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# **Protecting the Rights of Urban and Peripheral Urban Landholders under the New Code of Land Tenure and the Domain of Benin of 2013**

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# Abstract

On January 14, 2013, the National Assembly of Benin adopted the Code of Land Tenure and the Domain, fundamental legislation that consolidates all of the laws and regulatory acts dealing with the rights of citizens, other physical persons and legal entities, the state and its local communal administrations in land. The new Code reflects a national policy consensus and incorporates the results and the “lessons learned” from a series of experimental projects and programs. It elaborates new principles, such as prescriptive acquisition of land rights. It strengthens and clarifies several new instruments of rural and urban land tenure, in particular the *plan foncier rural*, the *register foncier urbain* and modernized procedures for the *immatriculation* of lands into civil law proprietorship. These innovations will now apply in all rural and urban areas, and they are expected to have significant impact on the processes of urban development and settlement at the urban periphery. The Code now provides principles of priority and interface that will fix the status of land rights, originating in custom and in modern property, contract and administrative law. In this way, the transition from rural to urban rights should take place in orderly stages and without the abuses and irregularities that have been widespread.

## Key Words

- ★ land legislation
- ★ land management
- ★ land reform policy
- ★ urban land rights

# Introduction

On January 14, 2013, the National Assembly of Benin adopted the Code of Land Tenure and the Domain, fundamental legislation that consolidates all of the laws and regulatory acts dealing with the land rights and obligations of physical persons, legal entities, the state and local commune administrations. The parliamentary vote achieved one further stage in the evolution of reforms, which began in 1990 with the adoption of the Constitution of Benin. Over 22 years, the parliament, governments and communes have taken a series of legal acts and engaged in experimental projects and programs with the intent of clarifying land rights and obligations, forms of transactions, methods of administration, and the roles of the state and communes in regulating landholding and land use.

The new Code is expected to have substantial impacts on landholding and land dealings in urban and peripheral urban districts. It provides the framework for unifying and integrating urban landholding with rural landholding and with the regime of *domain* lands of the state and the communes. It provides new rules and procedures for the transition of land from rural or *domain* status into urban status, with particular relevance to the city periphery. It offers new principles, procedures and instruments of law to clearly define and strengthen landholding rights and, thereby, to remedy problems of insecure tenure and conflict over land in the urban and peripheral urban districts.

This article explains the content of the Code and the main innovations, which are intended to address the problems of urban and peripheral urban development.

## Part 1: Understanding the Problems of Urban Landholding that the Code Intends to Address

Since national independence in 1960, Benin has experienced fast and uncontrolled growth in several of its urban areas, similar to other nations in West Africa and the developing world (*Djankaki 2008*). The transformation of land from rural to urban uses has taken place with weak planning and regulation and without adherence to rules of landholding law. Urban growth has overwhelmed the capacity of traditional leaders and contemporary administrators, regulators and judicial officers to apply rules of existing law and the processes of policy formation and legislation have failed to provide new solutions with sufficient speed and relevance.

Landholding law in Benin is usually described as a “dual” system of customary law operating in parallel with “modern” law. More accurately, however, the law is multi-faceted. Customary law is composed of:

- ★ rules and practices of different regions and ethnic/tribal groups, which are established and transferred by oral agreements and ceremonies.

Modern law is composed of:

- ★ the principles, institutes and procedures of civil property law with rights verified and certified by the procedure of inquest, verification, contest, and publication called *immatriculation*;<sup>1</sup>
- ★ instruments of administrative law, including use and occupancy permits [*permis d’habiter*], leases and concessions, which the state and communes issue subordinate to their *domain* control;<sup>2</sup> and
- ★ contract law rights and obligations, which are defined and transferred in two-party or multi-party agreements.

Further complicating the system, most landholders avoid the fees and complexities of formal actions and make use of:

- ★ informal documents that re-combine elements of custom, contract and administrative law (*Gbaguidi 1997, Durand Lasserre 2004*).

Within this complex structure, most urban landholders lack standard documents and find it difficult to define and protect their rights in adjudication, mediation, administration, or transactions. There are frequent conflicting claims, leading to unresolved mediation and litigation, conflict and disharmony in families and neighborhoods. Land administration and taxation are ineffective. Investment in urban development and the pledge of land for credit is obstructed. Seeking alternative ways to protect their occupancy and use of land, people enter into

<sup>1</sup> Law no. 65-25 of 14 August 1965, On the Regime of Landholding Proprietorship.

<sup>2</sup> Law no. 60-20 of 13 July 1960 On the Regime of the *Permis d’Habiter*.

additional irregular arrangements that are expensive and uncertain and that often involve political corruption or criminal behavior.

In theory and in strict adherence to the law, previously rural or open lands are supposed to become urban by passing through four stages. First, through planning, the state approves the removal of the land from rural use and fixes the spatial arrangement and character of its future urban development.<sup>3</sup> Second, through *immatriculation*, the land is cleared of customary rights and of any state, public or third-party interests that would be inconsistent with its re-definition in the regime of civil property and urban administrative law. Third, the land is subdivided by the process of *lotissement* into parcels of proper urban size and connection to streets and infrastructure lines.<sup>4</sup> Finally, the parcels are transferred to new urban proprietors, users and occupants, either by contracts of purchase/sale or leasehold in the regime of civil law or as *permis d'habiter*, if the state or commune retains proprietorship and *domain* control. Conditions of *mise en valeur* may be implicit or expressly stated in the transaction documents.

