

Twilight Institutions

Land conflict and hybrid authorities
in Benin's Borgou department

CRU report

Claude Biao
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Introduction

Of all issues in African local politics, land remains perhaps the most prominent one. (Lund, 2001: 9).

The Borgou Department is a large administrative area with eight communes and 43 districts spanning over 25,856 square kilometers. The department primarily comprises the Bariba, Dendi, Boo (about 40%) and Fulani ethnic groups (about 33%).¹ The majority of the first three groups are farmers, and the Fulani are primarily nomadic or semi-nomadic cattle and sheepherders.

The Borgou Department in Northern Benin has seen communal conflict over the past few years. There are escalating tensions between farmers and herders, even though there has also been more violence between the supporters of the former president Boni Yayi and those of the sitting President Patrice Talon (particularly in 2019 and 2020).

Communal conflicts between farmers and herders in Borgou have multiple driving forces. This report explores one of these: changing land management systems. It is argued that recent changes in land management are in any event likely to become a stronger driver of tensions in Borgou in the near future.

Exploring land management systems and their impact on the Borgou is relevant for two reasons.

First, there is simply very little literature on changing land management systems in Benin. For example, in August 2017 Benin's authorities modified the 2013 Land Code² to limit land conflicts and to modernize the institutional framework governing land acquisition and management.³ But exactly what the impact of this change has been has not been fully explored.

1 Institut National De La Statistique Et De L'analyse Économique (INSAE), "[Principaux Indicateurs Socio-Démographiques Et Économiques \(RGPH-4, 2013\)](#)", February 2016.

2 Agence Ecofin, "[Bénin : le titre foncier désormais délivré en 4 mois](#)", 17 April 2018.

3 Actu Bénin, "Le DG ANDF sur la session d'échanges AskGouv:« La réforme du foncier au Bénin fait appel à la révolution foncière »", 27 October 2020.

Second, Northern Benin has experienced the problem of increasing violent extremist activity. While this activity is concentrated in the Alibori and Atacora regions, it is conceivable that once it has become established it might further escalate, with Borgou being a possible area of expansion. Being able to focus on vulnerabilities with the aim of addressing them is important for Benin's stability.

The problem: tensions, land reform and traditional authorities

Research and media reports point to an increase in both the number and intensity of farmer-herder confrontations in the Borgou Department over the past five years.

From the literature, it is apparent that this shift is driven by two factors. On the one hand, it is the effect of the demographic growth of and the increase in the cattle population which results in more competition for land.⁴ On the other hand, the introduction of land reforms by successive governments has tended to reinforce the feeling of insecurity among essentially illiterate farmers and herders.

This report explores this last factor.

The last land-reform process in Benin created a National Agency for Property and Land Management (ANDF), centralising national land management systems in order to attain more transparency and traceability. The modified Land Code (2017) put an end to the longstanding coexistence of two land management systems: on the one hand, the traditional one characterized by orality and customs, and, on the other, the administrative management system that included housing permits and the land registry regime.⁵ That old dual system has now been replaced by a unique administrative system in which the land registry and land certificates are central features thereof.

4 SOS Faim, "[Les défis des éleveurs : le cas du Bénin en Afrique de l'Ouest](#)", *Dynamiques Paysannes* 36, May 2015, p. 3–9.

5 Eric Ahoumenou, "[Avancées juridiques contre les accaparements de terre au Bénin](#)", *Ritimo*, 26 October 2020.

These changes are relevant for farmer-herder relations in Benin.⁶ In Northern Benin, access to grazing land and water has always been a contested resource with strong competition as a result of increased scarcity. Traditional rulers, chiefs, and kings had long played a role in providing customary land management such as access to regulation, conflict mitigation, settlement, and ownership recognition. Moreover, they also help to resolve land conflicts when they emerge.

The reason for specifically considering the Borgou Department is that here the traditional chieftaincy system is significantly more influential than in other areas of Northern Benin.⁷ But how the new land systems impact the role of traditional authorities is not yet clear. It is likewise also not clear how this might impact their ability to mediate between farmers and herders.

Goal and approach

This report presents and analyses data on people's perceptions of the recent changes and the role of traditional authorities. The analysis is based on 44 interviews and 4 focus group discussions conducted in November-December 2021, March-June 2022 and October 2022 in the eight communes and three arrondissements of the Borgou Department. The data allows for three conclusions to be drawn.

First, according to those interviewed, land reforms are one of the reasons for increased tensions in Borgou. The land reforms have benefited economic and political elites who use advantageous connections and an ability to navigate formal structures to have their own way. Moreover, negotiated land usage is being undermined by land reforms, even though it constituted an important structure for negotiated relations between farmers and herders.

Second, appointed governmental officials and the security forces are not being seen in a positive light when it comes to their ability to address land and farmer-

6 Leif Brottem, "[The Growing Complexity of Farmer-Herder Conflict in West and Central Africa](#)", Africa Center for Strategic Studies, 12 July 2021.

7 Waldémar De Souza, "[La place des élites religieuses et traditionnelles au Bénin : l'impact de leurs relations avec les élites politiques sur le maintien de l'Etat démocratique](#)", Science politique, Université de Bordeaux Doctorate Thesis, 2014.

herder conflicts. Both of these findings combined are very significant. The new Land Law seems to limit the ability of traditional authorities to mediate conflicts while it strengthens formal state structures in issuing rulings and providing solutions.

