

**Sophie Andreetta***Max Planck Institute for Social Anthropology*

## **The Symbolic Power of the State: Inheritance Disputes and Litigants' Judicial Trajectories in Cotonou**

*Over the last 10 years, scholars have started to focus on African states' bureaucracies by investigating public servants' relationships with the state, their professional ethos, how they appropriate reforms, and the way they interact with citizens. With inheritance disputes as a focal point, this article highlights the users' perspective—which is often overlooked—and asks how litigants in Cotonou (Benin) see the state, appropriate legal reforms, and use the courts. It shows that citizens, despite a general sense that the court system is corrupt and ineffective, continue to use it because state institutions convey a form of authority that allows them either to legitimize or challenge family decisions in inheritance matters. [anthropology of the state, African courts, family law, inheritance, Benin]*

“After someone dies, problems with the family are almost inevitable,” explained Catherine,<sup>1</sup> a thirty-year-old widow and mother of two.<sup>2</sup> Her husband, Pierre, died in 2011, leaving behind four children—two of whom were from relationships Pierre had had with other women. Because they were having marriage problems at the time of Pierre’s death, Catherine was immediately suspected of having poisoned him. Pierre’s family organized meetings to try to figure out what had happened. Six months later, they decided to appoint Germaine, Pierre’s older sister, as principal executor and Catherine as coexecutor, since by law two people are required. They were to manage Pierre’s estate until it was liquidated, which consisted of some money in the bank, one car, and two houses. In March 2012, they went to Cotonou’s high court to validate the report of the family meetings that they had written. The judge insisted that Catherine, and not Germaine, should be the principal executor, contrary to what the family had decided. Six months after the first hearing, Catherine went back to court to report the difficulties in collaborating with Germaine. As she explained to me:

I noticed that money was disappearing from my husband’s account. I tried to get in touch with my sister-in-law, but she refused to help. She said the money was meant for the children, because I would get the widow’s pension anyway. The judge already knew about our case, so I requested another hearing, and I asked him to tell her [Germaine] how the money should be shared.<sup>3</sup>

The Beninese *Code des personnes et de la famille* (Code on Persons and Family, CPF), which has regulated how inheritance disputes should be settled since 2004, grants surviving spouses one-fourth of the deceased’s property, with the rest to be shared equally among surviving children.<sup>4</sup> By involving the courts, Catherine wanted to make sure that she would get what she was entitled to.

*PoLAR: Political and Legal Anthropology Review*, Vol. 43, Number 1, pp. 5–20. ISSN 1081-6976, electronic ISSN 1555-2934. © 2020 The Authors. *PoLAR: Political and Legal Anthropology Review* published by Wiley Periodicals LLC on behalf of American Anthropological Association. All rights reserved. DOI: 10.1111/plar.12341.

This is an open access article under the terms of the Creative Commons Attribution-NonCommercial-NoDerivs License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

In Cotonou, the economic center of Benin,<sup>5</sup> inheritance disputes are a source of tension in many families, and a significant number of them end up in court: more than a thousand inheritance cases have been filed every year since the introduction of digitized records in 2010. To show how formal reforms can sometimes achieve their intended effects—in this case, promoting gender and generational equality—regardless of formal judicial enforcement, in this article I focus on the ways in which the citizens of Cotonou appropriate the CPF and mobilize lower-level state courts to renegotiate the way property is distributed within their families.

From the 1990s onward, judicial reforms have been implemented all across the African continent (Comaroff and Comaroff 2006; Rubbers and Gallez 2015). While their effects on public services and legal professions have been examined (Anders 2010; Bierschenk and Olivier de Sardan 2014), there has been limited concern for the consequences in the everyday lives of ordinary people (cf. Andreetta 2018; Rubbers and Gallez 2012). This article draws on the ethnography of African bureaucracies (Bierschenk and Olivier de Sardan 2014; Blundo and Le Meur 2009; Olivier de Sardan 2004) and on sociolegal studies (Felstiner, Abel, and Sarat 1981; Galanter 1974; Merry 1990) to reflect on the particularities of state courts in a context where public services are generally described as ineffective and must therefore be “coproduced” by private actors (Bierschenk 2014; Lund 2006; Titeca and De Herdt 2011). I argue that by appealing to the courts, those on the lower rungs of family hierarchies—particularly sisters and widows—manage to transform power relationships to their advantage. The symbolic power of the state and the normativities that its laws create, which render land rights quantifiable and divisible, allow these women to renegotiate the way decisions are made and properties distributed among family members. Inheritance claims, therefore, illustrate the importance of formal norms and institutions in understanding social processes in Africa.

When it comes to studying the resolution of disputes, scholars have mainly focused on “traditional” or “nonstate” laws and courts (Benda-Beckmann 1981; Claassens and Mnisi Weeks 2009; Griffiths 1998, 2011). Griffiths (1990, 2011) specifically focused on inheritance disputes in rural courts, arguing that despite the relative social and economic positions of men and women usually making it harder for women to access property, customary laws were not necessarily disadvantageous to women. In the anglophone literature, inheritance claims have indeed mainly been studied as part of two interconnected subfields: gender dynamics and land rights (Kingwill 2016; Peters 2010). These scholars have highlighted the relative failure of land rights reforms to promote women’s rights and access to property (Berry 2002; Haugerud 1989; Peters 2010), insisting on the importance of legal pluralism and the diluted power of state law (Himonga 2011). More recently, other scholars have started looking at the family law reforms in West Africa, where “modern law” is often at odds with religious norms (N’Diaye 2015; Vincent-Grosso 2012; Voorhoeve 2012). They point out that while law is regularly mobilized—by women in particular—judicial decisions still reproduce “traditional” gender roles and inequalities (Ben Hounet and Rupert 2018). In the economic capital of Benin, however, women successfully use state law in court to challenge inequalities and to eventually tip the balance of power within their families.<sup>6</sup> In contrast to their rural counterparts (Claassens and Mnisi Weeks 2009; Griffiths 2011; Peters 2010), most women in Cotonou have some education and generally work as well. As daughters especially, they contribute their share to the family budget and feel that they are entitled to an equal share of the common property as stipulated in the CPF.