In reality, few landholders or developers follow these formalities and only small numbers of individuals or legal entities have undertaken *immatriculation* to gain the protection of registered property rights. (See Table 1.) Even fewer landholders bother to inscribe the changes on previously registered documents when inheritance, sales or leases subsequently occur. Significantly, the state and communal administrations themselves avoid *immatriculation* even though they are under the legal mandate to complete this process before granting *permis d'habiter*, land sales, leases, or concessions.

## Part 2: Evolution of Reform Policies and Experimental Projects and Programs Activities, Addressing the Problems of Urban Landholding

Following the adoption of the Constitution of Benin in 1990 and accession to the OHADA Treaty of 1995,<sup>5</sup> the Government of Benin issued a series of policy declarations, which have influenced the new Code. (See Table 2.) To test and evaluate these policies, the government has undertaken a number of experimental programs and projects. Each has followed the pattern of (i) initial “pilot” operations in a few villages or zones in order to design and test the methodology; (ii) an expansion phase, carrying out the operations in a larger group of communes, neighborhoods or zones; and (iii) the adoption of legislation, rules, technical standards, and methodological manuals, applicable to all communes, zones, pertinent lands, and landholders. (See Table 3.) The main programs and projects have involved:

3 Decree no. 59-207 of 28 November 1959, On Conditions for Approval of Urban Land Spatial Plans.

4 Ministerial Decrees no 69-154 MTPTPPT and 69-155 PR/MTPTPPT of 19 June 1969, Conditions for Approval of Urban Land Arrangement Projects.

5 Law no. 90-32 of 11 December 1990, the Constitution of Benin; Uniform Act of 17 April 1997, On Organization of Sureties in the Financial System of OHADA

- ★ Creation of the *registre foncier urbain* [RFU], a communal database, which defines the location, size and character of urban land parcels and identifies their landholders, for purposes of taxation and municipal administration;
- ★ Creation of the *plan foncier rural* [PFR], the instrument for recording rural landholding rights, based on custom, and issuing the *certificat foncier rural* [CFR] as the instrument of proof of customary proprietorship;
- ★ Creation of a method of “mass *immatriculation*” and transformation of *permis d’habiter* into land titles [PH/TF];
- ★ Combined replanning, land arrangement, installation of infrastructure, and formalization of landholding rights in “irregular” urban zones under the *programme de gestion decentralisee* [PGUD]; and
- ★ Communal development planning and spatial arrangement [SDAC] under the Program of Communal Development [PRODECOM].

In addition, several communes have carried forward projects of urban spatial arrangement, development planning and *lotissement*, financed locally (*Bah, C. 2000; Lassissi 2006; SERHAU*). Elements of all of these projects and responses to their “lessons learned” can be recognized in the Code of Land Tenure and the Domain.

## Part 3: The Structural and Unifying Elements of the Code of Land Tenure and the Domain

The drafters and sponsors of the Code have stated the primary purposes of the legislation: to assure equitable access to land by citizens and legal entities, to secure investments in land and urban development, to provide for the effective management of conflicts, to reduce poverty, to achieve social harmony, and to realize integrated development (*Benin National Assembly and MEHU 2012*). In the work of drafting, they sought to achieve the following objectives:

- ★ To organize coherently all of the principal texts governing landholding and the state and communal domain;
- ★ To establish a uniform legal status and instruments of landholding tenure, covering both rural and urban lands;
- ★ To define simplified, clear and efficient procedures of *immatriculation*; and
- ★ To generally authorize and apply the new procedures for “formalization” of customary rights – the PFR and CFR.

### 3.1. *The Form and Content of the Code*

In form, the Code is a framework law that consolidates all pertinent legislative texts on the subject of landholding. In substance, it contains all of the principles, rules, instruments, and procedures of custom and “modern” property, contract and administrative law. It achieves coherence by: (i) maintaining the distinct elements of each legal regime, (ii) fixing them in a logical order, (iii) providing the connecting texts that allow the regimes to interact, and (iv) stating the rules of priority when elements of the different regimes conflict.

The Code has 11 titles, subdivided into chapters, sections, paragraphs, and articles. An outline of the title headings illustrates how the distinct regimes fit into the framework:

**Title 1. General provisions** – fundamental rules for application of the Code, its scope of coverage and definitions of key words and phrases;

**Title 2. Property rights [*propriété*]** – the substance of rights and obligations in land as defined by civil law, including subordinate real rights [*droits réels*] and co-proprietty;

**Title 3. The regime of landholding** – the new, unified legal status of landholding and the instrument of confirmation of rights in land, which is achieved both by the revised procedure of *immatriculation* and by the PFR and CFR for rural lands;

**Title 4. Limitations on property rights** – seizure of real property, expropriation for public necessity, and limitations for land arrangement, urban development and public servitudes;

**Title 5. The domains of the state and local self-governments** – regime of control of state and municipal-owned and reserve [*domain*] lands;

**Title 6. Provisions related to rural land and custom** – the substance and procedures that govern rural land under the customary regime;

**Title 7. Spatial arrangement [*aménagement*] and urban development regulation [*urbanisme*]** – the rules and procedures that govern the transformation of land from rural into urban;

**Title 8. The Cadastre** – concept and authority for a multi-purpose land information system;

**Title 9. Organization of the regime of landholding** – institutional structure of landholding administration and registration, to be called the *Agence National du Domaine et du Foncier* (ANDF);

**Title 10. Infractions and sanctions** – methods of enforcement of the rules contained in the Code; and

**Title 11. Transitory and final provisions.**

In order to understand the Code, it is helpful, first, to highlight its major reforms and then look at some specific innovations that apply to urban and peripheral-urban landholding.



