in the passage and by taxing theoretically the owners of the urban grounds. On the other hand, if the holder of this agreement of sale which, for example, will then have received a living licence (*which formally is a personal title, precarious and essentially revocable* [2]) within the framework of a lot-land regrouping, wants to obtain a land title, he will have to engage a heavy procedure and "buy" to the State the ground that he already possesses "in full property". Everything thus takes place, on the legal plan, as if the State had of a kind of eminent property on the land and as if this one was alienated during the attribution of a land title [1]. And actually, the beneficiary of a land title doesn't have much to be afraid any more of the State, even if he doesn't pay his taxes. While it's the opposite which had to occur because the land title should allow the State to identify exactly the owner-taxpayer.

In substantive law, there is no specificity which allows to deal except for of an "urban land law" which would just be different from "land law". The land law is fundamentally the same in town and in rural zone, as much as most of the most pointed land problems are justly encountered exactly in the intermediate fringes between the rural and the urban (suburban zone), where grounds change more or less quickly custom and value. It is thus necessary to envisage, on one hand, a reform of the land law in what is fundamental, by treating privileges of the property right, the proofs of this property, and procedures of transfer.

## **Towards a reorganization of the massive delivery of the Land Titles in urban zone**

### *Les acteurs*

The operations of marking out of division for the massive creation of LT regroup several actors of the land management and the follow-up of certain dispositions in particular:

- the notaries: to authenticate the acts of presumption of property;
- the land surveyors: to make the topographic plan of the plot and the Report of marking out;
- the Direction of Domains, the Recording and the Stamp (DDRS): to regulate the preservation and the respect for the procedure of registration to the land book. She assures the keeping of the “land book”;
- NGI (National Geographical Institute): to assure the conformity test of the plans established by the land surveyor;
- the National Commission: to assure the supervision and create the conditions for a synergy of action between the previous actors.

The good correlation between the structures and the institutions accompanying, overseeing or validating the works should favor the harmony and the synergy of actions gathering the minimal conditions necessary for the achievement of the quantitative and qualitative goals.

### *Procedural dispositions*

To make a success of the massive delivery of Land Titles in a locality, it is necessary to have or to make have:

- 1) a perimeter already provided and registered in the name of the State or of an Association of Land Interests (A.L.I);
- 2) a Requisition of the DDRS to the Land surveyor for the settings of division of the different plots of land establishing the registered perimeter;
- 3) the Collection of the presumption acts of property of presumed owners anxious to obtain a land title;
- 4) Authentication by the Notaries of the various deeds of property and the transmission of copy (deed of property + request of land title of presumed owner + slip of authentication of the Notary) to the land surveyor;
- 5) Identification by the land surveyor from the plans of lot of the concerned perimeter, every plot of land of which the deed of property is listed and raised by its cares;
- 6) Investigation of neighborhood led by notary and land surveyor on the ground with every owner to appreciate the property right;
- 7) Transmission by the land in the National Geographical Institute (NGI) of the plans of the plots of land raised for conformity test and certification concomitantly in the investigation of neighborhood;
- 8) Taking into account the observations of NGI (National Geographical Institute) and the finalization of the file of Land Title: the topographic survey certified by NGI (NATIONAL GEOGRAPHICAL INSTITUTE) — the report of marking out — the copy of the deed of property (deed of property + request of land title of presumed owner + slip of authentication of the Notary);

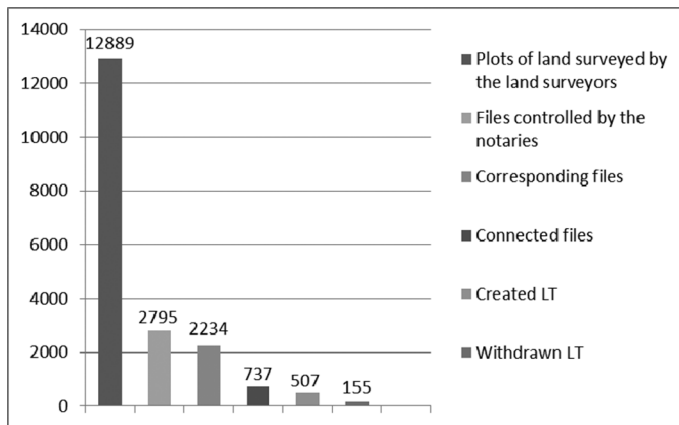
9) Joining of files with the acts of assumption of property;

10) Transmission of the expeditions and the technical files in the DDRS for creation of Land Titles.

