

# **CHAPTER 7: HISTORY AND POLITICAL ECONOMY OF LAND ADMINISTRATION REFORM IN BENIN**

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## Acronyms

ADC	<i>Attestation de Détention Coutumière</i> (Attestation of Customary Possession)
AFD	<i>Agence française de développement</i> (French Agency for International development)
ANDF	<i>Agence Nationale du Domaine et du Foncier</i> (National Agency of Land and Domain)
ANCB	<i>Association Nationale des Communes du Benin</i> (Benin National Mayors' Organisation)
BCDF	<i>Bureau Communal du Domaine et du Foncier</i> (Local Office of Land and Domain)
CFR	<i>Certificat Foncier Rural</i> (Rural Land Certificate)
CNAO-TF	<i>Commission Nationale d'Appui à l'Obtention des Titres Fonciers</i> (National Support Commission for the Acquisition of Land Titles)
DDET	<i>Direction des Domaines, de l'Enregistrement et du Timbre</i> (Directorate of Land, Registration, and Seals)
EMICoV	<i>Enquête Modulaire Intégrée sur les Conditions de Vie des Ménages</i> (Integrated Modular Survey on Household Living Conditions)
FCFA	<i>Franc de la Communauté Financière en Afrique</i> (1€ = 656 FCFA)
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i> (German Corporation for International Cooperation)
IGN-Bénin	<i>Institut Géographique National du Bénin</i> (Benin National Geographic Institute)
INSAE	<i>Institut National de la Statistique et de l'Analyse Economique du Bénin</i> (Benin National Institute for Statistics and Economic Analysis)
MAEP	<i>Ministère de l'Agriculture, de l'Élevage et de la Pêche</i> (Ministry of Agriculture, Livestock, and Fisheries)
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
MEHU	<i>Ministère de l'Environnement, de l'Habitat et de l'Urbanisme</i> (Ministry of Environment, Housing and Urban Planning) (before 2005 and between 2010-2015)
MUHRFLEC	<i>Ministère de l'Urbanisme, de l'Habitat, de la Réforme Foncière et de la Lutte contre l'Erosion Côtière</i> (Ministry of Urban Planning, Housing Reform and Fight Against Coastal Erosion) (2005-2010)
OHADA	<i>Organisation pour l'Harmonisation en Afrique du Droit des Affaires</i> (Organisation for Harmonising Business Law in Africa)
PFR	<i>Plan Foncier Rural</i> (Rural Land Tenure Map)
PGRU	<i>Projet de Gestion et de Réhabilitation Urbaine</i> (Urban Rehabilitation and Management Project) (World Bank)
RFU	<i>Registre Foncier Urbain</i> (Urban Land Register)
SERHAU-SEM	<i>Société d'Etudes Régionales d'Habitat et d'Aménagement Urbain</i> (Institute for Regional Studies of Habitat and Urban Development)
TF	<i>Titre Foncier</i> (land title)

# 1 Introduction

This chapter deals with the issue of land tenure, which has been identified by the research coordinators as one of the major institutional problems in Benin. It deals more specifically with the recent land reform that was enacted by the 2013 *Code Foncier et Domaniale* (Land and Domain Code).<sup>1</sup> The orientation of this chapter is significantly different from the others, both in its purpose and approach. It is not so much a question of proposing an institutional diagnosis of the sector and highlighting desirable areas for reform, as it is of analysing an ongoing reform process. In accordance with the terms of reference, this chapter deals with the political economy of the reform. It deals with the reform's political and economic stakes, the groups of actors and interests which pushed it, those which are opposed to it, and those which seek to shape it for their own benefit.<sup>2</sup> It also provide a detailed history of the reform process.

A matter of 'power, wealth, and meaning' (Shipton and Goheen, 1992), land is indeed at the heart of societies and of the formation of the state: (i) the way of thinking and organising access and control of land and its resources reflects the conceptions of the society, its forms of authority, and the differentiations that structure it; (ii) the distribution of rights over land and resources determines, in part, socio-economic inequalities; and (iii) the capacity to define rules covering, and to grant or validate, land rights is at the heart of political power and construction of the state (Boone, 2014). Any land policy necessarily has power-related stakes (politics) and societal stakes (polity) (Léonard and Lavigne Delville, to be published). Besides the economic policy stakes, land reform processes are linked to the interests of the different groups of economic and political actors, the weight of professional corporatism, the conflicts of societal projects, and the question related to the plurality of norms that run through the society (Lund, 2001). These political and social stakes of land lead to controversies and even to conflicts, which makes any attempt of reforms much more complex than in other sectors – water supply, for example – where neighbouring countries have also launched similar policy reforms at the same time (Lavigne Delville, 2018c).

## 1.1 Land reforms in Africa, between the privatisation paradigm and the adaptation paradigm

Since the middle of the 1980s the land issue in Africa has come back again onto the agenda of development policies, in a context of state crises, economy liberalisation, and increased conflicts in rural areas. Two major visions clash, both challenging the colonial and post-colonial state's monopoly on land (Gbaguidi, 1997), but with different answers. The first one, described as 'standard' or 'offensive' (Chauveau, 2016), is based on a narrative that

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<sup>1</sup> In French-speaking African countries, land law makes a distinction between 'land' issues, which are about private property, and 'domain' issues, which are about state- (and local government-) owned or controlled land. Several countries have a Land and Domain Code, which deals with both dimensions. This is the case in Benin since the advent of the 2013 Land and Domain Code, which I will be simply call the 'Land Code' or 'Code' in this chapter.

<sup>2</sup> The analysis presented below is based on long-term research on land reforms in West Africa, with a main focus on Benin, that was initiated some 15 years ago (Lavigne Delville, 2018a), and in particular on a two-month research trip in autumn 2018 specifically devoted to the political issues of the 2013 reform and its 2017 review. It has also benefited from a complementary research mission carried out in March 2019 as part of the *Economic Development and Institutions* project. I would like to thank the discussants and participants of the workshop organised by the project in Grand Popo in March 2019, in particular Mr Djibril-Akambi, *Agence Nationale du Domaine et du Foncier* (National Agency of Land and Domains) (ANDF) Deputy General Manager, and Kenneth Hounbedji and Jean-Philippe Platteau, for their contributions. I also thank Clement Dossou-Yovo, lawyer and land expert, for our numerous exchanges on this reform.

promotes the replacement of informal customary rights, considered as obstacles to productivity, by private ownership rights, supposed to be a condition for economic development. The other one, described as 'adaptive' (Bruce, 1992), 'defensive' (Chauveau), and 'pro-poor' (Borras Jr and Franco, 2010; Zevenbergen *et al.*, 2013), acknowledges the dynamics of local/customary land rights. For the second vision, the issue of land reforms is to build a favourable institutional environment that secures people's rights and allows these rights to evolve peacefully.

Both paradigms emphasize the issue of the security of land rights, but with different assumptions regarding what 'tenure security' means. For the privatisation paradigm, it means private ownership rights recognised by the state and full capacity of transfer and sale. For the adaptation paradigm, land tenure security is before all an institutional issue: it means that one's rights (of whatsoever kind) cannot be challenged without good reason, and that legitimate authorities (customary, state, or hybrid) are able to settle conflicts (Lavigne Delville, 2006).

In a context in which the role of the state in the economy is challenged, and where a market economy is promoted, the 'standard' and the 'adaptation' paradigms consider that the 'informal' nature of the majority of land rights is one of the obstacles to economic development. According to a reading – well established if not dated – of property rights theory, the legal formalisation of private property rights is supposed to secure economic actors by guaranteeing them the benefit of their investments and work, on the one hand, and by enabling them to access credit, on the other hand. The development – or the fluidisation – of the land market that this legal formalisation is supposed to encourage should also favour the transfer of rights from the least efficient producers to the most efficient ones and, once again, stimulate economic development.

Such an interpretation, which considers private property and the legal status of land as key variables, has been questioned or qualified for more than 20 years. Many development economists (Platteau, 1992; Binswanger, Deininger, and Feder, 1995; Bromley, 2009; Migot-Adholla, Hazell, Blarel *et al.*, 1993; Platteau, 1996) highlight the limits of a theory that makes direct links between title and investment. Deininger and Feder (1995) show that, in contexts with significant imperfections in related markets of credit, labour force, products, etc., favouring the land sales market is likely to have little impact on efficiency, and negative impacts on equity. Platteau (1996) shows that the standard narrative is highly questionable because investments depend on many variables outside land legal status; and because farmers' access to land title does not mean that they will have access to credit. For Bromley (2009), titling might even be 'the wrong prescription for the wrong malady'. These economists have joined those social scientists (geographers, sociologists, anthropologists, etc.) that have conducted field research on land rights dynamics since the 1980s. These social scientists question the supposed link between informality and land insecurity (Lavigne Delville, 2006). They analyse land conflicts not (or at least not only) as symptoms of increasing pressure on land but above all as a result of deficiencies in arbitration mechanisms in contexts of plurality of norms (von Benda-Beckmann, 2006; von Benda-Beckmann and Wiber, 2006) and competition between authorities (Lund, 1998). They also highlight the interest that powerful actors have in 'managing confusion' (Mathieu, 1996), in urban and peri-urban environments (Piermay, 1986b) but also in rural areas.

Although land tenure securitisation and formalisation are not the same (Comité Technique Foncier & Développement, 2015), the 'adaptation' paradigm also supports the 'formalisation' of land rights that have so far been largely 'informal' and 'extra-legal', particularly in rural

areas. However, the main issue for it is about tenure security and not privatization. According to this paradigm formalisation has to be implemented through progressive frameworks, and the development of innovative, adapted, inexpensive, and accessible approaches that are able to take stock of the diversity of current rights over land.

Land issues are thus subject to conflicts of diagnosis and prescription, both at national and international levels. Narratives that are ‘dead theories’ (Musembi, 2007) from an academic point of view may be still alive in the development policy world, due to ignorance or strategy. In the 1990s, international aid institutions vacillated between those two paradigms, with an emphasis on privatisation for the World Bank and on adaptation for European aid agencies. The famous but highly contested ‘Mystery of Capital’ (De Soto, 2000) can be seen as an attempt to re-legitimate the standard paradigm in a context where poverty reduction was supposed to be the priority of aid. Since the 2000s, and even more since the dynamics of ‘large-scale land acquisitions’ have become prevalent, the standard paradigm seems to be exercising renewed influence.

The debate on the legal recognition of property rights in French-speaking Africa is also strongly structured by a legal framework that is a colonial legacy. Lawyers and even ordinary people think of land ownership only in terms of land title<sup>3</sup>, and ‘immatriculation’, which is a colonial registration procedure based on the granting ‘from the top’ (Comby, 1998a) of a quasi-absolute private ownership, that is both based on the ‘purging’ of all pre-existing rights and is incontestable and guaranteed by the state. Every plot that does not have a land title is subject to informal rights or ‘presumed ownership’. This approach, inspired by the Torrens system developed in Australia by the British Crown to grant undeniable rights to settlers in denial of the rights of indigenous peoples, is thus specifically colonial. ‘Immatriculation (hereafter referred to as standard tilting or registration) allows for ‘the entry into legal life’ of land previously having ‘informal’ status. However, it is a complex and costly procedure, historically oriented towards the needs of the colonial power and its allies, but not towards the recognition of existing rights. It is still reserved for a small minority.

Standard registration and land title are, for a large number of West African land professionals and policymakers, the essential reference and the only conceivable form of legal property rights. For them, the main issue is to generalise land titles. For others, standard tilting is an obstacle to a large-scale access to land rights formalisation since its very logic – not to mention its cost – is opposed to the idea of a legal recognition of the various existing land rights, which are the products of history, ‘from the bottom-up’.<sup>4</sup> The priority is thus to build alternatives, even when private ownership and the land market are at stake.

These various and intricate issues explain why, even though almost every West African country has launched attempts at land reform, the processes and outcomes have been very different from one country to another. The degree of implementation of the adopted reforms is even more crucial (Seck *et al.*, 2017). Indeed, *‘many would agree with Berry (1984) that “more stable or less contentious conditions of access and adjudication of rights to productive resources” (including land) must be established to ensure future growth of agricultural*

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<sup>3</sup> I write ‘land title’ when I am talking about “titre foncier” (TF), this specific kind of title over land.

<sup>4</sup> Comby (1998a) distinguishes two ways of creating property: ‘from the bottom’ and ‘from the top’. In the ‘from the bottom’ process, property is created from land rights as historically constituted over transfers, inheritances, etc. In this logic, applied by European countries, the owner must be able to show that he or she obtained this right legally from someone who held it legally. The state only defines transfer procedures and records contracts negotiated between actors. In the ‘from the top’ process, which is that of ‘immatriculation’, the creation of property is based on the attribution of titles by the state, then on the registration of the mutations in the land book, with legal value. See also Stamm (2013).

*production capacity in Africa*' (Platteau, 1992, p. 183). However, the question of how to ensure these conditions remains controversial, 30 years after debates on the subject began.

The case of Benin is particularly interesting from this point of view because land debate began in the 1990s and because, within the space of a few years (2007 and 2013), Benin has adopted two different land reforms. The first one focused on rural areas and promoted an alternative to standard registration and land title, which the promoters considered fundamentally unsuitable for rural areas. It was prepared from the early 1990s onwards by rural development projects funded by European donors. Those projects developed an approach to identifying and mapping customary individual and collective land rights, the '*Plan Foncier Rural*' (PFR, Rural Land Map). PFRs were institutionalised by the Rural Land Tenure Act 2007 (*Loi portant régime foncier rural*), which created a new legal status, the *Certificat Foncier Rural* (CFR, Rural Land Certificate), to legalise plots registered in the PFRs, and a new land administration framework, anchored in rural communes.<sup>5</sup> The second one has a national focus. It was led by the Ministry of Urban Planning<sup>6</sup> and the Millennium Challenge Account Benin (MCA-Benin)<sup>7</sup>. Initiated in 2004–2005 and prepared between 2006 and 2011 with the support of the Millennium Challenge Corporation (MCC), this reform aims to standardise land law and develop access to land title by reforming the land administration. It was embodied in a Land Policy Statement (MUHRFLEC, 2011a) in 2011, followed by the adoption of the Land and Domain Code in 2013 (slightly revised in 2017), and the establishment in 2016 of the *Agence Nationale du Domaine et du Foncier* (ANDF, National Agency of Land and Domains).

The succession, within a few years, of two reforms based on different paradigms, carried out by different networks of actors, supported by different donors, and having experienced varying degrees of implementation, represents a textbook case by which to highlight the intricate issues of land reform, and to question the stakes and the actors' interests around the idea of land reform. It also offers an opportunity to question the diverse conceptions of land tenure security, of land regulation institutions, and their conditions as regards institutionalisation and being anchored in practices.

## **1.2 Understanding the political economy of an ongoing reform: a process-tracing approach**

This chapter provides an analysis of the ongoing land reform in Benin, initiated in 2004 under the aegis of the Ministry of Urban Planning and the MCA-Benin, which resulted in the adoption of the 2013 Land Code, amended in 2017. I study the history of this land reform, by putting it in the context of land practices in the 1990s and the various former attempts at reform. I highlight the various steps and controversies that have been involved. I describe the options of the reform and its degree of implementation. Elaborating on this history, the chapter finally discusses some of the policy choices.

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<sup>5</sup> I use 'communes' and not 'municipalities' because in Benin most communes are rural and urban, and include a central town and a number of villages.

<sup>6</sup> This Ministry had different names : Ministère de l'environnement, de l'habitat et de l'urbanisme (MEHU - Ministry of Environment, Housing and Urbanism) ; then Ministère de l'Urbanisme, de l'Habitat, de la Réforme Foncière et de la Lutte contre l'Erosion Côtière (MURFLEC - Ministry of Urban Planning, Housing Reform and Fight Against Coastal Erosion) from 2005 to 2010, then again MEHU, etc. I will call it Ministry of Urban Planning.

<sup>7</sup> The MCA is the national team set up under the aegis of the Presidency of the Republic to develop and manage projects submitted to the MCC, an American aid agency founded following the Monterrey Conference in 2004.

My analysis relies on a perspective of 'socio-anthropology of public action in countries under aid regime' (Lavigne Delville, 2016). Building on the anthropology of development and the sociology of public policy, this perspective aims to study in depth through qualitative enquiries the way public policies are framed, negotiated, contested, and implemented, in aid-dependent countries. In an ethnographic and constructivist approach, it studies the interplay of actors and conflicts of representation and interests throughout the policy process, taking into account the multiple disjunctions between its different stages (Mosse, 2004). By following the way in which a policy, and its devices and instruments, is gradually shaped, such a *process-tracing* approach does not separate design from implementation. It considers that the reality of a policy is the result of the practices of the actors responsible for its implementation and the reactions of the actors concerned, as much or more than the content of policy statements. By empirically following networks of actors, ideas, instruments, from the global to the local (Wedel, 2004), this approach shows the intertwining of ideas, interests, and institutions (Hall, 1997; Palier and Surel, 2005), and the intricate issues of *policy*, *politics*, and *polity*. It offers renewed perspectives, both on 'the State in action' (Jobert and Muller, 1987) in Africa and on the intertwining of national and aid institutions (Whitfield, 2009; Lavigne Delville, 2018c). It thus sheds light on the double processes of building state apparatus and administrations (state construction) and recomposing relations between the state and the society (state formation) (Berman and Lonsdale, 1992).

This analysis focuses on a reform that is still being implemented. The new institutional framework is largely in place, but a number of procedures, devices, and tools have not yet been designed and implemented. The digitalisation of existing land information and the preparation of the future cadastral tool are still in progress. Moreover, the reform is partly being built as it progresses, its current framework is not exactly as outlined in the Policy Statement, and various measures, already in preparation or which will emerge from the implementation, will also contribute to shaping its content and effects. This text therefore concerns an incompletely stabilised reform, and in no way claims to evaluate it. Focusing on retracing its history and the way in which the choices were made, it takes primarily retrospective look, and does not intend to take note of all recent developments. However, it considers that this history, the controversies that have marked it, and the achievements and difficulties of the previous stages, make it possible to shed light on current or future issues. Finally, it should be noted that the perspective on land practices and issues will have a focus on the rural field, which is the one I have been working on, and where controversies about fundamental options and questions about the effects of reform are most acute.

## 2 State ownership, informality, semi-formal arrangements and ‘confusion management’: a brief analysis of the land sector in the early 2000s

From independence up to the 2007 Rural Land Law, land in Benin was governed by a legal framework resulting from the early years of independence (Gbaguidi, 1997): Law N° 65-25 of 14 August 1965 on land ownership in Dahomey<sup>8</sup> (which largely incorporates the colonial registration procedures defined by the 1932 decree). Land not registered in the name of private persons was in the public or private domain of the state. Act N° 60-20 of 13 July 1960, established the system of ‘housing permits’ in Dahomey, which made it possible to grant ‘essentially personal, precarious and revocable’ rights to urban actors established on the private domain of the state.

As in most French-speaking African countries, the colonial decrees of 1955 and 1956 on the recognition of customary rights were set aside by the new authorities. Enacted at the end of the colonial period, those decrees allowed ‘indigenous’ people to obtain legal recognition of their land rights. They were rarely implemented, or not at all. However, they were never formally repealed before the 2013 Code, and were sources of inspiration for the 2007 rural land reform.

### 2.1 Institutional weaknesses and semi-formal arrangements

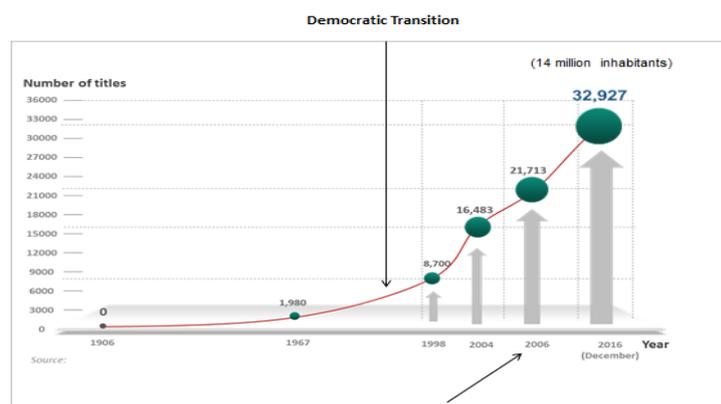
Although representing the only legal form of access to land ownership, registration remained very rare: across the entirety of the country only 1980 titles were issued between 1906 and 1967 (Comby, 1998, pp. 11–12) and in 2004 there were only 14,606 land titles (MUHRFLEC, 2009)<sup>9</sup>, for a population of 6,769,914 inhabitants in 2002.<sup>10</sup> Demands for land title have risen sharply since the 1990s and the democratic transition, mostly from urban well-off citizens. In practice, most of the country's territory still has an ‘informal’ or at least a ‘semi-formal’ status. In 2007, only 5% of urban residents and 0.8% of rural residents had land titles (INSAE, 2009: 166), with high inequalities by wealth level: 4.4% of the ‘richest’ have a land title, compared to 1.1% of the ‘poorest’ (idem, p. 167).

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<sup>8</sup> This was the name of the country until the 1975 revolution.

<sup>9</sup> The MCA project (Annex 1, Note 1) states: ‘*and titles cover less than 20,000 ha out of 11,260,000 ha, or 0.17% of the national territory. They concern less than 15,000 households (1.23%) out of a total of 1210,463 households.*’

<sup>10</sup> <https://benin.un.org/fr/306-les-resultats-definitifs-du-4eme-recensement-general-de-la-population-et-delhabitation>.

**Figure 1. Evolution of the number of land titles (Plançon, 2017)**

Note : 14606 land titles in 2006 according to MUHRFLEC 2009...  
(Source : Plançon)

Note: On 3 April 2019, the number of titles was 47,544 ([www.andf.bj/](http://www.andf.bj/), consulted on 24 April 2019).

The responsibility for the management of the state domain and private land titles is entrusted to the *Direction des Domaines, de l'Enregistrement et du Timbre* (DDET, the Directorate of Land Tenure, Registration and Seals), within the Ministry of Finance. DDET is a highly centralised body: there are only two offices, in Cotonou and Porto Novo). However, the land sector is in practice fragmented between various ministries and institutions, with little or no coordination. Under-equipped, the land administration delivers few titles. Many files are incomplete. The plot maps drawn up by the surveyors are not connected to a general system of topographical markers, and the location of the titled plots is not very easy to identify. Some housing developments are found in the sea due to reference system problems.<sup>11</sup> Because it is practically difficult or impossible to verify the legal status of the plot concerned by a new title, titles may be issued in partial superposition over existing titles.