### ***3.2. Continuation of the Regime of Customary Law and the Principle of Equivalency of Customary Rights with Civil Law Property Rights.***

Law 2007-03 of October 16, 2007, On the Regime of Rural Landholding, has established two fundamental principles, which are now incorporated into the Code: (i) the regime of local customary rights and practices continues to govern agricultural lands and (ii) the rights and obligations, created by custom, are to be given equivalent legal status with civil law property rights in any adjudication, mediation, administration, or transaction.<sup>6</sup> In order to provide the documents by which this “equivalency” can be effective, the law authorizes each village to create a *Plan Foncier Rural* [PFR], in the form of a parcel survey map, a related list of landholders and an archive of land transaction agreements. Based on these documents (preserved and kept up to date), the communal administration can issue a *certificat foncier rural* [CFR] to each listed customary proprietor, which gains the status of presumptive proof of the customary landholding rights.

The Code incorporates the text of law 2007-03 as Title 6 and it adds to the procedure of the PFR a new method for the formation, survey, written definition, and recording of rights of individual parcels in villages that have not yet completed a PFR. The new procedure will allow a single landholder to gain the legal status of customary proprietor and receive the CFR, providing proof of his/her rights.

### **3.3. Gradual Coverage of All Urban Land by the Regime of Civil Property Law.**

The Code embodies the policy that all urban land (not in the public domain) shall eventually be brought under the regime of civil property law with the “land book” as the exclusive instrument that guarantees land rights.<sup>7</sup> This requires a series of actions to be taken by the state, municipal administrations and landholders, including:

- ★ Ending the issuance of administrative law instruments of occupancy and use permits [*permis d’habiter*] under state or municipal *domain* status;
- ★ Transforming all existing contractual law, administrative law and neo-customary law rights in urban land parcels into registered and titled rights of proprietorship either by individual applications or systematic methods; and
- ★ Carrying out the procedures of spatial planning, land arrangement [*aménagement*] and subdivision [*lotissement*], which are necessary to define the zones and land parcels to which urban land rights apply.

<sup>6</sup> Law no.2007-03 October 16, 2007, Article 7; Decree no. 2010-329, *Declaration de Politique Foncière et Domainale*, Chapter 7, Orientation 4, Axe 1.

<sup>7</sup> *Declaration de Politique Foncière et Domaniale*, Chapter 7, Orientation 4, Axe 1, adopted by the Council of Ministers as Decree no. 2010-329 of July 24, 2010; also Decree no. 2009-693 of December 31, 2009, *Cadrage de la Reforme Foncier*.

### ***3.4. A Unified Procedure of Confirmation of Rights in Land***

In order to achieve in practical operation the policy of “equivalency” of custom and civil law, the Code introduces a new concept of “confirmation of landholding rights” and a new instrument of landholding proof, called the *certificat de propriété foncière* (*Title 3, Chapter 1*). The concept bridges the divide between rural customary landholding, defined by creating the PFR, and civil law property rights, formed and registered by *immatriculation*. It allows both procedures to reach the stage of completion with the same legal instrument of proof. Thus, the new certificate replaces the former land registry “title” as well as the CFR, and it offers to both urban and rural landholders the status of definitive and “un-attackable” proof in the courts, except when fraud in its issuance is alleged

The Code seeks to make the procedure of confirmation of rights simpler than the former procedure of *immatriculation* by reducing the number of administrative steps to four: (i) application and requisition of technical services (surveyors, notaries); (ii) publication of the claim of possession and time period for contesting third parties to come forward; (iii) fixing of parcel boundary lines and agreement of neighbors; and (iv) registration of rights and delivery of the *certificat de propriété foncière* (*Title 3, Chapter 1, Section 2*). It speeds up the process by allowing use of modern communications for administration and publication, and by fixing time periods for the actions of the land registry officers. For example, it sets a limit of 90 days to deliver the *certificat* in any case where there is no opposing third party claim.

The Code also describes a collective procedure for confirming rights that can be initiated by an association of landholders in a zone (*Title 3, Chapter 1, Section 4*). The four stages of procedure are carried out for the whole zone as a “global” unit and at the final stage the individual parcels are subdivided. This type of “mass titling” approach has been used in the projects transforming *permis d’habiter* into titles [PH/TF].

### ***3.5. Role of the State in Landholding***

From each of its historical eras of pre-colonial, colonial and post-colonial government, Benin’s land law has retained distinct concepts of the role of the state in landholding:

- ★ The state as guarantor of the land/property rights, which arise under custom and civil law;
- ★ The state as protector of the land as patrimony of its people (*domain*), exercising powers to allocate land to citizens, their associations and collectivities, and managing the use, settlement and development of land by instruments of administrative law;
- ★ The state as the proprietor and manager of lands of the public *domain*, such as streets, government facilities, and protected areas, with powers to acquire lands for public needs by expropriation with just compensation or by pre-emption;

- ★ The state as possessor and manager of lands of the private *domain* (free of property rights of private parties) with powers to hold land as reserves and dispose of tracts and parcels to commercial, industrial, residential, and other non-state users; and
- ★ The state as regulator of the actions of citizens and entities, which occupy and use land in the interests of the environment, social welfare and sustainable development.

The Code reconciles these diverse concepts by spelling out in detail the array of powers to be exercised by the state and communal administrations, and the procedures and instruments to be used for each administrative and management task. These powers include expropriation for public need (*Title 4*), management of the public domain lands (*Title 5, Chapter 2*), and disposition of various categories of private domain lands by leasehold, concession, unpaid allocation, and transfer of proprietorship rights (*Title 5, Chapters 4 and 5*). As the tool for classifying and managing the state and communal domain lands, the Code revives the *tableau general*—an inventory list—that was mandated in past laws but has never been put into place.<sup>8</sup> Presumably, the state and communal inventories will be incorporated into the cadastre (*Title 5, Chapter 3*).