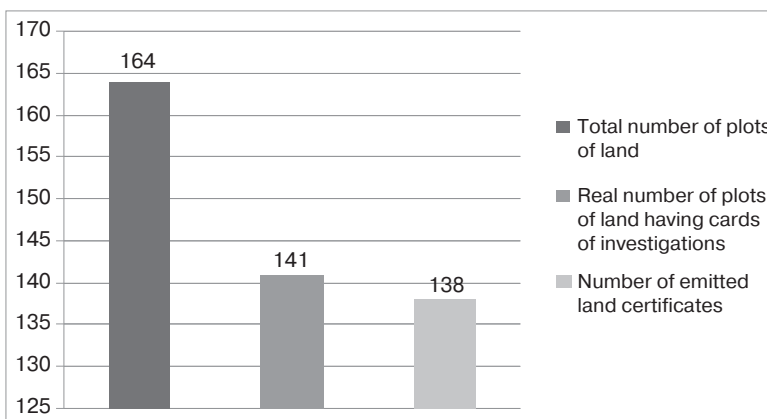
The role of each of these actors, in spite of his will to make well, revealed certain difficulties which hinder the good progress of the activities of massive delivery of the Land Titles. So by studying the results of the massive delivery of the individual land titles in urban zone and those of the delivery of the land certificates in rural zone, we obtain the figures 2 and 3 below/

***In urban zone (massive Delivery of LT on the LT N°438 of COTONOU)***

The results of the massive delivery of the Land Titles financed by the Millennium Challenge Account — BENIN (MCA-BENIN) from the year 2009 to 2012, leads us to present the following statistics on a sample of 12889 representing the number of plots of land taken into account on the LT 438 located in the city center of Commune of Cotonou in the department of the littoral.



**Fig. 2.** Histogram showing the evolution of the study of files and the delivery of the LT on the LT N 438 of Cotonou. — Benin



**Fig. 3.** Histogram showing the evolution of the delivery of the Land Certificates in the village HOUNVIGUE of the Commune of Bonou-Benin

These results which are not at all as high as expectations show that the urban populations were not interested at all to seize this chance of a lifetime which is offered to them to secure their real estate. Indeed about 1 % of the owners of the surveyed plots of land have satisfied the conditions to receive the LT then the great majority isn't interested in it. However, we have to note that the results of the administration within the framework of the treatment of files are not also satisfactory. On the other hand in rural zone, the results are convincing.

### ***In rural zone (Establishment of the RLP in the Commune of BONOU)***

During the same project, the establishment of the rural land plans and the delivery of land certificates has known more success. As shows the sample which represents the village HOUNVIGUE of the commune of Bonou in the department of Oueme.

These results show that the 84% owners of the surveyed plots of land have received some land certificates. This success can be explained by the gratuity of the delivery of the land certificates to the populations.

### **Difficulties encountered by the actors during the massive delivery of the land titles**

The collective registration through the project of change of living licences into land titles, which has evolved in the time to become project of transformation of the acts of presumption of property right was confronted with several difficulties among which:

- the lack of sensitization of the population;
- the lack of documents (plans and directories of lotting) being able to inform about the regularity of deeds of property and the modifications and the transfers intervened on the plans and on the ground (fusion of plots of land, division or explosion of plot of land) during time. What puts once more the problem of the bad organization of the archiving of documents of lotting in the municipalities, the prefectures and other state departments;
- the absence of provision of the budget that must cover the operations;
- the lack of available qualified human resources full-time;
- the absence of the membership of local elected representatives to the project;
- the lack of cohesion and synergy of actions between the various structures involved to know the Direction of Domains, the Recording and the Stamp (DDRS), National Geographical Institute (NGI), the Notaries and the Land surveyors;
- The unavailability of perimeter of Association of Land Interests (A.L.I) regularly registered at DDRS;
- the defect of cover of the area of the territory of BENIN, by the Departmental Centers of Domains (D.C.D) and the absence of qualified staff and at DDRS to appreciate effectively and statutorily the documents;
- the defect of preliminary registration of the perimeter that must make object of division;
- the unavailability and the slowness noticed at the level of certain Presidents of A.L.I by the signature of the Reports of marking out;
- the defect of validation of the fastenings (plans of the land surveyor + deed of property) with the local level with the implication of the concerned actors (C / SAD, Leader (Head) district, Notaries, Presidents A.L.F etc.);