However, a third key observation is that people point to an emerging layer of authority that plays a positive role: the village chiefs. *Chefs de villages et quartier* are true hybrid actors; they combine a customary traditional role with an elected state-sanctioned role. The population of Borgou views these chiefs as being legitimate under customary practices and administratively empowered and hence acceptable. These chiefs are believed to be positively contributing to resolving farmer-herder tensions and managing land reform. This is an important finding that provides a clear entry point to improve informal dispute settlement in Borgou.

Structure

This report is structured around four sections. The first section shows how land reform has unfolded in Benin over the last 20 years and how that has impacted the role of customary actors. Section 2 presents qualitative data where farmers, herders and customary actors highlight what they see as the important consequences of land reform for rising tensions in Borgou. Section 3 explores which conflict resolution mechanisms exist, which actors are involved and how these are perceived. Section 4 finally presents five recommendations.

Figure 1 Location of the Borgou Department in Benin



1 Land reform in the Borgou: what role is there for the traditional rulers?

Borgou Department's political and sociological structure is characterized by the coexistence of two political authority lines: the (formal) government administration with its many (informal) links to the people; and a customary system of traditional rulers (Kings, Chefs de Terre) with not only an important cultural but also a political role. This two-fold political authority structure is reflected in the management of land in Borgou.

Waxing and waning

Just as throughout West Africa, the coexistence of two systems of authority has resulted in consistent attempts to gain political influence. In Benin under French colonization, the colonial authority sought to replace uncooperative traditional powers with more obedient ones or sometimes even to “invent” traditional chiefs to challenge the authority of existing ones.⁸ This resulted in the traditional chiefs' authority being reduced to a cultural or honorary status.⁹ After independence and particularly during the Marxist Revolution era from 1972 to 1989, this situation did not change for the traditional leadership; the then president Mathieu Kérékou's military regime limited traditional leaders' authority, thereby demonstrating its hostility towards traditional chiefdoms.¹⁰

The position of the traditional authorities changed in the 1990s with the increasing authority of traditional rulers. This was the result of two simultaneous driving forces.

8 Dominika Koter, “King Makers: Local Leaders and Ethnic Politics in Africa”, *World Politics*, 65(2), April 2013.

9 Richard Banégas, “[La démocratie à pas de caméléon: transition et imaginaires politiques au Bénin](#)”, Paris, Karthala : Recherches internationales, 2003.

10 Dominika Koter, April 2013.

On the one hand, the new democratically elected president Nicéphone Soglo – a French-trained intellectual who had previously worked for the World Bank – intentionally reinvested in traditional rulers and other cultural norms of political and social authority. Traditional rulers were invited to participate more openly in the political sphere. Two concrete actions were, for example, the re-establishment of the National Voodoo and Traditional Religions Festival on the 10th of January 1991 (still celebrated each year), and the rehabilitation of the Abomey Kingdom Palace in the early 1990s.

On the other hand, the electoral dynamics instilled by the Democratic Renewal era¹¹ compelled political actors to increasingly connect with traditional leaders to secure votes for various elections. Those dynamics increasingly reinforced the return of traditional chiefs as renowned authorities in the political sphere.¹² This trend would then significantly intensify under the regime of Boni Yayi (2006-2016), culminating in the creation of a High Council of Kings and Traditional Rulers in 2012.

To date, government and traditional structures have a predominantly cooperative relationship.¹³ Traditional authorities have effective control over power leverages, including resources, political legitimacy, and ethnic or community alliances. Government authorities hold administrative and legal powers and have unchallenged control over country-level assets and resources. Traditional rulers benefit from strong legitimacy within their communities that allows them to conduct the day-to-day management of their communities.

Changing land regimes in the Borgou

The first Land Code in 1965 established the government's authority over land. However, at that time, communities also applied customary mechanisms of land

11 The period in the political history of Benin known under the French consecrated term of “Renouveau Démocratique” characterized by uninterrupted electoral successions at the level of the Presidency of the Republic, and that spans from the Conference of the Living Forces of the Nation (February 1990) to nowadays.

12 Thomas Bierschenk, “Democratization without Development: Benin 1989–2009”, *International Journal of Politics, Culture, and Society* IJPS 22(3), 1 September 2009.

13 Michel Sogbossi, “[Chefferie traditionnelle et institutions du pouvoir d'État au Bénin : des origines dahoméennes à nos jours](#)”, Université de Bordeaux 4, Doctorate Thesis, 2001.

access, attribution, and tenure.¹⁴ A new Land Code (2013) confirmed the two land management systems by granting legal value to land acquired according to customary rules, but under strict conditions, however.¹⁵

While these land reforms in Benin have mostly dealt with formal rules, there is a certain value in exploring customary rules. For example, under customary regulations land ownership can be granted to an individual by a traditional ruler after 10 to 20 years of uninterrupted exploitation of the land.¹⁶ Other considerations can also influence that decision (by the traditional ruler), such as the implications of the individual for the host community's daily life, his ethnic group, or the settlement of existing claims from other community members.

This practice had clear problems, one of them being that it was non-inclusive. For example, the Fulani could lease land for a set period of time but were “not entitled to land ownership” (as most traditional leaders interviewed still attest to this). For the authorities, only the Bariba, Boo, and in some cases the Nago and Dendi ethnicities can be landowners because of their (historical) first occupation. Whereas it was possible for some land to change hands and for ‘secondary occupants’ (ethnicities from other regions) to take over land, this did not include the Fulani people.