This article also argues that the “success” of inheritance cases should not be understood only as a function of the Code or the way its principles are appropriated (Ewick and Sibley

1998; Merry 1990); litigants' judicial trajectories also point to the importance of the state and its symbolic authority in Cotonou. While the question of dispute resolution in Africa has been an important topic in the anthropological literature for more than fifty years, critical in-depth studies of the African state only emerged at the end of the 1990s. While the early contributions treated the state as a source of power (Bayart 1989; Darbon 1990; Médard 1991), at the beginning of the 2000s, a small group of anthropologists advocated studying African states through their bureaucracies (Bierschenk and Olivier de Sardan 2014; Blundo and Le Meur 2009). Some of these scholars analyzed the logic underpinning the (dys)functioning of West African courts (Bako Arifari 2006; Bierschenk 2008; Tidjani Alou 2007); others reflected on the professional ethos of judges and prosecutors (Andreetta and Kolloch 2018; Budniok 2015; Oumarou 2014; Verheul 2013). However, as Rubbers and Gallez (2012) underline, there was little focus on the litigants' perspective.

This article builds on a similar foundation of the "local state" as an empirical reality to understand why people choose state courts as a forum and what this says about how they see the state and its institutions. Taking litigants' long-term trajectories into account, I reflect on the ways in which they use state institutions to produce social or political effects such as the renegotiation of family hierarchies and access to land. Inheritance cases also demonstrate that when people take family members to court, the legal proceedings are not about seeking revenge, punishment, or compensation (Rubbers and Gallez 2012); rather, they are about redefining relationships among kin.

Bringing together two sets of approaches and their respective ways of analyzing courts—as legal institutions in state bureaucracies, and as litigation practices—allows me to explore the specificities of state courts and what they "do" that other forums do not. In her study of alternative dispute resolution (ADR) in Bolivia, Ellison (2017) shows that many of the residents of El Alto use conciliation as a way of obtaining official-looking documents that can give concrete form to social obligations among neighbors, family members, or acquaintances. Inheritance disputes in Cotonou, on the other hand, show that people opt for formal proceedings in order to get *le cachet de l'État* (the state's stamp), which allows them to validate or renegotiate family decisions. This echoes Merry's (1990) description of litigation among working-class people in Massachusetts as "a symbolically powerful resource" that people use to either "challenge hierarchies which are vulnerable or to defend those which seem precarious" (87). However, in contrast to their counterparts in Massachusetts, the litigants of Cotonou do not necessarily lose control over their cases once they go to court: family members often use legal proceedings as leverage to renegotiate relationships regardless of the judge's decision.

This article, therefore, ultimately leads to a methodological suggestion. On the basis of five extended case studies, it shows how considering litigants' trajectories beyond (that is, both before and after) judicial proceedings helps researchers to better understand how and why people use the courts. These case studies, which I collected between 2010 and 2015, are part of a wider sample of seventy-five family stories, the protagonists of which I met either in court, through their lawyers, or in the mediation sessions that they requested. One limitation of my sampling method, however, is that I had access only to disagreements that had been made public. I neither attended family reunions, nor did I witness private conversations with friends, religious leaders, or *chefs de quartiers* (neighborhood chiefs).<sup>7</sup> The majority of the participants in my study belonged to what Jacquemot (2012) defines as the typical African middle class: they lived in the capital city and worked in the private sector, in public administration, or as street vendors. Most of them, like 75 percent of Cotonou's population, belonged to one or another of the Adja-Fon ethnic groups (Fon, Mahi, Goun, Mina), which are culturally very similar to each other. The other groups were

Yoruba or Nago, which account for 11 percent of the residents of Cotonou (Akomagni 2006). In any case, inheritance stories seemed to be more contingent on family situations than on ethnicity: most cases in court were about women or younger siblings claiming access to family property, regardless of the ethnic groups involved.

The following sections examine the place of law in family debates, delve into the reasons that people choose to go to court instead of mobilizing other dispute resolution mechanisms, and discuss the social effects of legal proceedings. These discourses and legal trajectories will help provide some nuance to the widespread assumption that African bureaucracies and formal legal reforms generally fail to fulfill their purpose, leading to the privatization and externalization of public services (Bierschenk 2008; Lund 2006; Titeca and De Herdt 2011). In the case of the Beninese economic capital, even though judicial decisions are not always enforced, litigation allows family members to negotiate access to land and redefine relationships on a more equal footing.

There is, of course, another side to each of these stories: the side of those who have been summoned to court, who think that family houses should not be sold, who perhaps took care of their younger siblings for years and think that equal sharing is unfair, or that inheritance should be reserved for children rather than widows. These arguments and the ways in which they play out in and out of courts call, however, for analysis that is beyond the scope of this article.

### **Inheritance Disputes and the Law**

The regulation of inheritance disputes in Benin since 2004 took place in a larger legal reform that created significant consequences for gender relationships and access to land in Cotonou. In 1904 Dahomey became a part of the French colonial empire, and French law was imposed throughout the entire territory (Brunet-La Ruche 2013). However, colonial administrators reported substantial difficulties in enforcing French law, which is why France decided to allow its colonies to maintain their own customs in matters of personal status, marriage, inheritance, donations, and wills (Gbaguidi 1998). From 1912 onward, a dual system applied to private matters: French citizens and naturalized indigenous peoples fell under “modern law,” which corresponded to the French Civil Code, while Beninese subjects were governed by “traditional law” (Kouassigan 1975). In 1946 those different categories of people were abolished. People could therefore “choose,” through the kind of marriage they entered into, which legal regime they wanted to be ruled under: French law applied to those who had a civil marriage ceremony; traditional law applied to the other types of ceremonies (Gbaguidi 1998).