**The situation according to the PGRU (Projet de gestion et de réhabilitation urbaines - Urban Rehabilitation and Management Project , World Bank) (Comby, 1998b)**

'Many old titles are practically unreadable, due to storage conditions (heat and humidity); some are even destroyed or missing. In Cotonou, only 3,379 titles could be referenced on a computerized database to allow indexing by owner name. (...) The land title conservation system does not make it possible to know whether, on a given piece of land, there exist or does not exist a land title. The Land Registry shall ensure, as much as possible, taking into account the resources at its disposal, the archiving of the entire file of the procedure for the allocation of each title, with a precise plan of the corresponding land. But, in practice, this plan is rarely localizable. The file only identifies the name of the neighbourhood and the identity of the neighbours, but over time, the neighbours are no longer the same. Only the owner of the land knows where it located. In the absence of a cadastral plan, the existence of a land title can then only be known through a survey with neighbours. In the event of prolonged absenteeism of the owner, nothing prevents a new title from being issued on a plot of land that has already been subject in whole or in part of an old title, which legally is still valid. Several recent examples attest to this.'

Although the titling procedure was designed to guarantee the reliability of the information and ensure the finality and unassailability of the title deed, the number of steps in that procedure increases its costs and duration. This also increases the risk of the file becoming bogged down, and therefore it increases the opportunities for personalised and clientelist, if not

<sup>11</sup> Experienced during a meeting with the team in charge of the digitalisation of titles.

corruptive, processing of the files. The centralisation of the procedure drastically increases the travel costs of both surveyors and applicants when plots are far from the office. But above all, the measures intended to ensure the legitimacy of the rights claimed (contradictory demarcation, in particular) do not always allow this in practice: demarcation notices must be published in the State Gazette, and posted in the Court of First Instance and in the sub-prefecture or town hall, where they are not easily accessible to the actors concerned. They are normally (but not always in practice) posted on the plot of land itself (Law 1965, art 94 and 95), but the boundary notices are often incomplete. Local information is fragmentary or not realised. In short, titles may be issued to applicants with files that may be incomplete or even sometimes illegal, and/or without the customary holders of the land being informed (on existing titles). In such cases, the impossibility of contesting a title, which is supposed to protect the owner, serves in practice to enable fraud and errors, and to ratify spoliations.

Applicants for titles are essentially wealthy urban actors, who are familiar with the workings of land administration and who want to secure their rights on the land they have purchased. However, many executives – and even lawyers – acknowledge that they do not go through with the procedure: they start it in order to have a file opened and they have the demarcation carried out by a surveyor in order to materialise on the spot the fact that the land has changed hands and to discourage possible claims. Then they stop there. The state itself rarely carries out registration procedures on its own land and the consistency of the state's domain is unclear. The text defining the scale of the sale of state land has not been updated since the 1960s, allowing actors familiar with the procedures to buy at low prices portions of the private domain of the state, which has been largely discounted over the years (Lassissi, 2006).

State intervention in Benin is reflected in urban planning and land subdivision operations, which are now largely carried out by the municipalities, and in rural areas by hydro-agricultural developments, mainly in the Ouémé Valley. Both provide opportunities to manipulate lists of rights-holders, where geometers, local elected officials and notable officials share illegally obtained plots of land.

During independence, then under the revolutionary regime (1974–1990), the state wanted to develop the country's palm groves by creating production cooperatives<sup>12</sup> largely controlled by the technical services, appropriating property from landowners in the area (Mensah, 1966) and offering opportunities for access to lands to state agents. In addition to the financial difficulties they face, until today those production cooperatives remain sites of conflict between co-operators and former customary owners (Hadonou, 2015). It should also be noted that the revolutionary regime did not nationalise land: the 1977 Basic Law recognises and protects private property.<sup>13</sup> However, this period saw the creation of several state farms and the allocation of 'uncultivated' land to state companies and administrative services, and at the same time, '*the consecration of the transfer of uncultivated land to the State by the Constitution*' (Crinot, 1998) rather than by the application of the appropriate texts. '*The 1970s and 1980s were marked by the creation of State farms which were carried out in total illegality, on the basis of expropriations and redistribution to "clients" and to political allies of the regime*' (Le Meur, 2008: 6). Furthermore, the official ban on owning more than one urban plot of land has multiplied bypass strategies, putting other plots of land that are held in the

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<sup>12</sup> Based on Laws 61-26 and 61-27 on rural development perimeters and agricultural cooperation.

<sup>13</sup> However, there was a suspension of the sale of housing land until an 'administrative decision of the Council of Ministers' of 27 January 1977 authorised it again, subject to the agreement of a provincial committee (*Société d'Etudes Régionales d'Habitat et d'Aménagement Urbain* (SERHAU), 1999, p. 405). On the other hand, the sale of agricultural land remained prohibited (idem.), though this did not prevent it from taking place.

name of offspring at risk of subsequent conflicts during succession (Andreetta, 2019, p. 118). Throughout this period (1960-1990), the widespread informality was not necessarily perceived as a problem in rural areas, where customary regulations continued to organise access to land and conflict arbitration. Land tenure insecurity is mostly found where the state is involved in development operations or projects, and where the land market is developing, which is mainly in urban or peri-urban areas.

Sitting beside the land law, or reinterpreting it, various procedures, most of them dating from the colonial period, have gradually constituted a 'semi-formal system' (André, 1999; Mathieu, 1996) of land regulation, i.e. a set of procedures and documents not explicitly integrated into the legal framework but nevertheless implemented in a relatively stable way, by official authorities.<sup>14</sup> In particular, different procedures are used that are part of the 'administrative custom' – that is, generalised administrative practices that do not follow a specific legal text. The administrative certificates delivered by the local authority (formerly the district heads, now the mayors), normally after field survey, attest to the ownership of a plot of land. Local authorities also validate sales contracts by selling printed forms and by signing and stamping them ('affirmation'), with reference to the 1906 decree on agreements between indigenous people. Local authorities also widely distribute housing permits, including for land registered in the name of the state (and therefore illegally).

In other countries, small forms, handwritten or typed, can be formalised with the signature of an administrative or communal authority. The affirmation of sales agreements is much more institutionalised in Benin. Despite some variations in procedures, this process is implemented everywhere on the basis of official and printed forms. This strong institutionalisation does not prevent conflicts over sales, for several reasons. Field surveys are not always done before issuing administrative certificates. When signing a land sale contract, the mayor attests that the two persons agree to it, but he has no means to ensure that the seller is really the owner and has the right to sell. The 'Certificate of non-litigation' (Attestation de Non Litige) requested from the village chief is not enough. Moreover, while numerous sales concern family land, there is no clear obligation to have a formal approval of the sale by the family rights-holder before endorsing a sale. Archives are not properly managed. It is thus 'technically' possible for people with no rights over the plot of land to sell it without the agreement of the rights-holders, and to make double or even fraudulent sales. These weaknesses in the system largely come from the fact that the state has never structured and supervised it. The biases, frauds, and manipulations are all the more frequent where land is a major economic issue, as in peri-urban areas, and in areas attracting external buyers.<sup>15</sup>

In practice, municipalities have multiple responsibilities in terms of building and planning, without having the tools and staff that would be necessary to discharge these responsibilities. Thus, in 2014, the Department of Land Affairs of the municipality of Abomey-Calavi, which is the municipality with the highest population growth, had '*13 employees, including 4 permanent staff and 9 collaborators. There are 3 computers, typing machines and there is a lack of electronic archiving of land data*' (Kakai, 2014, p. 12).

Urban buyers, who cannot rely on inter-knowledge to know whether the person claiming to sell a plot of land is the owner and whether the plot is a family property or not, and who are not there to guarantee their rights after the purchase, are particularly vulnerable to conflict

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<sup>14</sup> See also Lavigne Delville, Colin, Ka *et al.* (2017, pp. 146–150).

<sup>15</sup> See Sotindjo (1996) on land speculation in Cotonou, Adjahouhoué (2013), on land transactions in the urban periphery in Abomey Calavi, Magnon (2013) on speculation in anticipation of the new airport project in Glo-Djigbé, and Kapgen (2012) and Avohouémé (2016) in the Djidja region.

and insecurity with regard to the plots of land they have bought. Palm plantations in the Ouémé Valley, and more generally all land purchased in peri-urban areas, are thus equipped with cement pillars, and panels indicating the name and telephone number of the owner, in the hope of avoiding having land taken over by others.

Due to their limitations, these administrative practices are either largely ignored by the official diagnoses of land issues or strongly criticised. However, they are in practice the only way for interested citizens – mainly urban or peri-urban – to obtain official documents attesting to their land ownership. They are ‘palliative solutions’ that attempt to provide practical responses to the problems encountered, given the shortcomings of public services (de Sardan, 2014): *‘those behaviours are “unofficial”, “out of step with what the texts provide”, “at the limit of legality” (and sometimes even illegal), but they provide informal solutions to bottlenecks in public services’*. It is true that these practices take various forms and only partially guarantee the security of the transactions. However, such a situation is in large part the result of the lack of recognition and guidance by the state, itself resulting from a focus on a titling procedure that is unable to meet the needs of the citizens. Moreover, the state recognise them these practices: administrative certificates and endorsed land sales contracts are part of the necessary documents for requesting a land title. By acknowledging them, and even more so by leaving citizens' needs in terms of securing unregistered land without political and institutional response, the state is in practice complicit in these practices, which are illegal or semi-legal, but which result from the lack of public care in real situations.

## **2.2 Land governance, between neo-customary regulations, the market, and semi-formal systems**

From a socio-anthropological, non-prescriptive point of view, governance is the result of repeated interactions between actors (Blundo and Le Meur, 2009). Land governance in Benin is largely based on informal or semi-formal logics, taking very different forms in rural, peri-urban and urban areas. In the cities, a large part of the territory has been subdivided and the inhabitants frequently hold one or more documents: residence permits, sales agreements, and administrative certificates. People’s rights on the plot they live on are quite stabilized by occupation.

There are cases of conflicts or insecurity, due to contradictory overlapping rights, or conflicts over inheritance or sales. Some houses in cities are marked *‘contentious, not to be sold’*. Family rights-holders may contest sales made without their consent, even a long time after the fact. Heirs can even go to trial when they see that the value of land has dramatically increased and they can win in court. Cases of buildings have to be destroyed because of a court decision, due to a conflict relating to a sale, are regularly quoted. However, there are few reliable data on the number of such cases. Conflicts most frequently involve disputes over past sales, or inheritance disputes. The lack of reliability of the sales procedures, and above all the lack of a guarantee of their legitimacy (sellers’ right to sell, agreement of family rights-holders) favour conflicts over sales. Courts tends to judge in favour of former owners, even long after the sale, which encourages opportunistic legal action. Frequent polygamy – formalised or informal - complicates the transmission of property. Family houses are occupied by different family members and the eldest son often takes responsibility for them upon the father's death, postponing the distribution among the heirs, and managing the income from the rented property for his benefit. The youngest, and especially women, are increasingly claiming their share of inheritance, based on the recent Family Code (2004), and

are less hesitant to go to court, which has led to an increase in the number of such cases (Andreetta, 2019).

In rural areas, land governance is largely governed by customary or neo-customary<sup>16</sup> norms and by 'traditional' authorities, whose power varies greatly from one area to another. Land governance is mainly carried out at the level of villages or clusters of villages and hamlets under the same local customary political entity, with the intervention of state agents and territorial administration or municipal elected officials (since 2003) in the event of conflicts. State intervention in the area of land is more pronounced in some areas (gazetted forests, lowland developments, etc.), but gazetted forests are regularly occupied by neighbouring farmers or agricultural migrants. Depending on the region, population density, modes of exploitation of the environment, land tenure relationships are more or less individualised: there may be a land rental or sale market or there may not. The contrast is striking between the southern regions (Floquet et Mongbo, 1998), densely populated, highly individualised, where an intra-farmers land market for purchase-sale has existed for a long time, and the rest of the country, where such a market is non-existent or almost non-existent (Lavigne Delville, 2018b). Urban buyers, with financial resources that are disproportionate to those of rural families, are one of the major factors in the commodification of land, in – sometimes even remote – peri-urban areas, along roads and on pioneering fronts, where land is still available. Sales contracts are sometimes based on a mutual agreement, but can also rely on corruption, manipulation, or even force (Kapgen, 2012).

People from densely populated rural areas migrate to pioneer fronts, defined here as areas where land is still available and where they can settle and create a farm (now mainly in the centre, a former buffer zone between the coastal kingdoms and the kingdom of Borgou, which is subjected to slave raids). In these areas, they establish 'tutorat' clientelistic relationships (Chauveau, 2006; Le Meur, 2006b) between natives and migrants. In the customary logic, migrants who have settled in a context of abundant land gradually consolidate their rights, both through permanent use and the transmission of user rights to their descendants, and sometimes through matrimonial alliances, or even by settling other migrants themselves. Even if the rights of the founders are in theory imprescriptible, they are gradually reduced until they almost disappear in practice, since the expulsion of the migrant or his descendants is no longer possible except in extreme cases. However, such cases involve violence when autochthonous people want to claim their land back (Bierschenk, Floquet et Le Meur, 1999).

In closing pioneer fronts, where land is becoming rare, urban members of large landowning families are pushing their elders to strengthen control over their land and settled migrants. For example, in the Savé region, lineage chiefs have set up a 'lineage land register', listing the land granted to migrants (Edja, 1997). Elsewhere, as in the Djidja region, where autochthonous lineages control very large areas thanks to the clearing of land for yam cultivation, large plots (tens or hundreds of hectares) are sold to urban investors, in parallel with the settlement of migrants (Avohouémé, 2016).

Investing in land is indeed one of the preferred strategies of urban elites and the middle classes. Everyone wants to own their plot and house, but above all, investment in land, especially urban and peri-urban land, is profitable, given the soaring prices, which can multiply by 50% or 80% in a few decades (Grisoni-Niaki, 2000). This rush on land fuels acute

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<sup>16</sup> 'Neo-customary' means that the norms are primarily local norms and that local land authorities claim customary legitimacy. But norms, rights, and authorities change with economic and social change, and due to state intervention.

land speculation, which is felt far inland, and where all blows are allowed. *'The land situation in Cotonou and neighbouring cities is an inextricable legal, administrative and social imbroglio where the parties are ready to do anything to win their case'* (Andreetta, 2019, p. 73). All those who can afford it buy plots of land on the periphery or in remote suburban areas according to the available opportunities and their financial means. 'Land mafias' expand around large cities, which brings together landowners' lineages and 'canvassers', surveyors, and municipal or state agents. Multiple sales of the same plot of land, and contestation of former sales by rights-holders (shortly after a sale made without their knowledge, or years, or even a generation later when they discover that the plot's value has increased significantly) are frequent, causing insecurity for buyers. Nevertheless, these buyers rush to take advantage all opportunities, hoping to secure at least part of the plots they buy.

In this context, legal uncertainty (the lack of legally recognised rights) is widespread. This does not necessarily translate into real insecurity, or into a proven risk. Real land insecurity is concentrated in some areas, some configurations, and for the least powerful actors. It is particularly strong for non-local buyers. In the face of this insecurity, these actors mobilise various securitisation strategies (Lavigne Delville, 2007): building a house (when possible) or at least an enclosure wall or a well, installation of boards and land pillars, employment of a guard, 'mystical practices', etc. (Adjahouhoué, 2013).

Numerous actors highlight the high prevalence of land conflicts. However, solid figures are rare. *'The proportion of plots of land that have been the subject of State disputes is 1.4% in urban areas and 1.1% in rural areas in 2007 compared to 2.1% and 2.4% respectively in 2006'* (INSAE, 2009: 170). The percentage of conflicts is highest in the urban and peri-urban departments of the south of the country (around 4%) and very low elsewhere (less than 1%). Plots of land with a written document are less prone to conflict, but the title does not provide more guarantee than other documents: *'According to the results of the EMICoV 2011, plots with no administrative documents are the most affected by land conflicts (3.4%). In second place are plots with a non-formal sales agreement (2.7%), followed by plots with a sales agreement established by municipal authorities (2.4%) and a residence permit (2.3%). Plots of Land with land title that are affected by land disputes nevertheless represent 2.0% of conflict-prone parcels'* (INSAE, 2012: 121). Having a title does not greatly protect the possessor from the risk of conflicts.

*'All land conflicts in the last 12 months preceding the survey are mostly resolved by traditional institutions, regardless of the nature of the conflict. Thus, 17.1% of property rights disputes were settled by modern institutions and 82.9% by traditional institutions. 21.0% of conflicts relating to the boundaries of plots by modern institutions and 79.0% by traditional institutions. 4.5% of conflicts relating to the sharing of inheritance by modern institutions and 95.5% by traditional institutions, 12.3% of conflicts relating to the conquest of new fallow land or disputes between farmers by modern institutions and 87.7% by traditional institutions'* (INSAE, 2012: 130). Most disputes brought before the courts are the ones concerning titled plots of land (78%). The duration and cost of disputes vary significantly: *'the settlement of disputes concerning plots with non-formal sales agreements lasts on average 33.1 months at a cost of 193,900 FCFA, 29.2 months and 569,000 FCFA for those with land titles or leases and 8.8 months and 180,200 FCFA for those with a sales agreement obtained from municipal authorities'* (idem., p. 132).

A non-systematic survey conducted as part of the preparation of the reform states that *'more than half of the magistrates and judicial officers surveyed state that land disputes represent*

nearly 25% of the cases submitted to their jurisdiction or cabinet' and even between 25% and 50% for a third of them (Steward Intl, 2009a, p. 9). In 2005, there were 1,158 new cases of land disputes brought before the courts, half of them (600) in Cotonou alone (idem. p. 12, source Ministry of Justice). However, data on the sources of conflict are not very precise. 25% of conflicts brought to court are related to succession (idem, p. 14), and 42% of conflicts brought before the administration are related to boundary issues. For the Enquête Modulaire Intégrée sur les Conditions de Vie des Ménages (EMICov, Integrated Modular Survey on Household Living Conditions) study, '*at the national level, the most recurrent nature of conflict is the contestation of property rights (33.9%)*'. Such a contestation can have various sources: the sale of a plot or the delivery of a title to several persons, contestation of a sale, claim by the descendants of a former owner, etc.). Other causes of conflicts brought to courts include '*the sharing of inheritance (16.4%)<sup>17</sup>, the boundaries of land parcels (16.1%), the conquest of new fallow land and disputes between farmers and herders (11.4%)*. Finally, *other conflicts not classified elsewhere represent 22.2% of the conflicts cited*' (INSAE, 2012: 122).

### 2.3 'Managing confusion'

For J.L. Piermay (1986a; 1992), who studied urban land practices in central Africa, as for P. Mathieu (1996), who was interested in the rural situations in Sahelian Africa, the situation of informality and vagueness about the land rules does not result from chance. It is the product of a deliberate strategy of the 'management of confusion' by political and administrative elites, who are well integrated in the political and administrative networks, and able to take advantage of it.<sup>18</sup> The situation of Benin confirms this analysis. The obsolete nature of the texts, the vagueness of the rules, the institutional shortcomings, the complex procedures, the lack of resources for the administrations are greatly responsible for the current situation. These institutional deficiencies are partly the product of a lack of interest – and budgeting – on the part of the state and objective constraints on human and financial resources in state administration bodies, constraints that have been aggravated by structural adjustment.<sup>19</sup> But their maintenance over time cannot be attributed solely to negligence: for example, the lack of updating of the state property register and the lack of updating of the rate of sale of state land clearly favour the grabbing of the state's domain by actors who have mastered the rules. These deficiencies and the lack of resources open up many opportunities for negotiation, privatisation, and informal transaction, and even manipulation or corruption, from which different actors benefit.

*'With decentralization, land subdivision becomes the prerogative of municipalities and a central issue for mobilizing local resources in the municipal political economy. It is a very powerful instrument for the conversion (or regularization of the conversion) of "customary" rural areas into "registered" urban areas, producing "pieces of city" and strongly contributing to the commodification of land'* (Le Meur, 2008: 10). The plurality of sources of land information is increasing, as is the management of confusion. The land market, which is developing at high speed in areas that are of interest to urban elites, is for them a privileged means of land accumulation, alongside or in substitution for the manipulation of the private domain of the state and land-related development projects.

<sup>17</sup> In 2014, Andreetta (2019: 20) note 1104 new succession disputes brought before all civil chambers of the Cotonou Court of First Instance, on 8313 new cases.

<sup>18</sup> See also Berry (1993), and Platteau (1992: 177-183).

<sup>19</sup> See Bierschenk (2008) on justice and a comparison of the ratio of judicial personnel in Benin to that in Europe.

At the land administration level, files are delayed in order to encourage gifts, *'land registers are not always kept with total rigor. For one reason or another, a blank page may be left on the register marked "reserved" in pencil, where it will then be possible to insert a new title that will then be considered as predecessor to other existing titles'* (Economic and Social Council, 2005, p. 13). Land subdivisions are a privileged place for land corruption (Kakai, 2014, pp. 16–18). Surveyors apply an exaggerated 'reduction coefficient' that allows them to illegally create new plots that they share with local elected officials. They argue that the communes do not pay them fully and keep the subdivision plans in their offices. Having a monopoly on information, they become essential intermediaries for any transaction. The heads of communal land services and elected officials are also involved in land speculation. *'Some land canvassers maintain a land mafia which sometimes leads to the counterfeiting of Land acts with the complicity of the Land affairs services of the Mayor Office'* (MUHRFLEC, 2011b, p. 58). The justice process itself has a reputation for being unreliable and sensitive to corruption.

As Bayart (1989, pp. 113–114) explained 30 years ago, in Africa, land and property ownership *'is maybe the wealth par excellence (...). it is offered, so to speak, as a priority to government officials who are best able to know the administrative procedures in place, anticipate urban planning projects, take advantage of the necessary influences and overcome the 'long obstacle course' - the term is widely used - to which an acquisition is related. (...) They are now competing with the senior officials and politicians on whom they depend'*. Access to land accumulation is not open to well-off people outside the administration, but the logic is still the same. If *'in Benin, the State has sinned by a guilty resignation in the land legislation sector'* (Mongbo, 2000: 185), this resignation is not without explanation and does not only result in losers.

## 2.4 Institutional bottlenecks before reforms: a tentative synthesis

We can summarise the situation at the end of the 1990s as follows, based on the table proposed by Bourguignon and Wangwe (2018, pp. 21–25).