Another land reform came in 2017 with the reform of the Land Code. This code did not challenge customary land acquisitions and attribution mechanisms *per se* but made some important amendments.¹⁷ The most important one was that it introduced stricter administrative and judicial conditions, with the purpose of establishing a land certificate as the sole means to “confirm” the ownership of land acquired through customary rules.¹⁸ As such, the land certificate became the only valid proof of land ownership, which reduced other (previously acceptable) evidence of land ownership, such as the attestation of customary ownership or uninterrupted occupation, to merely presumptions of ownership.¹⁹

14 Eric Ahoumenou, 26 October 2020.

15 Law 2013-03, Article 5: the State guarantees the “right of ownership of natural persons, private legal entities acquired according to customary rules”.

16 Interview with a traditional ruler in Kalalé, November 2021.

17 The 2017-15 law modifying the law of 2013-01 does not amend its Article 5.

18 Law 2017-15, Article 4.

19 Law 2017-15, Article 112.

The consequences for customary authorities

This report explores the effects of these various reforms and, in particular, how the 2017 Code has affected the role of traditional Borgou rulers in the management of land. In the past, the traditional authorities played a role in the attribution of land (selling and donating land or negotiating land use) and in the resolution of conflicts. When conflicts arose, the traditional rulers in Borgou were often the first persons to whom the parties would go to. The 2017 Code changed this in two ways.

First and most importantly, even though the state declares ownership, traditional rulers can still confirm the ownership of the lands that they administer. This means that traditional rulers can transfer land even more securely under customary rules. As such, the traditional rulers have continued to play a role in the management of land, such as overseeing the attribution of cultural ownership land certificates.

Secondly, however, their role in managing disputes has changed. Land disputes fall under the administrative (formal) management system. This reduces traditional rulers' negotiation and mediation capacity. Yet, it does not completely undermine this role.

There are currently two possibilities for dispute resolution under the formal administrative management system. One option is that parties to a land dispute bring the case to the police, who carry out an initial investigation and then refer the case to the justice system. In these cases, traditional rulers might play an informal role in hearing complaints.

A second option is to refer the claimants to the conciliation courts which can attempt to mediate. The conciliation courts are administrative bodies under the Mayor's office that are dedicated to negotiating land disputes. The conciliation courts are composed of community elders who are appointed by the Mayor. Some of these elders are traditional leaders. However, many appointments are made as a result of political connections (even though there are examples of communities who 'negotiate' with the Mayor to select their favourite traditional ruler) and persons in these bodies have been removed when mayoral decisions

have been questioned. Hence, the conciliation courts often lack legitimacy because they are perceived as being not impartial.²⁰

In short, the role of traditional leaders in settling disputes over land seems to have been limited to a role where they can be consulted for advice by community members but have no formal status. The remainder of this report explores this further: a) how the new Land Law incentivises tensions concerning the management of land; and b) what has been the impact on dispute settlement and the role of the traditional authorities in managing these tensions?

²⁰ Farmer interview in Nikki, November 2021; Herder interview in Pèrèrè, November 2021.

2 Tensions around land management in the Borgou

For many years, Borgou has experienced tensions over land and its management. Most of these tensions take place between farmers and herders.

Figure 2 Farmer-Herder/Land conflicts in the Borgou

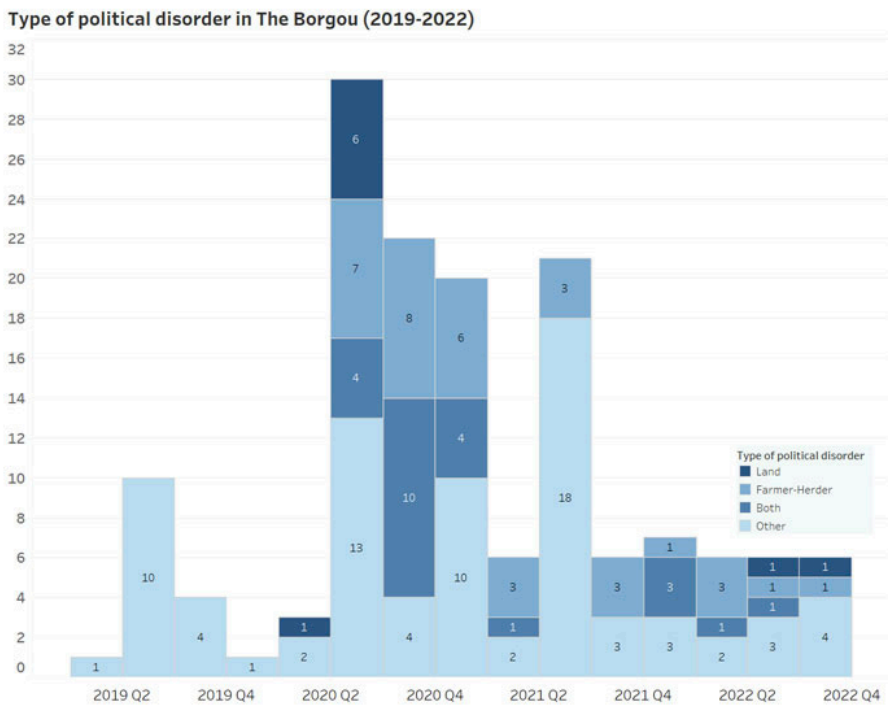


Figure 2 presents data on political disorder from the Armed Conflict Location and Event Data Project (ACLED) on the Borgou. This data distinguishes between conflicts over ‘Land’ (e.g. an escalated land dispute), ‘Farmer-Herder’ conflicts (e.g. a farming community attacks a pastoralist settlement), ‘both’ of these conflicts (e.g. a farmer-herder conflict with explicit land dimensions) and ‘other’