Whatever the rule of law, when a parent died, a family reunion had to be convened to identify the heirs and inventory the possessions of the deceased. An administrator was elected and tasked with taking care of the property until someone asked for it to be shared out. Traditional rules, under which most of the cases fell, stated that the inheritance was supposed to be “shared unequally among the children,” although the form this unequal distribution took depended on ethnicity: in some areas, a larger portion of land was given to the eldest son; in others, the youngest son received the more substantial share (Gbaguidi 1998). Some of these rules were listed in the *Coutumier du Dahomey* (Customary of Dahomey), which judges would refer to for information, but the rules were not legally binding. The French Civil Code, on the other hand, provided all children with equal inheritance rights, and gave surviving spouses usufruct rights to properties. This dual legal system remained in place after Dahomey’s independence in 1960 and did not change until 2004 (Bolle 2002). In practice, the eldest son generally informally acted as the executor of the family estate until he died, at which time someone else would take over responsibility

for the estate. Properties were rarely sold or formally transferred from one generation to the next; if there was a title deed, it often remained in the name of the deceased.

Toward the end of this period of dual legal systems, in 1990, a constitution was drafted and Benin (renamed from Dahomey) became party to numerous international human rights agreements. To improve public services, general assessment conferences were organized, including within the Ministry of Justice. The report that resulted from the Ministry of Justice's conference insisted on the need to enact the CPF, a first draft of which had been submitted to the Beninese national assembly in 1990.<sup>8</sup> Most parliamentarians, however, were reluctant to pass the law. The text was indeed considered too much of a radical break from existing customary law, especially when it came to the rights of women. Because the vote kept being postponed, in 2002 the local branch of the nongovernmental organization Women in Law and Development in Africa organized a protest in front of the Parliament building, which led to the adoption of the first version of the Code. The Constitutional Court, however, asked for substantial modifications, including deletion of a clause allowing polygamous marriages, which were deemed a violation of gender equality. The final version of the Code was promulgated in 2004 (Bolle 2002).

When it comes to inheritance, the CPF states that, as in the former legal system, a family reunion has to be convened to list the heirs and the belongings of the deceased. The participants include but are not limited to all potential heirs as well as the mothers of any underage children. Together, they also have to appoint two *liquidateurs* (coexecutors). Traditional law, deemed detrimental to women's rights, is abrogated. The CPF also states that "all children are equal" (CPF, art. 630 and following) and that "no one should be forced into co-ownership of undivided property; division and sharing of property can always be insisted upon" (CPF, art. 752 and following).

In addition to granting women rights that they did not have before, the new law therefore contributes to the increasing commodification of land within the capital city. The principle according to which "division and sharing of property can always be insisted upon" indeed makes it easier for family members to sell joint property that used to be inalienable. It also gives those who had limited access to family resources a substantial argument to redefine power relationships: the youngest siblings and widows can now force the sale or division of family properties in order to get their share.

One of the first litigants I met, Anaïs, went to court on behalf of her daughter. Anaïs requested that her late "husband's" bequeathal be sold and the profits shared equally among all of his children (the deceased had three other children in addition to Anaïs's daughter). Anaïs had not been legally married to the deceased, but according to the CPF, children born out of wedlock have the same rights as other children, and she wanted to use her daughter's share to provide for her. She also wanted to be able to get away from her "husband's" family, the members of which she feared could try to harm her and her daughter. With the money from the proceedings, she was hoping to buy a house for the two of them. Under the previous legal system, she would probably never have been able to make that claim.

In Cotonou, it is usually men who buy and sell houses. Family relationships are, in almost all ethnic groups, patrilineal; people therefore expect to inherit from their fathers. Men also frequently leave behind a large number of potential heirs and, consequently, complex family relationships and inheritance dynamics. In many cases, parents had married under the former legal regime, which allowed multiple marriages for men. These families now consist of several sets of children "from different beds." Today, even though the law only acknowledges monogamous marriages, many men still have children with more than one partner, some of whom are, in all respects but the legal one, their "wives." Many inheritance

disputes therefore pit either the children of different women against one another or one of the “widows” against the rest of the family.

Anaïs’s example illustrates how claiming inheritance in Cotonou’s court system has become a way of accessing property that has considerable financial value. Property values in Cotonou have been on the rise since at least the 1970s, with land prices increasing by up to 50 percent between 1970 and 1980 (Grisoni-Niaki 2000). Today, most houses in Cotonou are worth at least 100 million FCFA (US\$168,000). For heirs who find themselves in difficult financial situations, inherited real estate becomes a highly valued resource both inside and outside the city center.

### What Alternative Dispute Resolution Says about the Way People Use Courts

In Cotonou, family members can take their disagreements to various forums that include but are not limited to state courts. Women’s rights associations hold mediation sessions every week, as does Cotonou’s most popular radio station (discussed below). Rather than being adversarial, most of these forums operate on the idea of getting people to agree to a solution to their problem, and therefore are able to offer a cheaper, faster dispute resolution process than the courts.

The following is a case study of taking a family dispute to one of these ADR mechanisms. Together with other similar cases, it shows that while justice might be “coproduced” by private actors, in Cotonou even those who go through such a mediation process often believe that the high courts are still the most relevant and authoritative forum in which to solve family disputes.

Bernadette is a sixty-eight-year-old street vendor in Cotonou’s market. Her father died in 1958, leaving behind four children: Gertrude, Patrick, Jean, and herself. He owned a house in the center of Cotonou, as well as several plots of land in the Ouidah region. Together, the siblings decided that Patrick, as the eldest male, should hold on to the property deeds. When he died, Jean (the only male sibling remaining) started selling plots from his father’s estate. He also took it exclusively upon himself to collect rent from the tenants who lived in the house in Cotonou, and did not share the proceeds with his siblings. At the beginning of the 2000s, Bernadette, who barely earned enough as a street vendor to get by, asked for her share of the inheritance. Several family meetings were organized over the years, yet Jean systematically rejected any kind of sharing arrangement. In 2011 the family chief suggested that the children go to court. He found a lawyer for them, and took the family to the first meeting. The attorney asked for 500,000 FCFA (US\$840), which they could pay in several installments. Jean refused to be involved, Bernadette did not have enough money, and Gertrude was unwilling to cover the whole fee by herself. A couple of months later, Bernadette instead went to Radio Cotonou, where mediation sessions were organized once a week.