**Table 1. Institutional bottlenecks**

Deep factors	Proximate causes	Identified weaknesses	Economic consequences
Plurality of social and land norms within society	Obsolete legal texts	Legal recognition of land rights inaccessible to the vast majority of the population	Importance of informality
Normative conception of the law, not seen as being in the service of the society	Unregulated legal duality between state law and neo-customary norms	Registration procedure that does not guarantee reliable publicity and protection of existing rights	Frequent conflicts, especially in peri-urban areas
Conception of ownership as 'absolute' and given by the state, 'from the top'	Centralised land tenure administration	Unorganised plurality of state and neo-customary bodies in land governance and conflict resolution	Spoliations, in particular in land subdivisions and plots of land purchases
Colonial legal framework, left in place without major change since independence	Expensive procedures for having a land title	Poor reliability of 'semi-formal institutions'	Transaction costs in land purchases
Multiple interests in 'confusion management'	Duplicate procedures and rent-seeking strategies by land administrations and professionals	Unsecured sales (for family rights-holders and for buyers)	Cost of conflict for households and businesses
Rent-seeking financial system	Semi-formal palliative institutions	Little/no access to credit for rural producers, nor in the case of urgent need	Distress sales
	Shortcomings in the supply of credit to rural people	No taxation on purchased land not valued	Unproductive or speculative accumulation by elites

Source: author

### 3 The search for overall/sectorial adjustment in the land sector in the years 1990–2000: a telescoping of reforms<sup>20</sup>

#### 3.1 The emergence of the land issue in the 1990s

In Benin, a first seminar on housing and land tenure security, in 1984, is regularly quoted as the starting point for further reflection. But it was only a few years later, at the start of the 1990s, that the spoliations linked to a collapsing revolutionary regime, the land grabbing by the elite on the private domain of the state, and the abuses by state agents against the population led to the state's land monopoly being called into question (Gbaguidi, op. cit.). The context was one of economic liberalisation (induced by the structural adjustment plan signed in 1987) and democratic transition (with the National Conference of March 1990, and the 1990 Constitution, which fully recognises private property). Land rights' informality and tenure insecurity started to be raised as a problem, both in urban areas (Comby, 1998b) and in rural areas (Hounkpodoté, 2000).

#### 3.2 In urban areas, tax experiments and unsuccessful discussions on legal reform

In the early 1990s, the french cooperation set up local land taxation tools, called Registres fonciers urbains (RFUs – Urbain Land Registers), in Cotonou and Parakou, two main towns in Benin (Charles-Dominé, 2012). On this basis a map of land occupations is produced and tax notices are issued. Theoretically listing all dwellings regardless of their land status, this mapping and database gives a more complete picture of the city. In the minds of its designers, the RFUs can become a land tool: for them, the presence on a plot for a sufficient period, as evidenced by the regular payment of property tax, could allow one to be recognised as an owner. The RFU allows a significant increase in tax resources, but remains incompletely mobilised by the municipalities, both because elected officials are reluctant to increase the pressure to pay taxes, and because of issues of weak institutional anchoring in the municipalities' administrative system (Simonneau, 2015). The RFUs have been then disseminated to other municipalities, by various donors, in various forms and with limited success, due to the lower tax potential and lack of political will (idem.).

As part of the Urban Rehabilitation and Management Project (PGRU, with World Bank financing), a series of studies conducted in the 1990s laid the groundwork for possible land reform. The experts participating in it analysed standard registration. The collection of legal texts compiled on this occasion (SERHAU, 1999) incorporates the decrees of 1955 and 1956, and timidly opens the question of alternatives to title deeds, or in any case significant changes in procedures: *'It may be necessary to study at the State level how to make it accessible to as many people as possible if it must always be maintained as the mother of evidence of land ownership (...). There is a need to simplify the procedure along the lines of the procedure for establishing customary land rights (...) and to restore the contract as an essential role in the acquisition of property'* (p. 350, author's underlining). In 1998, Joseph Comby (1998b) summarised the diagnoses and identified four possible strategies for a land reform. The first strategy was *'an improvement of practices and reorganization of administrative means in compliance with existing law'*. The second strategy was *'a policy of*

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<sup>20</sup> See Lavigne Delville (2010a) for a first analysis, centred on rural issues.

*occasional improvements leading to a significant improvement' (idem). The third strategy built on the development of group registrations. The last strategy was based on deep modification of the conception of ownership and land rights legalisation: 'a completely different procedure can be envisaged, in a more radical break with current legal and administrative practices, making ownership a matter to be settled between private persons. The State and its administrations no longer deal with the recognition and allocation of property. The peaceful owner of a piece of land is presumed to be the owner, with the burden of proof to any interested person to the contrary by taking legal action' (idem). This means abandoning the colonial conception of state-guaranteed land ownership in favour of a contractual approach, like in the French Civil Code.*

*'For many people', according to Comby 'all the current difficulties stem simply from a lack of respect for existing texts. They think that it is not the law that needs to be changed, but that it is the practices that must be brought into conformity with the law, all the evil coming from the fact that the law was no longer respected' (idem). This expert supported the 'bottom-up ownership' perspective and thus an exit from the standard registration model. He explained in his report why, in his view, the scenario for implementing existing law was doubly unworkable: it would imply being able to prohibit sales of unregistered land, and the cost and pace of issuing land titles are incompatible with a desire to address the problem on a significant scale.*

In practice, however, the first scenario was adopted at that time by the Beninese authorities, with the establishment in 2001 of a 'Commission for the transformation of housing permits into land titles', which was supposed to accelerate the issuance of land titles. Blocked by complex procedures – and according to some interlocutors, by the entry of land professionals raising bids on procedures – this has been quite ineffective (see below). At the same time, there was an ongoing reflection within the Ministry of Urban Planning on a possible reform of land and urban planning. The 'Land and residential security' programme driven by the Ministry for Urban Planning *'provides for the issuance of 10,000 land titles in 2005, 15,000 in 2006 and 20,000 in 2007, the creation of a land register for 10 municipalities and the updating of land legislation and its application through the reform of the land system'* (Le Meur, 2008, p. 10).

### **3.3 In rural areas, the PFRs and the draft rural land law: the construction of an alternative to land title**

In rural areas, two successive development projects, under the supervision of the Ministry of Agriculture and with French and German funding<sup>21</sup>, have integrated the issue of land tenure security, first as a tool for encouraging farmers to invest in anti-erosion techniques. The principle was laid down in the 1988 feasibility study, carried out shortly before the collapse of Mathieu Kérékou's socialist regime. The experts involved consider that standard registration and land titles 1) are inappropriate to the reality of rural tenure, which is diverse and does not correspond to private property in most regions of the country; and 2) in any case are far too costly to be affordable by farmers. Thus, the issue was seen to be to design an alternative based on the recognition of existing – individual or collective – customary rights (Hounkpodoté, 2000). The project began in 1992 and experimented in different regions in the

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<sup>21</sup> And the World Bank for the first phase.

country with the PFRs approach, imported from Côte d'Ivoire, where it was invented a few years earlier (Chauveau, Bosc et Pescay, 1998; Gastaldi, 1998).

In the PFR approach, the land rights of individual or collective farmers are identified through cross-checked field surveys, conducted on a plot-by-plot basis. Each plot-holder explains the rights he/she has and how – and from whom – he/she has obtained them. The limits are lifted with a decametre and then drawn on an aerial photo. The survey sheets and forms take into account two types of situations: those of individual owners ('presumed owners' in legal language) and those of family communities, represented by their 'manager', in other words the representative of the group of rights-holders, who has authority to make decisions on the plot in question<sup>22</sup>. The plot-holder and the holders of the neighbouring plots sign the survey report. After a publicity phase, which should allow everyone to verify or correct the collected information, the final plot map and rights-holders' register are given to the village committee, which is supposed to register future changes in rights (inheritances, sales, leases, etc.) and to keep the land documentation up to date. PFR is thus a kind of village land cadastre, without legal value. But in the idea of its promoters, the demonstration that it is possible to map 'informal' customary rights, which are often considered difficult to understand from the outside, should contribute to promoting legal reform, which, by creating a new and more appropriate legal status for rural land, would enable rural actors to obtain legal recognition of their rights.<sup>23</sup> Some 40 pilot PFRs have been carried out in two successive projects in different regions of the country, and the approach has been improved. However, the idea of a coherent village territory constituted of juxtaposed farmers' plots is a simplification. It does not fully take into account the diversity of land rights (CIRAD-TERA, 1998) and the issues in areas where land rights are not stabilised (Edja, Le Meur and Lavigne Delville, 2003).<sup>24</sup>

Present from the outset, the prospect of legal reform became clear in 1998 when a second project was negotiated between the *Ministère de l'Agriculture, de l'Élevage et de la Pêche* (MAEP, Ministry of Agriculture, Livestock, and Fisheries) and donors. A group of Beninese experts was established. The draft law resulting from their work represents a potential legal revolution: it renounces the presumption of state ownership of unregistered land and provides that every plot subject to '*rights established or acquired according to custom and, more generally, local practices and standards*' (art. 7) is part of private land, in the same way as for those holding a land title. This drastically reduces the private domain of the state, which has incorporated such plots until now. Considering that there is no place in Benin that is not owned in one way or another, it removes the notion of '*vacant and landless land*', which is the basis of this presumption of state ownership on unregistered land. It introduces instead the notion of '*land that has never been the subject of a first appropriation*', extended to land that has not been used for more than 10 years, which belongs '*de facto to the State*' (art. 6).

The text of the draft version of the law institutionalises PFRs and gives them, as an outcome, a new legal document, the CFR, which can be individual or collective. A CFR is a '*document of recognition and confirmation of land rights established or acquired according to custom or*

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<sup>22</sup> Note that the issues of pastoralism and common areas are not dealt with.

<sup>23</sup> PFRs are presented as a radical innovation. While they were created in Ivory Coast in the 1990s, the approach takes inspiration from the 1950s, particularly the decrees of 1955 and 1956 on land and domain reorganisation in French west Africa, which were never applied but allowed 'indigenous' people to obtain a legal document attesting to their rights, individual or collective. They also reinvent – without knowing them – the detailed proposals that had been designed at the same period to make a cadastre of the Dahomey palm-tree area (Clerc, Adam, Tardits *et al.*, 1956), also without follow-up, in a pre-independence context. For an analysis of these two periods when the question of the legal recognition of customary rights was raised, see Lavigne Delville and Gbaguidi (2015).

<sup>24</sup> After the pilot projects, the GPS and satellites pictures were adopted.

*local practices and norms*' (art. 111), which is transferable, assignable, and usable as security for credit (arts. 9 and 112). '*A presumption of acquired rights is attached to it as proof until proven otherwise, established before the judge*' (art. 111). The aim is to reverse the logic of creating ownership, starting with socially legitimate rights, and to avoid the cumbersome procedures of standard registration.

In line with the recent administrative reforms creating elected local governments (1999), the draft law sets up a local land management system, anchored in the communes and integrating village-level bodies (*Section Villageoise de Gestion Foncière*). Villages can also define their own rules for managing natural resources on their territories. All transfers of rights must be formalised at the village level. At their request, villages can benefit from PFRs. The registered plots can then receive a CFR, issued by the commune. This certificate may be individual or collective, transferable, or tradeable, and may be used as a guarantee for credit. It can be transformed into a land title. The objective is to progressively expand PFRs and thus land certificates, but the institutional framework at commune and village level, with a local registration of land transfers, has to be put in place everywhere for this to happen.

This reform relies on an 'adaptation' paradigm. The 2001 MAEP Strategic Operational Plan states that '*with regard to land (agricultural, forestry, pastoral), the objective remains to adapt traditional law to modern constraints, using (and maintaining) its dynamism and adaptability*' (p. 58, quoted by Le Meur 2008: 67). The reform is mainly focused on the new law, without a policy statement clearly stating the policy objectives. While it does not rely on a clear political support at high level, it indicates a relative consensus in MAEP and more generally among the actors involved in the rural zones and decentralisation policies. Nevertheless, it is meeting with opposition from actors in the Ministry of Urban Planning: for them, a specifically rural legislation makes no sense and poses insoluble problems at the boundaries between rural and peri-urban<sup>25</sup> regions. In addition, the CFR is an intermediate document, of much lower status than the land title. It is contested on the basis of the provisions of the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA, Organisation for Harmonising Business Law in Africa), which provides (art 119) that only the land title (or failing that, an ongoing application) is recognised as the basis for a mortgage.

Partly because there is no policy statement, different visions of the reform's main objectives coexist. For its promoters, it creates a long-term alternative to land titles, allowing rural dwellers to have access to a legal recognition of their rights. Some want to quickly generalise PFRs over the country. Others have a more progressive strategy: for them, the rural land law represents a flexible and evolving framework offering responses to conflicts over transactions, with or without PFRs. Since PFRs are optional, upon village request, they can be extended very gradually over the national territory, depending on means and needs, starting from areas where they are most useful (Lavigne Delville, 2009). For those who support land title, this is a temporary framework, and land certificates must quickly be transformed into titles. The 'Law on rural land tenure' was finally passed in 2007, and has presented the paradox of a legal revolution that has not received backing from a political text or clear political will on the part of the government.

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<sup>25</sup> The first version of the draft bill also contained a section on state ownership, which was intended to address concrete problems, but it infringed on the Ministry of Urban Planning's prerogatives, with the risk of creating a blockage as a result. This section was removed before transmission to the government.

### 3.4 In the mid-2000s: the MCA-Benin and the emergence of a global reform project

In the middle of the 2000s, two separate policies were ongoing: in urban areas, the Committee for Transforming Housing Permits, which was practically ineffective, and in rural areas, the PFRs, a draft law on which was ready. A new initiative also emerged at that time, carried out by the MCA-Benin, with a view to harmonising land law at the national level. Following the 2004 Monterrey Conference on aid funding, the USA government created the MCC (Millennium Challenge Corporation) to support economic development projects proposed by beneficiary countries, officially selected based on good governance criteria, with a *big push* approach: massive funding, through grants, over a limited period of time, around identified objectives that are supposed to be decisive levers. The projects ('Compacts') are designed and implemented by the beneficiary countries, which set up a dedicated team, the MCA, attached to the head of state. However, MCC experts closely monitor the project formulation and implementation. The MCC is perceived by various analysts as an instrument for promoting American neo-liberalism and the interests of American investors (Boissenin, 2003; Daviron and Giordano, 2006; Soederberg, 2004).

Benin was among the first countries selected, along with Madagascar. A team from the MCC went to Benin in May 2004 and presented their offer. The government set up a series of workshops to identify the themes around which to build a proposal. No theme was chosen at that time. The first drafts of the proposal focused on rural development, with an emphasis on supporting export sectors.<sup>26</sup> The objectives and topics evolved considerably following exchanges with the MCC, and the land issue appeared gradually. The focus on land and judicial reform was validated in September 2004. It was finally in January 2005 that the Compact's architecture stabilised, at the interface of the successive proposals of the team set up by the government and the questions and influences exercised by the MCC. The formulation team was made up of executives from different ministerial departments. It worked in 2004 and 2005, with the support of MCC international consultants for the drafting of the project. The Compact was signed in 2006 and implemented between 2007 and 2011.

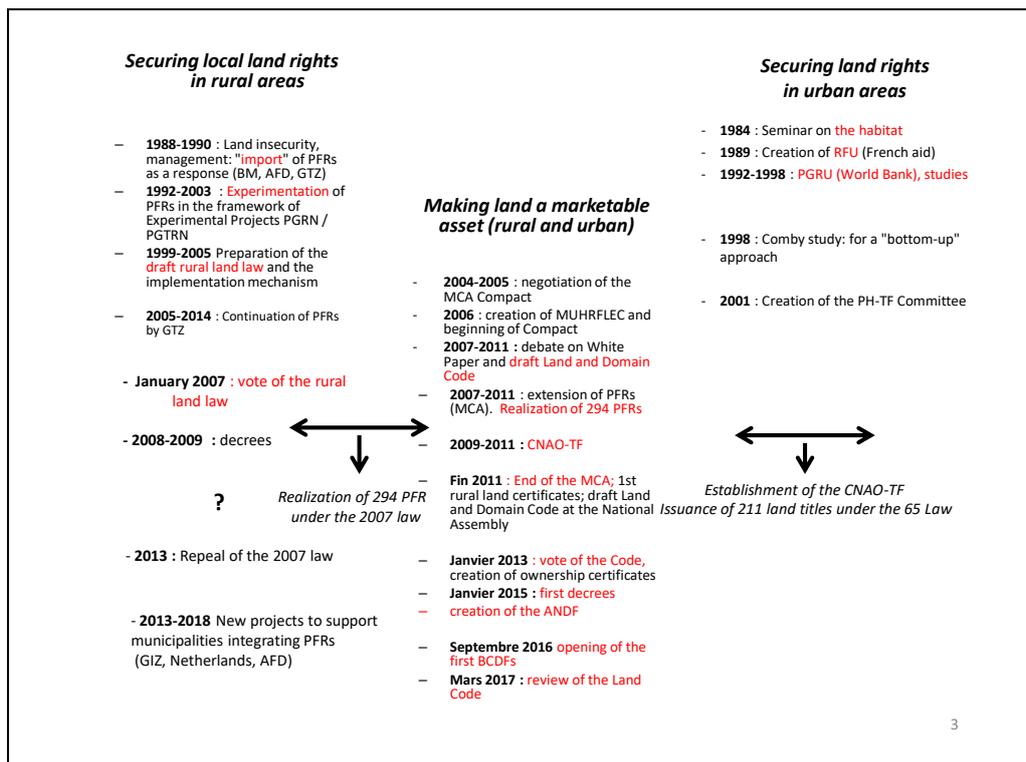
The overall title of the project was 'Making Benin an attractive country for investment'. Four axes were chosen: land tenure, the port of Cotonou, enterprise financing and microfinance, and justice, which were supposed to be complementary in the construction of an economic environment capable of fighting poverty through economic growth.

The 'Access to Land' project had three components: at the institutional level, a legal reform that aims to standardise land law, overcome legal dualism, and provide the country with updated legislation; at the operational level, the objectives are to scale up previous initiatives, both in rural areas (PFRs) and urban areas (the transformation of housing permits into land titles). Positioned under the aegis of the Presidency of the Republic, with considerable financial resources, the MCA was the central actor, and the centre for the design and preparation of the land reform. Shortly after the launch of the Compact, the new President of the Republic, Yayi Boni, officially placed responsibility for land reform under the aegis of the Ministry of Urban Planning. These two bodies have steered the reform.

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<sup>26</sup> Draft n°9 of December 2004 was also entitled 'Increasing market opportunities for Benin's agricultural products'.

**Figure 2. Chronology of land reforms in Benin**



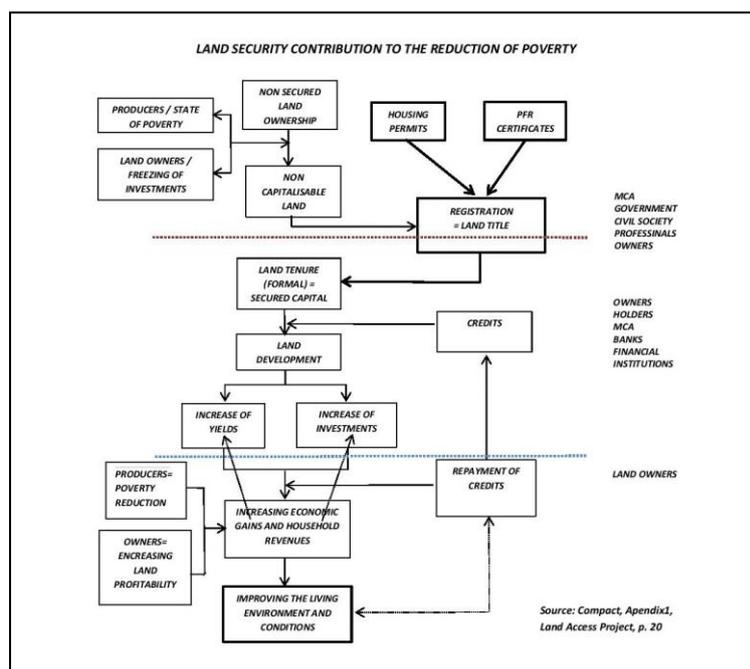
## 4 Extend access to land title through a deep reform of land administration: MCA-Benin's 'Access to Land' project and its aftermath

### 4.1 'Making land a marketable asset': the framework, objectives, and results of the MCA's 'Access to land project' (2006–2011)

With a budget of about \$30 million, out of the \$350 million in the Compact, the 'Access to land' project had the stated objective of 'making land a marketable asset', consistent with a vision of the land problem in terms of economy, or in any case with the MCC's priorities. Let us remember that, as we saw before, land was already largely commodified, in urban, peri-urban, and rural areas in the south of the country: 40% of plots of land in urban areas, and 10–13% in rural areas have been purchased (INSAE, 2009: 165). Thus, one can think that the challenge was not so much to make land a 'marketable asset' as it was to remove insecurity and conflicts related to land.

The conceptual scheme incorporated the assumptions of the standard property rights theory (Figure 3), with little consideration given to questions about the conditions of validity of this model. The scheme seemed to be applied above all to the rural environment (it talked about producers, investment, and yield), while the reform concerned the whole territory.

Figure 3. The conceptual diagram of the Access to Land project



The designers had a classic conception of land law according to which it is the holding of a land title that ensures security. *'The fact is that this title is extremely rare in both urban and rural areas. This notorious weakness in the holding by presumed landowners of intangible, reliable and unassailable property titles is the main cause of the land insecurity that prevails today in Benin'* (MCA 2005, underlined by them). *'The reforms identified will make it possible to implement a rapid registration procedure (in order to reduce the average registration time from 3 years currently to less than 1 year) and less costly (100,000 CFA francs instead of a*

*minimum of 300,000 CFA francs under the current procedures). The aim is to facilitate access to land ownership for the greatest number of people, to remove people from land insecurity by formally registering them, to increase their capacity to access credit and to stop the 'slumming' of urban centres that have become areas for receiving massive flows of rural people in search of better living conditions' (idem., p. 4). The solution to all land problems was therefore seen to be in facilitating access to land title.*

Building on previous experiences (the transformation of housing permits in land titles, PFRs), the project aimed to change their scale and integrate them into a renewed policy. In four years initially, then five, it wanted to (1) reform land legislation to modernise and standardise it, (2) implement 300 PFRs, issue 80,000 rural land certificates (CFRs), and transform 75,000 CFRs into land titles, and (3) reform the 'Commission for the transformation of housing permits into land titles' and issue 30,000 urban land titles. With its significant resources and its tight timetable, the Compact was, for some of its promoters in any case, an opportunity to fight against conservatism, force institutional reforms, and finally make it possible to remove the element of informality, which was considered as the main problem.

While the operational objectives were clear, the institutional vision was not yet designed at that time. The priority was more the reform of DDET than its abolition. In the rural sector, the MCA formulation team was hesitant. The MCA team needed to provide a legal framework for the PFRs it wanted to implement on a large scale. The adoption of the Rural Land Tenure Act has thus been integrated as a conditionality of the Compact. However, the MCA team did not want to endorse the planned institutional mechanism, which gave broad responsibility to the communes and provided for a Rural Land Management Agency, a flexible coordination and supervision structure. The form that the new legislation would take was also not fixed at the moment. The objective of a 'single and integrated land legislation (Land Code)' was clear (MCA, 2005), but the notion of a code was at that time thought as an articulated set of texts (on ownership, urban planning, rural land) covered by a guiding law (idem.).

