

THE PROTECTION OF THE AUTOCHTONES' URBAN AREAS "COLLECTIVE OWNERSHIP": THE CASE OF THE ALLADJAN OF ABROGUAMAN IN THE TOWN OF ABIDJAN

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Abstract: *This study sets oneself goal of focusing the attention of the authorities on the respect and the protection of the rights of autochthones of the urban areas. Indeed, the urbanization of the many countries, such as Ivory Coast, was made by infringing on the rights, especially on the right to collective ownership, on the rights of the natives of the chosen geographical areas. With regard to this historical injustice put the United Nations in 2007 an instrument of the protection of the human rights of the indigenous communities. In spite of this progress of the international law, some people are victim of abuse of power. The example of the Alladjan, natives of Abrogouaman in Abidjan is evocative. The investigations held at the headmen of this locality and at the population, as well as the documentary retrievals revealed that the right to the collective ownership of this people is denied by the authorities of the Ivory Coast. This state of affairs is a break on the improvement of their social conditions and a threat to their survival, things which it is important to repair.*

Key words: *protection; the Collective ownership; autochthones; urban areas; land title.*

Introduction

Component of the State, the territory is a delimited geographical space, where is exerted the monopoly and the plenitude of competences of the national authorities, and which is also used as support to their populations. Composed from abroad and nationals, populations of different States born of the colonial heritage (Karine Rinaldi, 2009: 217) were primarily made up by the people autochthones. Because of colonization and independences, a big number of people, were despoiled of their grounds, territories and resources.

Conscious of this historical injustice (Déclaration des Nations Unies sur les droits des peuples autochtones, 2008 : 2), which caused to prevent the people autochthones from exerting their right to development in accordance with their own needs, and interests, the United Nations, in the preamble to the Declaration on the rights of the people autochthones (below "Declaration")

challenge the States left on “the urgent need to respect and promote the intrinsic rights of the people autochthones [...], in particular their rights to their grounds, territories and resources”. From this call of the United Nations, it comes out clearly that one of the goals of the adoption of this instrument is the recognition, by the States, of the right to the collective ownership (Cour interaméricaine des droits de l’homme, 2001: Série C, n° 79, §§ 145-148) of the people autochthones.

Indeed, the problems of the protection of the right to the property of the indigenous communities, in particular those of the urban areas, are posed with acuity of as much since the consequences of the past are always present in our big cities of today, such Abidjan. Because the members of the aforesaid communities, the following the example of Alladjan of Abrogouaman, are most of the time victims of poverty, precariousness, loss of cultural identity, loss of grounds, territories and resources.

So the violation of the basic rights, in fact the right to the collective ownership, of the people autochthones of the urban areas, returns to the following questions: how to protect the right to the collective ownership from the people autochthones of the urban areas against the public abuse of authority, only exclusive holder of the power of final concession (Ordonnance n° 2013-481, 2013: 1). (Décret n° 2013-482, 2013: 1). of the grounds? Aren't poverty, precariousness even the under development of the people autochthones of the urban areas explained by this posture of the official authority?

Thus, the protection of the right to the collective ownership, object of this study, means report of violation of the legal existence of the people Alladjan of Abrogouaman with the rejection of their right to the collective ownership (I) which denied right that it is urgent to recognize and repair in accordance with the spirit of the Declaration (II).

I– Violation of the legal existence of the autochthones Alladjan of Abidjan to the rejection of their right to the collective ownership

This violation of the legal existence of the autochthones Alladjan is marked by the illegal sale of grounds operated by the communal authority which ignores evidence of administrative existence of these people (1). In fact, this attitude of abuse of power erodes the rights, in fact the right to the collective ownership of the people autochthones Alladjan. What prevented them using and from enjoying their grounds or territories, alone average of subsistence, now necessary to their development (2).