In the warehouse next to the radio station’s offices, *Da Houénou*,<sup>9</sup> a retired civil servant, sat in front of a wooden desk listening to people’s everyday problems: a couple’s disputes, claims for small debts between private individuals, arguments between neighbors. After hearing the “plaintiff,” he would send a written summons to the other people involved. A mediation session would be organized for the following week with those who showed up. During that session, *Da* (what his clients call him) would give his advice on the matter in the form of an oral “decision.” Sometimes he would refer people to court or to the police if no amicable solution could be reached.

In Bernadette’s case, the radio station was her second choice. “I wanted to hire a lawyer and go to court at first, but I didn’t have a penny to pay for it,” she explained. “So I thought, ‘Okay, I will come here.’”<sup>10</sup> In a similar case, André, whose older brother was denying his



younger siblings access to family houses, explained, “If I know the court well, I will go there on my own. But because I don’t have money, they won’t listen to me. That’s why I came here to the radio—so they will help me find my way to court.”<sup>11</sup>

The aforementioned examples show that even for those who use other dispute resolution mechanisms, state courts are often still perceived to be the most legitimate forum when family disputes can no longer be dealt with privately. The state courts are the first recourse they think of, with mediation being either a second choice or a way to make the necessary social connections to eventually be able to bring the case to court. “I’m hoping Da can introduce me to a judge, or to a lawyer,” André explained. “What will I be able to do in court if I don’t know anyone?”<sup>12</sup> This case, among many others, illustrates the importance of considering litigants’ trajectories across different forums, as people often go from one to the other, or even use them simultaneously.

### Getting the State’s Stamp: Formalizing Family Decisions

According to the CPF, family meeting reports have to be signed by a magistrate, who makes sure that all the heirs are listed, and agree to the two executors who have been chosen. Ratifying the minutes of the family meeting is the first reason why people go to court, which under these circumstances amounts to a mere formality, yet it is one that more and more people comply with for one or more of three main reasons: to access benefits, to formalize and ascertain certain roles and decisions, or to challenge power relationships within the family.

If the deceased was a public servant, heirs need the court-approved family meeting report to claim the widow’s pension benefits. They also need the judge’s decision to access bank accounts or to obtain the *capital décès* (death benefits), a lump sum of money that most public administrations provide to help their employees’ families pay for the funerals. Going to court is, therefore, first and foremost, a way of gaining access to both money and benefits.

The same procedure can be used by those who wish to sell joint properties. I met Robert, who works for a Belgian development agency, after a hearing in court. He and his brother and sisters had come to ask that one of their mother’s houses be sold. She had died several years earlier, and her children had shared the two houses that she left behind. Robert’s sisters got one of the houses, and the brothers got the other one. The two brothers, however, had trouble living together, and Robert’s younger brother eventually requested that their house be sold. The rest of the family agreed but, as Robert explained, they wanted “to make sure that he [the younger brother] cannot turn against us later on, saying he did not agree to the sale or the price. We wanted the state’s stamp on it.”<sup>13</sup> Similarly, executors whose position has been confirmed in court frequently insist that their role has been allocated to them by “the state,” therefore adding authority and legitimacy to their family’s decision.

Finally, in some cases, that same procedure is used by what is often referred to as the “small ones” of families, such as women or younger siblings, to get access to court and ask for property to be sold or shared. This is often the case with widows who do not dare to openly disagree with their dead husband’s family. They are afraid they will be suspected of having killed him if they seem too eager to settle inheritance matters, but they also frequently believe that the family will try to exclude them. Among the seventy-five original research cases, I interviewed eleven widows. Half of them mentioned having been suspected of “murdering” their husbands, and a few had even been thrown out of the house that they were living in. Such suspicions, often referring to witchcraft, generally arise when men die unexpectedly, especially if the couple is known to have had disagreements.

Within such a context, some members use the family reunion report hearing to disagree with what was written and ask for the properties to be divided or sold, or for a change of

executors. Other family members, as with Catherine and Anaïs, ask that the inheritance be shared as a way to make sure that they each get what they are entitled to. In this sense, then, signing off on the family report is more than a mere formality; it also represents a chance for those who feel pushed aside in the family decision-making process to stand up and stake their claims.

Those (judicial) formalities involve using official norms and institutions—either to legitimize or to challenge what had already been decided within the family (Merry 1990). They also show that state courts “do” something that informal institutions do not: they bestow the “state’s stamp” and the symbolic authority that goes along with it. This idea of the stamp, or the “signature of the state” (Das 2004), has been investigated in various contexts (Alpes 2017; Hoag 2010; Merry 1990; Tuckett 2018). While Ellison (2017) describes how people undergo mediation to obtain official-looking documents that they use to formalize relationships, in inheritance cases, people are not only looking to collect documents—whether they are state-“like” or genuine—but also to mobilize the symbolic authority of formal institutions to renegotiate the way decisions are made and property is distributed within the family.

### **Beyond the Stamp: Challenging Family Decisions**

Sometimes people claim rights and land in a more straightforward way than in the cases above: they start litigation proceedings against their siblings. The following case illustrates how courts are often perceived as having authority over all family members and as being able to impose that authority when family meetings have failed to “restore order”—a phrase litigants frequently used to explain why they went to court—between siblings. It shows that beyond that stamp of authority, statehood is embodied through a set of norms—the CPF—and institutions that people mobilize to define new (or challenge the “old”) categories of authority within families.

Thérèse and Annie Boko brought their case to court in 2008, more than thirty years after their father’s death. He left several family houses as well as acres of land in the suburbs of the economic capital. His first-born son managed the family estate, followed by the next male in line. One after the other, these executors—although not officially chosen as such by the family—proceeded to sell plots that belonged to all twenty-three heirs. In the late 1990s, Annie and Thérèse complained about the way the family estate was being managed. After numerous family meetings, the executor finally identified a piece of land as “the women’s share,” but he sold it several years later without informing them and without passing the proceeds on to them. “This is why we decided to go to court—to show him that some of us are not scared, that we can stand up to him,” Thérèse explained.<sup>14</sup> Annie added, “We want our share. What belongs to me, my share of my father’s estate, that is what I am asking the court to give me.”<sup>15</sup>