#### **4.1.1 Preparation of the land reform**

The initial schedule of the Access to Land Project provided for the first year to be devoted to land reform, after which the operational components would be implemented in a clarified framework during the following four years. The land policy reform project followed a structured process: a series of studies would help to build or refine a diagnosis; proposals would be drawn up on this basis and formulated in a white paper; after adoption by the government, this would be translated into a policy document and then a law. The whole had obviously to be 'participatory'. However, the process's openness was in practice very limited for several reasons. The timetable was hardly compatible with an open approach to consultations. The overall orientation (making land a marketable asset) was contractual with the MCC and therefore not negotiable. The studies were predefined and strongly framed the debate.<sup>27</sup> The participation provided for in the terms of reference was above all that of professionals in the sector (surveyors, notaries, etc.), more than the general population. The global orientations, predefined in the Compact, were endorsed in the Letter of Framework for Land Reform in Benin, adopted at a National Forum on Land Reform in 2009.

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<sup>27</sup> Thus, it is planned to carry out an institutional analysis of the Commission on the 'Project for transforming housing permits into Land Title' to reform it; a study to improve low income countries survey techniques, the objective of which is clearly to question the choices of simple techniques outside classic land titling standards.

An international call for tenders was then launched by the MCA to recruit a team of international and national experts to carry out the studies and prepare the white paper. The contract was won by an American consulting firm specialising in the sale of technological solutions for the legal security of land transfers. The relationship between the MCA and the firm has been stormy. International experts apparently spoke French poorly, and knew neither Africa nor the French-speaking legal culture, which was problematic on such technical subjects. In addition – and above all – their conceptions were confronted by the strategies of national reform actors. Most of the studies were carried out by Beninese consultants, land professionals rather than sociologists, and were largely defined to serve a pre-established design. Two general studies on land conflicts (Steward Intl, 2009a) and women's access to land (Steward Intl, 2008) made a short<sup>28</sup> rather formal diagnosis, without any real in-depth analysis of the causes of conflicts. They mainly served to legitimise the options, clearly stated in the introduction. The lack of land documentation was seen as the main cause of conflicts. Customary logics were presented as an obstacle to women's access to land, without distinguishing between access to farming rights and access to property, and without taking into account the fact that, where the land market is developing, there is no statutory blockage for women.<sup>29</sup> The study on the modalities of application of the 2007 Rural Land Tenure Act (Steward Intl, 2009b) made positive reading, highlighting the contributions of the text and the relevance of the implementation proposals. It stressed the need to provide for simple procedures for changing over from CFR to land title, to avoid the need for the holder of a CFR to have to repeat the entire procedure. It questioned the compatibility between the Rural Land Management Agency proposed by the MAEP (a flexible and temporary structure responsible for piloting the extension of PFRs and supervising communes in their rural land administration tasks) and the planned National Land Registry Agency. The idea of such an Agency emerged from the study on the institutional framework for land management, which had been launched at the end of 2008. On the other hand, the study of technologies pushed bringing the techniques of the PFR closer to those of registration (Steward Intl, 2009c). Overall, the diagnosis made (on conflicts, land speculation, women's access to land) did not take into account current economic and social science results or field studies (Edja, 1996; Edja, 2001; Floquet and Mongbo, 1998; Le Meur, 2006a; Magnon, 2013; Mongbo, 2002). It was based on standard but biased assumptions that customary laws were outdated, and that informality was the source of problems.

During all the process, debates between interest groups, state structures, and professional corporations have been lively. The head of the 'land reform' component testifies to the extreme difficulty of its elaboration, which for him is a real 'administrative diplomacy' challenge. The first version of the white paper, published at the beginning of 2009, was criticised because it set out options based on a predefined framework and without debate. Indeed, it went so far as to already propose technical and software solutions (pp. 113–115), well beyond the normal scope of a white paper, whose role is to provide a diagnosis and propose broad strategic options. The section on inequalities in access to land focused on customary regimes, without a word on elite land accumulation (pp. 42–43), although 'equitable access to land' was one of the main objectives stated (p. 86).

The analysis of the problems partly included the misdeeds of surveyors during housing developments, the monopolisation of the private domain of the state by the elites, the absence of regulation and supervision of real estate agents. Nevertheless, the operational

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<sup>28</sup> In 12 days for the study on conflicts.

<sup>29</sup> This inequality is apparently not so great: 'according to EMICoV data, 64.6% in 2007 and 61.7 in 2006 men who own land or plots inherited them, while this percentage was 52.7% in 2007 and 53.6% in 2006 for women' (INSAE, 2009 : 165).

strategies then took little account of them, and seemed to consider that legal and organisational change would suffice to prevent them in the future. In institutional terms, while the initial principle had been to push for the de-concentration of DDET (which has strongly resisted this), the choice was finally to create a National Domain and Land Agency, taking over a set of functions previously carried out by different technical departments spread over several ministries. The idea of a multi-donor pool for the financing of reform was also borrowed from the proposals for the implementation of the Rural Land Law.

The white paper (MUHRFLEC, 2011b) was adopted and translated into a policy document (MUHRFLEC, 2011a), itself adopted in June 2011. Extended beyond what was initially planned, the contract with the Steward ended when only a first draft of the Code had been written (in March 2010). The process has then been taken up directly by the MCA team, which led the process until its end, organised multiple workshops, mainly involving government officials and professionals, and enabled the draft Code to reach the National Assembly, where it has been voted on in January 2013.

#### **4.1.2 A problematic implementation in the field**

A land reform cannot be assessed only from a legal and institutional perspective: it is also an issue of implementation. The institutional frameworks before and after the Code differ, but the progress and difficulties that MCA's operations faced in the field, in urban as well as rural contexts, highlight the practical and managerial issues of land rights registration, shedding light on issues that the current reform's implementation will also face.

##### **4.1.2.1 The PFR component: corporatist struggles, accelerated implementation, and a sudden ending**

The '300 PFRs' project aimed to cover around one-tenth of Beninese villages. Due to delays in the land legislation component, it was implemented under the 2007 law that was just enacted and not under the Code in preparation. This led to different biases in the implementation process. MCA could not rely on a national body for the implementation of PFRs, like the *Agence pour la Gestion Foncière Rurale* (National Agency for Rural Land Tenure) that the experts working on the 2007 law had proposed. By mutual agreement, it contracted *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ, German Corporation for International Cooperation) International Services, a consultant firm linked to the German technical cooperation, for the implementing of this new project. MCA team did not really support the commune-level institutional framework created by this law and had little interest in their effectiveness and sustainability. While the existence of a sustainable system for the administration of registered rights is a prerequisite for the sustainability of land rights formalisation operations, the project put the emphasis on the production of maps and registers and the issuance of CFRs, in a non-stabilised institutional framework. The communal and village land management bodies created by the 2007 law have been set up in the field but without real support.

Establishing a PFR in a village involves a plot-by-plot survey phase combining a sociological survey of rights-holders and a topographical survey carried out by surveyors. GIS hired consortia regrouping a non-governmental organisation (NGO) and a surveyor firm to realise PFRs in a group of villages. The calls for tenders gave rise to a conflict between these two types of structures, around leadership in the consortium: the entity that has the lead determines the dominant logic in the implementation (the boundaries of plots of land or the

rights over land) and even more the distribution of the benefits between the organisations. While they had been subcontractors to NGOs in the pilot phases, the surveyors argued that they had a monopoly on topographical operations and claimed the leadership of the consortia. The implementation of the '300 PFR' project was blocked for nearly a year by this corporatist struggle. To meet the quantitative objectives, many consortia were launched in parallel, with three months to do the work in each village, whatever the size, plot number, or accessibility. While about 10 people involved in the pilot projects really had the know-how required to establish a PFR in the field, about 20 teams worked in parallel. Staff engaged in sociological fieldwork had only three days of training, mainly devoted to knowledge of the survey sheets, with only a very short briefing on land issues and land tenure inquiries. Due to delays in the first year, teams were doubled for the last round of PFRs, putting inexperienced teams on the ground, without any training.

The '300 PFR' coordination team did not carry out any real training and support work for the field teams they hired, in order to help them overcome the problems they encountered. While identifying land rights is subtle work, they did not exercise any quality control, leaving the investigations to be carried out by teams of various quality and sensitivity. Interviews on the conduct of the surveys reveal multiple distortions. When work commenced there were conflicts and sometimes blockages in villages that have no territory of their own and are dependent on other customary villages on land issues.<sup>30</sup> Teams also made a number of errors in the identification of beneficiaries. No systematic evaluation has been made but, in a single small area (a few villages in two neighbouring municipalities of the department of Collines) an in-depth study (Moalic, 2014) revealed a strong heterogeneity of practices. In some villages, the plots have been surveyed at the level of lineages because the teams wanted to go fast and limit the number of plots to survey. In others, the team pushed to register individual use rights, men and women of the same household each having a registered plot. Plots of land belonging to non-shared inheritances have sometimes been registered in the name of the group of heirs, sometimes in the name of their representative (with the risk that the latter may later be considered the owner of the whole). The state public domain, particularly rivers and lowlands, was not always identified in the maps. Lowlands, which are legally state land but are owned by peasants under customary rules; have sometimes been registered in the PFR, with the risk of recreating legal confusion. In many cases, the survey reports, which are supposed to reflect accurately the farmers' statements on their rights and to serve as the basic reference in the event of a future conflict, were drawn up in the evening, in the office, with all the distortions that one can imagine in such a situation.

To go faster, surveyors sometimes made their own list of beneficiaries without waiting for land rights surveys, incorporating multiple errors that had to be corrected in a hurry when the problem was recognised. Sometimes, the cement landmarks at the plots' boundaries were not installed by the surveyors during the surveys, but later by the farmers. A quality control of the maps produced was carried out by the *Institut Géographique National* (IGN, National Geographic Institute), but there was no quality control on the land rights surveys (Thinon and Elbow, 2010), creating a risk of bias and errors in the various stages of the transcription of rights.

The numerous tensions or conflicts encountered, as well as the difficulties in accessing villages and fields in the rainy season, slowed down the work, which was interrupted

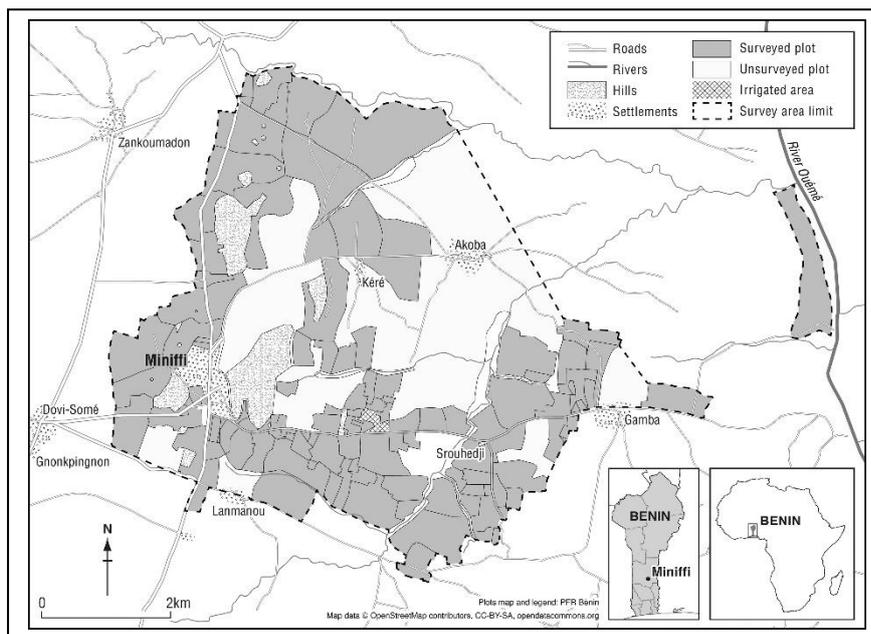
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<sup>30</sup> See Lavigne Delville and Moalic (2019) for an in-depth analysis of these issues.

arbitrarily at the end of the scheduled three months, leaving some of the inhabitants without surveyed plots of land.

Almost everywhere, teams could not survey the full village territory, due to conflicts – particularly between migrants and indigenous people, but not only – absentee owners, refusal to survey uncultivated areas, lack of time, etc. PFR maps often contained many ‘blanks’, within and around the surveyed areas (Figure 4). When only some of the people and of the territories were surveyed, PFR created new territories and new inequalities, particularly in frontier and migration areas like central Benin (Lavigne Delville and Moalic, 2019).

**Figure 4. Surveyed and non-surveyed areas in Miniffi’s PFR (Lavigne Delville and Moalic, 2019)**



These biases, errors, and problems resulted from a vision of PFRs that underestimated the issues and difficulties of registering customary rights and did not fully consider them. Field teams had already experienced some of these difficulties during the pilot phase, but lessons were not learnt. Even more serious, a certain number of these difficulties were raised during the training workshop on land rights surveys and were not addressed by the project heads. These difficulties were aggravated by the very conditions of the MCA project: very ambitious quantitative objectives, and a hierarchical management system based on the monitoring of indicators and not the quality of the work carried out. Moreover, following the contractual rules between MCA and GIZ International Services, the service provider was paid according to the rate of achievement of the objectives set, regardless of the time actually spent, and the cost involved. For a former pilot project employee, working in the Coordination Unit, ‘it is the worse PFRs that have ever been done. We see the basis for numerous future conflicts’<sup>31</sup>.

MCC rules forbade expanding the deadline of a project. The 300 PFR project ended suddenly. The commune and village bodies that were supposed to manage the PFRs were equipped (with furniture and computers for the commune committee) but they received only a short training at the end of the project. The documentation delivered to them was heterogeneous. Villages did not always receive maps of their territory or received them in the

<sup>31</sup> Author’s interview in 2010.

form of a paper print, not plasticised, so that they quickly deteriorated. In some cases, the ink cartridges did not correspond to the delivered printer and the plots database integrated into the computer system was incomplete (*Unité de Coordination et de Formulation*, 2013).

The first rural land certificates were issued in a hurry, in mid-2011, mainly to allow MCA to say that the process had begun. At the end of the contract, at the end of 2011, 294 PFRs had been carried out, of the 300 planned. Many had incomplete surveys, and more or less numerous errors. Village committees and communal services were left alone without support for learning and developing experience. Some adopted a wait-and-see attitude, while others tried to conduct their work as best as they could. However, no method had been designed for registering the splitting of a plot when only part of it is sold. The software enabled a new certificate to be issued in the event of a complete transfer of the plot, but not to split it up, leading to a practical blockage on the treatment of a significant part of the land market. A new heterogeneity emerged, linked to local land tenure configurations, the interest shown by communal authorities and heads of communal services in land issues, and their capacity and initiative.

An econometric study of the impact of PFRs was conducted by the World Bank (Goldstein, Hounbedji, Kondylis *et al.*, 2018). Based on a survey carried out in March-April 2011 before certificates were issued, the study allows for an interesting discussion of the impacts of plot delimitation itself, without certification.<sup>32</sup> The study highlights first a massive impact on plot boundaries, with a strong gender bias: *'Land demarcation activities cause a 28 p.p. increase in the proportion of plots with clear borders among male-headed households. In contrast, the effect on parcels managed by female-headed households is 8.5 p.p. lower (difference significant at the 10% level, p. 64)*. It also shows a lack of impact on productivity: *'land demarcation does not initially increase agricultural output, farm yields (measured as the log of the value harvested per hectare), or input use (labor, fertilizer, and improved seeds)' (p. 64)*. Finally, the study identifies a small increase in plantations (*'treated parcels are 2.4 percentage points more likely than control parcels to be used primarily for perennial crops, and they are 1.7 percentage points more likely to have a newly-planted tree'* (pp. 63–64) which is nevertheless impressive (+25% more plots with trees in PFR villages than in others), and a differential effect on women who would fallow more of the surveyed plots of land. However, these results are difficult to interpret, because of the analytical categories, which are sometimes not precisely defined. For example, the percentage of plots with 'clear borders' is 33.1% in the PFR villages, against 6,1% in the witness ones, which is highly significant, even if we are far from the theoretical 100% (as a PFR is intended to cover a whole village). However, the indicator 'clear borders' signifies the existence of rock or cement landmarks at plot boundaries, and does not consider the numerous cases where specific highly resistant trees are planted at the boundaries, which is the widely used farmers' solution for having 'clear borders'. As it includes rocks (natural or that people could have put), this indicator does not also enable the identification of the specific impact of the cement landmarks linked to the PFR. Considering *'the presence of clear border'* (with that definition) as *'a key intermediate outcome of the land demarcation'* (p. 63) is thus problematic. Taking this indicator as a proxy of land security is equally questionable, for insecurity often occurs due to a land rights grievance and not as a result of struggle on the plot's limit. Finally, calculations are conducted by comparing the villages with and without PFRs, without making distinction between plots according to the rights farmers have on it, or to the fact that they have been registered or not. Thus, it is not proven that the increase in the percentage of

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<sup>32</sup> I sincerely thank Kenneth Hounbedji for his information on the methodology of this study.

plots having perennial crops (which increases slightly, from 10.3% to 12.7% in the PFR villages - table 2 p.64) can be clearly imputed to the PFR.

#### **4.1.2.2 The 'Project for transforming housing permits into land title' component: a stalemate**

In urban areas, the objective was to accelerate the transformation of residential permits into land titles by reforming the National Commission established in 2001. The pilot operation carried out in Cotonou and Porto Novo issued only 1,483 titles in three years, including 292 in the name of the state and 1,191 in the name of land interest associations, bringing together the owners of housing land, and by July 2006 only 110 beneficiaries had withdrawn their title (Lassissi, 2006). The Land Access Project planned to restructure the Commission and provide it with substantial financial resources. The *Commission Nationale d'Appui à l'Obtention des Titres Fonciers* (CNAO-TF, National Support Committee for the Acquisition of Land Titles) was created in February 2009 and began work in June 2009, after extensive work to check the state's land titles. The Commission began to deliver land titles in June 2011, six months before the end of the MCA project. At the end of 2011, more than 10,000 cases had been initiated and 211 titles issued. After the end of MCA funding, the Commission continued operating, with reduced resources coming from the national budget. By August 2014, 3,531 titles had been issued, of which only 1,567 had been withdrawn by their holder (including 1,190 for the city of Cotonou alone).<sup>33</sup>

The restructuring of the Commission and the amount of the resources mobilised have therefore only partially improved its productivity, which remains marked by a low demand, a complexity of procedures requiring the intervention of multiple actors, and great difficulties in gathering legal evidence, even on housing allotments made by the state. Created for an initial period of five years, the CNAO-TF was extended in 2014 for another five years, with a target of 3000 titles per year, too small to reach the initial MCA target in 10 years, and in anyway largely insufficient to move urban land out of the informal sector. After the establishment of the ANDF in 2016, the CNAO-TF was shut down and its files were transferred to its decentralised offices.

## **4.2 After the end of the MCA project (2012–2015): uncertainties, reconfiguration, and the vote on the Land and State Code**

At the end of the MCA project, the planned major reorganisation of land management had only been initiated. The geodetic station system had been set up. A preliminary draft Code had been drafted, but did not seem at that time to have a strong political support and its adoption was uncertain. The delivery of titles and certificates fell far short of the targets. The rural land management system had been put in place in 40 of the 77 communes, but its future remained largely uncertain, and the whole system was in danger of rapidly collapsing due to a lack of institutional consolidation. The MCA team, which carried out all of these actions, had been dispersed. However, the reform process continued with the vote of the Land Code early 2013, the redaction of the decrees in 2015, the creation of ANDF in 2016.

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<sup>33</sup> Interview with Mr Bawa Bangana, CNAOTF coordinator, *L'Autre Quotidien* n°2438, 25 August 2014.

#### 4.2.1 Finalisation and voting on the Land and Domain Code (2012)

The legal reform process went on after the end of the project. The lawyer in charge of it in MCA team, who was very strongly committed to this issue, has pushed on the work after the end of the Compact and tried to move the issue forward at the political level. Confronted with their desire to unify the legal framework, and with strong criticism of standard registration, the reformers eventually abandoned the term 'land title'. They conceptualised the logic of the Code in terms of 'confirmation of land rights', with a twofold channel, that of individual demand (which barely modifies the standard registration procedure) and that of PFR, both resulting in a single private property document, the Land Ownership Certificate. No provision is made for collective processes in urban contexts. Unlike the land title, a Land Ownership Certificate can be challenged in court for a period of five years in the event of fraud or error.<sup>34</sup>

The reformers designed a complete reorganisation of the land administration framework around ANDF, which should concentrate different responsibilities that were previously scattered between different ministries, have decentralised offices in each commune and be responsible for the implementation and management of PFRs (see 5.1 for an analysis).

A preliminary draft Code, a long text of 543 articles, was completed at the very end of the MCA (2011). It bore the mark of the multiple expert meetings and controversies that marked it.<sup>35</sup> Fearing that the Code would favour land grabbing, a young farmers' union, Synergie Paysanne gathered a dozen NGOs within an 'Alliance for a consensual and socially just land code'. Faced with difficulties in accessing information and a certain lack of transparency in the process, the Alliance mobilised to impose itself in the process and try to influence it, through public meetings and advocacy (Lavigne Delville and Saïah, 2016). It advocated for restrictions on land sales. The final draft Code has been submitted to the National Assembly in 2012. To shorten the time required for the adoption, the government asked a Member of Parliament from its political majority to propose it as a parliamentary initiative, in order to avoiding the stage of the Supreme Court's analysis of the project, which is necessary in the case of a bill introduced by the government. The government was indeed facing an emergency, as new MCA financing is in sight (which will not concern land) and the MCC wanted the reforms initiated during the first Compact to be completed. For the government, enacting the Code was a proof of goodwill towards MCC, in a context in which Benin was, for a time, criticised for corruption and could have lost the opportunity of a second Compact. More likely (this is the opinion of several people very close to the case) the vote was an explicit conditionality from MCC for gaining the new funding. Learning that the examination of the bill was on the agenda of the National Assembly, Synergie Paysanne organised press conferences in which it criticised the Code, and workshops with parliamentarians, to make them aware of the risks for farmers. Although it has focused its advocacy on a small number of issues, in particular land purchase thresholds and the duration of fallows, Synergie Paysanne has had only limited success (*idem.*).

The adoption of the Code occurred in January 2013. The text links the future ANDF to the supervision of the 'Ministry in charge of land'. However, no ministry had at that time (2013) the land in its attributions. A strong inter-institutional struggle then opposed the Ministries of Finance and of Urban Planning. The former highlighted the possible risks for land tax collection if land and cadastre were not under its responsibility and ultimately obtained

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<sup>34</sup> Previously, to ensure the inviolability of land title, compensation was only possible for the injured parties, which amounted to ratifying fraud and errors.