### 3.6. Role of Commune Administrations in Landholding

The Code advances the policy of decentralization by providing the authority and the instruments of administration to elected communal governments, their subordinate urban districts and rural villages. The communes are to be given control of parts of the public and private *domains*, to be defined by separation of the *tableau general* into state and communal lists. For rural lands, the communes have the specific powers to create and maintain the PFR and issue the CFR under state tutelage. For urban lands, the communal role is diminished by loss of the power to issue *permis d'habiter*, but communal officers will continue to have a role in verifying the existence and content of landholder rights by making reference to the documents held in the municipal archives. Once a land parcel has been fully certified and recorded in the land registry and cadastre, however, future actions will take place in the regime of civil law without the need for authorizing or conditioned municipal approvals. Thus, the communal role will be defined as land use regulation, taxation and programs of assistance and support.

## Part 4: Innovative Provisions of the Code that Respond to Problems of Urban and Peripheral-Urban Landholding

The influence of the experimental programs and projects, which have confronted the major problems of urban and peripheral landholding, can be seen most clearly in several innovative principles and instruments that are new to the Code.

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<sup>8</sup> Law no. 60-21 of 13 July 1960. See Lassissi 2006 at page 221.

## 4.1 Prescriptive Acquisition

A weakness of the traditional civil property law of Benin has been the absence of the principle of prescriptive acquisition (*usucapion, propriété par prescription*), which is found in the civil and common law of many nations.<sup>9</sup> The principle holds that a person, who has occupied and used land peacefully and openly for a number of years, can be recognized as the proprietor if the land has not been registered previously in the name of another party and no contrary claimant has come forward. The principle serves the purpose of clearing away ancient and residual burdens or limitations that “cloud the title” and can hinder the disposition of the land for contemporary uses and development. The Code now contains a clear statement of the principle (*Title 1, Article 2*) and it specifies a period of 15 years of uncontested possession as the minimum basis. It requires the person who claims proprietorship under the rule to make application to the court (*Title 2, Chapter 1*).

For Benin, prescriptive acquisition is especially important because many urban landholders are inheritors or successors of persons who, in the past, acquired subdivided land plots from customary landholders in “irregular” and un-registered transactions. Now, these landholders are vulnerable to claims in which a descendant of the original customary holder asserts the right of possession as lineage inheritor. Often these contrary claims are instigated by the “land mafia” in schemes of extortion. Because of the lack of the principle of prescriptive acquisition, the courts have been unable to dismiss these claims or protect the contemporary landholders on the basis of the flawed old contractual documents. With the new principle in the Code, this widespread abuse should be greatly diminished or extinguished.

## 4.2. Co-Propriety and Consolidation of Rights of Usage

The Code introduces the legal status of co-proprietorship, which will apply contemporary methods to multiple-unit owners in buildings on a single unified parcel of land. The provisions include the typical elements of such laws, applicable in urban areas, including defining and managing building systems and areas of common use (*Title 2, Chapter 3*).

The mechanisms of co-proprietorship have been put into the Code primarily to respond to the rural problem of farm producers, who have been unable to achieve consolidation of fragmented parcels into efficient-sized fields. Nevertheless, their usefulness in urban settings is likely to grow and allow higher densities of urban settlement in the central cities.

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<sup>9</sup> According to Semiou Lassissi, the principle of *usucapion* is included in the Benin Civil Code, Article 2266 but it has long been abandoned, *Lassissi* (2006) at page 70.

### ***4.3. Clarification of Long-Term Leaseholds as Real Property Rights***

The Code now provides clear definitions of three types of long-term leaseholds that give rise to civil property law status and protections. Two of these have relevance in urban settings. First, the *bail emphyteotique* offers a term of 18 to 99 years for the proprietor of a building or other improvements that have been successfully installed on land. The *bail de construction* offers a term of up to 99 years for a person who is willing to undertake the development of a land parcel. In a rural setting, the *bail de plantation* offers similar long-term use and occupancy for the planting and exploitation of fruit, oil or timber-producing trees. Under each form, the lease must be inscribed in the land registry and the leaseholder thereby gains the status of protection of the long-term right, including compensation for the value of the building or improvements if the lease is terminated prematurely. The text specifically provides that the leasehold interests may be pledged for credit.

### ***4.4. Limitations on the Acquisition of Lands by Foreign Nationals and Maximum Size of Rural Landholdings***

In response to the threat of “land grabbing” by foreign interests and wealthy domestic investors, the Code includes several provisions intended to regulate agricultural land aggregation and the acquisition of land by foreign individuals and entities. Of primary interest in urban areas are provisions that prohibit foreign nationals and entities from acquiring the right of proprietorship. Exceptions are made for three types of persons: (i) any foreign national who is married to a Beninese citizen; (ii) an individual or legal entity that has been engaged in commercial or industrial activity in Benin for more than 20 years; and (iii) diplomatic missions. As an alternative, a foreign national or legal entity may participate with a Beninese partner or as part of a Beninese legal enterprise, which holds the land in proprietorship. Foreign nationals and legal entities are also specifically authorized to hold leasehold rights of up to 50 years in the form of a *bail emphyteotique* (*Title 2, Chapter 2, Section 6*).