This case, and many others like it, has to be considered within the context of today’s family dynamics in Cotonou. Most people live in nuclear families; but single-parent households are becoming more frequent and are generally headed by women, most of whom work and provide for themselves as well as for their children, therefore legitimizing the clauses of the Code that grant all siblings equal rights to inheritance. Referring to mandatory contributions associated with particular events, such as weddings and funerals, Annie stated, “We always pay our share. How come we are not entitled to any of the money that comes in?”<sup>16</sup>

The Boko sisters’ first request was introduced into the courts in 2008. A decision was finally made in 2012, which Thérèse and Annie appealed because some of the plots of land were not mentioned in the list of properties. Although they disagreed with the court’s initial decision, for both women the justice system remains, as Thérèse said, “the only institution



that is fit to decide which of us is right.” She added, “If the way properties are managed is not clear, you have to complain to the highest level. This is why we went to the state, so that if something belongs to us, it will be handed over to us.”<sup>17</sup>

Beyond the authority of the state, Thérèse and Annie made use of the categories that its laws create, which have made selling or sharing properties possible in a way that customary norms did not. By making land alienable, and therefore quantifiable and divisible, the CPF has also fundamentally changed gender and generational relationships, introducing calculation and individual rights into family dynamics.

### **Enforcing Judgments, or the Effects of Mobilizing the State**

While the enforcement of legal decisions is rarely investigated in the anthropology of law scholarship (cf. Andreetta 2016, 2018), it is a crucial part of the litigation process and says a great deal about how litigants use state courts. Looking at what happens “after court” shows that even though decisions are often not enforced or only partially enforced, they still act as a bargaining tool—the power of which emanates from the state’s stamp on them—that can be used to challenge family hierarchies and change the way resources are distributed.

Once a decision has been made, people have to contact the judge’s bailiff to either launch an appeal or, if both parties accept the decision, to get the writ of execution. From that point onward, the courts are no longer involved in the case. This is one reason why enforcement is difficult to quantify: once a case has been decided, it becomes impossible to track other than through the parties involved.

Judicial decisions in Cotonou, however, are not necessarily enforced. In inheritance cases, enforcement depends in part on the judge’s instructions. If a public notary is appointed to sell houses and plots of land, the writ of execution will be directly transmitted to the notary’s office. Litigants have no say regarding whether the decision is enforced or not. Public notaries are indeed only accountable to the court that appointed them, a condition about which families regularly complain. They also complain about the length of the process: it generally takes several years before the heirs can finally get money from a sale because the administrative procedures associated with the compulsory liquidation of joint properties are complex and require numerous steps that public notaries tend to follow scrupulously. This is the second reason why quantifying enforcement is impossible: the process can be delayed, paused, and then resumed after several years.

Appointing a public notary is, however, generally considered a last resort by family law judges, who regularly warn litigants during hearings, “If you cannot come to an agreement, I will appoint a public notary, and he will ‘eat’ most of the money and you will be left with crumbs.”<sup>18</sup> Alternative solutions include appointing a new executor if the existing one is suspected of bias, validating a sharing plan, or allowing families to sell some of the houses that they have inherited. In those cases, implementation is at the discretion of family members. Those who “win” the case can get the writ of execution and ask the opposing party to comply.

Nadia’s father was a truck driver. He died in 1975, leaving behind three wives and nine children. He had already bequeathed his belongings: each wife and their children were given the house that they lived in, as well as a house or a plot of land in the village they were from. Each woman’s eldest son was also given a piece of land. Nadia’s mother had one son and four daughters, of whom Nadia was the eldest. As the children got older, Nadia’s mother handed responsibility for collecting rent from the houses over to her son, Alfred. However, as Nadia explained, after their mother’s death, “He was keeping all of the money to himself and doing whatever he wanted with it.”<sup>19</sup>

The four sisters tried to reason with him, and asked for family meetings to be organized to learn more about their inheritance and how it was being taken care of. The extended family met on several occasions, suggesting a number of possible ways to share the houses among the five children.

He just said he would not give up on his position as executor, and then he just stopped showing up. He is not afraid of anybody . . . but he will be afraid of the courts. He will have no choice but to comply.<sup>20</sup>

Nadia's youngest sister, Adélaïde, wrote to Cotonou's high court in 2009. Her sisters joined her in the request for a budget report from their brother and for a new executor. In 2012 the judge appointed Nadia and Adélaïde as the new coexecutors. They did not inform their brother that a decision had been taken against him: "We don't know what his reaction is going to be, so we would rather wait," Nadia explained.<sup>21</sup>

Even though they did not formally notify Alfred about the decision, Nadia and Adélaïde started acting accordingly: they began collecting rent from new tenants in two of the five rooms in the house, which they felt was a good first step toward a different distribution of family resources. They also reported that they had sold one of the plots and that the proceeds had been shared equally among all siblings. In other words, although the judge's decision had not (yet) officially been enforced, legal proceedings still had an impact on family relationships and the way inheritance was distributed—which was the objective in the first place.

In inheritance cases, judicial decisions in favor of the party that brought the case to court often provide symbolic leverage, even when the decisions are not enforced. They can serve as effective bargaining tools in the renegotiation of access to resources and redefinition of family hierarchies. Litigants, therefore, often choose to enforce only some of the conditions of the judgment. For example, while a decision might allow for the sale of real estate, in fact houses and land in the village are almost never sold; they are seen as property that belongs to and should remain in the extended family, to be transmitted from one generation to the next.

Kohlhagen (2007) describes the lack of enforcement in rural Burundi as a symptom of the "failure of the intervention of the state's institutions" (3). When it comes to inheritance disputes in Cotonou, I would argue that the lack of formal enforcement of legal decisions does not necessarily indicate a failure of the system; it is more about using the authority of public institutions and the documents they generate in a strategic and constructive manner. By taking the dispute to court, Nadia and Adélaïde managed to tip the balance of power and change the way resources were allocated within their family; at least they can now collect rent from tenants.

The aforementioned example, like most of the case studies that I collected, offers a counterpoint to the widespread idea that litigation often fails to create social change (Ben Hounet and Rupert 2018; Rosenberg 1991; Scheingold 1974). The case of inheritance disputes indeed shows that, in Cotonou, litigation triggers substantial changes in family relationships, gender dynamics, and the way property is transmitted, shared, and sold.