<sup>35</sup> The Ministry of Urban Planning published at the same time (2011) the various studies funded by MCA, in final versions.

control of ANDF. Two months after the law was passed, the organisations representing the professions working on land issues (notaries, surveyors, architects, etc.) published an open letter denouncing the inconsistencies and weaknesses of the text, and in particular calling into question the change from land titles to Land Ownership Certificates. For them, this can only produce insecurity. The silence of the government and the absence of promulgation perpetuated uncertainties about its future – in fact, this time lapse was due to the verification of compliance with constitution. The text has been finally promulgated in August 2013, but by the end of September, no signed version had been circulated and the various actors were still trying to verify if the Code had really been circulated. Scheduled to take one year, the legal reform process in fact lasted eight years.

#### 4.2.2 A collapse of MCA PFRs

One year after the end of the MCA project, the MCA Coordination Unit (the team responsible for preparing a new Compact and providing some follow-up to the first Compact) toured the municipalities and drew up a report that it itself described as showing ‘very poor results’ (MCA-Benin/ formulation and coordination unit, 2013, p. 4). Only 25 of the 40 communes having PFRs used the land information system set up; only 5,246 certificates had been issued out of the 72,742 expected (7.2%), and 3,527 had been withdrawn, or 4.8% (Table 2).

The delivery of CFRs was slowed down by enduring hardware problems (broken printers, etc.) which in some cases hide a reluctance of communes with regard to PFRs and their management. As we saw, communes had not really been involved in the decision to make PFRs on their territory. Their priority was urban land and housing allotments. Taxes on sales, which are an important part of local revenue, were called into question by the PFR system, which provided for sales contracts to be drawn up at village level. Finally, several commune officials were concerned about their future capacity to negotiate land in villages for public infrastructure: if plots had land certificates, would the villagers still agree to freely give land to the commune for building a school? If land had to be purchased or expropriated by the commune, the cost of investments would increase.

**Table 2. CFRs issuance rate in November 2013<sup>36</sup>**

Departments	No. of expected CFRs	No. of established CFRs	%	No. of withdrawn CFRs	% withdrawn / established	% withdrawn/ expected	pending	% pending/ expected
Altantique	9,385	461	4,9	435	94,4	4,64	43	0,5
Borgou and Alibori	6,474	1,165	18,0	395	33,9	6,10	52	0,8
Zou and Collines	12,663	270	2,1	117	43,3	0,92	160	1,3
Mono et Couffo	20,818	1,613	7,7	1,294	80,2	6,22	133	0,6
Ouémé and Plateau	23,402	1,737	7,4	1,143	65,8	4,88	39	0,2
<b>TOTAL</b>	<b>72,742</b>	<b>5,246</b>	<b>7,2</b>	<b>3,384</b>	<b>64,5</b>	<b>4,65</b>	<b>427</b>	<b>0,6</b>

As a result of pressures from the MCA Coordination Unit, CFR delivery rates increased, but by very different levels depending on the region, and even depending on the village. Rates

<sup>36</sup> MCA-Benin/Formulation Coordination Unit (2013 : 25). Percentages by the author.

were higher in south Benin than in the north. In the department of Collines in central Benin, only 17 certificates were issued to Miniffi, an indigenous village where some 60 plots of lands were surveyed, including five to non-indigenous people who are close to customary and administrative power, who managed to have their plots registered in their name, and one to a widow. Few autochthonous people were interested. By contrast, in Assiyo, a hamlet of 'migrants' that has become an administrative village, nearly 90% of the registered people requested a certificate. After strong negotiation with the customary authorities from the village that historically allowed them to settle, they have obtained the right to be registered at PFR in their own names, which meant that they were now recognized as full owners of the plots that had been granted to them by the autochthonous lineages. Having a CFR was for them a strategy to consolidate their new land tenure position.

The number of CFRs issued has therefore increased, as has the number of delivered ones, at a very heterogeneous pace depending on local issues. However, their future is uncertain as they are recognised in the Code, but with a low legal value, equivalent to the old administrative certificates. The Code does not even recognise them as 'documents indicating a presumption of ownership'.

Moreover, the commune and village bodies put in place by MCA are crumbling. MCA did not support them seriously. Municipalities are doubly disinclined to take charge of them: they have little objective interest in these bodies, in terms of financial resources, and the Code denies them any role in land management, which hardly motivates them to maintain the information for a future takeover by ANDF.

#### **4.2.3 A reconfiguration of international support and field projects**

The end of MCA Compact led to a vacuum. Anticipating the end of the project, the Ministry of Urban Planning had developed an ambitious 'Land Governance Project', for which it did not find funding. Aware that PFRs were very fragile, actors from the PFR component of the MCA project set up a 'Rural Land Management Consolidation Project' and sought to convince donors to fund it. Although not involved in land issues until that time, the Dutch Embassy agreed in 2012 to support a transitional phase, aimed at advancing the implementation of the recently adopted Code, through the preparation of implementing decrees and support to municipalities in the management of PFRs. It also supported the creation of an informal coordination group on land issues, bringing together donors, national institutions, NGOs, and farmer unions, to facilitate the exchange of information. This coordination group allowed for a certain institutional decompartmentalisation of the land sector, after the strong monopoly exercised by MCA.

The consolidation project initially submitted was very expensive. It took time to negotiate and resize it on a two-year basis. It started in early 2014, just over two years after the end of the MCA. As no national institution was at that time clearly in charge of the reform, the Embassy could not entrust the implementation of this project to a ministerial directorate. In the absence of a better solution, they gave it to the MCA Coordination Unit, the team coordinating the preparation of the new Compact, even though the land experts had been dismissed and the second Compact would not work on land policy. In a phase of institutional vacuum, a MCA team with no legitimacy on land issues anymore that had been asked to organise the preparation of implementing decrees. The legal expert recruited for this work, who had been strongly involved in PFRs since the beginning, did important work in mediating and negotiating decrees, and in attempting to remedy a number of shortcomings in the text. 14

decrees were prepared, which were promulgated in January 2015. The most controversial was the one on the ANDF<sup>37</sup>.

Support to municipalities in the management of PFRs only started at the end of 2014, after three years during which the PFR system, the commune land services, and the village committees were left to their own devices. The consolidation project had in practice only time to refinance some equipment and run a series of training sessions.

During that period, several development projects, funded by other donors, continued to implement PFRs in their own areas. These projects had supported the initial design of PFRs as an alternative to land title and were concerned about the orientations of the Code. After the vote on the Code, they reviewed their approaches in the light of changes in the legal framework, and in particular the obligation to also survey residential areas. In the Atacora and Donga regions, the German cooperation (GIZ) funded some 60 PFRs between 2007 and 2015. In the region of Borgou, a three-year worldwide GIZ project, the 'Responsible Land Policies' project started activities in July 2016. Agence Française de Développement (AFD) had largely supported PFRs from the inception until 2007 but had failed to set up a new project at that time. It integrated a land component into its 'Project to support agricultural development in the Collines Department', which it has started to prepare. The feasibility study took place in September 2013. It proposed that the land component should provide support to communes and village land committees, starting with a shared assessment of the PFR experience. The feasibility study also proposed that the land component should facilitate the transition from the legal framework of the 2007 law to that of the Code and that it should contribute to national reflection based on its local anchoring. As the initial financing assumptions had been reviewed, the project had to be reconfigured and only started in mid-2015. Finally, in parallel with support for the preparation of the decrees, the Dutch cooperation financed a local land management project in two municipalities in the south of the country (2015-2018), in order to experiment the reform and provide tools and methodologies.

Conceived as projects to support decentralisation, these various projects promoted PFRs from a rural and communal point of view, and sought to negotiate modalities of implementation of the Code that were anchored in local contexts. They have been in tension with the newly created ANDF, which was seeking to assert itself.

#### **4.2.4 Temporality of projects vs temporality of policy reform**

The four years following the end of the MCA project (2012–2015) have been a period of institutional change and consolidation of the reform. The Code has been voted in 2013. The legal framework has been achieved with the publication of the decrees needed to implement the Land Code. The international networks working on land have been reorganised, with the arrival of the Dutch Embassy as the central international actor on land in Benin, both as a supporter of the reform and as a funder of a field project to test the implementation.

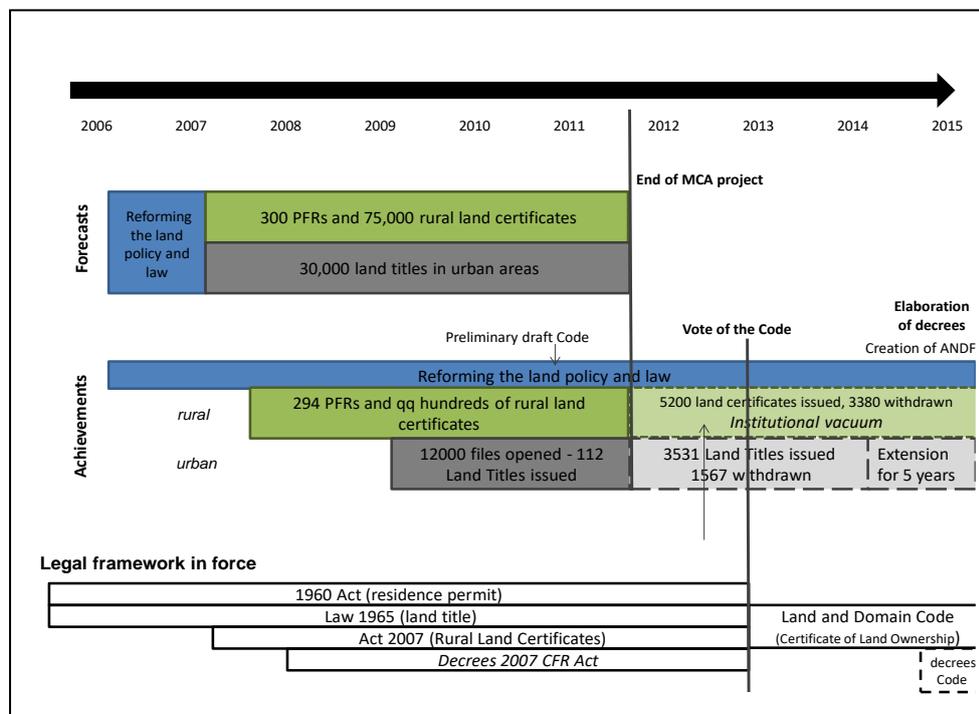
The tight schedule provided for in the MCA project has been considerably extended. The initial project, which in five years wanted to link legal reform and a scaling up in the field, has been confronted with the reality of policy change and project implementation, with induced

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<sup>37</sup> The authorities did not put this decree on the agenda of the validation workshop. Refusing to leave the government a blank cheque on this subject, the workshop participants refused to sit and secured its inclusion in the work programme.

negotiations, power relations, and operational constraints. One can finally consider that the temporalities have been eased, with a policy reform that is almost done in 2015, allowing implementation to begin, while results on the ground were far below the initial objectives, and fragile.

**Figure 5. The MCA project: delays in time and results**



Ten years for such a reform is quite normal. However the objectives and timeframe planned into the Compact had been very optimistic, not to say unrealistic. The corporatist struggles largely slowed down the operational aspects. But even more, the conception of the reform by the MCA made a confusion between the temporality of the policy reform, which is not predictable as it includes political negotiation and compromise, and the temporality of projects, which are supposed to be feasible in a given time scale (Lavigne Delville, 2014). The MCA team saw land policy reform as a technical issue that they could achieve in a short timeframe, allowing for a quick implementation in the field. However, negotiating the legal reform has taken much more time than planned. In consequence, land reform and field operations have been done simultaneously. The latter has been implemented within the former legal framework, in an institutional in-between. Therefore the transformation of housing permits into land titles could not benefit the intended flexibility in the registration procedure) and PFRs have been made within the context of the 2007 law, which institutional arrangements were under question.

### 4.3 Since 2016, the gradual implementation of the new institutional framework

The years 2016–2018 saw the establishment and ramp-up of ANDF, the repositioning of the various actors, and the beginning of the actual implementation of the Code.

The institutional landscape became clearer after the adoption of the decrees in January 2015 and the attribution of ANDF's supervision to the Ministry of Finance. The state then takes

charge of the deployment of the institutional mechanism provided for by the reform, which will take place in a coherent manner. The Ministry of Finance is reorganising itself, dissolving DDET and integrating ANDF into its organisational chart. ANDF has formally been created, and a start-up budget has been granted by the state. An action plan for implementation was defined in July 2015 (Gandonou, 2015). The Director was recruited through an open call for applications in 2016. The Director of DDET, probably supported by the Ministry of Finance, was a candidate. However, it was the lawyer who led the reform at the MCA level who was recruited. The central team was then set up. The decentralised office in Cotonou was opened. It was decided to open decentralised offices initially only at the level of the heads of department, and not at the level of each commune, as set out in the Code. Teams were gradually set up, through the assignment of staff and contractual recruitment. 14 *Bureau Communal du Domaine et du Foncier* (BCDFs, Local Offices of Land and Domain) (one per department, plus one for Abomey-Calavi and Ouidah) were officially opened in September 2016. The staff joined them only gradually and the tools and procedures were also put in place progressively.

President Talon's coming to power in 2016 gave a boost to the reform. In October 2016, the Ministry of Finance and the Ministry of the Environment (ex-Urban Planning) introduced a Communication in the Council of Ministers presenting the project, to prepare a national cadastre, and requesting a temporary suspension of all cadastral operations, in order to audit them and integrate them into the future cadastre. Field development projects that planned to make new PFRs were blocked. They asked for political support from their donors and the Ministry of Agriculture. The latter argued that the decision was illegal, given that it was responsible for PFRs, and a member of the ANDF Board of Directors, and it should thus have been consulted. It also argued that there was a difference between the PFRs and cadastre. The blockage was finally lifted in April 2017 and the new procedures manual was adopted in December of the same year (ANDF, 2017).

At the same time, a digitisation project for land documentation was launched from April 2017, implemented by a French consultancy firm, which collected all land information (titles, supporting documents such as sales agreements or administrative certificates, plot maps of PFRs and housing allotments) to digitise them and integrate them into a single GIS. The spatial calibration of land titles was a huge task, since the references used by surveyors were heterogeneous. Land subdivisions were relatively easily repositioned on satellite images, but the case of individual titles could be more complex. The team has almost succeeded in positioning existing maps and titles in the GIS but the information on landowners is still indicative, as the data are sometimes fake (in cases where only the planned resettlement plan exists, and not the final one) or obsolete due to changes, inheritances, transfers, or even fragmentation since the time the maps were drawn up. The consultant firm also validates the demarcation plans for new titles before integrating them into the GIS, which leads them to reject many plans and forces surveyors to do their work again. Field experiments for the implementation of the land cadastre in areas where there is no land information were launched in early 2019, as part of Dutch support.

At the end of 2018, i.e. more than five years after the promulgation of the Code, the institutional framework and its tools and procedures are more or less in place, apart from the cadastre. ANDF has just over 200 agents. The land documentation has been transferred almost entirely to the BCDFs. ANDF began issuing new land titles in April 2018<sup>38</sup>, at a very slow pace (Table 3). Applications for new land titles are being processed, with a view to

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<sup>38</sup> [www.andf.bj/index.php/le-foncier-au-benin/statistiques-bcdf](http://www.andf.bj/index.php/le-foncier-au-benin/statistiques-bcdf)

meeting the tight deadlines imposed by the Code. Pending applications are processed gradually.

**Table 3. Production of land titles by ANDF**

	Created land titles	Signed land titles	Withdrawn land titles
<b>Total</b>	1,705	1,134	1,228
<b>Monthly Average</b>	284	189	205

(New applications and inherited files, June–August 2018 and November 2018–January 2019)<sup>39</sup>

The Code has been slightly revised in 2017. The Finance Law reduced the cost of land titles and customary ownership certificates and temporarily offers free registration of transactions (instead of at a cost of 8% of their amount), which has led to many regularisations. However, the compilation of available land information is still ongoing, and not all the tools are set up. Teams in the Agency’s decentralised offices face difficulties in processing land title applications in a timely manner. The cost of the land title has not dropped significantly, because the main cost – plot demarcation and landmark setting – is still at the discretion of the surveyors. Even if new offices have been opened, the number of notaries remains very low, and above all very unevenly distributed throughout the territory. The same applies to surveyors. The cadastre is being built gradually from existing documentation, but with uncertain information on owners outside the areas with land titles. Extension to areas without cartographic documentation will face the same difficulties as PFRs and will require considerable resources, which are not yet available.

<sup>39</sup> Source : author calculations based on data from [www.andf.bj/index.php/le-foncier-au-benin/statistiques-bcdf](http://www.andf.bj/index.php/le-foncier-au-benin/statistiques-bcdf)

## 5 The Land Code, its orientations and controversies

Negotiating the land policy and the Land Code has been a complex and highly controversial process, and the subject of bitter struggles. Different visions of what land policy should be (standardisation vs. recognition of plurality) have been at stake, as well as different interests, which have tried to protect the existing situation and the rents it allowed, and/or tried to seek to exploit the text in the service of different interests. Any attempt to simplify the registration procedure has been strongly contested. The very fact that the Code would constitute a single legal text has been strongly opposed, particularly by the defenders of the Rural Land Law. For them, the initial idea of a code as an articulated set of complementary sectorial laws should have been maintained, which would have made it possible to maintain the initial logic of PFRs and land certificates as complementary to standard registration. In this section, I will describe the main provisions of the Code and situate them within the controversies that have surrounded some of them. I will then detail the changes related to the 2017 revision.

### 5.1 The main orientations of the Code and its controversies

The 2013 Land and Domain Code is an ambitious text that aims to radically reform the legal and institutional framework of land tenure in Benin. It includes 543 articles, organised into 10 titles and 31 chapters. It explicitly repeals the 1965 Property Act, the 1960 Residential Permits Act, the 2007 Rural Land Tenure Act, and also, implicitly, the 1955 and 1956 decrees, which had never been formally repealed before.

Focusing on private property, the Code intends to break with legal dualism and standardise the law. It recognises a single title of ownership, the Land Ownership Certificate (*Certificat de Propriété Foncière*). This new name is the result of a compromise that had been difficult to find between land title and CFR, and this will be unstable, as we will see. It is a response to criticisms centring on the intangible, unassailable nature of land title: while it is supposed to guarantee the security of the holder but in the event of fraud or error, it in fact allows dispossession and enables impunity, particularly in cases where demarcation and land marking are carried out without informing local stakeholders. The CFR was clearly a title not guaranteed by the state, and could be challenged in court, as can property titles wherever the cadastre has a fiscal function and does not prove ownership. The new Land Ownership Certificate is still intangible, but it temporally violates this principle by assuming that it can be contested in the event of fraud or error within one year after the discovery of the fraud (art. 146). However, any action lapses after five years from the date of establishment of the Certificate of Land Ownership.

The Code follows the logic of the 'confirmation of land rights', with two ways of obtaining a Land Ownership Certificate. One is on an individual basis and follows the former standard procedure of registration, with some amendments.<sup>40</sup> This process must respect a maximum duration of 120 days (art. 139). The other is collective, via the PFRs or collective confirmation processes (art. 142 ss), at the request of local authorities or a group of urban owners organised in a land interest association. The Code suppresses the intermediate documents (residence permits, administrative certificates, CFRs) which, as we have seen, were until now the most accessible documents, and the most used by citizens. However, it creates an *Attestation de Détention Coutumière* (ADC, Attestation of Customary Possession) for the rural environment, a new intermediate document issued by the local land management

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<sup>40</sup> In particular, in terms of local information for the persons concerned.

offices. In individual applications, this attestation, relocation certificates (obtained in land subdivisions), and tax notices for the last three years can be used as 'presumption of ownership' documents to initiate the confirmation request. The recognition of tax notices as implying a 'presumption of ownership' is an important step toward the recognition of peaceful occupation as source of ownership. However, sales agreements, residence permits, administrative certificates, CFRs are no longer recognised as documents allowing a person to apply for a Land Ownership Certificate. They can only be used, among others, in courts.<sup>41</sup>

As in the 1965 law on land ownership, the confirmation of rights is not mandatory. This maintains a dualism between plots having a Land Ownership Certificate and other plots. However, a Certificate is required for any sale or transfer (art. 17), under penalty of nullity. A 'certificate of membership' (mentioned but unspecified in the Code) may be issued by the Land Agency to allow the sale of a plot whose registration is ongoing. As in the 1965 law, only sales create an obligation to obtain a certificate, and the transition from 'informality' to land title is thus progressive, with a long period of coexistence between informal and titled plots. Any sale concerning a titled plot of land must be drawn up in the form of a notarial deed or, failing that, under private contract and deposited in the minutes of a notary (art. 18), before being copied and added to the Land Ownership Certificate by the local land office.

In urban areas, possession of a Land Ownership Certificate is the norm. Housing permits have been abolished. The idea of a quasi-automatic transformation of existing precarious housing permits into land ownership has therefore been abandoned. A housing permit is not even recognised as a document indicating presumption of ownership. The Code reaffirms that housing permits can only be issued on State titled land.<sup>42</sup> The future of the thousands or hundreds of thousands of housing permits issued by communes is thus unclear. Condominiums have been created, as well as construction leases.

In rural areas, the Code maintains the institutional framework created by the 2007 law, with a land management committee at commune level, with few prerogatives, having branches in every village. Every land transfer contract (final or temporary) relating to rural land must be registered at the village committee. The Code also integrates the PFR, which now leads to Land Ownership Certificates. Procedures for obtaining a Certificate for a plot registered in a PFR seem contradictory: following art 200, it seems to be automatic<sup>43</sup> but elsewhere it seems to occur upon request (art. 203-204: the issue is made within one month, on request). CFRs already issued are '*upon simple presentation by the holder, transformed into a Land Ownership Certificate*' (art. 520) by means of a confirmation request form and identity document. The rules that apply to rural land vary depending on whether or not a PFR exists on the area. Some measures, which are not very precise, concern user rights and their formalisation in the form of a written contract. The Code therefore introduces specificities for untitled rural land, which is inconsistent with its ambition to standardise the law and reproduces the problem of delimiting rural land, which was criticised in the 2007 law. However, the Code does not recognise any specific legal status for rural tenure, except for the Attestation of Customary Possession, whose role is unclear in the text). Therefore, it

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<sup>41</sup> However, administrative certificates were recognised by the 1965 law (art. 90).

<sup>42</sup> Article 380: 'The housing permit is a precarious and revocable authorisation issued by the State to a person on a domain previously registered in the name of the State. It may only be used to provide proof of the right of use or usufruct. The judge cannot base a confirmatory decision of ownership on it.'