### ***4.5 Institutional Structures for Administration of Landholding – ANDF and Cadastre***

The unification of the regimes of customary rights, civil law property rights, contracts, and administration and management by the state and communes requires an institutional structure that can provide practical oversight and coordination. The Code provides for a National Agency of the Domain and Landholding [ANDF] as the institution to be given authority to fulfill this role. Further, it authorizes the creation of a cadastre as the technical and administrative mechanism by which unified control can be accomplished (*Titles 7 and 8*). The ANDF is envisioned as an autonomous and self-financing agency of the national government that will bring together all of the existing regulatory and technical services, including the state land registry [DDET], the state surveying institute [IGN] and the state land management services. The national level administration will then link with similar services of urban land administration and rural PFR and CFR at the communal level. Using the cadastre as

the tool by which to consolidate all records of land dealings from every source at every level of administration, the ANDF will accomplish its tasks of monitoring, oversight, enforcement, and support services for land transactions.

## **Part 5: Conclusion: Is the Code an Effective Response to the Contemporary Problems in Urban and Peri-Urban Areas?**

The effectiveness of the Code of Land Tenure and the Domain may be predicted by considering whether the drafters have been able to incorporate and improve upon the experience of the experimental projects and programs of urban landholding reform. Three examples are most pertinent.

### ***5.1. Resolving Insecurity of Land Tenure Resulting from the Conflict between the Lineage Principle of Customary Law***

As described above, widespread problems have arisen because the transition of lands from rural to urban use and the re-definition of rights of possession from customary to “modern” law have taken place by “irregular” methods. In the absence of procedures of *lotissement* and *immatriculation*, residual customary rights are not effectively cleared away, documentation of rights and transactions is incomplete and contemporary landholding rights cannot be recognized, interpreted nor protected by courts or administrators as civil law property rights. Thus, large numbers of urban and peripheral urban landholders are vulnerable to conflicting claims.

The Code offers three solutions. First, it clarifies the originating rights in custom for the lands while they are still in rural status and use. The mechanisms of the PFR, the CFR and the confirmation of landholding rights will now bring the rural lands into the system of recorded rights and contractual obligations prior to transactions. Once these procedures are complete, the principles of non-alienation and lineage rights will govern for so long as the family or collectivity maintains its rural use and adheres to the customary rules. But the CFR and the recording and archive system of the PFR transform any subsequent transactions into the regime of written and contractual law. Therefore, if the customary proprietor or family collectivity signs a contract for sale to an outsider or undertakes subdivision, the rules of contract and civil law then prevail and lineage rights or customary limitations can no longer take priority or “cloud the title” of the contemporary landholder.

Second, from the side of the urban land purchaser, the Code encourages application for confirmation of the acquired landholding rights to gain the protections of civil law. By simplifying the procedure, landholders should be able to gain their titles with less complexity, time and cost.

Third, the new principle of prescriptive acquisition should allow landholders with long-time occupancy to overcome the obstacle of their weak and “irregular” contractual documentation. Their contemporary possession

and occupancy should prevail over conflicting claims based on lineage rights that were long ago removed or violated by the alienation of the customary lands.

It must be noted that these assumptions of the impacts of the new Code are untested. They await the drafting and adoption of detailed subordinate procedural and regulatory texts, as well as interpretation by the courts, mediators and administrators.

## **5.2. Replacement of *Permis d’Habiter* and Other Administrative Rights in Land by Certificates of Confirmation of Rights**

As noted above, the government has declared its policy to cease any further issuance of *permis d’habiter* and to replace all existing weak contractual and administrative land documents with the strong instruments of civil law proprietorship and leaseholds. The Code offers the simplified procedure of confirming landholding rights as the way to achieve this transformation, with both individual applications and “mass” methods. It also clarifies the definitions of long-term leases—*baux emphyteotique* and *baux de construction*—and reiterates the requirement that private landholders must carry out the procedure of confirmation of rights prior to subdivision and sale of land parcels for urban use.

The effectiveness of these provisions cannot be predicted with strong confidence, based on the record of past performance or the results of the experimental projects. Individual landholders have avoided the opportunity to gain the strong protection of property rights because of the costs and complexity of *immatriculation* and the state itself has often failed to follow the mandate of *immatriculation* prior to its allocation of *domain* lands. The Code anticipates that a simpler and less expensive procedure will be defined, but leaves the task to ministries, which must draft implementing decrees, orders and instructions. The difficulties that lie ahead can be predicted by looking back at the projects of transformation of *permis d’habiter* into titles, which have all had inconclusive results. Each accomplished substantial amounts of technical work—surveying, accumulation and review of landholder documentation—but each resulted in minimal numbers of citizens actually completing registration and taking their titles at the end (*MCA-Benin 2012*). These experiments with “mass titling” seem to teach the lesson that the highly irregular and variable landholder rights cannot be transformed in systematic, zone-wide operations. (See *Table 1.*) Every landholder in a zone has a unique “chain” of documents with errors, missing elements and irregularities. Since *immatriculation* has required careful inquest, review of documents of proof, cross-reference, re-verification, official certification, publication, and contest, each file has moved individually and has required its own set of corrective actions. The actors in the process have been unable or unwilling to formulate or apply any general rules or criteria that could allow the “automatic” correction of past errors, or the “blanket” removal of claims or burdens from any group or category of files.

Thus, while the Code can be recognized as a commitment by the leadership of Benin to carry forward the replacement of weak administrative and contractual rights in urban land with civil property law, it does not resolve the practical problem of how to accomplish this task at affordable cost and effort. The experimental projects have helped to increase the number of parcels entering the land registry, from 300-400 per year before 2006 to over 900 per year after 2009. But at this rate, reaching the estimated and still growing number of 500,000 to 600,000 urban parcels will require more than a century of activity.