## Conclusion

In this article, through the specific example of inheritance disputes, I have reflected on the various ways in which citizens of Benin—in this case, family members involved in inheritance disputes—perceive and mobilize state courts in Cotonou. I have also delved into the reasons they bring a case to court and the way they use judicial decisions. Litigation

indeed allows heirs to achieve a number of goals, ranging from gaining access to bank accounts or state benefits to legitimizing family decisions and successfully challenging family hierarchies.

A focus on litigants also illuminates the effects of judicial proceedings. In inheritance cases, despite the fact that enforcement of decisions is often delayed or selective, litigation nevertheless allows family members to solve the problem that brought them to court in the first place. This conclusion runs counter to the idea, often argued in the sociolegal literature, that law and litigation generally fail to generate social change. It also counters the claim that formal legal reforms on the African continent are often only partially implemented or get redirected, thus rarely bring about the intended effects (Anders 2014; Munoz 2014; Rubbers and Gallez 2015).

Exploring the “users’ perspective” will help researchers think about litigants’ judicial trajectories, which often involve different forums. These trajectories show that mediation and informal dispute resolution are not always seen as a more efficient alternative to the courts or as providing a more socially acceptable solution; in fact, they are sometimes used as a way to gain access to state institutions. Careful analysis of judicial trajectories allows for new understandings of the place of state courts in the resolution of disputes. In Cotonou, although African public services are sometimes coproduced by private actors (Lund 2006), when it comes to settling family disputes, citizens prefer going to the state because of its symbolic power. This ultimately demonstrates the need for researchers to find a way both *methodologically* and *theoretically* to look beyond the dichotomy of formal versus informal norms and practices and start apprehending the state and its institutions through the lens of the specific services that they provide and the ways in which ordinary citizens mobilize them in order to achieve certain desired outcomes.<sup>22</sup>

### Notes

This article was written on the basis of my doctoral research, which was funded by the Belgian Fund for Scientific Research and the University of Liège. The final version was written at the Max Planck Institute for Social Anthropology. I am grateful to the families who agreed to be a part of this research, as well as to the legal professionals who help me get in touch with them. A special thanks goes to Susanne Verheul and James Carrier for their comments on earlier drafts of this article, to Brian Donahoe for his careful language editing, and to the anonymous reviewers for their suggestions.

1. Interview, March 2013.
2. All participants in my study were assigned pseudonyms, which I use in this article. All translations are mine.
3. Interview, March 2013.
4. Throughout this article, I will use “belongings,” “estate,” and “properties” to refer to someone’s possessions which, after they die, are inherited by their heirs.
5. While Porto-Novo is the official capital of Benin, Beninese people refer to Cotonou, its largest city and the economic center, as *la capitale*. In this article I follow this local usage in referring to Cotonou as the capital.
6. I conducted fieldwork only in Cotonou and in neighboring cities. This research did not, therefore, address the effects of the CPF in rural areas.
7. Chefs de quartiers are chosen within the board of city councilors. They are given a four-year mandate during which they are responsible for local issues in their neighborhoods.

8. Ministère de la Justice, de la Législation et des Droits de l'Homme, 1996, *États Généraux de la Justice* [The general state of the justice system], Cotonou.
9. In the Fongbé language, Da is an honorific used for family chiefs.
10. Interview, November 2012.
11. Interview, November 2012.
12. Interview, November 2012.
13. Interview, February 2013.
14. Interview, May 2010.
15. Interview, October 2013.
16. Interview, October 2013.
17. Interview, April 2015.
18. Field notes, 20/11/2012.
19. Interview, March 2010.
20. Interview with Nadia, March 2010.
21. Interview, February 2013.
22. Blog Editor, "Unravelling Public Authority: Paths of Hybrid Governance in Africa," London School of Economics and Political Sciences (blog), April 7, 2014, <https://blogs.lse.ac.uk/jsrp/2014/04/07/unravelling-public-authority-paths-of-hybrid-governance-in-africa/>.

### References Cited

- Akomagni, Lazarre. 2006. *Monographie de la commune de Cotonou* [A monograph of the municipality of Cotonou]. Afrique Conseil: Cotonou.
- Alpes, M. J. 2017. "Papers That Work: Migration Brokers, State/Market Boundaries, and the Place of Law." *PoLAR: Political and Legal Anthropology Review* 40 (2): 262–77. <https://doi.org/10.1111/plar.12219>.
- Anders, Gerhard. 2010. *In the Shadow of Good Governance: An ethnography of Civil Service Reform in Africa*. Leiden: Brill.
- . 2014. "Old-school Bureaucrats and Technocrats in Malawi: Civil Service Reform in Practice." In *States at Work. Dynamics of African Bureaucracies*, edited by Thomas Bierschenk and Jean-Pierre Olivier de Sardan, 221–49. Leiden: Brill.
- Andreetta, Sophie. 2016. "Pourquoi aller au tribunal si l'on n'exécute pas la décision du juge? Conflits d'héritage et usages du droit à Cotonou" [Why go to court if you overlook the judge's decision? Inheritance disputes and legal consciousness in Cotonou]. *Politique africaine* no. 141, 147–68. <https://doi.org/10.3917/polaf.141.0147>.
- . 2018. *Saisir l'État. Les conflits d'héritage, la justice et la place du droit à Cotonou* [Going to the state. Inheritance disputes, state courts and the place of law in Cotonou]. Louvain-La-Neuve, Belgium: Académia-L'Harmattan.
- , and Annalena Kolloch. 2018. "Money, Morality and Magistrates. Prosecuting and Judging in the Republic of Benin." *Journal of Legal Pluralism and Unofficial Law* 50 (2): 145–66. <https://doi.org/10.1080/07329113.2018.1494407>.
- Bako Arifari. 2006. "La corruption quotidienne au Bénin" [Everyday corruption in Benin]. *Etudes et travaux* no. 43. [www.lasdel.net/images/etudes\\_et\\_travaux/La\\_corruption\\_quotidienne\\_au\\_Benin.pdf](http://www.lasdel.net/images/etudes_et_travaux/La_corruption_quotidienne_au_Benin.pdf).