<sup>43</sup> Art. 200: at the end of the preparation of the final documents of the rural land plan, a Land Ownership Certificate is issued to each holder registered in the list of rights-holders.

reproduces the traditional division between 'informal' land and registered land that existed prior to the 2007 law.

The Code establishes the cadastre (chapter IV, art. 452-481), with a triple vocation: technical (representing all the plots of land in the country), fiscal, and also legal, for land covered by a Land Ownership Certificate. The Code also defines the rules for the management of the public and private domain of the state and of local governments. ANDF is in charge of the state domain, it '*ensures the identification and monitoring of the State's built and non-built properties and holds the list of the State's land located abroad*' (art. 297), and it '*holds, by department, the general picture of the State's real land properties*' (art. 298). Land administration bodies already had this responsibility, but it was never discharged, especially since a large part of this domain, both public and private, has never been delimited and only a small part of the private domain has been titled.

The Code incorporates an innovative principle of 'extinctive' prescription for customary land, in order to avoid former owners or relatives of former owners challenging the sale of plots of land. However, no prescription is possible for land titles, even if it existed in the 1965 law for the benefit of the state (art. 82). The Code also creates a right of pre-emption by the state, exercised by ANDF, in order to reconstitute a private domain of the state. However, the purposes and modalities of pre-emption are not defined by law or by decree. The Code devotes a full section to the question of litigation and defines the methods of contestation and arbitration. To avoid the destruction of buildings in the event of the loss of a lawsuit by the buyers, a procedure allowing the losers of a lawsuit to buy back the land in question is included (art. 527 and following). The Code also introduces a criminal land law, which has not existed until now: to discourage fraud and errors, it provides for severe penalties, both for individuals and for official officials (mayors, stewards) (art. 487–515). The penalties provided for land administration managers in the 1965 law (art. 176) were set at '*200 to 2000 francs for a first contravention, and dismissals for the second*', have never been revised, and have not been very dissuasive<sup>44</sup> and have not been applied. The heavy threats apparently have a real deterrent effect on local elected officials in particular. It will be necessary to see if they materialise and make it possible to end the wide impunity that has so far been the rule.

As provided for in the Land Policy Statement, the administration of land rights (issuance of land titles, registration of transfers, cadastre management) is entrusted to ANDF, placed under the supervision of the '*Ministry in charge of land and domain*' (art. 416). This agency brings together functions previously dispersed in different institutions and must have decentralised offices (BCDFs) in all communes of the country, with extensive responsibilities. In particular, each BCDF has a manager capable of issuing land titles.

ANDF is managed by a board of directors open to different types of actors, including farmers' organisations and the associations of commune heads. It is supported by a Land Advisory Council, which is a steering body (art. 424 and following) that is also responsible for handling some cases or conflicts, and a Compensation Fund (not yet set up) designed to enable the state and local authorities to expropriate or purchase the land they need for infrastructure.<sup>45</sup>

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<sup>44</sup> 200 to 2000 FCFA = 0,3 to 3 €

<sup>45</sup> Until now, in rural areas, the appropriation of land for public use is negotiated with landowners, who transfer it to the municipality free of charge.

## 5.2 Criticisms of the Code and the 2017 review

The controversies during the preparation of the Code did not stop after the vote. The preparation of the decrees raised various practical problems that justified a tidying up of the text. The need for a partial revision was quite quickly recognised. ‘*The Code is a human work; like any human work, it has imperfections*’, was heard from various sides after its promulgation. The amendment was launched shortly after Patrice Talon took office in 2016. Strongly politically supporting the reform, he also lowered the cost of the procedures and increased ANDF’s funding.

### 5.2.1 Challenges to Land Ownership Certificates and inconsistencies in the text of the Code

The professional organisations of specialists working in land issues had been largely involved in the preparation of the Code. However, shortly after the vote in April 2013, all of them (lawyers, notaries, bailiffs, surveyors, auctioneers, and architects) published an inter-professional communiqué explaining their criticisms<sup>46</sup>. For them, the draft law made “*confusing terminological choices and introduces new legal concepts whose consequences have not been assessed and whose compatibility with the Benin legal system is uncertain. There is a worrying mix of the notions of prescription and foreclosure<sup>47</sup> and the absence of a strict distinction between simple customary tenure rights and property rights*’. The Code did not remove legal dualism. Much more, it introduced land insecurity by challenging the ‘*inviolability and sanctity of ownership*’, and by introducing a five-year time limit during which it is possible to contest a Land Ownership Certificate. ‘*The deliberate simplification of formalities (...) has led to the replacement of land title by the land ownership certificate but the reserves of error and fraud on the one hand, and the 5-year time limit, on the other hand make the Land Certificate permanently fragile and create genuine land insecurity. As soon as a simple administrative certificate is sufficient to defeat the 5-year foreclosure and as long as there is an administrative or judicial claim or dispute, the land ownership certificate will never be final and unassailable. It therefore appears that the law has not taken into account administrative practices and the land mafia that operates in the field of the services of the competent local authorities.*’

For these professionals, those few openings in the conception of land titles represented sources of insecurity and were unacceptable. They followed the analyses of lawyers (Djogbénu, 2013), who, while acknowledging the innovations of the Code, also considered that the possibility to challenge a Land Ownership Certificate weakened it deeply, and was ‘*a step back from the 1965 law*’ (p. 28).<sup>48</sup> With regard to the ‘Benin sociology’, they considered that this measure would increase the number of disputes, with family rights-holders waiting until the last moment to contest a sale, and the risk of the certificates being challenged preventing banks from granting loans. The arguments reflected as much real risks as a refusal to think outside the box of land title, sometimes in bad faith. For example, an administrative certificate cannot challenge a Land Ownership Certificate: ‘*when the Rural Land Certificate and/or the administrative certificate are in conflict with the Land Ownership Certificate, the judge grants a provision to the Land Ownership Certificate*’ (art. 378).

<sup>46</sup> <http://news.acotonou.com/h/2332.html>.

<sup>47</sup> The Code mixes acquisitive and extinctive prescription (art. 30 ss.).

<sup>48</sup> It should be noted, however, that they consider a little further on (p. 72) that the possible cancellation of a fraudulent title – instead of mere compensation as in the 1965 law – is ‘*a remarkable step forward*’.

This communiqué was published in April 2013, between the vote of the Code and its promulgation. These convergent critics of all professional organisations raised questions about the future of the text. *'Aren't the shortcomings noted in the law likely to hinder its implementation? Because, we also know that in Benin, laws are sometimes passed without ever being applied. The Land Code, which is of vital importance to the population, is it not in danger of the same fate?'* (in *Adjinakou* newspaper, 23 April 2014).

## **5.2.2 The effects of the Code on the communes and their attempts to get involved in the issue of land**

The communes had been little directly involved in the preparation of the reform. They understood only after the vote on the Code how much they would be impacted, including in their budgetary resources. The revenues derived from their land responsibilities constituted a significant part of their resources: throughout the country, resources of land origin represented 14% to 18% of communal revenues, with the following distribution: assertion of rights and transfers (47%), sale of developed land (32%), earning on allotments (11%), and taxes on built and non-built properties (10%)<sup>49</sup> (Gandonou and Dossou-Yovo, 2013: 29-30). Under the Code, land sales must be recorded by a notary and communes no longer have the right to endorse sales agreements and receive taxes for that. This jeopardises their finances and the *Association Nationale des Communes du Bénin* (ANCB, Benin National Mayors' Organisation) have been particularly active after the Code vote. It engaged in efforts to secure a seat in the ANDF Board of Directors and the Land Advisory Council, and to recover some prerogatives for communes, which it finally achieved with the changes in the ADC, integrated in the 2017 review of the Code.

Development projects carrying out PFRs and ANCB have also invested the new ADC and insisted on the need to better define its content and modalities. They argued that the local land management offices would not have the necessary knowledge on local land rights to judge the validity of the claims. Since those attestations had to be established with the village land committees, which are under the supervision of the commune land management committees, they should be issued by the communes and not by BCDF. Projects and ANCB have thus worked together to propose a methodology and format for ADCs and have fought to ensure that their delivery – which must be paid for – goes back to the municipalities, in order to partially replace the loss of revenue due to the abolition of sales agreements.

## **5.2.3 The 2017 amendments**

### **5.2.3.1 A return to land title**

The 2017 amending law provided for the disappearance of the Land Ownership Certificate and the return to the land title, with its intangible nature. Any fraud or error can again only give rise to compensation, paid by the state from the land compensation fund (art. 147)<sup>50</sup>. The state may then claim compensation from the fraudster.<sup>51</sup>

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<sup>49</sup> In practice, several municipalities have waived taxes on non-built land due to the difficulty of collection. No property taxes are levied in rural areas.

<sup>50</sup> As the same time, Art.148 seems to introduce uncertainty on this issue: *'in the event of a material error in land title or failure to comply with the legal procedure for issuing land titles, or any other forgery that has occurred in the procedure for registering and confirming land rights, the injured party shall receive compensation without prejudice to any action to claim the right to property'* (underlined by author).

<sup>51</sup> This expands its mandate and increases its resource requirements.

The return to land title was legitimised by both the OHADA (the French-speaking Africa regulations for business) and the fears expressed by professional orders following the 2013 vote. The reaffirmation of the definitive and unassailable nature of the title may result, as was the case in the past, in sanctuating spoliations. The fact that the state should compensate victims is an innovation, which might be costly for the state if there were many cases.

### **5.2.3.2 ADCs under the responsibility of the communes**

In accordance with the demands of ANCB, the 2017 law recognises the responsibility of communes to issue ADCs, in a compromise to ease tensions with municipalities and limit their loss of revenue induced by the Code. It is now the mayor who receives requests for ADCs and organises the procedure (art. 352), but the Code does not explain whether those ADCs are registered with ANDF, and how.

ANCB itself prints and sells the forms to the communes. In April 2018 ADCs were just beginning to be used. In the 2018 Finance Act, the state defined tariffs, preventing communes from setting them freely and reducing their expectations in terms of financial resources. An ADC would cost around 35,000 FCFA, depending on the size of the plot. This is well above the cost of the former CFRs, which was between 2,000 and 5,000 FCFA, depending on the communes and the size of the plot, and this will make it difficult for rural people to access ADCs.

In practice, as lawyers involved in the Code recognise it, the ADC is nothing more than a renewed administrative certificate, with more formalised procedures and a mandatory field survey involving village land committees. The first requests registered in the municipality of Tchaourou were made by buyers, looking for a 'document of presumption of ownership' to initiate a request for land title. As farmers' interests in paper is not very high in most of the country, it is very likely that the ADC will mainly play this role, diverting it from its primary purpose.

### **5.2.3.3 More possibilities for requesting a land title**

The 2013 text was very restrictive and only a few documents could be used for requesting a land title. The documents giving presumption of rights have been extended and now include administrative certificates and CFRs (in contradiction of art. 520, which still provides that they are automatically processed in land titles). Sale agreements are still not recognised as giving a presumption of ownership.

An additional paragraph to art .112 should make it easier to transform housing permits into land titles: *'the State shall issue land titles to holders of a housing permit on a plot belonging to it under the conditions set by decree issued by the Council of Ministers'*. A first decree (No. 2018-473 of 10 October 2018) has been promulgated, which concerns housing permits established on land (registered or not) belonging to the state. Another one is in preparation for housing permits delivered by communes on non-state land, outside the law, which is a crucial issue for many urban dwellers.

### **5.2.3.4 Other adjustments**

The duration of the transition phase has been extended to 10 years (art. 256), i.e. by 2023, which will be barely sufficient for the actual deployment of the system.

Other amendments reflect compromises made to municipalities and projects. For example, ANDF remains responsible for PFR operations, but can now ‘delegate to any public or private legal person’ (art. 196). Note that several contradictions or inconsistencies (or even French-language mistakes) identified earlier have not been addressed, showing the limited ambition of this review.

### 5.2.3.5 A strange new section on borders

The 2017 version of the Code also contains a long new section of 11 articles on ‘land ownership in border areas’. This section provides that land located in a 2.2-km strip along borders that is not already state or local authority property must be incorporated into the public domain of the state (art. 346-3). It can only be registered in the name of the state or the local authority (art. 346-5)<sup>52</sup>, but it can be exploited with the authorisation of the Ministry of the Interior (art. 346-8 to 10). Land included in 200-metre-wide ‘high security’ zones cannot be the subject of a private occupation, it can only be used by the state for military or mining purposes (art. 346-6); but this does not cover land in the border strip.

The need for a ‘national border policy’ was mentioned in the Land Policy Statement (p. 35). But the issue was about materialising the borders, not excluding people and villages settled near the borders. This surprising section is contradictory to the focus of the Code, which does not deal with state public domain. According to some informants, a specific law on borders had been prepared but had not been put on the agenda of the National Assembly. The consultant responsible for drafting the revised Code introduced the content of this draft law in this new section into the Code at the request of the National Border Management Agency, and the Members of Parliament hardly noticed it during the debate in the Assembly.

## 5.3 Synthesis: The Land Code, an updating of the land law with innovations and contradictions

All the lawyers interviewed acknowledge that the Land Code is a definite achievement. It is a single, up-to-date text, integrating private land and state ownership. It brings some innovations to address real problems, such as measures on litigation, extinctive prescription, and criminal land law. It also partly endorses the innovations made by the 2007 Rural Land Law. However, many interviewees regret the lack of innovation and the weight of notaries and surveyors in the drafting process. For them, the Code does not signify a legal revolution. No in-depth debate has been made regarding the real problems faced by citizens and the Code is above all an updating of the 1965 law.

The Code reflects a very normative conception of land rights. Far from starting from current land rights and problems faced by citizens to design concrete solutions, it mainly reflects the classic conception of land titling, considering that most of the evil came from the fact that the law was no longer respected, and from the lack of technical tools, and that it is the practices that must be brought into conformity with the law. In the typology suggested par Joseph Comby (1998) (see section 1a), the reform mainly follows the logic of *‘improving practices and reorganizing administrative means in compliance with existing law’*, coupled with elements of *‘a policy of punctual improvements leading to significant improvement’*. We are far from more radical approaches aimed at massively transforming housing permits into land

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<sup>52</sup> Which is contradictory: state public domain cannot be registered. Registration by the state incorporates the plot in the private domain of the state – that is, the land it owns as a private owner – and not its public domain.

titles through collective registration, and even more so from strategies for recognising various kind of land rights 'from the bottom up', as products of history and contexts. In fact, state agents and professionals working on land issues have blocked various attempts at simplification and have succeeded in ensuring that practical obstacles to cheap and simple registration are maintained or added whenever possible. They have largely closed the avenues for collective land titling, put forward since the 1990s for the urban sector. They have succeeded in creating suspicion about PFRs, removing the CFRs, and making access to land titles for plots registered in PFRs difficult. The acquisitive prescription, provided for in the 2010 draft Code, has been replaced by an original extinctive prescription, which is a step back: in the former case, a person who demonstrated that he had been occupying a plot peacefully and in good faith for 15 years would be directly recognised as the legitimate owner of this plot. Now he will be able to dismiss challenges to his rights based on claims from older occupants, but this will not give him any right of ownership: he will have engaged the full procedure from the beginning and will pay the full costs.

The Benin reform is thus more a reform in land administration than a reform changing the way land issues are dealt with. This strategy allows significant progress but it also has its limits, especially for the rural world.

- The studies commissioned by MCA to prepare the reform did not fully support the idea that registration and land titles were an indispensable solution. They showed that a significant part of the conflicts concerned the legitimacy of sales and could therefore be addressed by improving contract negotiation and validation. Another part concerned inheritance conflicts (Steward Intl, 2009a), which the title does not prevent. The cost and duration of dispute resolution did not differ significantly depending on whether the plot of land has a title or a sale agreement (INSAE, 2012: 130). '*...the proportion of loan amounts secured by a Land Title is very low (1% at most)*' (Steward Intl, 2010: ix).
- Despite the willingness of its promoters to move away from legal dualism and to standardise the law, the Code could not avoid reproducing this dualism, maintaining a divide between titled lands and others. This applies to the urban environment, at least until every urban plot is titled, which will necessarily take time. It is much more the case in the rural environment. There, the Code had to create a new intermediary paper, the ADC, to respond to situations where title is unaffordable. But, while being legally defined (which was not the case with the old administrative certificate), ADCs may pose the same problem as the old certificates: a lack of cartographic support to locate the plot of land, a relatively high cost, from 30 to 50 000 FCFA (€45 to €75), that can be problematic for poor farmers or in places where the need of such a paper is not obvious for rural dwellers. One can even perceive a step backward compared to the CFR, which was certainly limited to plots of land registered in the PFR, but represented an intermediate document, with the same legal content, and which was really inexpensive (from 2,000 to 10,000 FCFA depending on the surface area and the communes, i.e. from €3 to €15).
- Although it officially aims to reduce insecurity and conflict, the *Code only addresses the problem of sales conflicts by prohibiting any sale on a plot without land title*. While legally coherent, such a measure is difficult to apply in a context where very few lands have a title and where the rate of issuance of new titles by ANDF remains very low. Even more, it imposes a temporality that is incompatible with the rates of sales (distress sales, which are urgent, form the majority in rural areas) and the cost of a title is still far above the value of the land in most regions. Moreover, nothing is said about what should be put in sales contracts, and in particular how to ensure that the seller has the right to sell and –

in the case of family plots<sup>53</sup> that the other rights-holders agree. While they play an important role in the land market, the profession of intermediary or direct sellers is not regulated. A significant part of the functioning of land markets is not addressed.

- Although incorporating provisions specific to the rural environment, the Code refuses to take into account the diversity of rights existing in rural areas and the existence of collective rights at different scales. Such rights are mentioned here and there, but their status and treatment remain extremely ambiguous. The reality of land rights in rural areas is very diverse as we saw. They are certainly greatly individualised in the south but not elsewhere. While PFRs have sometime induced a dynamic of individualisation, this is not general and does not always extend to individual ownership. By proposing only individual ownership, the Code induces tensions both within extended families and between indigenous people and migrants (Lavigne Delville and Moalic, 2019). This is far from the ambition to '*overcome the climate of mistrust that generally prevails between customary landowners and that are generally indigenous and migrant exploiters*' (MCA Compact, project on access to land, p. 16). This situation jeopardises the principle of access to land for family rights-holders, which is obsolete in the densest areas, but which remains valid elsewhere and plays an important role in social security.

Let us add that, subject to an evaluation of practices, *the measures planned to combat land speculation in rural areas appear largely symbolic*: authorisations are required for land purchases in rural areas (art. 261), with an obligation to carry out a development project above 2 hectares (ha) and authorisations that depend on surface thresholds.<sup>54</sup> No acquisition of land can exceed an area of 1,000 ha, but 1000 ha is already huge for Benin and it is easy to bypass the thresholds by dividing the purchase into several contracts. A 'per purchase' threshold does not prohibit in any way accumulation of ownership far exceeding 1,000 ha for a single body. Moreover, the experience of authorisation thresholds, which exist elsewhere in Africa, shows that they more frequently result in political control over major acquisitions than in real regulation linked to the quality of productive projects. There is currently no definition of the criteria for judging this point and ANDF does not have the necessary skills to do so. Finally, the prohibition on the purchase of land by non-Beninese, which is a problem for border residents and migrant farmers, is also symbolic here, because it is sufficient to have a joint venture with a Benin shareholder or to create a subsidiary under Benin law to circumvent it. The Code also takes from the 2007 law the measures of forced rental in the case of unused land, but their practical feasibility is questionable.

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<sup>53</sup> The Code of Family addresses this problem on paper, but not in practice, as shown by the many conflicts over family land and inheritance.

<sup>54</sup> Authorisation by the municipal council between 2 and 20 ha, by ANDF between 20 and 100 ha, by the minister in charge of land after approval by the municipal council and ANDF between 100 and 500 ha, and by the council of ministers above 500 ha.

## 6 Issues, strengths and limitations of an ambitious reform of land administration

Benin's land reform is still being deployed and not all of its instruments and mechanisms are yet in place. Moreover, it is not totally fixed and its implementation itself is leading to changes and adjustments.

One of the interesting aspects of the reform is precisely that it is adaptive: its meaning is not completely stabilised. How will the housings permits be treated? How and at which rythm will the cadastre put in place? Will shortcomings be dealt with and how? Moreover, the reform will have to face the reality of both the enormous interests at stake in the peri-urban area and the habits and routines in place: *'Are the actors of land corruption, most of who are still in the State apparatus, willing to adopt formal regulations or even to secure land? This question remains unanswered'* (Kakai, 2014: 10). The capacity of the reform to reorganise over time the practices of all stakeholders is still an open question. The issue is not only important for ordinary citizens who have to adapt to the new rules and formalise more than before their land rights, it is even more so for the people who had an interest in the previous situation: the 'land mafia', the corrupt civil servants, the surveyors manipulating the land subdivision processes, etc. It is also an important issue for the agents of land administration offices, who will undoubtedly face numerous demands or pressures to be flexible or to accept manipulating the files, and for the agents of communal land services, of tribunals, etc. The success of the reform, its ability to clean up the sector and significantly enlarge access to formal rights, will depend on how far all of these actors will change and adapt their rules and their practices, how far the one who see their interests or routines challenged will be able to resist, circumvent, or neutralise it. The harsh penalties provided for by the law worry many actors, but will they really be dissuasive in the long term? Will the culture of impunity really end?

It is clearly too early to attempt a review or evaluation. Nevertheless, the history of the reform, and an analysis of the actors involved and the difficulties encountered, make it possible to put into perspective its conception, the choices made, the progress made, and the possible risks or impasses.

### 6.1 A difficult negotiation: promoters and opponents of reform

The broad consensus on the need for reform by the 2000s masked different visions of the origin of the land problems and the solutions to be promoted, with an intersection of political visions, a variable knowledge of land realities as they are experienced by citizens, and corporatist or institutional visions and interests. Those political conceptions and representations of the land sector and those interests strongly influenced the reform process.

The main foundations of the reform were laid very early on, in the 2005 Compact's project document, but its precise formulation and implementation have been a process, hampered by conflicts of interest and vision, which have affected its trajectory. Several groups of actors and dividing lines can be identified.

#### 6.1.1 Inter-institutional struggles to protect interests

The reformers first faced DDET, within the Ministry of Finance, responsible for the issuance and administration of land titles. We saw that DDET's lack of equipment and its practices, but

also its high degree of centralisation, were one of the causes of the problems identified. The decentralisation of DDET had been planned for a long time: '*Five (05) devolved conservator's offices called District Domain Offices have already been formally created by Memorandum No. 183/MFE/DC/SGM/DGID/DDET of August 10th, 2004*' (Compact, Annex 1, p. 6). The MCA fought throughout the Compact for the opening of those District Offices, which DDET slowed down as much as it could. Such a decentralisation was essential to bring land administration closer to the people, but it meant cutting the power of the DDET head, who had control over title application files for almost all the country and in particular on the periphery of Cotonou where the land issues are most intense. The strong resistance of DDET to any decentralisation finally convinced the MCA team that internal reform was impossible and that land administration should be entrusted to an autonomous agency.