events (e.g. mob violence, election-related incidents, etc.). From this picture two conclusions can be drawn: a) there is a variation over time with many events in early 2020 and a plateauing of events at a lower level since 2021; b) that land and farmer-herder tensions make up about half of all the events in Borgou and prove to be a significant source of friction.

Interviews and FGDs in the various towns and villages in the Borgou for this research strongly confirm what can already be gauged from the data: land is a key driver in many farmer-herder conflicts.²¹ In the Borgou, this often takes the form of crossing intra-Benin transhumance corridors' borders – by farmers who crop their farms into the corridors – or herders who allow unattended cattle to roam out of the transhumance corridors. Detailed assessments of some apparently 'purely' farmer-herder incidents often show an underlying contestation of land ownership, lease arrangements and land use.

Such conflicts over land in Borgou have been gaining in complexity in recent years for two main reasons (although also the wider circulation of small arms has resulted in more clashes of a lethal nature).²² Both of them are partly related to the changes in the law governing land and the changing role of customary authorities therein.

How land reform introduced new actors

First, disputes involve a greater diversity of actors and this stems partly from the new Land Code (2017). In the past, conflicts often involved rural farm operators and nomadic or semi-nomadic herders. However, over the past ten years new actors have emerged. This involves, for example, wealthier owners who increasingly entrust their herds to small groups of herders – the 'bouvier's'.

Moreover, wealthy political and economic elites have acquired land in rural areas for crop farms, as land can be more easily transferred. When the interests of

21 Mark Breuser, Suzanne Nederlof, and Teunis van Rheenen, "[Conflict or Symbiosis? Disentangling Farmer-Herdsman Relations: The Mossi and Fulbe of the Central Plateau, Burkina Faso](#)", *The Journal of Modern African Studies*, 36(3), September 1998.

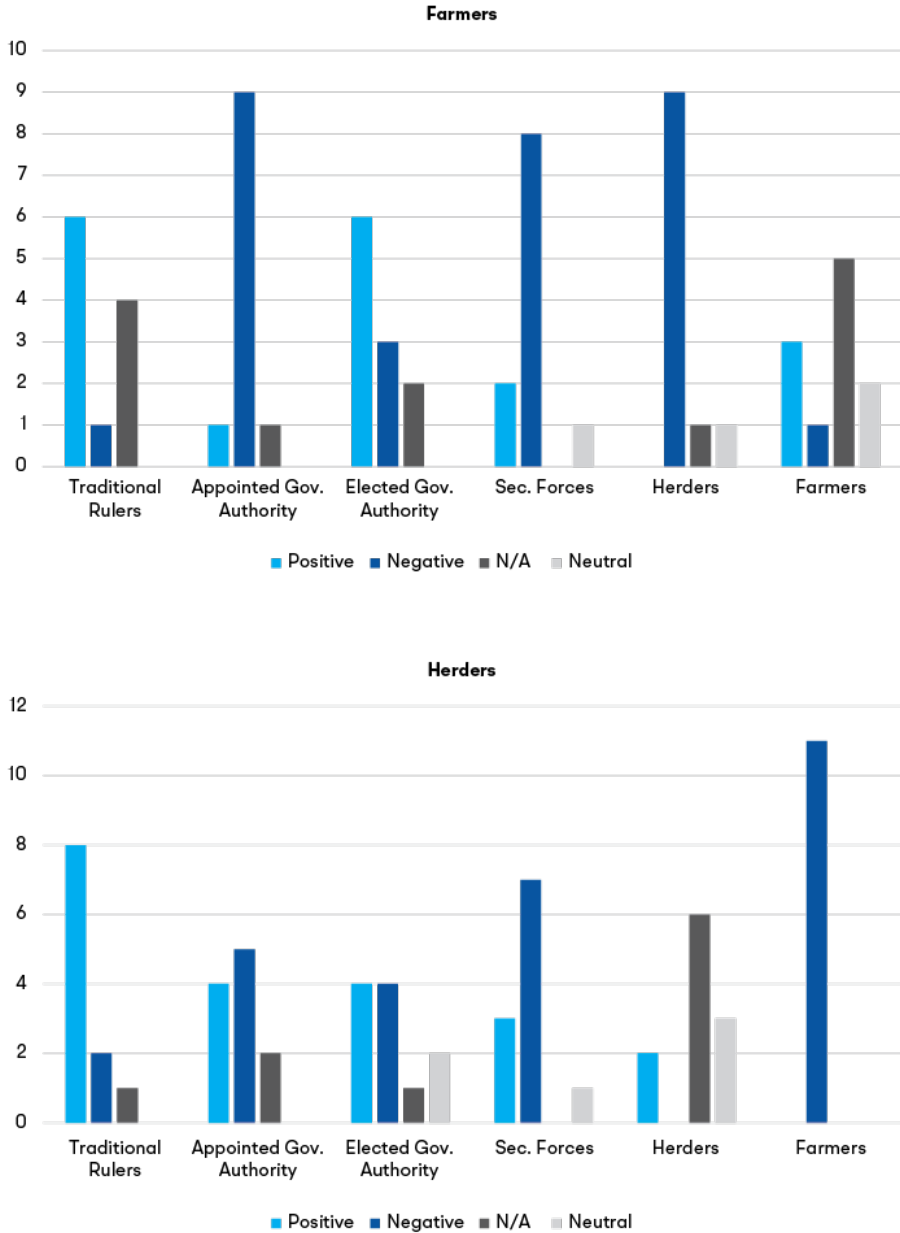
22 Including locally-made shotguns, and sometimes sophisticated rifles imported from regional conflicts such as the Ivorian one (2010-2011). See also Kars de Bruijne, "[Laws of Attraction: Northern Benin and risk of violent extremist spillover](#)", Clingendael Institute, June 2021.