I.1- The violation of the legal existence of the autochthones of Abrogouaman

Of the investigations conducted near the autochthones Alladjan of the village of Abrogouaman of the commune of Port-Bouët, it arises from the historical point of view that these people occupy the littoral one of the town of Abidjan well before colonization. Indeed, it is difficult to bring evidence attesting the existence of the village of Abrogouaman going back to 1910 (Kémonthé Marius-Jonas Gallon, 2016: 77-78). However, the research carried out in the documents in possession of the village community of Abrogouaman makes it possible to establish that these people, through his chiefdom, had talks with the colonial authorities, in particular the commander of the Airport of Abidjan Port-Bouët in September 1956 on the limits of the aforesaid airport (Courrier n° 1507/ AD – PG/JB, 1956: voir Annexe). Analysis of the document, one can see that the occupation of the collective ownership of the autochthones of Abrogouaman dates expressly from second half of the 20th century. Thus, the fight of protection of the interests related to the territory of the autochthones Alladjan carried out formerly by their Chiefs against the colonial authorities is one of the evidence that these people are originally installed on this territory. Consequently the usual property there is due on the part of the littoral of the town of Abidjan which they occupy.

If the usual property (Courrier n°1507/ AD – PG/JB, op. cit,) of the villager community of Abrogouaman was taken into account and was respected by the colonial authorities in their development project of the third capital of the Ivory Coast (District autonome d'Abidjan, 2017: <http://www.abidjan.district.ci/index2.php?page=pre&num=2>), the legal constitution (Arrêté n° 925/INT/DGAT/DCA, 2010: 1-2, in Kémonthé Marius-Jonas Gallon op. cit : 153-154) of this indigenous community was effective only in 2010, that is to say fifty (50) years after the independence of Ivory Coast. This reserve of the governmental authority to set up the village of Abrogouaman in an administrative community brings to wonder about the challenges of such recognition. Indeed, it rises from the factual data that the territory of Alladjan of Abrogouaman shelters not only the International airport Félix Houphouët Boigny of Abidjan since 1952, the 43rd Battalion (Ambassade de la France en Côte d'Ivoire, 2017 : <https://ci.ambafrance.org/Le-43e-BIMa>) of marine light infantry of the French Army in Ivory Coast (below "43rd BIMA"), of a residential district (district siren SIPIM), but also the "Société abidjanaise de transport" (below "SOTRA") and other companies and industries.

In comparison with the importance of the installations quoted above, one understands the reserve of the public authority of the Ivory Coast to acknowledge the right to the collective ownership of the autochthones Alladjan

of Abrogouaman of kind to maintain them in precariousness what gives free access to the grounds and territories without obligation of the purging (Dominique Fodegnon, 2015a: 10) of the common laws of the latter. This attitude, qualified “of historical injustice” in the preamble to the Declaration, caused to dispossess the village community of Abrogouaman of almost all its territory. Thus over its 1075 hectares of the grounds, there remain to date 34 hectares not yet developed, in spite of the request made with the competent authorities.

In fact, this ignorance of the existence of the indigenous people of Abrogouaman dating from the colonial time continues with acuity today in spite of the legal constitution in village of the commune of Port-Bouët (Agenda officiel du District d’Abidjan, 2013: in fine). This violation is the prerogative of the public authorities that those of the private one.

In the implementation of the construction project of the motorway connecting Abidjan to Grand-Bassam, the official authorities preceded to the abandonment (Dominique Fodegnon, 2015b: 10) ; (K.S., 2017: 7) of the villagers concerned, in particular those of Abrogouaman, without any right allowance and of delocalization like wishing beforehand. This contempt of the rights of the communities’ autochthones is increased by the first communal authority of Port-Bouët, which proceeded to the systematic sale of 10 hectares of the 34 hectares remaining of the village of Abrogouaman.

Attacked in recourse administrative precondition (René Dégni-Ségui, 2003 a: 148-251) in front of the Minister for construction and town planning by the village community, this sale (Arrêté du ministre de la construction et de l’urbanisation, *affaire la maire de Port-Bouët c/ la communauté autochtone d’Abrogouaman*, 2017); (David Ya, 2017: 10) was cancelled in July 2017. This similar situation occurred quite front in the business of the company International airport of Abidjan (below “company AERIA”) against the village of Abrogouaman in 2016. By decision of the Supreme Court based on the decree (Décret n° 2010-189, 2010); (Kémonthé Marius-Jonas Gallon, 2016, op. cit.: 165) presidential of 2010, company AERIA proceeded, within the framework of extension of the Airport, with the destruction of the dwellings of the villagers of Abrogouaman without compensating them as a preliminary like recommending by the aforementioned decree. Finally this decree was repealed without the victims of the actions under taken by company AERIA being compensated.