The Ministry of Finance did not seem to be very active in formal debate arenas, preferring to follow the process and assess the risks for it without being overly visible. DDET exercised strong passive resistance during the first phase, doing everything in its power to ensure that the decentralised offices, although largely financed by the MCA, did not open. When the reform was adopted, the Ministry of Finance invested heavily to win the battle for the agency's supervision. Once they gained it, they became supporters, undertook a series of internal reforms to integrate the ANDF into their organisational structure, reform the scope of DDET's competence, and organise the transfer of files.

The IGN is part of the inefficient public structures in a situation of monopoly rent. The reform tried – without success – from the outset in the early 1990s to reform the IGN by integrating it into ANDF. The entire history of PFRs has been marked by complicated relations with the IGN, which did not – or only did so very late – provide the – remunerated – services that were required of it in terms of the provision of aerial photographs or satellite images. During the MCA project, the IGN was responsible for the quality control of the PFR maps produced, which it did with very variable rigour. They requested funding of a new building in return for agreeing to sign the partnership agreement. The IGN finally avoided integration into ANDF.

The reform also opposed the communes. MCA team and land specialists strongly criticised their land practices (allotments, issuing administrative certificates, asserting sales agreements without real rigour, and issuing housing permits outside the legal field). Mayors rightly consider that the reform represents '*a deliberate desire of the legislator to reduce the prerogatives of communes in land management*' (Gandonou and Dossou-Yovo, 2013, p. 24). As we have seen, the reformers condemned communes' land practices without taking into account the institutional deficiencies of the state, which partly explains their 'semi-formal practices', and without attempting to reorganise and upgrade the practices. The Code removes most of the land responsibilities of communes, also greatly reducing their resources. After the vote on the Code, communes fought to recover some responsibilities and incomes.

The reform also challenges the role played by MAEP on rural land. From an institutional point of view, the fact that the management of the reform has been entrusted to the Ministry of Urban Planning extends its prerogatives to the rural world. MAEP tried to maintain control over rural land, mainly in supporting the PFRs, the supervision of which was explicitly assigned to it in the 2007 law. MAEP is divided between the promotion of family farming – and thus the protection of peasant rights – and of agribusiness.<sup>55</sup> Its defence of the 2007 law

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<sup>55</sup> The first draft of its 2005 policy document was clearly pro-agribusiness and had to be rewritten following reactions from farmers' organisations and donors. The official position is now in favour of a mix of family farming and agribusiness, while individuals have contrasted visions.

is as much about this institutional challenge as it is about a vigorous defence of peasant rights. However, the Ministry is politically and technically quite weak and it could not really influence the reform. After the vote on the Code, MAEP repositioned itself around the productive dimensions of land and invested in the theme of tenure contracts, totally neglected by the Code.

### **6.1.2 Fighting in defence of the specific features of the rural world: between challenging the foundations of reform and negotiating compromises**

The historical network of actors supporting PFRs as an alternative to land title was partly anchored within MAEP, partly within the various projects implementing PFRs. Some of them, who were integrated into the MCA team, were considered as traitors by the others, who continued to defend PFRs as an alternative and challenged the very logic of the reform. They highlighted the specificities of land tenure in rural areas; they strongly contested the land title, both in its logic of exclusive private property guaranteed by the state, and in its procedures, cost, and defects in terms of people's rights security. They tried to preserve the CFRs as a durable solution for farmers and a commune-level management system for those certificates, autonomous vis-à-vis the national land administration. For them, the Land Code had to only be a hat, encompassing various sectorial texts including the 2007 Rural Land Law.

It does not seem that associations representing urban populations have mobilised on the subject or criticised the focus on land title in urban areas. Regarding rural contexts, as we have seen, a young farmers' union quickly mobilised against the risk of land grabbing and fought to obtain better control over those risks. The umbrella farmers' organisation, the *Plateforme Nationale des Organisations Paysannes et de Producteurs Agricoles du Bénin* (National Platform of Farmers' and Agricultural Producers' Organisations of Benin) explicitly entrusted the land reform issues to *Synergie paysanne*. Its leaders, who are big farmers, did not necessarily contest the land title itself. Between the lack of knowledge over the stakes and the interests of the big producers, rural organisations did not question the logic of the title itself. On the other hand, livestock associations were rightly concerned about the future of pastoral areas, mobility, and access to crop residues in a Code based on private ownership that does not say a word about their existence. With the support of the MAEP livestock directorate, they worked in 2015–2016 on a draft Pastoral Code, which was passed on 3 July 2018 and promulgated in April 2019. Its articulation with the Land Code remains to be studied.

The network of experts defending historical PFRs, MAEP, and the farmers' organisations thus shared interests in working together, exchanging information on the process and trying to influence the draft Code, even if their own priorities were different. After the Code vote, each of them repositioned themselves around the issue of implementation and the practical problems that the Code posed to them. *Synergie Paysanne* tried to work on farming land contracts. The projects teams made a new alliance with communes. The new issues related to the future of existing CFRs and completed PFRs, the role of communes in land management, technical criteria for the implementation of PFRs, modalities for the articulation of PFRs, and the future cadastre. These were all points of contention with an ANDF that had just been set up and was seeking to assert itself. Those tensions reflected both different conceptions of reform, a defence of PFRs (which seemed threatened by the ANDF) and a demand for the autonomy of projects and their programming from ANDF. In particular, at the end of 2016 there was a major conflict between ANDF and projects over the capacity of projects to implement scheduled PFRs. While the latter agreed that new PFRs had to be

integrated later into the cadastre, they refused to stop making new PFRs until the cadastre software was ready.

At that time, the question of the desirability of formalising land rights, which had been raised in the early 2000s around the scope of validity of PFRs and the case of pioneer fronts and village reserves (Edja, Le Meur, and Lavigne Delville, 2003), had largely disappeared from the debates, which focused more on operational issues. The questions on the relevance of land title to the rural environment no longer took the form of a challenge to the title itself, but of questions about the spaces left by the Code for other options: is it still possible to deliver CFRs on PFRs that are already finished? Are PFRs without legal formalisation useful for securing farmers' rights? Etc. In private, some stakeholders questioned the relevance of continuing to conduct PFRs in the new context.<sup>56</sup> Others are trying to address the issue of user rights, and the relationship between rights-holders and farmers, in conjunction with the Ministry of Agriculture, thus investigating a related field of land tenure security, which has always existed in historical PFRs but had remained secondary.

The new version of the PFR procedures manual, prepared in 2015–2016, incorporated a new requirement for precision, at the risk of making it impossible to integrate previous PFRs into the future cadastre. ANDF blocked its approval, which has been interpreted by project teams as a desire to marginalise or even to suppress PFRs. In 2016, the various projects were very active in supporting the National Association of Communes in the preparation of texts on ADCs, which they considered to be a substitute for the CFRs. In October 2018, ANCB, with the support of the *Projet Foncier local* (Local Land Management Project), funded by the Netherlands, organised a national workshop on land, to assess the situation, almost 5 years after the vote of the Code and at the end of the project. This workshop was an opportunity to publicise the controversies between communes' heads and ANDF and to make pressure on it.

### **6.1.3 Professionals in the sector, between carrying out the reform and protecting vested interests**

The last group of actors is made up of the various professionals working in the land sector, in particular surveyors and notaries. Surveyors have, by all accounts, a very strong political weight in Benin. They are at the heart of the defence of the classical land titling procedure, which offers them comfortable income. Indeed, for each plot, they have to do two delimitations, the first one to make the map that is part of the application, the second one during the titling procedure to check the limits in presence of the neighbouring land owners and install the cement landmarks. The decree creating their order gives them a monopoly over all topographic work even where less skilled professionals could do it cheaper (we have seen how they fought for leadership over land operations in MCA PFRs). They are also among the actors who benefit greatly from the confusion by managing land subdivisions in a discretionary manner, manipulating registries and selling the land information they keep for themselves. IGN surveyors frequently hold positions both in the public service and private practice, which presents obvious conflicts of interest. They have been at the forefront of demands to apply urban standards to rural areas, and to take advantage of the use of high-precision GPS to impose a unnecessary accuracy. MCA commissioned the President of the

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<sup>56</sup> An evaluation by *Kreditanstalt für Wiederaufbau* - the German Funding Agency - explicitly asked the question in May 2018.

Order of Surveyors for the study on PFR techniques (Steward Intl, 2009d), which, not surprisingly, advocated the application of titling standards to PFRs.

Land professionals can be considered as co-authors of the reform, including when they have hindered any simplification of procedures that would be against their interest and when they have challenged the choice of Land Ownership Certificates. One can wonder if and how far extending their role and clarifying the rules of the game will be sufficient to stop their illegal practices. Notaries also benefit greatly from the reform: at the end of the transition period, no plot of land can legally be sold without the sale being carried out in the form of an authentic deed or in any case registered in the minutes of a notary. This increases notaries' volume of activities and allows them to develop their intervention outside urban centres. Although they were involved in the drafting of the Code, surveyors and notaries were both, together with the other professional bodies (bailiffs, architects, lawyers, etc.), signatories in April 2013 to the open letter vigorously contesting the Code.

The promoters of reform have thus had to fight against an ossified land administration and have had to force it to reform itself, rally professionals who were part of both the problem and the solution, and marginalise those who contested the basic options proposed while taking into account some of their proposals. In an interview, one of the reform's main architect said his work was in fact a huge task of administrative diplomacy. Having succeeded in overcoming those many obstacles, in bringing the draft Code to a successful conclusion and in obtaining the political support necessary for the implementation of the reform, is in itself an important achievement.

## **6.2 Maintaining an orthodox approach to land and land security, at the risk of continuing to exclude the majority of citizens**

The conception of land and land administration advanced by the reform promoters is based on the traditional conception of registration and land titling. Land title is seen as both a necessary and sufficient condition for land tenure security. Such a vision contrasts with current analyses that highlight the fact that a title is only valid if institutions (land administration, justice, etc.) guarantee it, show that it is therefore possible to have land tenure security even with 'informal' rights and consider land tenure security primarily as institutional issue (Lavigne Delville, 2006; 2017).

Standard land titling is based on a colonial model of 'creating ownership from the top' (Comby, 1998a). It is very different from the logic of the state recognising property rights that have been constructed 'from the bottom up', which has historically been the experience in Europe (Stamm, 2013). The idea that ownership can emerge from a gradual consolidation of rights with permanent occupation, as proposed by the promoters of the Urban Land Registry. There may be various legitimate rights not related to private property, as in rural areas, where it is difficult or impossible to accept this perspective. For those who support this orthodox conception of land titling, official documents issued after field survey – like former administrative certificates and now ADCs – are not considered as proof of ownership. They are only indicators of a 'presumption of ownership', a first step that is necessary to begin the titling procedure. Far from constituting the very basis of legal property rights – as is the case in most European countries – the contract of sale is not even considered as proving a 'presumption of ownership'. It is only a preliminary step to requesting an administrative certificate or an ADC, which then allows an individual to begin making an application for a title.

With the Land Code, the procedure for obtaining an individual 'confirmation of rights' is almost the same as the former titling process. The same stages are maintained, with maps needed twice, with a publication in the Official Gazette of each request while local information of local stakeholders is not really secured. BCDF managers acknowledge that they do not have the means to verify whether the information about a future plot demarcation has really been disseminated in the village. That means that demarcations can be done in the absence of uninformed rights-holders, just as before. LAs we have seen, lack of local information is one of the sources of spoliations, since a demarcation with no opposition allows the land administration to deliver a title.

As we saw, the issue of legitimacy of sales and procedures ensuring it is not dealt with, particularly for untitled plots. Of course, the Code prohibits any sale of untitled land (art. 17), which on paper resolves those issues. However, it was already the case in the 1965 law (art. 5-2) and it proved impossible to enforce. Will ANDF have the means to impose this rule, knowing that it imposes a deadline of several months, which is incompatible with the urgency of financial needs that frequently trigger sales? The same art. 17 states that it is possible to sell an untitled plot if one has a 'certificate of belonging' (*Certificat d'Appartenance*) delivered by ANDF with a 12-month validity. However, neither the Code nor the decrees details what this is, and how it is delivered. The trustworthiness of this certificate does not seem very clear.

Efforts to reduce the fees of a titling process (enshrined in successive finance laws) are real. ANDF services and various taxes should not cost more than 100,000 FCFA (€150). However, the overall reduction in the cost for citizens is doubly limited: first, surveyors freely fix the cost of demarcation, which is one of the major costs of the procedure, and frequently exceed 300,000 FCFA (€450). Second, the registration procedure follows several others (purchase, having a certificate, etc.), and the full cost for users must include those steps, as well as other indirect expenses (travels to the office, etc.). The cost of land titles remains high, but above all for demarcation fees – unregulated and therefore freely fixed by surveyors. Introducing notaries as a mandatory step for transfers adds significant costs upstream: a notarial sales contract or a minute registration costs around 300,000 FCFA (450€). The total continues to be high regarding the value of the plot in towns outside major urban centres and may still exceed it in rural areas.

Defenders of PFRs and of RFUs as a possible source of rights consider that standard land registration and land title have historically been designed in the service of colonial officers and their allies, and then of national elites after independence, and are by no means meant to be in the service of the entire population. The possibility of really lowering the costs is limited as long as it still is the reference. The problem is considerable for urban poor or small middle class. It is crucial for rural dwellers. Therefore, the ability of the reform to make title largely accessible to the population risks to be hampered, to a level that is still difficult to predict.

### **6.3 The issue of cadastre**

Consolidating reliable land information in a single GIS is undoubtedly useful. However, the conception and making of the cadastre raises some questions. Created by the Land Code, the cadastre is supposed to provide information also on untitled plots of land, thus avoiding the problems linked to the fact that legal dualism is maintained. Multi-functional, it has a technical, fiscal, and legal role. It is supposed to cover the entire territory. By assigning a

unique number to any plot of land in the country, whether or not it is the subject of a land title, it intends to avoid ambiguities about presumed owners and facilitate the transition to the title of unregistered plots. As the reformers say: *'with the cadastre, from your computer, you will be able to know who owns any plot of land'*<sup>57</sup>.

The first step to create the cadastre is to digitalise information on existing titles and geolocalise them. A second step is to gather and compile existing land information wherever there has been work to map plots and identify the rights-holders, such as subdivisions, PFRs, and urban land registers. The question here is the reliability of the information, and especially its accuracy when the documentation is old or incomplete (for example, a map of an urban subdivision made 20 years ago): there is a very high risk of creating an obsolete database from the outset, putting wrong names in the software. Even the map itself may be outdated since numerous divisions may have occurred. Buyers who have bought a plot will be invisible, even with a contract of sale registered and an administrative certificate at the commune, because local archives are not examined, which runs the risk of allowing former owners to deny the sales they have done.

The third step concerns the creation of land information on areas on which there is currently no information, which form the vast majority of the national territory. The approach is currently being tested. The PFR methodology, which combines the identification of plot boundaries and the investigation of rights held over it, will provide most of the necessary tools. In urban or peri-urban built areas, the identification of plots of land does not pose any (or many) difficulties, since walls mark the limits. Identification of the presumed owners may be trickier, as the difficulty in transforming the housing permits into land titles has shown. In rural areas, developing the land registry will face the same difficulties as PFRs for areas that are not individually owned (land reserves controlled by customary authorities, lineage heritages, etc.), and for plots where rights are not quasi-ownership. The conception of an absolute right, based on the purging of all existing rights, is a fiction (Comby, 1989) which does not correspond to the social reality of land rights as they exist in large parts of society. Even more than PFRs, the future cadastre will reduce overlapping rights into a single registered property right and exclude other rights-holders since there is no provision for registering them. It will not be able to avoid the risk of profoundly transforming rights at the same time as it registers them, and it will not be able to avoid the risk of generating conflicts and spoliations.

Covering the full national territory is a huge and very costly task. One issue of the current pilot phase of the cadastre is to improve productivity. However, it is difficult to see how the methodology could be significantly simplified and its cost greatly reduced without losing a lot in reliability. The desire to quickly establish a national land registry prohibits the strategy of gradual long-term extension of rural rights mapping, allowed by the 2007 law, which stated that PFRs were carried out at the request of the village. While systematic mapping can make sense in the urban peripheries and rural southern regions of the country, which are densely populated and have an active land market, its cost/utility ratio is questionable in many parts of the country.

In addition, the real problem of any cadastral system is updating it. When it is not possible to ensure the registration of changes, a land information system quickly becomes obsolete (Lavigne Delville, 2010b). Succeeding in registering millions of plots of land in a few years is a challenge that only two countries (Rwanda and Ethiopia, two authoritarian countries) have

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<sup>57</sup> Author's interview, 2010.

succeeded in in Africa. Success in ensuring updating is another: in Rwanda, in some municipalities, the rate of unregistered transfers reaches or exceeds 40%.<sup>58</sup> The ability of the future cadastre to register changes is all the more uncertain since the registered land will not have legal status. The experience of PFRs and of transforming housing permits show that the popular demand for title is not very high. What could be the incentive for people who do not see the interest of a title to pay for the updating of an informal registration of their rights?

Assuming that the obligation to title a plot of land before it is sold can be guaranteed and that every sale is recorded (which is not self-evident, as we have seen), the cadastre will slowly expand and update with the rhythm of sales (and recorded inheritances). But a large part of the territory, where the land is transmitted by inheritance, will remain for several decades outside the updating mechanisms and therefore with obsolete land information, which raises questions about the advisability of systematic mapping, at least for a significant part of the rural environment. Developing a land tax could be a solution, as nobody wants to pay if he is not the owner. However, is it cost-efficient where the value of land is low and the recovery costs high?

The future of the land cadastre therefore depends first on Benin's ability to mobilise the necessary resources to implement it, and therefore on the willingness of donors to provide the corresponding resources. But it depends even more on the ability to ensure that information on 'presumed owners' – with or without presumed ownership documents – is accurate and updated, which could be problematic where sound information does not exist and where there are few or no incentives for citizens.

It could be simpler and more cost-effective not to register every plot but only those where a legal procedure has been made (title, PFR, land subdivisions, ADC, land sale, share of inherited plots with new ADCs, etc.). Designing a cost-effective way of using GPS at a local level to register the limits of such plots could make it possible to incorporate news plots in the GIS on a case-by-case basis, including those having an ADC. Systematic surveys could be commissioned in peri-urban areas or rural areas with a dynamic land market, where detailed information is useful.

## 6.4 The issue of the transition: length and management

These findings raise broader questions about the way the reform's promoters thought the transition from the current situation to the expected one would occur. The reform strategy initiated in 2004–2005 was both proactive and extremely ambitious. It was designed based on both a quite technocratic vision of change and an overly optimistic timetable. However, following the planned steps and obtaining political support is not enough to really induce change in practices. The planned timeframe largely underestimated the time necessary for the implementation of planned actions, both because of the length of the bureaucratic procedures and the numerous oppositions, blockages, inertia capacities, and other capture strategies, which in practice determined the pace of the project.<sup>59</sup> The initial timetable, which included a one-year reform phase followed by four years of implementation, reflected a strong confusion between the temporality of policy change and the temporality of projects

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<sup>58</sup> Personal comment of a doctoral student on land in Rwanda.

<sup>59</sup> Foreseeing 300 PFRs for the MCA project was seen as a sign of caution by the project designers: '*it is essential not to move quickly in a geographical expansion of PFRs and land certificates. This is why, during the first phase, only 300 of Benin's 3743 villages, or about 8% of all villages in the country, were selected*' (Compact, annex 1, p.10). However, given that only 41 had been made in 15 years in the pilot projects, creating 300 PFRs in four or five years was in fact quite optimistic.

(Lavigne Delville, 2014). As we saw, it led to operational results that were well below the objectives and a high risk of erosion.

This desire for a rapid changeover was also reflected in the 2013 Code, which provided for a transitional phase of five years before all the measures would be in force, and in particular that any sale would be carried out in authentic form or recorded in the minutes of a notary. This corresponded to the logic of the replacement paradigm, which promotes a rapid switch from 'informal' rights to generalised formal ownership and aims to prevent the persistence of intermediate situations and devices, on the margins of the law. However, the time needed to implement the measures provided for in the Code and necessary for such a switch was in contradiction with this five-year transition phase. Besides the creation and deployment of ANDF, the full deployment of the new institutional framework requires having surveyors and notaries available in every region. They are currently few in number and very unevenly distributed throughout the territory: in 2013, there were only 35 notaries in Benin, all or almost all of them based in the south of the country. The state opened new offices in the regions, but these remain largely insufficient. Consequently, the compulsory registration of any sale by authentic instrument or by agreement recorded in the minutes of a notary will remain difficult to achieve in a significant part of the country for several years. The 2017 revision extended the deadline to 10 years (art. 516), that is 2023, which is still a very short timescale. It will also take many years to deploy the future cadastre and to have a full working institutional and operational framework.

The Code opened up the possibility of defining transitional arrangements, but this was not taken up, which caused institutional uncertainty, particularly on the issue of sales of plots of land. A literal interpretation of the text said that it should be only five years after the promulgation of the Code (i.e. mid-2018 originally) that sales must be registered before a notary, the old sales agreements signed by the communes becoming illegal (and severe punishments imposed for them). This meant that the former system would have remained in force until then. Nevertheless, ANDF and lawyers stated as soon as the Code was passed that these agreements were immediately illegal, leading to confusion about the transitional period. Fearing the heavy penalties provided for, some mayors refused to sign them, leaving sales in an increased state of informality, and possibly awaiting subsequent regularisation. In the same vein, no provisions have been made for ensuring the maintenance of the existing PFRs until ANDF takes it in hand. The shortcomings in the thinking about the temporality of the reform (and more generally the temporality of institutional change) is also reflected in ANDF's aborted desire to suspend topographical operations until the cadastral software is ready, as if land dynamics could be stopped until the new system is set up. Since the transition inherent in such a reform can probably not last less than 15 or 20 years, it seems important to think of it as such, by dealing with intermediate situations, which are inevitable. Failing to do so leads to the risk of leaving a legal and institutional blur, and the risk of seeing adaptive semi-formal solutions redeployed during this time.

## 7 Conclusion

Land tenure is at the heart of societies and the relationships between states, social networks, and citizens. The way in which a society defines property rights and ensures their security has a deep connection to the way in which social relations are thought of, whether inequalities (of status, wealth, and power) are considered acceptable or opposed, and the way in which people see the state and its role. Any land reform project has necessarily simultaneously and intricate political, economic, and societal stakes. It necessarily crystallises multiple issues at very different levels.