### ***5.3. Creation of a Land Data System and the Concept of Presumed Proprietorship***

The results of the experimental programs and projects, including the RFU, systematic urban titling and experimental land information systems, suggest an alternative, practical way to achieve the long-term goal of strengthening urban landholding rights. This solution is found in the new Code in the concept of “presumed rights of proprietorship” (*Title 3, Chapter 1*) and in the focus on land data management within the dual-level structure of the ANDE. The Code now states that every parcel of land is held under a status of “presumed” rights, up until the time that it is fully confirmed in the procedure of confirmation of rights.

When this rule is combined with the requirement of creating a cadastral database in each commune, there emerges the concept that each land parcel will have its own “file” into which the records of every transaction and every administrative or legal act will be placed by automatic inter-linkage of data sources. Over time the “file” will accumulate documentation that can gradually clarify the rights, refine descriptions, rectify errors, and build substantiating proofs for the presumption of proprietorship. Even if the landholder does not go forward to take the last steps of procedure to obtain the certificate of land proprietorship and its “un-attackable” legal status, the file will yield a gradually increasing amount of evidence to support the presumption.

Similarly, the projects of “mass titling” can provide a large volume of substantiating documentation and refinement of rights, by survey and inquest, even if they result in very small numbers of finally issued titles. For example, the recent attempt by the government, assisted by MCC, to form 30,000 urban titles using the method of mass *immatriculation* has so far yielded fewer than 1,000 titles (18 months after the project closing date in October 2011). Nevertheless, the project did produce accurate “files” of land survey data for over 31,000 parcels and corresponding files of accumulated and verified documentation for 12,500 of these parcels. Many of the parcels are in zones where the communes maintain corresponding RFU files and archive files of past administrative acts. If these files can be properly organized and maintained in the cadastre database, then these landholders should find it much easier in the future to assemble proofs when they need to protect their rights, and to move forward through the final stages of certification when they want to engage in new transactions.



## Conclusion

With the adoption of the Code of Land Tenure and the Domain on January 14, 2013, Benin is entering a new stage in the evolution of its landholding law. The process of adopting the Code has been broadly participative, and the accompanying projects of rural and urban experimentation have brought thousands of citizens into active discussion and consideration of their legal status and choices. More than 85,000 rural landholders now have their parcels mapped and rights listed in the 400 completed village PFRs. Similarly, some 35,000 urban land parcels have been accurately surveyed, and the proof documents for about 20,000 landholders have been assembled, verified and corrected in the four projects of urban titling. (About 2,700 of these landholders have completed the process, registered and received their titles.) The government has stated its intent to continue to expand the coverage of villages with PFR, and it has secured some further funding from European donors for this activity. Similarly, it has kept in place the administrative apparatus—called the CNAO-TF—to continue mass urban titling. If these efforts are able to continue in parallel with the next steps of implementing the Code, we can expect a continuing, practical evolution of policy and law.

# References

## Laws:

Law no. 90-032 of 11 December 1990, the Constitution of the Republic

Law no. 2007-03 of 16 October 2007, On the Regime of Rural Landholding

Law no. 97-029 of 15 January 1999, On the Organization of Communes

Law no. 97-028 of 15 January 1999, On the Organization of Territorial Administration

Law no. 65-25 of 14 August 1965, On the Regime of Landholding Proprietorship in Dahomey

## Decrees:

Benin Council of Ministers, Decree no. 2010- of July 13, 2011, approving the draft Code of Land Tenure and the Domain

Benin Council of Ministers, Decree no. 2010-329, approving the Declaration of National Policy on Land Tenure and the Domain

Benin Council of Ministers, Decree no. 2009-693 of December 31, 2009, approving the *Lettre de Cadrage de la Réforme Foncière*;

Benin Council of Ministers, Decree no. 2009-30 of February 16, 2009, On the Composition and Functions of the CNAO-TF

Benin Council of Ministers, Decree no. 2007-448 of October 20, 2007, On MDGLAAT

Benin Council of Ministers, Decree no. 2007-447 of October 2, 2007, Ministry of Urbanism

Benin Council of Ministers, Decree no. 2001-291, on Commission Ph/TF

Benin Council of Ministers, Decree no. 95-341 of October 30, 1995, Declaration of Urban Policy

**Ministry Orders:**

Benin Ministry of Urbanism, Housing, Landholding Reform and Coastal Erosion Protection [MUHRFLEC] (2011), *Declaration de Politique Foncière et Domainale*, published in the series of Etudes foncières by Millennium Challenge Account – Benin.

Benin Ministry of Urbanism, Housing, Landholding Reform and Coastal Erosion Protection [MUHRFLEC] (2010), *Lettre de Cadrage de la Réforme Foncière*,

**Articles:**

Bah, Constantin (2000), *Operations de Lotissement et de Recasement et leurs implications au République du Benin*, publication of *Ecole Supérieure des Ingenierus Geometriques et Topographiques de Cotonou*.

Bah, Roch A., (2006), *L’immatriculation collective, le Registre Foncier Urbain, et Plan Foncier Rural: Experiences Beninoises et la generalization du Cadastre*, paper delivered at FIG conference, Accra, Ghana; [www.FIG.net/pub.Accra/papers/ts12/ts12\\_02\\_Bah.pdf](http://www.FIG.net/pub.Accra/papers/ts12/ts12_02_Bah.pdf).