both groups are at stake (often vis-à-vis the population rather than one another), they can use their political relations or economic power to settle farmer-herder clashes for their benefit or the benefit of their operators. As one interviewed traditional leader put it, “if it is all about money, there is no need to negotiate: the one who is the wealthiest takes it all.”

Various respondents argued that land conflicts are increasingly difficult to settle. They point to the judicialization of disputes: cases are systematically referred to the justice sector, which limits or prohibits the possibility of (informal) negotiated settlements.²³ The data show that respondents generally agree that the involvement of the security forces is an aggravating factor as far as conflicts are concerned. In these disputes, the involvement of the security forces is frequently cited as a tipping point for the escalation of disputes. Both farmers and herders point out that the involvement of the security forces is often associated with perceived corruption that casts doubts on their impartiality (e.g. they are paid to ‘intervene’).

23 Farmer interview in Kalalé, November 2021; Herder interview in Kika, November 2021.

Figure 3 Actor-specific perception of roles in settling farmer-herder conflicts



In order to compare the data, all qualitative interview responses on perceptions about specific authorities were coded (see Annex 1 for the codebook). This coding shows that both farmers and herders perceive the security forces' involvement as having a negative impact on dispute settlement, yet that perception is relatively higher for farmer respondents than herders (see Figure 3 above). Farmers often accuse herders of involving their business relations in dispute settlement, particularly by including wealthy cattle owners or leveraging their higher economic capacities to influence the course of the procedure in their favour.²⁴

On the herders' side, the respondents have other concerns. Some herders claim that their access to land is relatively more difficult, due to customary land ownership rules. For the majority of both farmer and traditional leader respondents, land 'naturally' belongs to the indigenous communities. This means that under customary land ownership rules, herders – who are mostly from the Fulani community – are not allowed to possess land except when the indigenous community temporarily 'lends it' to them.

Interestingly, these were the exact problems that the Land Law sought to address. Yet herders in Borgou point to specific issues where the law works against them. Under the new Land Code (2017) there is a need to present "documentation" to prove or enforce their land ownership.²⁵ Many herders highlight that they often cannot access such supporting documentation, especially the certificate of customary ownership, as it needs to be issued with the participation of the customary authorities in the administrative process.²⁶

How land reform changed incentives for 'negotiated land usage'

A second reason why land conflicts have intensified are changes to the land renting processes by villages for the benefit of outsiders, so-called 'negotiated land usage'.

24 Farmer interview in Tchaourou, November 2021.

25 "Documentation" in the respondents' wording refers to: the certificate of customary ownership, a census certificate, notices of tax assessment for the last three years, a certificate of registration, an administrative certificate and a rural land certificate (Law 2017-15, Article 4).

26 Adamou Idrissou Bawa, expert interview, March 2022. There are obstacles in that obtaining land ownership documentation might be difficult due to greater illiteracy among the Fulani/herding community.

Negotiated land usage was a type of traditional arrangement by which a community agreed on how a particular plot of land would be used. Those land areas were rarely purchased, but were 'borrowed' or 'rented' for a certain period of time and for a specifically agreed usage. According to the agreement, communities could agree to reserve a particular plot for herding. For example, plots of land in the close vicinity of rivers are protected from both farming and herding in order to allow the community to use suitable drinking water for humans and for their herds.²⁷

Where this is more contentious is in the transhumance corridors. Negotiated land use is the system upon which the transhumance corridors are demarcated. These are strips of land where no farming activities are possible. The agreements over these strips were often negotiated between farmers' and herders' associations. As one farmer association leader puts it, "even the state had to discuss with us when in the 2000s they decided to institutionalize the transhumance corridors in our area."²⁸

Interviewees highlight that the Land Law has changed this. Communities can now use their economic and political networks to secure exclusive control over these areas with no consideration being given to their previously agreed usage within and between communities. Both the farmers and the herders interviewed stated that this is one area where existing social rules have been eroded; abiding by the negotiated usage and operation of the land in their villages now only depends on the goodwill of each actor. They felt that any individual seeking greater benefits, or pursuing a certain political agenda, can acquire land and impose its usage on the community. Thus, the power of negotiated land usage has been significantly reduced, thereby creating more scarcity and competition. Interviewees on both sides expressed a fear that farmers' relationships with herders will further change because of these rules.