In view of acts of the public authorities and private which carry seriously reached to the legal existence of the people autochthones of the urban areas, such Alladjan of Abrogouaman of the commune of Port-Bouët, it proves to be necessary, even obligatory for the political decision makers to respect and

protect the right to the collective ownership of the a foresaid village community legally made up.

This violation, which indicates of an abuse public authorities, erodes the right to the collective ownership of the autochthones of Abrogouaman to such sign which they cannot today undertake of work of development on their grounds in order to improve their social situation and economic necessary to their survival.

I.2- Right to the collective ownership of eroded the Alladjans people, a brake with their development and their survival

The inter-American Court of the human rights stresses that: *“the close links which the people autochthones maintain with their grounds must be recognized and understood as being a basic element of their cultures, of their spiritual life, their integrity and their economic survival. For the communities’ autochthones, the relation with the ground is not only one question of possession and production but a material element and spiritual of which they must fully enjoy, this was to preserve their cultural heritage and to transmit to the future generations”* (Cour interaméricaine des droits de l’homme, op. cit.: § 149).

This definition makes it possible to highlight four essential components of the right to the collective ownership of the people autochthones. Also called right of the people autochthones to their grounds, territories and resources by the Declaration, “the collective ownership” is the object of a special protection. Because its alienation must, according to the Declaration, to be made with the assent communities autochthones (Déclaration des Nations Unies sur les droits des peuples autochtones, article 32 (2), op. cit.: 13); (Mécanisme d’experts sur les droits des peuples autochtones, 2013: avis n° 2 (A/HRC/18/42, annexe), in Nations Unies, 2014: 6). With contrary, any action conducted by the official authorities concerning to the grounds, territories or resources of the autochtones, without their assent, or with no regard for their right to the usual property are violations or injustices to be proscribed like recommending by the United Nations.

Thus, the refusal of the competent jurisdictions of the Ivory Coast, in particular communal, to authorize the allotment of the 34 hectares (Arrêté du ministre de la construction et de l’urbanisation, op. cit.) of grounds remaining and in habited by the Alladjan autochthones of Abrogouaman of the commune of Port-Bouët, constitutes a serious violation of their human rights and leaving a brake with their development. However, under article 5 of law of the Ivory Coast on the acquisition of property of the urban grounds, *“no ground can be the object of a decree of final concession, if it is not resulting from an allotment”*

(Ordonnance n° 2013-481, op. cit.). However, the allotment of a communal piece, such the grounds of the village of Abrogouaman, can be legally ordered only by the communal authority which keeps, however, silence on the case of the aforesaid autochthones of its commune. This attitude indicates of an unavowed will to maintain this villager community in the precariousness of fate to dispossess it of its grounds. This abuse of power reduced these indigenous people with poverty and carries the violation of its right of use and pleasure of its grounds. Consequently, this village community will not be able to claim with the improvement of its social situation and even economic, in particular in the field of housing, the cleansing, health, the social security, etc., like mentioning in article 21 of the Declaration.

The State of Ivory Coast violates, also, the right to the collective ownership of the autochthones people of Abrogouaman if it does not grant a document of title at this community apart from any allotment of the geographical zone inhabited by this one, which expects only that to exert their right to development (article 23 of the Declaration). Indeed, the law of acquisition of above mentioned land and buildings recognizes with the Minister for construction and town planning the derogatory power to grant of document of title apart from all approved allotments. Article 3 of the law quoted above lays out that *“For any urban piece located apart from approved allotments, only the minister in charge for construction and town planning takes the order of final concession on all the extent of the territory”* (Décret n° 2013-482, op. cit.); (Ordonnance n° 2013-481, article 5 alinéas 2, op. cit.).