- Bayart, Jean-François. 1989. *L'État en Afrique: La politique du ventre* [The politics of the belly]. Paris: Fayard.
- Ben Hounet, Yaziz, and Nouri Rupert. 2018. "L'application du droit de la famille au Maroc: du 'genre' et de la parentalité" [The application of family law in Morocco: Gender and parenthood]. *L'Année du Maghreb* no. 18, 169–83. <https://doi.org/10.4000/anneemaghreb.3751>.
- Benda-Beckmann, Kebeet. 1981. "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau village in West Sumatra." *Journal of Legal Pluralism* 13 (19): 117–59. <https://doi.org/10.1080/07329113.1981.10756260>.
- Berry, Sara. 2002. "Debating the Land Question in Africa." *Comparative Studies in Society and History* 44 (4): 638–68. <https://doi.org/10.1017/S0010417502000312>.
- Bierschenk, Thomas. 2008. "The Everyday Functioning of the African Public Service: Informalization, Privatization and Corruption in Benin's Legal System." *Journal of Legal Pluralism* 40 (57): 101–39. <https://doi.org/10.1080/07329113.2008.10756619>.
- Bierschenk, Thomas. 2014. "Sedimentation, Fragmentation and Normative Double-Binds in (West) African Public Services." In *States at Work. Dynamics of African Bureaucracies*, edited by Thomas Bierschenk and Jean-Pierre Olivier de Sardan, 221–49. Leiden: Brill.
- Bierschenk, Thomas, and Jean-Pierre Olivier de Sardan, ed. 2014. *States at Work. Dynamics of African Bureaucracies*. Leiden: Brill.
- Blundo, Giorgio, and Pierre-Yves Le Meur, ed. 2009. *The Governance of Daily Life in Africa. Ethnographic Explorations of Public and Collective Services*. Leiden: Brill.
- Bolle, Stéphane. 2004. "Le Code des Personnes et de la Famille devant la Cour Constitutionnelle du Bénin. La décision DCC 02–144 du 23 décembre 2002" [The Code on Persons and Family before the Beninese Constitutional Court. The decision DCC 02–144 on the 23rd of December 2002]. *Afrilex* no. 4, 315–42. <http://afrilex.u-bordeaux4.fr>.
- Brunet-La Ruche, Bénédicte. 2013. *Crime et châtement aux colonies: poursuivre, juger et sanctionner au Dahomey de 1894 à 1945* [Crime and punishment in the colonies: Prosecuting, judging and punishing in colonial Dahomey (1894–1945)]. PhD diss., Université de Toulouse 2 Le Mirail.
- Budniok, Jan. 2015. "When Judges Feel Misjudged: Encountering Doubt in Ghanaian Courts." In *Of Doubt and Proof: Ritual and Legal Practices of Judgment*, edited by Daniela Berti, Anthony Good, and Gilles Tarabout, 77–94. London: Ashgate.
- Claassens, Annika, and Sindiso Mnisi Weeks. 2009. "Rural Women Redefining Land Rights in the Context of Living Customary Law." *Journal of Human Rights* 25 (3): 491–516. <https://doi.org/10.1080/19962126.2009.11865214>.
- Comaroff, Jean, and John Comaroff. 2006. "Law and Disorder in the Postcolony." *Social Anthropology* 15 (2): 133–52. <https://doi.org/10.1111/j.0964-0282.2007.00010.x>.
- Darbon, Dominique. 1990. "L'État prédateur" [The predatory state]. *Politique Africaine* no. 39, 37–45. <http://www.politique-africaine.com/numeros/pdf/039037.pdf>.
- Das, Veena. 2004. "The Signature of the State: The Paradox of Illegibility." In *Anthropology in the Margins of the State*, edited by Deborah Poole and Veena Das, 225–52. Santa Fe, NM: School of American Research Press.
- Ellison, Susan Helen. 2017. "'You Have to Comply with Paper': Debt, Documents, and Legal Consciousness in Bolivia." *Journal of the Royal Anthropological Institute* 23 (3): 523–42. <https://doi.org/10.1111/1467-9655.12651>.

- Ewick, Patricia, and Susan Sibley. 1998. *The Common Place of Law. Stories from Everyday Life*. Chicago: The University of Chicago Press.
- Felstiner, William, Richard Abel, and Austin Sarat. 1981. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ... ." *Law & Society Review* 15 (3/4): 631–54. <https://doi.org/10.2307/3053505>.
- Galanter, Marc. 1974. "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9(1): 95–160. <https://doi.org/10.2307/3053023>.
- Gbaguidi, Noel. 1998. *Pluralisme juridique et conflits internes de lois en Afrique noire* [Legal pluralism and internal legal conflicts in sub-Saharan Africa]. PhD diss., Université Montesquieu de Bordeaux IV.
- Griffiths, Anne. 1990. "The 'Women's Question' in Kwena Family Disputes." *Journal of Legal Pluralism and Unofficial Law* 23 (30–31): 223–54. <https://doi.org/10.1080/07329113.1990.10756429>.
- . 1998. "Legal Pluralism in Botswana. Women's Access to Law." *Journal of Legal Pluralism and Unofficial Law* 30 (42): 125–39. <https://doi.org/10.1080/07329113.1998.10756519>.
- . 2011. "Delivering Justice: the Changing Gendered Dynamics of Land Tenure in Botswana." *Journal of Legal Pluralism and Unofficial Law* 43 (63): 229–60. <https://doi.org/10.1080/07329113.2011.10756663>.
- Grisoni-Niaki, Jean-Claude. 2000. "Dynamiques foncières et immobilières. Explosion urbaine et développement local à Cotonou" [Land and housing dynamics. Urban explosion and local development in Cotonou]. *Les Annales de la Recherche Urbaine* no. 86, 119–25. <https://doi.org/10.3406/aru.2000.2319>.
- Haugerud, Angelique. 1989. "Land Tenure and Agrarian Change in Kenya." *Africa: Journal of the international African Institute* 595 (1): 61–90. <https://doi.org/10.2307/1160764>.
- Himonga, Chuma. 2011. "Taking the Gap. Living Law and Land Grabbing in the Context of Customary Succession Laws in Southern Africa." *Acta Juridica* no. 114, 114–39.
- Hoag, Colin Brewster. 2010. "The Magic of the Populace: An Ethnography of Illegibility in the South African Immigration Bureaucracy." *Political and Legal Anthropology Review* 33(1): 6–25. <https://doi.org/10.1111/j.1555-2934.2010.01090.x>.
- Jacquemot, Pierre. 2012. "Les classes moyennes changent-elles la donne en Afrique? Réalités, enjeux et perspective" [Africa's 'Middle Class' Realities, Issues and Perspectives]. *Afrique contemporaine* 4 (224): 17–31. <https://doi.org/10.3917/afco.244.0017>.
- Kingwill, Rosalie. 2008. "[En]gendering the Norms of Customary Inheritance in Botswana and South Africa." *Journal of Legal Pluralism and Unofficial Law* 48 (2): 208–37. <https://doi.org/10.1080/07329113.2016.1185829>.
- Kohlhagen, Dominik. 2007. *Le tribunal face au terrain. Les problèmes d'exécution des jugements au Mugamba dans une perspective juridique et anthropologique* [State courts and the field. Anthropological and legal perspectives on problems related to judicial enforcement in Mugamba]. Brussels: RCN Justice and Démocratie.
- Kouassigan, Guy A. 1975. *Quelle est ma loi? Tradition et modernité dans le droit privé de la famille en Afrique noire francophone*. [What is my law? Tradition and modernity in family law in sub-Saharan Africa]. Paris: Pédonne.
- Lund, Christian, ed. 2006. *Twilight Institutions: Public Authority and Local Politics in Africa*. Oxford: Blackwell.