27 Herds' drinking areas would traditionally be downriver, while humans would drink water from upstream areas (Interview with the village chief of Kalalé, November 2021).

28 Interview with a farmers' association leader in Sinendé, November 2021.

3 Conflict resolution mechanisms: the rise of elected authorities

Despite improved legal instruments, the management of land, as has been shown, results in tensions. In the Borgou, there are two mechanisms for conflict resolution: negotiated/amicable or contentious/formal.

The former was traditionally the domain of customary actors who played a role in land disputes before they were eventually brought to the justice system. The latter involves appointed government authorities – the justice administration, the conciliation courts, or officers of the Territorial Agency for Agricultural Development (ATDA)²⁹ – and the security forces. They enforce the law by often imposing compensation to be paid by one actor to the other or by pronouncing penal sanctions.

Interviewed actors overwhelmingly agreed that farmer-herder conflicts are mostly settled through an amicably negotiated mechanism within their communities in the Borgou Department. Negotiations are commonly held with the mediation of an authority that both sides perceive to be legitimate in order to find viable solutions to the conflict. The individual farmer and herder involved in a conflict primarily select the form of resolution and the type of actor they would accept to conduct the mediation process.

Actors involved in the resolution of land conflicts

Semi-structured interviews allowed us to pose similar questions to all participants. One of the questions involved an appreciation of the role of specific actors in conflict resolution and the extent to which actors are presently involved

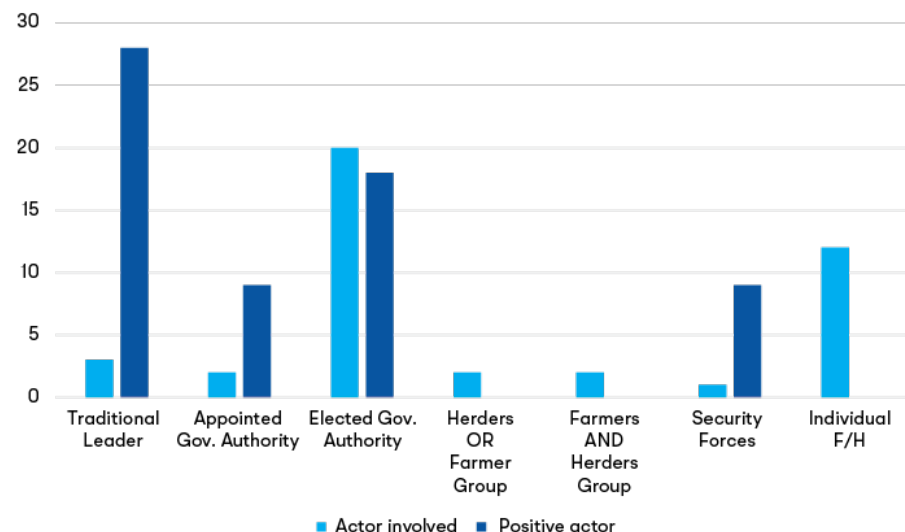
²⁹ The Territorial Agency for Agricultural Development (ATDA) was created by a [Decree](#) in 2017 for the Agency “to implement the national policy of agricultural development and initiate actions to ensure that the government’s objectives to promote farming sectors and the development of territories are achieved”.

in dispute settlement concerning land. These data were coded (see Annex 1) and, from the resulting data, three insights can be drawn.

As observed above for formal state security forces, also appointed government authorities are not viewed positively. Interviewed farmers, for example, frequently accuse herders of paying bribes to those officials to secure favourable judgments.

This data shows, moreover, that traditional rulers are perceived to have the most positive influence and the strongest legitimacy to seek amicable solutions to farmer-herder conflicts. The actors involved in dispute settlement are traditional rulers and local farmers’ and herders’ associations. However, while traditional rulers are perceived to play a strong positive role in solving farmer-herder conflicts, they tend to be far less involved than other actors.³⁰ In the interviews, the respondents explained that traditional authorities are more often involved when conflicts have escalated into deadly armed confrontations and require mediation by a high-level and respected authority.

Figure 4 Actors involved in farmer-herder coping mechanisms and how they are perceived



30 This research defines a “positive role” by the fact that the actor was or is involved in successful initiatives to solve a farmer-herder conflict, with the success of the initiative being directly linked to his status or position.

Surprisingly, as a third observation, a group that is viewed fairly positively and is also strongly involved in dispute settlement is the village-level elected government authorities (village or neighbourhood chiefs).

Village chiefs (also called neighbourhood chiefs in urban areas) are the heads of the village or the neighbourhood council. They were created in January 1999 under the Kerekou regime, in the wake of Benin's decentralization effort to make the village/neighbourhood level a political and administrative lowest layer of authority.³¹ The law (97-028 and 97-029), however, left unclarity with regard to their attribution, functioning, remuneration schemes as well as various practical issues. As a result, these village chiefs created an unofficial political economy to sustain themselves (e.g. not reporting the administrative fees that they collected).³²

In 2013, the former President Boni Yayi passed a new law aiming to bring more clarity to the selection, organization, attribution, functioning and remuneration of village chiefs.³³ While this had an effect on most administrative layers (communes and arrondissements), the law remained unclear for village chiefs as it simply stated: "the village or city neighbourhood is the basic administrative unit within which rural or urban life is organized."³⁴ In practice, however, it allowed room for existing traditional authorities to exert influence; many village chiefs in this period held these positions with the support of traditional authority families and were (s)elected with customary support. This made these functions truly 'hybrid' by combining a formal status (the lowest-level decentralized administrative authority heading the conciliation courts) with an informal customary role.