- the slowness in the certification by NGI of each plan of marking out;
- the rejection of the minutes of the Notaries at DDRS for questions of recording and stamp duty. Where from the necessity of a ministerial decree to guarantee the free recording and without stamp duties of acts delivered by the Notaries within the framework of the activities of massive delivery of LT;
- the difficulties of access of the Land surveyors to certain information concerned to the plots of land (names of presumed owners and/or bordering, exact description of the building). As a consequence, certain technical files of division produced by the Land surveyors are badly informed;
- the formalization of the acts of presumption of property by town halls does not facilitate the good progress of the project. This formality must be carried out in an flat price to see free of charge;
- lack of qualified and technical personnel in the NCSO-LT to appreciate the files in their just value;
- the absence of references of the relative plots of land at the same time in the divisions and in the Urban Land Register (U.L.R) in all the municipalities;
- the defect of total cover of the national territory by the permanent stations GPS / GNSS;
- the not fastening by the land surveyors of the plans of marking out of registration in the world geodesic system WGS 84 (ITRF on 2005) [2];
- the absence of reliable databases being able to inform about the state of files collected by perimeters, those already executed by the former commission Living Licences in Land Titles or by the NCSO-LT itself or still by the classic and individual procedure.

#### **Approaches of solution: the priority objectives of reform**

The resolution of its problems allows to identify five (5) scenarios which go from the preservation of the current system to its complete revision. On one side the preservation of the current system and its improvement can get on of two different manners: either as a better respect for the positive law such as it exists thanks to an improvement of its administration and a bigger legal rigor, or like the punctual modification of the current positive law to move it closer to a few social practices.

Besides, if the extension and the progressive generalization of the legal recognition of the private property can certainly come real on the base between private persons by notarial technics and a change of legal definition of the property, there is also a possible generalization of the recognition of the property on a model of germanic type, less individualist and closer to current procedures of obtaining of Land Titles.

All in all, we are then in the presence of five main ways to explore which are not moreover necessarily exclusive some of the others.

A. Respect for the current positive law of which we would try to improve the administrative implementation.

B. Punctual improvements of texts while staying in the general spirit of the existing land system.

C. Modification of the system by turning to a property based on the “land book” with generalization of the land title for all the grounds.

D. Modification of the system by turning to a general recognition of the property based on the acquisitive prescription and the recording of the transfers.



E. Respect for the current positive law with rigorous application of the article 5 of the law 65-25 supported by a recognition of the customary property based on the acquisitive prescription and especially a land action based on the land tax system.

At the issue of this report, it is possible to reformulate as follows the goals that will have to assign a reform of the land system and the constraints which it will have to respect.

1. The first central aim of the reform is to give the land security to the manager investor, that is essentially to give the guarantee to the user of a ground of which he will not lose the profit of the works, the arrangements and the improvements which he will have begun on this ground.

2. The second central aim is to secure the buyer, that is to give the guarantee to the one who buys a ground, that this ground is well identified and that there aren't more other rights on this ground than those the seller gives up to him as the procedure of registration reveals it. For that purpose, the Land Title is the alone and irrevocable title recognized by the legislation in BENIN. However this document just proves that his holder is really owner of the plot of land object of LT but the last is treated in the same way than the plots of land without LT during the operations of arrangement.

3. In spite of everything, both systems inherited from the colonization must be maintained and improved. It is about the customary system and about the system of the land book. However the law 60-20 of July 13th, 1960 must be repealed.