Benin National Assembly and MEHU (2012), *Les Actes du forum parlementaire sur le foncier, l’aménagement et l’urbanisme en République du Benin*, proceedings of the national forum sponsored by the National Assembly and Ministry of Environment, Housing and Urbanism, at Bohicon, 16-17 October 2012.

Djankaki, C.C. (2007), *La Décentralisation au Benin: L’Impasse, Le cas de la Commune d’Abomey-Calavi*, Imprimerie A-Z, Cotonou.

Durand Lasserre, A. (2004), *La Nouvelle Coutume Urbaine dans les Pays d’Afrique SubSaharienne*, [www.gemdev.org](http://www.gemdev.org).

Gbaguidi, A.N. (1997), *La Revendication du Monopole Foncier de l’Etat, l’Intangibilité du Titre Foncier et l’Accès à la Terre au Benin*, paper presented at the Xth Conference on Folk Law and Legal Pluralism, Accra, 1995, [www.jlp.bham.ac.uk/volumes/39/gbaguidi-art.pdf](http://www.jlp.bham.ac.uk/volumes/39/gbaguidi-art.pdf).

GLTN (2012), *Les Registres Fonciers Urbains, Guide du Maître d’Ouvrage*, UN Habitat, Global Land Tool Network, [www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=3402&alt=1](http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=3402&alt=1).

Eco-Plan (2008), “Diagnostic study and plan of action for Landholding and Housing Security,” prepared for MUHRFLEC.

MCA-Benin (2012), *Rapport d'Achevement du Programme du Benin pour le Millennium Challenge Account*; [www.mcabenin.bj](http://www.mcabenin.bj).

National Commisison Ph/TF (2003), *Rapport General de Cloture des travaux de l'operation pilote de transformation des permis d'habiter en titres fanciers dans les villes de Cotonou, Porto-Novo et Parakou* presented to Council of Ministers, *Affaire* no. 187/01 under Decree no. 2001-291 of August 8, 2001.

SERHAU, S.A., [www.SERHAU.com/experiences.php](http://www.SERHAU.com/experiences.php).

**Table 1. Progress of Land Title Formation**

|                    | Total in registry<br>2006<br>(Lassissi) | Added by sporadic immatriculation each year |                |               | Added by PH/TF<br>2003-11 | Parcels in RFU 2007 |
|--------------------|-----------------------------------------|---------------------------------------------|----------------|---------------|---------------------------|---------------------|
|                    |                                         | 2006<br>(DDET)                              | 2007<br>(DDET) | 2008<br>(BIM) |                           |                     |
| Benin TOTAL        | 21,713                                  | 616                                         | 355            | 973           | 1,971**                   |                     |
| Littoral - Cotonou | 7,187                                   | 26                                          | 48             | 102           |                           | 75,825              |
| Oueme              | 3,343                                   | 27                                          | 8              | 57            |                           |                     |
| Porto Novo         | 2,378                                   |                                             |                |               |                           | 38,286              |
| Bourgou            | 444                                     | 28                                          | 2              | 21            |                           |                     |
| Parakou            | 197                                     |                                             |                |               |                           | 25,000*             |
| Atlantique         | 8,317                                   | 485                                         | 272            | 706           |                           |                     |
| Ab. Calavi         | -6,349                                  |                                             |                |               |                           |                     |
| Collines           | 341                                     | 11                                          | 0              | 11            |                           |                     |
| Couffo             | 122                                     | 4                                           | 5              | 1             |                           |                     |
| Atacora/Donga      | 85                                      | 4                                           | 0              | 4             |                           |                     |
| Natitingou         | 23                                      |                                             |                |               |                           | 11,908              |
| Mono               | 399                                     | 8                                           | 10             | 24            |                           |                     |
| Plateau            | 202                                     | 4                                           | 1              | 9             |                           |                     |
| Zou                | 884                                     | 19                                          | 9              | 35            |                           |                     |
| Bohicon            | 153                                     |                                             |                |               |                           | 10,417              |
| Alibori            | 205                                     | 0                                           | 0              | 4             |                           |                     |
| Kandi              | 196                                     |                                             |                |               |                           | 5,276               |

\*\*Note: The pilot project (2003-2004) and first expansion projects (2005-2007) added 1,453 titles out of 6,500 anticipated. The MCA-Benin project of CNAO-TF added 518 titles out of 30,000 anticipated. (MCA-Benin, September 2012)