In Benin, negotiating the reform, in its orientations and modalities, has been a complex process, involving multiple actors, institutional, private, and customary, etc., but also international experts and donors. Benin's land reform has had the merit of confronting long-standing institutional deficiencies and consolidated interests. It has set up an efficient geodetic infrastructure, making it possible to link topographic surveys to a single reference frame, and it has deeply transformed the legal and institutional framework for land management, with the creation of ANDF and its decentralised offices, which now have many more staff and resources than the former land administration. The reform made it possible to digitise existing land documentation, centralise information and make it accessible, correct spatial referencing errors, and identify gaps in files. The time and cost of issuing a land title has – at least on paper – been significantly reduced. Transparency and rigorous management are highlighted. However, it is questionable whether this is sufficient to ensure the equity of access and the exit from informality highlighted in the land policy objectives.

Framing the problem as a matter of legal updating, administrative reform and technology is not the same as framing it in terms of administrative failures, state negligence, intricate institutional bottlenecks and 'management of confusion', with a large range of actors, including powerful political and economic actors, and actors positioned at key points in land administration, benefiting from the situation. The choice to dismiss intermediate tools and documents like rural land maps and certificates, and to maintain the logic of standard registration and unquestionable land titles, raises questions about the reform's inclusiveness. The full cost of a land title includes the cost of obtain the 'presumption of ownership' document, travelling several times to the Land Office, paying the surveyors for the contradictory mapping, etc. This cost is still very high for most citizens. The risk is that this excludes part of the population: holders of existing housing permits or sales contracts that are no longer recognised and are even more informal than before, and rural buyers who will not be able to face the requirement of titling before selling a plot and who are not fully protected from spoliation during the titling process. There is therefore a risk of recreating informality, which is even greater for actors for whom the title is inaccessible, because they will no longer be able to rely on the set of intermediate documents that previously ensured a given recognition of their rights. As has been demonstrated elsewhere, land registration can 'modernize insecurity' for a number of citizens (Jansen and Roquas, 1998).

Failing to recognise the role played by existing intermediate solutions, and thus failing to build a plural system offering a range of legal solutions, Benin's land reform reproduces in practice the legal dualism that previously left a large part of the population in the 'informal' or semi-formal category, which it had claimed it wanted to fight. That will also undoubtedly give rise to new intermediate, semi-palliative, semi-instrumental practices of the type the reform sought to combat, either for areas where the transition to title is complex or poorly justified, or after the title has been issued, due to the cost of registering transfers for poor households.

Only experience will show how far the integration of the popular categories in the field of land title will be achieved and what will happen to others and if this analysis is wrong.

Basing its diagnosis on the situations experienced by citizens and takes into account the semi-formal mechanisms that those institutional deficiencies have generated, the broader institutional analysis we made shows that the blockages identified and addressed by the reform are more related to what the “Institutions and Economic Development” research framework calls the ‘causes of proximity’ than to the ‘underlying factors’ (see Table 1). Benin’s land reform is above all a reform of land administration, which does not question the land title and its logic, which, as we have seen, was the case for promoters of rural reform and some experts working on urban issues. Based on the conceptions of land tenure professionals more than on the concrete problems of citizens the Code is actually designed more for land administration and land professionals, and for wealthy land buyers, than for all citizens, especially rural people, and it runs the risk of leaving them aside or even making them more insecure.

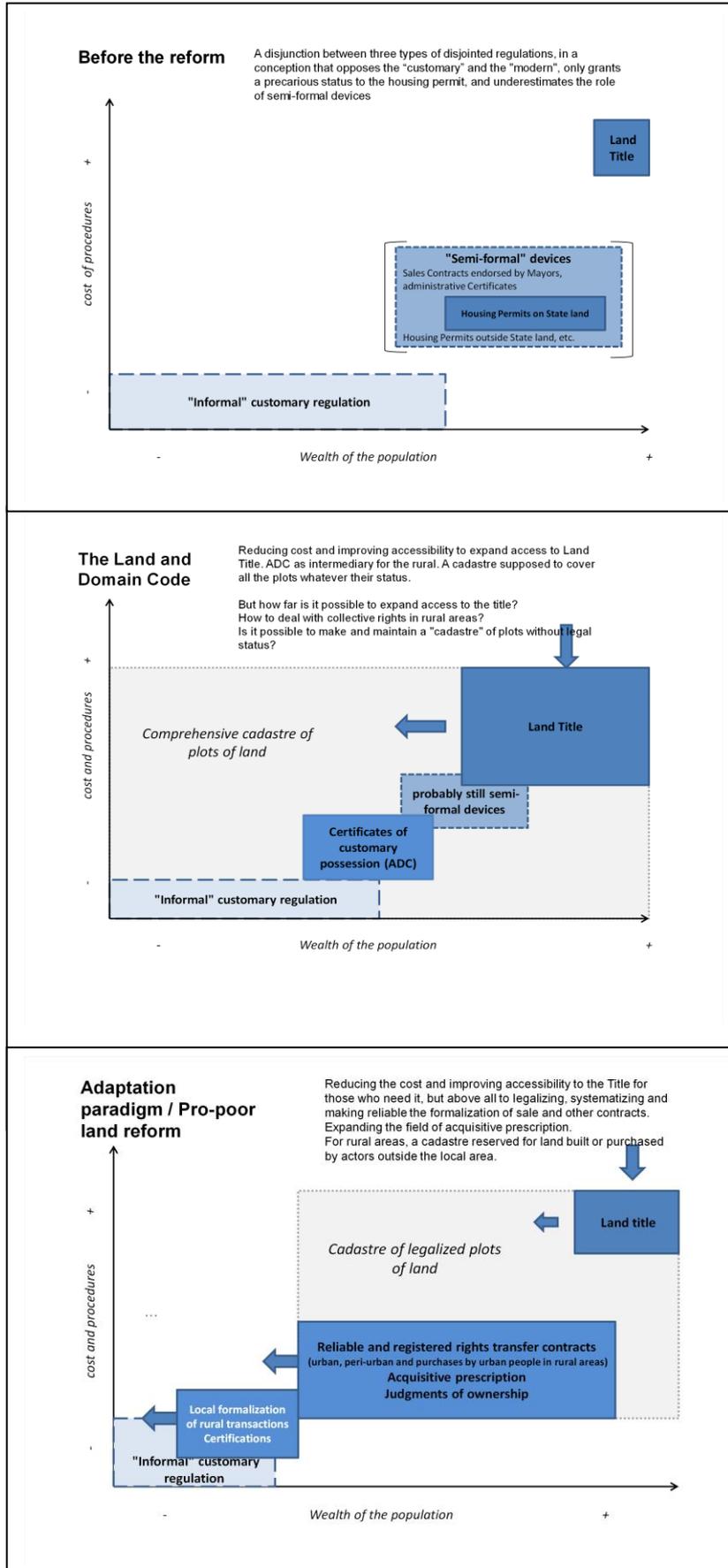
Despite the current government’s clear commitment, Benin’s land policy raises a number of questions. Even if the new land administration system and cadastral software can be deployed within the remaining four years of transition, analysis of the procedures and their cost shows that, in practice, they will probably only be accessible to a part of the population – although expanded compared to today – which poses the risk of increasing land informalisation and land insecurity for others. The risk is therefore that the reform will serve above all to extend access to land ownership for a – expanded but still small – minority of quite wealthy actors who are able to mobilise the law and to take advantage of faster procedures (particularly urban dwellers buying land in rural areas), and that it will serve to allow the state to reconstitute a private domain that has been largely sold off to the elites since independence. This would be to the detriment of the majority of the population.

Another strategy was possible, which would have started more from the situation ‘in the field’, problems, and people’s resources, and from an analysis of the role played by semi-formal mechanisms, in order to reduce contradictions and ensure greater land security, in line with pro-poor approaches (Zevenbergen, Augustinus, Antonio *et al.*, 2013). That was more or less the logic of the RFUs and PFRs implemented in Benin after the 1990s. While also making land title more accessible and reliable for those who really need it – and in particular those who need mortgage credit – such a strategy would have focused mainly on the concrete needs of all citizens as regards securing their diverse rights over land. It would have offered them a range of institutional solutions, from which they would choose depending on the context and their own situation. Such institutional solutions would be based on a will to protect existing rights against spoliation, to favour acquisitive prescription to solve old cases, and to secure the negotiation and formalisation of land sales, even for untitled plots of land. In such a strategy, all transfers – except for local sales in rural areas – would be included in the land cadastre, which would focus on plots of land with legal status and would gradually expand. In this perspective, sales and inheritance contracts, drafted and formalised according to strict procedures, with a notary for urban areas, and on the field with the Village Land Committee and Land Office agents for rural areas, would be the basis of ownership, including when they concern untitled land. Sale or inheritance contracts would assess the seller’s right to sell, specify the origin of the rights held and the content of the rights transferred, including various easements linked to other rights-holders or local rules. Family land could not be sold without a family council record explicitly authorising the sale and specifying the distribution of its amount among rights-holders and validated by the Village Land Committee for rural areas. Actors who do not have such documents and need to

secure themselves legally could request an attestation of customary possession, which would rely on a cross-checked field survey. The plots sold or plots having an attestation would be surveyed by local surveyors using GPS of a sufficient (but not centimetre) precision and data would be integrated in the national cadastre, which would gather information on land titles as well as on sales, transfers, and ADCs on untitled plots of land. A PFR-like systematic survey would be carried out where the stakes are high, in peri-urban areas, where the land market is developing, leading to certificates. The integration of plots into the cadastre would be a progressive process, along with social and economic evolution and people's needs.

Altogether, the Benin land reform, its achievements and limits, and the fierce debate that took place during those years, contributes to the general debate on land reform strategies. It raises questions about the potential and limits of improvement strategies that do not question the global model of land title. It contributes to a rethinking of the relevance of adaptive strategies, which organise over time the transition from an existing and dynamic situation that is problematic in specific contexts to better land governance that focuses primarily on the security of land tenure of citizens and economic actors, starting from their real situations. History will show whether and to what extent the actors in charge of the reform's implementation will integrate pragmatic adaptations to the challenges they face, and to what extent they will be able to face the issue of social inclusion.

Figure 6. Code logic vs. pro-poor logic



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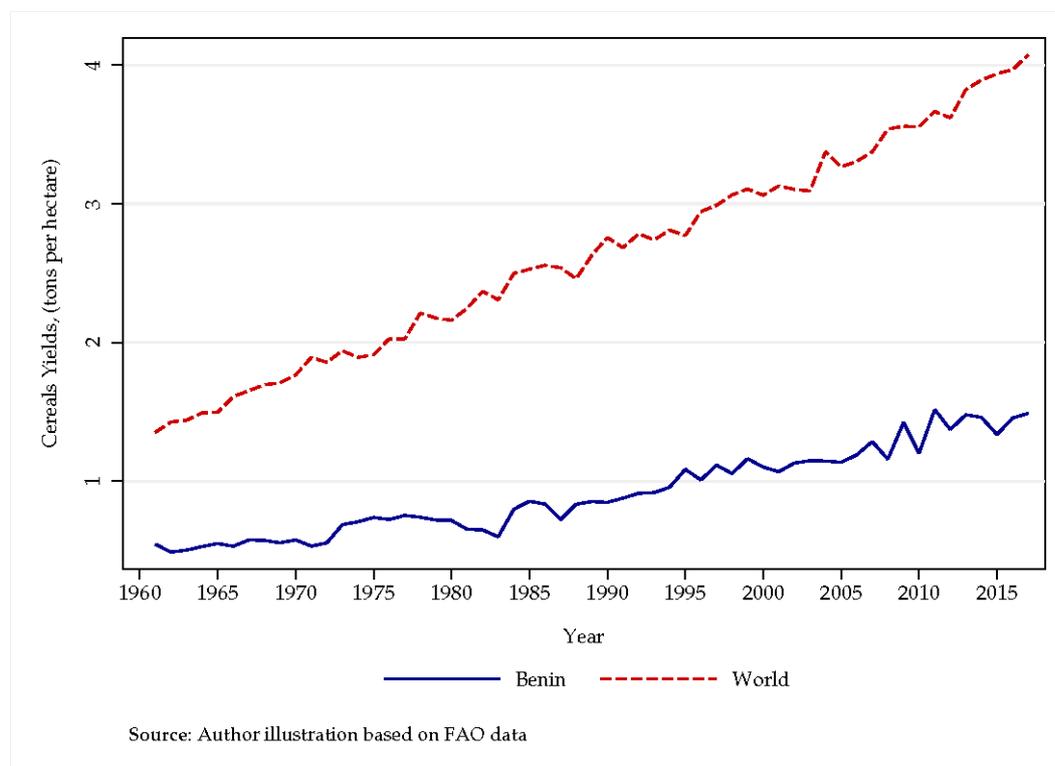
## Discussion of ‘History and political economy of land administration reform’

### Setting the scene

As a resource, land produces a range of services for human development, such as food production, housing, and ecosystem services through forested areas. While statistics related to homelessness are scarce for Benin, the most recent statistics of the United Nations Food and Agriculture Organization (FAO) estimate that agriculture and forest represented respectively 33% and 38% of the land area of the country in 2016. However, in terms of contribution to food security, employment, income generation, and the creation of goods and services, agricultural activities play a central role in the social and economic life of the country. According to the most recent statistics, the share of the employed population working in agriculture in 2018 was estimated at 41%, and contributed to producing 23% of the value generated by economic activities (World Bank, 2018).

Despite this position and the positive economic performance in recent years, the agricultural performance in Benin is still very much lagging behind in international comparisons. Figure 1 illustrates this situation and reports the evolution of cereal yields in Benin and at the global level between 1960 and 2017.

**Figure 7: Evolution of cereal yields in Benin (1960–2017)**



While the rest of the world experienced gradual and substantial productivity gains throughout the entire period, despite a steady growth since the 1990s land productivity remains low in Benin. Moreover, even though the country has a privileged access to trade routes and imports food from abroad, the latest report on the state of food security and nutrition in the

world ranks Benin among low-income, food-insecure countries. This underlines the fact that agricultural output is not sufficient to meet local demand for food and the country lacks the resources to fill the gap by purchasing food on the international market. In that context, it is estimated that the population is affected by multiple forms of malnutrition – including a high prevalence rate of anaemia among women, and child stunting – and that one out of 10 persons (i.e. 1.1 million persons) were undernourished in Benin between 2015 and 2017. Agricultural production is also particularly vulnerable to climate change and this situation raises concerns regarding the future prospects of food security in Benin (see FAO *et al.*, 2018).

This chapter on land reforms provides a thorough and in-depth analysis of the political forces that shaped the orientations of successive land reforms in Benin. In this discussion, we propose to analyse the land reforms in Benin through their impacts on the social and economic lives of individuals. To pursue that goal, we provide a bird's-eye view of the theoretical and observed effects of the land reforms implemented and offer remarks on some of the challenges and opportunities ahead to promote sustainable improvement of the social and economic lives of individuals in Benin.

### **Land reforms in Benin: theoretical expectations**

A property right refers to socially recognised structures of allowable individual actions. It determines how a resource is used for consumption and/or income generation (see, for example, Besley and Ghatak, 2010). Hence, a system of property rights provides the incentives and devises the constraints that shape human interaction, whether political, social, or economic (North, 1990).

There is a well-established theoretical literature that shows that the enforcement of private property rights, which make it possible to legally exclude others from using a good or asset, within an effective legal framework, should in theory increase productivity and spur economic development (Besley and Ghatak, 2010). The literature proposes three channels through which productivity gains arise in these contexts. First, the codification and enforcement of private property rights reduce expropriation risks and promotes long-term investments. Second, enforceable property rights should lower transaction costs and allow productive farmers to negotiate land use rights from less productive farmers, thus making both parties better off. Third, a clear definition of property rights reduces information asymmetry about ownership rights and can allow individuals to use their property as collateral for loans. Nevertheless, to be effective, the ability to use land as collateral requires a number of conditions, including the presence of a properly functioning credit market.

Theoretical predictions of the effects of the enforcement of private property rights on productivity suggest that places where property rights are clearly defined and enforced should be more productive. However, most agricultural land in Benin is held under customary rules, where the allocation and enforcement of land rights involve a diverse and complex set of arrangements made and upheld by local stakeholders, such as village chiefs, councils of elders, and land chiefs (Le Bris *et al.*, 1982). Therefore, private property rights, as conceptually defined in theory, do not match local practices of land rights management.

Yet there are good reasons to consider that land tenure insecurity represents a challenge for investment and living conditions in Benin. First, using detailed information on agricultural

practices on plots, Lawin and Tamini (2019) find evidence suggesting that land tenure arrangements significantly influence farmers' decisions to invest in practices that improve agricultural productivity while preserving the environment. Second, there is evidence that under customary land management, land tenure insecurity prevents farmers from leaving their land fallow, a low-cost soil fertility management investment practice that improves agricultural practices (Goldstein *et al.*, 2018). Third, available statistics estimate that 34% of the population in Benin felt insecure about their tenure rights over the home they owned or rented in 2018 (Prindex, 2019).<sup>60</sup> Though home tenure insecurity appeared evenly distributed across urban and rural areas, it varied geographically and was highest for vulnerable groups, such as women and renters.

To reduce land tenure insecurity, in a context where allocation and enforcement of land rights have historically been vested in customary practices, policymakers in Benin approved the Rural Landholding Law of 2007, which provided formal recognition of land held under customary arrangements. A new land law was then adopted in 2013 to improve the definition of property rights. This established the *Agence Nationale du Domaine et du Foncier* (ANDF), a national agency with responsibility for the implementation of land policies.

While little is known about the effects of the implementation of the 2013 land law, more can be learned from studying the effects of the implementation of the Rural Land Law of 2007. In practice, the Rural Land Law allowed willing villages to produce Rural Land Use Plans, or PFRs (*Plans Fonciers Ruraux*), which embed the resolution of land disputes, the demarcation of plots, and the recognition of individual land rights within customary practices, and which provide documentary evidence of those rights. PFRs are a community driven approach that seeks to provide legal recognition of land rights held under customary tenure systems (see, for example, Colin *et al.*, 2009; Cotula *et al.*, 2004; Lavigne Delville, 2014). The approach systematically demarcates several plots at once, making it an affordable policy option. However, the impacts of the PFRs are theoretically unclear, since customary land rights which are formalised are not necessarily private and still remain (partly) vested in customary practices.

## **Empirical effects of the PFRs in Benin**

To our knowledge, available empirical studies of the effects of Benin's PFRs include a study of changes in land security for landowners and access to land for tenants (Yemadje *et al.*, 2014), variation of agricultural investment decisions (Goldstein *et al.*, 2018), and changes in individual levels of cooperation and trust (Fabbri, 2019) as a result of land registration activities.

In the oil palm-based cropping system on the Adja Plateau, Yemadje *et al.* (2014) report that following the land registration activities carried out as part of the PFRs, land conflicts have decreased and there was a shift towards agricultural intensification. Tenants and landowners increasingly invested in land through rotations between maize and cowpea (rather than maize mono-cropping) and the use of mineral fertilisers, without increased use of household waste. The paper suggests also that as a result of the PFRs there was a shift from oral to

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<sup>60</sup> Perceived tenure security was assessed via a central question about people's home: 'In the next five years, how likely is it that you could lose the right to use this home, or part of this home, against your will?' (See Prindex, 2019, for more details).

written land rental contracts, from un-witnessed to witnessed contracts, and from contracts backed up by local chiefs under customary rules to contracts backed up by the state in a legal system.

Covering a larger study area that spreads across 40 of the 77 communes of Benin, Goldstein *et al.* (2018) compare the agricultural decisions of rural households in villages that were randomly selected to receive a PFR intervention to otherwise comparable households in villages that were not selected. The authors find that following land demarcation agricultural households were on average more likely to have their plots demarcated. In line with theoretical predictions, households in villages that implemented a PFR were also on average more likely to shift their investment decisions to long-term and perennial cash crops. There was also evidence that, on average, the PFRs helped to reduce the gender gap in following, a key soil fertility investment.

The results reported by Yemadje *et al.* (2014) and Goldstein *et al.* (2018) are in line with the effects reported for similar interventions in other countries of sub-Saharan Africa. In Ethiopia, Deininger *et al.* (2011) find that the registration of land rights in Amhara significantly reduced fear of land loss, and increased the propensity to rent out land and the propensity to invest in soil and water conservation measures by 20 percentage points. Studying the effects of Rwanda's large-scale land tenure regularisation programme, Ali *et al.* (2014) find that the land tenure regularisation increased soil conservation investments among male-headed households by approximately 10 percentage points, and that the impact for female-headed households – at 19 percentage points – was nearly twice as large.

The long-term impacts of the registration of customary land rights on agricultural productivity and food security in Benin remain an area of active research. However, outside Benin, Holden *et al.* (2009) find that, up to eight years after the rural land registration in the Tigray Region in Ethiopia, plot productivity increased. In Vietnam, Newman *et al.* (2015) study the effect of the land use certificate (LUC) on rice production and find that 'plots that move from not having a LUC to having a LUC experience gains in rice yields of 4.9%' (Newman *et al.*, 2015).

## Concluding remarks

Theoretical and empirical results suggest that land tenure arrangements matter for agricultural practices. Empirical studies of the PFRs provide evidence that the land registration activities have on average increased agricultural investment and have encouraged the adoption of soil fertility management techniques in parts of Benin. While detailed studies of the long-term impacts of the PFRs on land productivity in Benin remain to be carried out, it seems unlikely that the formalisation of land rights alone will boost agricultural productivity to the level observed in the rest of the world. To sustain investment in agriculture and maximise the chances of improving food security in Benin, a systemic approach is needed to connect farming to local demand for food while reducing externalities on the environment.

While the evidence suggests that the formalisation of land rights in rural areas can be instrumental in increasing land tenure security, it raises a number of concerns about the distributional effects of land registration under customary settings. As pointed out by Yemadje *et al.* (2014), land registration of customary rights does not exist in a vacuum. Land

registration activities take place in contexts marked by spatially heterogeneous land tenure management systems, and the issuance of formal documentary evidence of land rights changes expectations and coordination between individuals. For instance, the issuance of land certificates can skew land tenure security toward holders of land certificates. This can reduce tenure security for other individuals that may have claims to the same piece of land and to different dimensions of use of that land (Lavigne Delville, 2014; Udry, 2012). This is particularly a salient concern for women, who typically obtain land use rights via a male intermediary. Alternatively, land registration activities can embed conflict resolution mechanisms and can help uphold the land rights of vulnerable groups, as protected by the legal system. In this way there are also reasons to expect that land registration activities act as a magnet that helps customary and legal practices coevolve and converge (Aldashev *et al.*, 2012).

Overall, given, on the one hand, the role that access to land plays in social recognition, access to housing and the economic lives of individuals, and on the other hand the spatial variation of existing customary practices, land registration activities are expected to produce an array of impacts depending on the constraints that are locally relaxed and or exacerbated. It therefore seems worth considering various approaches to land registration activities depending on local context.

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