On 20th December 2021, the sitting President Patrice Talon enacted Law 2021-14 on territorial administration which gave practical details on the attribution and functioning of the village and neighbourhood chiefs. Unlike previously, the present law prescribes monthly remunerations to be paid to the village

31 Law 97-029 of the 15th January 1999 Organizing communes; and Law 97-028 of the 15th January 1999 Organizing the territorial administration.

32 Falilatou Titi, "[Mauvaise gestion des actes de l'autorité au Bénin : les chefs de quartier et de village piégés par un apparent vide juridique](#)", Banouto, 21 January 2018.

33 Law 2013-05 of 27th May 2013 on the creation, organization, attribution and functioning of local administrative units.

34 Law 2013-05, Article 64.

and neighbourhood chiefs and places them under the direct administrative supervision of the chiefs of the arrondissements (note that these are not customary authorities but have also been newly 'created') and the administrative secretary of the arrondissements overseeing the communes' decisions at the village and neighbourhood level.³⁵ The role of the customary authorities has not drastically changed because the law has only been in effect for a year and the customary influence over village chief elections still remains.

Interviewees suggest that mediation by these village and neighbourhood chiefs most often occurs when land conflicts have not yet escalated and this most frequently results in compensation being agreed by both sides. Interestingly, this compensation is generally not perceived as being unfair. As shown in Figure 4, elected government authorities appear to be generally perceived in a fairly positive way.

Qualitative interviews underscore this point: they highlight how village chiefs benefit from a personal aura within their communities because of their combined social position as community leaders and elected officials.³⁶ It is that status that gives them a solid position to negotiate conflict settlements informally that is both relevant, locally attuned and accepted in both the administrative and traditional systems.

Interestingly, even the most traditional leaders interviewed for this research acknowledged that the village chiefs are best positioned to conduct conflict resolution negotiations between farmers and herders. In that sense, the changes in local governance offset some of the negative effects of the amendments in the land laws and, despite the obvious political role of these authorities, offer a promising avenue to engage in informal land dispute settlement.

35 Law 2021-14 of 20th December 2021 on the code of territorial administration in the Republic of Benin.

36 Interviews with the Kings of Thaourou and Kika, November 2021.

4 Making land reform work for the people in the Borgou

This report seeks to understand the consequence of land reform for conflict in the Borgou and the role of traditional rulers. Specifically, it has sought to explore how farmer-herder conflicts have changed as a consequence of the reform of the Land Code (2017) of Benin.

The report highlights how Benin's land reforms have brought about a number of changes in the ways in which land is managed. One key change is that land reform plays a role in rising levels of farmer-herder and land conflicts. This involves, on the one hand, the increasing role of individuals with economic and political influence who leverage connections to obtain favourable outcomes. On the other hand, there are negotiated land arrangements that benefit relationships between the communities, but that have been partly undermined by the new law.

What can be done to make land reform work more effectively in the interest of farmers and herders in Benin? How can the political economy of land in the region work less for vested economic and political interests and speak more to the people's needs?

1. Build on the strong appetite for informal conflict resolution

This report finds that there is an important social capital in Borgou; our data show a strong appetite for negotiated solutions in both the farmer and herder communities. The recent land reforms have limited the room for dispute settlement at the local level; disputes tend to have become more formalized with more outside actors being involved and a larger role for formal state actors (appointed officials, the judiciary and security actors).

The Benin government and its development and security partners should seek to explicitly build in an informal mechanism in the villages to improve dispute settlement rather than having recourse to formal systems. For example, formal

cases might require that parties have sought to initially settle cases through informal and established conflict mediation practices.

It might be important in that light to also rethink the role of customary actors. One possibility is to evaluate what room there is for them in conflict resolution. Traditional authorities currently only tend to be involved when tensions have escalated and some form of community healing is sought. Historically, however, their role in conflict resolution was greater and is still generally viewed as positive. Exploring what additional role customary authorities can play might help to build a wide array of informal conflict resolution mechanisms.

2. Explore what role elected government quasi-customary authorities can play

Our data highlights the evolving role of elected governmental authorities that perform customary functions. Even though their formal involvement in land management under the new land reform is limited, it is clear that they are a trusted and often used entity for informal conflict mediation.

As the elected village and neighbourhood chiefs have increasing administrative authority and political relevance, they might potentially play a stronger political role. Yet, what is important is that their ability to maintain legitimacy and deliver positive results is built on their association with customary leaders. Hence, it is advisable that the implementation of the 2021 Decentralization Law continues to strike this hybrid balance between formal and informal sources of authority.

Yet, at the same time, there still remains some scope to better define their roles. What leverages do these actors have in terms of bringing negotiated solutions concerning land up to the level of the formal administration? Is there a need to protect these actors against increased politicization and instrumentalization in order to maintain their legitimacy?

3. Do not underestimate that 'rewiring' local authority might generate additional tensions

A long-term problem might be looming on the horizon. The Borgou is a region where customary authorities have traditionally played a more prominent role

than in other parts of Benin. Yet, their changing role in dispute settlement and the granting of land rights leaves important questions about their perceptions. This is strengthened by the rise of chef de villages/quartiers which are presently still informally tied to traditional authority structures, but as time progresses and potentially under political influence this position could increasingly drift beyond customary control.