**Table 2: Progression of Land Policy and Legislation**

|      |                                                                                                                                          |                                                                                                                                                                                       |
|------|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1990 | Constitution of the Republic of Benin, no. 90-32 of December 11, 1990                                                                    | Establishes the principle of the guarantee of private property and right to fair compensation for its expropriation in the public interest                                            |
| 1992 | Inter-ministerial Order no. 0019 MEHU/MISAT of October 26, 1992                                                                          | Defines the conditions for study and approval of projects of urban spatial arrangement                                                                                                |
| 1995 | Decree approving the Declaration of Urban Policy, no. 95-341 of October 30, 1995                                                         | Fixes policy of gradual elimination of the <i>permis d'habiter</i> as the instrument of urban landholding in favor of <i>immatriculation</i> of all urban land parcels                |
| 1996 | Ministerial Order no. 023 MEHU/DC of October 22, 1996                                                                                    | Defines the minimal requirements for preparation of plans of subdivision [ <i>lotissement</i> ]                                                                                       |
| 1997 | Uniform Act on Organization of Sureties (OHADA), no. 119 of April 17, 1997                                                               | Requires the pledge of land as collateral for loans to be based on proprietorship rights                                                                                              |
| 1999 | Law on Organization of Territorial Administration, no. 97-028 of January 15, 1999                                                        | Fixes the structure of national, regional and communal administration, and sub-communal arrondissements, villages and urban quartiers                                                 |
| 1999 | Law on Organization of Communes, no. 97-029 of January 15, 1999                                                                          | Authority of communal administrations to regulate landholding, land use and urbanization and to manage the communal domain lands                                                      |
| 2000 | National Study on Long Term Perspectives of Development - Benin 2025 ALAFIA                                                              | Places urban policies of reform of spatial arrangement, planning and subdivision and protection of property rights within broad policies of economic, political and governance reform |
| 2001 | Decree on the Creation of the National Commission on Transformation of Permis d'Habiter into Land Titles, no. 2001-291 of August 8, 2001 | Authorization of inter-ministerial commission to oversee experimental program of transformation of <i>permis d'habiter</i> into land titles in selected urban zones                   |
| 2005 | Decree approving the Declaration of National Housing Policy, no. 2005-549 of August 31, 2005                                             | Sets policy of improving landholding security in order to support investment in housing and housing credit; outlines reforms of urban spatial planning and subdivision                |

|      |                                                                                                                                                      |                                                                                                                                                                                                                                                                                                |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2006 | Report of the Presidential Working Group on Land Tenure Reform, letter of the Director of Presidential Civil Cabinet no. 343 of August 7, 2006       | Recommends integration and consolidation of urban and rural land reforms and restructuring to create a specific administrative unit of landholding policy oversight (National Commission on Land Tenure)                                                                                       |
| 2007 | Law on the Regime of Rural Landholding, no. 2007-03 of October 16, 2007                                                                              | Establishes principle that customary law continues to govern rural lands and fixes status of “equivalency” of customary rights with civil law rights; authorizes PFR and CFR as tools of proof of rights; defines methods of management and state and communal rural domains                   |
| 2007 | Decree on Structure and Authority of the Ministry of Urbanism, Housing, Land Reform, and Coastal Erosion Protection, no. 2007-447 of October 2, 2007 | Places in the ministry the authority for comprehensive oversight of landholding reform, with role of inter-ministerial coordination (General Directorate of Landholding Reform), and the role of oversight of communal activities in urban planning, subdivision and allocation of land rights |
| 2007 | Decree on Structure and Authority of the Ministry of Decentralization and Territorial Arrangement, no. 2007-448 of October 20, 2007                  | Places in the ministry the role of tutelage and technical oversight of communal activities in land arrangement and economic development planning                                                                                                                                               |
| 2009 | Decree on the Creation of the National Commission of Support for Obtaining Landholding Titles [CNAO-TF], no. 2009-30 of February 16, 2009            | Authorization for the new CNAO-TF, replacing the earlier Commission PH/TF, to carry out systematic <i>immatriculation</i> of urban land parcels                                                                                                                                                |
| 2009 | Decree adopting the Lettre de Cadrage de la Reforme Fonciere, no. 2009-693 of December 31, 2009                                                      | Comprehensive framework for all elements of reform in landholding, land regulation and land management                                                                                                                                                                                         |
| 2010 | Decree approving the Declaration of National Policy on Landholding and the Domain, no. 2010-329 of July 24, 2010                                     | Comprehensive policy outlining the intended reforms, including the integration of regimes of rural custom and “modern” civil and administrative law                                                                                                                                            |
| 2011 | Decree approving the draft Code of Landholding and the Domain, no. of July 13, 2011                                                                  | Council of Ministers approval of draft Code and transmission to the National Assembly                                                                                                                                                                                                          |

**Table 3. Projects and Programs of Landholding Reform**

|           |                                                                           |                                                                                                                                                                                                                                               |
|-----------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1992-1998 | Pilot project of <i>Registre Foncier Urbain</i>                           | Set-up of RFU in three large cities and six small urban centers. Numbers of parcels recorded:<br><br>-Cotonou with approximately 55,000<br><br>-Parakou with approximately 25,000<br><br>-Porto Novo with 38,286 ( <i>Dorier April 2005</i> ) |
| 2001-2006 | Projet d'Appui a la Reforme Fonciere et a l'Urbanisme (PARFU)             | Strategic Plan of MEHU 2002-2006                                                                                                                                                                                                              |
|           | Projet de Gestion Urbaine Decentralisee (PGUD) 2                          |                                                                                                                                                                                                                                               |
| 2001-2004 | Pilot project of transformation of <i>permis d'habiter</i> into titles    | Systematic titling in 7 selected urban zones in Cotonou, Parakou and Porto Novo. Registered 1,483 parcels and delivered 111 titles by 2005.                                                                                                   |
| 2005-2008 | Expanded project of transformation of <i>permis d'habiter</i> into titles | Systematic titling in selected urban zones. Set goal of 65,650 parcels over five years. ( <i>Bah 2006</i> )<br>Carried out technical work on 2,875 parcels in six communes before ending with creation of new CNAO-TF in 2009.                |
| 2005-2010 | Programme Appui a la Decentralisation et au Developpement Communal [PDDC] | RFU expanded to nine more urban centers plus re-constitution and expansion of inventories in Cotonou, Parakou and Porto Novo and the six original urban centers. (GLTN 2012)                                                                  |
| 2006-2011 | Millennium Challenge Account Access to Land                               | Systematic titling in 28 selected urban zones achieved only 507 titles out of 30,000 goal by end of 2012.<br><br>Preparation of 294 village PFR and set-up of rural landholding information systems to issue CFR in 39 communes.              |