Legally made up in village (Arrêté n° 925/INT/DGAT/DCA, op. cit.); (Arrêté n° 694/PA/SG/D1, 2010 : 1-2, in Kémonthé Marius-Jonas Gallon, op. cit. : 155-156), the indigenous community of Abrogouaman owes of this fact being recognized owner (Cour interaméricaine des droits de l’homme, op. cit.) legitimate of the grounds on which she lives since the colonial time and even precolonial. Today reduced to 34 hectares out of 1075 hectares, because of the presence of great structures, pride of the development and security of the State of Ivory Coast, like the International airport of Abidjan, 43rd BIMA, etc., the piece from which is cut off the Alladjan indigenous people deserves that it is equipped with final document of title. Which title is necessary for the development but also for the safeguarding of the cultural heritage to be transmitted to the future generations of this indigenous community of Abrogouaman.

Because of what the lack of land document of title is a true inertia for the village community to develop, which, consequently, will ineluctably carry its disintegration of the urban areas of Abidjan. Only ability, it is up to the State to

grant decrees of final concession (below “ACD”) to restore the right to the collective ownership of the aforesaid autochthones. As recalled by Madeleine Grawitz (2001, P. 290), *“the most solid power is that which expresses really the aspirations of the community”*.

All in all, the Alladjan villager community of the commune of Port-Bouët aspires to a repair of the injustices undergone because of the persistent violations of their right to the collective ownership.

II–The repair of the violations to the right to collective ownership

“Basic principle of the international law, any violation of an international obligation causing damage implies the duty to repair it in an adequate way” (Cour interaméricaine des droits de l’homme, 1989, Série C, n° 7: § 25, in Ludovic Hennebel, 2006: 270).

The obligation with load of the State of the Ivory Coast to repair the damage caused by the violation of the right to the collective ownership of the indigenous community of Abrogouaman, consists, initially with are cognition and a pleasure of the property (1). Then, granting of land title and installation of a formula of allotment (2).

II.1- Recognition and pleasure of the property on the 34 hectares of the Alladjan community of Abrogouaman

For the right to their grounds, territories and resources, the Declaration in its article 26 recognizes unambiguous at the communities autochthones the possession or the traditional property. Also she recognizes (article 28) this usual property, even on the grounds or territories or resources controlled from now on by the others in fact as in right. In other words, the people autochthones are entitled to a repair, in particular the purging of the common laws, with regard to their grounds which they cannot recover any more.

Thus, the land of the autochthones of Abrogouaman occupied by a public or deprived entity and whose purging of the common laws is not thing made to date, will owe the being as soon as possible and it will be justice. This repair can for example be done in the form of job offer with certain members of the community in the structures installed on their territories, which will contribute to the reduction of poverty within this minority.

Moreover, the indigenous people Alladjan of Abrogouaman are legally recognized like a village community (Arrêté n° 925/INT/DGAT/DCA, op. cit.) in the commune of Port-Bouët, it in accordance with the administrative law (René Dégni-Ségu, 2003 b : 105-187) of the Ivory Coast. However, force is to note

that the aforementioned indigenous community is victim of the violations repeated by the public authorities' authors even of its legal recognition. Such is for example the abusive act of sale of 10 hectares of the grounds of the village of Abrogouaman by the mayor without the assent of the villagers. Following the example of the decision of the African Commission of the human rights and people in the affair of Endorois (Zoé Boirin-Fargues, 2014: <https://www.gitpa.org/Autochtone%20GITPA...>), this spoliation (Centre for Minority Rights Development (Kenya) and Minority Rights Group International, 2009: Communication n° 276/03); (Luis Rodríguez Pinero, 2011), cancelled thereafter by the Minister for construction and town planning, is contrary, not only with the national standards, but also with the spirit of the Declaration which in its article 37(1) recommends to the States to honour and to respect the constitutive treaties, agreements and other arrangements concluded with the people autochthones. However, the State of Ivory Coast by setting up Abrogouaman in village cannot from now on ignore the existence of these people. It must to consequently acknowledge all the rights him attached to its statute of village community, in fact its right of use and pleasure of its grounds, territories and resources. Concretely, the State of the Ivory Coast must recognize to him the free hold and pleasure of the piece of 34 hectares on which these indigenous people of approximately 15 thousand hearts (Dominique Fodegnon, op. cit.); (K.S, op. cit.) wait to confine themselves today because of even anarchistic uncontrolled urbanization.