This leads to a set of thorny questions as to how traditional authorities perceive these changes. All authorities, with one exception, refrained from answering questions on how they viewed these changes, but there were non-verbal clues indicating that there may be a degree of resentment. From the wider literature it is clear that altering power configurations around land and the role of local authorities are highly contentious issues that can open a “hornet’s nest of potential conflict over land claims and over competing claims as to who had the authority to settle those conflicts.”³⁷ A better understanding of how recent land reform changes are perceived by customary authorities and how to begin addressing micro-grievances is a topic that deserves attention.

4. Immediately address problems around ‘negotiated land usage’

There is a need to develop a specific policy concerning negotiated land usage. The formalization of land tenure has put a price on ‘the commons’: areas of land that support local structures that are necessary for the (more) peaceful coexistence of the communities.

All actors (farmers and herders) agree that the State should sanction and potentially protect the transhumance corridors in order to limit conflicts surrounding trespassing and usage by farmers or herders. Even if the national policy is moving towards the sedentarisation of herders,³⁸ there is still a realization that sedentarisation is an ongoing process and that even settled

37 Christian Lund. “[Local Politics and the Dynamics of Property in Africa](#)”, Cambridge: Cambridge University Press, 2001.

38 PREDIP, “[Elevage des ruminants au Bénin : un Haut Commissariat à la sédentarisation des éleveurs créé | Projet régional de dialogue et d’investissement pour le pastoralisme et la transhumance \(PREDIP\)](#)”, Projet Régional de Dialogue et d’Investissement pour le Pastoralisme et la transhumance au Sahel et dans les Pays Côtiers de l’Afrique de l’Ouest (PREDIP), 11 June 2021.

herders might require these types of land to be used to move their cattle to the markets and on to the larger towns.

5. Support the population in order to withstand pressure from educated and wealthy elites

The administrative-only type of land management system introduced by the land reform makes access to land contingent on only economic power and literacy or the ability to conduct the required administrative procedures. This poses a threat to legitimate ownership claims by illiterate communities. The Benin government should intensively sensitize the communities concerning the legal mechanisms and administrative processes around land access, management and tenure as well as also clearly explaining the powers and attribution of each actor. To formalize existing customary claims, it might be advisable to jointly fill in the required paperwork to allow people to formalize their customary rights.

Annex 1 Research methodology

This research relies on data from 3 rounds of interviews and focus group discussions in Borgou Department in Northern Benin: November-December 2021, March-June 2022 and October 2022.

Sampling

The analysis is based on 44 interviews and 4 focus group discussions in the 8 communes and 3 arrondissement of the Borgou Department (11 areas in total). In total, 4 interviews per village were conducted and with 2 participants per village in the FGDs (travelling to a central place).

Participants were selected through purposive sampling. First, there was a representative sample of farmers, herders, traditional rulers, and 'villagers'. This involved 11 farmers' association leaders, 11 herders' association leaders, 11 kings and traditional rulers, and 11 ordinary persons.

Second, 2 types of villages were selected: villages where there were relatively many land conflicts (vis-à-vis other villages in the department) and villages with relatively few land conflicts.³⁹ All villages were along the official transhumance corridor that passes through the Borgou Department.

First round

The first round was conducted in November 2021 in 11 villages along the transhumance corridor⁴⁰ in the Borgou Department. Apart from being situated along the transhumance corridor, the villages were selected on the basis of the

39 Based on data from the Armed Conflict Location & Event Data Project ([ACLED](#)).

40 Bembéréké, Kalalé, N'Dali, Nikki, Parakou, Pèrèrè, Sinendé, Tchaourou, Kika, Bérubouay, and Papane.

known existence of recurring farmer-herder clashes (4 villages); no or fewer reported farmer-herder clashes (4 villages), and an unknown status at the time of data collection (3 villages).

The interview questions inquired into how farmer-herder conflicts were perceived in the communities, what the existing coping mechanism was, what the role of key stakeholders in those mechanisms was, how effective they were, and how the land reform is going to influence those local mechanisms.

Data from those KII interviews were used to design the Focus Group Discussions – 2 with herders and 2 with farmers – that were conducted at the end of November 2021 in 2 villages.⁴¹

Second round

The second round of data collection was conducted between March and June 2022, based on the initial draft analysis of the data from the first round. It first probed into the findings through an additional literature research, 1 interview in each village (11 in total), as well as 7 semi-directed expert interviews. Interviewees in this round came from various backgrounds, including the development and non-profit sectors, government agencies, and researchers, and included 2 police officers.

Third round

In October 2022, 2 interviews were carried out in order to fill in the details about the precise role of the chiefs.

Analysis process

In the analysis process, qualitative data collected in the first round was ‘coded’ based on a codebook developed by the researchers to facilitate both a content and thematic analysis of the interview transcripts. While this approach was

41 Tchaourou and Kalalé.

useful to obtain a general set of tentative answers to the research questions, relevant nuances were less accurately incorporated in that initial part of the analysis process.

That is why the researchers relied on a discourse analysis to better restore the context- or respondent-specific nuances that helped nuance and refine the data interpretation and analysis.

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