- Merry, Sally Engle. 1990. *Getting Justice and Getting Even: Legal Consciousness Among Working-class Americans*. Chicago: The University of Chicago Press.
- Médard, Jean-François. 1991. *États d'Afrique noire: formation, mécanisme et crise* [Sub-Saharan states: Formation, mechanisms and crises]. Paris: Karthala.
- Munoz, José Maria. 2014. "A Breeding Ground for Revenue Reliability? Cameroonian Veterinary Agents and Tax Officials in the Face of Reform." In *States at Work: Dynamics of African Bureaucracies*, edited by Thomas Bierschenk and Jean-Pierre Olivier de Sardan, 303–28. Leiden: Brill.
- N'Diaye, Marième. 2015. "Interpréter le non-respect du droit de la famille au Sénégal. La légitimité et les capacités de l'État en question" [Interpreting non-compliance with family law in Senegal: State legitimacy and capacities in debate]. *Droit et Société* 91(3): 607–22. <https://doi.org/10.3917/drs.091.0607>.
- Olivier de Sardan, Jean-Pierre. 2004. "État, bureaucratie et gouvernance en Afrique de l'Ouest francophone: Un diagnostic empirique, une perspective historique" [State, bureaucracy and governance in French-speaking West Africa. An empirical diagnostic: A historical perspective]. *Politique Africaine* 96 (4): 139–62. <https://doi.org/10.3917/polaf.096.0139>.
- Oumarou, Hamani. 2014. "'We Make Do and Keep Going!' Inventive Practices of Ordered Informality in the Functioning of the District Courts in Niamey and Zinder (Niger)." In *States at Work: Dynamics of African Bureaucracies*, edited by Thomas Bierschenk and Jean-Pierre Olivier de Sardan, 145–75. Leiden: Brill.
- Peters, Pauline. 2010. "'Our Daughters Inherit Our Land, but Our Sons Use Their Wives' Fields': Matrilineal-Matrilocal Land Tenure and the New Land Policy in Malawi." *Journal of Eastern African Studies* 4 (1): 179–99. <https://doi.org/10.1080/17531050903556717>.
- Rosenberg, Gerald. 1991. *The Hollowed Hope: Can Courts Bring About Social Change?* Chicago: The University of Chicago Press.
- Rubbers, Benjamin, and Emilie Gallez. 2012. "Why Do Congolese People Go to Court? A Qualitative Study of Litigant's Experiences in Two Justice of the Peace Courts in Lubumbashi." *Journal of Legal Pluralism and Unofficial Law* 44 (66): 79–108. <https://doi.org/10.1080/07329113.2012.10756691>.
- . 2015. "Réformer la 'justice de proximité': Une comparaison entre les tribunaux coutumiers et les tribunaux de paix à Lubumbashi (R.D. Congo)" [Reforming "proximity justice" in DR Congo: A comparison between customary and justice of the peace courts in Lubumbashi]. *Critique internationale* 66 (1): 145–64. <https://doi.org/10.3917/criti.066.0145>.
- Scheingold, Stuart. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven, CT: Yale University Press.
- Titeca, Christophe, and Tom De Herdt. 2011. "Real Governance beyond the 'Failed State': Negotiating Education in the Democratic Republic of the Congo." *African Affairs* 110 (439): 213–31. <https://doi.org/10.1093/afraf/adr005>.
- Tidjani Alou, Mahaman. 2007. "La corruption dans le système judiciaire" [Corruption in the judiciary]. In *État et corruption en Afrique* [State corruption in Africa], edited by Giorgio Blundo and Jean-Pierre Olivier de Sardan, 179–225. Paris: Karthala.
- Tuckett, Anna. 2018. *Rules, Paper, Status: Migrants and Precarious Bureaucracy in Contemporary Italy*. Stanford, CA: Stanford University Press.

- Verheul, Susanne. 2013. "'Rebels' and 'Good Boys': Patronage, Intimidation and Resistance in Zimbabwe's Attorney General's Office after 2000." *Journal of Southern African Studies* 39 (4): 765–82. <https://doi.org/10.1080/03057070.2013.858544>.
- Vincent-Grosso, Sarah. 2012. "Maktub: An Ethnography of Evidence." In *Family Law in Islam. Divorce, Marriage and Women in the Muslim World*, edited by Maaïke Voorhoeve, 171–98. London: IB Tauris.
- Voorhoeve, Maaïke, ed. 2012. *Family Law in Islam. Divorce, Marriage and Women in the Muslim World*. London: IB Tauris.