The first system, that of the customary tenure bases on the material ownership of a building according to the local customs which vary from a region to the other one. The second system is the one of the land book. It is based on a real identification of the concerned building and its location with regard to a given geographical space. The preservation of these two systems finds its base in the choice of our system of registration. The legislation on the subject opted for the optional registration. This optional character thus allows to conciliate the land book with the traditions which must be supported by an adequate cadastral system. In other words it means that by proceeding to the elaboration of a good land legislation aiming at a revision of the law 65-25, it would suit to accompany it legally of a functional cadastral system on the whole of the Territory. This provision will have the advantage to facilitate the follow-up and the evolution of lands not registered then placed under the influence of the common law but being able to allow to prove a presumption of proof of property right. And it is this approach which characterized the choice of the establishment of the rural land plans which must be improved in its implementation.

4. A related objective will be to facilitate the work of tax authorities and thus to improve the rate of tax collection for a lesser administrative cost.

5. A second related aim will be to facilitate the management of their territory by local authorities.

6. The set constraint will be to conceive a system financially balanced itself, as soon as the phase of implementation is crossed.

7. To Create a database of all the LF individually delivered according to the classic procedure or in a massive way.

8. To pursue the LL / LT project exclusively in the zones where the lotting is enclosed and the documents (plan and directory of current situation and recasement are available. Give responsibilities for it Town halls, NGI (NATIONAL GEOGRAPHICAL

INSTITUTE) and the Order of the Land surveyors by elaborating a handbook of procedure supported by a law or in defect a decree.

9. On the technical plan, the reform has to take into account the densification of the network of the geodesic points of the 1st order until the 5th order in the geodesic system of the permanent stations (UTM31, WGS 84, ITRF2005) then the cover of the national territory in cartography to scale of 1/50 000 and the edition of maps to scale of 1/25 000.

10. Concerning the land management, the reform must quickly proceed with. The computerization of the land book through the implementation of a SIF.

We shall obviously notice that some of the quoted purposes are contradictory. In particular, the more we shall want to reinforce the security) of the buyer (2), the more it will result from it high costs of functioning of the system, which will then weigh down the costs (4) if we want to respect the constraint of balance (6). Compromises of optimization will thus have to be looked for.

### **Conclusion**

The land stays and remains a vast field to be investigated. Far from filling all the expectations of the technical, administrative and sociopolitical management of this generative sector of resources, this study contented with making the diagnostic of the troubles which undermine the land management and so prevent the economic take-off of the country. However the best solution to its troubles stays the establishment of a general fragmented land registry by communes to know who has what and how. This aim could come true by putting in contribution the skills of the specialists whom are the Land surveyors.

### **NOTES**

- (1) Sohouénou collection of 1994 pp. 307 to 313.
- (2) It is the expression used titular by the form supplied by the administration to register(record) the sales of customary lands.

### **REFERENCES**

- [1] *Comby J.* Report on the reform of the land law in BENIN. 1988. 12 p.
- [2] *Adechy G.* The land problems in BENIN, Doctor of Law, Notary. 1990. 6 p.

## **РЕФОРМЫ БЕНИНА В ОБЛАСТИ УПРАВЛЕНИЯ ЗЕМЕЛЬНЫМИ РЕСУРСАМИ**

**Леопольд Дегвеггон, Нуну Госсу**

Политехническая школа де'Абомей-Калави  
Университет де'Абомей-Калави, Бенин

Реорганизация сектора управления земельными ресурсами в целом и городского земельного налогообложения в частности в настоящее время является необходимым условием для устойчивого развития страны. Для успешного решения этой задачи необходимо, чтобы каждый

земельный участок был зарегистрирован под собственным названием (ЛТ). Поэтому правительство Республики Бенин усиленно работает над созданием перечня наименований земельных участков в некоторых городских районах страны. На сегодня многие проблемы в этой области решены, но остается еще ряд трудностей. Эти трудности вызваны тем, что земельное законодательство Республики Бенин по сути и по форме устарело. Именно поэтому управление земельными ресурсами в стране необходимо урегулировать путем реформ в законодательстве и в структуре земельных институтов.

**Ключевые слова:** земельный налог, трансфер, законный претендент, земельная безопасность, земельный кадастр