Taking into consideration this threat of disappearance, the authorities of the Ivory Coast must abstain from and prevent any illegal assignment of the grounds, territories and remaining resources of the indigenous people Alladajan of Abrogouaman apart from any document of title. This legal protection, which falls on the State (article 26(3)), cannot be opposable to any person, was a public authority even, must always be preceded by an allotment which approved, leads to the granting of a ACD.

II.2- Allotment and granting of land titles

Under article 23 of the Declaration *“the people autochthones are entitled to define and work out priorities and strategies in order to exert their right to development”*. Thus, the plan of improvement of its living conditions consists, for the Alladjan community of Abrogouaman, with the development of its grounds, today its principal means of subsistence. The survival of the autochthones of Abrogouaman and its traditions rests from now on the 34 hectares of grounds of which they have difficulty obtaining qualified public authorities the authorization of allotment in order to claim with the development.

Indeed, the authorization of allotment of a communal piece arises from the attributes of the mayor of each commune in Ivory Coast. Recognized in administrative law of the Ivory Coast, this attribute cannot be exceeded by another authority. However, in the event of the refusal, even prejudicial, of the mayor no allotment can be carried out on the territory of its commune. Such is the dilemma with which the indigenous community of Abrogouaman is confronted. The mayor of the commune of Port-Bouët refuses since years to authorize the allotment requested by the alladjan autochthones of the village of Abrogouaman on his plot of land of 34 hectares located in the aforementioned commune.

The question arises of knowing: how to overcome this inertia of the mayor who to date keeps silence on the request for allotment of the Alladjan autochthones of Abrogouaman?

The law on the acquisition of property of urban grounds above mentioned recognizes with the Minister for construction and town planning the power to approve or not the allotment (Ordonnance n° 2013-481, article 5 alinéas 2, op. cit,) of a piece of urban ground. This power of discretionary approval of the minister must be able to help to take an action pursuant favorable at the request of allotment of the 34 hectares grounds which remain with the Alladjan people of Abrogouaman. That will enable them to undertake activities of development necessary to the wellness collective.

For completion of projects private important, for example of development, the above mentioned law recognizes with the Minister for construction and town planning, the power to deliver ACD on pieces located apart from the approved allotments. In other words, for the urgent need of an urban piece not parceled out, the delivery of an ACD, records of result of the allotment, allows in all quietude the land utilization definitively yielded. Thus, opposite the refusal of the mayor to authorize the allotment of the 34 hectares of the grounds of Abrogouaman, without which no development project can be undertaken for the improvement of the social conditions of the aforesaid village community, the Minister for construction can, by the granting of ACD on the piece in question, to allow the development of this one by the indigenous community of Abrogouaman although the aforementioned piece is located apart from any allotment. That will make it possible to the indigenous people Alladjan of Abrogouaman to leave the precariousness which is a threat with their survival.

According to article 3 of the Decree (Décret n° 2013-482, op. cit.) of application of the above mentioned law, the Minister for construction and town planning are the only authority entitled to grant the ACD on the urban

pieces located apart from allotments. This power of granting of ACD is recognized to him on all the extent of the national territory. Of this, it is deductible that any act of final concession of urban ground operated by a public authority or deprived apart from the Minister for construction and town planning is null and of no effect. It is thus in virtues of this power that the current Minister for construction cancelled the act of sale of 10 hectares of the 34 hectares of the urban grounds of the autochthones Alladjan of Abrogouaman which are not parceled out yet.

By what precedes, it arises that the granting of a ACD, on the piece of ground in question, by the competent minister will make it possible to avoid the disappearance of the indigenous community of Abrogouaman which until today continues to undergo not only the pressure of the projection of the urbanization of the town of Abidjan but also the abuse the public authority of the mayor of its commune. As recalled by Antonio Augusto Cançado Trindade (2008, P. 289-328): *“the State only exists it human being and not the reverse”*. Thus, the granting of an ACD as desired by the villager community of Abrogouaman, will be on behalf of the Minister for construction and town planning, therefore of the State of the Ivory Coast, a salutary act for the aforementioned indigenous community.

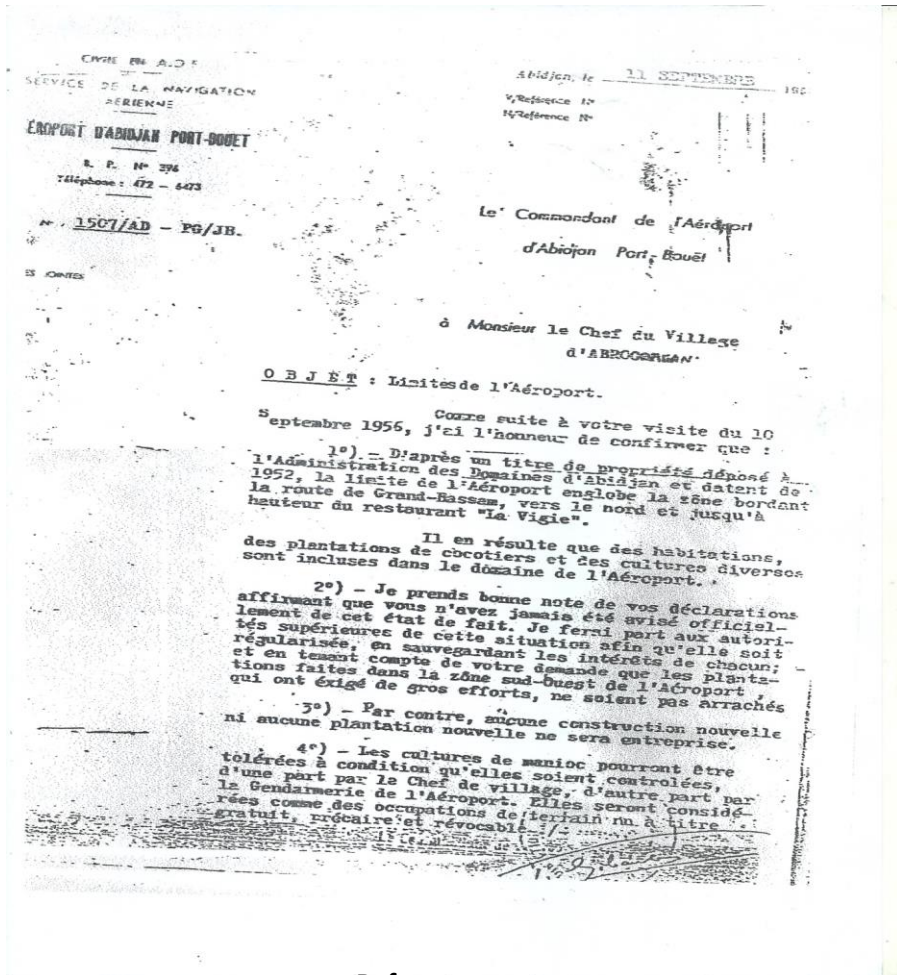
Conclusion

Altogether, this study allowed, in the light of the case of the Alladjan indigenous people of Abrogouaman, of the town of Abidjan, raising the abuses of the political authorities of the right to the collective ownership of the people autochthones of the urban areas in spite of their international and national protection. Taking into consideration tribute heavy that they paid during colonization and after this one, by the dispossession of their grounds, territories and resources, it is advisable today for the official authorities to respect and enforce all their human rights, in particular the right to the collective ownership, recognized by the Declaration of the United Nations at the communities autochthones. Which Declaration is no constraining from where its problem of effectiveness in its application by the States left?

Although the Declaration is not a constraining instrument, it does not remain about it less that it is *“a solemn instrument to which one resorts only into cubes very rare occasions for questions of major importance and durable, where one expects Members which they respect to the maximum the stated principles”* (Rapport de la Commission des droits de l’homme, 80^{ème} session: § 105). Of this meaning, one is brought to conclude that the persistent violations of the right to the collective ownership of the autochthones people of the

urban areas come out from a question of the political will in the application of the ratified international standards.

ANNEXE : « Courrier n° 1507/ AD – PG/JB (11 septembre 1956), Service de la navigation aérienne de l'aéroport d'Abidjan Port-Bouët, émis par le Commandant de l'aéroport d'Abidjan Port-Bouët ».



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